

M

COMPANIES FORM No. 466(Scot)

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

CHFP025

*Please do not
write in this
margin***A fee of £13 is payable to Companies House in respect
of each register entry for a mortgage or charge.**

Pursuant to section 410 and 466 of the Companies Act 1985

*Please complete
legibly, preferably
in black type, or
bold block lettering*To the Registrar of Companies
(Address overleaf - Note 6)

For official use

Company number

[1 2]

SC381984

Name of company

* Lomond Capital Limited

** insert full name
of Company*

Date of creation of the charge (note 1)

29 March 2017

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

Group Debenture (the "Charge")

Names of the persons entitled to charge

Toscafund GP Limited (as "Second Lien Agent" and "Second Lien Security
Agent")

Short particulars of all the property charged

A series of fixed and floating charges covering the whole of the property,
assets and rights (including uncalled capital) which is or may from time to
time, while the Charge is in force, be comprised in the property and
undertaking of Lomond Capital Limited.Presentor's name address and
reference (if any):DLA Piper Scotland LLP
Rutland Square
EDINBURGH
EH1 2AA

DX: ED271 Edinburgh

For official use (06/2005)

Charges Section

Post room

TUESDAY

SCT *S64MJXS1* #25
18/04/2017
COMPANIES HOUSE

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

See paper apart 1

Please do not
write in
this margin

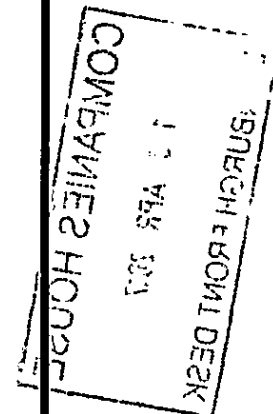
Please complete
legibly, preferably
in black type, or
bold block lettering

Date(s) of execution of the instrument of alteration

29 March 2017

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

Please do not
write in
this margin

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

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

(1) First, the Senior Transaction Security shall rank in priority to the Second Lien Transaction Security (in respect of the Senior Liabilities referred to in clause 2.1(a)) of the Intercreditor Agreement, and in priority in all respects to the Third Ranking Transaction Security and the Fourth Ranking Transaction Security;

(2) Second, the Second Lien Transaction Security shall rank in priority to the Third Ranking Transaction Security and the Fourth Ranking Transaction Security;

(3) Third, the Third Ranking Transaction Security shall rank in priority to the Fourth Ranking Transaction Security;

(4) Fourth, the Senior Transaction Security, the Second Lien Transaction Security, the Third Ranking Transaction Security and the Fourth Ranking Transaction Security shall rank in priority to the Subordinated Security; and

(5) Fifth, 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 David E. North for DLR Pipe Scotland LLP Date 18/4/17
On behalf of [company] [chargee] †

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

Notes

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

† delete as
appropriate

Form 466: Paper Apart 1

Company: Lomond Capital Limited

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

1) Clydesdale Bank PLC (Registered No. SC001111) whose registered office is at 30 St Vincent Place, Glasgow, G1 2HL (the "**Senior Lender**")

2) Toscafund GP Limited a company incorporated in England and Wales with registered number 06942099 (the "**Second Lien Agent**" and "**Second Lien Security Agent**")

3) Tosca Debt Capital Fund Designated Activity Company a company incorporated in Ireland with registered number 564519 (the "**Second Lien Arranger**" and "**Second Lien Lenders**")

4) Lomond Capital Partnership LLP (Registered No. SO302064) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET (the "**LLP**")

5) The Betsy S Aubrey Revocable Trust whose address is at 2953 Pacific Avenue, San Francisco, CA 94115

6) Lane-Smith Consulting Limited a company incorporated in England and Wales with registered number 07983218 as security trustee for the Series A Loan Noteholders (the "**Series A Loan Note Security Trustee**")

7) Lomond Capital Limited (Registered No. SC381984) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET (the "**Parent**")

8) Lomond Capital No. 1 Ltd (Registered No. SC427623) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET (the "**Company**")

9) Lomond Capital No. 2 Ltd (Registered No. SC455640) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET

10) Lomond Property Lettings Limited (Registered No. SC373580) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET

11) Bondsav Limited (Registered No. SC138755) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET

12) Mountview Investments Limited (Registered No. SC151792) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET

13) Lomond Maintenance Limited (Registered No. SC428376) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET

14) Thornley Groves Estate Agents Limited (Registered No. 07072190) whose registered office is at 16-18 Lloyd Street, Altrincham, Cheshire, WA14 2DE

15) Thornley Groves Limited (Registered No. 02674298) whose registered office is at 16-18 Lloyd Street, Altrincham, Cheshire, WA14 2DE

16) John Shepherd Estate Agents Limited (Registered No. 09704507) whose registered office is at 14 Beeches Walk, Sutton Coldfield, West Midlands, United Kingdom, B73 6HN

17) John Shepherd Lettings Limited (Registered No. 06841027) whose registered office is at 14 Beeches Walk, Sutton Coldfield, West Midlands, United Kingdom, B73 6HN

18) 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

19) Managed Space Limited (Registered No. SC250257) whose registered office is at 32 Charlotte Square, Edinburgh, Scotland, EH2 4ET

20) Stuart Pender residing at Garnock House, 16 Kenilworth Road, Bridge of Allan, Stirlingshire EK9 4DU

21) Robert Hamilton at 23 Murrayfield Avenue, Edinburgh EH12 6AU

22) Vernon Powell at 20 Helena Street, Wellington Point, Queensland 4160 Australia

23) 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 1748 Luxembourg Findel, Grand Duchy of Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B157697 (the "**Fourth Ranking Noteholder**") (MML Capital Europe V S.A., Stuart Pender, Lane-Smith Consulting, Robert Hamilton and Vernon Powell hereinafter known as the "**Third Ranking Creditors**")

24) MML Capital Partners LLP, of 1 3 Strand, London WC2N 5HR (the "**Third Ranking Security Agent**" and the "**Fourth Ranking Security Agent**").

Paper Apart 2 – Lomond Capital Limited

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

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

"Debt Document" means:

- (a) the Senior Finance Documents;
- (b) the Second Lien 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) and the Second Lien Security Agent (prior to the Second Lien Discharge Date) or the Third Ranking Security Agent (after the Second Lien 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*) of the Intercreditor Agreement;

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Senior Lender, the Second Lien 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 Loan Note 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 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 £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 (as defined in the Senior Facility Agreement) or Permitted Subordinated Equity Cure Debt (as defined in the Senior Facility Agreement), 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 the Intercreditor Agreement, in the appropriate capacity, pursuant to clause 31.13 (Creditor Accession Undertaking) thereof;

"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 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 (*Security: Fourth Ranking Creditors*) of the Intercreditor Agreement)); 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 agreement entered into between the Senior Lender, the Second Lien Agent, Second Lien Security Agent, Second Lien Lienders, Second Lien Arranger, Subordinated Creditors, Series A Loan Note Security Trustee, the LLP, the Parent, the Company, the Intra-Group Lenders, the Original Debtors, the Third Ranking Creditors, the Third Ranking Security Agent, the Fourth Ranking Noteholder and the Fourth Ranking Security Agent dated 29 March 2017;

"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) of the Intercreditor Agreement;

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

"Investment Agreement" means the Investment Agreement as 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;

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

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

"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;

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

"Second Lien Creditors" means each Second Lien Agent, Second Lien Arranger, Second Lien Security Agent and Second Lien Lender;

"Second Lien Debt Documents" has the meaning given to the term "*Finance Documents*" in the Second Lien Facility Agreement;

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

"Second Lien Facility Agreement" means the second lien facility agreement made between the Parent, the Company, Toscafund GP Limited (in its capacity as agent and security agent) and the lenders set out therein dated on or about the date of the Intercreditor Agreement;

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

"Second Lien Secured Parties" means the Second Lien Creditors, any Receiver (appointed by the Second Lien Security Agent) or Delegate (appointed by the Second Lien Security Agent) but, in the case of the Second Lien Creditors, only if it is a Party or has acceded to the Intercreditor Agreement in the appropriate capacity, pursuant to clause 31.12 (*Creditor Accession Undertaking*) thereof;

"Second Lien Security Documents" means:

- (a) each of the "*Transaction Security Documents*" as defined in the Second Lien 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 Lien Secured Parties as security for any of the Second Lien Secured Obligations including pursuant to clause 5.9 (*Designation of Second Lien Debt Documents*) of the Intercreditor Agreement; and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b);

"Second Lien Transaction Security" means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Second Lien Security 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 14 October 2016 between, the Parent, the Company, the Debtors and the Senior Lender as amended and restated on or about the date of the Intercreditor Agreement;

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

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

"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 this 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) thereof;

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

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

"Third Ranking Debt Documents" means the Third Ranking Notes, the Third Ranking Loan Note Instrument 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 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 as amended on or prior to the date of the Intercreditor Agreement 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 £2,225,000 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 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 31.13 (*Creditor Accession Undertaking*) thereof;

"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 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*) of the Intercreditor Agreement; 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 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 Lien Transaction Security, the Third Ranking Transaction Security and the Fourth Ranking Transaction Security;

"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 the Intercreditor 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.



FILE COPY

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

COMPANY NO. 381984
CHARGE CODE SC38 1984 0021

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 29 MARCH 2017 WERE DELIVERED
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985
ON 18 APRIL 2017

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 29
MARCH 2017

BY LOMOND CAPITAL LIMITED

IN FAVOUR OF
TOSCAFUND GP LIMITED AS SECURITY AGENT FOR THE
SECURED PARTIES (AS DEFINED IN THE INSTRUMENT)

GIVEN AT COMPANIES HOUSE, EDINBURGH 24 APRIL 2017



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

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

INTERCREDITOR AGREEMENT



I CERTIFY THAT, SAVE FOR MATERIAL REDACTED
PURSUANT TO s859G OF THE COMPANIES ACT 2006,
THIS IS A TRUE, COMPLETE AND CORRECT COPY
OF THE ORIGINAL INSTRUMENT

DATE

18/4/17
SIGNED *DLA Piper Scotland LLP*
DLA PIPER SCOTLAND LLP

CONTENTS

SECTION 1	2
INTERPRETATION.....	2
1. DEFINITIONS AND INTERPRETATION	2
SECTION 2	25
RANKING AND PRIMARY CREDITORS	25
2. RANKING AND PRIORITY	25
3. SECURITY ACKNOWLEDGMENT.....	27
4. SENIOR LENDER AND SENIOR LIABILITIES	29
5. SECOND LIEN CREDITORS AND SECOND LIEN LIABILITIES	32
6. THIRD RANKING CREDITORS AND THIRD RANKING LIABILITIES	44
7. FOURTH RANKING CREDITORS AND FOURTH RANKING LIABILITIES	50
SECTION 3	57
OTHER CREDITORS	57
8. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES	57
9. SUBORDINATED CREDITOR AND SUBORDINATED LIABILITIES	60
SECTION 4	64
INSOLVENCY, TURNOVER AND ENFORCEMENT	64
10. EFFECT OF INSOLVENCY EVENT	64
11. TURNOVER OF RECEIPTS.....	67
12. REDISTRIBUTION.....	69
13. ENFORCEMENT OF SENIOR TRANSACTION SECURITY	71
14. ENFORCEMENT OF SECOND LIEN TRANSACTION SECURITY	71
15. ENFORCEMENT OF THIRD RANKING TRANSACTION SECURITY	72
16. ENFORCEMENT OF FOURTH RANKING TRANSACTION SECURITY	73
17. NO ENFORCEMENT OF SUBORDINATED SECURITY	75
SECTION 5	75
NON-DISTRESSED DISPOSALS, DISTRESSED DISPOSALS AND CLAIMS.....	75
18. NON-DISTRESSED DISPOSALS	75
19. SENIOR DISTRESSED DISPOSALS AND APPROPRIATION	77
20. SECOND LIEN DISTRESSED DISPOSALS AND APPROPRIATION.....	82
21. THIRD RANKING DISTRESSED DISPOSALS AND APPROPRIATION.....	86
22. FOURTH RANKING DISTRESSED DISPOSALS AND APPROPRIATION.....	89
23. NON-CASH RECOVERIES	92
24. INSURANCE CLAIMS.....	96
25. FURTHER ASSURANCE - DISPOSALS AND RELEASES	98
SECTION 6	99
PROCEEDS	99
26. APPLICATION OF PROCEEDS	99

SECTION 7	106
THE PARTIES	106
27. THE SENIOR LENDER	106
28. THE SECOND LIEN SECURITY AGENT	111
29. THE THIRD RANKING SECURITY AGENT	122
30. THE FOURTH RANKING SECURITY AGENT	134
31. CHANGES TO THE PARTIES	146
SECTION 8	150
ADDITIONAL PAYMENT OBLIGATIONS	150
32. COSTS AND EXPENSES	150
33. OTHER INDEMNITIES	152
SECTION 9	153
ADMINISTRATION	153
34. INFORMATION	153
35. NOTICES	155
36. PRESERVATION	157
37. CONSENTS, AMENDMENTS AND OVERRIDE	158
38. COUNTERPARTS	165
SECTION 10	165
GOVERNING LAW AND ENFORCEMENT	165
39. GOVERNING LAW	165
40. ENFORCEMENT	165
SCHEDULE 1: THE PARTIES	167
Part 1: Second Lien Lenders	167
Part 2: Original Subordinated Creditors	167
Part 3: Original Intra-Group Lenders	167
Part 4: Original Debtors	168
Part 5: Third Ranking Creditors	169
SCHEDULE 2: FORM OF DEBTOR ACCESSION DEED	170
SCHEDULE 3: FORM OF CREDITOR ACCESSION UNDERTAKING	174
SCHEDULE 4: FORM OF DEBTOR RESIGNATION REQUEST	176
EXECUTION PAGES	177
MC/MC/373146/11/UKM/81747458.2	217

