

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

* insert full name of company

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

For official use

Company number

126

SC381984

Name of company

* Lomond Capital Limited (the "Parent")

Date of creation of the charge (note 1)

13 October 2016

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

Floating Charge (the "Charge")

Names of the persons entitled to the charge

Clydesdale Bank plc (the "Senior Lender")

Short particulars of all the property charged

The whole of the property, assets and rights (including uncalled capital) which are or may from time to time while the Charge is in force be comprised in the property and undertaking of the Parent.

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

For official use (02/06)
Charges Section

Post room

WEDNESDAY



S5IERMSA

SCT

26/10/2016

#324

COMPANIES HOUSE

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

See paper apart 1

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write in
this margin*

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

Date(s) of execution of the instrument of alteration

14 October 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

N/A

Short particulars of any property released from the floating charge

N/A

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

N/A

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*

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

- (1) The Senior Transaction Security shall rank in priority to the Second Ranking Transaction Security, the Third Ranking Transaction Security and the Fourth Ranking Transaction Security;
- (2) The Second Ranking Transaction Security shall rank in priority to the Third Ranking Transaction Security and the Fourth Ranking Transaction Security;
- (3) The Third Ranking Transaction Security shall rank in priority to the Fourth Ranking Transaction Security;
- (4) The Senior Transaction Security, the Second Ranking Transaction Security, the Third Ranking Transaction Security and the Fourth Ranking Transaction Security shall rank in priority to the Subordinated Security; and
- (5) The Subordinated Security Documents shall rank pari passu with each other.

Additional definitions: see papers apart 1 and 2

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

*Please do not
write in
this margin*

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

Signed *Erin Unness* Date 26/10/16
On behalf of Company Gateley (Scotland) LLP

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

Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc as the case may be, should be given. For the date of creation of a charge see section 410(5) of the Companies Act. ☐ 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

Form 466: Paper Apart 1

Company: Lomond Capital Limited

Names and addresses of the persons who have executed the instrument of alteration:

- 1) The Parent who registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET
- 2) Lomond Capital No. 1 Ltd (Registered No. SC427623) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET (the **Company**)
- 3) The Senior Lender (Registered No. SC001111) whose registered office is at 30 St Vincent Place, Glasgow, G1 2HL
- 4) Roger Lane-Smith residing at Bradford Lane Farm, Bradford Lane, Nether Alderley, Macclesfield, Cheshire SK10 4TR (the **Series A Loan Note Security Trustee**)
- 5) Lomond Capital Partnership LLP (Registered No. SO302064) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET (the **LLP**)
- 6) The Betsy S Aubrey Revocable Trust whose address is at 2953 Pacific Avenue, San Francisco, CA 94115
- 7) Robert Hamilton residing at 23 Murrayfield Avenue, Edinburgh EH12 6AU
- 8) Stuart Pender residing at Garnock House, 16 Kenilworth Road, Bridge of Allan, Stirlingshire EK9 4DU
- 9) Ivor Dickinson residing at 4 High Lawn, East Downs Road, Bowden WA14 2LG
- 10) Michael Groves residing at Novington Manor, Plumpton, East Sussex BN7 3AH
- 11) MML Capital Partners V GP Limited as general partner of MML Capital Partners Fund V, LP (registered number LP014658) and MML Capital Partners Fund V Co-Invest, LP each of whose registered offices are at Aztec Group House, 11-15 Seaton Place, St Helier JE4 0QH
- 12) Investec Investments (UK) Limited (Registered No. 00205468) whose registered office is at 2 Gresham Street, London EC2V 7QP
- 13) Investec Bank Plc (Registered No. 00489604) whose registered office is at 2 Gresham Street, London EC2V 7QP (the **Second Ranking Security Agent** and a **Second Ranking Noteholder**)
- 14) Lomond Capital No. 2 Ltd (Registered No. SC455640) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET
- 15) Lomond Property Lettings Limited (Registered No. SC373580) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET
- 16) Bondsave Limited (Registered No. SC138755) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET
- 17) Mountview Investments Limited (Registered No. SC151792) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET

- 18) Lomond Maintenance Limited (Registered No. SC428376) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET
- 19) Thornley Groves Estate Agents Limited (Registered No. 07072190) whose registered office is at 16-18 Lloyd Street, Altrincham, Cheshire, WA14 2DE
- 20) Thornley Groves Limited (Registered No. 02674298) whose registered office is at 16-18 Lloyd Street, Altrincham, Cheshire, WA14 2DE
- 21) John Shepherd Estate Agents Limited (Registered No. 09704507) whose registered office is at 14 Beeches Walk, Sutton Coldfield, West Midlands, United Kingdom, B73 6HN
- 22) John Shepherd Lettings Limited (Registered No. 06841027) whose registered office is at 14 Beeches Walk, Sutton Coldfield, West Midlands, United Kingdom, B73 6HN
- 23) Lomond Mortgages Limited (Registered No. SC390469) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET
- 24) Mountview Property (Scotland) Limited (Registered No. SC476925) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET
- 25) Managed Space Limited (Registered No. SC250257) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET
- 26) MML Capital Europe V S.A (Registered with the Luxembourg Register of Commerce and Companies under number B157697) whose registered office is at 7, rue Lou Hemmer, L-1748 Luxembourg-Findel, Luxembourg (the **Fourth Ranking Noteholder**)
- 27) Vernon Powell residing at 20 Helena Street, Wellington Point, Queensland 4160, Australia
- 28) MML Capital Partners LLP (Registered No. OC333488) whose registered office is at 1-3 Strand, London, WC2N 5HR (the **Third Ranking Security Agent** and the **Fourth Ranking Security Agent**)

Form 466 – Paper Apart 2

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

"Counter Indemnity Fee Letters" means:

- a) the fee letter relating to the MML Counter Indemnity dated on or about the date of the Intercreditor Agreement between the Company and MML Capital Europe V S.A; and
- b) the fee letter relating to the SP Counter Indemnity dated on or about the date of the Intercreditor Agreement between the Company and Stuart Pender;

"Counter Indemnities" means each of the MML Counter Indemnity and the SP Counter Indemnity, and "Counter Indemnity" shall mean either of them;

"Creditor" means the Senior Lender, the Second Ranking Creditors, the Third Ranking Creditors, the Fourth Ranking Creditors, the Intra-Group Lenders and the Subordinated Creditors;

"Debt Documents" means:

- a) the Senior Finance Documents;
- b) the Second Ranking Debt Documents;
- c) the Third Ranking Debt Documents;
- d) the Fourth Ranking Debt Documents; and/or
- e) the Subordinated Documents and any other agreement evidencing the terms of the Intra-Group Liabilities or the Subordinated Liabilities,

and any other document designated as such by the Senior Lender (prior to the Senior Discharge Date) or the Second Ranking Security Agent (after the Senior Discharge Date and prior to the Second Ranking Discharge Date) or the Third Ranking Security Agent (after the Second Ranking Discharge Date and prior to the Third Ranking Discharge Date) or the Fourth Ranking Security Agent (after the Third Ranking Discharge Date) and the Parent;

"Debtors" each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of clause 31 of the Intercreditor Agreement;

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Senior Lender, the Second Ranking Security Agent, the Third Ranking Security Agent or the Fourth Ranking Security Agent;

"Fourth Ranking Creditors" means the Fourth Ranking Noteholders and the Fourth Ranking Security Agent;

"Fourth Ranking Debt Documents" means the Fourth Ranking Notes, the Fourth Ranking Loan Note Instrument and the Fourth Ranking Security Documents;

"Fourth Ranking Loan Note Instrument" means the loan note instrument dated 31 July 2014 constituting the Fourth Ranking Notes, as amended on or prior to the date of the Intercreditor Agreement and each other loan note instrument relating to the issue of Fourth Ranking Notes;

"Fourth Ranking Noteholders" means each "Noteholder" under and as defined in the Fourth Ranking Loan Note Instrument;

"Fourth Ranking Notes" means the Liabilities owed by the Debtors to the Fourth Ranking Creditors under or in connection with the Fourth Ranking Debt Documents;

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

"Fourth Ranking Secured Parties" means the Fourth Ranking Security Agent, any Receiver (appointed by the Fourth Ranking Security Agent) or Delegate (appointed by the Fourth Ranking Security Agent) and each of the Fourth Ranking Creditors from time to time but, in the case of each Fourth Ranking Creditor, only if it is a Party or has acceded to the Intercreditor Agreement, in the appropriate capacity, pursuant to clause 31.11 (Creditor Accession Undertaking);

"Fourth Ranking Security Documents" means

- a) each of the "MML Loan Note Security Documents" (as such term is defined in the Senior Facility Agreement) in the form in force as at the date of the Intercreditor Agreement;
- b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Fourth Ranking Secured Parties as security for any of the Fourth Ranking Secured Obligations including pursuant to clause 7.4 of the Intercreditor Agreement (Security: Fourth Ranking Creditors); and
- c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b);

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

"Group" means the Parent and each of its Subsidiaries for the time being;

"Intercreditor Agreement" means the intercreditor agreement dated 14 October 2016 and made between, among others, the Parent, the Company, the Senior Lender, the LLP, the Second Ranking Security Agent and MML;

"Intra-Group Lender" means each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member

of the Group and which is named on the signing pages as an Intra-Group Lender or which becomes a Party as an Intra-Group Lender in accordance with the terms of clause 31 (Changes to Parties);

"Investment Agreement" means the Investment Agreement (as such term is defined in the Senior Facility Agreement) in the form in force on the date of the Intercreditor Agreement;

"Liabilities" means all present and future liabilities and obligations at any time of any member of the Group to any Creditor under the Debt Documents or, in the case of any liabilities or obligations to any Intra-Group Lender whether documented or undocumented, 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;

"Majority Second Ranking Noteholders" has the meaning given to "Majority Noteholders" in the Second Ranking Loan Note Instrument;

"MML" means all and any of MML Fund V LP, MML Europe V SA, MML Capital Partners Fund V Co-Invest LP, MML Capital Partners LLP and any other fund managed by MML Capital Partners LLP;

"MML Counter Indemnity" means the counter indemnity dated on or about the date of the Intercreditor Agreement by the Company in favour of MML Capital Europe V S.A.;

"Original Debtors" means the Parent, the Company, Lomond Capital No.2 Ltd, Lomond Property Lettings Limited, Bondsave Limited, Mountview Investments Limited, Lomond Maintenance Limited, Thornley Groves Estate Agents Limited, Thornley Groves Limited, John Shepherd Estate Agents Ltd, John Shepherd Lettings Limited, Lomond Mortgages Limited, Mountview Property (Scotland) Limited and Managed Space Limited;

"Parent Shareholders" means each of the LLP, Stuart Pender, the Series A Loan Note Security Trustee, Robert Hamilton, Ivor Dickinson, Michael Groves, MML Capital Partners Fund VLP, MML Capital Partners V Co-Invest LP and Investec Investments (UK) Limited;

"Party" means a party to the Intercreditor Agreement;

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

"Permitted Acquisition" has the permitted acquisition as defined in the Senior Facility Agreement;

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

"Second Ranking Creditors" means the Second Ranking Noteholders and the Second Ranking Security Agent;

"Second Ranking Debt Documents" has the meaning given to the term "Loan Note Documents" in the Second Ranking Loan Note Instrument;

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

"Second Ranking Liabilities" means the Liabilities owed by the Debtors to the Second Ranking Creditors under or in connection with the Second Ranking Debt Documents;

"Second Ranking Loan Note Instrument" means the loan note instrument dated 11 September 2013 constituting the Second Ranking Notes;

"Second Ranking Noteholders" means each "Noteholder" under and as defined in the Second Ranking Loan Note Instrument;

"Second Ranking Notes" means the £3,492,857 guaranteed and secured loan notes of the Company due 2020;

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

"Second Ranking Secured Parties" means the Second Ranking Security Agent, any Receiver (appointed by the Second Ranking Security Agent) or Delegate (appointed by the Second Ranking Security Agent) and each of the Second Ranking Creditors from time to time but, in the case of each Second Ranking Creditor, only if it is a Party or has acceded to the Intercreditor Agreement, in the appropriate capacity, pursuant to clause 31.11 (Creditor Accession Undertaking);

"Second Ranking Security Documents" means

- (a) each of the "Investec Loan Note Security Documents" (as such term is defined in the Senior Facility Agreement) in the form in force as at the date of the Intercreditor Agreement;
- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Second Ranking Secured Parties as security for any of the Second Ranking Secured Obligations including pursuant to clause 5.4 (Security: Second Ranking Creditors); and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b);

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

"Secured Subordinated Creditors" means the Series A Loan Note Security Trustee and the Series A Loan Noteholders;

"Secured Subordinated Documents" means the Series A Loan Note Documents and the Subordinated Security Documents;

"Secured Subordinated Liabilities" means the Liabilities owed to the Secured Subordinated Creditors by the Parent under the Secured Subordinated Documents;

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

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

"Senior Facility Agreement" means the term loan and revolving facilities agreement dated on or around the date of the Intercreditor Agreement between, the Parent, the Company, the Debtors and the Senior Lender;

"Senior Finance Documents" means the "Finance Documents" (as such term is defined in the Senior Facility Agreement);

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

"Senior Security Documents" means:

- (d) each of the Transaction Security Documents as defined in the Senior Facility Agreement;

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

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

"Senior Secured Parties" means the Senior Lender, any Receiver or Delegate;

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

"Series A Loan Note Documents" has the meaning given to that term in the Senior Facility Agreement;

"Series A Loan Note Instrument" has the meaning given to that term in the Senior Facility Agreement;

"Series A Loan Noteholders" means each "Noteholder" under and as defined in the Series A Loan Note Instrument;

"SP Counter Indemnity" means the counter indemnity dated on or about the date of the Intercreditor Agreement by the Company in favour of Stuart Pender;

"Subordinated Creditors" means the Secured Subordinated Creditors, the LLP, the Parent Shareholders from time to time and any person or entity which becomes a party to the Intercreditor Agreement as a Subordinated Creditor in accordance with clause 31 (Changes to Parties);

"Subordinated Documents" means the Secured Subordinated Documents and the Unsecured Subordinated Documents;

"Subordinated Liabilities" means the Secured Subordinated Liabilities and the Unsecured Subordinated Liabilities;

"Subordinated Security" means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Subordinated Security Documents as at the date of the Intercreditor Agreement together with any Security under any Subordinated Security Documents entered into after the date of the Intercreditor Agreement pursuant to clause 9.6 (Security: Subordinated Creditors);

"Subordinated Security Documents" means each and any of the "Series A Loan Note Security Documents" (as such term is defined in the Senior Facility Agreement);

"Subsidiaries" means the Company, Lomond Capital No.2 Ltd, Lomond Maintenance Limited, Lomond Mortgages Limited, Lomond Property Lettings Limited, Thornley Groves Estate Agents Limited, Thornley Groves Limited, John Shepherd Estate Agents Ltd, John Shepherd Lettings Limited, Bondsave Limited, Mountview Investments Limited, Mountview Property (Scotland) Limited and Managed Space Limited;

"Third Ranking Creditors" means the Third Ranking Noteholders, each Third Ranking Indemnity Creditor and the Third Ranking Security Agent;

"Third Ranking Debt Documents" means the Third Ranking Notes, the Third Ranking Loan Note Instrument, the Counter Indemnities, the Counter Indemnity Fee Letters and the Third Ranking Security Documents;

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

"Third Ranking Indemnity Creditor" means

- a) MML Capital Europe V S.A. in its capacity as a beneficiary under the MML Counter Indemnity; and
- b) Stuart Pender in his capacity as a beneficiary under the SP Counter Indemnity;

"Third Ranking Liabilities" means the Liabilities owed by the Debtors to the Third Ranking Creditors under or in connection with the Third Ranking Debt Documents;

"Third Ranking Loan Note Instrument" means the loan note instrument dated 22 January 2016 constituting the Third Ranking Notes;

"Third Ranking Noteholders" means each "Noteholder" under and as defined in the Third Ranking Loan Note Instrument;

"Third Ranking Notes" means the £2,000,000 25% fixed rate subordinated secured loan notes of the Company due, subject to the terms of the Intercreditor Agreement, 2020, together with any Third Ranking PIK Notes;

"Third Ranking PIK Notes" means the PIK notes constituted pursuant to the terms of the Third Ranking Loan Note Instrument in force as at the date of the Intercreditor Agreement;

"Third Ranking Security Documents" means

- (a) each of the "2016 Subordinated Loan Note Security Documents" (as such term is defined in the Senior Facility Agreement) in the form in force as at the date of the Intercreditor Agreement;
- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of

any of the Third Ranking Secured Parties as security for any of the Third Ranking Secured Obligations including pursuant to clause 6.4 (Security: Third Ranking Creditors); and

- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b);

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

"Third Ranking Secured Parties" means the Third Ranking Creditors and any Receiver (appointed by the Third Ranking Security Agent) or Delegate (appointed by the Third Ranking Security Agent) from time to time but, in the case of each Third Ranking Creditor, only if it is a Party or has acceded to the Intercreditor Agreement, in the appropriate capacity, pursuant to clause 31.11 (Creditor Accession Undertaking);

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

"Transaction Security" means the Senior Transaction Security, the Second Ranking Transaction Security, the Third Ranking Transaction Security and the Fourth Ranking Transaction Security;

"Transaction Security Documents" means the Senior Security Documents, the Second Ranking Security Documents, the Third Ranking Security Documents and the Fourth Ranking Security Documents;

"Unsecured Lomond Loan Notes" means the £6,244,670 unsecured loan notes due, subject to the Intercreditor Agreement, 2020 issued by the Parent under the Unsecured Lomond Loan Note Instrument;

"Unsecured Lomond Loan Note Instrument" has the meaning given to the term "Partnership Loan Note Instrument" in the Senior Facility Agreement;

"Unsecured Subordinated Documents" means the constitutional documents, the Investment Agreement, the Unsecured Lomond Loan Note Instrument, the Unsecured Lomond Loan Notes, any other documents entered into pursuant to the Unsecured Lomond Loan Note Instrument or the Unsecured Lomond Loan Notes, any document or instrument that documents the terms of any Permitted Additional Subordinated Debt (as such term is defined in the Senior Facility Agreement) and any other document evidencing the terms of any Subordinated Liabilities which are not Secured Subordinated Documents; and

"Unsecured Subordinated Liabilities" means any Liabilities owed by the Parent or any other member of the Group to the Subordinated Creditors under the Unsecured Subordinated Documents.



FILE COPY

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

COMPANY NO. 381984
CHARGE CODE SC38 1984 0018

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 14 OCTOBER 2016 WERE DELIVERED
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985
ON 26 OCTOBER 2016

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 13
OCTOBER 2016

BY LOMOND CAPITAL LIMITED

IN FAVOUR OF
CLYDESDALE BANK PLC

GIVEN AT COMPANIES HOUSE, EDINBURGH 1 NOVEMBER 2016



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

HBJ Gateley

- (1) CLYESDALE BANK PLC
as Senior Lender
- (2) INVESTEC BANK PLC
as Second Ranking Noteholder
- (3) THE ENTITIES LISTED IN PART 1 OF SCHEDULE 1
as Subordinated Creditors
- (4) ROGER LANE-SMITH
as Series A Loan Note Security Trustee
- (5) LOMOND CAPITAL PARTNERSHIP LLP
as LLP
- (6) LOMOND CAPITAL LIMITED
as Parent
- (7) LOMOND CAPITAL NO. 1 LTD
as Company
- (8) THE COMPANIES LISTED IN PART 2 OF SCHEDULE 1
as Intra-Group Lenders
- (9) THE COMPANIES LISTED IN PART 3 OF SCHEDULE 1
as Original Debtors
- (10) INVESTEC BANK PLC
as Second Ranking Security Agent
- (11) THE ENTITIES AND INDIVIDUALS LISTED IN PART 4 OF SCHEDULE 1
as Third Ranking Creditors
- (12) MML CAPITAL PARTNERS LLP
as Third Ranking Security Agent
- (13) MML CAPITAL EUROPE V S.A.
as Fourth Ranking Noteholder
- and-
- (14) MML CAPITAL PARTNERS LLP
as Fourth Ranking Security Agent

INTERCREDITOR AGREEMENT

Certified as a true copy of
the original subject to the
exclusion of personal
information permitted by
Section 859G of the
Companies Act 2006

Gateley (Scotland) LLP

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THIS AGREEMENT is made on

October 2016

BETWEEN:

- (1) **CLYDESDALE BANK PLC** as the Senior Lender;
- (2) **INVESTEC BANK PLC** as a Second Ranking Noteholder;
- (3) **THE PERSONS AND ENTITIES** listed in part 1 of schedule 1 (*The Parties*) as Subordinated Creditors;
- (4) **ROGER LANE-SMITH** as security trustee for the Series A Loan Noteholders (the "**Series A Loan Note Security Trustee**");
- (5) **LOMOND CAPITAL PARTNERSHIP LLP**, a limited liability partnership incorporated in Scotland with registered number SO302064 (the "**LLP**");
- (6) **LOMOND CAPITAL LIMITED**, a company incorporated in Scotland with registered number SC381984 (as "**Parent**");
- (7) **LOMOND CAPITAL NO.1 LTD**, a company incorporated in Scotland with registered number SC427623 (as "**Company**");
- (8) **THE COMPANIES** listed in part 2 of schedule 1 (*The Parties*) as Intra-Group Lenders;
- (9) **THE COMPANIES** listed in part 3 of schedule 1 (*The Parties*) as Debtors (together with the Parent and the Company, the "**Original Debtors**");
- (10) **INVESTEC BANK PLC** as security trustee for the Second Ranking Secured Parties (the "**Second Ranking Security Agent**");
- (11) **THE ENTITIES AND INDIVIDUALS** listed in part 4 of schedule 1 (*The Parties*) as Third Ranking Creditors (the "**Third Ranking Creditors**");
- (12) **MML CAPITAL PARTNERS LLP**, of 1-3 Strand, London WC2N 5HR (as "**Third Ranking Security Agent**");
- (13) **MML CAPITAL EUROPE V S.A.**, a public limited company (société anonyme), existing under the laws of Luxembourg, having its registered office at 7 rue Lou Hemmer, L-17488 Luxembourg-Findel, Grand Duchy of Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B157697 (the "**Fourth Ranking Noteholder**"); and
- (14) **MML CAPITAL PARTNERS LLP**, of 1-3 Strand, London WC2N 5HR (as "**Fourth Ranking Security Agent**").

SECTION 1

INTERPRETATION

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement capitalised terms have the meaning given to them in the Senior Facility Agreement unless otherwise defined in this Agreement and:

"Acceleration Event" means a Senior Acceleration Event, a Second Ranking Acceleration Event, a Third Ranking Acceleration Event or a Fourth Ranking Acceleration Event;

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

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

"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 or a Debtor in respect of Financial Indebtedness (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a borrower under the Senior Finance Documents, liabilities and obligations as a Debtor under the Second Ranking Debt Documents, liabilities and obligations as a Debtor under the Third Ranking Debt Documents and liabilities and obligations as a Debtor under the Fourth Ranking Debt Documents);

"Cash Proceeds" means:

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

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

"Common Assurance" means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible, given to all the Senior Secured Parties, the Second Ranking Secured Parties, the Third Ranking Secured Parties and the Fourth Ranking Secured Parties in respect of their Liabilities;

"Common Currency" means sterling;

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

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

"Counter Indemnities" means each of the MML Counter Indemnity and the SP Counter Indemnity, and **"Counter Indemnity"** shall mean either of them;

"Counter Indemnity Fee Letters" means:

- (a) the fee letter relating to the MML Counter Indemnity dated on or about the date of this Agreement between the Company and MML Capital Europe V S.A.; and
- (b) the fee letter relating to the SP Counter Indemnity dated on or about the date of this Agreement between the Company and Stuart Pender;

"Creditor Accession Undertaking" means:

- (a) an undertaking substantially in the form set out in schedule 3 (*Form of Creditor Accession Undertaking*);
- (b) prior to the Senior Discharge Date, an assignment of the Senior Lender's rights under the Senior Facility Agreement containing an accession to this Agreement which is substantially in the form set out in schedule 3 (*Form of Creditor Accession Undertaking*);

as the context may require, or

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

"Creditors" means the Senior Lender, the Second Ranking Creditors, the Third Ranking Creditors, the Fourth Ranking Creditors, the Intra-Group Lenders and the Subordinated Creditors;

"Debt Disposal" means any disposal of any Liabilities or Debtors' Intra-Group Receivables pursuant to clauses 19.1(d) and 19.1(e), 20.1(d) and 20.1(e), 21.1(d) and 21.1(e) and 22.1(d) and 22.1(e);

"Debt Document" means:

- (a) the Senior Finance Documents;
- (b) the Second Ranking Debt Documents;
- (c) the Third Ranking Debt Documents;
- (d) the Fourth Ranking Debt Documents; and/or
- (e) the Subordinated Documents and any other agreement evidencing the terms of the Intra-Group Liabilities or the Subordinated Liabilities,

and any other document designated as such by the Senior Lender (prior to the Senior Discharge Date) or the Second Ranking Security Agent (after the Senior Discharge Date and prior to the Second Ranking Discharge Date) or the Third Ranking Security Agent (after the Second Ranking Discharge Date and prior to the Third Ranking Discharge Date) or the Fourth Ranking Security Agent (after the Third Ranking Discharge Date) and the Parent;

"Debtor" means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of clause 31 (*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 guarantor under the Senior Facility Agreement) an Accession Deed as defined in the Senior Facility Agreement (provided that it contains an accession to this Agreement which is substantially in the form set out in schedule 2 (*Form of Debtor Accession Deed*));

"Debtor Resignation Request" means a notice 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;

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Senior Lender, the Second Ranking Security Agent, the Third Ranking Security Agent or the Fourth Ranking Security Agent;

"Distress Event" means any of:

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

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

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

"Enforcement Action" means:

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

relevant Debtor and Intra-Group Lender and (B) that any resulting Payment would be a Permitted Intra-Group Payment);

- (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
- (v) 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 the acquisition of an Intra-Group Liability which is permitted under clause 8.4 (*Acquisition of Intra-Group Liabilities*));
- (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right:
 - (A) a set-off of Intra-Group Liabilities prior to the occurrence of a Distress Event;
 - (B) which is otherwise permitted under the Senior Facility Agreement, the Second Ranking Loan Note Instrument, the Third Ranking Loan Note Instrument and the Fourth Ranking Loan Note Instrument to the extent that the exercise of that right gives effect to a Permitted Payment; and
- (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;
- (b) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (c) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under clause 31 (*Changes to the Parties*)); or
- (d) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the taking of any action falling within paragraphs (a)(vii) or (d) which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods shall not constitute Enforcement Action;

"Event of Default" means any event or circumstance specified as such in the Senior Facility Agreement, the Second Ranking Loan Note Instrument, the Third Ranking Loan Note Instrument or the Fourth Ranking Loan Note Instrument;

"Final Discharge Date" means the later to occur of the Senior Discharge Date, the Second Ranking Discharge Date, the Third Ranking Discharge Date and the Fourth Ranking Discharge Date;

"Final Priority Ranking Discharge Date" means the later to occur of the Senior Discharge Date and the Second Ranking Discharge Date;

"Financial Adviser" means any:

- (a) independent internationally recognised investment bank;
- (b) independent internationally recognised accountancy firm; or
- (c) other independent internationally recognised professional services firm which is regularly engaged in providing valuations of businesses or financial assets;

"Fourth Ranking Acceleration Event" means the Majority Fourth Ranking Noteholders exercising any of their rights under clause 5 (*Events of Default*) of appendix 1 to the Fourth Ranking Loan Instrument;

"Fourth Ranking Borrower" has the meaning given to the term "*Issuer*" in the Fourth Ranking Loan Note Instrument;

"Fourth Ranking Creditors" means the Fourth Ranking Noteholders and the Fourth Ranking Security Agent;

"Fourth Ranking Debt Documents" means the Fourth Ranking Notes, the Fourth Ranking Loan Note Instrument and the Fourth Ranking Loan Note Security Documents;

"Fourth Ranking Default" means a Fourth Ranking Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Fourth Ranking Debt Documents or any combination of any of the foregoing) be an Fourth Ranking Event of Default;

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

"Fourth Ranking Event of Default" means an Event of Default under, and as defined in, the Fourth Ranking Loan Note Instrument;

"Fourth Ranking Guarantor" means any party who has granted to any Fourth Ranking Secured Party a guarantee, pursuant to the Fourth Ranking Security Documents;

"Fourth Ranking Liabilities" means the Liabilities owed by the Debtors to the Fourth Ranking Creditors under or in connection with the Fourth Ranking Debt Documents;

"Fourth Ranking Loan Note Instrument" means the loan note instrument dated 31 July 2014 constituting the Fourth Ranking Notes, as amended on or prior to the date of this Agreement and each other loan note instrument relating to the issue of Fourth Ranking Notes;

"Fourth Ranking Noteholder" means each *"Noteholder"* under and as defined in the Fourth Ranking Loan Note Instrument;

"Fourth Ranking Notes" means the £14,000,000 12% fixed rate subordinated secured loan notes of the Company due 2020, any Fourth Ranking PIK Notes, and any other loan notes issued by the Parent or the Company to the Fourth Ranking Noteholders which constitute Permitted Additional Subordinated Debt or Permitted Subordinated Equity Cure Debt, and which, in either case, is intended to rank as Fourth Ranking Liabilities in accordance with paragraph (b) of either definition;

"Fourth Ranking PIK Notes" means the PIK notes constituted pursuant to the terms of the Fourth Ranking Loan Note Instrument;

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

"Fourth Ranking Secured Parties" means the Fourth Ranking Security Agent, any Receiver (appointed by the Fourth Ranking Security Agent) or Delegate (appointed by the Fourth Ranking Security Agent) and each of the Fourth Ranking Creditors from time to time but, in the case of each Fourth Ranking Creditor, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to clause 31.11 (*Creditor Accession Undertaking*);

"Fourth Ranking Security Documents" means:

- (a) each of the *"MML Loan Note Security Documents"* as defined in the Senior Facility Agreement in the form in force as at the date of this Agreement;
- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Fourth Ranking Secured Parties as security for any of the Fourth Ranking Secured Obligations including pursuant to clause 7.4 (*Security: Fourth Ranking Creditors*); and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b);

"Fourth Ranking Security Property" means:

- (a) the Fourth Ranking Transaction Security expressed to be granted in favour of the Fourth Ranking Security Agent as trustee for the Fourth Ranking Secured Parties and all proceeds of that Fourth Ranking Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Fourth Ranking Liabilities to the Fourth Ranking Security Agent as trustee for the Fourth Ranking Secured Parties and secured by the Fourth Ranking Transaction Security together with all representations and warranties expressed to be given by a

Debtor in favour of the Fourth Ranking Security Agent as trustee for the Fourth Ranking Secured Parties;

- (c) the Fourth Ranking Security Agent's interest in any trust fund created pursuant to clause 11 (*Turnover of Receipts*);
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Fourth Ranking Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Fourth Ranking Secured Parties;

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

"Group" means the Parent and each of its Subsidiaries for the time being;

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

"Historic Senior Facility Agreement" means the facility agreement originally dated 11 September 2013 between (1) Lomond Capital Limited (as Parent), (2) the companies listed in part 1 of schedule 1 thereto as Original Borrowers, (3) the companies listed in part 1 of schedule 1 thereto as Original Guarantors, and (4) Investec Bank plc as Arranger, Original Lender, Original Hedge Counterparty, Agent and Security Agent, pursuant to which the Original Lender agreed to make a term loan facility available to the Borrowers (as defined therein), as varied, supplemented, amended, restated, novated or replaced from time to time;

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

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

"Instructing Group" means:

- (a) prior to the Senior Discharge Date, the Senior Lender;
- (b) on or after the Senior Discharge Date, the Majority Second Ranking Noteholders;
- (c) on or after the Final Priority Ranking Discharge Date, the Majority Third Ranking Creditors; and

- (d) on or after the Third Ranking Discharge Date, the Majority Fourth Ranking Noteholders;

"Intercreditor Amendment" means any amendment or waiver which is subject to clause 37 (*Consents, Amendments and Override*);

"Intra-Group Lenders" means each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which is named on the signing pages as an Intra-Group Lender or which becomes a Party as an Intra-Group Lender in accordance with the terms of clause 31 (*Changes to the Parties*);

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

"Investec Group" means Investec Bank plc, Investec PLC, Investec Limited and each of their Subsidiaries for the time being;

"Investec Guarantees" means:

- (a) the guarantee granted by MML Europe Capital V S.A. in favour of the Second Ranking Security Agent in respect of the Second Ranking Liabilities; and
- (b) the guarantee granted by Stuart Pender in favour of the Second Ranking Security Agent in respect of the Second Ranking Liabilities,

each dated on or about the date of this Agreement;

"Investment Agreement" means the Investment Agreement as defined in the Senior Facility Agreement, in the form in force on the date of this Agreement;

"Liabilities" means all present and future liabilities and obligations at any time of any member of the Group to any Creditor under the Debt Documents or, in the case of any liabilities or obligations to any Intra-Group Lender whether documented or undocumented, 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 or transfer;

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

the rights in respect of those Liabilities;

"Liabilities Sale" means a Debt Disposal pursuant to clause 19.1(e), clause 20.1(e) or clause 21.1(e) and 22.1(e);

"LLP Unsecured Subordinated Liabilities" has the meaning given to that term in clause 2.3(d);

"Majority Fourth Ranking Noteholders" has the meaning given to *"Majority Noteholders"* in the Fourth Ranking Loan Note Instrument;

"Majority Second Ranking Noteholders" has the meaning given to *"Majority Noteholders"* in the Second Ranking Loan Note Instrument;

"Majority Third Ranking Creditors" means Third Ranking Creditors together holding not less than 50.1 per cent. of the Third Ranking Liabilities;

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

"MML Counter Indemnity" means the counter indemnity dated on or about the date of this Agreement by the Company in favour of MML Capital Europe V S.A.;

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

"Non-Cash Recoveries" means:

- (a) any proceeds of a Distressed Disposal or a Debt Disposal; or
- (b) any amount distributed to the Senior Lender, Second Ranking Security Agent, Third Ranking Security Agent or Fourth Ranking Security Agent pursuant to clause 11.1 (*Turnover by the Creditors*),

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

"Non-Distressed Disposal" has the meaning given to that term in clause 18 (*Non-Distressed Disposals*);

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

"Parent Shareholders" means each of the LLP, Stuart Pender, Roger Lane-Smith, Robert Hamilton, Ivor Dickinson, Michael Groves, MML Capital Partners Fund VLP, MML Capital Partners v Co-invest LP and Investec Investments (UK) Limited;

"Party" means a party to this Agreement;

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

"Permitted Fourth Ranking Creditor Payment" means the Payments permitted by clause 7.2 (*Permitted Payments: Fourth Ranking Liabilities*);

"Permitted Intra-Group Payments" means the Payments permitted by clause 8.2 (*Permitted Payments: Intra-Group Liabilities*);

"Permitted LLP Investor Loan Note Payment" means, in respect of the Series A Loan Notes, a payment of accrued cash pay interest (and not for the avoidance of doubt payment of any amount of principal or capitalised or PIK interest), provided that:

- (a) such interest is then due and payable in accordance with the terms of Series A Loan Note Instrument as in force at the date of this Agreement;
- (b) the aggregate of all such payments made in any year does not exceed an amount calculated 10 per cent per annum on the principal amount of the Series A Loan Notes; and
- (c) no Senior Default is continuing at the time of making such payment or would result from the payment being made;