THIS AGREEMENT is made on

29 March

2017

BETWEEN:

- (1) **CLYDESDALE BANK PLC** as the Senior Lender;
- (2) **TOSCAFUND GP LIMITED** a company incorporated in England and Wales with registered number 06942099 as a Second Lien Agent;
- (3) **THE ENTITIES** listed in part 1 of schedule 1 (*The Parties*) as Second Lien Lenders;
- (4) **TOSCAFUND GP LIMITED** a company incorporated in England and Wales with registered number 06942099 as a Second Lien Security Agent;
- (5) **TOSCA DEBT CAPITAL FUND DESIGNATED ACTIVITY COMPANY** a company incorporated in Ireland with registered number 564519 as Second Lien Arranger;
- (6) **THE PERSONS AND ENTITIES** listed in part 2 of schedule 1 (*The Parties*) as Subordinated Creditors;
- (7) **LANE-SMITH CONSULTING LIMITED** a company incorporated in England and Wales with registered number 07983218 as security trustee for the Series A Loan Noteholders (the "Series A Loan Note Security Trustee");
- (8) **LOMOND CAPITAL PARTNERSHIP LLP**, a limited liability partnership incorporated in Scotland with registered number SO302064 (the "LLP");
- (9) **LOMOND CAPITAL LIMITED**, a company incorporated in Scotland with registered number SC381984 (as "Parent");
- (10) **LOMOND CAPITAL NO.1 LTD**, a company incorporated in Scotland with registered number SC427623 (as "Company");
- (11) **THE COMPANIES** listed in part 3 of schedule 1 (*The Parties*) as Intra-Group Lenders;
- (12) **THE COMPANIES** listed in part 4 of schedule 1 (*The Parties*) as Debtors (together with the Parent and the Company, the "Original Debtors");
- (13) **THE ENTITIES AND INDIVIDUALS** listed in part 5 of schedule 1 (*The Parties*) as Third Ranking Creditors (the "Third Ranking Creditors");
- (14) **MML CAPITAL PARTNERS LLP**, of 1-3 Strand, London WC2N 5HR (as "Third Ranking Security Agent");
- (15) **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
- (16) **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:

"Acquisition" means an "Acquisition" as such term is defined in the Senior Facility Agreement;

"Acceleration Event" means a Senior Acceleration Event, a Second Lien 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;

"Agreed Hedging Principles" means interest rate hedging effected by the Company with the Senior Lender in respect of a period expiring on or prior to 11 August 2020 and for a notional principal amount of the Senior Facility up to £9,000,000;

"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 Lien 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 Lien 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 Lien 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;

"Competitive Sales Process" means:

- (a) any public auction or other competitive sales process conducted with the advice of a Financial Adviser appointed by, or approved by, the Instructing Group pursuant to clause 19.5 (*Appointment of Financial Adviser*); and
- (b) any enforcement of the Transaction Security carried out by way of public auction or other competitive sales process pursuant to requirements of applicable law;

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

"Covenant Cure Account" has the meaning given to that term in the Senior Facility Agreement;

"Creditor Accession Undertaking" means:

- (a) an undertaking substantially in the form set out in schedule 3 (*Form of Creditor Accession Undertaking*);
- (b) a Transfer Certificate or an Assignment Agreement (as each such term is defined in the Second Lien Facility Agreement) provided it contains an accession to this Agreement; and
- (c) 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

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

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

"Cure Payment" means a payment made by a Second Lien Lender to the Parent in accordance with the provisions of clause 5.15 (*Right to make Cure Payments*);

"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 Lien 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) and the Second Lien Security Agent (prior to the Second Lien Discharge Date) or the Third Ranking Security Agent (after the Second Lien 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 Lien 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 Lien 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 Lien Facility Agreement, 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:

- (i) 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; and
- (ii) a Second Lien Creditor bringing legal proceedings against any person solely for the purpose of:
 - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
 - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
 - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages;

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

"Fairness Opinion" means, in respect of a Distressed Disposal or a Liabilities Sale, an opinion or valuation from a Financial Adviser that can be relied upon by and disclosed to the Senior Lender, the Second Lien Agent and the Second Lien Lenders that the proceeds received or recovered in connection with that Distressed Disposal or Liabilities Sale are fair from a financial point of view taking into account all relevant circumstances, including, without limitation and to the extent ordinarily included in such opinions or valuations, the method of enforcement or disposal;

"Final Discharge Date" means the later to occur of the Senior Discharge Date, the Second Lien 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 Lien 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;

"Financial Year" has the meaning given to that term in the Senior Facility Agreement;

"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 31.13 (*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*); and
- (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 Lien Debt Documents, the Third Ranking Debt Documents or the Fourth Ranking Debt Documents);

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

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

"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) subject to paragraph (b)(ii) below, prior to the Senior Discharge Date, the Senior Lender;
- (b)
 - (i) on or after the Senior Discharge Date; or
 - (ii) at any time when the Second Lien Creditors are entitled to take Enforcement Action pursuant to clause 5.12 (*Permitted Enforcement: Second Lien Creditors*),
the Majority Second Lien Lenders,
- (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;

"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 Lien Lenders" has the meaning given to *"Majority Lenders"* in the Second Lien Facility Agreement;

"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;

"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 Lien 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;

"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 and no Second Lien 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 Lien Facility Payment, a Permitted Third Ranking Creditor Payment, a Permitted Fourth Ranking Creditor Payment or a Permitted Subordinated Creditor Payment;

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

"Permitted Senior Facility Payments" means the Payments permitted by clause 4.1 (*Payment of Senior 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*);

"Prepayment Cure Amount" has the meaning given to that term in the Senior Facility Agreement;

"Primary Creditors" means the Senior Lender, the Second Lien Lender, 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;

"Qualifying Administrator" means an insolvency practitioner licensed to practice as an administrator in England and Wales and who is employed by or a partner in:

- (a) an independent nationally recognised firm of insolvency practitioners; or
- (b) an independent internationally recognised accountancy firm.

"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 Creditor" means:

- (a) subject to paragraph (b)(ii) below, prior to the Senior Discharge Date, the Senior Lender; and
- (b)
 - (i) on or after the Senior Discharge Date; or
 - (ii) at any time when the Second Lien Creditors are permitted to take Enforcement Action pursuant to clause 5.12 (*Permitted Enforcement: Second Lien Creditors*),

the Second Lien Security Agent;

"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 Lien Creditors under the Second Lien 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 Lien Creditors under the Second Lien Debt Documents;

"Relevant Period" has the meaning given to that term in the Senior Facility Agreement;

"Report" means:

- (a) any "Group Report" under and as defined in the Senior Facility Agreement; and
- (b) any "Brighton Target Group Report" under and as defined in the Senior Facility Agreement;

"Second Lien Acceleration Event" means the Second Lien Lender exercising any of their rights under clause 24.19 (*Acceleration*) of the Second Lien Facility Agreement;

"Second Lien Accordion Loan" means any loan to be made available by the Second Lien Lenders to the Second Lien Borrower by way of a utilisation of the Additional Commitments (as such term is defined in the Second Lien Facility Agreement);

"Second Lien Agent" means the Agent under and as defined in the Second Lien Facility Agreement;

"Second Lien Arranger" means the Arranger under and as defined in the Second Lien Facility Agreement;

"Second Lien Borrower" has the meaning given to the term "*Borrower*" in the Second Lien Facility Agreement;

"Second Lien Converted Interest" means any cash pay interest under the Second Lien Facility Agreement which is converted to capitalised interest under the Second Lien Facility Agreement pursuant to paragraph (b)(ii)(C) of clause 5.8 (*Amendments and Waivers: Second Lien Creditors*).

"Second Lien Creditors" means each Second Lien Agent, Second Lien Arranger, Second Lien Security Agent and Second Lien Lender.

"Second Lien Cure Loan" means a loan advanced by the Second Lien Lenders to the Second Lien Borrower under the terms of the Second Lien Facility Agreement to effect a cure of the Senior Financial Covenants pursuant to clause 5.15 (*Right to make Cure Payments*);

"Second Lien Debt Documents" has the meaning given to the term "*Finance Documents*" in the Second Lien Facility Agreement;

"Second Lien Debt Purchase Transaction" has the meaning given to the term "*Debt Purchase Transaction*" in the Second Lien Facility Agreement.

"Second Lien Default" means a Second Lien 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 Lien Debt Documents or any combination of any of the foregoing) be a Second Lien Event of Default;

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

"Second Lien Event of Default" means an Event of Default under, and as defined in, the Second Lien Facility Agreement;

"Second Lien Facility" has the meaning given to the term "*Facility*" in the Second Lien Facility Agreement;

"Second Lien Facility Agreement" means the second lien facility agreement made between the Parent, the Company, Toscafund GP Limited (in its capacity as agent and security agent) and the lenders set out therein dated on or about the date of this Agreement;

"Second Lien Guarantor" has the meaning given to the term "*Guarantor*" in the Second Lien Facility Agreement ;

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

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

"Second Lien Mandatory Prepayment Waiver" means, in relation to a Senior Mandatory Prepayment Waiver, any amendment or waiver of the corresponding requirement to make the Second Lien Mandatory Prepayment which corresponds with, and is in the same amount as, the Senior Mandatory Prepayment which is the subject of that Senior Mandatory Prepayment Waiver;

"Second Lien Payment Stop Event" means:

- (a) a Senior Payment Default in respect of the payment of principal or interest due under the Senior Finance Documents in the form as at the date of this Agreement (but not further or otherwise);
- (b) a Senior Payment Default (other than in respect of any payment of principal or interest referred to in paragraph (a) above) where the aggregate outstanding unpaid amount exceeds £10,000;
- (c) a breach of the terms of clause 23 (*Financial Covenants*) of the Senior Facility Agreement (other than clause 23.2.2 (*Total Forecast Cashflow Cover*) and clause 23.2.9 (*Liquidity*)) (subject to the provisions of clause 23.4 (*Equity cure*) of the Senior Facility Agreement);
- (d) an Event of Default under clauses 25.5.2 and 25.5.3 (*Cross default*) of the Senior Facility Agreement;
- (e) an Event of Default under clauses 25.6 (*Insolvency*), 25.7 (*Insolvency proceedings*) or 25.8 (*Creditors' process*) of the Senior Facility Agreement provided that, in respect of clause 25.7(iv), such Event of Default involves the enforcement of Security over assets of a Material Company with an aggregate value of £100,000 or more;
- (f) a breach of clause 24.15 (*Negative Pledge*) or 24.16 (*Disposals*) of the Senior Facility Agreement which involves (or when added to all other breaches of those clauses involves) assets of an aggregate value in excess of 5% of the aggregate total value of all assets of the Group; or
- (g) a Senior Acceleration Event has occurred.

"Second Lien Payment Stop Notice" has the meaning given to that term in clause 5.3 (*Issue of Second Lien Payment Stop Notice*).

"Second Lien PIK Margin" has the meaning given to the term *"Margin"* in the Second Lien Facility Agreement.

"Second Lien Restructuring Costs" means all reasonable fees, costs and expenses of third party professional advisers payable by the Second Lien Lenders in respect of restructuring advice or valuations relating to the Group (other than those payable in connection with disputing any aspect of a Distressed Disposal or a Liabilities Sale or any provision of a Debt Document).

"Second Lien 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 Lien Secured Party under the Second Lien Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity;

"Second Lien Secured Parties" means the Second Lien Creditors, any Receiver (appointed by the Second Lien Security Agent) or Delegate (appointed by the Second Lien Security Agent) but, in the case of the Second Lien Creditors, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to clause 31.13 (*Creditor Accession Undertaking*);

"Second Lien Security Documents" means:

- (a) each of the *"Transaction Security Documents"* as defined in the Second Lien 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 Lien Secured Parties as security for any of the Second Lien Secured Obligations including pursuant to clause 5.9 (*Designation of Second Lien Debt Documents*); and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b);

"Second Lien Security Property" means:

- (a) the Second Lien Transaction Security expressed to be granted in favour of the Second Lien Security Agent as trustee for the Second Lien Secured Parties and all proceeds of that Second Lien Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Second Lien Liabilities to the Second Lien Security Agent as trustee for the Second Lien Secured Parties and secured by the Second Lien Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Second Lien Security Agent as trustee for the Second Lien Secured Parties;
- (c) the Second Lien 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 Lien Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Second Lien Secured Parties;

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

"Second Lien Standstill Period" has the meaning given to that term in clause 5.12 (*Permitted Enforcement: Second Lien Creditors*);

"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 Lien 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 Lien Security Documents, the Third Ranking Security Documents and the Fourth Ranking Security Documents;

"Security Property" means the Senior Security Property, the Second Lien 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 Accordion Facility" means the *"Incremental Facility"* as defined in the Senior Facility Agreement;

"Senior Accordion Loan" means an *"Incremental Facility Loan"* as defined in 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 Deferral" means, at any time, a deferral (by more than nine months of the relevant due date) of any scheduled repayment of the Senior Liabilities which would have fallen due under the Senior Finance Documents prior to that time but for that deferral, to the extent that, at that time, that scheduled repayment has not been made.

"Senior Deferral Amount" means, in relation to a Senior Deferral, the amount of the scheduled repayment subject to that Senior Deferral.

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

"Senior Facility Agreement" means the term loan and revolving facilities agreement dated 14 October 2016 between, the Parent, the Company, the Debtors and the Senior Lender as amended and restated on or about the date of this Agreement;

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

"Senior Financial Covenant Breach" means a breach by the Parent of the provisions of clause 23 (Financial Covenants) of the Senior Facility Agreement;

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

"Senior Headroom Amount" means, at any time and in relation to:

- (a) a Senior Mandatory Prepayment Waiver (the **"Relevant Senior Mandatory Prepayment Waiver"**);
- (b) a Senior Principal Increase (the **"Relevant Senior Principal Increase"**);
- (c) a Senior Deferral Amount (the **"Relevant Senior Deferral Amount"**); and
- (d) a Senior Interest/Fee Deferral Amount (the **"Relevant Senior Interest/Fee Deferral Amount"**),

£1,407,500 less:

- (i) the aggregate amount which would have been required to be prepaid as a Senior Mandatory Prepayment prior to that time but which has not been prepaid because of one or more Senior Mandatory Prepayment Waivers, other than:
 - (A) the Relevant Senior Mandatory Prepayment Waiver;
 - (B) to the extent that there has been a Second Lien Mandatory Prepayment Waiver in relation to the Senior Mandatory Prepayment Waiver(s); and
 - (C) any Senior Mandatory Prepayment Waiver which has been agreed to by the Second Lien Agent;
- (ii) the aggregate amount of any Senior Principal Increases other than:
 - (A) the Relevant Senior Principal Increase; and
 - (B) any Senior Principal Increase which has been agreed to by the Second Lien Agent;
- (iii) the amount equal to the aggregate Senior Deferral Amounts other than:
 - (A) the Relevant Senior Deferral Amount; and
 - (B) any Senior Deferral Amount relating to a Senior Deferral which has been agreed to by the Second Lien Agent; and
- (iv) any Senior Interest/Fee Deferral Amount other than:

- (A) the Relevant Senior Interest/Fee Deferral Amount; and
- (B) any Senior Interest/Fee Deferral Amount relating to a Senior Interest/Fee Deferral Amount which has been agreed to by the Second Lien Agent.

"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 Interest/Fee Deferral" means, at any time, a deferral (by more than nine months of the relevant due date) or capitalisation (in each case expressly agreed to by the relevant Senior Facility Creditors in accordance with the Senior Finance Documents before the relevant amount fell due) of any interest or fees which would have fallen due under the Senior Finance Documents prior to that time but for that deferral or capitalisation, to the extent that, at that time, payment of that interest or those fees has not been made.

"Senior Interest/Fee Deferral Amount" means, in relation to a Senior Interest/Fee Deferral, the amount of the interest or fees subject to that Senior Interest/Fee Deferral.

"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(b) 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 Mandatory Prepayment Waiver" means any amendment or waiver of the requirement to make a Senior Mandatory Prepayment (other than any waiver of amounts by the Senior Lender if the amounts waived can, pursuant to the terms of the Senior Facility Agreement, be applied to reduce other Senior Liabilities);

"Senior Payment Default" means a Default under clause 25.1 (*Non-payment*) of the Senior Facility Agreement;

"Senior Principal" means, at any time, and in relation to the Senior Finance Documents, the then aggregate (without double counting) of:

- (a) any amounts borrowed and not repaid or prepaid; and
- (b) the committed financial accommodation available (or potentially available) including without limitation, the Senior Accordion Facility,

under those Senior Finance Documents but shall not include any amount in respect of the Senior Priority Hedging Liabilities;

"Senior Principal Increase" means in relation to an amendment or waiver of the Senior Finance Documents, the extent to which the Senior Principal immediately after that amendment or waiver, would (as a result of that amendment or waiver), incrementally exceed the Senior Principal as at the dated of this Agreement;

"Senior Priority Hedging Liabilities" means Hedging Liabilities to the extent that they arise in respect of interest rate hedging entered into in accordance with the Agreed Hedging Principles;

"Senior Priority Limit" means £15,482,500;

"Senior Restructuring Costs" means all reasonable fees, costs and expenses of third party professional advisers payable by the Senior Lender in respect of restructuring advice or valuations relating to the Group (other than those payable in connection with disputing any aspect of a Distressed Disposal or a Liabilities Sale or any provision of a Debt Document).

"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;

"Senior Yield Headroom" means, at any time and in relation to any increase in Margin , or inclusion of additional margin, under paragraph (b)(ii) of clause 4.3 (*Restrictions on amendments and waivers: Senior Liabilities*) a "Margin Increase" an effect which, when aggregated with any Margin Increase (other than that Margin Increase) is equivalent to an increase in the Margin relating to the Senior Facilities by up to 1 per cent. per annum (by reference to the original form of the Senior Finance Documents) in aggregate per Senior Facility.

"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;

"Subordinated Creditors" means the Secured Subordinated Creditors, the LLP 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 and the Third Ranking Security Agent;

"Third Ranking Debt Documents" means the Third Ranking Notes, the Third Ranking Loan Note Instrument 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 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 as amended on or prior to the date of this Agreement 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 £2,225,000 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 31.13 (*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 Lien Transaction Security, the Third Ranking Transaction Security and the Fourth Ranking Transaction Security;

"Transaction Security Documents" means the Senior Security Documents, the Second Lien 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 Lien 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 Lien 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 Lien Security Agent, the Third Ranking Security Agent or the Fourth Ranking Security Agent, any person for the time being appointed as the Second Lien Security Agent, the 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 Lien Security Agent (prior to the Senior Discharge Date in accordance with clause 5.12 (*Permitted Enforcement: Second Lien*)) after the Senior Discharge Date and prior to the Second Lien 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 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 is "continuing" if it has not been remedied or 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.
- (e) The determination that a Second Lien Payment Stop Notice is "outstanding" is to be made by reference to the provisions of clause 5.3 (*Issue of Second Lien Payment Stop Notice*).

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 28.9(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 (other than the Hedging Liabilities) up to the Senior Priority Limit and the Senior Priority Hedging Liabilities on a *pari passu* basis;
- (b) **second**, the Second Lien 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) the Second Lien Transaction Security shall secure the Second Lien Liabilities (to the extent that such Second Lien 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) and any references in the Third Ranking Security Documents to:
 - (i) the "Intercreditor Agreement" shall be deemed to be a reference to this Agreement; and
 - (ii) the "Facilities Agreement" shall be deemed to be a reference to the Senior Facility Agreement;
- (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) and any references in the Fourth Ranking Security Documents to:
 - (i) the "Intercreditor Agreement" shall be deemed to be a reference to this Agreement;
 - (ii) the "Facilities Agreement" shall be deemed to be a reference to the Senior Facility Agreement; and
 - (iii) the "Third Ranking Secured Parties" shall be deemed to be a reference to the Fourth Ranking Secured Parties;
- (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) and any references in the Subordinated Security Documents to:
 - (i) the "Intercreditor Agreement" shall be deemed to be a reference to this Agreement; and
 - (ii) the "Facilities Agreement" shall be deemed to be a reference to the Senior Facility Agreement;
- (f) the Senior Transaction Security shall rank in priority to the Second Lien Transaction Security (in respect of the Senior Liabilities referred to in clause 2.1(a)), and in priority in all respects to the Third Ranking Transaction Security and the Fourth Ranking Transaction Security;
- (g) the Second Lien 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 Lien 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 Lien 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.

2.4 Anti-layering

Notwithstanding anything in any Debt Document to the contrary, until the Second Lien Discharge Date, no Debtor shall, without the approval of the Majority Second Lien Lenders, issue or allow to remain outstanding any Liabilities that:

- (a) are secured or expressed to be secured by Transaction Security on a basis (i) junior to any of the Senior Liabilities but (ii) senior to the Second Lien Liabilities;
- (b) are expressed to rank or rank so that they are subordinated to any of the Senior Liabilities but are senior to the Second Lien Liabilities;
- (c) are contractually subordinated in right of payment to any of the Senior Liabilities and senior in right of payment to the Second Lien Liabilities.

3. SECURITY ACKNOWLEDGMENT

- (a) Each of the Subordinated Creditors recognises and acknowledges the Transaction Security granted in favour of the Senior Lender, the Second Lien Security Agent, 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 Lien 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 Lien Transaction Security, the Third Ranking Transaction Security, Fourth Ranking Transaction Security or the Subordinated Security.

- (c) The Second Lien 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 Lien 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 Lien Transaction Security granted in favour of the Second Lien Security Agent, 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 Lender, the Second Lien 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 Lien Secured Parties confirm that no notices of assignment or charge will be served under any Second Lien 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:
 - (i) the Senior Discharge Date has occurred;
 - (ii) the Senior Lender has served notice (in which case the Second Lien Agent may serve an equivalent notice); or
 - (iii) the Second Lien Creditors are entitled to take Enforcement Action pursuant to clause 5.12 (*Permitted Enforcement: Second Lien*).
- (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 Lien 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 Lien Security Agent to hold until the Second Lien 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.

4. SENIOR LENDER AND SENIOR LIABILITIES

4.1 Payment of Senior 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

Subject to clause 4.3 (*Restrictions on amendments and waivers: Senior Liabilities*), 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.

4.3 Restrictions on amendments and waivers: Senior Liabilities

The Senior Lender may not amend or waive the terms of the Senior Finance Documents if the amendment or waiver is, in relation to the original form of the Senior Finance Documents an amendment or waiver which:

- (a) constitutes a Senior Principal Increase the amount of which exceeds the Senior Headroom at that time;
- (b) constitutes an increase in the applicable Margin, or the inclusion of an additional margin, relating to the Senior Facilities other than such an increase or inclusion which is:
 - (i) contemplated by the original form of the Senior Finance Documents; or
 - (ii) not otherwise permitted pursuant to paragraph (i) above and the effect of which does not cause the Senior Yield Headroom at that time to be exceeded;
- (c) is a Senior Mandatory Prepayment Waiver unless:
 - (i) there is, in relation to that Senior Mandatory Prepayment Waiver, a Second Lien Mandatory Prepayment Waiver; or
 - (ii) the amount of the Senior Mandatory Prepayment which is the subject of that Senior Mandatory Prepayment Waiver does not exceed the Senior Headroom at that time;
- (d) results in a Senior Deferral unless the Senior Deferral Amount of that Senior Deferral does not exceed the Senior Headroom at that time;
- (e) results in a Senior Interest/Fee Deferral unless the Senior Interest/Fee Deferral Amount of that Senior Interest/Fee Deferral does not exceed the Senior Headroom at that time; or
- (f) results in the Senior Finance Documents being more onerous unless an equivalent amendment is made to the Second Lien Facility Agreement (provided that where the Second Lien Security Agent has not given its consent to the proposed amendment, such amendment will not affect the definition of Second Lien Payment Stop Event in this Agreement to the extent it would otherwise have done);

- (g) has the effect of making any member of the Group liable to make additional or increased payments other than:
 - (i) such additional or increased payments provided for under the original form of the Senior Finance Documents; or
 - (ii) such an amendment or waiver which is permitted as a consequence of paragraphs (a) to (e) above,

unless the prior consent of the Second Lien Creditors is obtained.

4.4 Designation of Senior Finance Documents

If the terms of a document effect a change which would, if that change was effected by way of amendment to, or waiver of, the terms of a Senior Finance Document, require the consent of the Second Lien Creditors under clause 4.3 (*Restrictions on amendments and waivers: Senior Liabilities*), that document shall not constitute a Senior Finance Document for the purposes of this Agreement or a "Finance Document" for the purposes of the Senior Facility Agreement, without the prior consent of the Second Lien Agent (acting on the instructions of the Majority Second Lien Lenders).

4.5 Security: Senior Lender

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

- (a) any Security in respect of the Senior 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 Lien Security Agent as trustee for the Second Lien Secured Parties; or
 - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Second Lien Security Agent as trustee for the Second Lien Secured Parties:
 - (A) to the Second Lien Secured Parties in respect of their Liabilities; or
 - (B) to the Second Lien Security Agent under a parallel debt structure for the benefit of the Second Lien 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 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 Lien Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in clause 2 (*Ranking and Priority*).

4.6 Enforcement: Senior Lender

Prior to enforcing the Transaction Security, the Senior Lender shall consult with the Second Lien Security Agent in good faith with respect to the enforcement action to be taken for a period of not less than 10 Business Days prior to taking such action provided that there shall be no duty to consult where:

- (a) such consultation would be reasonably likely to have an adverse effect on the ability of the Senior Lender to enforce the Transaction Security or have a material adverse impact on the quantum of proceeds which may be realised from such enforcement;
- (b) an Insolvency Event has occurred and is continuing;
- (c) any action or proceedings have been threatened or commenced by or on behalf of any Second Lien Creditor (in its capacity as such) against the Senior Lender (in its capacity as such), any Affiliate of the Senior Lender, any Debtor or any Holding Company of any Debtor;
- (d) the Senior Lender has obtained an independent valuation (in accordance with the terms of clause 19.4 (*Fair value*)) showing that the enterprise value of the Group is less than the Senior Liabilities or is greater than the aggregate amount of the Senior Liabilities and the Second Lien Liabilities and the Senior Lender has provided a copy of such valuation to the Second Lien Security Agent;
- (e) it is unlawful or in breach of a confidentiality obligation binding on the Senior Lender to undertake such consultation; or
- (f) the Second Lien Security Agent takes enforcement action in accordance with clause 5.12 (*Permitted Enforcement: Second Lien Creditors*),

and the Senior Lender shall use reasonable endeavours to inform the Second Lien Security Agent as to any material actions it intends to take in relation to the enforcement of the Transaction Security after this consultation period.