"Permitted Payment" means a Permitted Intra-Group Payment, a Permitted Senior Facility Payment, a Permitted Second Ranking Creditor Payment, a Permitted Third Ranking Creditor Payment, a Permitted Fourth Ranking Creditor Payment or a Permitted Subordinated Creditor Payment;

"Permitted Second Ranking Creditor Payment" means the Payments permitted by clause 5.2 (*Permitted Payments: Second Ranking Liabilities*);

"Permitted Senior Facility Payments" means the Payments permitted by clause 4 (*Senior Lender and Senior liabilities*

Payment of Senior Facility Liabilities);

"Permitted Subordinated Creditor Payments" means the Payments permitted by clause 9.2 (*Permitted Payments: Subordinated Liabilities*);

"Permitted Third Ranking Creditor Payment" means the Payments permitted by clause 6.2 (*Permitted Payments: Third Ranking Liabilities*);

"Primary Creditors" means the Senior Lender, the Second Ranking Creditors, the Third Ranking Creditors and the Fourth Ranking Creditors;

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

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

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

"Recoveries" has the meaning given to that term in clause 26.1 (*Order of application*);

"Relevant Liabilities" means:

(a) in the case of a Creditor:

- (i) the Liabilities owed to Creditors ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to that Creditor (as the case may be); and
- (ii) all present and future liabilities and obligations, actual and contingent, of the Debtors to the Senior Lender under the Senior Finance Documents, the Second Ranking Security Agent under the Second Ranking Debt Documents, the Third Ranking Security Agent under the Third Ranking Debt Documents and the Fourth Ranking Security Agent under the Fourth Ranking Debt Documents; and

(b) in the case of a Debtor, the Liabilities owed to the Creditors together with all present and future liabilities and obligations, actual and contingent, of the Debtors to the Senior Lender under the Senior Finance Documents and the Second Ranking Security Agent under the Second Ranking Debt Documents;

"Report" means any "Report" under and as defined in the Senior Facility Agreement;

"Second Ranking Acceleration Event" means the Majority Second Ranking Noteholders exercising any of their rights under clause 8 (*Events of Default*) of the Second Ranking Loan Note Instrument;

"Second Ranking Borrower" has the meaning given to the term "Company" in the Second Ranking Loan Note Instrument;

"Second Ranking Creditors" means the Second Ranking Noteholders and the Second Ranking Security Agent;

"Second Ranking Debt Documents" has the meaning given to the term "Loan Note Documents" in the Second Ranking Loan Note Instrument;

"Second Ranking Default" means a Second Ranking Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Second Ranking Debt Documents or any combination of any of the foregoing) be a Second Ranking Event of Default;

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

"Second Ranking Event of Default" means an Event of Default under, and as defined in, the Second Ranking Loan Note Instrument;

"Second Ranking Guarantor" has the meaning given to the term "Guarantor" in the Second Ranking Loan Note Instrument ;

"Second Ranking Liabilities" means the Liabilities owed by the Debtors to the Second Ranking Creditors under or in connection with the Second Ranking Debt Documents;

"Second Ranking Loan Note Instrument" means the loan note instrument dated 11 September 2013 constituting the Second Ranking Notes;

"Second Ranking Noteholder" means each *"Noteholder"* under and as defined in the Second Ranking Loan Note Instrument;

"Second Ranking Notes" means the £3,492,857 guaranteed and secured loan notes of the Company due 2020;

"Second Ranking PIK Notes" means the PIK notes constituted pursuant to the terms of the Second Ranking Loan Note Instrument;

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

"Second Ranking Secured Parties" means the Second Ranking Security Agent, any Receiver (appointed by the Second Ranking Security Agent) or Delegate (appointed by the Second Ranking Security Agent) and each of the Second Ranking Creditors from time to time but, in the case of each Second Ranking Creditor, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to clause 31.11 (*Creditor Accession Undertaking*);

"Second Ranking Security Documents" means:

- (a) each of the *"Investec Loan Note Security Documents"* as defined in the Senior Facility Agreement in the form in force as at the date of this Agreement;
- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Second Ranking Secured Parties as security for any of the Second Ranking Secured Obligations including pursuant to clause 5.4 (*Security: Second Ranking Creditors*); and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b);

"Second Ranking Security Property" means:

- (a) the Second Ranking Transaction Security expressed to be granted in favour of the Second Ranking Security Agent as trustee for the Second Ranking Secured Parties and all proceeds of that Second Ranking Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Second Ranking Liabilities to the Second Ranking Security Agent as trustee for the Second Ranking Secured Parties and secured by the Second Ranking Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Second Ranking Security Agent as trustee for the Second Ranking Secured Parties;
- (c) the Second Ranking Security Agent's interest in any trust fund created pursuant to clause 11 (*Turnover of Receipts*);
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Second Ranking Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Second Ranking Secured Parties;

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

"Secured Subordinated Creditors" means the Series A Loan Note Security Trustee and the Series A Loan Noteholders;

"Secured Subordinated Documents" means the Series A Loan Note Documents and the Subordinated Security Documents;

"Secured Subordinated Liabilities" means the Liabilities owed to the Secured Subordinated Creditors by the Parent under the Secured Subordinated Documents;

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

"Security Agent" means the Second Ranking Security Agent, the Third Ranking Security Agent or the Fourth Ranking Security Agent or all of them as the context requires;

"Security Documents" means the Senior Security Documents, the Second Ranking Security Documents, the Third Ranking Security Documents and the Fourth Ranking Security Documents;

"Security Property" means the Senior Security Property, the Second Ranking Security Property, the Third Ranking Security Property and the Fourth Ranking Security Property;

"Senior Acceleration Event" means the Senior Lender exercising any of its rights under clause 24.19 (*Acceleration*) of the Senior Facility Agreement;

"Senior Borrower" means a *"Borrower"* under and as defined in the Senior Facility Agreement;

"Senior Default" means a Default under (and as defined in) the Senior Facility Agreement;

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

"Senior Event of Default" means an Event of Default under (and as defined in) the Senior Facility Agreement;

"Senior Facility Agreement" means the term loan and revolving facilities agreement dated on or around the date of this Agreement between, the Parent, the Company, the Debtors and the Senior Lender;

"Senior Finance Documents" means the *"Finance Documents"* as defined in the Senior Facility Agreement;

"Senior Guarantor" means a *"Guarantor"* under and as defined in the Senior Facility Agreement;

"Senior Hedging Agreement" means a *"Hedging Agreement"* as defined in the Senior Facility Agreement.

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

- (a) in the case of a Senior 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 Senior 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 Senior Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Senior 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 Senior Lender and as calculated in accordance with the relevant Senior Hedging Agreement.

"Senior Lender's Spot Rate of Exchange" means, in respect of the conversion of one currency (the **"First Currency"**) into another currency (the **"Second Currency"**) the relevant 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 11:00am (London time) on a particular day, which shall be notified by the Senior Lender or the relevant Security Agent (as appropriate) in accordance with clause 27.1(b), clause 28.3(e) or clause 29.3(e) or clause 30.3(e), as applicable;

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

"Senior Mandatory Prepayment" means a mandatory prepayment of any of the Senior Liabilities pursuant to clause 8.2 (*Disposal and Insurance Proceeds*) of the Senior Facility Agreement;

"Senior Priority Limit" means £10,450,000,

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

"Senior Secured Parties" means the Senior Lender, any Receiver or Delegate;

"Senior Security Documents" means:

- (a) each of the Transaction Security Documents as defined in the Senior Facility Agreement;
- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Senior Secured Parties as security for any of the Senior Secured Obligations; and

- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b);

"Senior Security Property" means:

- (a) the Senior Transaction Security expressed to be granted in favour of the Senior Lender and all proceeds of that Senior Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Senior Liabilities to the Senior Lender and secured by the Senior Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Senior Lender; and
- (c) the Senior Lender's interest in any trust fund created pursuant to clause 11 (*Turnover of Receipts*).

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

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

"Series A Loan Note Documents" has the meaning given to that term in the Senior Facility Agreement;

"Series A Loan Noteholders" means each *"Noteholder"* under and as defined in the Series A Loan Note Instrument;

"Series A Loan Notes" has the meaning given to that term in the Senior Facility Agreement;

"Series A Loan Note Instrument" has the meaning given to that term in the Senior Facility Agreement;

"SP Counter Indemnity" means the counter indemnity dated on or about the date of this Agreement by the Company in favour of Stuart Pender;

"Subordinated Creditors" means the Secured Subordinated Creditors, the LLP, the Parent Shareholders from time to time and any person or entity which becomes a party to this Agreement as a Subordinated Creditor in accordance with clause 31 (*Changes to the Parties*);

"Subordinated Documents" means the Secured Subordinated Documents and the Unsecured Subordinated Documents;

"Subordinated Liabilities" means the Secured Subordinated Liabilities and the Unsecured Subordinated Liabilities;

"Subordinated Loan Note Instruments" means the Series A Loan Note Instrument and the Unsecured Lomond Loan Note Instrument;

"Subordinated Loan Notes" means the Series A Loan Notes and the Unsecured Lomond Loan Notes;

"Subordinated Security" means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Subordinated Security Documents as at the date of this Agreement together with any Security under any Subordinated Security Documents entered into after the date of this Agreement pursuant to clause 9.6 (*Security: Subordinated Creditors*);

"Subordinated Security Documents" means each and any of the *"Series A Loan Note Security Documents"* under and as defined in the Senior Facility Agreement;

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

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

"Third Ranking Acceleration Event" means the Majority Third Ranking Creditors exercising any of their rights under clause 5 (*Events of Default*) of appendix 1 to the Third Ranking Loan Note Instrument;

"Third Ranking Borrower" has the meaning given to the term *"Company"* in the Third Ranking Loan Note Instrument;

"Third Ranking Creditors" means the Third Ranking Noteholders, each Third Ranking Indemnity Creditor and the Third Ranking Security Agent;

"Third Ranking Debt Documents" means the Third Ranking Notes, the Third Ranking Loan Note Instrument, the Counter Indemnities, the Counter Indemnity Fee Letters and the Third Ranking Security Documents;

"Third Ranking Default" means a Third Ranking Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Third Ranking Debt Documents or any combination of any of the foregoing) be a Third Ranking Event of Default;

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

"Third Ranking Event of Default" means an Event of Default under, and as defined in, the Third Ranking Loan Note Instrument;

"Third Ranking Guarantor" means any party who has granted to any Third Ranking Secured Party a guarantee, pursuant to the Third Ranking Security Documents;

"Third Ranking Indemnity Creditor" means:

- (a) MML Capital Europe V S.A. in its capacity as a beneficiary under the MML Counter Indemnity; and
- (b) Stuart Pender in his capacity as a beneficiary under the SP Counter Indemnity,

and, to the extent permitted by this Agreement, each of their successors or assignees under the relevant Counter Indemnity;

"Third Ranking Liabilities" means the Liabilities owed by the Debtors to the Third Ranking Creditors under or in connection with the Third Ranking Debt Documents;

"Third Ranking Loan Note Instrument" means the loan note instrument dated 22 January 2016 constituting the Third Ranking Notes;

"Third Ranking Noteholder" means each *"Noteholder"* under and as defined in the Third Ranking Loan Note Instrument;

"Third Ranking Notes" means the £2,000,000 25% fixed rate subordinated secured loan notes of the Company due, subject to the terms of this Agreement, 2020, together with any Third Ranking PIK Notes;

"Third Ranking PIK Notes" means the PIK notes constituted pursuant to the terms of the Third Ranking Loan Note Instrument in force as at the date of this Agreement;

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

"Third Ranking Secured Parties" means the Third Ranking Creditors and any Receiver (appointed by the Third Ranking Security Agent) or Delegate (appointed by the Third Ranking Security Agent) from time to time but, in the case of each Third Ranking Creditor, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to clause 31.11 (*Creditor Accession Undertaking*);

"Third Ranking Security Documents" means:

- (a) each of the *"2016 Subordinated Loan Note Security Documents"* as defined in the Senior Facility Agreement in the form in force as at the date of this Agreement;
- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Third Ranking Secured Parties as security for any of the Third Ranking Secured Obligations including pursuant to clause 6.4 (*Security: Third Ranking Creditors*); and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b);

"Third Ranking Security Property" means:

- (a) the Third Ranking Transaction Security expressed to be granted in favour of the Third Ranking Security Agent as trustee for the Third Ranking Secured Parties and all proceeds of that Third Ranking Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Third Ranking Liabilities to the Third Ranking Security Agent as trustee for the Third Ranking Secured Parties and secured by the Third Ranking Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Third Ranking Security Agent as trustee for the Third Ranking Secured Parties;
- (c) the Third Ranking Security Agent's interest in any trust fund created pursuant to clause 11 (*Turnover of Receipts*); and
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Third Ranking Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Third Ranking Secured Parties;

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

"Transaction Security" means the Senior Transaction Security, the Second Ranking Transaction Security, the Third Ranking Transaction Security and the Fourth Ranking Transaction Security;

"Transaction Security Documents" means the Senior Security Documents, the Second Ranking Security Documents, the Third Ranking Security Documents and the Fourth Ranking Security Documents;

"Unsecured Lomond Loan Note Instrument" has the meaning given to the term *"Partnership Loan Note Instrument"* in the Senior Facility Agreement;

"Unsecured Lomond Loan Notes" means the £6,244,670 unsecured loan notes due, subject to this Agreement, 2020 issued by the Parent under the Unsecured Lomond Loan Note Instrument;

"Unsecured Subordinated Documents" means the Constitutional Documents, the Investment Agreement, the Unsecured Lomond Loan Note Instrument, the Unsecured Lomond Loan Notes, any other documents entered into pursuant to the Unsecured Lomond Loan Note Instrument or the Unsecured Lomond Loan Notes, any document or instrument that documents the terms of any Permitted Additional Subordinated Debt (as defined in the Senior Facility Agreement) and any other document evidencing the terms of any Subordinated Liabilities which are not Secured Subordinated Documents;

"Unsecured Subordinated Liabilities" means any Liabilities owed by the Parent or any other member of the Group to the Subordinated Creditors under the Unsecured Subordinated Documents; and

"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), or imposed elsewhere.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) any "Company", "Creditor", "Debtor", "Intra-Group Lender", "LLP", "Parent", "Party", "Second Ranking Noteholder", "Second Ranking Security Agent", "Second Ranking Creditor", "Series A Loan Note Security Trustee", "Senior Lender", "Senior Guarantor", "Subordinated Creditor", "Third Ranking Creditor", "Third Ranking Security Agent", "Third Ranking Creditor", "Third Ranking Secured Party", "Fourth Ranking Noteholder", "Fourth Ranking Security Agent" or "Fourth Ranking Creditor" shall be construed to be a reference to it in its capacity as such and not in any other capacity;
 - (ii) any "Creditor", "Debtor", "Senior Lender", "Party", "Second Ranking Security Agent", "Third Ranking Security Agent", "Fourth Ranking Security Agent" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its

rights and/or obligations under the Debt Documents and, in the case of the Second Ranking Security Agent or the Third Ranking Security Agent or the Fourth Ranking Security Agent, any person for the time being appointed as Second Ranking Security Agent or Second Ranking Security Agents or Third Ranking Security Agent or Third Ranking Security Agents or the Fourth Ranking Security Agent or Fourth Ranking Security Agents respectively, in accordance with this Agreement;

- (iii) an **"amount"** includes an amount of cash and an amount of Non-Cash Consideration;
- (iv) **"assets"** includes present and future properties, revenues and rights of every description;
- (v) a **"Debt Document"** or any other agreement or instrument is (other than a reference to a **"Debt Document"** or any other agreement or instrument in **"original form"**) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
- (vi) a **"distribution"** of or out of the assets of a member of the Group, includes a distribution of cash and a distribution of Non-Cash Consideration;
- (vii) **"enforcing"** (or any derivation) the Transaction Security includes the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor by the Senior Lender (prior to the Senior Discharge Date) or the Second Ranking Security Agent (after the Senior Discharge Date and prior to the Second Ranking Discharge Date) or the Third Ranking Security Agent (after the Final Priority Ranking Discharge Date but before the Third Ranking Discharge Date) or the Fourth Ranking Security Agent (after the Third Ranking Discharge Date);
- (viii) a **"group of Creditors"** includes all the Creditors, a **"group of Second Ranking Creditors"** includes all the Second Ranking Creditors, a **"group of Third Ranking Creditors"** includes all the Third Ranking Creditors and a **"group of Fourth Ranking Creditors"** includes all the Fourth Ranking Creditors;
- (ix) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (x) the **"original form"** of a **"Debt Document"** or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
- (xi) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (xii) **"proceeds"** of a Distressed Disposal or of a Debt Disposal includes proceeds in cash and in Non-Cash Consideration;
- (xiii) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

- (xiv) the "Third Ranking Discharge Date" shall mean the later to occur of the "Third Ranking Discharge Date" and the "Final Priority Ranking Discharge Date"; and
- (xv) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, clause and schedule headings are for ease of reference only.
- (c) A Default (other than an Event of Default) is "*continuing*" if it has not been remedied or waived and an Event of Default is "*continuing*" if it has not been waived.
- (d) All parties acknowledge and agree that, from the date of this Agreement, all references to the "Intercreditor Agreement" or "Intercreditor Deed" in any Transaction Security Document shall be read and construed as if they were references to this Agreement.

1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in clause 27.7(b), clause 28.10(b), clause 29.10(b) or clause 30.10(b) may, subject to this clause 1.3 and the Third Parties Act, rely on any clause of this Agreement which expressly confers rights on it.

SECTION 2

RANKING AND PRIMARY CREDITORS

2. RANKING AND PRIORITY

2.1 Liabilities

Each of the Parties agrees that the Liabilities owed by the Debtors to the Creditors shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:

- (a) **first**, the Senior Liabilities up to the Senior Priority Limit;
- (b) **second**, the Second Ranking Liabilities;
- (c) **third**, the remaining Senior Liabilities;
- (d) **fourth**, the Third Ranking Liabilities;
- (e) **fifth**, the Fourth Ranking Liabilities;
- (f) **sixth**, the Secured Subordinated Liabilities;
- (g) **seventh**, the Unsecured Subordinated Liabilities arising under the Unsecured Lomond Loan Note Documents and any other Unsecured Subordinated Liabilities

owed by any member of the Group to the LLP (the "LLP Unsecured Subordinated Liabilities"); and

- (h) **eighth**, the Unsecured Subordinated Liabilities (other than the LLP Unsecured Subordinated Liabilities) and the Intra-Group Liabilities on a *pari passu* basis.

2.2 Transaction Security

Each of the Parties agrees that:

- (a) the Senior Transaction Security shall secure the Senior Liabilities (to the extent that such Senior Transaction Security is expressed to secure those Liabilities);
- (b) (notwithstanding any references to the Historic Senior Facility Agreement therein) the Second Ranking Transaction Security shall secure the Second Ranking Liabilities (to the extent that such Second Ranking Transaction Security is expressed to secure those Liabilities);
- (c) (notwithstanding any references to the Historic Senior Facility Agreement therein) the Third Ranking Transaction Security shall secure the Third Ranking Liabilities (to the extent that such Third Ranking Transaction Security is expressed to secure those Liabilities);
- (d) (notwithstanding any references to the Historic Senior Facility Agreement therein) the Fourth Ranking Transaction Security shall secure the Fourth Ranking Liabilities (to the extent that such Fourth Ranking Transaction Security is expressed to secure those Liabilities);
- (e) (notwithstanding any references to the Historic Senior Facility Agreement therein) the Subordinated Security shall secure the Secured Subordinated Liabilities (to the extent that such Subordinated Security is expressed to secure those Liabilities);
- (f) the Senior Transaction Security shall rank in priority to the Second Ranking Transaction Security, the Third Ranking Transaction Security and the Fourth Ranking Transaction Security;
- (g) the Second Ranking Transaction Security shall rank in priority to the Third Ranking Transaction Security and the Fourth Ranking Transaction Security;
- (h) the Third Ranking Transaction Security shall rank in priority to the Fourth Ranking Transaction Security;
- (i) the Senior Transaction Security, the Second Ranking Transaction Security, the Third Ranking Transaction Security and the Fourth Ranking Transaction Security shall rank in priority to the Subordinated Security; and
- (j) the Subordinated Security Documents shall rank *pari passu* with each other.

2.3 Subordinated and Intra-Group Liabilities

Each of the Parties agrees that:

- (a) the Subordinated Liabilities and the Intra-Group Liabilities are postponed and subordinated to the Senior Liabilities, the Second Ranking Liabilities, the Third Ranking Liabilities and the Fourth Ranking Liabilities;
- (b) the Secured Subordinated Liabilities shall rank *pari passu* and without any preference between them;

- (c) the Unsecured Subordinated Liabilities and the Intra-Group Liabilities are postponed and subordinated to the Secured Subordinated Liabilities;
- (d) the LLP Unsecured Subordinated Liabilities shall rank *pari passu* and without any preference between them; and
- (e) the Unsecured Subordinated Liabilities (other than the LLP Unsecured Subordinated Liabilities) and the Intra-Group Liabilities shall be postponed and subordinated to the LLP Unsecured Subordinated Liabilities and all such other Unsecured Subordinated Liabilities and Intra-Group Liabilities shall rank *pari passu* without any preference between them.

3. SECURITY ACKNOWLEDGMENT

- (a) Each of the Subordinated Creditors recognises and acknowledges the Transaction Security granted in favour of the Senior Lender, the Second Ranking Creditors, the Third Ranking Creditors and the Fourth Ranking Creditors and confirms that no breach of any of the Subordinated Documents will occur as a result of the granting or continuing existence of the Transaction Security.
- (b) The Senior Lender recognises the Second Ranking Transaction Security, the Third Ranking Transaction Security, the Fourth Ranking Transaction Security and the Subordinated Security and confirms that no breach of any of the Senior Finance Documents will occur as a result of the granting or continuing existence of the Second Ranking Transaction Security, the Third Ranking Transaction Security, Fourth Ranking Transaction Security or the Subordinated Security.
- (c) The Second Ranking Creditors recognise the Senior Transaction Security, the Third Ranking Transaction Security, the Fourth Ranking Transaction Security and the Subordinated Security and confirm that no breach of any of the Second Ranking Debt Documents will occur as a result of the granting or continuing existence of the Senior Transaction Security, the Third Ranking Transaction Security, Fourth Ranking Transaction Security or the Subordinated Security.
- (d) The Third Ranking Creditors recognise and acknowledge the Transaction Security granted in favour of the Senior Lender, the Second Ranking Transaction Security granted in favour of the Second Ranking Creditors, the Fourth Ranking Transaction Security in favour of the Fourth Ranking Creditors and the Subordinated Security and confirm that no breach of the Third Ranking Debt Documents will occur as a result of the granting or continuing existence of the Transaction Security or the Subordinated Security.
- (e) The Fourth Ranking Creditors recognise and acknowledge the Transaction Security granted in favour of the Senior Creditors, the Second Ranking Creditors and the Third Ranking Creditors and the Subordinated Security and confirm that no breach of the Fourth Ranking Debt Documents will occur as a result of the granting or continuing existence of the Transaction Security or the Subordinated Security.
- (f) The Second Ranking Secured Parties confirm that no notices of assignment or charge will be served under any Second Ranking Transaction Security Document (other than any notices of charge which require to be publicly registered pursuant to the terms of the Companies Act 2006 in order to constitute valid security) unless the Senior Discharge Date has occurred.
- (g) The Third Ranking Secured Parties confirm that no notices of assignment or charge will be served under any Third Ranking Transaction Security Document (other than any notices of charge which require to be publicly registered pursuant to the terms of

the Companies Act 2006 in order to constitute valid security) unless the Second Ranking Discharge Date has occurred.

- (h) The Fourth Ranking Secured Parties confirm that no notices of assignment or charge will be served under any Fourth Ranking Transaction Security Document (other than any notices of charge which require to be publicly registered pursuant to the terms of the Companies Act 2006 in order to constitute valid security) unless the Third Ranking Discharge Date has occurred.
- (i) The Secured Subordinated Creditors confirm that no notices of assignment or charge will be served under any Subordinated Security (other than any notices of charge which require to be publicly registered pursuant to the terms of the Companies Act 2006 in order to constitute valid security) unless the later of the Third Ranking Discharge Date or the Fourth Ranking Discharge Date has occurred.
- (j) Each of the Creditors acknowledges that all relevant title documents and deeds in relation to the Security Property shall be held by the Senior Lender until the Senior Discharge Date, at which point the Senior Lender shall promptly transfer the same to the Second Ranking Security Agent to hold until the Second Ranking Discharge Date.
- (k) Each of the Creditors recognises and acknowledges that, notwithstanding the terms of the Transaction Security Documents, no breach of any Transaction Security Document, this Agreement or any other Debt Document will occur as a result of a party's compliance with this clause 3.
- (l) Each of the Creditors recognises and acknowledges the Investec Guarantees and that no breach of any Transaction Security Document will occur as a result of the granting or continuing existence of the Investec Guarantees.

4. SENIOR LENDER AND SENIOR LIABILITIES

4.1 Payment of Senior Facility Liabilities

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

4.2 Amendments and Waivers: Senior Lender

The Senior Lender may amend or waive the terms of the Senior Finance Documents in accordance with their terms (and subject to any consent required under them) at any time provided that, in respect of an amendment of any of the following terms the consent of the Majority Second Ranking Noteholders shall be required at any time prior to the occurrence of the Second Ranking Discharge Date:

- (a) the margin applicable to the facilities under the Senior Facility Agreement (other than as expressly provided under the Senior Facility Agreement as at the date of this Agreement);
- (b) the fees payable under the Senior Facility Agreement (in the form as at the date of this Agreement);
- (c) the amortisation profile or Repayment Dates for any of the facilities under the Senior Facility Agreement as at the date of this Agreement;
- (d) the Senior Events of Default under the Senior Facility Agreement as at the date of this Agreement;

- (e) the definitions of "Permitted Payment", "Permitted Subordinated Equity Cure Debt", "Permitted Series A Loan Note Payment" or "Permitted Additional Subordinated Debt";
- (f) any increase in the Senior Liabilities above the Senior Priority Limit; and
- (g) any amendment that would otherwise have the effect of making any member of the Group liable for additional or increased payments other than:
 - (i) where permitted as a consequence of paragraphs (a) to (f) above;
 - (ii) where such additional or increased payments relate to finance leases or capital leases up to an aggregate maximum amount of £2,000,000; or
 - (iii) where such additional or increased payments are expressly contemplated by the Senior Facility Agreement (in the form as at the date of this Agreement).

4.3 Security: Senior Lender

The Senior Lender may take, accept or receive the benefit of:

- (a) any Security in respect of the Senior Facility Liabilities from any member of the Group which to the extent legally possible is, at the same time, also offered either:
 - (i) to the Second Ranking Security Agent as trustee for the Second Ranking Secured Parties; or
 - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Second Ranking Security Agent as trustee for the Second Ranking Secured Parties:
 - (A) to the Second Ranking Secured Parties in respect of their Liabilities; or
 - (B) to the Second Ranking Security Agent under a parallel debt structure for the benefit of the Second Ranking Secured Parties,

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

- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Senior Facility Liabilities in addition to those in:
 - (i) the Senior Facility Agreement (in the form as at the date of this Agreement);
 - (ii) this Agreement; or
 - (iii) any Common Assurance,

if and to the extent legally possible, at the same time it is also offered to the Second Ranking Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in clause 2 (*Ranking and Priority*).

5. SECOND RANKING CREDITORS AND SECOND RANKING LIABILITIES

5.1 Restriction on Payment: Second Ranking Liabilities

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

- (a) that Payment is permitted under clause 5.2 (*Permitted Payments: Second Ranking Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under clause 5.6 (*Permitted Enforcement: Second Ranking Creditors*).

5.2 Permitted Payments: Second Ranking Liabilities

- (a) The Debtors may:
 - (i) prior to the Senior Discharge Date, make Payments to the Second Ranking Creditors in respect of the Second Ranking Liabilities then due if:
 - (A) the Payment is of accrued interest and is made by the issue of Second Ranking PIK Notes in accordance with the terms of the Second Ranking Loan Note Instrument;
 - (B) the Payment is expressly permitted by the Senior Facility Agreement; or
 - (C) the Senior Lender consents to that Payment being made.
 - (ii) on or after the Senior Discharge Date, make Payments to the Second Ranking Creditors in respect of the Second Ranking Liabilities in accordance with the Second Ranking Debt Documents; or
 - (iii) make payments to the Second Ranking Security Agent or Second Ranking Creditors in accordance with clause 26.1 (*Order of application*).
- (b) For the avoidance of doubt, nothing in clause 5.1 (*Restriction on Payment: Second Ranking Liabilities*) or this clause 5.2 shall prevent interest accruing in accordance with the terms of, and being added to the principal amount outstanding in respect of, the Second Ranking Loan Note Instrument.
- (c) Notwithstanding clause 5.2(a), nothing in clause 5.1 (*Restriction on Payment: Second Ranking Liabilities*), this clause 5.2 or any other provision of this Agreement shall prevent the Second Ranking Creditors receiving payments under the Investec Guarantees in accordance with their terms.

5.3 Amendments and Waivers: Second Ranking Creditors

- (a) Subject to clause 5.3(b), the Second Ranking Creditors may amend or waive the terms of the Second Ranking Debt Documents in accordance with their terms (and subject to any consent required under them) at any time.
- (b) Prior to the Senior Discharge Date, the Second Ranking Creditors may not amend or waive the terms of the Second Ranking Debt Documents if the amendment or waiver is:
 - (i) an amendment to the principal amount of the Second Ranking Loan Notes in excess of that contemplated by the Second Ranking Loan Note

Instrument (in its form in force at the date of this Agreement) other than by the capitalisation of interest or the issue of Second Ranking PIK Notes;

- (ii) an amendment to, or waiver of, the amount, currency, dates or terms of repayment or prepayment (mandatory or otherwise) of the Second Ranking Loan Note Instrument other than one:
 - (A) which is contemplated by the form of the Second Ranking Debt Documents in force at the date of this Agreement; or
 - (B) the effect of which is solely to defer any scheduled repayment of the Second Ranking Liabilities;
- (iii) an amendment to, or waiver of, the basis on which interest, fees or commission accrue, are calculated or are payable other than one:
 - (A) which is contemplated by the form of the Second Ranking Debt Documents in force at the date of this Agreement; or
 - (B) which is:
 - (1) a minor or administrative change or correction; or
 - (2) a correction of a manifest error,which is, in each case, not prejudicial to the Senior Lender;
- (iv) any other amendment or waiver the effect of which is to make any Debtor liable to make additional or increased payments; or
- (v) an amendment or waiver:
 - (A) which would result in any Debtor being subject to more onerous obligations under the representations, undertakings, financial covenants or events of default; and
 - (B) which has not been made to, or given in respect of, the equivalent Senior Finance Documents,

in which case the prior consent of the Senior Lender is required.

5.4 Security: Second Ranking Creditors

At any time prior to the Senior Discharge Date, the Second Ranking Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from (or over the assets of or over the shares in) any member of the Group in respect of the Second Ranking Liabilities other than:

- (a) the Second Ranking Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) the form of Second Ranking Loan Note Instrument or other Second Ranking Debt Documents in each case in the form in force at the date of this Agreement; or
 - (ii) this Agreement,

- (c) Security in substantially identical form to Security constituted by the Senior Security Documents provided in accordance with clause 4.3 (*Security: Senior Lender*) which ranks in the same order of priority as that contemplated in clause 2.2 (*Transaction Security*);
- (d) any guarantee, indemnity or other assurance against loss in substantially identical form to that provided in respect of the Senior Liabilities in accordance with clause 4.3 (*Security: Senior Lender*) which ranks in the same order of priority as that contemplated in clause 2.2 (*Transaction Security*); or
- (e) as otherwise contemplated by clause 4.3 (*Security: Senior Lender*),

unless the prior consent of the Senior Lender is obtained.

5.5 Restriction on Enforcement: Second Ranking Creditors

Subject to clause 5.6 (*Permitted Enforcement: Second Ranking Creditors*), no Second Ranking Creditor shall be entitled to take any Enforcement Action in respect of any of the Second Ranking Liabilities prior to the Senior Discharge Date.

5.6 Permitted Enforcement: Second Ranking Creditors

- (a) Each Second Ranking Creditor may take Enforcement Action which would be available to it but for clause 5.5 (*Restriction on Enforcement: Second Ranking Creditors*) in respect of any of the Second Ranking Liabilities if at the same time as, or prior to, that action and subject to Clause 5.7 (*Restriction of Enforcement against Debtors: Second Ranking Creditors*):
 - (i) a Senior Acceleration Event has occurred in which case each Second Ranking Creditor may take the same Enforcement Action (but in respect of the Second Ranking Liabilities) as constitutes that Senior Acceleration Event provided that a Second Ranking Creditor may not take any action falling under paragraphs (b), (c) or (d) of the definition of "Enforcement Action" without the prior consent of the Senior Lender (unless permitted pursuant to clause 5.6(b) below); or
 - (ii) the Senior Lender has given a notice to the Parent and the Second Ranking Security Agent specifying that a Senior Event of Default (which it shall do promptly after the occurrence of such event) has occurred and is continuing and:
 - (A) the Second Ranking Security Agent has given a notice to the Senior Lender specifying that it wishes to trigger the standstill period for enforcement action under the Second Ranking Security Documents (a "Second Ranking Enforcement Notice"); and
 - (B) a period (a "Second Ranking Standstill Period") of not less than 120 days has elapsed from the date on which that Second Ranking Enforcement Notice becomes effective in accordance with Clause 35.4 (*Delivery*) and the relevant Senior Event of Default has not been remedied to the satisfaction of the Senior Lender or waived in writing by the Senior Lender.
- (b) After the occurrence of an Insolvency Event in relation to any member of the Group, each Second Ranking Creditor may (unless otherwise directed by the Senior Lender or unless the Senior Lender has taken, or has given notice that it intends to take, action on behalf of that Second Ranking Creditor in accordance with clause 10.4

(*Filing of claims*)) exercise any right they may otherwise have against that member of the Group to:

- (i) accelerate any of that member of the Group's Second Ranking Liabilities or declare them prematurely due and payable or payable on demand;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Second Ranking Liabilities;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Second Ranking Liabilities of that member of the Group; or
 - (iv) claim and prove in the liquidation of that member of the Group for the Second Ranking Liabilities owing to it.
- (c) Neither clause 5.5 (*Restrictions on Enforcement: Second Ranking Creditors*) nor any other provision of this Agreement shall prevent the Second Ranking Creditors from enforcing their rights under the Investec Guarantees at any time in accordance with their terms.

5.7 Restriction on Enforcement against Debtors: Second Ranking Creditors

- (a) Subject to paragraph (b) below, if the Senior Lender (or any Receiver or Delegate appointed under any of the Senior Security Documents) has given notice to the Second Ranking Security Agent that the Transaction Security over shares in a Debtor or any Holding Company of a Debtor is being enforced (or that any formal steps are being taken to enforce that Transaction Security) by the sale or Appropriation of shares which are subject to that Transaction Security, the Second Ranking Creditors may not take Enforcement Action against that Debtor or against any Property of that Debtor in respect of any of the Second Ranking Liabilities until the earlier of:
- (i) the date which is 120 days after the date on which the Senior Lender (or that Receiver or Delegate) gave that notice; and
 - (ii) the Senior Lender (or that Receiver or Delegate) notifying the Second Ranking Security Agent (which it shall do promptly) that such action is no longer being taken.
- (b) Paragraph (a) above shall not apply to action taken pursuant to paragraphs (b) or (c) of Clause 5.6 (*Permitted Enforcement: Second Ranking Creditors*).

5.8 Option to purchase: Second Ranking Noteholders

- (a) Subject to clause 5.8(b), any Second Ranking Noteholder which is a member of the Investec Group may after a Senior Acceleration Event, by giving not less than ten days' notice to the Senior Lender, require the transfer to it (or to a nominee or nominees), in accordance with clause 31.3 (*Change of Senior Lender*), of all, but not part, of the rights and obligations in respect of the Senior Lender Liabilities if:
- (i) that transfer is lawful and, subject to clause 5.8(a)(ii) otherwise permitted by the terms of the Senior Finance Documents;
 - (ii) any conditions relating to such a transfer contained in the Senior Finance Documents are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required

- (iii) the Senior Lender is paid an amount equal to the aggregate of:
 - (A) all of the Senior Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Facility Agreement if the Senior Term Facility were being prepaid by the relevant Debtors on the date of that payment;
 - (B) if a Debtor has entered into a Senior Hedging Agreement, (in the case of a positive number) the Senior Hedging Purchase Amount in respect of the hedging transactions under the relevant Senior Hedging Agreement at that time; and
 - (C) all costs and expenses (including legal fees) incurred by the Senior Lender as a consequence of giving effect to that transfer;
 - (iv) as a result of that transfer the Senior Lender has no further actual or contingent liability to any Debtor under the Senior Finance Documents;
 - (v) an indemnity is provided from that Second Ranking Noteholder (or from another third party acceptable to the Senior Lender) in a form satisfactory to the Senior Lender in respect of all losses which may be sustained or incurred by the Senior Lender in consequence of any sum received or recovered by the Senior Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Senior Lender for any reason;
 - (vi) the Second Ranking Noteholder which purchases the Senior Liabilities enters into a confidentiality agreement with the Senior Lender (in substantially the same form as the Loan Market Association form of confidentiality undertaking) agreeing to keep the details of the debt purchase confidential;
 - (vii) the transfer is made without recourse to, or representation or warranty from, the Senior Lender, except that the Senior Lender shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer;
 - (viii) the Second Ranking Noteholder which purchases the Senior Liabilities provides an unconditional and irrevocable undertaking to the Senior Lender that all and any claims, demands or court or arbitration proceedings which such Second Ranking Noteholder makes, brings or prosecutes against any party in respect of the Senior Finance Documents will be so brought, made and prosecuted solely in the name of the relevant Second Ranking Noteholder; and
 - (ix) the Second Ranking Noteholder which purchases the Senior Liabilities provides an indemnity to the Senior Lender against all claims, demands, proceedings, losses, damages, costs or expenses brought, made against or incurred by the Senior Lender on or after the date of the purchase as a result of or in connection with the enforcement of any rights under the Senior Finance Documents.
- (b) The Senior Lender shall, at the request of a Second Ranking Noteholder which is a member of the Investec Group notify that Second Ranking Noteholder of the sum of the amounts described in clauses 5.8(a)(iii)(A) to 5.8(a)(iii)(C) (inclusive).

- (c) It is agreed and acknowledged by all Parties that the Senior Lender may take all Enforcement Action under the Senior Finance Documents in accordance with their terms and without restriction during the period from the date of delivery of a notice pursuant to paragraph (a) above by a Second Ranking Noteholder and the date of completion of any purchase made in accordance with this clause 5.8.

6. THIRD RANKING CREDITORS AND THIRD RANKING LIABILITIES

6.1 Restriction on Payment: Third Ranking Liabilities

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

- (a) that Payment is permitted under clause 6.2 (*Permitted Payments: Third Ranking Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under clause 6.6 (*Permitted Enforcement: Third Ranking Creditors*).

6.2 Permitted Payments: Third Ranking Liabilities

- (a) The Debtors may:
- (i) prior to the Final Priority Ranking Discharge Date, make Payments to the Third Ranking Creditors in respect of the Third Ranking Liabilities then due under the Third Ranking Debt Documents if:
- (A) the Senior Lender and the Majority Second Ranking Noteholders give prior written consent to that Payment being made;
- (B) the Payment is of £150,000 due in accordance with the terms of the Counter Indemnity Fee Letter between the Company and MML Capital Europe V.S.A. in the form in force at the date of this Agreement;
- (C) the Payment is of £75,000 due in accordance with the terms of the Counter Indemnity Fee Letter between the Company and Stuart Pender in the form in force at the date of this Agreement and is made by the issue of Third Ranking Notes which constitute Permitted Financial Indebtedness (as defined in the Senior Facility Agreement);
- (D) the Payment is of accrued interest and is made by the issue of Third Ranking PIK Notes in accordance with the terms of the Third Ranking Loan Note Instrument in the form in force at the date of this Agreement;
- (E) the Payment is in settlement of a demand under a Counter Indemnity and is made by the issue of shares or of Third Ranking Notes which constitute a Permitted Share Issue or Permitted Financial Indebtedness (as defined in the Senior Facility Agreement); or
- (F) the Payment is expressly permitted by the Senior Facility Agreement (other than pursuant to paragraph (f) of the definition of "Permitted Payment" or paragraph (b) of the definition of the definition of "Permitted Partnership Loan Note Payment") and the Second Ranking Loan Note Instrument; or

- (ii) on or after the Final Priority Ranking Discharge Date, make Payments to the Third Ranking Creditors in respect of the Third Ranking Liabilities in accordance with the Third Ranking Debt Documents.
- (b) For the avoidance of doubt, nothing in clause 6.1 (*Restriction on Payment: Third Ranking Liabilities*) or this clause 6.2 shall prevent interest accruing in accordance with the terms of, and being added to the principal amount outstanding in respect of, the Third Ranking Debt Documents.

6.3 Amendments and Waivers: Third Ranking Creditors

- (a) Subject to clause 6.3(b), the Third Ranking Creditors may amend or waive the terms of the Third Ranking Debt Documents in accordance with their terms (and subject to any consent required under them) at any time.
- (b) Prior to the Final Priority Ranking Discharge Date, the Third Ranking Creditors may not amend or waive the terms of the Third Ranking Debt Documents if the amendment or waiver is:
 - (i) an amendment to the principal amount of the Third Ranking Loan Notes in excess of that contemplated by the Third Ranking Loan Note Instrument in force at the date of this Agreement, other than as a result of:
 - (A) the capitalisation of accrued interest;
 - (B) the issue of Third Ranking PIK Notes, (in each case as contemplated by the form of the Third Ranking Loan Note Instrument in force at the date of this Agreement; or
 - (C) the issue of Third Ranking Notes to settle a liability of the Company under or pursuant to a Counter Indemnity or the Counter Indemnity Fee Letter between the Company and Stuart Pender and such issue constitutes Permitted Financial Indebtedness (as defined in the Senior Facility Agreement);
 - (ii) an amendment to, or waiver of, the amount, currency, dates or terms of repayment or prepayment (mandatory or otherwise) of the Third Ranking Loan Note Instrument other than one:
 - (A) which is contemplated by the form of the Third Ranking Debt Documents in force at the date of this Agreement; or
 - (B) the effect of which is solely to defer any scheduled repayment of the Third Ranking Liabilities;
 - (iii) an amendment to, or waiver of, the basis on which interest, fees or commission accrue, are calculated or are payable other than one:
 - (A) which is contemplated by the form of the Third Ranking Debt Documents in force at the date of this Agreement; or
 - (B) which is:
 - (1) a minor or administrative change or correction; or
 - (2) a correction of a manifest error,

which is, in each case, not prejudicial to the Senior Lender or the Second Ranking Creditors;

- (iv) any other amendment or waiver the effect of which is to make any Debtor liable to make additional or increased payments; or
- (v) an amendment or waiver:
 - (A) which would result in any Debtor being subject to more onerous obligations under the representations, undertakings, financial covenants or events of default; and
 - (B) which has not been made to, or given in respect of, the equivalent Senior Finance Documents and Second Ranking Debt Documents,

in which case the prior consent of the Senior Lender and the Majority Second Ranking Noteholders is required.

6.4 Security: Third Ranking Creditors

At any time prior to the Final Priority Ranking Discharge Date, the Third Ranking Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from (or over the assets of or over the shares in) any member of the Group in respect of the Third Ranking Liabilities other than:

- (a) the Third Ranking Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) the Third Ranking Loan Note Instrument (as at the date of this Agreement) or other original form Third Ranking Debt Documents; or
 - (ii) this Agreement;
- (c) Security in substantially identical form to Security constituted by the Senior Security Documents provided in accordance with clause 4.3 (*Security: Senior Lender*) and by the Second Ranking Security Documents provided in accordance with clause 5.4 (*Security: Second Ranking Creditors*) which ranks in the same order of priority as that contemplated in clause 2.2 (*Transaction Security*),
- (d) any guarantee, indemnity or other assurance against loss in substantially identical form to that provided in respect of the Senior Liabilities in accordance with clause 4.3 (*Security: Senior Lender*) and in respect of the Second Ranking Liabilities in accordance with clause 5.4 (*Security: Second Ranking Creditors*) which ranks in the same order of priority as that contemplated in clause 2.2 (*Transaction Security*); or
- (e) as otherwise contemplated by clause 4.3 (*Security: Senior Lender*),

unless the prior consent of the Senior Lender and Majority Second Ranking Noteholders is obtained.

6.5 Restriction on Enforcement: Third Ranking Creditors

Subject to clause 6.6 (*Permitted Enforcement: Third Ranking Creditors*), no Third Ranking Creditor shall be entitled to take any Enforcement Action in respect of any of the Third Ranking Liabilities prior to the Final Priority Ranking Discharge Date.

6.6 Permitted Enforcement: Third Ranking Creditors

- (a) Each Third Ranking Creditor may take Enforcement Action which would be available to it but for clause 6.5 (*Restriction on Enforcement: Third Ranking Creditors*) in respect of any of the Third Ranking Liabilities if:
 - (i) at the same time as, or prior to, that action a Senior Acceleration Event and a Second Ranking Acceleration Event have occurred in which case each Third Ranking Creditor may take the same Enforcement Action (but in respect of the Third Ranking Liabilities) as constitutes that Senior Acceleration Event and Second Ranking Acceleration Event provided that a Third Ranking Creditor may not take any action falling under paragraphs (b), (c) or (d) of the definition of "Enforcement Action" without the prior consent of the Senior Lender and Majority Second Ranking Noteholders; or
 - (ii) the Majority Second Ranking Noteholders and, prior to the Senior Discharge Date, the Senior Lender have given their prior written consent.
- (b) After the occurrence of an Insolvency Event in relation to any member of the Group, each Third Ranking Creditor may (unless otherwise directed by the Senior Lender (until the Senior Discharge Date) or the Second Ranking Security Agent thereafter (until the Second Ranking Discharge Date), or unless the Senior Lender or the Second Ranking Security Agent (as applicable) has taken, or has given notice that it intends to take, action on behalf of that Third Ranking Creditor in accordance with clause 10.4 (*Filing of claims*)) exercise any right they may otherwise have against that member of the Group to:
 - (i) accelerate any of that member of the Group's Third Ranking Liabilities or declare them prematurely due and payable or payable on demand;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Third Ranking Liabilities;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Third Ranking Liabilities of that member of the Group; or
 - (iv) claim and prove in the liquidation of that member of the Group for the Third Ranking Liabilities owing to it.

6.7 Representations: Third Ranking Creditors

Each Third Ranking Creditor represents and warrants to the Senior Lender, the Second Ranking Creditors and the Second Ranking Security Agent that:

- (a) to the extent it is not a natural person, it is a limited liability partnership, corporation, or trust, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) to the extent it is a natural person, he or she is not and has not been bankrupt or subject to any analogous proceedings in any jurisdiction;
- (c) subject to the Legal Reservations and the Perfection Requirements, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations;

- (d) the entry into and performance by it of this Agreement does not and will not:
 - (i) conflict with any law or regulation applicable to it, its constitutional documents (if applicable); or
 - (ii) conflict with any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument breach of which has or is reasonably likely to have a Material Adverse Effect (as defined in the Senior Facility Agreement); and
- (e) in the case of a Third Ranking Creditor to whom Liabilities are owed under the Third Ranking Debt Documents those documents, each in the agreed form as delivered to the Senior Lender on the date of this Agreement, evidence all the terms of all the Liabilities owed by any member of the Group to that Third Ranking Creditor.

6.8 Option to purchase: Third Ranking Noteholders

- (a) Subject to clause 5.85.8(b), any Third Ranking Noteholder may after a Senior Acceleration Event (and provided that a Second Ranking Acceleration Event has also occurred), by giving not less than thirty days' notice to each of the Senior Lender and the Second Ranking Security Agent, require the transfer to it (or to a nominee or nominees), in accordance with clause 31.3 (*Change of Senior Lender*), of all, but not part, of the rights and obligations in respect of the Senior Lender Liabilities and the Second Ranking Liabilities if:
 - (i) that transfer is lawful and, subject to clause 6.8(a)(i) otherwise permitted by the terms of the Senior Finance Documents and the Second Ranking Loan Note Instrument;
 - (ii) any conditions relating to such a transfer contained in the Senior Finance Documents and the Second Ranking Loan Note Instrument are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required
 - (iii) the Senior Lender is paid an amount equal to the aggregate of:
 - (A) all of the Senior Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Facility Agreement if the Senior Term Facility were being prepaid by the relevant Debtors on the date of that payment;
 - (B) if a Debtor has entered into a Senior Hedging Agreement, (in the case of a positive number) the Senior Hedging Purchase Amount in respect of the hedging transactions under the relevant Senior Hedging Agreement at that time; and
 - (C) all costs and expenses (including legal fees) incurred by the Senior Lender as a consequence of giving effect to that transfer;
 - (iv) the Second Ranking Noteholders are paid an amount equal to the aggregate of:
 - (A) all of the Second Ranking Liabilities at that time (whether or not due), including all amounts that would have been payable under the Second Ranking Loan Note Instrument if the Second Ranking

Notes were being prepaid by the relevant Debtors on the date of that payment; and

- (B) all costs and expenses (including legal fees) incurred by the Second Ranking Noteholders as a consequence of giving effect to that transfer;
 - (v) as a result of that transfer the Senior Lender and the Second Ranking Noteholders have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
 - (vi) an indemnity is provided from that Third Ranking Noteholder (or from another third party acceptable to the Senior Lender and Second Ranking Noteholders) in a form satisfactory to the Senior Lender and each Second Ranking Noteholder in respect of all losses which may be sustained or incurred by the Senior Lender or any Second Ranking Noteholder in consequence of any sum received or recovered by the Senior Lender or Second Ranking Noteholder from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Senior Lender or any Second Ranking Noteholder for any reason;
 - (vii) the Third Ranking Noteholder which purchases the Senior Liabilities enters into a confidentiality agreement with the Senior Lender (in substantially the same form as the Loan Market Association form of confidentiality undertaking) agreeing to keep the details of the debt purchase confidential;
 - (viii) the transfer is made without recourse to, or representation or warranty from, the Senior Lender or Second Ranking Noteholders, except that the Senior Lender and each Second Ranking Noteholder shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer;
 - (ix) the Third Ranking Noteholder which purchases the Senior Liabilities provides an unconditional and irrevocable undertaking to the Senior Lender that all and any claims, demands or court or arbitration proceedings which such Third Ranking Noteholder makes, brings or prosecutes against any party in respect of the Senior Finance Documents will be so brought, made and prosecuted solely in the name of the relevant Third Ranking Noteholder; and
 - (x) the Third Ranking Noteholder which purchases the Senior Liabilities provides an indemnity to the Senior Lender against all claims, demands, proceedings, losses, damages, costs or expenses brought, made against or incurred by the Senior Lender on or after the date of the purchase as a result of or in connection with the enforcement of any rights under the Senior Finance Documents.
- (b) The Senior Lender and each Second Ranking Noteholder shall, at the request of a Third Ranking Noteholder notify that Third Ranking Noteholder of the sum of the amounts described in clauses 6.8(a)(iii)(A) to 6.8(a)(iii)(C) (inclusive in the case of the Senior Lender) and clauses 6.8(iv)(A) and 6.8(iv)(B) (in the case of the Second Ranking Noteholders).
 - (c) It is agreed and acknowledged by all Parties that the Senior Lender may take all Enforcement Action under the Senior Finance Documents in accordance with their terms and without restriction during the period from the date of delivery of a notice

pursuant to paragraph (a) above by a Third Ranking Noteholder and the date of completion of any purchase made in accordance with this clause 6.8.

7. FOURTH RANKING CREDITORS AND FOURTH RANKING LIABILITIES

7.1 Restriction on Payment: Fourth Ranking Liabilities

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

- (a) that Payment is permitted under clause 7.2 (*Permitted Payments: Fourth Ranking Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under clause 7.6 (*Permitted Enforcement: Fourth Ranking Creditors*).

7.2 Permitted Payments: Fourth Ranking Liabilities

- (a) The Debtors may:
 - (i) prior to the Final Priority Ranking Discharge Date, make Payments to the Fourth Ranking Creditors in respect of the Fourth Ranking Liabilities then due under the Fourth Ranking Loan Note Instrument if:
 - (A) the Senior Lender, the Majority Second Ranking Noteholders and (prior to the Third Ranking Discharge Date) the Majority Third Ranking Creditors give prior written consent to that Payment being made or;
 - (B) the Payment is of accrued interest and is made by the issue of Fourth Ranking PIK Notes in accordance with the terms of the Fourth Ranking Loan Note Instrument in the form in force at the date of this Agreement; or
 - (C) the Payment is expressly permitted by the Senior Facility Agreement (other than pursuant to paragraph (f) of the definition of "Permitted Payment" or paragraph (b) of the definition of "Permitted Partnership Loan Note Payment"), the Second Ranking Loan Note Instrument and the Third Ranking Loan Note Instrument; or
 - (ii) on or after the Third Ranking Discharge Date, make Payments to the Fourth Ranking Creditors in respect of the Fourth Ranking Liabilities in accordance with the Fourth Ranking Debt Documents.
- (b) For the avoidance of doubt, nothing in clause 7.1 (*Restriction on Payment: Fourth Ranking Liabilities*) or this clause 7.2 shall prevent interest accruing in accordance with the terms of, and being added to the principal amount outstanding in respect of, the Fourth Ranking Loan Note Instrument in the form in force at the date of this Agreement.

7.3 Amendments and Waivers: Fourth Ranking Creditors

- (a) Subject to clause 7.3(b), the Fourth Ranking Creditors may amend or waive the terms of the Fourth Ranking Debt Documents in accordance with their terms (and subject to any consent required under them) at any time.

- (b) Prior to the Third Ranking Discharge Date, the Fourth Ranking Creditors may not amend or waive the terms of the Fourth Ranking Debt Documents if the amendment or waiver is:
- (i) an amendment to the principal amount of the Fourth Ranking Loan Notes in excess of that contemplated by the Fourth Ranking Loan Note Instrument in force at the date of this Agreement (in its original form), other than as a result of:
 - (A) the capitalisation of accrued interest or the issue of Fourth Ranking PIK Notes, (in each case as contemplated by the form of the Fourth Ranking Loan Note Instrument in force at the date of this Agreement (in its original form)); or
 - (B) the issue of Fourth Ranking Notes which constitute Permitted Additional Subordinated Debt (after the Second Ranking Discharge Date) and Permitted Subordinated Equity Cure Debt, and the capitalisation of accrued interest thereon or the issue of Fourth Ranking PIK Notes in relation thereto, in each case only to the extent permitted under the Senior Facility Agreement;
 - (ii) an amendment to, or waiver of, the amount, currency, dates or terms of repayment or prepayment (mandatory or otherwise) of the Fourth Ranking Loan Note Instrument other than one:
 - (A) which is contemplated by the form of the Fourth Ranking Debt Documents in force at the date of this Agreement (in their original form); or
 - (B) the effect of which is solely to defer any scheduled repayment of the Fourth Ranking Liabilities;
 - (iii) an amendment to, or waiver of, the basis on which interest, fees or commission accrue, are calculated or are payable other than one:
 - (A) which is contemplated by the form of the Fourth Ranking Debt Documents in force at the date of this Agreement (in their original form); or
 - (B) which is:
 - (1) a minor or administrative change or correction; or
 - (2) a correction of a manifest error,which is, in each case, not prejudicial to the Senior Lender, the Second Ranking Creditors or the Third Ranking Creditors;
 - (iv) any other amendment or waiver the effect of which is to make any Debtor liable to make additional or increased payments; or
 - (v) an amendment or waiver:
 - (A) which would result in any Debtor being subject to more onerous obligations under the representations, undertakings, financial covenants or events of default; and

- (B) which has not been made to, or given in respect of, the equivalent Senior Finance Documents, Second Ranking Debt Documents and Third Ranking Debt Documents,

in which case the prior consent of the Senior Lender, the Majority Second Ranking Noteholders and the Majority Third Ranking Creditors is required.

7.4 Security: Fourth Ranking Creditors

At any time prior to the Third Ranking Discharge Date, the Fourth Ranking Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from (or over the assets of or over the shares in) any member of the Group in respect of the Fourth Ranking Liabilities other than:

- (a) the Fourth Ranking Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of Fourth Ranking Loan Note Instrument or other original form Fourth Ranking Debt Documents; or
 - (ii) this Agreement;
- (c) Security in substantially identical form to Security constituted by the Senior Security Documents provided in accordance with clause 4.3 (*Security: Senior Lender*) and by the Second Ranking Security Documents provided in accordance with clause 5.4 (*Security: Second Ranking Creditors*) and by the Third Ranking Security Documents provided in accordance with clause 6.4 (*Security: Third Ranking Creditors*) which ranks in the same order of priority as that contemplated in clause 2.2 (*Transaction Security*);
- (d) any guarantee, indemnity or other assurance against loss in substantially identical form to that provided in respect of the Senior Liabilities in accordance with clause 4.3 (*Security: Senior Lender*) and in respect of the Second Ranking Liabilities in accordance with clause 5.4 (*Security: Second Ranking Creditors*) and in respect of the Third Ranking Liabilities in accordance with clause 6.4 (*Security: Third Ranking Creditors*) which ranks in the same order of priority as that contemplated in clause 2.2 (*Transaction Security*); or
- (e) as otherwise contemplated by clause 4.3 (*Security: Senior Lender*),

unless the prior consent of the Senior Lender, Majority Second Ranking Noteholders and Majority Third Ranking Creditors is obtained.

7.5 Restriction on Enforcement: Fourth Ranking Creditors

Subject to clause 7.6 (*Permitted Enforcement: Fourth Ranking Creditors*), no Fourth Ranking Creditor shall be entitled to take any Enforcement Action in respect of any of the Fourth Ranking Liabilities prior to the Third Ranking Discharge Date.

7.6 Permitted Enforcement: Fourth Ranking Creditors

- (a) Each Fourth Ranking Creditor may take Enforcement Action which would be available to it but for clause 7.5 (*Restriction on Enforcement: Fourth Ranking Creditors*) in respect of any of the Fourth Ranking Liabilities if:
 - (i) at the same time as, or prior to, that action a Senior Acceleration Event, a Second Ranking Acceleration Event and a Third Ranking Acceleration

Event have occurred in which case each Fourth Ranking Creditor may take the same Enforcement Action (but in respect of the Fourth Ranking Liabilities) as constitutes that Senior Acceleration Event, Second Ranking Acceleration Event and Third Ranking Acceleration Event provided that a Fourth Ranking Creditor may not take any action falling under paragraphs (b), (c) or (d) of the definition of "Enforcement Action" without the prior consent of the Senior Lender, Majority Second Ranking Noteholders and Majority Third Ranking Creditors; or

- (ii) the Majority Third Ranking Creditors and, prior to the Second Ranking Discharge Date the Majority Second Ranking Noteholders and, prior to the Senior Discharge Date, the Senior Lender have each given their prior written consent.
- (b) After the occurrence of an Insolvency Event in relation to any member of the Group, each Fourth Ranking Creditor may (unless otherwise directed by the Senior Lender (until the Senior Discharge Date) or the Second Ranking Security Agent thereafter (until the Second Ranking Discharge Date) or the Third Ranking Security Agent thereafter (until the Third Ranking Discharge Date), or unless the Senior Lender, the Second Ranking Security Agent or the Third Ranking Security Agent (as applicable) has taken, or has given notice that it intends to take, action on behalf of that Fourth Ranking Creditor in accordance with clause 10.4 (*Filing of claims*)) exercise any right they may otherwise have against that member of the Group to:
 - (i) accelerate any of that member of the Group's Fourth Ranking Liabilities or declare them prematurely due and payable or payable on demand;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Fourth Ranking Liabilities;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Fourth Ranking Liabilities of that member of the Group; or
 - (iv) claim and prove in the liquidation of that member of the Group for the Fourth Ranking Liabilities owing to it.

7.7 Representations: Fourth Ranking Creditors

Each Fourth Ranking Creditor represents and warrants to the Senior Lender, the Second Ranking Creditors and the Third Ranking Creditors, the Second Ranking Security Agent and the Third Ranking Security Agent that:

- (a) to the extent it is not a natural person, it is a limited liability partnership, corporation, or trust, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) to the extent it is a natural person, he or she is not and has not been bankrupt or subject to any analogous proceedings in any jurisdiction;
- (c) subject to the Legal Reservations and the Perfection Requirements, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations;
- (d) the entry into and performance by it of this Agreement does not and will not:
 - (i) conflict with any law or regulation applicable to it, its constitutional documents (if applicable); or

- (ii) conflict with any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument breach of which has or is reasonably likely to have a Material Adverse Effect (as defined in the Senior Facility Agreement); and
- (e) in the case of a Fourth Ranking Creditor to whom Liabilities are owed under the Fourth Ranking Debt Documents those documents, each in the agreed form as delivered to the Senior Lender on or prior to the date of this Agreement, evidence all the terms of all the Liabilities owed by any member of the Group to that Fourth Ranking Creditor.

7.8 Option to purchase: Fourth Ranking Noteholders

- (a) Subject to clause 7.8(b), any Fourth Ranking Noteholder may after a Senior Acceleration Event (and provided that a Second Ranking Acceleration Event and a Third Ranking Acceleration Event have also both occurred), by giving not less than thirty days' notice to each of the Senior Lender, the Second Ranking Security Agent and the Third Ranking Security Agent, require the transfer to it (or to a nominee or nominees), in accordance with clause 31.3 (*Change of Senior Lender*) or clause 31.6 (*Change of Third Ranking Noteholder*), of all, but not part, of the rights and obligations in respect of the Senior Lender Liabilities, the Second Ranking Liabilities and the Third Ranking Liabilities if:
 - (i) that transfer is lawful and, subject to clause 6.86.8(a)6.8(a)(i) otherwise permitted by the terms of the Senior Finance Documents, the Second Ranking Loan Note Instrument and the Third Ranking Loan Note Instrument;
 - (ii) any conditions relating to such a transfer contained in the Senior Finance Documents, the Second Ranking Loan Note Instrument and the Third Ranking Loan Note Instrument are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required
 - (iii) the Senior Lender is paid an amount equal to the aggregate of:
 - (A) all of the Senior Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Facility Agreement if the Senior Term Facility were being prepaid by the relevant Debtors on the date of that payment;
 - (B) if a Debtor has entered into a Senior Hedging Agreement, (in the case of a positive number) the Senior Hedging Purchase Amount in respect of the hedging transactions under the relevant Senior Hedging Agreement at that time; and
 - (C) all costs and expenses (including legal fees) incurred by the Senior Lender as a consequence of giving effect to that transfer;
 - (iv) the Second Ranking Noteholders are paid an amount equal to the aggregate of:
 - (A) all of the Second Ranking Liabilities at that time (whether or not due), including all amounts that would have been payable under the Second Ranking Loan Note Instrument if the Second Ranking

Notes were being prepaid by the relevant Debtors on the date of that payment; and

- (B) all costs and expenses (including legal fees) incurred by the Second Ranking Noteholders as a consequence of giving effect to that transfer;
- (v) the Third Ranking Noteholders are paid an amount equal to the aggregate of:
 - (A) all of the Third Ranking Liabilities at that time (whether or not due), including all amounts that would have been payable under the Third Ranking Loan Note Instrument if the Third Ranking Notes were being prepaid by the relevant Debtors on the date of that payment; and
 - (B) all costs and expenses (including legal fees) incurred by the Third Ranking Noteholders as a consequence of giving effect to that transfer;
- (vi) as a result of that transfer the Senior Lender, the Second Ranking Noteholders and the Third Ranking Noteholders have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
- (vii) an indemnity is provided from that Fourth Ranking Noteholder (or from another third party acceptable to all of the Senior Lender, the Second Ranking Noteholders and the Third Ranking Noteholders) in a form satisfactory to the Senior Lender, each Second Ranking Noteholder and each Third Ranking Noteholder in respect of all losses which may be sustained or incurred by the Senior Lender, any Second Ranking Noteholder or any Third Ranking Noteholder in consequence of any sum received or recovered by the Senior Lender, any Second Ranking Noteholder or any Third Ranking Noteholder from any person being required (or it being alleged that it is required) to be paid back by or clawed back from the Senior Lender, any Second Ranking Noteholder or any Third Ranking Noteholder for any reason;
- (viii) the Fourth Ranking Noteholder which purchases the Senior Liabilities enters into a confidentiality agreement with the Senior Lender (in substantially the same form as the Loan Market Association form of confidentiality undertaking) agreeing to keep the details of the debt purchase confidential;
- (ix) the transfer is made without recourse to, or representation or warranty from, the Senior Lender, Second Ranking Noteholders or Third Ranking Noteholders, except that the Senior Lender, each Second Ranking Noteholder and each Third Ranking Noteholder shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer;
- (x) the Fourth Ranking Noteholder which purchases the Senior Liabilities provides an unconditional and irrevocable undertaking to the Senior Lender that all and any claims, demands or court or arbitration proceedings which such Fourth Ranking Noteholder makes, brings or prosecutes against any party in respect of the Senior Finance Documents will be so brought, made and prosecuted solely in the name of the relevant Fourth Ranking Noteholder; and

- (xi) the Fourth Ranking Noteholder which purchases the Senior Liabilities provides an indemnity to the Senior Lender against all claims, demands, proceedings, losses, damages, costs or expenses brought, made against or incurred by the Senior Lender on or after the date of the purchase as a result of or in connection with the enforcement of any rights under the Senior Finance Documents.
- (b) The Senior Lender, each Second Ranking Noteholder and each Third Ranking Noteholder shall, at the request of a Fourth Ranking Noteholder notify that Fourth Ranking Noteholder of the sum of the amounts described in clauses 7.8(a)(iii)(A) to 7.8(a)(iii)(C) (inclusive in the case of the Senior Lender), clauses 7.8(iv)(A) and 7.8(iv)(B) (in the case of the Second Ranking Noteholders) and clauses 7.8(v)(A) and 7.8(v)(B) (in the case of the Third Ranking Noteholders).
- (c) It is agreed and acknowledged by all Parties that the Senior Lender may take all Enforcement Action under the Senior Finance Documents in accordance with their terms and without restriction during the period from the date of delivery of a notice pursuant to paragraph (a) above by a Fourth Ranking Noteholder and the date of completion of any purchase made in accordance with this clause 7.8.

7.9 Senior Lender Liabilities Transfer: Hierarchy

If any Second Ranking Noteholder, any Third Ranking Noteholder and any Fourth Ranking Noteholder all seek to exercise their rights under clauses 5.8 (*Option to purchase: Second Ranking Noteholders*), 6.8 (*Option to purchase: Third Ranking Noteholders*) and 7.8 (*Option to purchase: Fourth Ranking Noteholders*) following a Senior Acceleration Event, the rights of the Second Ranking Noteholders shall have precedence over the Third Ranking Noteholders and the Fourth Ranking Noteholders, and the Third Ranking Noteholders shall have precedence over the Fourth Ranking Noteholders. The rights of the Third Ranking Noteholders under clause 6.8 (*Option to purchase: Third Ranking Noteholders*) and the rights of the Fourth Ranking Noteholders under clause 7.8 (*Option to purchase: Fourth Ranking Noteholders*) shall be postponed for so long as any Second Ranking Noteholder is proceeding in good faith and without undue delay to effect the transfers envisaged under clause 5.8 (*Option to purchase: Second Ranking Noteholders*) and the rights of the Fourth Ranking Noteholders under clause 7.8 (*Option to purchase: Fourth Ranking Noteholders*) shall be postponed for so long as the Third Ranking Noteholder is proceeding in good faith and without undue delay to effect the transfers envisaged under clause 6.8 (*Option to purchase: Third Ranking Noteholders*).

SECTION 3

OTHER CREDITORS

8. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES

8.1 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 8.2 (*Permitted Payments: Intra-Group Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under clause 8.7(c).

8.2 Permitted Payments: Intra-Group Liabilities

- (a) Subject to clause 8.2(b), the Debtors may make Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) from time to time when due.
- (b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to clause 8.2(a) if, at the time of the Payment, an Acceleration Event has occurred unless:
 - (i) prior to the Senior Discharge Date, the Senior Lender consents to that Payment being made;
 - (ii) on or after the Senior Discharge Date and prior to the Second Ranking Discharge Date (or at any time when the Second Ranking Creditors are entitled to take Enforcement Action in accordance with clause 5.6 (*Permitted Enforcement: Second Ranking Creditors*) provided that the Senior Lender is not taking or has not taken Enforcement Action which has not been discharged, stayed or otherwise ceased at such point in time), the Majority Second Ranking Noteholders consent to that Payment being made;
 - (iii) on or after the Final Priority Ranking Discharge Date and prior to the Third Ranking Discharge Date, the Majority Third Ranking Creditors consent to that Payment being made;
 - (iv) on or after the Third Ranking Discharge Date, the Majority Fourth Ranking Noteholders consent to that payment being made; or
 - (v) that Payment is made to facilitate Payment of the Senior Liabilities, the making of any Permitted Second Ranking Creditor Payment, the making of any Permitted Third Ranking Creditor Payment or the making of any Permitted Fourth Ranking Creditor Payment.

8.3 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 8.1 (*Restriction on Payment: Intra-Group Liabilities*) and 8.2 (*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.

8.4 Acquisition of Intra-Group Liabilities

- (a) Subject to clause 8.4(b), each Debtor may, and may permit any other member of the Group to:
 - (i) enter into any Liabilities Acquisition; or
 - (ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,in respect of any Intra-Group Liabilities at any time.
- (b) Subject to clause 8.4(c), no action described in clause 8.4(a) may take place in respect of any Intra-Group Liabilities if:

- (iii) that action would result in a breach of the Senior Facility Agreement, the Second Ranking Loan Note Instrument, the Third Ranking Loan Note Instrument or the Fourth Ranking Loan Note Instrument; or
 - (iv) at the time of that action, an Acceleration Event has occurred.
- (c) The restrictions in clause 8.4(b) shall not apply if:
 - (i) prior to the Senior Discharge Date, the Senior Lender consents to that action;
 - (ii) on or after the Senior Discharge Date and prior to the Second Ranking Discharge Date or at any time when the Second Ranking Creditors are entitled to take Enforcement Action in accordance with clause 5.6 (*Permitted Enforcement: Second Ranking Creditors*), the Majority Second Ranking Noteholders consent to that Action;
 - (iii) on or after the Final Priority Ranking Discharge Date and prior to the Third Ranking Discharge Date, the Majority Third Ranking Creditors consent to that Action;
 - (iv) on or after the Third Ranking Discharge Date, the Majority Fourth Ranking Noteholders consent to that Action; or
 - (v) that action is taken to facilitate Payment of the Senior Liabilities, the making of any Permitted Second Ranking Creditor Payment, the making of any Permitted Third Ranking Creditor Payment or the making of any Permitted Fourth Ranking Creditor Payment.