4.7 Option to purchase: Senior Lender

- (a) Subject to clause (b), the Senior Lender may after a Second Lien Acceleration Event, by giving not less than ten Business Days' notice to the Second Lien Agent, require the transfer to it (or to a nominee or nominees), in accordance with clause 31.4 (*Change of Second Lien Lender*), of all, but not part, of the rights and obligations in respect of the Second Lien Liabilities if:
 - (i) that transfer is lawful and, subject to clause 4.7(a)(ii) otherwise permitted by the terms of the Second Lien Debt Documents;
 - (ii) any conditions relating to such a transfer contained in the Second Lien Debt 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 Second Lien Agent is paid an amount equal to the aggregate of:
 - (A) all of the Second Lien Liabilities at that time (whether or not due), including all amounts that would have been payable under the Second Lien Debt Documents if the Second Lien Facilities 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 Lien Creditors as a consequence of giving effect to that transfer;
 - (iv) as a result of that transfer the Second Lien Lenders have no further actual or contingent liability to any Debtor under the Second Lien Debt Documents;
 - (v) an indemnity is provided from the Senior Lender (or from another third party acceptable to the Second Lien Lenders) in a form satisfactory to the Second Lien Lenders in respect of all losses which may be sustained or incurred by the Second Lien Lenders in consequence of any sum received or recovered by the Second Lien Lenders from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Second Lien Lender for any reason;
 - (vi) the Senior Lender which purchases the Second Lien Liabilities enters into a confidentiality agreement with the Second Lien Lenders (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 Second Lien Lenders, except that the Second Lien Lenders shall be deemed to have represented and warranted on the date of that transfer that they have the corporate power to effect that transfer and they have taken all necessary action to authorise the making by it of that transfer;
 - (viii) the Senior Lender which purchases the Second Lien Liabilities provides an unconditional and irrevocable undertaking to the Second Lien Lenders that all and any claims, demands or court or arbitration proceedings which the Senior Lender makes, brings or prosecutes against any party in respect of the Second Lien Debt Documents will be so brought, made and prosecuted solely in the name of the Senior Lender; and
 - (ix) the Senior Lender which purchases the Second Lien Liabilities provides an indemnity to the Second Lien Lenders against all claims, demands, proceedings, losses, damages, costs or expenses brought, made against or incurred by the Second Lien Lenders on or after the date of the purchase as a result of or in connection with the enforcement of any rights under the Second Lien Debt Documents.
- (b) The Second Lien Agent shall, at the request of a Senior Lender notify the Senior Lender of the sum of the amounts described in clause 4.7(a)(iii).
 - (c) It is agreed and acknowledged by all Parties that the Second Lien Creditors may take all Enforcement Action under the Second Lien Debt Documents in accordance with this Agreement and with their terms and without restriction during the period from the date of delivery of a notice pursuant to paragraph (a) above by the Senior Lender and the date of completion of any purchase made in accordance with this clause 4.7.

5. SECOND LIEN CREDITORS AND SECOND LIEN LIABILITIES

5.1 Restriction on Payment: Second Lien Liabilities

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

- (a) that Payment is permitted under clause 5.2 (*Permitted Payments: Second Lien Liabilities*); or

- (b) the taking or receipt of that Payment is permitted under clause 5.12 (*Permitted Enforcement: Second Lien Creditors*).

5.2 Permitted Payments: Second Lien Liabilities

- (a) The Debtors may make Payments to the Second Lien Creditors:
- (i) in respect of the Second Lien Liabilities then due if under clause 13.1 (*Arrangement fee*) of the Second Lien Facility Agreement on or about the date of this Agreement; or
 - (ii) in respect of the Second Lien Liabilities then due if the Payment is:
 - (A) of the Second Lien Liabilities in accordance with clause 7.1 (*Illegality*) of the Second Lien Facility Agreement provided that either:
 - (1) if a prepayment also requires to be made pursuant to clause 8.1 (*Illegality*) of the Senior Facility Agreement, this prepayment is made in full prior to the relevant payment under the Second Lien Facility Agreement; or
 - (2) the payment of the Second Lien Liabilities is financed by way of additional Subordinated Liabilities or a refinancing of the Second Lien Liabilities where the new Lender accedes to this Agreement as a Second Lien Lender and the Senior Lender provides its prior written consent to the increased amount of the Second Lien Liabilities or the Subordinated Liabilities to be made available to make such payment;
 - (B) only after the Senior Discharge Date, any of the Second Lien Liabilities pursuant to paragraph (b) of clause 8.1 (*Exit*) of the Second Lien Facility Agreement;
 - (C) all or part of the Second Lien Liabilities as a result of those Second Lien Liabilities being released or otherwise discharged solely in consideration for the issue of shares in the Parent (a "Debt for Equity Swap") provided that no cash or cash equivalent payment is made in respect of the Second Lien Liabilities and any Liabilities owed by a member of the Group to another member of the Group, the Subordinated Creditors or any other Holding Company of the Parent that arise as a result of any such Debt for Equity Swap are subordinated to the Senior Lender Liabilities pursuant to this Agreement;
 - (D) made by way of the capitalisation of interest or by the issuance of a non-cash pay financial instrument evidencing the same which is subordinated to the Senior Liabilities on the same terms as the Second Lien Liabilities or otherwise on terms satisfactory to the Senior Lender (acting reasonably);
 - (iii) provided that a Second Lien Payment Stop Notice has not been issued and remains outstanding, if the Payment is:
 - (A) an arrangement fee payable in connection with a Second Lien Accordion Loan pursuant to clause 2.2 (*Facility B - Additional Commitments*) of the Second Lien Facility Agreement ("Second Lien Accordion Loan Arrangement Fee"), provided that such fee is not

greater than 4% of the principal amount of the relevant Second Lien Accordion Loan;

- (B) fees to the Second Lien Agent and the Second Lien Security Agent payable pursuant to clauses 14.3 (*Agency fees*) and 14.4 (*Security Agent fee*) of the Second Lien Facility Agreement in its form as at the date of this Agreement up to a maximum amount of £10,000 per annum and provided that such fees are only paid after the primary syndication of the Second Lien Facility;
 - (C) a monitoring fee payable pursuant to clause 13.2 (*Monitoring fee*) of the Second Lien Facility Agreement in its form as at the date of this Agreement up to a maximum amount of £25,000 per annum (linked to the United Kingdom Retail Price Index);
 - (D) any of the principal amount of the Second Lien Liabilities in accordance with clause 8.4 (*Right of cancellation and repayment in relation to a single Lender*) provided that either:
 - (1) the Senior Discharge Date has occurred; or
 - (2) the payment of the Second Lien Liabilities is financed by way of additional Subordinated Liabilities or a refinancing of the Second Lien Liabilities where the new lender accedes to this Agreement as a Second Lien Lender;
 - (E) in respect of board observer costs in accordance with the terms of clause 23.38(e) of the Second Lien Facility Agreement in its form as at the date of this Agreement up to a maximum amount of £25,000 per annum;
 - (F) in respect of cash pay interest accruing on the principal amount of the Second Lien Loans in accordance with clause 10.2(b) of the Second Lien Facility Agreement in its form as at the date of this Agreement provided that:
 - (1) the cash pay interest payable under the Second Lien Facility Agreement shall not exceed 6% per annum; and
 - (2) no element of capitalised margin payable under the Second Lien Facility Agreement shall be payable in cash; or
- (iv) provided a Senior Payment Default has not occurred and is continuing but notwithstanding that a Second Lien Payment Stop Notice has been issued and remains outstanding, the Payment is:
- (A) any consent and/or waiver fee in respect of any consent granted under, or waiver or amendment of any provision of, a Second Lien Debt Document in an amount which, when expressed as a percentage of the principal amount of the Second Lien Liabilities (or the affected principal amount thereof), does not exceed the amount of the corresponding consent and/or waiver fee paid to the Senior Lender (when expressed as a percentage of the principal amount of the Senior Liabilities); or
 - (B) Second Lien Restructuring Costs provided that such fees are paid on a proportionate basis to any Senior Restructuring Costs and the aggregate maximum of all such fees payable (on behalf of the

Second Lien Creditors and the Senior Lender) does not exceed £100,000 (or its equivalent in other currencies) in aggregate over the life of the Second Lien Facility;

- (v) prior to the Senior Discharge Date, make Payments to the Second Lien Lender in respect of the Second Lien Liabilities then due if the Senior Lender gives its prior written consent to that Payment being made; or
 - (vi) pursuant to clause 18.3 (*Disposal Proceeds*) or clause 24.2 (*Mandatory prepayment of Proceeds*); and
- (b) on or after the Senior Discharge Date, the Debtors may make Payments to the Second Lien Lender in respect of the Second Lien Liabilities in accordance with the Second Lien Debt Documents,

and, for the avoidance of doubt, in the case of clauses 5.2(a)(ii)(A), 5.2(a)(ii)(B), 5.2(a)(ii)(C) and 5.2(a)(iii)(D), such Payment may be made together with any fees payable pursuant to clause 13.5 (*Non-call protection fee*) and 13.6 (*Exit fee*) of the form of the Second Lien Facility Agreement in place at the date of this Agreement which is due in connection with such Payment.

5.3 Issue of Second Lien Payment Stop Notice

- (a) A Second Lien Payment Stop Notice is "outstanding" during the period from the date on which, following the occurrence of a Second Lien Payment Stop Event, the Senior Lender issues a notice (a "Second Lien Payment Stop Notice") to the Second Lien Agent (with a copy to the Parent) advising that that Second Lien Payment Stop Event has occurred and is continuing and suspending Payments of the Second Lien Liabilities referred to in clause 5.2(a)(iii) until the first to occur of:
 - (i) the date which is 120 days after the date of issue of the Second Lien Payment Stop Notice;
 - (ii) if a Second Lien Standstill Period commences after the issue of a Second Lien Payment Stop Notice, the date on which that Second Lien Standstill Period expires;
 - (iii) the date on which the Second Lien Payment Stop Event in respect of which that Second Lien Payment Stop Notice was issued is no longer continuing;
 - (iv) the date on which the Senior Lender cancels that Second Lien Payment Stop Notice by notice to the Second Lien Agent (with a copy to the Parent); and
 - (v) the Senior Discharge Date or the Second Lien Discharge Date.
- (b) No Second Lien Payment Stop Notice may be served by the Senior Lender in reliance on a particular Second Lien Payment Stop Event more than 120 days after the Senior Lender receives notice of the occurrence of the Event of Default constituting that Second Lien Payment Stop Event.
- (c) No more than one Second Lien Payment Stop Notice may be served with respect to the same event or set of circumstances.
- (d) No more than two Second Lien Payment Stop Notices may be served in any period of 365 days.

5.4 Effect of Second Lien Payment Stop Event or Senior Payment Default

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

- (a) the occurrence of an Event of Default as a consequence of that failure to make a Payment in relation to the Second Lien Facility Agreement; or
- (b) the issue of a Second Lien Enforcement Notice on behalf of the Second Lien Creditors.

5.5 Payment obligations and capitalisation of interest continue

- (a) No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Second Lien Finance Document by the operation of clauses 5.1 (*Restriction on Payment: Second Lien Liabilities*) to 5.4 (*Effect of Second Lien Payment Stop Event or Senior Payment Default*) even if its obligation to make that Payment is restricted at any time by the terms of any of those clauses.
- (b) The accrual and capitalisation of interest in accordance with the Second Lien Facility Agreement shall continue notwithstanding the issue of a Second Lien Payment Stop Notice.

5.6 Cure of Payment Stop: Second Lien Creditors

If:

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

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

5.7 Second Lien Debt Purchase Transactions

- (a) Subject to paragraph (b) below, the Debtors shall not, and shall procure that no other member of the Group will, enter into any Second Lien Debt Purchase Transaction or beneficially own all or any part of the share capital of a company that is a Second Lien Lender or a party to a Second Lien Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of Second Lien Debt Purchase Transaction.
- (b) Paragraph (a) above shall not apply in respect of any action which occurs:
 - (i) either:
 - (A) on or after the Senior Discharge Date; or

- (B) with the prior written consent of the Senior Lender and in accordance with the Senior Facility Agreement; and

- (ii) in accordance with the Second Lien Facility Agreement.

5.8 Amendments and Waivers: Second Lien Creditors

- (a) Subject to clause 5.8(b), the Second Lien Creditors may amend or waive the terms of the Second Lien 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 Lien Creditors may not amend or waive the terms of the Second Lien Debt Documents if the amendment or waiver is:
 - (i) an amendment to the principal amount of the Second Lien Facility in excess of that contemplated by the Second Lien Facility Agreement (in its form in force at the date of this Agreement) other than by the capitalisation of interest in accordance with the terms of the Second Lien Facility Agreement or the making of a Cure Payment in accordance with the terms of clause 5.15 (*Right to make Cure Payments*);
 - (ii) an amendment to, or waiver of, the amount, currency, dates or terms of repayment or prepayment (mandatory or otherwise) of the Second Lien Facility Agreement other than one:
 - (A) which is contemplated by the form of the Second Lien Debt Documents in force at the date of this Agreement;
 - (B) the effect of which is solely to defer any scheduled repayment of the Second Lien Liabilities; or
 - (C) does not result in an obligation on the Group to make additional or more frequent payments to the Second Lien Creditors;
 - (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 Lien Debt Documents in force at the date of this Agreement; or
 - (B) the effect of which is solely to convert cash pay interest to capitalised interest or to reconvert capitalised interest (if and to the extent that it was previously cash pay interest) back into cash pay interest;
 - (C) the sole effect of which is to require interest that would otherwise have been required to be paid by the issuance of a non-cash pay financial instrument evidencing the same to be paid in cash under the relevant Second Lien Facility Agreement on the basis that the Senior Lender has provided their written consent to such amendment;
 - (D) to amend the rate of interest in respect of any Second Lien Cure Loan up to 14% non-cash pay; or
 - (E) 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;
- (v) an amendment or waiver which permits any member of the Group to incur Borrowing Liabilities under the Second Lien Debt Documents other than the Company; or
- (vi) 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 written consent of the Senior Lender is required.

- (c) Notwithstanding the foregoing, nothing in this clause 5.8 shall prevent the waiver of any breach of, or the relaxation of the terms of, any of the covenants or undertakings in any Second Lien Facility Agreement.

5.9 Designation of Second Lien Debt Documents

If the terms of a document effect a change which would, if that change was effected by way of amendment to, or waiver of, the terms of a Second Lien Debt Document, require the consent of the Senior Lender under clause 5.8 (*Amendments and Waivers: Second Lien Creditors*), that document shall not constitute a Second Lien Debt Document for the purposes of this Agreement or a "Finance Document" for the purposes of the Second Lien Facility Agreement without the prior written consent of the Senior Lender.

5.10 Security: Second Lien Creditors

At any time prior to the Senior Discharge Date, the Second Lien Security Agent 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 Lien Liabilities other than:

- (a) the Second Lien Transaction Security granted by the Debtors on or prior to the date of this Agreement;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) the form of Second Lien Facility Agreement 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 4.5 (*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 4.5

(*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 4.5 (*Security: Senior Lender*),

unless the prior consent of the Senior Lender is obtained.

5.11 Restriction on Enforcement: Second Lien Creditors

Subject to clause 5.12 (*Permitted Enforcement: Second Lien Creditors*), the Second Lien Creditors shall not be entitled to take any Enforcement Action in respect of any of the Second Lien Liabilities prior to the Senior Discharge Date.

5.12 Permitted Enforcement: Second Lien Creditors

- (a) The Second Lien Security Agent may take Enforcement Action which would be available to it but for clause 5.11 (*Restriction on Enforcement: Second Lien Creditors*) in respect of any of the Second Lien Liabilities if at the same time as, or prior to, that action and subject to clause 5.13 (*Restriction on Enforcement against Debtors: Second Lien Creditors*):

- (i) a Senior Acceleration Event has occurred in which case the Second Lien Agent may take the same Enforcement Action (but in respect of the Second Lien Liabilities) as constitutes that Senior Acceleration Event; or

(ii)

- (A) the Second Lien Agent has given notice (a "Second Lien Enforcement Notice") to the Senior Lender specifying that an Event of Default under the Second Lien Facility Agreement has occurred and is continuing; and

- (B) a period (a "Second Lien Standstill Period") of not less than:

- (1) 90 days in the case of a failure to make a payment of an amount of principal, interest or fees representing the Second Lien Liabilities;
- (2) 120 days in the case of an Event of Default arising as a result of a breach of clause 22.2 (*Financial Covenants*) (other than paragraphs (b) or (g) of clause 22.2 (*Financial Covenants*) or clauses 24.5 (*Cross default*) paragraphs (b) or (c) of the Second Lien Facility Agreement; and
- (3) 150 days in the case of any other Event of Default under the Second Lien Facility Agreement,

has elapsed from the date on which that Second Lien Enforcement Notice becomes effective in accordance with clause 35.4 (*Delivery*) provided that no period referred to above can extend beyond the Second Lien Termination Date and any Second Lien Standstill Period shall automatically cease on that date; and

- (C) that Event of Default is continuing at the end of the Second Lien Standstill Period; or

- (iii) the Senior Lender has given its prior written consent.

- (b) Prior to the Majority Second Lien Lenders giving instructions to the Second Lien Security Agent at the end of a Second Lien Standstill Period to:

- (i) enforce Transaction Security; or
- (ii) take Enforcement Action not otherwise available to it due to the provisions of clause 5.13 (*Restriction on Enforcement against Debtors: Second Lien Creditors*),

the Second Lien Agent shall consult with the Senior Security Agent in good faith with respect to the instructions to be given by the Majority Second Lien Lenders for a period of not less than 10 Business Days prior to the expiry of a Second Lien Standstill Period (including, without limitation, the identity of a proposed administrator but who shall always be a Qualifying Administrator) provided that nothing in this clause 5.12(b) shall operate to extend a Second Lien Standstill Period and further provided that there shall be no duty to consult where:

- (A) such consultation would be reasonably likely to have an adverse effect on the ability of the Second Lien Security Agent to enforce the Transaction Security or have a material adverse impact on the quantum of proceeds which may be realised from such enforcement;
 - (B) an Insolvency Event has occurred and is continuing;
 - (C) any action or proceedings have been threatened or commenced by or on behalf of any Senior Lender (in its capacity as such) against any Second Lien Creditor (in its capacity as such), any Affiliate of any Second Lien Creditor, any Debtor or any Holding Company of any Debtor;
 - (D) the Second Lien Security Agent has obtained an independent valuation (in accordance with the terms of clause 19.4 (*Fair value*)) showing that the enterprise value of the Group is greater than the aggregate amount of the Senior Liabilities and the Second Lien Liabilities and the Second Lien Security Agent has provided a copy of such valuation to the Senior Lender;
 - (E) it is unlawful or in breach of a confidentiality obligation binding on the Second Lien Agent to undertake such consultation; or
 - (F) a Senior Acceleration Event occurs.
- (c) After the occurrence of an Insolvency Event in relation to any member of the Group, the Second Lien Agent 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 Lien 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 Lien 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 Lien Liabilities;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Second Lien Liabilities of that member of the Group; or

- (iv) claim and prove in the liquidation of that member of the Group for the Second Lien Liabilities owing to it.

5.13 Restriction on Enforcement against Debtors: Second Lien 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 Lien 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 Lien Agent may not take Enforcement Action against that Debtor or against any Property of that Debtor in respect of any of the Second Lien 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 or, if earlier, the Second Lien Termination Date; and
 - (ii) the Senior Lender (or that Receiver or Delegate) notifying the Second Lien 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 clause 5.12 (*Permitted Enforcement: Second Lien Creditors*) or after the Senior Discharge Date.

5.14 Option to purchase: Second Lien Lenders

- (a) Subject to clause 5.14(b), the Second Lien Lenders may after a Senior Acceleration Event, by giving not less than ten Business 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 5.14(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 each Second Lien Lender (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 Lien Lender 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 Lien Lender 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 the Second Lien Lender 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 Second Lien Lender; and
 - (ix) the Second Lien Lender 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 the Second Lien Agent, notify the Second Lien Agent of the sum of the amounts described in clauses 5.14(a)(iii)(A) to 5.14(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 the Second Lien Agent and the date of completion of any purchase made in accordance with this clause 5.14.

5.15 Right to make Cure Payments

- (a) Upon the occurrence of a Senior Financial Covenant Breach, the Senior Lender shall promptly and within 10 Business Days, notify the Second Lien Agent of the occurrence of the Senior Financial Covenant Breach (the "Relevant Senior Financial Covenant Breach").
- (b) Subject to the terms of this Agreement, if the Relevant Senior Financial Covenant Breach is continuing, the Second Lien Lenders shall (if they wish to exercise their rights under this clause 5.15) no later than the date falling 5 Business Days following receipt (in accordance with the terms of clause 35.4 (*Delivery*) of the notification referred to in paragraph (a) above, notify the Senior Lender and the Parent (a "Second Lien Cure Notification") that it wishes to make a Cure Payment in respect of the Relevant Senior Financial Covenant Breach.

- (c) If a Second Lien Lender gives a Second Lien Cure Notification and the Parent has not cured the Relevant Senior Financial Covenant Breach, such Second Lien Lender must procure that, not later than 5 Business Days after the date of the Second Lien Cure Notification, a Cure Payment is received by the Parent and applied in accordance with paragraph (d) below.
- (d) In the event that the Second Lien Lender elects to make a Cure Payment in accordance with the terms of this clause 5.15, then the amount of such Cure Payment will be in an amount equal to:
 - (i) in relation to a breach of clauses 23.2.4, 23.2.5, 23.2.6 and 23.2.7 of the Senior Facility Agreement, the Prepayment Cure Amount (calculated in accordance with clause 23.4 (*Equity Cure*) of the Senior Facility Agreement) for the Relevant Senior Financial Covenant Breach and shall be paid into the Covenant Cure Account; and
 - (ii) in relation to a breach of the financial covenant set out in clause 23.2.1 or 23.2.3 of the Senior Facility Agreement, the Cure Payment shall be of an amount which if deemed to have been made and the prepayment of the Senior Facility in accordance with clause 9.4 (*Mandatory Prepayment Account and Covenant Cure Account*) of the Senior Facility Agreement is deemed to have occurred on the first day of the Relevant Period (but on the basis that the Facility A Loans (as such term is defined in the Senior Facility Agreement) are prepaid first with the amount being applied against the Repayment Instalments (as such term is defined in the Senior Facility Agreement) on a pro rata basis with the remainder applied against the Facility B Loans (as such term is defined in the Senior Facility Agreement) such that the Total Debt Service and/or the Senior Debt Service (as appropriate) are recalculated for such Relevant Period and no breach of such financial covenant ratio has occurred.
- (e) Upon receipt of the Cure Payment into the Covenant Cure Account, the Parent shall prepay the Senior Facility in accordance with the provisions of clause 9.4 (*Mandatory Prepayment and Cure Account*) of the Senior Facility Agreement.
- (f) Upon receipt of the Cure Payment into the Covenant Cure Account the Senior Lender (acting reasonably) shall promptly confirm to the Parent and the Second Lien Agent in writing that it is satisfied that the calculations of the financial covenant (which was the subject of the Relevant Financial Covenant Breach) including the Cure Payment remedy the Relevant Financial Covenant Breach and shall be treated as remedied for all purposes under the Senior Finance Documents from the date of such confirmation.
- (g) Any Cure Payment made by a Second Lien Lender pursuant to this clause 5.15, shall:
 - (i) not accrue any interest or fees which require to be paid by any Debtor in cash (but may accrue interest which is capitalised at 14% per annum);
 - (ii) comply with all of the requirements of clause 5.8 (*Amendments and Waivers: Second Lien Creditors*) (other than paragraph (b)(i));
 - (iii) be created as an additional drawing of the Second Lien Facility Agreement; and
 - (iv) be treated as forming part of the Second Lien Liabilities.
- (h) Each Second Lien Lender agrees and acknowledges that it shall:

- (i) only be able to exercise its rights under this clause 5.15 if such rights or the Parent's rights under clause 22.4 (*Equity Cure*) of the Senior Facility Agreement have not been exercised in the twelve month period ending on the proposed date of the exercise of such rights and only on three occasions for all such cures from the date of this Agreement until the Senior Discharge Date;
 - (ii) not be entitled to exercise its rights under this clause 5.15 in respect of two successive Relevant Periods or if the Parent has exercised its rights under clause 22.4 (*Equity Cure*) of the Senior Facility Agreement in respect of an immediately successive Relevant Period; and
 - (iii) not be entitled to exercise its rights if the Parent has exercised its rights under clause 22.4 (*Equity Cure*) of the Senior Facility Agreement the maximum number of times provided for by that clause.
- (i) The Parent agrees and acknowledges to the Senior Lender that:
- (i) any Cure Payment made by a Second Lien Lender shall be deemed to reduce the maximum number of times which the Parent can exercise its rights under clause 22.4 (*Equity Cure*) of the Senior Facility Agreement pursuant to clause 22.4.3 (as if such Cure Payment had been an exercise by the Parent of its rights under clause 22.4 (*Equity Cure*) of the Senior Facility Agreement); and
 - (ii) any exercise of the Parent's rights under clause 22.4 (*Equity Cure*) of the Senior Facility Agreement shall reduce the maximum number of times which the Second Lien Lenders may exercise their rights under this clause 5.15.