8.5 Security: Intra-Group Lenders

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

- (a) that Security, guarantee, indemnity or other assurance against loss is expressly permitted by the Senior Facility Agreement, the Second Ranking Loan Note Instrument, the Third Ranking Loan Note Instrument and the Fourth Ranking Loan Note Instrument; or
- (b) the prior written consent of the Majority Fourth Ranking Noteholders and prior to the Third Ranking Discharge Date, the prior written consent of the Majority Third Ranking Creditors and, prior to the Second Ranking Discharge Date, the prior written consent of the Majority Second Ranking Noteholders and, prior to the Senior Discharge Date, the prior written consent of the Senior Lender, is obtained.

8.6 Restriction on enforcement: Intra-Group Lenders

Subject to clause 8.7 (*Permitted Enforcement: Intra-Group Lenders*), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date.

8.7 Permitted Enforcement: Intra-Group Lenders

After the occurrence of an Insolvency Event in relation to any member of the Group, each Intra-Group Lender may (unless otherwise directed by the Senior Lender (until the Senior Discharge Date) or thereafter the Second Ranking Security Agent (until the Second Ranking Discharge Date) or thereafter the Third Ranking Security Agent (until the Third Ranking

Discharge Date) or the Fourth Ranking Security Agent thereafter) or unless such 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 10.4 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

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

8.8 Representations: Intra-Group Lenders

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

- (a) it is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) subject to the Legal Reservations and the Perfection Requirements, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations;
- (c) the entry into and performance by it of this Agreement does not and will not:
 - (i) conflict with any law or regulation applicable to it or its constitutional documents; or
 - (ii) conflict with any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any agreement or instrument, breach of which has or is reasonably likely to have a Material Adverse Effect.

9. SUBORDINATED CREDITOR AND SUBORDINATED LIABILITIES

9.1 Restriction on Payment: Subordinated Liabilities

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

- (a) that Payment is permitted under clause 9.2 (*Permitted Payments: Subordinated Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under clause 9.8 (*Permitted Enforcement: Subordinated Creditors*).

9.2 Permitted Payments: Subordinated Liabilities

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

- (a) the Payment is:
 - (i) of an amount due under clause 16.1.1 (*Monitoring fee and expenses*) of the Investment Agreement in an aggregate amount not to exceed £10,000 per annum (exclusive of VAT); or
 - (ii) of any amount due under clause 16.1.2 (*Monitoring fee and expenses*) of the Investment Agreement;
- (b) the Payment is a Permitted Payment (other than pursuant to paragraph (f) of that definition) or a Permitted Series A Loan Note Payment (each as defined in the Senior Facility Agreement as in force at the date of this Agreement);
- (c) the Payment is expressly permitted by the Senior Facility Agreement (other than pursuant to paragraph (f) of the definition of "Permitted Payment" or paragraph (b) of the definition of "Permitted Partnership Loan Note Payment") and the Second Ranking Loan Note Instrument; or
- (d) the Majority Fourth Ranking Noteholders and, prior to the Third Ranking Discharge Date, the Majority Third Ranking Creditors and, prior to the Second Ranking Discharge Date, the Majority Second Ranking Noteholders and, prior to the Senior Discharge Date, the Senior Lender, consent in writing to that Payment being made.

9.3 Payment obligations continue

Neither the Parent nor any other Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of clauses 9.1 (*Restriction on Payment: Subordinated Liabilities*) and 9.2 (*Permitted Payments: Subordinated Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those clauses.

9.4 No acquisition of Subordinated Liabilities

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

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

in respect of any of the Subordinated Liabilities, unless:

- (i) prior to the Senior Discharge Date, the prior consent of the Senior Lender, the Majority Second Ranking Noteholders, the Majority Third Ranking Creditors and the Majority Fourth Ranking Noteholders is obtained;
- (ii) on or after the Senior Discharge Date but prior to the Second Ranking Discharge Date, the prior consent of the Majority Second Ranking Noteholders, the Majority Third Ranking Creditors and the Majority Fourth Ranking Noteholders is obtained;

- (iii) on or after the Final Priority Ranking Discharge Date but prior to the Third Ranking Discharge Date, the prior consent of the Majority Third Ranking Creditors and the Majority Fourth Ranking Noteholders is obtained; or
- (iv) on or after the Third Ranking Discharge Date the prior consent of the Majority Fourth Ranking Noteholders is obtained.

9.5 Amendments and Waivers: Subordinated Creditors

- (a) Prior to the Final Discharge Date, the Subordinated Creditors may not amend, waive or agree the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted unless:
 - (i) the prior written consent of the Majority Fourth Ranking Noteholders and, prior to the Third Ranking Discharge Date, the Majority Third Ranking Creditors and, prior to the Second Ranking Discharge Date, the Majority Second Ranking Noteholders and, prior to the Senior Discharge Date, the Senior Lender is obtained; or
 - (ii) the amendment or waiver is permitted by clause 23.29 (*Amendments*) of the Senior Facility Agreement in the form in force at the date of this Agreement.
- (b) Notwithstanding the generality of the foregoing, prior to the Final Priority Discharge Date, the amount of the Subordinated Liabilities may not be increased after the date of this Agreement other than by reason of:
 - (i) the capitalisation of interest in accordance with the original form of the relevant Subordinated Document; or
 - (ii) the incurrence of Permitted Additional Subordinated Debt (after the Second Ranking Discharge Date) or Permitted Subordinated Equity Cure Debt.

9.6 Security: Subordinated Creditors

- (a) Subject to clause 9.6(b), the Subordinated Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from any member of the Group in respect of any of the Subordinated Liabilities prior to the Final Discharge Date without the prior consent of the Senior Lender, the Majority Second Ranking Noteholders, the Majority Third Ranking Creditors and the Majority Fourth Ranking Noteholders.
- (b) The restrictions in clause 9.6(a) shall not apply to:
 - (i) the Series A Loan Note Security Agent and the Series A Loan Noteholders in respect of the Subordinated Security Documents in force at the date of this Agreement, subject always to clause 17 (*No Enforcement of Subordinated Security*); and
 - (ii) Security in substantially identical form to (and on terms no more onerous on the relevant member of the Group than) Security constituted by the Senior Security Documents in accordance with clause 4.3 (*Security: Senior Lender*) which ranks in the same order of priority as that contemplated in clause 2.2 (*Transaction Security*) and which is granted with the prior written consent of:
 - (A) the Senior Lender;

- (B) (if the Second Ranking Creditors do not benefit from equivalent and substantially identical Security), the Second Ranking Security Agent;
- (C) (if the Third Ranking Creditors do not benefit from equivalent and substantially identical Security), the Third Ranking Security Agent;
- (D) (if the Fourth Ranking Creditors do not benefit from equivalent and substantially identical Security), the Fourth Ranking Security Agent,

provided a copy of any such document referred to in paragraph (ii) above is delivered to the Senior Lender and each Security Agent promptly after being entered into.

9.7 Restriction on Enforcement: Subordinated Creditors

Subject to clause 9.8 (*Permitted Enforcement: Subordinated Creditors*), no Subordinated Creditor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Final Discharge Date.

9.8 Permitted Enforcement: Subordinated Creditors

After the occurrence of an Insolvency Event in relation to any member of the Group, each Subordinated Creditor may (unless otherwise directed by the Senior Lender (until the Senior Discharge Date) and thereafter by the Second Ranking Security Agent (until the Second Ranking Discharge Date) and thereafter by the Third Ranking Security Agent (until the Third Ranking Discharge Date and thereafter by the Fourth Ranking Security Agent) or unless such Security Agent has taken, or has given notice that it intends to take, action on behalf of that Subordinated Creditor in accordance with clause 10.4 (*Filing of claims*)) exercise any right it may otherwise have in respect of that member of the Group to:

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

9.9 Representations: Subordinated Creditors

Each Subordinated Creditor represents and warrants to the Senior Lender, the Second Ranking Creditors, the Third Ranking Creditors, the Fourth Ranking Creditors, the Second Ranking Security Agent, the Third Ranking Security Agent and the Fourth Ranking Security Agent that:

- (a) to the extent it is not a natural person, it is a limited liability partnership, corporation, or trust, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) to the extent it is a natural person, he or she is not and has not been bankrupt or subject to any analogous proceedings in any jurisdiction; and
- (c) subject to the Legal Reservations and the Perfection Requirements, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations;

- (d) the entry into and performance by it of this Agreement does not and will not:
 - (i) conflict with any law or regulation applicable to it, its constitutional documents (if applicable); or
 - (ii) conflict with any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument breach of which has or is reasonably likely to have a Material Adverse Effect (as defined in the Senior Facility Agreement); and
- (e) in the case of a Subordinated Creditor to whom Liabilities are owed under the Series A Loan Note Instrument and/or Unsecured Lomond Loan Note Instrument, those documents, each in the agreed form as delivered to the Senior Lender on or prior to the date of this Agreement, evidence all the terms of all the Liabilities owed by any member of the Group to that Subordinated Creditor.

SECTION 4

INSOLVENCY, TURNOVER AND ENFORCEMENT

10. EFFECT OF INSOLVENCY EVENT

10.1 Distributions

- (a) After the occurrence of an Insolvency Event in relation to any member of the Group which occurs prior to the Senior Discharge Date, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to make that distribution to the Senior Lender (or to such other person as the Senior Lender shall direct) until the Senior Discharge Date.
- (b) The Senior Lender shall apply distributions made to it under clause 10.1(a) in accordance with clause 26 (*Application of Proceeds*).
- (c) After the occurrence of an Insolvency Event in relation to any member of the Group which occurs after the Senior Discharge Date and prior to the Second Ranking Discharge Date, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of Liabilities owed to that Party shall, upon the demand of the Second Ranking Security Agent and to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to make that distribution to the Second Ranking Security Agent (or to such other person as the Second Ranking Security Agent shall direct) until the Second Ranking Discharge Date.
- (d) The Second Ranking Security Agent shall apply distributions made to it under clause 10.1(c) in accordance with clause 26 (*Application of Proceeds*).
- (e) After the occurrence of an Insolvency Event in relation to any member of the Group which occurs after the Final Priority Ranking Discharge Date, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of Liabilities owed to that Party shall, upon the demand of the Third Ranking Security Agent and to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to make that distribution to the Third Ranking Security Agent (or to such other person as the Third Ranking Security Agent shall direct).

- (f) The Third Ranking Security Agent shall apply distributions made to it under clause 10.1(e) in accordance with clause 26 (*Application of Proceeds*).
- (g) After the occurrence of an Insolvency Event in relation to any member of the Group which occurs after the Third Ranking Discharge Date, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of Liabilities owed to that Party shall, upon the demand of the Fourth Ranking Security Agent and to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to make that distribution to the Fourth Ranking Security Agent (or to such other person as the Fourth Ranking Security Agent shall direct).
- (h) The Fourth Ranking Security Agent shall apply distributions made to it under clause 10.1(e) in accordance with clause 26 (*Application of Proceeds*).

10.2 Set-Off

To the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off, prior to the Senior Discharge Date, to the Senior Lender and thereafter prior to the Second Ranking Discharge Date to the Second Ranking Security Agent and thereafter prior to the Third Ranking Discharge Date to the Third Ranking Security Agent and thereafter to the Fourth Ranking Security Agent, for application in accordance with clause 26 (*Application of Proceeds*).

10.3 Non-cash distributions

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

10.4 Filing of claims

After the occurrence of an Insolvency Event in relation to any member of the Group, each Creditor irrevocably authorises, prior to the Senior Discharge Date, the Senior Lender and thereafter prior to the Second Ranking Discharge Date, the Second Ranking Security Agent and thereafter prior to the Third Ranking Discharge Date to the Third Ranking Security Agent and thereafter to the Fourth Ranking Security Agent, on its behalf, to:

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

10.5 Further assurance - Insolvency Event

Each Creditor will until the Senior Discharge Date:

- (a) do all things that the Senior Lender requests in order to give effect to this clause 10; and
- (b) if the Senior Lender is not entitled to take any of the actions contemplated by this clause 10 or if the Senior Lender requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Senior Lender or grant a power of attorney to the Senior Lender (on such terms as the Senior Lender may reasonably require) to enable the Senior Lender to take such action,

and thereafter will until the Second Ranking Discharge Date:

- (a) do all things that the Second Ranking Security Agent requests in order to give effect to this clause 10; and
- (b) if the Second Ranking Security Agent is not entitled to take any of the actions contemplated by this clause 10 or if the Second Ranking Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Second Ranking Security Agent or grant a power of attorney to the Second Ranking Security Agent (on such terms as the Second Ranking Security Agent may reasonably require) to enable the Second Ranking Security Agent to take such action,

and thereafter will until the Third Ranking Discharge Date:

- (a) do all things that the Third Ranking Security Agent requests in order to give effect to this clause 10;
- (b) if the Third Ranking Security Agent is not entitled to take any of the actions contemplated by this clause 10 or if the Third Ranking Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Third Ranking Security Agent or grant a power of attorney to the Third Ranking Security Agent (on such terms as the Third Ranking Security Agent may reasonably require) to enable the Third Ranking Security Agent to take such action;

and thereafter will until the Fourth Ranking Discharge Date:

- (a) do all things that the Fourth Ranking Security Agent requests in order to give effect to this clause 10; and
- (b) if the Fourth Ranking Security Agent is not entitled to take any of the actions contemplated by this clause 10 or if the Fourth Ranking Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Fourth Ranking Security Agent or grant a power of attorney to the Fourth Ranking Security Agent (on such terms as the Fourth Ranking Security Agent may reasonably require) to enable the Fourth Ranking Security Agent to take such action.

10.6 Security Agent instructions

For the purposes of clause 10.1 (*Distributions*), clause 10.4 (*Filing of claims*) and clause 10.5 (*Further assurance - Insolvency Event*) the relevant Security Agent shall act:

- (a) in the case of the Second Ranking Security Agent, on the instructions of the Majority Second Ranking Noteholders;
- (b) in the case of the Third Ranking Security Agent, on the instructions of the Majority Third Ranking Creditors;
- (c) in the case of the Fourth Ranking Security Agent, on the instructions of the Majority Fourth Ranking Noteholders; or
- (d) in the absence in either case of any such instructions, as such Security Agent sees fit.

11. TURNOVER OF RECEIPTS

11.1 Turnover by the Creditors

Subject to clause 11.2 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not either:
 - (i) a Permitted Payment;
 - (ii) in the case of the Second Ranking Creditors and the Second Ranking Liabilities, payments under the Investec Guarantees; or
 - (iii) made in accordance with clause 26 (*Application of Proceeds*);
- (b) other than where clause 11.1(a) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- (c) notwithstanding clause 11.1(a) and 11.1(b), and other than where clause 11.2(a)(i) applies, any amount:
 - (i) on account of, or in relation to, any of the Liabilities:
 - (A) after the occurrence of a Distress Event; or
 - (B) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
 - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,

other than, in each case, any amount received or recovered in accordance with clause 26 (*Application of Proceeds*);
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with clause 26 (*Application of Proceeds*); or
- (e) other than where clause 11.2(a)(i) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with clause 26 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,

that Creditor will:

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

11.2 Permitted assurance and receipts

- (a) Nothing in this Agreement shall restrict the ability of any Senior Lender, Second Ranking Creditor, Third Ranking Creditor, Fourth Ranking Creditor or Subordinated Creditor to:
 - (i) 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
 - (ii) make any assignment or transfer permitted by clause 31 (*Changes to the Parties*),

which is permitted by the Senior Facility Agreement, the Second Ranking Loan Note Instrument, the Third Ranking Loan Note Instrument, the Fourth Ranking Loan Note Instrument or the Subordinated Documents, as applicable and that Senior Lender, Second Ranking Creditor, Third Ranking Creditor, Fourth Ranking 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.

- (b) Nothing in this Agreement shall prevent the Second Ranking Creditors receiving payments under the Investec Guarantees in accordance with their terms and the provisions of clauses 10 (*Effect on Insolvency*) and 11.1 (*Turnover by the Creditors*) shall not apply to such receipts.

11.3 Amounts received by Debtors

If any of the Debtors receives or recovers any amount which, under the terms of any of the Debt Documents, should have been paid to the Senior Lender (prior to the Senior Discharge Date) or thereafter to the Second Ranking Security Agent (prior to the Second Ranking Discharge Date) or thereafter to the Third Ranking Security Agent (until the Third Ranking Discharge Date) and thereafter on trust for the Fourth Ranking Security Agent, that Debtor will:

- (a) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Senior Lender (until the Senior Discharge Date) and thereafter on trust for the Second Ranking Security Agent (until the Second Ranking Discharge Date) and thereafter on trust for the Third Ranking Security Agent and promptly pay that amount to the Senior Lender (until the Senior Discharge Date) and thereafter to the Second Ranking Security Agent (until the Second Ranking Discharge Date) and thereafter to the Third Ranking 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 Senior Lender (until the Senior Discharge Date) and thereafter to the Second Ranking Security Agent (until the Second Ranking Discharge Date) and thereafter to the Third Ranking Security Agent (until the Third Ranking Discharge Date) and thereafter on trust for the Fourth Ranking Security Agent, for application in accordance with the terms of this Agreement.

11.4 Saving provision

If, for any reason, any of the trusts expressed to be created in this clause 11 should fail or be unenforceable, the affected Creditor or Debtor will promptly pay or distribute an amount equal to that receipt or recovery to the Senior Lender (until the Senior Discharge Date) and the Second Ranking Security Agent thereafter (until the Second Ranking Discharge Date) and the Third Ranking Security Agent thereafter (until the Third Ranking Discharge Date) and thereafter on trust for the Fourth Ranking Security Agent to be held on trust by the Senior Lender (until the Senior Discharge Date) and the Second Ranking Security Agent thereafter (until the Second Ranking Discharge Date) and the Third Ranking Security Agent thereafter (until the Third Ranking Discharge Date) and thereafter on trust for the Fourth Ranking Security Agent for application in accordance with the terms of this Agreement.

11.5 Turnover of Non-Cash Consideration

For the purposes of this clause 11, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to clause 11.1 (*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with clause 23.2 (*Cash value of Non-Cash Recoveries*).

12. REDISTRIBUTION

12.1 Recovering Creditor's rights

- (a) Any amount paid or distributed by a Creditor (a "Recovering Creditor") to the Senior Lender (until the Senior Discharge Date) and thereafter the Second Ranking Security Agent (until the Second Ranking Discharge Date) and thereafter the Third Ranking Security Agent (until the Third Ranking Discharge Date) and thereafter on trust for the Fourth Ranking Security Agent under clause 10 (*Effect of Insolvency Event*) or clause 11 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and distributed to the Senior Lender (until the Senior Discharge Date) and thereafter to the Second Ranking Security Agent and Second Ranking Creditors (until the Second Ranking Discharge Date) and thereafter to the Third Ranking Security Agent and Third Ranking Creditors (until the Third Ranking

Discharge Date) and thereafter on trust for the Fourth Ranking Security Agent and Fourth Ranking Creditors (each a "Sharing Creditor"), in accordance with the terms of this Agreement.

- (b) On a distribution by the Senior Lender (until the Senior Discharge Date), thereafter the Second Ranking Security Agent (until the Second Ranking Discharge Date) and thereafter the Third Ranking Security Agent (until the Third Ranking Discharge Date) and thereafter on trust for the Fourth Ranking Security Agent under clause 12.1(a) 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 Senior Lender (until the Senior Discharge Date) and thereafter the Second Ranking Security Agent (until the Second Ranking Discharge Date) and thereafter the Third Ranking Security Agent (until the Third Ranking Discharge Date) and thereafter on trust for the Fourth Ranking Security Agent (the "Shared Amount") will be treated as not having been paid or distributed by that Debtor.

12.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returned by that Recovering Creditor to that Debtor, then:
 - (i) each Sharing Creditor shall, upon request of the Senior Lender (until the Senior Discharge Date) and thereafter the Second Ranking Security Agent (until the Second Ranking Discharge Date) and thereafter the Third Ranking Security Agent (until the Third Ranking Discharge Date) and thereafter on trust for the Fourth Ranking Security Agent, pay or distribute to the Senior Lender (until the Senior Discharge Date) and thereafter the Second Ranking Security Agent (until the Second Ranking Discharge Date) and thereafter the Third Ranking Security Agent (until the Third Ranking Discharge Date) and thereafter on trust for the Fourth Ranking Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "Redistributed Amount"); and
 - (ii) as between the relevant Debtor and each relevant Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor.
- (b) The Senior Lender (until the Senior Discharge Date) and the Second Ranking Security Agent thereafter (until the Second Ranking Discharge Date) and the Third Ranking Security Agent (until the Third Ranking Discharge Date) and thereafter on trust for the Fourth Ranking Security Agent thereafter shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under clause 12.2(a)(i) until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

12.3 Deferral of subrogation

- (a) No Creditor (other than a Third Ranking Creditor, Fourth Ranking Creditor or Subordinated 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 (other than a Third Ranking Creditor, Fourth Ranking Creditor or a Subordinated Creditor) which ranks ahead of it

in accordance with the priorities set out in clause 2 (*Ranking and Priority*) until such time as all of the Liabilities owing to each prior ranking Creditor (or, in the case of any Debtor, owing to each Creditor (other than a Third Ranking Creditor, Fourth Ranking Creditor or a Subordinated Creditor)) have been irrevocably paid in full.

- (b) No Third Ranking Creditor, Fourth Ranking Creditor or 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 Creditor until such time as all of the Liabilities owing to each Creditor (other than a Third Ranking Creditor, Fourth Ranking Creditor or Subordinated Creditor) have been irrevocably discharged in full.

13. ENFORCEMENT OF SENIOR TRANSACTION SECURITY

13.1 Manner of enforcement

Prior to the Senior Discharge Date, the Senior Lender shall enforce the Senior Transaction Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Senior Lender) as the Senior Lender considers in its discretion to be appropriate.

13.2 Exercise of voting rights

Prior to the Senior Discharge Date each Second Ranking Creditor, each Third Ranking Creditor, each Fourth Ranking Creditor, each Subordinated Creditor and each Intra-Group Lender 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 Senior Lender.

13.3 Waiver of rights

To the extent permitted under applicable law and subject to clause 13.1 (*Manner of enforcement*), clause 19.4 (*Fair value*) and clause 26 (*Application of Proceeds*), the Senior Lender and the Debtors waive all rights it may otherwise have to require that the Senior Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Senior Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Senior Secured Obligations is so applied.

14. ENFORCEMENT OF SECOND RANKING TRANSACTION SECURITY

14.1 Enforcement of Second Ranking Security

Subject to clause 5.6 (*Permitted Enforcement: Second Ranking Creditors*), prior to the Senior Discharge Date neither the Second Ranking Security Agent nor any other Second Ranking Creditor shall have any power to enforce, nor have recourse to, any of the Second Ranking Transaction Security or to exercise any right, power, authority or discretion arising under the Second Ranking Security Documents.

14.2 Enforcement Instructions

Subject to clause 5.5 (*Restriction on Enforcement: Second Ranking Creditors*):

- (a) the Second Ranking Security Agent may refrain from enforcing the Second Ranking Transaction Security unless instructed otherwise by the Majority Second Ranking Noteholders;

- (b) subject to the Second Ranking Transaction Security having become enforceable in accordance with its terms, the Majority Second Ranking Noteholders may give or refrain from giving instructions to the Second Ranking Security Agent to enforce or refrain from enforcing the Second Ranking Transaction Security as they see fit; and
- (c) the Second Ranking Security Agent is entitled to rely on and comply with instructions given in accordance with this clause 14.2.

14.3 Manner of enforcement

If the Second Ranking Transaction Security is being enforced pursuant to clause 14.2 (*Enforcement Instructions*), the Second Ranking Security Agent shall enforce the Second Ranking Transaction Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Second Ranking Security Agent) as the Majority Second Ranking Noteholders shall instruct or, in the absence of any such instructions, as the Second Ranking Security Agent considers in its discretion to be appropriate.

14.4 Exercise of voting rights

After the Senior Discharge Date but prior to the Second Ranking Discharge Date (or at any time when the Second Ranking Creditors are entitled to take Enforcement Action in accordance with clause 5.6(a) provided that the Senior Lender is not taking or has not taken Enforcement Action which has not been discharged, stayed or otherwise ceased at such point in time):

- (a) each Third Ranking Creditor, each Fourth Ranking Creditor each Subordinated Creditor and each Intra-Group Lender 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 Second Ranking Security Agent; and
- (b) the Second Ranking Security Agent shall give instructions for the purposes of clause 14.4(a) in accordance with any instructions given to it by the Majority Second Ranking Noteholders.

14.5 Waiver of rights

To the extent permitted under applicable law and subject to clause 14.2 (*Enforcement Instructions*), clause 14.3 (*Manner of enforcement*), clause 19.4 (*Fair value*) and clause 26 (*Application of Proceeds*), each of the Second Ranking Secured Parties and the Debtors waives all rights it may otherwise have to require that the Second Ranking Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Second Ranking Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Second Ranking Secured Obligations is so applied.

14.6 Enforcement through Second Ranking Security Agent only

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

15. ENFORCEMENT OF THIRD RANKING TRANSACTION SECURITY

15.1 Enforcement of Third Ranking Security

Subject to clause 6.6 (*Permitted Enforcement: Third Ranking Creditors*), prior to the Final Priority Ranking Discharge Date, neither the Third Ranking Security Agent nor any other Third Ranking Creditor shall have any power to enforce, nor have recourse to, any of the Third Ranking Transaction Security or to exercise any right, power, authority or discretion arising under the Third Ranking Security Documents.

15.2 Enforcement Instructions

Subject to clause 6.5 (*Restriction on Enforcement: Third Ranking Creditors*):

- (a) the Third Ranking Security Agent may refrain from enforcing the Third Ranking Transaction Security unless instructed otherwise by the Majority Third Ranking Creditors;
- (b) subject to the Third Ranking Transaction Security having become enforceable in accordance with its terms, the Majority Third Ranking Creditors may give or refrain from giving instructions to the Third Ranking Security Agent to enforce or refrain from enforcing the Third Ranking Transaction Security as they see fit; and
- (c) the Third Ranking Security Agent is entitled to rely on and comply with instructions given in accordance with this clause 15.2.

15.3 Manner of enforcement

If the Third Ranking Transaction Security is being enforced pursuant to clause 15.2 (*Enforcement Instructions*), the Third Ranking Security Agent shall enforce the Third Ranking Transaction Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Third Ranking Security Agent) as the Majority Third Ranking Creditors shall instruct or, in the absence of any such instructions, as the Third Ranking Security Agent considers in its discretion to be appropriate.

15.4 Exercise of voting rights

After the Final Priority Ranking Discharge Date but prior to the Third Ranking Discharge Date:

- (a) each Subordinated Creditor, each Fourth Ranking Creditor and each Intra-Group Lender 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 Third Ranking Security Agent; and
- (b) the Third Ranking Security Agent shall give instructions for the purposes of clause 15.4(a) in accordance with any instructions given to it by the Third Ranking Creditors.

15.5 Waiver of rights

To the extent permitted under applicable law and subject to clause 15.2 (*Enforcement Instructions*), clause 15.3 (*Manner of enforcement*), clause 19.4 (*Fair value*) and clause 26 (*Application of Proceeds*), each of the Third Ranking Creditors and the Debtors waives all rights it may otherwise have to require that the Third Ranking Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Third

Ranking Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Third Ranking Secured Obligations is so applied.

15.6 Enforcement through Third Ranking Security Agent only

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

16. ENFORCEMENT OF FOURTH RANKING TRANSACTION SECURITY

16.1 Enforcement of Fourth Ranking Security

Subject to clause 7.6 (*Permitted Enforcement: Fourth Ranking Creditors*), prior to the Third Ranking Discharge Date, neither the Fourth Ranking Security Agent nor any other Fourth Ranking Creditor shall have any power to enforce, nor have recourse to, any of the Fourth Ranking Transaction Security or to exercise any right, power, authority or discretion arising under the Fourth Ranking Security Documents.

16.2 Enforcement Instructions

Subject to clause 7.5 (*Restriction on Enforcement: Fourth Ranking Creditors*):

- (a) the Fourth Ranking Security Agent may refrain from enforcing the Fourth Ranking Transaction Security unless instructed otherwise by the Majority Fourth Ranking Noteholders;
- (b) subject to the Fourth Ranking Transaction Security having become enforceable in accordance with its terms, the Majority Fourth Ranking Noteholders may give or refrain from giving instructions to the Fourth Ranking Security Agent to enforce or refrain from enforcing the Fourth Ranking Transaction Security as they see fit; and
- (c) the Fourth Ranking Security Agent is entitled to rely on and comply with instructions given in accordance with this clause 16.2.

16.3 Manner of enforcement

If the Fourth Ranking Transaction Security is being enforced pursuant to clause 16.2 (*Enforcement Instructions*), the Fourth Ranking Security Agent shall enforce the Fourth Ranking Transaction Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Fourth Ranking Security Agent) as the Majority Fourth Ranking Noteholders shall instruct or, in the absence of any such instructions, as the Fourth Ranking Security Agent considers in its discretion to be appropriate.

16.4 Exercise of voting rights

After the Third Ranking Discharge Date:

- (a) each Subordinated Creditor and each Intra-Group Lender 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 Fourth Ranking Security Agent; and

- (b) the Fourth Ranking Security Agent shall give instructions for the purposes of clause 16.4(a) in accordance with any instructions given to it by the Fourth Ranking Noteholders.

16.5 Waiver of rights

To the extent permitted under applicable law and subject to clause 16.2 (*Enforcement Instructions*), clause 16.3 (*Manner of enforcement*), clause 19.4 (*Fair value*) and clause 26 (*Application of Proceeds*), each of the Fourth Ranking Secured Parties and the Debtors waives all rights it may otherwise have to require that the Fourth Ranking Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Fourth Ranking Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Majority Fourth Ranking Secured Obligations is so applied.

16.6 Enforcement through Fourth Ranking Security Agent only

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

17. NO ENFORCEMENT OF SUBORDINATED SECURITY

Prior to the Final Discharge Date, none of the Series A Security Trustee or the Secured Subordinated Creditors shall have the power to enforce nor have recourse to, any Subordinated Security or to exercise any right, power authority or discretion arising under the Subordinated Security Documents.

SECTION 5

NON-DISTRESSED DISPOSALS, DISTRESSED DISPOSALS AND CLAIMS

18. NON-DISTRESSED DISPOSALS

18.1 Definitions

In this clause 18:

- (a) **"Disposal Proceeds"** means the proceeds of a Non-Distressed Disposal; and
- (b) **"Non-Distressed Disposal"** means
- (i) a disposal of:
 - (A) an asset of a member of the Group; or
 - (B) an asset which is subject to the Senior Transaction Security, the Second Ranking Transaction Security, the Third Ranking Transaction Security or the Fourth Ranking Transaction Security,

to a person or persons outside the Group where:

- (1) that disposal is permitted under the Senior Finance Documents; and

- (2) that disposal is permitted under the Second Ranking Loan Note Instrument, the Third Ranking Loan Note Instrument and the Fourth Ranking Loan Note Instrument; and

that disposal is not a Distressed Disposal.

18.2 Facilitation of Non-Distressed Disposals

- (a) If a disposal of an asset is a Non-Distressed Disposal the Senior Lender is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Senior Secured Party or Debtor) but subject to clause 18.2(e):
- (i) to release the Senior Transaction Security or any other claim (relating to a Debt Document) (excluding the Second Ranking Transaction Security, Third Ranking Transaction Security, Fourth Ranking Transaction Security and the Subordinated Security) over that asset;
 - (ii) where that asset consists of shares in the capital of a member of the Group, to release the Senior Transaction Security or any other claim (relating to a Debt Document) (excluding the Second Ranking Transaction Security, the Third Ranking Transaction Security, Fourth Ranking Transaction Security and the Subordinated Security) over that member of the Group's Property; and
 - (iii) to execute and deliver or enter into any release of the Senior Transaction Security or any claim described in clauses 18.2(a)(i) and 18.2(a)(ii) and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Senior Lender, be considered necessary or desirable.
- (b) If a disposal of an asset is a Non-Distressed Disposal the Second Ranking Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Second Ranking Secured Party or Debtor) but subject to clause 18.2(e):
- (i) to release the Second Ranking Transaction Security or any other claim (relating to a Debt Document) (excluding the Senior Transaction Security, the Third Ranking Transaction Security, the Fourth Ranking Transaction Security and the Subordinated Security) over that asset;
 - (ii) where that asset consists of shares in the capital of a member of the Group, to release the Second Ranking Transaction Security or any other claim (relating to a Debt Document) (excluding the Senior Transaction Security, the Third Ranking Transaction Security the Fourth Ranking Transaction Security and the Subordinated Security) over that member of the Group's Property; and
 - (iii) to execute and deliver or enter into any release of the Second Ranking Transaction Security or any claim described in clauses 18.2(b)(i) and 18.2(b)(ii) and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Second Ranking Security Agent, be considered necessary or desirable.
- (c) If a disposal of an asset is a Non-Distressed Disposal the Third Ranking Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Third Ranking Secured Party or Debtor) but subject to clause 18.2(e):

- (i) to release the Third Ranking Transaction Security or any other claim (relating to a Debt Document) (excluding the Senior Transaction Security, the Second Ranking Transaction Security, the Fourth Ranking Transaction Security and the Subordinated Security) over that asset;
 - (ii) where that asset consists of shares in the capital of a member of the Group, to release the Third Ranking Transaction Security or any other claim (relating to a Debt Document) (excluding the Senior Transaction Security, the Second Ranking Transaction Security, the Fourth Ranking Transaction Security and the Subordinated Security) over that member of the Group's Property; and
 - (iii) to execute and deliver or enter into any release of the Third Ranking Transaction Security or any claim described in clauses 18.2(c)(i) and 18.2(c)(ii) and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Third Ranking Security Agent, be considered necessary or desirable.
- (d) If a disposal of an asset is a Non-Distressed Disposal the Fourth Ranking Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Fourth Ranking Secured Party or Debtor) but subject to clause 18.2(e):
- (i) to release the Fourth Ranking Transaction Security and the Subordinated Security or any other claim (relating to a Debt Document) (excluding the Senior Transaction Security, the Second Ranking Transaction Security and the Third Ranking Transaction Security) over that asset;
 - (ii) where that asset consists of shares in the capital of a member of the Group, to release the Fourth Ranking Transaction Security and the Subordinated Security or any other claim (relating to a Debt Document) (excluding Senior Transaction Security, the Second Ranking Transaction Security and the Third Ranking Transaction Security) over that member of the Group's Property; and
 - (iii) to execute and deliver or enter into any release of the Fourth Ranking Transaction Security and the Subordinated Security or any claim described in clauses (i) 18.2(c)(i) and 18.2(c)(ii) and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Fourth Ranking Security Agent, be considered necessary or desirable.
- (e) Each release of Senior Transaction Security, Second Ranking Transaction Security, Third Ranking Transaction Security, Fourth Ranking Transaction Security or Subordinated Security or any claim described in clause 18.2(a), (b), (c) or (d) shall become effective only on the making of the relevant Non-Distressed Disposal.