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 Second Lien Agent give prior written consent to that Payment being made;
 - (B) 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 and which have maturity date falling after the Second Lien Termination Date; or

- (C) the Payment is expressly permitted by the Senior Facility Agreement (other than pursuant to paragraph (i) of the definition of "Permitted Payment" in the Senior Facility Agreement) and by the Second Lien Facility Agreement (other than pursuant to paragraph (h) of the definition of "Permitted Payment" in the Second Lien Facility Agreement); 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 and which have maturity date falling after the Second Lien Termination Date; 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 and the Second Lien 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 Lien 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 Lien Debt Documents,
 in which case the prior consent of the Senior Lender and the Second Lien Agent 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 4.5 (*Security: Senior Lender*) and by the Second Lien 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 4.5 (*Security: Senior Lender*) and by the Second Lien 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); or
- (e) as otherwise contemplated by clause 4.5 (*Security: Senior Lender*),

unless the prior written consent of the Senior Lender and the Second Lien Security Agent 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 Lien 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 Lien 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 the Second Lien Agent; or
 - (ii) the Second Lien Agent 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 Lien Agent (until the Second Lien Discharge Date), or unless the Senior Lender or the Second Lien 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 and the Second Lien Creditors 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 and the Second Lien Agent 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 5.14(b), any Third Ranking Noteholder may after a Senior Acceleration Event (and provided that a Second Lien Acceleration Event has also occurred), by giving not less than thirty days' notice to each of the Senior Lender and the Second Lien Agent, require the transfer to it (or to a nominee or nominees), in accordance with clause 31.3 (*Change of Senior Lender*) and clause 31.4 (*Change of Second Lien Lender*), of all, but not part, of the rights and obligations in respect of the Senior Lender Liabilities and the Second Lien 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 Lien Debt Documents;
 - (ii) any conditions relating to such a transfer contained in the Senior Finance Documents and the Second Lien Debt 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) the Second Lien Creditors are paid an amount equal to the aggregate of:
 - (A) all of the Second Lien Liabilities at that time (whether or not due), including all amounts that would have been payable under the Second Lien Debt Documents if the Second Lien Facilities 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 Lien Creditors as a consequence of giving effect to that transfer;
- (v) as a result of that transfer the Senior Lender and the Second Lien Creditors 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 Lien Creditors) in a form satisfactory to the Senior Lender and the Second Lien Creditors in respect of all losses which may be sustained or incurred by the Senior Lender or the Second Lien Creditors in consequence of any sum received or recovered by the Senior Lender or Second Lien Creditors 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 the Second Lien Lender 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 the Second Lien Lender, except that the Senior Lender and the Second Lien 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;
- (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;
- (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;
- (xi) the Third Ranking Noteholder which purchases the Second Lien Liabilities enters into a confidentiality agreement with the Second Lien 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;

- (xii) the Third Ranking Noteholder which purchases the Second Lien Liabilities provides an unconditional and irrevocable undertaking to the Second Lien 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 Second Lien Debt Documents will be so brought, made and prosecuted solely in the name of the relevant Third Ranking Noteholder; and
 - (xiii) the Third Ranking Noteholder which purchases the Second Lien Liabilities provides an indemnity to the Second Lien Lender against all claims, demands, proceedings, losses, damages, costs or expenses brought, made against or incurred by the Second Lien Lender on or after the date of the purchase as a result of or in connection with the enforcement of any rights under the Second Lien Debt Documents.
- (b) The Senior Lender and the Second Lien Agent 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 Lien Agent).
 - (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.
 - (d) It is agreed and acknowledged by all Parties that the Second Lien Lender may take all Enforcement Action under the Second Lien Debt 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 Second Lien Agent 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 and which have a maturity date falling after the Second Lien Termination Date; or
 - (C) the Payment is expressly permitted by the Senior Facility Agreement (other than pursuant to paragraph (i) of the definition of "Permitted Payment" in the Senior Facility Agreement) and by the Second Lien Facility Agreement (other than pursuant to paragraph (h) of the definition of "Permitted Payment" in the Second Lien Facility Agreement) 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)) and which have a maturity date falling after the Second Lien Termination Date; or
 - (B) the issue of Fourth Ranking Notes which constitute Permitted Additional Subordinated Debt (after the Second Lien 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 and the Second Lien 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 Lien 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 Lien Debt Documents and Third Ranking Debt Documents,

in which case the prior consent of the Senior Lender, the Second Lien Agent 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 4.5 (*Security: Senior Lender*) and by the Second Lien Security Documents provided in accordance with clause 5.10 (*Security: Second Lien 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 4.5 (*Security: Senior Lender*) and in respect of the Second Lien Liabilities in accordance with clause 5.10 (*Security: Second Lien 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*),

unless the prior written consent of the Senior Lender, the Second Lien Security Agent and the 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 Lien 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 Lien 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, Second Lien Agent and Majority Third Ranking Creditors; or
 - (ii) the Majority Third Ranking Creditors and, prior to the Second Lien Discharge Date the Second Lien Agent 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 Lien Security Agent (until the Second Lien Discharge Date) or the Third Ranking Security Agent thereafter (until the Third Ranking Discharge Date), or unless the Senior Lender, the Second Lien 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 Lien Creditors and the Third Ranking Creditors, the Second Lien Lender 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 Lien 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 Lien 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*), clause 31.4 (*Change of Second Lien Lender*) or clause 31.8 (*Change of Third Ranking Creditor*), of all, but not part, of the rights and obligations in respect of the Senior Lender Liabilities, the Second Lien Liabilities and the Third 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, the Second Lien Debt Documents and the Third Ranking Loan Note Instrument;
 - (ii) any conditions relating to such a transfer contained in the Senior Finance Documents, the Second Lien Debt Documents 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 Lien Creditors are paid an amount equal to the aggregate of:
 - (A) all of the Second Lien Liabilities at that time (whether or not due), including all amounts that would have been payable under the Second Lien Debt Documents if the Second Lien Facilities 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 Lien Creditors 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 Lien Creditors 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 Lien Creditors and the Third Ranking Noteholders) in a form satisfactory to the Senior Lender, each Second Lien Creditors and each Third Ranking Noteholder in respect of all losses which may be sustained or incurred by the Senior Lender, the Second Lien Creditors or any Third Ranking Noteholder in consequence of any sum received or recovered by the Senior Lender, the Second Lien Creditors 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, the Second Lien Creditors 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 Lien Creditors or Third Ranking Noteholders, except that the Senior Lender, the Second Lien Creditors 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;
 - (xii) the Fourth Ranking Noteholder which purchases the Second Lien Liabilities enters into a confidentiality agreement with the Second Lien 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;
 - (xiii) the Fourth Ranking Noteholder which purchases the Second Lien Liabilities provides an unconditional and irrevocable undertaking to the Second Lien 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 Second Lien Debt Documents will be so brought, made and prosecuted solely in the name of the relevant Fourth Ranking Noteholder; and
 - (xiv) the Fourth Ranking Noteholder which purchases the Second Lien Liabilities provides an indemnity to the Second Lien Lender against all claims, demands, proceedings, losses, damages, costs or expenses brought, made against or incurred by the Second Lien Lender on or after the date of the purchase as a result of or in connection with the enforcement of any rights under the Second Lien Debt Documents.
- (b) The Senior Lender, the Second Lien Agent 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 Lien Agent) 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.
- (d) It is agreed and acknowledged by all Parties that the Second Lien Agent may take all Enforcement Action under the Second Lien Debt 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 the Second Lien Creditors, any Third Ranking Noteholder and any Fourth Ranking Noteholder all seek to exercise their rights under clauses 5.14 (*Option to purchase: Second Lien Lenders*), 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 Lien Creditors 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 the Second Lien Creditors are proceeding in good faith and without undue delay to effect the transfers envisaged under clause 5.14 (*Option to purchase: Second Lien Lenders*) 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 and, if the Second Lien Security Agent is entitled to take Enforcement Action in accordance with clause 5.12 (*Permitted Enforcement: Second Lien Creditors*), the Second Lien Agent consents to that Payment being made;
- (ii) on or after the Senior Discharge Date and prior to the Second Lien Discharge Date, the Second Lien Agent consents 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 Lien Facility 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 Lien Facility Agreement, 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 and, if the Second Lien Security Agent is entitled to take Enforcement Action in accordance with clause 5.12 (*Permitted Enforcement: Second Lien Creditors*), the Second Lien Agent consents to that action;

- (ii) on or after the Senior Discharge Date and prior to the Second Lien Discharge Date the Second Lien Agent 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 Lien Facility 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 Lien Facility Agreement, 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 Lien Discharge Date, the prior written consent of the Second Lien Agent and, prior to the Senior Discharge Date, the prior written consent of the Senior Lender and the Second Lien Agent 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 the Second Lien Agent (until the Second Lien 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 Lien Creditors, the Third Ranking Creditors, the Fourth Ranking Creditors, Creditors, 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 of an amount due under clause 16.1 (*Monitoring fee and expenses*) of the Investment Agreement in an aggregate amount not to exceed £100,000 per annum (exclusive of VAT);
- (b) the Payment is a Permitted Payment (other than pursuant to paragraph (i) of that definition in the Senior Facility Agreement or paragraph (h) of that definition in the Second Lien Facility Agreement) or a Permitted Series A Loan Note Payment (each as defined in the Senior Facility Agreement and the Second Lien 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 (i) of the definition of "Permitted Payment" in the Senior Facility Agreement) or permitted by the Second Lien Facility Agreement (other than

paragraph (h) of the definition of "Permitted Payment" in the Second Lien Facility Agreement); 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 Lien Discharge Date, the Second Lien Agent and, prior to the Senior Discharge Date, the Senior Lender and the Second Lien Agent, 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 Second Lien Agent, 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 Lien Discharge Date, the prior consent of the Second Lien Agent, 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 Lien Discharge Date, the Second Lien Agent and, prior to the Senior Discharge Date, the Senior Lender and the Second Lien Agent is obtained; or
 - (ii) the amendment or waiver is permitted by clause 24.32 (*Amendments*) of the Senior Facility Agreement and clause 23.32 (*Amendments*) of the

Second Lien 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 Lien 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 Second Lien Agent, 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) the Second Lien 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) or by the Second Lien Agent (until the Second Lien 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 Lien Creditors, the Third Ranking Creditors, the Fourth Ranking Creditors, 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 the Second Lien 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 Relevant Creditor (or to such other person as the Relevant Creditor shall direct) until the Final Priority Ranking Discharge Date.
- (b) The Relevant Creditor 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 Lien 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 Lien 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 Lien Security Agent (or to such other person as the Second Lien Security Agent shall direct) until the Second Lien Discharge Date.
- (d) The Second Lien 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 Relevant Creditor and thereafter prior to the Second Lien Discharge Date to the Second Lien 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, in each case for application in accordance with clause 26 (*Application of Proceeds*).

10.3 Non-cash distributions

If the Senior Lender, the Second Lien Security Agent or any other Second Lien 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:

- (a) each Creditor (other than the Senior Lender and the Second Lien Creditors) irrevocably authorises, prior to the Senior Discharge Date, the Relevant Creditor; and
- (b) thereafter each Creditor irrevocably authorises prior to the Second Lien Discharge Date, the Second Lien 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:
 - (i) take any Enforcement Action (in accordance with the terms of this Agreement) against that member of the Group;
 - (ii) demand, sue, prove and give receipt for any or all of that member of the Group's Liabilities;
 - (iii) collect and receive all distributions on, or on account of, any or all of that member of the Group's Liabilities; and
 - (iv) file claims, take proceedings and do all other things that, prior to the Senior Discharge Date the Relevant Creditor and thereafter, prior to the Second Lien Discharge Date, the Second Lien 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 Relevant Creditor requests in order to give effect to this clause 10; and
- (b) if the Relevant Creditor is not entitled to take any of the actions contemplated by this clause 10 or if the Relevant Creditor requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Relevant

Creditor or grant a power of attorney to the Relevant Creditor (on such terms as the Relevant Creditor may reasonably require) to enable the Relevant Creditor to take such action,

and thereafter will until the Second Lien Discharge Date:

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

11.2 Permitted assurance and receipts

(a) Nothing in this Agreement shall restrict the ability of any Senior Lender, Second Lien 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 Lien Facility Agreement, the Third Ranking Loan Note Instrument, the Fourth Ranking Loan Note Instrument or the Subordinated Documents, as applicable and that Senior Lender, Second Lien 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.

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 Lien Agent (prior to the Second Lien Discharge Date) or thereafter to the Third Ranking Creditor (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 Lien Security Agent (until the Second Lien 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 Lien Security Agent (until the Second Lien 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 Lien Security Agent (until the Second Lien 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 Lien Security Agent thereafter (until the Second Lien 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 Lien Security Agent thereafter (until the Second Lien 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 Lien Security Agent (until the Second Lien 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 Lien Security Agent (until the Second Lien 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 Lien Security Agent (until the Second Lien 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 Lien Security Agent (until the Second Lien 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 Lien Security Agent (until the Second Lien 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 Lien Security Agent (until the Second Lien 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 Lien Security Agent thereafter (until the Second Lien 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 and subject to clause 4.6 (*Enforcement: Senior Lender*), 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 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 LIEN TRANSACTION SECURITY

14.1 Enforcement of Second Lien Security

Subject to clause 5.12 (*Permitted Enforcement: Second Lien Creditors*), prior to the Senior Discharge Date the Second Lien Security Agent shall not have any power to enforce, nor have recourse to, any of the Second Lien Transaction Security or to exercise any right, power, authority or discretion arising under the Second Lien Security Documents.

14.2 Manner of enforcement

If the Second Lien Transaction Security is being enforced in accordance with clause 5.12 (*Permitted Enforcement: Second Lien Creditors*), the Second Lien Security Agent shall enforce the Second Lien 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 Lien Security Agent) as the Second Lien Lenders shall instruct or, in the absence of any such instructions, as the Second Lien Security Agent considers in its discretion to be appropriate.

14.3 Exercise of voting rights

After the Senior Discharge Date but prior to the Second Lien Discharge Date (or at any time when the Second Lien Creditors are entitled to take Enforcement Action in accordance with clause 5.12(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 Lien Security Agent; and

- (b) the Second Lien Security Agent shall give instructions for the purposes of clause 14.3(a) in accordance with any instructions given to it by the Second Lien Lenders.

14.4 Waiver of rights

To the extent permitted under applicable law and subject to clause 14.2 (*Manner of enforcement*), clause 19.4 (*Fair value*) and clause 26 (*Application of Proceeds*), each of the Second Lien Secured Parties and the Debtors waives all rights it may otherwise have to require that the Second Lien 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 Lien Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Second Lien Secured Obligations is so applied.

14.5 Enforcement through Second Lien Security Agent only

The Second Lien 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 Lien Security Documents except through the Second Lien Security Agent.

14.6 Duties owed

Each of the Creditors and the Debtors acknowledges that, in the event that the Second Lien Security Agent enforces or is instructed to enforce any Transaction Security prior to the Second Lien Discharge Date, the duties of the Second Lien Security Agent and of any Receiver or Delegate owed to the other Creditors in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to clause 19.4 (*Fair value*), be no different to or greater than the duty that is owed by the Second Lien Security Agent, Receiver or Delegate to the Debtors under general law.

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 Lien 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 Lien Debt Documents, 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 Lien 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 Lien 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 Lien 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 Lien Secured Party or Debtor) but subject to clause 18.2(e):
 - (i) to release the Second Lien 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 Lien 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 Lien 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 Lien 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 Lien 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 Lien 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 Lien 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 Lien 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 Lien 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 Liabilities or the Second Lien Liabilities then those Disposal Proceeds shall be applied in or towards Payment of:

- (a) first, the Senior Liabilities in accordance with the terms of the Senior Facility Agreement (without any obligation to apply those amounts towards the Second Lien Liabilities); and
- (b) then, after the discharge in full of the Senior Liabilities, the Second Lien Liabilities in accordance with the terms of the Second Lien 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

Subject to clause 19.4 (*Fair value*), 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 Lien 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 Lien 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 Lien 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 (other than Borrowing Liabilities under the Second Lien Debt Documents);
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
- (ii) any Senior Transaction Security, Second Lien 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 Lien Creditor (other than in respect of Borrowing Liabilities), 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 (other than Borrowing Liabilities under the Second Lien Debt Documents);
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
- (ii) any Senior Transaction Security, Second Lien 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 Lien Creditor (other than in respect of Borrowing Liabilities), 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 (other than Borrowing Liabilities under the Second Lien Debt Documents); 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 Lien Creditor or a Second Lien 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 Lien Creditor or a Second Lien 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 (other than Borrowing Liabilities under the Second Lien Debt Documents); 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 Lien Creditor, a Second Lien 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 Lien Creditors, the Third Ranking Creditors and the Fourth Ranking Creditors; and
- (B) all or part of any other Liabilities (other than Borrowing Liabilities under the Second Lien Debt Documents) 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 Lien Secured Obligations resulting from that Appropriation, had not occurred.

19.4 Fair value

- (a) In the case of:

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

effected by, or at the request of, the Senior Lender, the Senior Lender shall obtain a fair market price 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 price).

- (b) As between the Senior Lender, the Creditors (other than the Second Lien Creditors) and the Debtors it is agreed that:
 - (i) the Senior Lender may seek to satisfy the requirement of clause 19.4(a) in any manner; and
 - (ii) without prejudice to the generality of paragraph 19.4(a) above, the requirement in clause 19.4(a) shall be satisfied (and as between the Creditors (other than the Second Lien Creditors) and the Debtors shall be conclusively presumed to be satisfied) and the Senior Lender shall be taken to have discharged all its obligations in this respect under this

Agreement, the other Debt Documents and generally at law if one or more of the conditions set out in paragraph 19.4(c) below are met.

- (c) As between the Senior Lender and the Second Lien Creditors, it is agreed that the Senior Lender is not authorised to release any Debtor, Subsidiary of a Debtor or Holding Company of a Debtor from any Guarantee Liabilities or any Transaction Security in relation to the Second Lien Liabilities unless:
- (i) that Distressed Disposal or Liabilities Sale raises sufficient cash proceeds to repay the Senior Liabilities and the Second Lien Liabilities in full;
 - (ii) that Distressed Disposal or Liabilities Sale is made pursuant to any process or proceedings approved or supervised by or on behalf of any court of law;
 - (iii) that Distressed Disposal or Liabilities Sale is made pursuant to a Competitive Sales Process in relation to which:
 - (A) the Second Lien Creditors are entitled to participate as bidders or financiers to the prospective purchasers and have the right to receive all relevant sales information (except in each case where the Financial Adviser advises the Relevant Creditor that the exercise of any such right would prejudice the Competitive Sales Process); and
 - (B) the Senior Lender is entitled to participate as bidder or financier to the prospective purchasers and has the right to receive the all relevant sales information (except in each case where the Financial Adviser advises the Relevant Creditor that the exercise of any such right would prejudice the Competitive Sales Process), provided that:
 - (1) the Senior Lender is satisfied (acting reasonably and in good faith) that there is no third party bid in relation to which the cash consideration of the relevant Distressed Disposal is sufficient to repay the Senior Liabilities in full; and
 - (2) a Fairness Opinion has been delivered in accordance with clause 19.4(c)(iv) below; or
 - (iv) that Distressed Disposal or Liabilities Sale is made by, at the direction of or under the control of, a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer (or any analogous officer in any jurisdiction) appointed
 - (v) a Financial Adviser appointed by the Relevant Creditor pursuant to clause 19.5 (*Appointment of Financial Adviser*) has delivered a Fairness Opinion to the Relevant Creditor in respect of that Distressed Disposal or Liabilities Sale.
- (d) In the case of a Distressed Disposal or Liabilities Acquisition which is effected by way of a pre pack administration process (a "Pre Pack Deal"), the Senior Lender shall not be entitled to participate as bidder or financier to the prospective purchasers, unless the Second Lien Agent has been given written notice in accordance with clause 35 (*Notices*) of the opportunity to match the proposed purchase price under the Pre Pack Deal (the "Matching Notice") and to the extent that the Second Lien Creditors match the proposed Pre Pack Deal in all material respects (which shall include, without limitation, the consideration to be paid, the payment terms, any security proposed in relation to any deferred consideration and the liability and recourse to the Senior Lender and/or any administrator, receiver, liquidator or similar officer in connection with the Pre-Pack Deal) and such offer is made within five Business Days of the

Matching Notice becoming effective in accordance with clause 35.4 (*Delivery*), such Pre Pack Deal shall be concluded with the Second Lien Creditors (either as purchaser or as financiers to the prospective purchasers).

- (e) Any administrator appointed in relation to this clause 19.4 (*Fair value*) shall be a Qualifying Administrator.

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 LIEN DISTRESSED DISPOSALS AND APPROPRIATION

20.1 Facilitation of Distressed Disposals and Appropriation

Subject to clause 20.5 (*Restriction on Second Lien enforcement*), if a Distressed Disposal or an Appropriation is being effected after the Senior Discharge Date or pursuant to clause 5.12 (*Permitted Enforcement: Second Lien Creditors*), by the Second Lien Security Agent, the Second Lien Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, Senior Secured Party, other Second Lien 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 Lien 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 Senior Transaction Security, Second Lien 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 Lien 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 (other than Borrowing Liabilities under the Senior Finance Documents);
 - (B) its Guarantee Liabilities; and

(C) its Other Liabilities;

- (ii) any Senior Transaction Security, Second Lien 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 the Senior Lender, the Second Lien Creditors, 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 (other than Borrowing Liabilities under the Senior Finance Documents);
- (B) its Guarantee Liabilities; and
- (C) its Other Liabilities;

(ii) any Senior Transaction Security, Second Lien 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 the Senior Lender, the Second Lien Creditors, 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 Lien 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 Lien 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 Lien 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 Lien 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 Lien 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 Lien Creditors; and
- (B) all or part of any other Liabilities (other than Liabilities owed to the Senior Lender) 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 Lien 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

Subject to clause 20.5, 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 Lien 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 Lien Creditors 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 Lien 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 Lien Creditors, the Second Lien Security Agent shall take reasonable care to obtain a fair market value having regard to the prevailing market conditions (though the Second Lien 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 Restriction on Second Lien enforcement

If, prior to the Senior Discharge Date, a Distressed Disposal or a Liabilities Sale is being effected at a time when the Majority Second Lien Lenders are entitled to give, and have given, instructions under clause 5.12 (*Permitted Enforcement: Second Lien Creditors*) on which the Second Lien Security Agent is acting:

- (a) the Second Lien Security Agent is not authorised to release any Debtor, Subsidiary or Holding Company from any Borrowing Liabilities or Guarantee Liabilities owed to the Senior Lender unless those Borrowing Liabilities or Guarantee Liabilities and any other Senior Liabilities will be paid (or repaid) in full following that release; and
- (b) no Distressed Disposal or Liabilities Sale may be made for Non Cash Consideration unless (i) the amount of Cash Proceeds received pursuant to such Distressed Disposal or Liabilities Sale exceeds the Senior Liabilities; or (ii) the prior written consent of the Senior Lender is obtained.

20.6 Appointment of Financial Adviser

Without prejudice to clause 28.6 (*Rights and discretions*) and without any obligation to do so, the Second Lien 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*).

20.7 Second Lien Security Agent's actions

For the purposes of clauses 20.1 (*Facilitation of Distressed Disposals and Appropriation*), 20.2 (*Form of consideration Form of consideration for Distressed Disposals and Debt Disposals*), 20.3 (*Proceeds of Distressed Disposals and Debt Disposals*), 20.4 (*Fair value*), clause 20.5 (*Restriction on Second Lien enforcement*) and 20.6 (*Appointment of Financial Adviser*) the Second Lien Security Agent shall act:

- (a) on the instructions of the Majority Second Lien Lenders; or
- (b) in the absence of any such instructions, as the Second Lien 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 the Senior Lender) 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 Final Priority Ranking Discharge Date and 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 the Senior Lender) 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 Lien 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 or as permitted pursuant to clause 5.12 (*Permitted Enforcement: Second Lien Creditors*) the Second Lien Security Agent or after the Second Lien 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 Lien Lenders in the case of the Second Lien 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 or where clause 5.12 (*Permitted Enforcement: Second Lien Creditors*) applies the Second Lien Security Agent or after the Second Lien 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 Lien Security Agent pursuant to clause 20.6 (*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 Lien Security Agent.
- (d) Subject to clause 23.3(e) and to clause 23.4 (*Alternative to Non-Cash Consideration*), if, pursuant to clause 26.1 (*Order of application*), the Second Lien Security Agent receives Non-Cash Recoveries for application towards the discharge of any Liabilities, the Second Lien Security Agent shall apply those Non-Cash Recoveries (in

respect of the Second Lien Liabilities) in accordance with the Second Lien Facility Agreement as if they were Cash Proceeds.

- (e) The Second Lien Security Agent 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 Second Lien 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 Second Lien Security Agent shall think fit for later application pursuant to clause 23.3(a).
- (f) On the occurrence of the Final Priority Ranking Discharge Date, the Second Lien Security Agent shall promptly transfer all Non-Cash Recoveries it holds to the Third Ranking Security Agent.
- (g) 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, the Second Lien Security Agent 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 Lien 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, the Second Lien Security Agent or relevant Security Agent and supplies such supporting evidence as that Security Agent may reasonably require,that Senior Lender, Second Lien Creditor, Third Ranking Creditor or Fourth Ranking Creditor shall be a "Cash Only Creditor" and the Non-Cash Recoveries to which it is entitled shall be "Retained Non-Cash".
- (c) To the extent that, in relation to any distribution of Non-Cash Recoveries, there is a Cash Only Creditor:
 - (i) the Senior Lender, the Second Lien Security Agent 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, the Second Lien Security Agent 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) The Second Lien Creditors, Third Ranking Creditor and Fourth Ranking Creditor shall, following a request by the Second Lien Security Agent (acting in accordance with clause 20.7 (*Second Lien 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 Lien Security Agent (until the Second Lien 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. ACQUISITION AND INSURANCE CLAIMS

24.1 Facilitation of claims

- (a) So long as the requirements of clause 24.2 (*Mandatory prepayment of Proceeds*) and, in the case of a claim against the provider of any Report, the requirements of clause 24.3 (*Recoveries from Report Providers*) are met, if any claim relating to an Acquisition or 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 Lien Transaction Security, the Third Ranking Transaction Security and/or the Fourth Ranking Transaction Security, the Senior Lender, Second Lien 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 Lien Security Agent shall promptly on the request of the Senior Lender and prior to the Second Lien Discharge Date the Third Ranking Security Agent and Fourth Ranking Security Agent shall promptly on the request of the Second Lien 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 Lien Transaction Security (in the case of the Second Lien 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 Lien Facility Agreement, 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 Liabilities or the Second Lien Liabilities then those Proceeds shall be applied in or towards Payment of:

- (a) first, the Senior Liabilities in accordance with the terms of the Senior Facility Agreement (without any obligation to apply those amounts towards the Second Lien Liabilities); and
- (b) then, after discharge in full of the Senior Liabilities, the Second Lien Liabilities in accordance with the terms of the Second Lien 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 and the Second Lien 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 Lien Security Agent or, after the Second Lien 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 Lien 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 and the Second Lien Security Agent or after the Senior Discharge Date, the Second Lien Security Agent or after the Second Lien 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 and the Second Lien Security Agent or, after the Second Lien 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 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 Lien Security Agent or, after the Second Lien 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 (*Acquisition and 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 Lien Security Agent

Prior to the Senior Discharge Date where the Second Lien Creditors are enforcing pursuant to clause 5.12 (*Permitted Enforcement: Second Lien Creditors*) or after the Senior Discharge Date, each Creditor and Debtor will:

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

provided that the proceeds of those disposals are applied in accordance with clause 18 (*Non-Distressed Disposals*) or clause 20 (*Second Lien 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 (*Acquisition and 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 (*Acquisition and 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 Lien 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 Lien 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 Relevant Creditor on trust and thereafter the Relevant Creditor shall promptly transfer the balance of the Recoveries to the Second Lien Security Agent to be held prior to the Second Lien Discharge Date (together with any other amounts the Second Lien 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 Lien Transaction Security) by the Second Lien Security Agent on trust and thereafter the Second Lien 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 Lien Security Agent or, after the Second Lien 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) any Receiver or any Delegate appointed by the Senior Lender under or in respect of the Senior Finance Documents; and
 - (ii) the Second Lien Security Agent, any Receiver or any Delegate appointed by it under or in respect of any Second Lien 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 Relevant Creditor in connection with any realisation or enforcement of the Senior Transaction Security or the Second Lien Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Relevant Creditor under clause 10.5 (*Further assurance - Insolvency Event*);
- (c) in payment or distribution to the Senior Lender for application towards the discharge of:
 - (i) the Senior Liabilities (other than Hedging Liabilities) up to the Senior Priority Limit; and
 - (ii) the Senior Priority Hedging Liabilities,
 in accordance with the terms of the Senior Finance Documents on a *pari passu* basis;
- (d) in payment or distribution to the Second Lien Creditors for application towards the discharge of the Second Lien Liabilities in accordance with the terms of the Second Lien Debt Documents;
- (e) in payment or distribution of the balance of the Senior Liabilities (if any);
- (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 (and in relation to the Third Ranking Notes, any application shall be in accordance with the Third Ranking Loan Note Instrument);
- (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 Lien 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.