18.3 Disposal Proceeds

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

19. SENIOR DISTRESSED DISPOSALS AND APPROPRIATION

19.1 Facilitation of Distressed Disposals and Appropriation

If a Distressed Disposal or an Appropriation is being effected by the Senior Lender, the Senior Lender is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Senior Secured Party, Second Ranking Secured Party, Third Ranking Secured Party, Fourth Ranking Secured Party or Debtor):

- (a) **release of Transaction Security/non-crystallisation certificates:** to release the Senior Transaction Security, the Second Ranking Transaction Security, the Third Ranking Transaction Security, the Fourth Ranking Transaction Security, Subordinated Security or any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that Senior Transaction Security, Second Ranking Transaction Security, the Third Ranking Transaction Security, the Fourth Ranking Transaction Security, Subordinated 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 Senior Lender, be considered necessary or desirable;
- (b) **release of liabilities and Transaction Security on a share sale/Appropriation (Debtor):** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:
 - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
 - (ii) any Senior Transaction Security, Second Ranking Transaction Security, Third Ranking Transaction Security, Fourth Ranking Transaction Security and/or Subordinated Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
 - (iii) any other claim of a Second Ranking Creditor, a Third Ranking Creditor, a Fourth Ranking Creditor, a Subordinated Creditor, an Intra-Group Lender or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

- (c) **release of liabilities and Transaction Security on a share sale/Appropriation (Holding Company):** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of any Holding Company of a Debtor, to release:
 - (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;

- (ii) any Senior Transaction Security, Second Ranking Transaction Security, Third Ranking Transaction Security, Fourth Ranking Transaction Security and/or Subordinated Security granted by any Subsidiary of that Holding Company over any of its assets; and
- (iii) any other claim of a Second Ranking Creditor, the Third Ranking Creditor, Fourth Ranking Creditor, a Subordinated Creditor, an Intra-Group Lender or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtors;

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

- (i) the 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 the Senior Lender, a Second Ranking Creditor or a Second Ranking Secured Party, a Third Ranking Creditor or a Third Ranking Secured Party, or a Fourth Ranking Creditor or Fourth Ranking 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 the Senior Lender, a Second Ranking Creditor or a Second Ranking Secured Party, a Third Ranking Creditor or a Third Ranking Secured Party, a Fourth Ranking Creditor or Fourth Ranking Secured Party for the purposes of this Agreement;

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

- (i) the 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 Senior Lender, a Second Ranking Creditor, a Second Ranking Secured Party, a Third Ranking Creditor or a Third Ranking Secured Party, a Fourth Ranking Creditor or Fourth Ranking Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of:

- (A) all (and not part only) of the Liabilities owed to the Senior Lender, the Second Ranking Creditors, the Third Ranking Creditors and the Fourth Ranking Creditors; and
- (B) all or part of any other 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/Appropriation:** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the "Disposed Entity") and the Senior Lender decides to transfer to another Debtor (the "Receiving Entity") all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of:

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

to execute and deliver or enter into any agreement to:

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

19.2 Form of consideration for Distressed Disposals and Debt Disposals

Subject to clause 23.5 (*Security Agent protection*), a Distressed Disposal or a Debt Disposal may be made in whole or in part for consideration in the form of cash or, if not for cash, for Non-Cash Consideration which is acceptable to the Senior Lender.

19.3 Proceeds of Distressed Disposals and Debt Disposals

The net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Senior Lender for application in accordance with clause 26 (*Application of Proceeds*) and, to the extent that:

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

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

19.4 Fair value

In the case of:

- (a) a Distressed Disposal; or
- (b) a Liabilities Sale,

effected by, or at the request of, the Senior Lender, the Senior Lender shall take reasonable care to obtain a fair market value having regard to the prevailing market conditions (though the Senior Lender shall have no obligation to postpone (or request the postponement of) any Distressed Disposal or Liabilities Sale in order to achieve a higher value).

19.5 Appointment of Financial Adviser

Without prejudice to clause 27.4 (*Rights and discretions*) and without any obligation to do so, the Senior Lender 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;
- (b) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal; or
- (c) any amount of Non-Cash Consideration which is subject to clause 11.1 (*Turnover by the Creditors*).

20. SECOND RANKING DISTRESSED DISPOSALS AND APPROPRIATION

20.1 Facilitation of Distressed Disposals and Appropriation

If a Distressed Disposal or an Appropriation is being effected after the Senior Discharge Date by the Second Ranking Security Agent, the Second Ranking Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Second Ranking Secured Party, Third Ranking Secured Party, Fourth Ranking Secured Party or Debtor):

- (a) **release of Transaction Security/non-crystallisation certificates:** to release the Second Ranking Transaction Security, the Third Ranking Transaction Security, the Fourth Ranking Transaction Security, the Subordinated Security or any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that Second Ranking Transaction Security, the Third Ranking Transaction Security, the Fourth Ranking Transaction Security, Subordinated 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 Second Ranking Security Agent, be considered necessary or desirable;
- (b) **release of liabilities and Transaction Security on a share sale/Appropriation (Debtor):** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:
 - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
 - (ii) any Second Ranking Transaction Security, Third Ranking Transaction Security, the Fourth Ranking Transaction Security and/or Subordinated Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
 - (iii) any other claim of a Second Ranking Creditor, Third Ranking Creditor, Fourth Ranking Creditor, Subordinated Creditor, an Intra-Group Lender or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

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

- (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
- (ii) any Second Ranking Transaction Security, Third Ranking Transaction Security, the Fourth Ranking Transaction Security and/or Subordinated Security granted by any Subsidiary of that Holding Company over any of its assets; and
- (iii) any other claim of a Second Ranking Creditor, Third Ranking Creditor, Fourth Ranking Creditor, Subordinated Creditor, an Intra-Group Lender or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtors;

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

- (i) the Liabilities (other than Liabilities due to any Senior Facility Creditor); 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 Second Ranking Secured Party, a Third Ranking Secured Party or a Fourth Ranking 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 Second Ranking Secured Party, a Third Ranking Secured Party or a Fourth Ranking Secured Party for the purposes of this Agreement;

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

- (i) the Liabilities (other than Liabilities due to any Senior Facility Creditor); 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 Second Ranking Secured Party or a Third Ranking

Secured Party or a Fourth Ranking 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 Second Ranking Creditors; and
- (B) all or part of any other Liabilities (other than Liabilities owed to any Senior Creditors) and the Debtors' Intra-Group Receivables,

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

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

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

to execute and deliver or enter into any agreement to:

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

20.2 Form of consideration for Distressed Disposals and Debt Disposals

After the Senior Discharge Date, a Distressed Disposal or a Debt Disposal may be made in whole or in part for consideration in the form of cash or, if not for cash, for Non-Cash Consideration which is acceptable to the Second Ranking Security Agent.

20.3 Proceeds of Distressed Disposals and Debt Disposals

After the Senior Discharge Date, the net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Second Ranking Security Agent for application in accordance with clause 26 (*Application of Proceeds*) and, to the extent that:

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

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

20.4 Fair value

In the case of:

- (a) a Distressed Disposal; or
- (b) a Liabilities Sale,

effected by, or at the request of, the Second Ranking Security Agent, the Second Ranking Security Agent shall take reasonable care to obtain a fair market value having regard to the prevailing market conditions (though the Second Ranking Security Agent shall have no obligation to postpone (or request the postponement of) any Distressed Disposal or Liabilities Sale in order to achieve a higher value).

20.5 Appointment of Financial Adviser

Without prejudice to clause 28.7 (*Rights and discretions*) and without any obligation to do so, the Second Ranking 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;
- (b) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal; or
- (c) any amount of Non-Cash Consideration which is subject to clause 11.1 (*Turnover by the Creditors*).

20.6 Second Ranking Security Agent's actions

For the purposes of clauses 20.1 (*Facilitation of Distressed Disposals and Appropriation*), 20.2 (*Form of consideration for Distressed Disposals and Debt Disposals*), 20.3 (*Proceeds of Distressed Disposals and Debt Disposals*), 20.4 (*Fair value*) and clause 20.5 (*Appointment of Financial Adviser*) the Second Ranking Security Agent shall act:

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

21. THIRD RANKING DISTRESSED DISPOSALS AND APPROPRIATION

21.1 Facilitation of Distressed Disposals and Appropriation

If a Distressed Disposal or an Appropriation is being effected after the Final Priority Ranking Discharge Date, the Third Ranking Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Third Ranking Secured Party, Fourth Ranking Secured Party or Debtor):

- (a) **release of Transaction Security/non-crystallisation certificates:** to release the Third Ranking Transaction Security, Fourth Ranking Transaction Security, the Subordinated Security or any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that Third Ranking Transaction Security, Fourth Ranking Transaction Security, Subordinated 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 Third Ranking Security Agent, be considered necessary or desirable;

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

- (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
- (ii) any Third Ranking Transaction Security, Fourth Ranking Transaction Security and/or Subordinated Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
- (iii) any other claim of a Third Ranking Creditor, Fourth Ranking Creditor, Subordinated Creditor, an Intra-Group Lender or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

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

- (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
- (ii) any Third Ranking Transaction Security, Fourth Ranking Transaction Security and/or Subordinated Security granted by any Subsidiary of that Holding Company over any of its assets; and
- (iii) any other claim of a Third Ranking Creditor, Fourth Ranking Creditor, Subordinated Creditor, an Intra-Group Lender or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtors;

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

- (i) the Liabilities (other than Liabilities due to any Senior Facility Creditor); 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 Third Ranking Secured Party or Fourth Ranking Security 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 Third Ranking Secured Party or Fourth Ranking Secured Party for the purposes of this Agreement;

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

- (i) the Liabilities (other than Liabilities due to any Senior Facility Creditor); 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 Third Ranking Secured Party or Fourth Ranking 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 Third Ranking Creditors; and
- (B) all or part of any other Liabilities (other than Liabilities owed to any Senior Creditors) and the Debtors' Intra-Group Receivables,

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

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

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

to execute and deliver or enter into any agreement to:

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

21.2 Form of consideration for Distressed Disposals and Debt Disposals

After the Final Priority Ranking Discharge Date, a Distressed Disposal or a Debt Disposal may be made in whole or in part for consideration in the form of cash or, if not for cash, for Non-Cash Consideration which is acceptable to the Third Ranking Security Agent.

21.3 Proceeds of Distressed Disposals and Debt Disposals

After the Final Priority Ranking Discharge Date, the net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Third Ranking Security Agent for application in accordance with clause 26 (*Application of Proceeds*) and, to the extent that:

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

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

21.4 Fair value

In the case of:

- (a) a Distressed Disposal; or
- (b) a Liabilities Sale,

effected by, or at the request of, the Third Ranking Security Agent, the Third Ranking Security Agent shall take reasonable care to obtain a fair market value having regard to the prevailing market conditions (though the Third Ranking Security Agent shall have no obligation to postpone (or request the postponement of) any Distressed Disposal or Liabilities Sale in order to achieve a higher value).

21.5 Appointment of Financial Adviser

Without prejudice to clause 29.7 (*Rights and discretions*) and without any obligation to do so, the Third Ranking 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;
- (b) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal; or
- (c) any amount of Non-Cash Consideration which is subject to clause 11.1 (*Turnover by the Creditors*).

21.6 Third Ranking Security Agent's actions

For the purposes of clauses 22.1 (*Facilitation of Distressed Disposals and Appropriation*), 22.2 (*Form of consideration for Distressed Disposals and Debt Disposals*), 22.3 (*Proceeds of Distressed Disposals and Debt Disposals*), 22.4 (*Fair value*) and clause 22.5 (*Appointment of Financial Adviser*) the Third Ranking Security Agent shall act:

- (a) on the instructions of the Majority Third Ranking Creditors; or

- (b) in the absence of any such instructions, as the Third Ranking Security Agent sees fit.

22. FOURTH RANKING DISTRESSED DISPOSALS AND APPROPRIATION

22.1 Facilitation of Distressed Disposals and Appropriation

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

- (a) **release of Transaction Security/non-crystallisation certificates:** to release the Fourth Ranking Transaction Security, the Subordinated Security or any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that Fourth Ranking Transaction Security, Subordinated 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 Fourth Ranking Security Agent, be considered necessary or desirable;
- (b) **release of liabilities and Transaction Security on a share sale/Appropriation (Debtor):** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:
- (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
 - (ii) any Fourth Ranking Transaction Security and/or Subordinated Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
 - (iii) any other claim of a Fourth Ranking Creditor, Subordinated Creditor, an Intra-Group Lender or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

- (c) **release of liabilities and Transaction Security on a share sale/Appropriation (Holding Company):** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of any Holding Company of a Debtor, to release:
- (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
 - (ii) any Fourth Ranking Transaction Security and/or Subordinated Security granted by any Subsidiary of that Holding Company over any of its assets; and

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

on behalf of the relevant Creditors and Debtors;

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

- (i) the Liabilities (other than Liabilities due to any Senior Facility Creditor); 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 Fourth Ranking 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 Fourth Ranking Secured Party for the purposes of this Agreement;

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

- (i) the Liabilities (other than Liabilities due to any Senior Facility Creditor); 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 Fourth Ranking 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 Fourth Ranking Creditors; and
- (B) all or part of any other Liabilities (other than Liabilities owed to any Senior Creditors) and the Debtors' Intra-Group Receivables,

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

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

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

to execute and deliver or enter into any agreement to:

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

22.2 Form of consideration for Distressed Disposals and Debt Disposals

After the Third Ranking Discharge Date, a Distressed Disposal or a Debt Disposal may be made in whole or in part for consideration in the form of cash or, if not for cash, for Non-Cash Consideration which is acceptable to the Fourth Ranking Security Agent.

22.3 Proceeds of Distressed Disposals and Debt Disposals

After the Third Ranking Discharge Date, the net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Fourth Ranking Security Agent for application in accordance with clause 26 (*Application of Proceeds*) and, to the extent that:

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

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

22.4 Fair value

In the case of:

- (a) a Distressed Disposal; or
- (b) a Liabilities Sale,

effected by, or at the request of, the Fourth Ranking Security Agent, the Fourth Ranking Security Agent shall take reasonable care to obtain a fair market value having regard to the prevailing market conditions (though the Fourth Ranking Security Agent shall have no obligation to postpone (or request the postponement of) any Distressed Disposal or Liabilities Sale in order to achieve a higher value).

22.5 Appointment of Financial Adviser

Without prejudice to clause 30.7 (*Rights and discretions*) and without any obligation to do so, the Fourth Ranking 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;

- (b) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal; or
- (c) any amount of Non-Cash Consideration which is subject to clause 11.1 (*Turnover by the Creditors*).

22.6 Fourth Ranking Security Agent's actions

For the purposes of clauses 22.1 (*Facilitation of Distressed Disposals and Appropriation*), 22.2 (*Form of consideration for Distressed Disposals and Debt Disposals*), 22.3 (*Proceeds of Distressed Disposals and Debt Disposals*), 22.4 (*Fair value*) and clause 22.5 (*Appointment of Financial Adviser*) the Fourth Ranking Security Agent shall act:

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

23. NON-CASH RECOVERIES

23.1 Senior Lender, Second Ranking Security Agent, Third Ranking Security Agent, Fourth Ranking Security Agent and Non-Cash Recoveries

To the extent the Senior Lender, or after the Senior Discharge Date the Second Ranking Security Agent or after the Second Ranking Discharge Date the Third Ranking Security Agent or after the Third Ranking Discharge Date the Fourth Ranking Security Agent receives or recovers any Non-Cash Recoveries, it may (acting on the instructions of the Majority Second Ranking Noteholders in the case of the Second Ranking Security Agent or the Majority Third Ranking Creditors in the case of the Third Ranking Security Agent or the Majority Fourth Ranking Noteholders in the case of the Fourth Ranking Security Agent) but without prejudice to its ability to exercise discretion under clause 26.2 (*Prospective liabilities*):

- (a) distribute those Non-Cash Recoveries pursuant to clause 26 (*Application of Proceeds*) as if they were Cash Proceeds;
- (b) hold, manage, exploit, collect, realise and dispose of those Non-Cash Recoveries; and
- (c) hold, manage, exploit, collect, realise and distribute any resulting Cash Proceeds.

23.2 Cash value of Non-Cash Recoveries

- (a) The cash value of any Non-Cash Recoveries shall be determined by reference to a valuation obtained by the Senior Lender or after the Senior Discharge Date the Second Ranking Security Agent or after the Second Ranking Discharge Date the Third Ranking Security Agent or after the Third Ranking Discharge Date the Fourth Ranking Security Agent from a Financial Adviser appointed by the Senior Lender pursuant to clause 19.5 (*Appointment of Financial Adviser*) or the Second Ranking Security Agent pursuant to clause 20.5 (*Appointment of Financial Adviser*) or the Third Ranking Security Agent pursuant to clause 21.5 (*Appointment of Financial Adviser*) or the Fourth Ranking Security Agent pursuant to clause 22.5 (*Appointment of Financial Adviser*), taking into account any notional conversion made pursuant to clause 26.4 (*Currency conversion*).
- (b) If any Non-Cash Recoveries are distributed pursuant to clause 26 (*Application of Proceeds*), the extent to which such distribution is treated as discharging the Liabilities shall be determined by reference to the cash value of those Non-Cash Recoveries determined pursuant to clause 23.2(a).

23.3 Senior Lender and Non-Cash Recoveries

- (a) Subject to clause 23.3(b) and to clause 23.4 (*Alternative to Non-Cash Consideration*), if, pursuant to clause 26.1 (*Order of application*), the Senior Lender receives Non-Cash Recoveries for application towards the discharge of any Liabilities, the Senior Lender shall apply those Non-Cash Recoveries in accordance with the Senior Facility Agreement as if they were Cash Proceeds.
- (b) The Senior Lender may:
 - (i) use any reasonably suitable method of distribution, as it may determine in its discretion, to distribute those Non-Cash Recoveries in the order of priority that would apply under the Senior Facility Agreement if those Non-Cash Recoveries were Cash Proceeds;
 - (ii) hold any Non-Cash Recoveries through another person; and
 - (iii) hold any amount of Non-Cash Recoveries for so long as the Senior Lender shall think fit for later application pursuant to clause 23.3(a).
- (c) On the occurrence of the Senior Discharge Date, the Senior Lender shall promptly transfer all Non-Cash Recoveries it holds to the Second Ranking Security Agent.
- (d) On the occurrence of the Final Priority Ranking Discharge Date, the Second Ranking Security Agent shall promptly transfer all Non-Cash Recoveries it holds to the Third Ranking Security Agent.
- (e) On the occurrence of the Third Ranking Discharge Date, the Third Ranking Security Agent shall promptly transfer all Non-Cash Recoveries it holds to the Fourth Ranking Security Agent.

23.4 Alternative to Non-Cash Consideration

- (a) If any Non-Cash Recoveries are to be distributed pursuant to clause 26 (*Application of Proceeds*), the Senior Lender or relevant Security Agent shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify the Senior Lender, the Second Ranking Creditors, Third Ranking Creditors or Fourth Ranking Creditors entitled to receive those Non-Cash Recoveries pursuant to that distribution (the "Entitled Creditors").
- (b) If:
 - (i) it would be unlawful for an Entitled Creditor to receive such Non-Cash Recoveries (or it would otherwise conflict with that Entitled Creditor's constitutional documents for it to do so); and
 - (ii) that Entitled Creditor promptly so notifies the Senior Lender or relevant Security Agent and supplies such supporting evidence as that Security Agent may reasonably require,that Senior Lender, Second Ranking Creditor, Third Ranking Creditor or Fourth Ranking Creditors shall be a "Cash Only Creditor" and the Non-Cash Recoveries to which it is entitled shall be "Retained Non-Cash".
- (c) To the extent that, in relation to any distribution of Non-Cash Recoveries, there is a Cash Only Creditor:

- (i) the Senior Lender or relevant Security Agent shall not distribute any Retained Non-Cash to that Cash Only Creditor but shall otherwise treat the Non-Cash Recoveries in accordance with this Agreement; and
 - (ii) the Senior Lender shall not distribute any of those Non-Cash Recoveries to that Cash Only Creditor to satisfy the Senior Liabilities.
- (d) Subject to clause 23.5 (*Security Agent protection*), the Senior Lender or the relevant Security Agent shall hold any Retained Non-Cash and shall, acting on the instructions of the Cash Only Creditor entitled to it, manage, exploit, collect, realise and dispose of that Retained Non-Cash for cash consideration and shall distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with clause 26 (*Application of Proceeds*).
- (e) On any such distribution of Cash Proceeds which are attributable to a disposal of any Retained Non-Cash, the extent to which such distribution is treated as discharging the Liabilities due to the relevant Cash Only Creditor shall be determined by reference to:
 - (i) the valuation which determined the extent to which the distribution of the Non-Cash Recoveries to the other Entitled Creditors discharged the Liabilities due to those Entitled Creditors; and
 - (ii) the Retained Non-Cash to which those Cash Proceeds are attributable.
- (f) Each Second Ranking Creditor, Third Ranking Creditor and Fourth Ranking Creditor shall, following a request by the Second Ranking Security Agent (acting in accordance with clause 20.6 (*Second Ranking Security Agent's actions*)) or the Third Ranking Security Agent (acting in accordance with clause 21.6 (*Third Ranking Security Agent's actions*)) or the Fourth Ranking Security Agent (acting in accordance with clause 22.6 (*Fourth Ranking Security Agent's actions*)) (as applicable), notify the relevant Security Agent of the extent to which clause 23.4(b)(i) would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries.

23.5 Security Agent protection

- (a) No Distressed Disposal or Liabilities/Receivables Disposal may be made in whole or part for Non-Cash Consideration if the relevant Security Agent has reasonable grounds for believing that its receiving, distributing, holding, managing, exploiting, collecting, realising or disposing of that Non-Cash Consideration would have an adverse effect on it.
- (b) If Non-Cash Consideration is distributed to a Security Agent pursuant to clause 11.1 (*Turnover by the Creditors*) the Second Ranking Security Agent thereafter (until the Second Ranking Discharge Date) and the Third Ranking Security Agent thereafter (until the Third Ranking Discharge Date) and the Fourth Ranking Security Agent thereafter may, at any time after notifying the Creditors entitled to that Non-Cash Consideration and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Non-Cash Consideration for cash consideration (and distribute any Cash Proceeds of that Non-Cash Consideration to the relevant Creditors in accordance with clause 26 (*Application of Proceeds*)) if such Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.
- (c) If a Security Agent holds Retained Non-Cash for a Cash Only Creditor (each as defined in clause 23.4 (*Alternative to Non-Cash Consideration*)) that Security Agent may at any time, after notifying that Cash Only Creditor and notwithstanding any

instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Retained Non-Cash for cash consideration (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with clause 26 (*Application of Proceeds*)) if that Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Retained Non-Cash would have an adverse effect on it.

24. INSURANCE CLAIMS

24.1 Facilitation of claims

- (a) So long as the requirements of clause 24.2 (*Mandatory prepayment of Proceeds*) are met, if any insurance claim is to be made, or is made, by a Debtor prior to a Distress Event and that claim or that insurance claim (or any proceeds of that claim or insurance claim (the "**Proceeds**")) is or are expressed to be subject to the Senior Transaction Security, the Second Ranking Transaction Security, the Third Ranking Transaction Security and/or the Fourth Ranking Transaction Security, the Senior Lender, Second Ranking Security Agent, Third Ranking Security Agent and Fourth Ranking Security Agent are irrevocably authorised (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) to (and prior to the Senior Discharge Date, the Fourth Ranking Security Agent, Third Ranking Security Agent and Second Ranking Security Agent shall promptly on the request of the Senior Lender and prior to the Second Ranking Discharge Date the Third Ranking Security Agent and Fourth Ranking Security Agent shall promptly on the request of the Second Ranking Security Agent and prior to the Third Ranking Discharge Date the Fourth Ranking Security Agent shall promptly on the request of the Third Ranking Security Agent):
 - (i) give a consent under or release the Senior Transaction Security (in the case of the Senior Lender), the Second Ranking Transaction Security (in the case of the Second Ranking Security Agent), the Third Ranking Transaction Security (in the case of the Third Ranking Security Agent) and the Fourth Ranking Transaction Security (in the case of the Fourth Ranking Security Agent) or any other claim, over the relevant document or insurance policy solely to the extent necessary to allow that Debtor to make that claim or that insurance claim and to comply with that Debtor's obligations in respect of that claim or that insurance claim and any Proceeds under the Senior Facility Agreement, Second Ranking Loan Note Instrument, Third Ranking Loan Note Instrument and the Fourth Ranking Loan Note Instrument; and
 - (ii) execute and deliver or enter into any such consent under or release of that Transaction Security, or claim, that may, in the discretion of the Senior Lender or the relevant Security Agent, be considered necessary or desirable.

24.2 Mandatory prepayment of Proceeds

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

24.3 Recoveries from Report Providers

- (a) In this clause 24.3:

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

"Net Award" means any amount received or recovered by any Party in relation to any Proceedings less reasonable legal costs and expenses incurred by that Party in pursuing such Proceedings and any tax payable (including any amount payable in the future and which, in accordance with the Accounting Principles (as defined in the Senior Facility Agreement) is reserved for) by that Party directly as a result of that receipt or recovery;

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

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

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

- (i) give the other Parties reasonable prior notice (through the Senior Lender or, after the Senior Discharge Date, the Second Ranking Security Agent or, after the Second Ranking Discharge Date, the Third Ranking Security Agent or after the Third Ranking Discharge Date, the Fourth Ranking Security Agent) of its intention to do so;
- (ii) give each other Party and any insolvency representative appointed under, or pursuant to the terms of, any Senior Finance Document, Second Ranking Debt Documents, Third Ranking Debt Documents or Fourth Ranking Debt Documents a reasonable opportunity to be joined into such Proceedings or initiate similar proceedings; and
- (iii) co-operate with any such persons who are joined in as regards the efficient and effective conduct of such Proceedings,

and, in any event, no Party shall at any time waive any right or claim against any Report Provider without the prior written consent of the Senior Lender or after the Senior Discharge Date, the Second Ranking Security Agent or after the Second Ranking Discharge Date, the Third Ranking Security Agent or after the Third Ranking Discharge Date, the Fourth Ranking Security Agent.

- (c) Notwithstanding any other provision in the Debt Documents, no Debtor or Subordinated Creditor or prior to the Final Priority Ranking Discharge Date, Third Ranking Creditor or Fourth Ranking Creditor may initiate Proceedings unless and until the Debtor or Subordinated Creditor, or, prior to the Final Priority Ranking Discharge Date, the Third Ranking Creditor or Fourth Ranking Creditor has consulted with the Senior Lender or, after the Senior Discharge Date, the Second Ranking Security Agent or, after the Second Ranking Discharge Date, the Third Ranking Security Agent or, after the Third Ranking Discharge Date, the Fourth Ranking Security Agent unless those proceedings would otherwise be time barred in which case it may take such action as is necessary in order not to lose the right to make a claim but may take no other action until it has so consulted.
- (d) If no Distress Event has occurred at the time of receipt of a Net Award, and the Senior Facility Agreement requires Award Proceeds obtained by the Parent to be

applied in mandatory prepayment of the Senior Facility Liabilities, the recipient of that Net Award (if not the Parent) shall pay the Award Proceeds to the Parent for application in accordance with the Senior Facility Agreement.

(e) If a Distress Event has occurred at the time of receipt of a Net Award, the recipient of that Net Award shall pay the Award Proceeds to the Senior Lender or, after the Senior Discharge Date, the Second Ranking Security Agent or, after the Second Ranking Discharge Date, the Third Ranking Security Agent or, after the Third Ranking Discharge Date, the Fourth Ranking Security Agent and such Security Agent shall apply those Award Proceeds in accordance with clause 26 (*Application of Proceeds*).

(f) This clause 24.3 shall apply until the Final Discharge Date.

25. FURTHER ASSURANCE - DISPOSALS AND RELEASES

25.1 Release by Senior Lender

Prior to the Senior Discharge Date, each Creditor and Debtor will:

- (a) do all things that the Senior Lender requests in order to give effect to clause 18 (*Non-Distressed Disposals*), clause 19 (*Senior Distressed Disposals and Appropriation*) and clause 24 (*Insurance claims*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Senior Lender may consider to be necessary to give effect to the releases or disposals contemplated by those clauses); and
- (b) if the Senior Lender is not entitled to take any of the actions contemplated by those clauses or if the Senior Lender requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Senior Lender,

provided that the proceeds of those disposals are applied in accordance with clause 18 (*Non-Distressed Disposals*) or clause 19 (*Senior Distressed Disposals and Appropriation*) as the case may be.

25.2 Release by Second Ranking Security Agent

After the Senior Discharge Date, each Creditor and Debtor will:

- (a) do all things that the Second Ranking Security Agent requests in order to give effect to clause 18 (*Non-Distressed Disposals*), clause 20 (*Second Ranking Distressed Disposals and Appropriation*) and clause 24 (*Insurance claims*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Second Ranking Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by those clauses); and
- (b) if the Second Ranking Security Agent is not entitled to take any of the actions contemplated by those clauses or if the Second Ranking Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Second Ranking Security Agent,

provided that the proceeds of those disposals are applied in accordance with clause 18 (*Non-Distressed Disposals*) or clause 20 (*Second Ranking Distressed Disposals and Appropriation*) as the case may be.

25.3 Release by Third Ranking Security Agent

After the Final Priority Ranking Discharge Date, each Creditor and Debtor will:

- (a) do all things that the Third Ranking Security Agent requests in order to give effect to clause 18 (*Non-Distressed Disposals*), clause 21 (*Third Ranking Distressed Disposals and Appropriation*) and clause 24 (*Insurance claims*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Third Ranking Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by those clauses); and
- (b) if the Third Ranking Security Agent is not entitled to take any of the actions contemplated by those clauses or if the Third Ranking Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Third Ranking Security Agent,

provided that the proceeds of those disposals are applied in accordance with clause 18 (*Non-Distressed Disposals*) or clause 21 (*Third Ranking Distressed Disposals and Appropriation*) as the case may be.

25.4 Release by Fourth Ranking Security Agent

After the Third Ranking Discharge Date, each Creditor and Debtor will:

- (a) do all things that the Fourth Ranking Security Agent requests in order to give effect to clause 18 (*Non-Distressed Disposals*), clause 22 (*Fourth Ranking Distressed Disposals and Appropriation*) and clause 24 (*Insurance claims*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Fourth Ranking Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by those clauses); and
- (b) if the Fourth Ranking Security Agent is not entitled to take any of the actions contemplated by those clauses or if the Fourth Ranking Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Fourth Ranking Security Agent,

provided that the proceeds of those disposals are applied in accordance with clause 18 (*Non-Distressed Disposals*) or clause 22 (*Fourth Ranking Distressed Disposals and Appropriation*) as the case may be.

SECTION 6

PROCEEDS

26. APPLICATION OF PROCEEDS

26.1 Order of application

Subject to clause 26.2 (*Prospective liabilities*), all amounts from time to time received or recovered by the Senior Lender, the Second Ranking Security Agent, the Third Ranking Security Agent or the Fourth Ranking Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Senior Transaction Security, the Second Ranking Transaction Security, the Third Ranking Transaction Security or the Fourth Ranking Transaction Security (for the purposes of this clause 26, the "Recoveries") shall be held prior to the Senior Discharge Date by the Senior Lender on trust and thereafter the Senior Lender shall promptly transfer the balance of the

Recoveries to the Second Ranking Security Agent to be held prior to the Second Ranking Discharge Date (together with any other amounts the Second Ranking Security Agent receives pursuant to the terms of any Debt Documents or in connection with the realisation or enforcement of all or any part of the Second Ranking Transaction Security) by the Second Ranking Security Agent on trust and thereafter the Second Ranking Security Agent shall promptly transfer the balance of the Recoveries to the Third Ranking Security Agent to be held (together with any other amounts the Third Ranking Security Agent receives pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Third Ranking Transaction Security) by the Third Ranking Security Agent on trust and thereafter the Third Ranking Security Agent shall promptly transfer the balance of the Recoveries to the Fourth Ranking Security Agent received pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Fourth Ranking Transaction Security) by the Fourth Ranking Security Agent on trust. The Recoveries shall be applied at any time as the Senior Lender or, after the Senior Discharge Date, the Second Ranking Security Agent or, after the Second Ranking Discharge Date, the Third Ranking Security Agent or, after the Third Ranking Discharge Date or, after the Third Ranking Discharge Date, the Fourth Ranking Security Agent or, after the Fourth Ranking Discharge Date, the relevant Subordinated Creditor (in each case in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this clause 26), in the following order of priority:

- (a) in discharging, *pari passu*, any sums owing to:
 - (i) the Senior Lender, any Receiver or any Delegate appointed by it under or in respect of the Senior Finance Documents; and
 - (ii) the Second Ranking Security Agent, any Receiver or any Delegate appointed by it under or in respect of any Second Ranking Debt Documents as a result, prior to the Senior Discharge Date only, of taking action permitted or required to be taken under this Agreement;
- (b) in discharging all costs and expenses incurred by the Senior Lender in connection with any realisation or enforcement of the Senior Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Senior Lender under clause 10.5 (*Further assurance - Insolvency Event*);
- (c) in payment or distribution to the Senior Lender for application towards the discharge of the Senior Liabilities (in accordance with the terms of the Senior Finance Documents);
- (d) in discharging all costs and expenses incurred by any Second Ranking Creditor in connection with any realisation or enforcement of the Second Ranking Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Second Ranking Security Agent under clause 10.5 (*Further assurance - Insolvency Event*);
- (e) in payment or distribution to the Second Ranking Creditors for application towards the discharge of the Second Ranking Liabilities;
- (f) in discharging any sums owing to the Third Ranking Security Agent, any Receiver or any Delegate appointed by it under or in respect of any Third Ranking Debt Documents as a result of taking action permitted to be taken under this Agreement;
- (g) in discharging all costs and expenses incurred by any Third Ranking Creditor in connection with any realisation or enforcement of the Third Ranking Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Third Ranking Security Agent under clause 10.5 (*Further assurance - Insolvency Event*);

- (h) in payment or distribution to the Third Ranking Creditors for application towards the discharge of the Third Ranking Liabilities;
- (i) in discharging any sums owing to the Fourth Ranking Security Agent, any Receiver or any Delegate appointed by it under or in respect of any Fourth Ranking Debt Documents as a result of taking action permitted to be taken under this Agreement;
- (j) in discharging all costs and expenses incurred by any Fourth Ranking Creditor in connection with any realisation or enforcement of the Fourth Ranking Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Fourth Ranking Security Agent under clause 10.5 (*Further assurance - Insolvency Event*);
- (k) in payment or distribution to the Fourth Ranking Creditors for application towards the discharge of the Fourth Ranking Liabilities;
- (l) if none of the Debtors is under any further actual or contingent liability under any Senior Finance Document, Second Ranking Debt Document, Third Ranking Debt Document or Fourth Ranking Debt Document in payment or distribution to the Secured Subordinated Creditors for application towards the discharge of the Secured Subordinated Liabilities on a pari passu basis;
- (m) in payment or distribution to the Parent for application towards the discharge of the LLP Unsecured Subordinated Liabilities;
- (n) in payment or distribution to the Parent for application towards the discharge of the Unsecured Subordinated Liabilities (other than the LLP Unsecured Subordinated Liabilities) and the Intra-Group Liabilities on a pari passu basis; and
- (o) the balance, if any, in payment or distribution to the relevant Debtor.

For the avoidance of doubt, this clause 26.1 (*Order of application*) shall not apply to any Payments received by the Second Ranking Creditors pursuant to the Investec Guarantees.

26.2 Prospective liabilities

- (a) Prior to the Senior Discharge Date, following a Distress Event the Senior Lender may, in its discretion:
 - (i) hold any amount of the Recoveries which is in the form of cash, and any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any Non-Cash Consideration, in one or more interest bearing suspense or impersonal accounts in the name of the Senior Lender with such financial institution (including itself) as the Senior Lender shall think fit (the interest being credited to the relevant account); and
 - (ii) hold, manage, exploit, collect and realise any amount of the Recoveries which is in the form of Non-Cash Consideration,

in each case for so long as the Senior Lender shall think fit for later application under clause 26.1 (*Order of application*) in respect of:

- (A) any sum to any Senior Lender, any Receiver or any Delegate; and
- (B) any part of the Liabilities,

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

- (b) After the Senior Discharge Date and prior to the Second Ranking Discharge Date, following a Distress Event the Second Ranking Security Agent may, in its discretion:

- (i) hold any amount of the Recoveries which is in the form of cash, and any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any Non-Cash Consideration, in one or more interest bearing suspense or impersonal accounts in the name of the Second Ranking Security Agent with such financial institution (including itself) as the Second Ranking Security Agent shall think fit (the interest being credited to the relevant account); and
- (ii) hold, manage, exploit, collect and realise any amount of the Recoveries which is in the form of Non-Cash Consideration,

in each case for so long as the Second Ranking Security Agent shall think fit for later application under clause 26.1 (*Order of application*) in respect of:

- (A) any sum to any Second Ranking Security Agent, any Receiver or any Delegate; and
- (B) any part of the Liabilities,

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

- (c) After the Final Priority Ranking Discharge Date and prior to the Third Ranking Discharge Date, following a Distress Event the Third Ranking Security Agent may, in its discretion:

- (i) hold any amount of the Recoveries which is in the form of cash, and any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any Non-Cash Consideration, in one or more interest bearing suspense or impersonal accounts in the name of the Third Ranking Security Agent with such financial institution (including itself) as the Third Ranking Security Agent shall think fit (the interest being credited to the relevant account); and
- (ii) hold, manage, exploit, collect and realise any amount of the Recoveries which is in the form of Non-Cash Consideration,

in each case for so long as the Third Ranking Security Agent shall think fit for later application under clause 26.1 (*Order of application*) in respect of:

- (A) any sum to any Third Ranking Security Agent, any Receiver or any Delegate; and
- (B) any part of the Liabilities,

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

- (d) After the Third Ranking Discharge Date, following a Distress Event the Fourth Ranking Security Agent may, in its discretion:

- (i) hold any amount of the Recoveries which is in the form of cash, and any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any Non-Cash Consideration, in one or more interest bearing suspense or impersonal accounts in the name of the Fourth Ranking Security

Agent with such financial institution (including itself) as the Fourth Ranking Security Agent shall think fit (the interest being credited to the relevant account); and

- (ii) hold, manage, exploit, collect and realise any amount of the Recoveries which is in the form of Non-Cash Consideration,

in each case for so long as the Fourth Ranking Security Agent shall think fit for later application under clause 26.1 (*Order of application*) in respect of:

- (A) any sum to any Fourth Ranking Security Agent, any Receiver or any Delegate; and

- (B) any part of the Liabilities,

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

26.3 Investment of Cash Proceeds

- (a) Prior to the Senior Discharge Date, prior to the application of the proceeds of the Security Property in accordance with clause 26.1 (*Order of application*) the Senior Lender may, in its discretion, hold all or part of any Cash Proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Senior Lender with such financial institution (including itself) and for so long as the Senior Lender shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Senior Lender's discretion in accordance with the provisions of this clause 26.
- (b) After the Senior Discharge Date and prior to the Second Ranking Discharge Date, prior to the application of the proceeds of the Security Property in accordance with clause 26.1 (*Order of application*) the Second Ranking Security Agent may, in its discretion, hold all or part of any Cash Proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Second Ranking Security Agent with such financial institution (including itself) and for so long as the Second Ranking Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Second Ranking Security Agent's discretion in accordance with the provisions of this clause 26.
- (c) After the Final Priority Ranking Discharge Date and prior to the Third Ranking Discharge Date, prior to the application of the proceeds of the Security Property in accordance with clause 26.1 (*Order of application*) the Third Ranking Security Agent may, in its discretion, hold all or part of any Cash Proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Third Ranking Security Agent with such financial institution (including itself) and for so long as the Third Ranking Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Third Ranking Security Agent's discretion in accordance with the provisions of this clause 26.
- (d) After the Third Ranking Discharge Date, prior to the application of the proceeds of the Security Property in accordance with clause 26.1 (*Order of application*) the Fourth Ranking Security Agent may, in its discretion, hold all or part of any Cash Proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Fourth Ranking Security Agent with such financial institution (including itself) and for so long as the Fourth Ranking Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those

monies in the Fourth Ranking Security Agent's discretion in accordance with the provisions of this clause 26.

26.4 Currency conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Senior Lender or relevant Security Agent (as appropriate) may:
 - (i) convert any monies received or recovered by the Senior Lender or that Security Agent (including, without limitation, any Cash Proceeds) from one currency to another, at the Senior Lender's Spot Rate of Exchange (or, after the Senior Discharge Date, the relevant Security Agent's spot rate of exchange); and
 - (ii) notionally convert the valuation provided in any opinion or valuation from one currency to another, at that Security Agent's Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied:
 - (i) in the case of clause 26.4(a)(i), to the extent of the amount of the due currency purchased after deducting the costs of conversion; and
 - (ii) in the case of clause 26.4(a)(ii), to the extent of the amount of the due currency which results from the notional conversion referred to in that clause.

26.5 Permitted Deductions

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

virtue of its capacity as Third Ranking Security Agent under any of the Debt Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

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

26.6 Good Discharge

- (a) Any distribution or payment made by the Senior Lender or a Security Agent shall be a good discharge, to the extent of that payment or distribution, by the Senior Lender or the relevant Security Agent:
 - (i) in the case of a payment made in cash, to the extent of that payment; and
 - (ii) in the case of a distribution of Non-Cash Recoveries, as determined by clause 23.2 (*Cash value of Non-Cash Recoveries*).
- (b) The Second Ranking Security Agent is under no obligation to make any payments to the Second Ranking Creditors in the same currency as that in which the Liabilities owing to the relevant Second Ranking Creditor are denominated pursuant to the relevant Debt Document.
- (c) The Third Ranking Security Agent is under no obligation to make any payments to the Third Ranking Creditors in the same currency as that in which the Liabilities owing to the relevant Third Ranking Creditor are denominated pursuant to the relevant Debt Document.
- (d) The Fourth Ranking Security Agent is under no obligation to make any payments to the Fourth Ranking Creditors in the same currency as that in which the Liabilities owing to the relevant Fourth Ranking Creditor are denominated pursuant to the relevant Debt Document.

26.7 Calculation of Amounts

For the purpose of calculating any person's share of any amount payable to or by it, the Senior Lender, Second Ranking Security Agent, Third Ranking Security Agent or Fourth Ranking Security Agent (as applicable) shall be entitled to:

- (a) notionally convert the Liabilities owed to any person into a common base currency (decided in its discretion by the Senior Lender or the applicable Security Agent), that notional conversion to be made at the spot rate at which the Senior Lender, Second Ranking Security Agent, Third Ranking Security Agent or Fourth Ranking Security Agent (as applicable) is able to purchase the notional base currency with the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made; and
- (b) assume that all amounts received or recovered as a result of the enforcement or realisation of the Security Property are applied in discharge of the Liabilities in

accordance with the terms of the Debt Documents under which those Liabilities have arisen.

SECTION 7

THE PARTIES

27. THE SENIOR LENDER

27.1 Duties of the Senior Lender

- (a) Except where a Debt Document specifically provides otherwise, the Senior Lender is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (b) To the extent that a Party (other than the Senior Lender) is required to calculate a Common Currency Amount, the Senior Lender shall upon a request by that Party, promptly notify that Party of the relevant Senior Lender's Spot Rate of Exchange.
- (c) The Senior Lender 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).

27.2 No fiduciary duties to Debtors, Subordinated Creditors, Second Ranking Creditors, Third Ranking Creditors or Fourth Ranking Creditors

Nothing in this Agreement constitutes the Senior Lender as an agent, trustee or fiduciary of any Debtor, Subordinated Creditor, Second Ranking Creditor, Third Ranking Creditor or Fourth Ranking Creditor.

27.3 Business with the Group

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

27.4 Rights and discretions

- (a) The Senior Lender may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised; and
 - (ii) 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 clause 27.4(a)(ii)(A), may assume the truth and accuracy of that certificate.
- (b) The Senior Lender may assume (unless it has received notice to the contrary pursuant to the Senior Finance Documents) 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 Senior Lender may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) The Senior Lender, any Receiver and any Delegate may act in relation to the Debt Documents and the Senior 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 Senior Lender's, Receiver's or Delegate's gross negligence or wilful misconduct.

- (e) Unless this Agreement expressly specifies otherwise, the Senior Lender may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- (f) Notwithstanding any other provision of any Debt Document to the contrary, the Senior Lender 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.
- (g) Notwithstanding any provision of any Debt Document to the contrary, the Senior Lender 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.

27.5 Responsibility for documentation

None of the Senior Lender, 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 Senior Lender, a Debtor or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Senior 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 Senior Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Senior 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.

27.6 No duty to monitor

The Senior Lender 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.

27.7 Exclusion of liability

- (a) Without limiting clause 27.7(b) (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Senior Lender, any Receiver or Delegate), none of the Senior Lender, any Receiver nor any Delegate will be liable for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
- (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document or the Security Property unless the exercise of, or the failure to exercise, any such right, power, authority or discretion constituted gross negligence or wilful default on its part;
- (iii) any shortfall which arises on the enforcement or realisation of the Security Property unless caused by its gross negligence or wilful default; or
- (iv) without prejudice to the generality of clauses 27.7(a)(i) to 27.7(a)(iii), 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 Senior Lender, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Senior Lender, a Receiver or a Delegate in respect of any claim it might have against the Senior Lender, 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 Senior Security Property and any officer, employee or agent of the Senior Lender, a

Receiver or a Delegate may rely on this clause subject to clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.

- (c) Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Senior Lender, any Receiver or Delegate, any liability of the Senior Lender, 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 Senior Lender, 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 Senior Lender, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Senior Lender, 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 Senior Lender, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

27.8 Reliance and engagement letters

The Senior Lender 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).

27.9 No responsibility to perfect Senior Transaction Security

The Senior Lender 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 Senior Transaction Security;
- (c) register, file or record or otherwise protect any of the Senior 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 Senior 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 Senior 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 Senior Security Document.

27.10 Insurance by Senior Lender

- (a) The Senior Lender 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 Senior Lender 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 Senior Lender 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.

27.11 Custodians and nominees

The Senior Lender 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 Senior Lender 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 Senior Lender 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.

27.12 Delegation by the Senior Lender

- (a) Each of the Senior Lender, 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 Senior Lender, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Senior Secured Parties.
- (c) No Senior Lender, 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.

27.13 Acceptance of title

The Senior Lender 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.

27.14 Third Ranking Creditors, Fourth Ranking Creditors, Intra-Group Lenders, Debtors and Subordinated Creditors: Power of Attorney

Each Third Ranking Creditor, Fourth Ranking Creditor, Intra-Group Lender, Debtor and Subordinated Creditor by way of security for its obligations under this Agreement irrevocably appoints the Senior Lender to be its attorney to do anything after a Distress Event which that Third Ranking Creditor, Fourth Ranking Creditor, Intra-Group Lender, Debtor or Subordinated Creditor has authorised the Senior Lender or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Senior Lender may delegate that power on such terms as it sees fit) or if no Distress Event has occurred, which such Third Ranking Creditor, Fourth Ranking Creditor, Intra-Group Lender, Debtor or Subordinated Creditor has failed to do within 10 Business Days of being notified by the Senior Lender of the failure to comply and being requested to comply.

27.15 Title documents

The Senior Lender shall transfer all relevant title documents and deeds in relation to the Secured Property to the Second Ranking Security Agent promptly following the occurrence of the Senior Discharge Date.

28. THE SECOND RANKING SECURITY AGENT

28.1 Second Ranking Security Agent as trustee

- (a) The Second Ranking Security Agent declares that it holds the Second Ranking Security Property on trust for the Second Ranking Secured Parties on the terms contained in this Agreement.
- (b) Each of the Second Ranking Creditors authorises the Second Ranking Security Agent to perform the duties, obligations and responsibilities to exercise the rights, powers, authorities and discretions specifically given to the Second Ranking Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions

28.2 Instructions

- (a) The Second Ranking Security Agent shall:
 - (i) subject to clauses 28.2(d) and 28.2(e)), exercise or refrain from exercising any right, power, authority or discretion vested in it as Second Ranking Security Agent in accordance with any instructions given to it by the Majority Second Ranking Noteholders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with clause 28.2(a)(i) (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 Second Ranking Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Second Ranking Noteholders (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Second Ranking 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 Second Ranking Security Agent by the Majority Second Ranking Noteholders shall override any conflicting instructions given by any other Parties and will be binding on all Second Ranking Secured Parties.
- (d) Clause 28.2(a) shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Second Ranking Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Second Ranking Security Agent's own position in its personal capacity as opposed to its role of Second Ranking Security Agent for the Second Ranking Secured Parties including, without limitation, clause 28.5 (*No duty to account*) to clause 28.10 (*Exclusion of liability*), clause 28.13 (*Confidentiality*) to clause 28.20 (*Custodians and nominees*) and clause 28.23 (*Acceptance of title*) to clause 28.26 (*Disapplication of Trustee Acts*); or

- (iv) in respect of the exercise of the Second Ranking Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) clause 18 (*Non-Distressed Disposals*);
 - (B) clause 26.1 (*Order of application*);
 - (C) clause 26.2 (*Prospective liabilities*); and
 - (D) clause 26.5 (*Permitted Deductions*).
- (e) If giving effect to instructions given by the Majority Second Ranking Noteholders would (in the Second Ranking Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Second Ranking Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Second Ranking 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 clause 28.2(d)(iv),
 the Second Ranking Security Agent shall have regard to the interests of all the Second Ranking Secured Parties.
- (g) The Second Ranking Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the provisions of clause 14 (*Enforcement of Second Ranking Transaction Security*) and the remainder of this clause 28.2, in the absence of instructions, the Second Ranking Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

28.3 Duties of the Second Ranking Security Agent

- (a) The Second Ranking Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Second Ranking Security Agent shall promptly:
 - (i) forward to the Second Ranking Noteholders a copy of any document received by the Second Ranking 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 Second Ranking Security Agent for that Party by any other Party.
- (c) Except where a Debt Document specifically provides otherwise, the Second Ranking 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 34.2 (*Notification of prescribed events*), if the Second Ranking Security Agent receives notice from a Party referring to any Debt Document, describing a Second Ranking Default and stating that the circumstance described is a Default, it shall promptly notify the Second Ranking Creditors.
- (e) To the extent that a Party (other than the Second Ranking Security Agent) is required to calculate a Common Currency Amount, the Second Ranking Security Agent shall upon a request by that Party, promptly notify that Party of the relevant Second Ranking Security Agent's Spot Rate of Exchange.
- (f) The Second Ranking 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).

28.4 No fiduciary duties to Debtors, Subordinated Creditors, Senior Creditors, Third Ranking Creditors or Fourth Ranking Creditors

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

28.5 No duty to account

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

28.6 Business with the Group

The Second Ranking 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.

28.7 Rights and discretions

- (a) The Second Ranking Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Second Ranking Noteholders, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) if it receives any instructions to act in relation to the Second Ranking 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 clause 28.7(a)(iii)(A), may assume the truth and accuracy of that certificate.

- (b) The Second Ranking Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Second Ranking Secured Parties) that:
- (i) no Second Ranking 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 Second Ranking 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 clause 28.7(c) or clause 28.7(e) the Second Ranking Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Second Ranking Security Agent (and so separate from any lawyers instructed by any Second Ranking Creditor) if the Second Ranking Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Second Ranking 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 Second Ranking 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 Second Ranking Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Second Ranking 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 Second Ranking Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless this Agreement expressly specifies otherwise, the Second Ranking 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 Second Ranking 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 Second Ranking 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.

28.8 Responsibility for documentation

None of the Second Ranking 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 Second Ranking Security Agent, a Debtor or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Second Ranking 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 Second Ranking 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.

28.9 No duty to monitor

The Second Ranking 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.

28.10 Exclusion of liability

- (a) Without limiting clause 28.10(b) (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Second Ranking Security Agent, any Receiver or Delegate), none of the Second Ranking 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 Second Ranking 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 Second Ranking 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 Second Ranking Security Property unless the exercise of, or the failure to exercise, any such right, power, authority or discretion constituted gross negligence or wilful default on its part;

- (iii) any shortfall which arises on the enforcement or realisation of the Second Ranking Security Property unless caused by its own gross negligence or wilful default; or
- (iv) without prejudice to the generality of clauses 28.10(a)(i) to 28.10(a)(iii), 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 Second Ranking Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Second Ranking Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Second Ranking 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 Second Ranking Security Property and any officer, employee or agent of the Second Ranking Security Agent, a Receiver or a Delegate may rely on this clause subject to clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) Nothing in this Agreement shall oblige the Second Ranking 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 Second Ranking Creditor,

on behalf of any Second Ranking Creditor and each Second Ranking Creditor confirms to the Second Ranking 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 Second Ranking Security Agent.

- (d) Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Second Ranking Security Agent, any Receiver or Delegate, any liability of the Second Ranking Security Agent, any Receiver or Delegate arising under or in connection with any Debt Document or the Second Ranking 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 Second Ranking 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 Second Ranking 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 Second Ranking 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 Second Ranking Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

28.11 Second Ranking Creditors' indemnity to the Second Ranking Security Agent

- (a) Each Second Ranking Creditor shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Second Ranking Creditors for the time being (or, if the Liabilities due to the Second Ranking Creditors are zero, immediately prior to their being reduced to zero)), indemnify the Second Ranking 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 Second Ranking Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Second Ranking Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Second Ranking Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).

28.12 Resignation of the Second Ranking Security Agent

- (a) The Second Ranking Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Second Ranking Creditors and the Parent.
- (b) Alternatively the Second Ranking Security Agent may resign by giving 30 days' notice to the Second Ranking Creditors and the Parent, in which case the Majority Second Ranking Noteholders may appoint a successor Second Ranking Security Agent.
- (c) If the Majority Second Ranking Noteholders have not appointed a successor Security Agent in accordance with clause 28.12(b) within 20 days after notice of resignation was given, the retiring Second Ranking Security Agent (after consultation with the Senior Lender prior to the Senior Discharge Date) may appoint a successor Second Ranking Security Agent.
- (d) The retiring Second Ranking Security Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Second Ranking Security Agent may reasonably request for the purposes of performing its functions as Second Ranking Security Agent under the Debt Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Second Ranking Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Second Ranking Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Second Ranking Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Second Ranking Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under clause 28.24(b) and clause 28.12(d)) but shall remain entitled to the benefit of this clause 28 and clause 33.1 (*Indemnity to the Senior Lender and Security Agent*) (and any Second Ranking Security Agent fees for the account of the retiring Second Ranking Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.

- (g) The Majority Second Ranking Noteholders may, by notice to the Second Ranking Security Agent, require it to resign in accordance with clause 28.12(b). In this event, the Second Ranking Security Agent shall resign in accordance with clause 28.12(b) but the cost referred to in clause 28.12(d) shall be for the account of the Parent.

28.13 Confidentiality

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

28.14 Information from the Creditors

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

28.15 Credit appraisal by the Second Ranking 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 Second Ranking Secured Party confirms to the Second Ranking 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 Second Ranking 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 Second Ranking Security Property;
- (c) whether that Second Ranking Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Second Ranking 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 Second Ranking Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Second Ranking 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 Second Ranking Transaction Security or the existence of any Security affecting the Charged Property.

28.16 Second Ranking Security Agent's management time and additional remuneration

- (a) Any amount payable to the Second Ranking Security Agent under clause 28.11 (*Second Ranking Creditors' indemnity to the Second Ranking Security Agent*), clause 32 (*Costs and expenses*) or clause 33.1 (*Indemnity to the Senior Lender and Security Agent*) shall include the cost of utilising the Second Ranking Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Second Ranking Security Agent may notify to the Parent and the Second Ranking Creditors, and is in addition to any other fee paid or payable to the Second Ranking Security Agent.
- (b) Without prejudice to clause 28.16(a), in the event of:
 - (i) a Second Ranking Default; or
 - (ii) the Second Ranking Security Agent being requested by a Debtor or the Majority Second Ranking Noteholders to undertake duties which the Second Ranking Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Second Ranking Security Agent under the Debt Documents; or
 - (iii) the Second Ranking Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Second Ranking Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to clause 28.16(c).

- (c) If the Second Ranking Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in clause 28.16(b) or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Second Ranking Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Second Ranking 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.

28.17 Reliance and engagement letters

The Second Ranking 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).

28.18 No responsibility to perfect Second Ranking Transaction Security

The Second Ranking 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 Second Ranking Transaction Security;

- (c) register, file or record or otherwise protect any of the Second Ranking Transaction Security (or the priority of any of the Second Ranking Transaction Security) under any law or regulation or to give notice to any person of the execution of any Debt Document or of the Second Ranking 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 Second Ranking 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 Second Ranking Security Document.

28.19 Insurance by Second Ranking Security Agent

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

28.20 Custodians and nominees

The Second Ranking 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 Second Ranking 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 Second Ranking 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.

28.21 Delegation by the Second Ranking Security Agent

- (a) Each of the Second Ranking 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 Second Ranking Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Second Ranking Secured Parties.
- (c) No Second Ranking 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.

28.22 Additional Second Ranking Security Agents

- (a) The Second Ranking Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Second Ranking Secured Parties;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Second Ranking Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Second Ranking Security Agent shall give prior notice to the Parent and the Second Ranking Creditors of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Second Ranking 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 Second Ranking 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 Second Ranking Security Agent.

28.23 Acceptance of title

The Second Ranking 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.

28.24 Winding up of trust

If the Second Ranking Security Agent, with the approval of the Majority Second Ranking Noteholders, determines that:

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

then:

- (i) the trusts set out in this Agreement shall be wound up and the Second Ranking Security Agent shall release, without recourse or warranty, all of the Second Ranking Transaction Security and the rights of the Second Ranking Security Agent under each of the Second Ranking Security Documents; and
- (ii) any Second Ranking Security Agent which has resigned pursuant to clause 28.12 (*Resignation of the Second Ranking Security Agent*) shall

release, without recourse or warranty, all of its rights under each Second Ranking Security Document.

28.25 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Second Ranking 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 Second Ranking Security Agent by law or regulation or otherwise.

28.26 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Second Ranking 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.

28.27 Third Ranking Creditor, Fourth Ranking Creditor, Intra-Group Lenders, Debtors and Subordinated Creditors: Power of Attorney

Each Third Ranking Creditor, Fourth Ranking Creditor, Intra-Group Lender, Debtor and Subordinated Creditor by way of security for its obligations under this Agreement irrevocably appoints the Second Ranking Security Agent to be its attorney to do anything after a Distress Event which that Third Ranking Creditor, Fourth Ranking Creditor, Intra-Group Lender, Debtor or Subordinated Creditor has authorised the Second Ranking Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Second Ranking Security Agent may delegate that power on such terms as it sees fit) or if no Distress Event has occurred which such Third Ranking Creditor, Fourth Ranking Creditor, Intra-Group Lender, Debtor or Subordinated Creditor has failed to do within 10 Business Days of being notified by the Second Ranking Security Agent of the failure to comply and being requested to comply.

28.28 Title Documents

The Second Ranking Security Agent shall transfer all relevant title documents and deeds in relation to the Secured Property to the Third Ranking Security Agent promptly following the Second Ranking Discharge Date, provided the Senior Discharge Date has also occurred.

29. THE THIRD RANKING SECURITY AGENT

29.1 Third Ranking Security Agent as trustee

- (a) The Third Ranking Security Agent declares that it holds the Third Ranking Security Property on trust for the Third Ranking Secured Parties on the terms contained in this Agreement.
- (b) Each of the Third Ranking Creditors authorises the Third Ranking Security Agent to perform the duties, obligations and responsibilities to exercise the rights, powers, authorities and discretions specifically given to the Third Ranking Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions

29.2 Instructions

- (a) The Third Ranking Security Agent shall:

- (i) subject to clauses 29.2(d) and 28.2(e)), exercise or refrain from exercising any right, power, authority or discretion vested in it as Third Ranking Security Agent in accordance with any instructions given to it by the Majority Third Ranking Creditors; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with clause 29.2(a)(i) (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 Third Ranking Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Third Ranking Creditors (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Third Ranking 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 Third Ranking Security Agent by the Majority Third Ranking Creditors shall override any conflicting instructions given by any other Parties and will be binding on all Third Ranking Secured Parties.
- (d) Clause 29.2(a) shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Third Ranking Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Third Ranking Security Agent's own position in its personal capacity as opposed to its role of Third Ranking Security Agent for the Third Ranking Secured Parties including, without limitation, clause 29.5 (*No duty to account*) to clause 29.10 (*Exclusion of liability*), clause 29.13 (*Confidentiality*) to clause 29.20 (*Custodians and nominees*) and clause 29.23 (*Acceptance of title*) to clause 29.26 (*Disapplication of Trustee Acts*); or
 - (iv) in respect of the exercise of the Third Ranking Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) clause 18 (*Non-Distressed Disposals*);
 - (B) clause 26.1 (*Order of application*);
 - (C) clause 26.2 (*Prospective liabilities*); and
 - (D) clause 26.5 (*Permitted Deductions*).
- (e) If giving effect to instructions given by the Majority Third Ranking Creditors would (in the Third Ranking Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Third Ranking Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Third Ranking 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 clause 29.2(d)(iv),

the Third Ranking Security Agent shall have regard to the interests of all the Third Ranking Secured Parties.

- (g) The Third Ranking Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the provisions of clause 15 (*Enforcement of Third Ranking Transaction Security*) and the remainder of this clause 29.2, in the absence of instructions, the Third Ranking Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

29.3 Duties of the Third Ranking Security Agent

- (a) The Third Ranking Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Third Ranking Security Agent shall promptly:
 - (i) forward to the Third Ranking Creditors a copy of any document received by the Third Ranking 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 Third Ranking Security Agent for that Party by any other Party.
- (c) Except where a Debt Document specifically provides otherwise, the Third Ranking 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 34.2 (*Notification of prescribed events*), if the Third Ranking Security Agent receives notice from a Party referring to any Debt Document, describing a Third Ranking Default and stating that the circumstance described is a Default, it shall promptly notify the Third Ranking Creditors.
- (e) To the extent that a Party (other than the Third Ranking Security Agent) is required to calculate a Common Currency Amount, the Third Ranking Security Agent shall upon a request by that Party, promptly notify that Party of the relevant Third Ranking Security Agent's Spot Rate of Exchange.
- (f) The Third Ranking 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).

29.4 No fiduciary duties to Debtors or Subordinated Creditors, Senior Creditors, Second Ranking Creditors or Fourth Ranking Creditors

Nothing in this Agreement constitutes the Third Ranking Security Agent as an agent, trustee or fiduciary of any Debtor, any Subordinated Creditor, any Senior Creditor, Second Ranking Creditors or Fourth Ranking Creditors.

29.5 No duty to account

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

29.6 Business with the Group

The Third Ranking 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.

29.7 Rights and discretions

(a) The Third Ranking Security Agent may:

- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- (ii) assume that:
 - (A) any instructions received by it from the Majority Third Ranking Creditors, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) if it receives any instructions to act in relation to the Third Ranking 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 clause 29.7(a)(A)(iii)(A), may assume the truth and accuracy of that certificate.

(b) The Third Ranking Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Third Ranking Secured Parties) that:

- (i) no Third Ranking 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 Third Ranking 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 clause 29.7(c) or clause 29.7(e) the Third Ranking Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Third Ranking Security Agent (and so separate from any lawyers instructed by any Third Ranking Creditor) if the Third Ranking Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Third Ranking 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 Third Ranking 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 Third Ranking Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Third Ranking 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 Third Ranking Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.

- (g) Unless this Agreement expressly specifies otherwise, the Third Ranking 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 Third Ranking 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 Third Ranking 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.

29.8 Responsibility for documentation

None of the Third Ranking 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 Third Ranking Security Agent, a Debtor or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;

- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Third Ranking 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 Third Ranking 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.

29.9 No duty to monitor

The Third Ranking 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.

29.10 Exclusion of liability

- (a) Without limiting clause 29.10(b) (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Third Ranking Security Agent, any Receiver or Delegate), none of the Third Ranking 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 Third Ranking 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 Third Ranking 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 Third Ranking Security Property unless the exercise of, or the failure to exercise, any such right, power, authority or discretion constituted gross negligence or wilful default on its part;
 - (iii) any shortfall which arises on the enforcement or realisation of the Third Ranking Security Property unless caused by its own gross negligence or wilful default; or
 - (iv) without prejudice to the generality of clauses 29.10(a)(i) to 29.10(a)(iii), 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 Third Ranking Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Third Ranking Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Third Ranking 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 Third Ranking Security Property and any officer, employee or agent of the Third Ranking Security Agent, a Receiver or a Delegate may rely on this clause subject to clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.

- (c) Nothing in this Agreement shall oblige the Third Ranking 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 Third Ranking Creditor,

on behalf of any Third Ranking Creditor and each Third Ranking Creditor confirms to the Third Ranking 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 Third Ranking Security Agent.

- (d) Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Third Ranking Security Agent, any Receiver or Delegate, any liability of the Third Ranking Security Agent, any Receiver or Delegate arising under or in connection with any Debt Document or the Third Ranking 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 Third Ranking 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 Third Ranking 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 Third Ranking 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 Third Ranking Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

29.11 Third Ranking Creditors' indemnity to the Third Ranking Security Agent

- (a) Each Third Ranking Creditor shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Third Ranking Creditors for the time being (or, if the Liabilities due to the Third Ranking Secured Creditors are zero, immediately prior to their being reduced to zero)), indemnify the Third Ranking 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 Third Ranking Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Third Ranking Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Third Ranking Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).

29.12 Resignation of the Third Ranking Security Agent

- (a) The Third Ranking Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Third Ranking Creditors and the Parent.
- (b) Alternatively the Third Ranking Security Agent may resign by giving 30 days' notice to the Third Ranking Creditors and the Parent, in which case the Majority Third Ranking Creditors may appoint a successor Third Ranking Security Agent.
- (c) If the Third Ranking Creditors have not appointed a successor Security Agent in accordance with clause 29.12(b) within 20 days after notice of resignation was given, the retiring Third Ranking Security Agent (after consultation with the Senior Lender) may appoint a successor Third Ranking Security Agent.
- (d) The retiring Majority Third Ranking Security Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Third Ranking Security Agent may reasonably request for the purposes of performing its functions as Third Ranking Security Agent under the Debt Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Third Ranking Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Third Ranking Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Third Ranking Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Third Ranking Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under clause 29.24(b) and clause 29.12(d)) but shall remain entitled to the benefit of this clause 29 and clause 33.1 (*Indemnity to the Senior Lender and Security Agents*) (and any Third Ranking Security Agent fees for the account of the retiring Third Ranking Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Third Ranking Creditors may, by notice to the Third Ranking Security Agent, require it to resign in accordance with clause 29.12(b). In this event, the Third Ranking Security Agent shall resign in accordance with clause 29.12(b) but the cost referred to in clause 29.12(d) shall be for the account of the Parent.

29.13 Confidentiality

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

29.14 Information from the Creditors

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

29.15 Credit appraisal by the Third Ranking 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 Third Ranking Secured Party confirms to the Third Ranking 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 Third Ranking 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 Third Ranking Security Property;
- (c) whether that Third Ranking Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Third Ranking 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 Third Ranking Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Third Ranking 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 Third Ranking Transaction Security or the existence of any Security affecting the Charged Property.

29.16 Third Ranking Security Agent's management time and additional remuneration

- (a) Any amount payable to the Third Ranking Security Agent under clause 29.11 (*Third Ranking Creditors' indemnity to the Third Ranking Security Agent*), clause 32 (*Costs and expenses*) or clause 33.1 (*Indemnity to the Senior Lender and Security Agents*) shall include the cost of utilising the Third Ranking Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Third Ranking Security Agent may notify to the Parent and the Third Ranking Creditors, and is in addition to any other fee paid or payable to the Third Ranking Security Agent.
- (b) Without prejudice to clause 29.16(a), in the event of:
 - (i) a Third Ranking Default; or
 - (ii) the Third Ranking Security Agent being requested by a Debtor or the Majority Third Ranking Creditors to undertake duties which the Third

Ranking Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Third Ranking Security Agent under the Debt Documents; or

- (iii) the Third Ranking Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Third Ranking Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to clause 29.16(c).

- (c) If the Third Ranking Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in clause 29.16(b) or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Third Ranking Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Third Ranking 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.

29.17 Reliance and engagement letters

The Third Ranking 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).

29.18 No responsibility to perfect Third Ranking Transaction Security

The Third Ranking 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 Third Ranking Transaction Security;
- (c) register, file or record or otherwise protect any of the Third Ranking Transaction Security (or the priority of any of the Third Ranking Transaction Security) under any law or regulation or to give notice to any person of the execution of any Debt Document or of the Third Ranking 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 Third Ranking 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 Third Ranking Security Document.

29.19 Insurance by Third Ranking Security Agent

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

29.20 Custodians and nominees

The Third Ranking 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 Third Ranking 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 Third Ranking 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.

29.21 Delegation by the Third Ranking Security Agent

- (a) Each of the Third Ranking 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 Third Ranking Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Third Ranking Secured Parties.
- (c) No Third Ranking 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.

29.22 Additional Third Ranking Security Agents

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

and the Third Ranking Security Agent shall give prior notice to the Parent and the Third Ranking Creditors of that appointment.

- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Third Ranking 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 Third Ranking 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 Third Ranking Security Agent.

29.23 Acceptance of title

The Third Ranking 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.

29.24 Winding up of trust

If the Third Ranking Security Agent, with the approval of the Majority Third Ranking Creditors, determines that:

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

then:

- (i) the trusts set out in this Agreement shall be wound up and the Third Ranking Security Agent shall release, without recourse or warranty, all of the Third Ranking Transaction Security and the rights of the Third Ranking Security Agent under each of the Third Ranking Security Documents; and
- (ii) any Third Ranking Security Agent which has resigned pursuant to clause 29.12 (*Resignation of the Third Ranking Security Agent*) shall release, without recourse or warranty, all of its rights under each Third Ranking Security Document.

29.25 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Third Ranking 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 Third Ranking Security Agent by law or regulation or otherwise.

29.26 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Third Ranking 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.

29.27 Fourth Ranking Creditors, Intra-Group Lenders, Debtors and Subordinated Creditors: Power of Attorney

Each Fourth Ranking Creditor, Intra-Group Lender, Debtor and Subordinated Creditor by way of security for its obligations under this Agreement irrevocably appoints the Third Ranking Security Agent to be its attorney to do anything after a Distress Event which that Fourth Ranking Creditor, Intra-Group Lender, Debtor or Subordinated Creditor has authorised the Third Ranking Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Third Ranking Security Agent may delegate that power on such terms as it sees fit) or if no Distress Event has occurred which such Fourth Ranking Creditor, Intra-Group Lender, Debtor or Subordinated Creditor has failed to do within 10 Business Days of being notified by the Third Ranking Security Agent of the failure to comply and being requested to comply.

30. THE FOURTH RANKING SECURITY AGENT

30.1 Fourth Ranking Security Agent as trustee

- (a) The Fourth Ranking Security Agent declares that it holds the Fourth Ranking Security Property on trust for the Fourth Ranking Secured Parties on the terms contained in this Agreement.
- (b) Each of the Fourth Ranking Creditors authorises the Fourth Ranking Security Agent to perform the duties, obligations and responsibilities to exercise the rights, powers, authorities and discretions specifically given to the Fourth Ranking Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions

30.2 Instructions

- (a) The Fourth Ranking Security Agent shall:
 - (i) subject to clauses 30.2(d) and 30.2(e)), exercise or refrain from exercising any right, power, authority or discretion vested in it as Fourth Ranking Security Agent in accordance with any instructions given to it by the Majority Fourth Ranking Noteholders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with clause 30.2(a)(i) (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 Fourth Ranking Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Fourth Ranking Noteholders (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Fourth Ranking 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 Fourth Ranking Security Agent by the Majority Fourth Ranking Noteholders shall override any conflicting instructions given by any other Parties and will be binding on all Fourth Ranking Secured Parties.