26.2 Prospective liabilities

- (a) Prior to the Senior Discharge Date, following a Distress Event the Relevant Creditor 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 Relevant Creditor with such financial institution (including itself) as the Relevant Creditor 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 Relevant Creditor shall think fit for later application under clause 26.1 (*Order of application*) in respect of:

- (A) any sum to any Relevant Creditor, any Receiver or any Delegate; and

- (B) any part of the Liabilities,

that the Relevant Creditor 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 Lien Discharge Date, following a Distress Event the Second Lien 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 Lien Security Agent with such financial institution (including itself) as the Second Lien 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 Lien Security Agent shall think fit for later application under clause 26.1 (*Order of application*) in respect of:

- (A) any sum to any Second Lien Creditor, any Receiver or any Delegate;
and
- (B) any part of the Liabilities,

that the Second Lien 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 Relevant Creditor 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 Relevant Creditor with such financial institution (including itself) and for so long as the Relevant Creditor shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Relevant Creditor's discretion in accordance with the provisions of this clause 26.
- (b) After the Senior Discharge Date and prior to the Second Lien Discharge Date, prior to the application of the proceeds of the Security Property in accordance with clause 26.1 (*Order of application*) the Second Lien 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 Lien Security Agent with such financial institution (including itself) and for so long as the Second Lien 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 Lien Lender'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 Second Lien Security Agent's spot rate of exchange or 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 the Senior Lender's Spot Rate of Exchange (or the Second Lien Security Agent's spot rate of exchange or 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 Lien Discharge Date, the Second Lien 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 Lien 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, the Second Lien Security Agent or a Security Agent shall be a good discharge, to the extent of that payment or distribution, by the Senior Lender, the Second Lien Security Agent 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 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.
- (c) 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 Lien 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 Lien 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 Lien 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 Lien 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 Lien Security Agent promptly following the occurrence of the Senior Discharge Date.

28. THE SECOND LIEN SECURITY AGENT

28.1 Second Lien Security Agent as trustee

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

28.2 Instructions - Second Lien Security Agent

- (a) The Second Lien Security Agent shall:
 - (i) subject to clause 28.2(d) and clause 28.2(e), exercise or refrain from exercising any right, power, authority or discretion vested in it as Second Lien Security Agent in accordance with any instructions given to it by the Majority Second Lien Lenders; 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 Lien Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Second Lien Lenders (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 Lien 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 Lien Security Agent by the Majority Second Lien Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Second Lien 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 Lien Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Second Lien Security Agent's own position in its personal capacity as opposed to its role of Senior Security Agent for the Second Lien Secured Parties including, without limitation, clauses 28.5 (*No duty to account*) to clause 28.9 (*Exclusion of liability*), clause 28.12 (*Confidentiality*) to clause 28.19 (*Custodians and nominees*) and clause 28.22 (*Acceptance of title*) to clause 28.25 (*Disapplication of Trustee Acts*);

- (iv) in respect of the exercise of the Second Lien 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 Lien Lenders would (in the Second Lien Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Second Lien 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 Lien 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 Lien Security Agent shall other than where clause 28.2(d)(iv)(B) applies, do so having regard to the interests of all the Second Lien Secured Parties.
- (g) The Second Lien 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 13 (*Enforcement of Senior Transaction Security*) and the remainder of this clause 28.2, in the absence of instructions, the Second Lien Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

28.3 Duties of the Second Lien Security Agent

- (a) Except where a Debt Document specifically provides otherwise, the Second Lien Security Agent 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 Second Lien Security Agent) is required to calculate a Common Currency Amount, the Second Lien Security Agent shall upon a request by that Party, promptly notify that Party of the relevant Second Lien Lender's Spot Rate of Exchange.
- (c) The Second Lien 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).
- (d) The Second Lien Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.

- (e) The Second Lien Security Agent shall promptly:
- (i) forward to each Second Lien Facility Agent and to each Hedge Counterparty a copy of any document received by the Second Lien 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 Lien Security Agent for that Party by any other Party.
- (f) Without prejudice to clause 34.2 (*Notification of prescribed events*), if the Second Lien Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Second Lien Creditors.

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

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

28.5 No duty to account

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

28.6 Rights and discretions

- (a) The Second Lien 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 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 Lien 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 28.6(a)(iii)(A), may assume the truth and accuracy of that certificate.
- (b) The Second Lien Security Agent may assume 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 Second Lien 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 28.6(c) or clause 28.6(e) the Second Lien Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Second Lien Security Agent if the Second Lien Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Second Lien 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 Lien 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 Lien Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Second Lien 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 Lien Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless this Agreement expressly specifies otherwise, the Second Lien 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 Lien 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 Lien 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.

28.7 Responsibility for documentation

None of the Second Lien 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 Lien Creditors, 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 Lien 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 Lien 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.

28.8 No duty to monitor

The Second Lien 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.

28.9 Exclusion of liability

- (a) Without limiting clause 28.9(b) (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Second Lien Security Agent, any Receiver or Delegate), none of the Second Lien 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 Lien 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 Lien 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 Lien 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 Lien Security Property unless caused by its own gross negligence or wilful default; or

- (iv) without prejudice to the generality of clauses 28.9(a)(i) to 28.9(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 Lien Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Second Lien Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Second Lien 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 Lien Security Property and any officer, employee or agent of the Second Lien 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 Lien Security Agent to carry out:

- (i) any "know your customer" or other checks in relation to any person; or

- (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Primary Creditor,

on behalf of any Second Lien Creditor and each Second Lien Creditor confirms to the Second Lien 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 Lien Lender.

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

28.10 Second Lien Creditors' Indemnity to the Second Lien Security Agent

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

28.11 Resignation of the Second Lien Security Agent

- (a) The Second Lien Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Second Lien Creditors and the Parent.
- (b) Alternatively the Second Lien Security Agent may resign by giving 30 days' notice to the Second Lien Creditors and the Parent, in which case the Majority Second Lien Lenders may appoint a successor Second Lien Security Agent.
- (c) If the Second Lien Creditors have not appointed a successor Second Lien Security Agent in accordance with clause 28.11(b) within 20 days after notice of resignation was given, the retiring Second Lien Security Agent may appoint a successor Second Lien Security Agent.
- (d) The retiring Second Lien Security Agent shall, at its own cost, make available to the successor Second Lien Security Agent such documents and records and provide such assistance as the successor Second Lien Security Agent may reasonably request for the purposes of performing its functions as Second Lien Security Agent under the Debt Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Second Lien 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 Lien Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Second Lien Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Second Lien Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under clause 28.23(b) and clause 28.11(d)) but shall remain entitled to the benefit of this clause 28 and clause 33.1 (*Indemnity to the Senior Lender, the Second Lien Security Agent 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 Second Lien Lenders may, by notice to the Second Lien Security Agent, require it to resign in accordance with clause 28.11(b). In this event, the Second Lien Security Agent shall resign in accordance with clause 28.11(b) but the cost referred to in clause 28.11(d) shall be for the account of the Parent.

28.12 Confidentiality

- (a) In acting as trustee for the Second Lien Secured Parties, the Second Lien 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 Lien Security Agent, it may be treated as confidential to that division or department and the Second Lien 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 Lien 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.

28.13 Information from the Creditors

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

28.14 Credit appraisal by the Second Lien 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 Lien Secured Party confirms to the Second Lien 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 Lien 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 Lien Security Property;
- (c) whether that Second Lien 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 Lien 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 Lien Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Second Lien 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 Lien Transaction Security or the existence of any Security affecting the Charged Property.

28.15 Second Lien Security Agent's management time and additional remuneration

- (a) Any amount payable to the Second Lien Security Agent under clause 28.10 (*Second Lien Creditors' Indemnity to the Second Lien Security Agent*), clause 32 (*Costs and expenses*) or clause 33.1 (*Indemnity to the Senior Lender, the Second Lien Security Agent and Security Agents*) shall include the cost of utilising the Second Lien 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 Lien Security Agent may notify to the Parent and the Second Lien Creditors, and is in addition to any other fee paid or payable to the Second Lien Security Agent.
- (b) Without prejudice to clause 28.15(a), in the event of:
 - (i) a Second Lien Default; or
 - (ii) the Second Lien Security Agent being requested by a Debtor or the Majority Second Lien Lenders to undertake duties which the Second Lien Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Second Lien Security Agent under the Debt Documents; or
 - (iii) the Second Lien Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Second Lien Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to clause 28.15(c).

- (c) If the Second Lien Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in clause 28.15(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 Lien Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Second Lien 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.

28.16 Reliance and engagement letters

The Second Lien 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).

28.17 No responsibility to perfect Second Lien Transaction Security

The Second Lien 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 Lien Transaction Security;

- (c) register, file or record or otherwise protect any of the Second Lien Transaction Security (or the priority of any of the Second Lien 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 Lien 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 Lien 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 Lien Security Document.

28.18 Insurance by Second Lien Security Agent

- (a) The Second Lien 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 Lien 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 Lien 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 Second Lien Creditors request it to do so in writing and the Second Lien Security Agent fails to do so within fourteen days after receipt of that request.

28.19 Custodians and nominees

The Second Lien 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 Lien 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 Lien 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.

28.20 Delegation by the Second Lien Security Agent

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

28.21 Additional Second Lien Security Agents

- (a) The Second Lien 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 Lien Secured Parties;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Second Lien Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Second Lien Security Agent shall give prior notice to the Parent and the Second Lien Creditors of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Second Lien 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 Lien 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 Lien Security Agent.

28.22 Acceptance of title

The Second Lien 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.

28.23 Winding up of trust

If the Second Lien Security Agent, with the approval of the Majority Second Lien Lenders, determines that:

- (a) all of the Second Lien Secured Obligations and all other obligations secured by the Second Lien Security Documents have been fully and finally discharged; and
- (b) no Second Lien 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 Lien Debt Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Second Lien Security Agent shall release, without recourse or warranty, all of the Second Lien Transaction Security and the rights of the Second Lien Security Agent under each of the Second Lien Security Documents; and
- (ii) any Third Ranking Security Agent which has resigned pursuant to clause 28.11 (*Resignation of the Second Lien Security Agent*) shall release, without recourse or warranty, all of its rights under each Third Ranking Security Document.

28.24 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.

28.25 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.

28.26 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 Lien 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 Lien 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 Lien 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 Lien Security Agent of the failure to comply and being requested to comply.

28.27 Title Documents

The Second Lien 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 Lien 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 29.2(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 Lender, Second Lien 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, the Senior Lender, Second Lien 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 Secured 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 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, the Second Lien Security Agent 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, the Second Lien Security Agent 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 Lender, Second Lien 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, the Senior Lender, Second Lien 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 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, the Second Lien Security Agent 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*, the Second Lien Security Agent 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, Second Lien Lender, 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 31.13 (*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;
- (B) any assignee or transferee has acceded to this Agreement, as the Senior Lender, pursuant to clause 31.13 (*Creditor Accession Undertaking*); and
- (C) the Senior Lender has given five Business Days' notice to the Second Lien Agent.

31.4 Change of Second Lien Lender

(a) A Second Lien Lender 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 Lien Facility Agreement; and
- (B) any assignee or transferee has acceded to this Agreement, as the Second Lien Lender, pursuant to clause 31.13 (*Creditor Accession Undertaking*); and
- (C) the Second Lien Lender has given five Business Days' notice to the Senior Lender; and

in respect of any assignment or transfer of rights or rights and obligations by a Second Lien Lender, the relevant Second Lien Lender has involved the Senior Lender in the consultations with the Parent regarding the proposed assignment or transfer pursuant to clause 25 (*Changes to the Lenders*) of the Second Lien Facility Agreement (to the extent such consultation provisions apply) unless:

- (A) such assignment or transfer is to another Second Lien Lender or an Affiliate of a Second Lien Lender;
- (B) if the relevant Second Lien Lender is a fund, such assignment or transfer is to a fund which is a Related Fund (as such term is defined in the Second Lien Facility Agreement in its form as at the date of this Agreement); or
- (C) such assignment or transfer is made at a time