- (d) Clause 30.2(a) shall not apply:
- (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Fourth Ranking Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Fourth Ranking Security Agent's own position in its personal capacity as opposed to its role of Fourth Ranking Security Agent for the Fourth Ranking Secured Parties including, without limitation, clause 30.5 (*No duty to account*) to clause 30.10 (*Exclusion of liability*), clause 30.13 (*Confidentiality*) to clause 30.20 (*Custodians and nominees*) and clause 30.23 (*Acceptance of title*) to clause 30.26 (*Disapplication of Trustee Acts*); or
 - (iv) in respect of the exercise of the Fourth Ranking Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) clause 18 (*Non-Distressed Disposals*);
 - (B) clause 26.1 (*Order of application*);
 - (C) clause 26.2 (*Prospective liabilities*); and
 - (D) clause 26.5 (*Permitted Deductions*).
- (e) If giving effect to instructions given by the Majority Fourth Ranking Noteholders would (in the Fourth Ranking Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Fourth Ranking Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Fourth Ranking 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 clause 30.2(d)(iv),
- the Fourth Ranking Security Agent shall have regard to the interests of all the Fourth Ranking Secured Parties.
- (g) The Fourth Ranking Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the provisions of clause 16 (*Enforcement of Fourth Ranking Transaction Security*) and the remainder of this clause 29.2, in the absence of instructions, the Fourth Ranking Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

30.3 Duties of the Fourth Ranking Security Agent

- (a) The Fourth Ranking Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Fourth Ranking Security Agent shall promptly:
 - (i) forward to the Fourth Ranking Noteholders a copy of any document received by the Fourth Ranking 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 Fourth Ranking Security Agent for that Party by any other Party.
- (c) Except where a Debt Document specifically provides otherwise, the Fourth Ranking 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 34.2 (*Notification of prescribed events*), if the Fourth Ranking Security Agent receives notice from a Party referring to any Debt Document, describing a Fourth Ranking Default and stating that the circumstance described is a Default, it shall promptly notify the Fourth Ranking Creditors.
- (e) To the extent that a Party (other than the Fourth Ranking Security Agent) is required to calculate a Common Currency Amount, the Fourth Ranking Security Agent shall upon a request by that Party, promptly notify that Party of the relevant Fourth Ranking Security Agent's Spot Rate of Exchange.
- (f) The Fourth Ranking 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).

30.4 No fiduciary duties to Debtors or Subordinated Creditors, Senior Creditors, Second Ranking Creditors or Third Ranking Creditors

Nothing in this Agreement constitutes the Fourth Ranking Security Agent as an agent, trustee or fiduciary of any Debtor, any Subordinated Creditor, any Senior Creditor, Second Ranking Creditors or Third Ranking Creditors.

30.5 No duty to account

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

30.6 Business with the Group

The Fourth Ranking 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.

30.7 Rights and discretions

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

- (A) any instructions received by it from the Majority Fourth Ranking Noteholders, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) if it receives any instructions to act in relation to the Fourth Ranking 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 clause 30.7(a)(iii)(A), may assume the truth and accuracy of that certificate.
- (b) The Fourth Ranking Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Fourth Ranking Secured Parties) that:
 - (i) no Fourth Ranking 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 Fourth Ranking 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 clause 30.7(c) or clause 30.7(e) the Fourth Ranking Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Fourth Ranking Security Agent (and so separate from any lawyers instructed by any Fourth Ranking Creditor) if the Fourth Ranking Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Fourth Ranking 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 Fourth Ranking Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.

- (g) Unless this Agreement expressly specifies otherwise, the Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking 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.

30.8 Responsibility for documentation

None of the Fourth Ranking 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 Fourth Ranking Security Agent, a Debtor or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Fourth Ranking 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 Fourth Ranking 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.

30.9 No duty to monitor

The Fourth Ranking 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.

30.10 Exclusion of liability

- (a) Without limiting clause 30.10(b) (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Fourth Ranking Security Agent,

any Receiver or Delegate), none of the Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking Security Property unless the exercise of, or the failure to exercise, any such right, power, authority or discretion constituted gross negligence or wilful default on its part;
- (iii) any shortfall which arises on the enforcement or realisation of the Fourth Ranking Security Property unless caused by its own gross negligence or wilful default; or
- (iv) without prejudice to the generality of clauses 30.10(a)(i) to 30.10(a)(iii), 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 Fourth 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 Fourth Ranking Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Fourth Ranking Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Fourth Ranking 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 Fourth Ranking Security Property and any officer, employee or agent of the Fourth Ranking Security Agent, a Receiver or a Delegate may rely on this clause subject to clause 1.3 (*Third party rights*) and the provisions of the Fourth Parties Act.
- (c) Nothing in this Agreement shall oblige the Fourth Ranking 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 Fourth Ranking Creditor,

on behalf of any Fourth Ranking Creditor and each Fourth Ranking Creditor confirms to the Fourth Ranking 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 Fourth Ranking Security Agent.

- (d) Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Fourth Ranking Security Agent, any Receiver or Delegate, any liability of the Fourth Ranking Security Agent, any Receiver or Delegate arising under or in connection with any Debt Document or the Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

30.11 Fourth Ranking Creditors' indemnity to the Fourth Ranking Security Agent

- (a) Each Fourth Ranking Creditor shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Fourth Ranking Creditors for the time being (or, if the Liabilities due to the Fourth Ranking Creditors are zero, immediately prior to their being reduced to zero)), indemnify the Fourth Ranking 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 Fourth Ranking Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Fourth Ranking Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Fourth Ranking Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).

30.12 Resignation of the Fourth Ranking Security Agent

- (a) The Fourth Ranking Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Fourth Ranking Creditors and the Parent.
- (b) Alternatively the Fourth Ranking Security Agent may resign by giving 30 days' notice to the Fourth Ranking Creditors and the Parent, in which case the Majority Fourth Ranking Noteholders may appoint a successor Fourth Ranking Security Agent.
- (c) If the Fourth Ranking Noteholders have not appointed a successor Security Agent in accordance with clause 30.12(b) within 20 days after notice of resignation was given, the retiring Fourth Ranking Security Agent (after consultation with the Senior Lender) may appoint a successor Fourth Ranking Security Agent.
- (d) The retiring Majority Fourth Ranking Security Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Fourth Ranking Security Agent may reasonably request for the purposes of performing its functions as Fourth Ranking Security Agent under the Debt Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Fourth Ranking Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.

- (e) The Fourth Ranking Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Fourth Ranking Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Fourth Ranking Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under clause 30.24(b) and clause 30.12(d)) but shall remain entitled to the benefit of this clause 30 and clause 33.1 (*Indemnity to the Senior Lender and Security Agents*) (and any Fourth Ranking Security Agent fees for the account of the retiring Fourth Ranking Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Fourth Ranking Noteholders may, by notice to the Fourth Ranking Security Agent, require it to resign in accordance with clause 30.12(b). In this event, the Fourth Ranking Security Agent shall resign in accordance with clause 30.12(b) but the cost referred to in clause 30.12(d) shall be for the account of the Parent.

30.13 Confidentiality

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

30.14 Information from the Creditors

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

30.15 Credit appraisal by the Fourth Ranking 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 Fourth Ranking Secured Party confirms to the Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking Security Property;

- (c) whether that Fourth Ranking Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Fourth Ranking 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 Fourth Ranking Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Fourth Ranking 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 Fourth Ranking Transaction Security or the existence of any Security affecting the Charged Property.

30.16 Fourth Ranking Security Agent's management time and additional remuneration

- (a) Any amount payable to the Fourth Ranking Security Agent under clause 30.11 (*Fourth Ranking Creditors' indemnity to the Fourth Ranking Security Agent*), clause 32 (*Costs and expenses*) or clause 33.1 (*Indemnity to the Senior Lender and Security Agents*) shall include the cost of utilising the Fourth Ranking Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Fourth Ranking Security Agent may notify to the Parent and the Fourth Ranking Creditors, and is in addition to any other fee paid or payable to the Fourth Ranking Security Agent.
- (b) Without prejudice to clause 30.16(a), in the event of:
 - (i) a Fourth Ranking Default; or
 - (ii) the Fourth Ranking Security Agent being requested by a Debtor or the Majority Fourth Ranking Noteholders to undertake duties which the Fourth Ranking Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Fourth Ranking Security Agent under the Debt Documents; or
 - (iii) the Fourth Ranking Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Fourth Ranking Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to clause 30.16(c).

- (c) If the Fourth Ranking Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in clause 30.16(b) or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Fourth Ranking Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Fourth Ranking 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.

30.17 Reliance and engagement letters

The Fourth Ranking 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).

30.18 No responsibility to perfect Fourth Ranking Transaction Security

The Fourth Ranking 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 Fourth Ranking Transaction Security;
- (c) register, file or record or otherwise protect any of the Fourth Ranking Transaction Security (or the priority of any of the Fourth Ranking Transaction Security) under any law or regulation or to give notice to any person of the execution of any Debt Document or of the Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking Security Document.

30.19 Insurance by Fourth Ranking Security Agent

- (a) The Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking Noteholders request it to do so in writing and the Majority Fourth Ranking Security Agent fails to do so within fourteen days after receipt of that request.

30.20 Custodians and nominees

The Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking 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.

30.21 Delegation by the Fourth Ranking Security Agent

- (a) Each of the Fourth Ranking 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 Fourth Ranking Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Fourth Ranking Secured Parties.
- (c) No Fourth Ranking 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.

30.22 Additional Fourth Ranking Security Agents

- (a) The Fourth Ranking Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Fourth Ranking Secured Parties;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Fourth Ranking Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Fourth Ranking Security Agent shall give prior notice to the Parent and the Fourth Ranking Creditors of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Fourth Ranking 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 Fourth Ranking 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 Fourth Ranking Security Agent.

30.23 Acceptance of title

The Fourth Ranking 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.

30.24 Winding up of trust

If the Fourth Ranking Security Agent, with the approval of the Majority Fourth Ranking Noteholders, determines that:

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

then:

- (i) the trusts set out in this Agreement shall be wound up and the Fourth Ranking Security Agent shall release, without recourse or warranty, all of the Fourth Ranking Transaction Security and the rights of the Fourth Ranking Security Agent under each of the Fourth Ranking Security Documents; and
- (ii) any Fourth Ranking Security Agent which has resigned pursuant to clause 30.12 (*Resignation of the Fourth Ranking Security Agent*) shall release, without recourse or warranty, all of its rights under each Fourth Ranking Security Document.

30.25 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Fourth Ranking 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 Fourth Ranking Security Agent by law or regulation or otherwise.

30.26 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Fourth Ranking 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.

30.27 Intra-Group Lenders, Debtors and Subordinated Creditors: Power of Attorney

Each Intra-Group Lender, Debtor and Subordinated Creditor by way of security for its obligations under this Agreement irrevocably appoints the Fourth Ranking Security Agent to be its attorney to do anything after a Distress Event which that Intra-Group Lender, Debtor or Subordinated Creditor has authorised the Fourth Ranking Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Fourth Ranking Security Agent may delegate that power on such terms as it sees fit) or if no Distress Event has occurred which such Intra-Group Lender, Debtor or Subordinated Creditor has failed to do within 10 Business Days of being notified by the Fourth Ranking Security Agent of the failure to comply and being requested to comply.

31. CHANGES TO THE PARTIES

31.1 Assignments and transfers

No Party may:

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

in respect of any Debt Documents or the Liabilities except as permitted by this clause 31.

31.2 Change of Subordinated Creditor

Subject to clause 9.4 (*No acquisition of Subordinated Liabilities*), a Subordinated Creditor (other than the LLP) may:

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

in respect of the Subordinated Liabilities owed to it if:

- (i) in the case of any assignment or transfer of rights and/or obligations under any of the Subordinated Documents, the assignee or transferee is (unless the Senior Lender, Majority Second Ranking Noteholders, Majority Third Ranking Creditors and Majority Fourth Ranking Noteholders have given their prior consent) immediately prior to the transfer a Lomond Investor or a Parent Shareholder; and
- (ii) any assignee or transferee has (if not already party to this Agreement as a Subordinated Creditor) acceded to this Agreement, as a Subordinated Creditor, pursuant to clause 31.11 (*Creditor Accession Undertaking*).

31.3 Change of Senior Lender

(a) A Senior Lender may:

- (i) assign any of its rights; or
- (ii) transfer by novation any of its rights and obligations,

in respect of any Debt Documents or the Liabilities if:

- (A) that assignment or transfer is in accordance with the terms of the Senior Facility Agreement; and
- (B) any assignee or transferee has acceded to this Agreement, as the Senior Lender, pursuant to clause 31.11 (*Creditor Accession Undertaking*).

31.4 Change of Second Ranking Noteholder

(a) A Second Ranking Noteholder may:

- (iii) assign any of its rights; or
- (iv) transfer by novation any of its rights and obligations,

in respect of any Debt Documents or the Liabilities if:

- (A) that assignment or transfer is in accordance with the terms of the Second Ranking Loan Note Instrument; and
- (B) any assignee or transferee has (if not already a Party as a Second Ranking Noteholder) acceded to this Agreement, as a Second Ranking Noteholder (as the case may be), pursuant to clause 31.11 (*Creditor Accession Undertaking*).

31.5 Change of Intra-Group Lender

Subject to clause 8.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may:

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

in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already a Party as an Intra-Group Lender) acceded to this Agreement, as an Intra-Group Lender, pursuant to clause 31.11 (*Creditor Accession Undertaking*).

31.6 Change of Third Ranking Creditor

A Third Ranking Creditor may:

- (i) assign any of its rights; or
- (ii) transfer by novation any of its rights and obligations,

in respect of any Debt Document or the Liabilities if:

- (A) that assignment or transfer is in accordance with the terms of the Third Ranking Loan Note Instrument; and
- (B) any assignee or transferee has (if not already a Party as a Third Ranking Creditor) acceded to this Agreement as a Third Ranking Creditor pursuant to Clause 31.11 (*Creditor Accession Undertaking*).

31.7 Change of Fourth Ranking Noteholder

A Fourth Ranking Noteholder may:

- (i) assign any of its rights; or
- (ii) transfer by novation any of its rights and obligations,

in respect of any Debt Document or the Liabilities if:

- (A) that assignment or transfer is in accordance with the terms of the Fourth Ranking Loan Note Instrument; and
- (B) any assignee or transferee has (if not already a Party as a Fourth Ranking Noteholder) acceded to this Agreement as a Fourth Ranking Noteholder pursuant to Clause 31.11 (*Creditor Accession Undertaking*).

31.8 New Fourth Ranking Noteholder

If any member of the Group receives from MML any Permitted New Shareholder Injections pursuant to paragraphs (b) or (c) of that definition, the Parent will procure that the person making that injection or providing that debt (if not already a Party as a Fourth Ranking Creditor) accedes to this Agreement as a Fourth Ranking Creditor, pursuant to clause 31.11 (*Creditor Accession Undertaking*).

31.9 New Subordinated Creditor

If any member of the Group receives any Permitted New Shareholder Injections from an entity other than MML (or, in the case of MML, a Permitted New Shareholder Injection pursuant to paragraph (a) of that definition), the Parent will procure that the person making that injection or providing that debt (if not already a Party as a Subordinated Creditor) accedes to this Agreement, as a Subordinated Creditor, pursuant to clause 31.11 (*Creditor Accession Undertaking*).

31.10 New Intra-Group Lender

If any Intra-Group Lender or any member of the Group makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Intra-Group Lender) accedes to this Agreement, as an Intra-Group Lender, pursuant to clause 31.11 (*Creditor Accession Undertaking*).

31.11 Creditor Accession Undertaking

With effect from the date of acceptance by the Senior Lender (or the Second Ranking Security Agent after the Senior Discharge Date or the Third Ranking Security Agent after the Second Ranking Discharge Date or the Fourth Ranking Security Agent after the Third Ranking Discharge Date) and, of a Creditor Accession Undertaking duly executed and delivered to the Senior Lender (or the Second Ranking Security Agent following the Senior Discharge Date or the Third Ranking Security Agent following the Second Ranking Discharge Date or the Fourth Ranking Security Agent following the Third Ranking Discharge Date) by the relevant acceding party or, if later, the date specified in that Creditor Accession Undertaking:

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

31.12 New Debtor

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

the Debtors will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor, in accordance with

clause 31.12(b), 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 Senior Lender (or the Second Ranking Security Agent after the Senior Discharge Date or the Third Ranking Security Agent after the Second Ranking Discharge Date or the Fourth Ranking Security Agent after the Third Ranking Discharge Date) of a Debtor Accession Deed duly executed and delivered to the Senior Lender or the relevant Security Agent (as appropriate) 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 as a Debtor.

31.13 Additional parties

- (a) Each of the Parties appoints the Senior Lender (or the Second Ranking Security Agent following the Senior Discharge Date or the Third Ranking Security Agent following the Second Ranking Discharge Date or the Fourth Ranking Security Agent after the Third Ranking Discharge Date) to receive on its behalf each Debtor Accession Deed and Creditor Accession Undertaking delivered to the Senior Lender or such Security Agent and the Senior Lender or that Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the Senior Facility Agreement.

31.14 Resignation of a Debtor

- (a) The Parent may request that a Debtor ceases to be a Debtor by delivering to the Senior Lender (or, following the Senior Discharge Date, the Second Ranking Security Agent or, following the Second Ranking Discharge Date, the Third Ranking Security Agent or, following the Third Ranking Discharge Date, the Fourth Ranking Security Agent) a Debtor Resignation Request.
- (b) The Senior Lender (or the Second Ranking Security Agent following the Senior Discharge Date or the Third Ranking Security Agent following the Second Ranking Discharge Date or the Fourth Ranking Security Agent after the Third Ranking Discharge Date) 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 Senior Default, Second Ranking Default, Third Ranking Default or Fourth Ranking Default is continuing or would result from the acceptance of the Debtor Resignation Request;
 - (ii) to the extent that the Senior Facility Discharge Date has not occurred, the Senior Lender notifies the Second Ranking Security Agent that that Debtor is not, or has ceased to be, a Senior Borrower or a Senior Guarantor;
 - (iii) that Debtor is not the Second Ranking Borrower and the Majority Second Ranking Noteholders notify the Second Ranking Security Agent that that Debtor is not a Second Ranking Guarantor;
 - (iv) that Debtor is not the Company and the Majority Third Ranking Creditors notify the Third Ranking Security Agent that that Debtor is not a Third Ranking Guarantor;
 - (v) that Debtor is not the Fourth Ranking Borrower and the Majority Fourth Ranking Noteholders notify the Fourth Ranking Security Agent that that Debtor is not a Fourth Ranking Guarantor; and

- (vi) the Parent confirms that that Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities.
- (c) Upon notification by the Senior Lender (or the Second Ranking Security Agent after the Senior Discharge Date or the Third Ranking Security Agent after the Second Ranking Discharge Date or the Fourth Ranking Security Agent after the Third Ranking Discharge Date) 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.

SECTION 8

ADDITIONAL PAYMENT OBLIGATIONS

32. COSTS AND EXPENSES

32.1 Transaction expenses

The Parent shall, promptly on demand, pay the Senior Lender and each Security Agent the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Senior Lender and that 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.

32.2 Amendment costs

If a Debtor requests an amendment, waiver or consent, the Parent shall, within three Business Days of demand, reimburse the Senior Lender and each Security Agent for the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Senior Lender and that Security Agent (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

32.3 Enforcement and preservation costs

The Parent shall, within three Business Days of demand, pay to the Senior Lender and each 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 Senior Lender and that Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights (save for any proceedings arising from the Senior Lender or that Security Agent's gross negligence or wilful misconduct).

32.4 Stamp taxes

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

32.5 Interest on demand

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the

due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is two per cent per annum over the rate at which the Senior Lender or the relevant Security Agent was being offered, by leading banks in the London interbank market, deposits in an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Senior Lender or such Security Agent may from time to time select provided that if any such rate is below zero, that rate will be deemed to be zero.

33. OTHER INDEMNITIES

33.1 Indemnity to the Senior Lender and Security Agents

- (a) Each Debtor jointly and severally shall promptly indemnify the Senior Lender and each 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 32 (*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 (save for any cost, loss or liability incurred by the Senior Lender or a Security Agent as a result of its gross negligence or wilful misconduct in holding any Transaction Security);
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Senior Lender or a Security Agent, each Receiver and each Delegate by the Debt Documents or by law;
 - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
 - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
 - (vii) acting as a Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this clause 33.1 will not be prejudiced by any release or disposal under clause 19 (*Senior Distressed Disposals and Appropriation*) or clause 20 (*Second Ranking Distressed Disposals and Appropriation*) or clause 21 (*Third Ranking Distressed Disposals and Appropriation*) or clause 22 (*Fourth Ranking Distressed Disposals and Appropriation*) taking into account the operation of that clause 19 (*Senior Distressed Disposals and Appropriation*) or clause 20 (*Second Ranking Distressed Disposals and Appropriation*) or clause 21 (*Third Ranking Distressed Disposals and Appropriation*) or clause 22 (*Fourth Ranking Distressed Disposals and Appropriation*).
- (c) The Senior Lender, each Security Agent and every Receiver and Delegate may, in priority to any payment to the Senior Secured Parties, Second Ranking Secured Parties, Third Ranking Secured Parties or Fourth Ranking Secured Parties (as the case may be), 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 33.1 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.

33.2 Parent's indemnity to Senior Lender

The Parent shall promptly and as principal obligor indemnify the Senior Lender 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 19 (*Senior Distressed Disposals and Appropriation*).

33.3 Parent's indemnity to Second Ranking Creditors

The Parent shall promptly and as principal obligor indemnify each Second Ranking 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 20 (*Second Ranking Distressed Disposals and Appropriation*).

33.4 Parent's indemnity to Third Ranking Creditors

The Parent shall promptly and as principal obligor indemnify each Third Ranking 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 21 (*Third Ranking Distressed Disposals and Appropriation*).

33.5 Parent's indemnity to Fourth Ranking Creditors

The Parent shall promptly and as principal obligor indemnify each Fourth Ranking 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 22 (*Fourth Ranking Distressed Disposals and Appropriation*).

SECTION 9

ADMINISTRATION

34. INFORMATION

34.1 Disclosure between Primary Creditors, Senior Lender, Second Ranking Security Agent, Third Ranking Security Agent and Fourth Ranking Security Agent

Notwithstanding any agreement to the contrary, each of the Debtors and the Subordinated Creditors consents until the Final Discharge Date (and each of the Third Ranking Creditors consents until the Final Priority Ranking Discharge Date and each of the Fourth Ranking Creditors consent until the Third Ranking Discharge Date), to the disclosure by any Senior Lender, Second Ranking Creditor, Third Ranking Creditor, Fourth Ranking Creditor, the Second Ranking Security Agent, the Third Ranking Security Agent and the Fourth Ranking Security Agent to each other (whether or not through the Senior Lender, Second Ranking Security Agent, Third Ranking Security Agent or Fourth Ranking Security Agent) of such information concerning the Debtors, the Subordinated Creditors and (until the Final Priority Ranking Discharge Date, the Third Ranking Creditors and until the Third Ranking Discharge Date the Fourth Ranking Creditors) as any Senior Lender, Second Ranking Creditor, Third Ranking Creditor, Fourth Ranking Creditor, Second Ranking Security Agent, Third Ranking Security Agent or Fourth Ranking Security Agent or shall see fit (but provided that any confidential information relating to the Group, and the Subordinated Creditors shall be kept confidential, save where required to be disclosed by applicable law, regulation or supervising

authority and provided that any confidential information relating to the Group shall be kept confidential by the Senior Lender on the same terms as are set out in clause 38 (*Confidentiality*) of the Senior Facility Agreement as if such terms were set out in this Agreement in full.

34.2 Notification of prescribed events

- (a) If a Senior Acceleration Event occurs the Senior Lender shall notify each other Party or the Second Ranking Security Agent after the Senior Discharge Date or the Third Ranking Security Agent following the Second Ranking Discharge Date or the Fourth Ranking Security Agent following the Third Ranking Discharge Date and that Security Agent shall, upon receiving that notification, notify each other Party.
- (b) If a Second Ranking Acceleration Event occurs the Second Ranking Security Agent shall notify the Senior Lender (or the Third Ranking Security Agent after the Senior Discharge Date or the Fourth Ranking Security Agent following the Third Ranking Discharge Date) and the Senior Lender (or relevant Security Agent, as the case may be) shall, upon receiving that notification, notify each other party.
- (c) If a Second Ranking Event of Default either occurs or ceases to be continuing the Second Ranking Security Agent shall, upon becoming aware of that occurrence or cessation, notify the Senior Lender and each other Security Agent.
- (d) If a Third Ranking Acceleration Event occurs the Third Ranking Security Agent shall notify the Senior Lender (or the Second Ranking Security Agent after the Senior Discharge Date or the Third Ranking Security Agent following the Second Ranking Discharge Date or the Fourth Ranking Security Agent following the Third Ranking Discharge Date) and the Senior Lender shall, upon receiving that notification, notify each other Party.
- (e) If a Third Ranking Event of Default either occurs or ceases to be continuing the Third Ranking Security Agent shall, upon becoming aware of that occurrence or cessation, notify the Senior Lender which shall, upon receiving that notification, notify each Party of that action.
- (f) If a Fourth Ranking Acceleration Event occurs the Fourth Ranking Security Agent shall notify the Senior Lender (or the Second Ranking Security Agent after the Senior Discharge Date or the Third Ranking Security Agent following the Second Ranking Discharge Date or the Fourth Ranking Security Agent following the Third Ranking Discharge Date) and the Senior Lender shall, upon received that notification, notify each other Party.
- (g) If a Fourth Ranking Event of Default either occurs or ceases to be continuing the Fourth Ranking Security Agent shall, upon becoming aware of that occurrence or cessation notify the Senior Lender which shall, upon receiving that notification, notify each Party of that action.
- (h) If the Senior Lender enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.
- (i) If the Senior Lender takes any Enforcement Action (other than any action listed in paragraph (a)(vi) of such definition) under any of the Transaction Security, it shall notify each Party of that action.

35. NOTICES

35.1 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.

35.2 Senior Lender's communications with Primary Creditors

The Senior Lender shall be entitled to carry out all dealings:

- (a) with the Second Ranking Creditors, through the Second Ranking Security Agent;
- (b) with the Third Ranking Creditors, through the Third Ranking Security Agent; and
- (c) with the Fourth Ranking Creditors, through the Fourth Ranking Security Agent.

35.3 Addresses

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

- (a) in the case of each original Party to this Agreement, that identified with its name below; and
- (b) in the case of each other Party, that notified in writing to the Senior Lender and the Second Ranking 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 Senior Lender (or the Second Ranking Security Agent following the Senior Discharge Date or the Third Ranking Security Agent following the Second Ranking Discharge Date or the Fourth Ranking Security Agent following the Third Ranking Discharge Date) (or which the Senior Lender or that Security Agent may notify to the other Parties, if a change is made by the Senior Lender or that Security Agent) by not less than five Business Days' notice.

35.4 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 35.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Senior Lender will be effective only when actually received by the Senior Lender and then only if it is expressly marked for the attention of the department or officer identified with the Senior Lender's signature below (or any substitute department or officer as the Senior Lender shall specify for this purpose).
- (c) Any communication or document to be made or delivered to the Second Ranking Security Agent will be effective only when actually received by the Second Ranking

Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Second Ranking Security Agent's signature below (or any substitute department or officer as the Second Ranking Security Agent shall specify for this purpose).

- (d) Any communication or document to be made or delivered to the Third Ranking Security Agent will be effective only when actually received by the Third Ranking Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Third Ranking Security Agent's signature below (or any substitute department or officer as the Third Ranking Security Agent shall specify for this purpose).
- (e) Any communication or document to be made or delivered to the Fourth Ranking Security Agent will be effective only when actually received by the Fourth Ranking Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Fourth Ranking Security Agent's signature below (or any substitute department or officer as the Fourth Ranking Security Agent shall specify for this purpose).
- (f) Any communication or document made or delivered to the Parent in accordance with this clause 35.4 will be deemed to have been made or delivered to each of the Debtors.
- (g) Any communication or document which becomes effective, in accordance with clauses 35.4(a) to 35.4(d) (inclusive), after 5.00pm in the place of receipt shall be deemed only to become effective on the following day.

35.5 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to clause 35.3 (*Addresses*) or changing its own address or fax number, the relevant Security Agent shall notify the other Parties.

35.6 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Senior Lender or a Security Agent only if it is addressed in such a manner as the Senior Lender or that Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with clause 35.6(b), after 5.00pm in the place of receipt shall be deemed only to become effective on the following day.

35.7 English language

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Senior Lender or a 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.

36. PRESERVATION

36.1 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.

36.2 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.

36.3 Remedies and waivers

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

36.4 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 36.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor or other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;
- (g) any intermediate Payment of any of the Liabilities owing to the Primary Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

36.5 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 Primary Creditors or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;
- (b) apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and
- (c) secure the Liabilities owing to the Primary 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.

37. CONSENTS, AMENDMENTS AND OVERRIDE

37.1 Required consents

- (a) Subject to clause 37.1(b) and clause 37.4 (*Exceptions*), this Agreement may be amended or waived only with the consent of the Senior Lender, the Majority Second Ranking Noteholders, the Majority Third Ranking Creditors the Majority Fourth Ranking Noteholder, the Second Ranking Security Agent, the Third Ranking Security Agent and the Fourth Ranking Security Agent.
- (b) An amendment or waiver that has the effect of changing or which relates to:
 - (i) clause 12 (*Redistribution*), clause 26 (*Application of Proceeds*) or this clause 37;
 - (ii) clause 28.2(d)(iii), 28.2(e) and 28.2(f);
 - (iii) clause 30.2(d)(iii), 30.2(e) and 30.2(f); or
 - (iv) the order of priority or subordination under this Agreement;

shall not be made without the consent of:

- (A) the Senior Lender;
- (B) the Second Ranking Noteholders;
- (C) the Third Ranking Creditors;
- (D) the Fourth Ranking Noteholders;
- (E) the Second Ranking Security Agent;
- (F) the Third Ranking Security Agent; and
- (G) the Fourth Ranking Security Agent.

37.2 Amendments and Waivers: Security Documents

- (a) Subject to clause 37.2(b) and to clause 37.4 (*Exceptions*) and unless the provisions of any Senior Finance Document expressly provide otherwise, the Senior Lender may, if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Senior Security Documents which shall be binding on each Party.
- (b) Subject to clause 37.4(c), any amendment or waiver of, or consent under, any Senior Security Document which has the effect of changing or which relates to:
 - (i) the nature or scope of the Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Senior Transaction Security are distributed; or
 - (iii) the release of any Senior Transaction Security,

shall not be made without the prior consent of the Senior Lender whose consent to that amendment, waiver or consent is required under the Senior Facility Agreement.

- (c) Subject to clause 37.2(d) and to clause 37.4 (*Exceptions*) and unless the provisions of any Second Ranking Debt Document expressly provide otherwise, the Second Ranking Security Agent may, if authorised by the Majority Second Ranking Noteholders, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Second Ranking Transaction Security Documents which shall be binding on each Party.
- (d) Subject to clause 37.4(c), any amendment or waiver of, or consent under, any Second Ranking Security Document which has the effect of changing or which relates to:
 - (i) the nature or scope of the Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Second Ranking Transaction Security are distributed; or
 - (iii) the release of any Second Ranking Transaction Security,

shall not be made without the prior consent of the Second Ranking Creditors whose consent to that amendment, waiver or consent is required under the Second Ranking Loan Note Instrument.

- (e) Subject to clause 37.2(f) and to clause 37.4 (*Exceptions*) and unless the provisions of any Third Ranking Debt Document expressly provide otherwise, the Third Ranking Security Agent may, if authorised by the Majority Third Ranking Creditors, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Third Ranking Transaction Security Documents which shall be binding on each Party.
- (f) Subject to clause 37.4(c), any amendment or waiver of, or consent under, any Third Ranking Security Document which has the effect of changing or which relates to:
 - (i) the nature or scope of the Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Third Ranking Transaction Security are distributed; or
 - (iii) the release of any Third Ranking Transaction Security,

shall not be made without the prior consent of the Third Ranking Creditors whose consent to that amendment, waiver or consent is required under the Third Ranking Debt Documents.

- (g) Subject to clause 37.2(h) and to clause 37.4 (*Exceptions*) and unless the provisions of any Fourth Ranking Debt Document expressly provide otherwise, the Fourth Ranking Security Agent may, if authorised by the Majority Fourth Ranking Noteholders, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Fourth Ranking Transaction Security Documents which shall be binding on each Party.
- (h) Subject to clause 37.4(c), any amendment or waiver of, or consent under, any Fourth Ranking Security Document which has the effect of changing or which relates to:
 - (i) the nature or scope of the Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Fourth Ranking Transaction Security are distributed; or
 - (iii) the release of any Fourth Ranking Transaction Security,

shall not be made without the prior consent of the Fourth Ranking Creditors whose consent to that amendment, waiver or consent is required under the Fourth Ranking Loan Note Instrument.

37.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this clause 37 will be binding on all Parties and the Senior Lender may effect any amendment, waiver or consent permitted by this clause 37 and the Second Ranking Security Agent may effect, on behalf of any Second Ranking Creditor, any amendment, waiver or consent permitted by this clause 37 and the Third Ranking Security Agent may effect, on behalf of any Third Ranking Creditor, any amendment, waiver or consent permitted by this clause 37 and the Fourth Ranking Security Agent may effect, on behalf of any Fourth Ranking Creditor, any amendment, waiver or consent permitted by this clause 37.
- (b) Without prejudice to the generality of clause 27.4 (*Rights and discretions*), clause 27.4 (*Rights and discretions*) and clause 27.4 (*Rights and discretions*), the Senior Lender, the Second Ranking Security, the Third Ranking Security and the Fourth Ranking Security may engage, pay for and rely on the services of lawyers in

determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

37.4 Exceptions

- (a) Subject to clause 37.4(c), if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:
 - (i) in the case of a Second Ranking Creditor in a way which affects or would affect Second Ranking Creditors of that Party's class generally;
 - (ii) in the case of a Third Ranking Creditor in a way which affects or would affect Third Ranking Creditors of that Party's class generally;
 - (iii) in the case of a Fourth Ranking Creditor in a way which affects or would affect Fourth Ranking Creditors of that Party's class generally; or
 - (iv) in the case of a Debtor, to the extent consented to by the Parent under clauses 37.2(a), 37.2(c), 37.2(e) or 37.2(g),

the consent of that Party is required.

- (b) Subject to clause 37.4(c), an amendment, waiver or consent which relates to the rights or obligations of the Senior Lender (including, without limitation, any ability of the Senior Lender to act in its discretion under this Agreement), a Second Ranking Security Agent (including, without limitation, any ability of the Second Ranking Security Agent to act in its discretion under this Agreement) or a Third Ranking Security Agent (including, without limitation, any ability to the Third Ranking Security Agent to act in its discretion under this Agreement) or a Fourth Ranking Security Agent (including, without limitation, any liability to the Fourth Ranking Security Agent to act in its discretion under this Agreement) may not be effected without the consent of the Senior Lender, the Second Ranking Security Agent, the Third Ranking Security Agent or the Fourth Ranking Agent as applicable.
- (c) Clauses 37.4(a), 37.4(b) and 37.2(b) shall not apply:
 - (i) to any release of Transaction Security, claim or Liabilities; or
 - (ii) to any consent,

which, in each case, the Senior Lender or the Second Ranking Security Agent gives in accordance with clause 18 (*Non-Distressed Disposals*), clause 19 (*Senior Distressed Disposals and Appropriation*), clause 20 (*Second Ranking Distressed Disposals and Appropriation*), clause 21 (*Third Ranking Distressed Disposals and Appropriation*) or clause 22 (*Fourth Ranking Distressed Disposals and Appropriation*) or clause 24 (*Insurance claims*).

37.5 Deemed consent

- (a) If, at any time prior to the Senior Discharge Date, the Senior Lender gives a Consent in respect of the Senior Finance Documents then, if that action was permitted by the terms of this Agreement, the Second Ranking Creditors (unless under the terms of this Agreement that action requires the consent of any group of Second Ranking Creditors), the Third Ranking Creditors (unless under the terms of this Agreement that action requires the consent of any group of Third Ranking Secured Creditors), the Fourth Ranking Creditors (unless under the terms of this Agreement that action requires the consent of any group of Fourth Ranking Creditors) the Intra-Group Lenders and the Subordinated Creditors will (or will be deemed to):

- (i) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
 - (ii) do anything (including executing any document) that the Senior Lender may reasonably require to give effect to this clause 37.5.
- (b) If, at any time after the Senior Discharge Date but before the Second Ranking Discharge Date, the Second Ranking Creditors give a Consent in respect of the Second Ranking Debt Documents then, if that action was permitted by the terms of this Agreement, the Third Ranking Creditors (unless under the terms of this Agreement that action requires the consent of any group of Third Ranking Creditors), the Fourth Ranking Creditors (unless under the terms of this Agreement that action requires the consent of any group of Fourth Ranking Creditors) the Intra-Group Lenders and the Subordinated Creditors will (or will be deemed to):
 - (i) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
 - (ii) do anything (including executing any document) that the Second Ranking Creditors may reasonably require to give effect to this clause 37.5.
- (c) If, at any time after the Second Ranking Discharge Date but before the Third Ranking Discharge Date, the Third Ranking Creditors give a consent in respect of the Third Ranking Debt Document then, if that action was permitted by the terms of this Agreement, the Fourth Ranking Creditors (unless under the terms of this Agreement that action requires the consent of any group of Fourth Ranking Creditors) the Intra-Group Lenders and the Subordination Creditors will (or will be deemed to):
 - (i) give a corresponding consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
 - (ii) do anything (including executing any document) that the Third Ranking Creditors may reasonably request to give effect to this clause 37.5 (*Deemed consent*).
- (d) If, at any time after the Third Ranking Discharge Date, the Fourth Ranking Creditors give a consent in respect of the Fourth Ranking Debt Document then, if that action was permitted by the terms of this Agreement, the Intra-Group Lenders and the Subordination Creditors will (or will be deemed to):
 - (i) give a corresponding consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
 - (ii) do anything (including executing any document) that the Fourth Ranking Creditors may reasonably request to give effect to this clause 37.5 (*Deemed consent*).

37.6 Excluded consents

Clause 37.5 (*Deemed consent*) does not apply to any Consent which has the effect of:

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

37.7 No liability

None of the Senior Lender, the Second Ranking Creditors nor the Third Ranking Creditors nor the Fourth Ranking Creditors will be liable to any other Creditor or Debtor for any Consent given or deemed to be given under this clause 37.

37.8 Agreement to override

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

37.9 Subordinated Loan Notes

Subject to Clause 37.10 (*Restrictions on override*), the Fourth Ranking Noteholders shall, either after the Third Ranking Discharge Date or with the prior written consent of the Senior Lender, Majority Second Ranking Noteholders and Majority Third Ranking Creditors (or, after the Senior Discharge Date, the Majority Second Ranking Noteholders and Majority Third Ranking Creditors or, after the Final Priority Discharge Date, the Majority Third Ranking Creditors) be entitled, on behalf of all holders of Subordinated Loan Notes:-

- (a) to deal with or approve and to make amendments to the terms of the Subordinated Loan Note Instruments and the Subordinated Loan Notes; and
- (b) to give any waiver, consent, approval or release (including but not limited to approving and/or consenting to the writing off or cancellation of principal or interest, the amendment to the rate of interest or the stopping of the accrual of interest under such Subordinated Loan Notes) (each being a "Loan Note Consent") required to make such amendments pursuant to the terms of the relevant Subordinated Loan Note Instrument.

37.10 Restrictions on override

The Fourth Ranking Noteholders shall not be entitled to approve any amendment or to give any Loan Note Consent pursuant to Clause 37.9 (*Subordinated Loan Notes*) without the consent of the holders of the majority in nominal amount of the Subordinated Loan Notes unless equivalent amendments are made to the Fourth Ranking Loan Notes or an equivalent consent is given pursuant to the terms of the Fourth Ranking Loan Note Instrument. For the purposes of Clause 37.9 (*Subordinated Loan Notes*) and 37.10, the expressions "equivalent amendments" and "equivalent consent" shall mean amendments to or, as the case may be, a waiver, consent, approval or release given pursuant to the Fourth Ranking Loan Note Instrument which in all material respects (having regard to the comparative interest, redemption rights and other terms attaching to the Fourth Ranking Loan Notes and the Subordinated Loan Notes) are the same as the amendments to be made to the Subordinated Loan Notes and the relevant Subordinated Loan Note Instruments pursuant to Clause 37.9 (*Subordinated Loan Notes*) or the Loan Note Consent to be given pursuant to Clause 37.9 (*Subordinated Loan Notes*), as the case may be.

37.11 Amendments to return on redemption

If, either after the Third Ranking Discharge Date or with the prior written consent of the Senior Lender, the Majority Second Ranking Noteholders and the Majority Third Ranking Creditors (or, after the Senior Discharge Date, the Majority Second Ranking Noteholders and Majority Third Ranking Creditors or, after the Final Priority Discharge Date, the Majority Third Ranking Creditors), at a time when the Fourth Ranking Loan Notes and the Subordinated Loan Notes are fully or partially redeemable in accordance with the terms of the Fourth Ranking Loan Note Instrument and the Subordinated Loan Note Instrument, as the case may be, the holders of the Fourth Ranking Loan Notes agree to the redemption of the Fourth Ranking Loan Notes at a discount to the aggregate of the principal redeemable amount of the Fourth Ranking Loan

Notes at the time of the redemption (the "relevant time") plus all accrued interest on them, the relevant Subordinated Creditors undertake to the Fourth Ranking Noteholders that the holders of the Subordinated Loan Notes shall also agree at the relevant time to the redemption, as determined by the Fourth Ranking Noteholder, of the redeemable Subordinated Loan Notes at a discount to the principal redeemable amount of the Subordinated Loan Notes then outstanding plus all accrued interest on them, provided that the amount to be paid to the holders of the Subordinated Loan Notes on redemption or sale of the Subordinated Loan Notes at the relevant time shall not be less than:-

$$A \times \frac{B}{C}$$

Where:-

A is an amount equal to the aggregate of the principal amount of redeemable Subordinated Loan Notes at the relevant time plus all accrued interest on them;

B is an amount equal to the aggregate amount of principal and interest on the Fourth Ranking Loan Notes that the holders of the Fourth Ranking Loan Notes have agreed shall be payable to them on the redemption; and

C is an amount equal to the aggregate of the principal amount of the redeemable Fourth Ranking Loan Notes at the relevant time plus all accrued interest on them.

37.12 Power of Attorney

In the event that a Fourth Ranking Noteholder exercises its rights under Clause 37.9 (*Subordinated Loan Notes*) or Clause 37.11 (*Amendments to return on redemption*), each of the Subordinated Creditors that is a holder of Subordinated Loan Notes, hereby irrevocably appoints any Fourth Ranking Noteholder and each of its directors from time to time to act as his attorney with authority in his name and on his behalf:-

- (a) to sign and execute (and to date and deliver) any and all agreements, instruments, deeds, consents, waivers, resolutions, transfers or other papers and documents; and
- (b) to take all actions and do all things (including voting at any meeting of holders of Subordinated Loan Notes and giving consent to the same being held on short notice),

which such attorney may (subject to obtaining the consent of the Investor) in his absolute discretion consider necessary or desirable to enable or to facilitate any approval, Loan Note Consent, amendment or redemption or sale to be given or made, as the case may be pursuant to Clause 37.9 (*Subordinated Loan Notes*) or Clause 37.11 (*Amendments to return on redemption*) in so far as they relate to any such approval, Loan Note Consent, amendment, redemption and, if required, each relevant Subordinated Creditor will ratify such action or signature by any such attorney.

38. 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.

SECTION 10

GOVERNING LAW AND ENFORCEMENT

39. GOVERNING LAW

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

40. ENFORCEMENT

40.1 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 40.1 is for the benefit of the Senior Lender and Second Ranking Secured Parties only. As a result, no Senior Secured Party or Second Ranking Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Senior Secured Parties and Second Ranking Secured Parties may take concurrent proceedings in any number of jurisdictions.

40.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law:
 - (i) each Debtor (unless incorporated in England and Wales):
 - (A) irrevocably appoints DM Company Services (London) Limited (company number: 02535994) as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
 - (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned;
 - (ii) each Subordinated Creditor (unless incorporated in England and Wales):
 - (A) irrevocably appoints DM Company Services (London) Limited (company number: 02535994) as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
 - (B) agrees that failure by a process agent to notify the relevant Subordinated Creditor of the process will not invalidate the proceedings concerned;
 - (iii) MML Capital Partners Fund V, LP, MML Capital Partners Fund V Co-Invest, LP, the Third Ranking Creditors and the Fourth Ranking Noteholders:

- (A) irrevocably appoints the Third Ranking Security Agent as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement (and the Third Ranking Security Agent, by its execution of the Amendment and Restatement Agreement accepts that appointment); and
 - (B) agrees that failure by a process agent to notify MML Capital Partners Fund V, LP, MML Capital Partners Fund V Co-Invest, LP and the Third Ranking Creditors and the Fourth Ranking Noteholders of the process will not invalidate the proceedings concerned;
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (in the case of an agent for service of process for a Debtor) or the relevant Subordinated Creditor must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Senior Lender or, if after the Senior Discharge Date, the Second Ranking Security Agent or after the Second Ranking Discharge Date, the Third Ranking Security Agent or if after the Third Ranking Discharge Date, the Fourth Ranking Security Agent. Failing this, the Senior Lender, the Second Ranking Security Agent, the Third Ranking Security Agent or the Fourth Ranking Security Agent (as the case may be) may appoint another agent for this purpose.
- (c) Each Debtor and each Subordinated Creditor expressly agrees and consents to the provisions of this clause 40 and clause 39 (*Governing Law*).

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

SCHEDULE 1: THE PARTIES**Part 1: Original Subordinated Creditors**

Name of Subordinated Creditor	Registration number (or equivalent, if any) or Address
Lomond Capital Partnership LLP	SO302064, Scotland
The Betsy S Aubrey Revocable Trust	2953 Pacific Avenue San Francisco CA 94115
Roger Lane-Smith	
Robert Hamilton	
Stuart Pender	
Investec Investments (UK) Limited	2 Gresham Street, London EC2V 7QP
MML Capital Partners V GP Limited as general partner of MML Capital Partners Fund V, LP (registered number LP014658)	Aztec Group House, 11-15 Seaton Place, St Helier JE4 0QH
MML Capital Partners V GP Limited as general partner of MML Capital Partners Fund V Co-Invest, LP (registered number LP014658)	Aztec Group House, 11-15 Seaton Place, St Helier JE4 0QH
Ivor Dickinson	
Michael Groves	

Part 2: Original Intra-Group Lenders

Name of company	Registration number (or equivalent, if any) Original Jurisdiction
Lomond Capital Limited	SC381984, Scotland




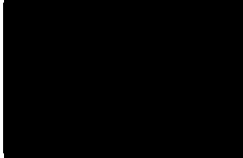
Lomond Capital No.1 Ltd	SC427623, Scotland
Lomond Capital No.2 Ltd	SC455640, Scotland
Lomond Property Lettings Limited	SC373580, Scotland
Bondsave Limited	SC138755, Scotland
Mountview Investments Limited	SC151792, Scotland
Lomond Maintenance Limited	SC428376, Scotland
Thornley Groves Estate Agents Limited	07072190, England
Thornley Groves Limited	02674298, England
John Shepherd Estate Agents Limited	09704507, England
John Shepherd Lettings Limited	06841027, England
Lomond Mortgages Limited	SC390469, Scotland
Mountview Property (Scotland) Limited	SC476925, Scotland
Managed Space Limited	SC250257, Scotland

Part 3: Original Debtors

Name of company	Registration number (or equivalent, if any) Original Jurisdiction
Lomond Capital Limited	SC381984, Scotland
Lomond Capital No.1 Ltd	SC427623, Scotland
Lomond Capital No.2 Ltd	SC455640, Scotland
Lomond Property Lettings Limited	SC373580, Scotland
Bondsave Limited	SC138755, Scotland
Mountview Investments Limited	SC151792, Scotland
Lomond Maintenance Limited	SC428376, Scotland
Thornley Groves Estate Agents Limited	07072190, England
Thornley Groves Limited	02674298, England
John Shepherd Estate Agents Limited	09704507, England
John Shepherd Lettings Limited	06841027, England

Name of company	Registration number (or equivalent, if any) Original Jurisdiction
Lomond Mortgages Limited	SC390469, Scotland
Mountview Property (Scotland) Limited	SC476925, Scotland
Managed Space Limited	SC250257, Scotland

Part 4: Third Ranking Creditors

Name of Subordinated Creditor	Registration number (or equivalent, if any) or Address
MML Capital Europe V S.A.	7, rue Lou Hemmer L-1748 Luxembourg-Findel Luxembourg
Stuart Pender	
Roger Lane-Smith	
Robert Hamilton	
Vernon Powell	

SCHEDULE 2: FORM OF DEBTOR ACCESSION DEED

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

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

This agreement is made on []] 20[] by the Ac
intercreditor agreement (the "Intercreditor Agreement") dated 11 September 2013 as amended and
restated on [] between, as
Ltd as company, Clydesdale Bank plc as senior lender, Investec Bank plc as second ranking security
agent, the Second Ranking Creditors, the Third Ranking Security Agent, the Third Ranking Creditors,
the Fourth Ranking Security Agent, the Fourth Ranking Creditors, the other Creditors and the other
Debtors (each as defined in the Intercreditor Agreement).

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

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

(the "Relevant Documents").

IT IS AGREED as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
2. The Acceding Debtor and the Senior Lender agree that the Senior Lender shall hold:
 - (a) [any Senior Transaction Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
 - (b) all proceeds of that Senior Transaction Security; and]
 - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Senior Lender (in the Relevant Documents or otherwise) and secured by the Senior 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 Senior Lenderon trust for the Senior Lender on the terms and conditions contained in the Intercreditor Agreement.
3. The Acceding Debtor and the Second Ranking Security Agent agree that the Second Ranking Security Agent shall hold:
 - (a) [any Second Ranking Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
 - (b) all proceeds of that Second Ranking Security; and]
 - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Second Ranking Security Agent as trustee for the Second Ranking Secured Parties (in the Relevant Documents or otherwise) and

secured by the Second Ranking 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 Second Ranking Security Agent as trustee for the Second Ranking Secured Parties,

on trust for the Second Ranking Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

4. The Acceding Debtor and the Third Ranking Security Agent agree that the Third Ranking Security Agent shall hold:

- (a) [any Third Ranking Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
- (b) all proceeds of that Third Ranking Security; and]
- (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Third Ranking Security Agent as trustee for the Third Ranking Secured Parties (in the Relevant Documents or otherwise) and secured by the Third Ranking 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 Third Ranking Security Agent as trustee for the Third Ranking Secured Parties,

on trust for the Third Ranking Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

5. The Acceding Debtor and the Fourth Ranking Security Agent agree that the Fourth Ranking Security Agent shall hold:

- (a) [any Fourth Ranking Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
- (b) all proceeds of that Fourth Ranking Security; and]
- (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Fourth Ranking Security Agent as trustee for the Fourth Ranking Secured Parties (in the Relevant Documents or otherwise) and secured by the Fourth Ranking 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 Fourth Ranking Security Agent as trustee for the Fourth Ranking Secured Parties,

on trust for the Fourth Ranking Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

6. 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.
7. [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].

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

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

The Acceding Debtor

[EXECUTED AS A DEED

By: *[Full Name of Acceding Debtor]*

)
)

Director

Director/Secretary

OR

[EXECUTED AS A DEED

By: *[Full name of Acceding Debtor]*

)
)

Signature of Director

Name of Director

in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness]

Address for notices:

Address: [☐]

Fax: [☐]

Attention: [☐]

The Senior Lender

[Full Name of current Senior Lender]

By: [☐]

Date: [☐] 20[☐]

The Second Ranking Security Agent

[Full Name of current Second Ranking Security Agent]

By: [☐]

Date: [☐] 20[☐]

The Third Ranking Security Agent

[Full Name of current Third Ranking Security Agent]

By: [☐]

Date: [☐] 20[☐]

The Fourth Ranking Security Agent

[Full Name of current Fourth Ranking Security Agent]

By: [☐]

Date: [☐] 20[☐]

SCHEDULE 3: FORM OF CREDITOR ACCESSION UNDERTAKING

To: *[Insert full name of current Senior Lender (or after the Senior Discharge Date the Second Ranking Security Agent or after the Final Priority Discharge Date the Third Ranking Security Agent or after the Third Ranking Discharge Date the Fourth Ranking Security Agent)]* for itself and each of the other parties to the Intercreditor Agreement referred to below.

[To: *[Insert full name of current Senior Lender]* as Senior Lender.].¹

From: *[Acceding Creditor]*

THIS UNDERTAKING is made on [☐] 20[*[Insert full name of new Senior Lender /Intra-Group Lender/Second Ranking Creditor/Third Ranking Creditor/ Fourth Ranking Creditor/Subordinated Creditor (the "Acceding [Senior Lender/Intra-Group Lender/Second Ranking Creditor/Third Ranking Creditor/Fourth Ranking Creditor/Subordinated Creditor])"*] in relation to the intercreditor agreement (the "Intercreditor Agreement") dated [] 2016 between, among others, Lomond Capital Limited as parent, Lomond Capital No. 1 Ltd as company, Clydesdale Bank plc as senior lender, Investec Bank plc as the Second Ranking Security Agent, the Third Ranking Security Agent, the Fourth Ranking Security Agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding *[Senior Lender/Intra-Group Lender/Second Ranking Creditor/Third Ranking Creditor/Fourth Ranking Creditor/Subordinated Creditor]* being accepted as a *[Senior Lender/ Intra-Group Lender/Second Ranking Creditor/Third Ranking Creditor/Fourth Ranking Creditor/Subordinated Creditor]* for the purposes of the Intercreditor Agreement, the Acceding *[Senior Lender/Intra-Group Lender/Second Ranking Creditor/Third Ranking Creditor/Fourth Ranking Creditor/Subordinated Creditor]* confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a *[Senior Lender/ Intra-Group Lender/Second Ranking Creditor/Third Ranking Creditor/Fourth Ranking Creditor/Subordinated Creditor]* and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a *[Senior Lender/Intra-Group Lender/Senior Arranger/Second Ranking Creditor/Third Ranking Creditor/Fourth Ranking Creditor/Subordinated 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 or a Subordinated Creditor and is delivered on the date stated above].

Acceding *[Creditor]*

[EXECUTED as a DEED]

[Insert full name of Acceding Creditor]

By: [☐]

Address: [☐]

Fax: [☐]

¹ Only applicable before the Senior Discharge Date

Accepted by the Senior
Lender/[Security Agent]

for and on behalf of

***[Insert full name of current Senior
Lender/Second Ranking Security
Agent/Third Ranking Security
Agent/Fourth Ranking Security
Agent]***

Date: [☐] 20[☐]

SCHEDULE 4: FORM OF DEBTOR RESIGNATION REQUEST

To: [☐] as Security Agent

From: [resigning Debtor] and [Parent]

Dated: [☐] 20[☐]

Dear Sirs

**LOMOND CAPITAL LIMITED - INTERCREDITOR AGREEMENT DATED 11 SEPTEMBER 2013
AND AMENDED AND RESTATED ON [☐] 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 [31.14] (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [resigning Debtor] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) [resigning Debtor] is under no actual or contingent obligations in respect of the Intra-Group Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Parent]

[resigning Debtor]

By: _____

By: _____

EXECUTION PAGES

THE PARENT

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND CAPITAL LIMITED

Signature of Director



Name of Director **STUART PENDER**

in the presence of:

Signature of witness



Name of witness **HAZEL FISHER**

Address of witness



Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

THE COMPANY

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND CAPITAL NO.1 LTD

Signature of Director



Name of Director **STUART PENDER**

in the presence of:

Signature of witness



Name of witness **HAZEL FISHER**

Address of witness



Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Vernon Powell

THE SENIOR LENDER

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
CLYDESDALE BANK PLC

[REDACTED]

Signature of Authorised Signatory

ANDREW FRASER CARLSON

Name of Authorised Signatory

in the presence of:

[REDACTED]

Signature of witness

✓ CRISTIN CRAIG

Name of witness

[REDACTED]

Address of witness

TRAINEE SOLICITOR

Occupation of witness

Address: Clydesdale Bank
30 St Vincent Place
Glasgow
G1 2HL

Fax: 0800 032 5682

Attention: Andrew Carson

THE SERIES A LOAN NOTE SECURITY TRUSTEE

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, in)
the name and on behalf of **ROGER LANE-**)
SMITH by his attorney, in the presence of a)
witness:)

as attorney for
ROGER LANE-SMITH

in the presence of:

Signature

Name (block
capitals)

STUART PENDER

Signature of witness

Name of witness

LAUREN FISHER

Address of witness

Occupation of witness

SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

THE LLP

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND CAPITAL PARTNERSHIP LLP

Signature of Designated Member
Name of Designated Member

[Redacted]

STUART PENDER

~~Signature of Designated Member~~

~~Name of Designated Member~~

in the presence of:

Signature of witness

[Redacted]

Name of witness

RACHEL FISHER

Address of witness

[Redacted]

Occupation of witness

SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

THE SUBORDINATED CREDITORS

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND CAPITAL PARTNERSHIP LLP

Signature of Designated Member

Name of Designated Member **STUART PENDER**

~~Signature of Designated Member~~

~~Name of Designated Member~~

in the presence of:

Signature of witness

Name of witness **HAZEL FISHER**

Address of witness

Occupation of witness **SOLICITOR**

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, in)
the name and on behalf of THE BETSY S)
AUBREY TRUST by its attorney, in the)
presence of a witness:)

Signature



as attorney for
THE BETSY S AUBREY TRUST

Name (block
capitals)

STUART PENDER

in the presence of:

Signature of witness



Name of witness

RACHEL FISHER

Address of witness



Occupation of witness SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, in)
the name and on behalf of **ROGER LANE-**)
SMITH by his attorney in the presence of a)
witness:)

Signature



as attorney for
ROGER LANE-SMITH

Name (block
capitals)

STUART PENDER

in the presence of:

Signature of witness



Name of witness

RACHEL FISHER

Address of witness



Occupation of witness

SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, in)
the name and on behalf of ROBERT)
HAMILTON by his attorney in the presence)
of a witness:)

Signature

as attorney for
ROBERT HAMILTON

Name (block
capitals)

STUART PENDER

in the presence of:

Signature of witness

Name of witness

RACHA FISHER

Address of witness

Occupation of witness

SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
STUART PENDER in the presence of a)
witness:)
)

Signature



Name (block
capitals)

STUART PENDER

in the presence of:

Signature of witness



Name of witness

RACHEL FISHER

Address of witness



Occupation of witness

SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, in)
the name and on behalf of **IVOR**)
DICKINSON by his attorney in the)
presence of a witness:)

Signature



as attorney for **IVOR DICKINSON**

Name (block
capitals)

HENRIETTA DICKINSON

in the presence of:

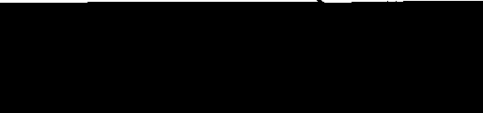
Signature of witness



Name of witness

ROBERT FAWCETT

Address of witness



Occupation of witness

Lecturer

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, in)
the name and on behalf of **MICHAEL**)
GROVES in the presence of a witness:)
)

as attorney for **MICHAEL GROVES**

in the presence of:

Signature

Name (block
capitals)



STUART PENDER

Signature of witness

Name of witness



RACHEL FISHER

Address of witness



Occupation of witness SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
MML CAPITAL PARTNERS V GP)
LIMITED as general partner of **MML**)
CAPITAL PARTNERS FUND V, LP in the)
presence of a witness:

Signature



Name (block capitals)
capitals)

RICHARD ANTHONY

AUTHORISED SIGNATORY

MATT JONES

AUTHORISED SIGNATORY

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Signature

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
MML CAPITAL PARTNERS V GP)
LIMITED as general partner of **MML**)
CAPITAL PARTNERS V COINVEST LP in)
the presence of a witness:

Signature



RICHARD ANTHONY

MATT JONES

Name (block capitals)
AUTHORISED SIGNATORY

AUTHORISED SIGNATORY

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
INVESTEC INVESTMENTS (UK) LIMITED)
)

[Redacted]

in the presence of:

Signature of attorney

[Redacted]

Signature of witness

Name of witness ALEXANDRE RESS

Address of witness INVESTEC BANK PLC

Occupation of witness BANKER

[Redacted]

Address: 2 Gresham Street
London
EC2V 7QP

Fax: +44 20 7597 4913

Attention: Shaun Mullin/Stephen White/
GLO - General Lending

THE SECOND RANKING SECURITY AGENT

INVESTEC BANK PLC

[Redacted]

By:

Address: 2 Gresham Street
London
EC2V 7QP

Fax: +44 20 7597 4913

Attention: Shaun Mullin/Stephen White/GLO - General Lending

THE SECOND RANKING NOTEHOLDER

INVESTEC BANK PLC

By:

Address: 2 Gresham Street
London
EC2V 7QP

Fax: +44 20 7597 4913

Attention: Shaun Mullin/Stephen White/GLO - General Lending

THE INTRA-GROUP LENDERS

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND CAPITAL LIMITED

Signature of Director

Name of Director

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

THE SECOND RANKING NOTEHOLDER

INVESTEC BANK PLC

By:

Address: 2 Gresham Street
London
EC2V 7QP

Fax: +44 20 7597 4913

Attention: Shaun Mullin/Stephen White/GLO - General Lending

THE INTRA-GROUP LENDERS

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND CAPITAL LIMITED

Signature of Director

Name of Director



STUART PENDER

Signature of witness

Name of witness



ALLAN FRASER

Address of witness



Occupation of witness

Solicitor

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND CAPITAL NO.1 LTD

Signature of Director

Name of Director



STUART PENDER

in the presence of:

Signature of witness

Name of witness



RACHEL FISHER

Address of witness



Occupation of witness

SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND CAPITAL NO.2 LTD

Signature of Director



Name of Director

STUART PENDER

in the presence of:

Signature of witness



Name of witness

RACHAEL FISHER

Address of witness



Occupation of witness SOLICITOR


Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND PROPERTY LETTINGS
LIMITED

Signature of Director



Name of Director **STUART PENDER**

in the presence of:

Signature of witness



Name of witness **HAZEL MCINTYRE**

Address of witness



Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
BONDSAVE LIMITED

Signature of Director

Name of Director **STUART PENDER**

in the presence of:

Signature of witness

Name of witness **Hazel Fisher**

Address of witness

Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
MOUNTVIEW INVESTMENTS LIMITED

Signature of Director



Name of Director

STUART PENDER

in the presence of:

Signature of witness



Name of witness

RACHEL ANNE FISHER

Address of witness



Occupation of witness

SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND MAINTENANCE LIMITED

Signature of Director



Name of Director **STUART PENDER**

in the presence of:

Signature of witness



Name of witness **RACHEL FURNESS**

Address of witness



Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
**THORNLEY GROVES ESTATE AGENTS
LIMITED**

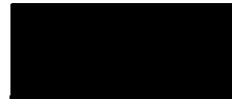
Signature of Director



Name of Director *STUART PENDER*

in the presence of:

Signature of witness



Name of witness *RACHEL FISHER*

Address of witness



Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
THORNLEY GROVES LIMITED

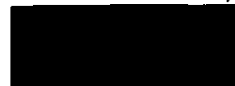
Signature of Director



Name of Director **STUART PENDER**

in the presence of:

Signature of witness



Name of witness **RACHEL FISHER**

Address of witness



Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
JOHN SHEPHERD ESTATE AGENTS
LIMITED

Signature of Director



Name of Director *STUART PENDER*

in the presence of:

Signature of witness



Name of witness *RACHEL FISHER*

Address of witness



Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
JOHN SHEPHERD LETTINGS LIMITED

Signature of Director

Name of Director *STUART PENDER*

in the presence of:

Signature of witness

Name of witness *RACHEL FISHER*

Address of witness

Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND MORTGAGES LIMITED

Signature of Director

Name of Director *STUART PENDER*

in the presence of:

Signature of witness

Name of witness *RACHEL FISHER*

Address of witness

Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
MOUNTVIEW PROPERTY (SCOTLAND)
LIMITED

Signature of Director

Name of Director *STUART PENDER*

in the presence of:

Signature of witness

Name of witness *HAZEL FISHER*

Address of witness

Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
MANAGED SPACE LIMITED

Signature of Director

Name of Director *STUART PENDER*

in the presence of:

Signature of witness

Name of witness *HAZEL FISHER*

Address of witness

Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

THE DEBTORS

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND CAPITAL LIMITED

Signature of Director



Name of Director **STUART PENDER**

in the presence of:

Signature of witness



Name of witness **RACHEL FISHER**

Address of witness



Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND CAPITAL NO.1 LTD

Signature of Director



Name of Director

STUART PENDER

in the presence of:

Signature of witness



Name of witness

RACHEL FISHER

Address of witness



Occupation of witness

SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND CAPITAL NO.2 LTD

Signature of Director



Name of Director *STUART PENDER*

in the presence of:

Signature of witness



Name of witness *RAEEN FISHER*

Address of witness



Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND MAINTENANCE LIMITED

Signature of Director



Name of Director

STUART PENDER

in the presence of:

Signature of witness



Name of witness

RACHEL FISHER

Address of witness



Occupation of witness

SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND PROPERTY LETTINGS
LIMITED

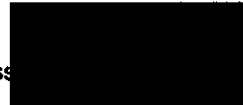
Signature of Director



Name of Director *STUART PENDER*

in the presence of:

Signature of witness



Name of witness *HAZEL FINLAY*

Address of witness



Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
BONDSAVE LIMITED

Signature of Director



Name of Director **STUART PENDER**

In the presence of:

Signature of witness



Name of witness **ILACHAEL FISAGE**

Address of witness



Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
MOUNTVIEW INVESTMENTS LIMITED

Signature of Director



Name of Director **STUART PENDER**

in the presence of:

Signature of witness



Name of witness **ELACHAL PISTACH**

Address of witness



Occupation of witness **SEVICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
**THORNLEY GROVES ESTATE AGENTS
LIMITED**

Signature of Director



Name of Director **STUART PENDER**

in the presence of:

Signature of witness



Name of witness **HAZEL FISHER**

Address of witness



Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
THORNLEY GROVES LIMITED

Signature of Director



Name of Director

STUART PENDER

in the presence of:

Signature of witness



Name of witness

RACHEL FISHER

Address of witness



Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
**JOHN SHEPHERD ESTATE AGENTS
LIMITED**

Signature of Director

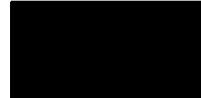


Name of Director

STUART PENDER

in the presence of:

Signature of witness



Name of witness

RAEAL FISHER

Address of witness



Occupation of witness

SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
JOHN SHEPHERD LETTINGS LIMITED

Signature of Director

Name of Director *STUART PENDER*

in the presence of:

Signature of witness

Name of witness *RACHEL FISHER*

Address of witness

Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND MORTGAGES LIMITED

Signature of Director

Name of Director *STUART PENDER*

in the presence of:

Signature of witness

Name of witness *RACHEL FISHER*

Address of witness

Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
MOUNTVIEW PROPERTY (SCOTLAND)
LIMITED

Signature of Director

Name of Director **STUART PENDER**

in the presence of:

Signature of witness

Name of witness **HAZEL MCINTYRE**

Address of witness

Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
MANAGED SPACE LIMITED

Signature of Director

Name of Director **STUART PENDER**

in the presence of:

Signature of witness

Name of witness **HAZEL MCINTYRE**

Address of witness

Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

THE THIRD RANKING CREDITORS

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
MML CAPITAL EUROPE V S.A



(as attorney)

Signature of Director

Name of Director IAN WALLIS

Signature of Witness



Name of Witness JAMIE HOLT

Address of Witness



Occupation of Witness

P.A.

Address:
Fax:
Attention:

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
STUART PENDER in the presence of a)
witness:)

Signature



Name (Block
Capitals)

STUART PENDER

in the presence of:

Signature Of Witness



Name Of Witness

Hazel McIntyre

Address Of Witness



Occupation Of Witness

Solicitor

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, in)
the name and on behalf of ROGER LANE-)
SMITH by his attorney in the presence of a)
witness:

as attorney for
ROGER LANE-SMITH

in the presence of:

Signature

Name (block
capitals)

STUART PENDER

Signature of witness

Name of witness

HAZEL FISHER

Address of witness

Occupation of witness

SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901


Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, in)
the name and on behalf of ROBERT)
HAMILTON by his attorney in the presence)
of a witness:

as attorney for
ROBERT HAMILTON

in the presence of:

Signature



Name (block
capitals)

STUART PENDER

Signature of witness



Name of witness

RACHEL FRASER

Address of witness



Occupation of witness

SERVICES

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, in)
the name and on behalf of VERNON)
POWELL by his attorney in the presence)
of a witness:)

as attorney for
VERNON POWELL

in the presence of:

Signature



Name (block
capitals)

STUART PENDER

Signature of witness



Name of witness

RACHEL FISHER

Address of witness



Occupation of witness

SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender/Hazel McIntyre

THE THIRD RANKING SECURITY AGENT

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
MML CAPITAL PARTNERS LLP



(as a member)

Signature of Designated Member

Name of Designated Member

JAW WALLPS

Signature of Designated Member

Name of Designated Member

In the presence of:

Signature of witness



Name of witness

JAMIE HOLT.

Address of witness



Occupation of witness

P.A.

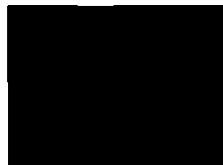
Address:

Fax:

Attention:

THE FOURTH RANKING NOTEHOLDER

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
MML CAPITAL EUROPE V S.A



(as attorney)

Signature of Director

Name of Director *DAW WALLIS*

Signature of Witness



Name of Witness *JAMIE HOLT*

Address of Witness



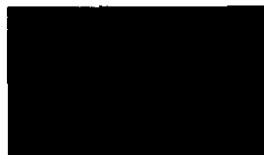
Occupation of Witness

Address:
Fax:

Attention:

THE FOURTH RANKING SECURITY AGENT

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
MML CAPITAL PARTNERS LLP



(as a member)

Signature of Designated Member

Name of Designated Member *DAW WALLIS*

Signature of Designated Member

Name of Designated Member

In the presence of:

Signature of witness



Name of witness

JAMIE HOLT

Address of witness



Occupation of witness

P.A.

Address:
Fax:
Attention: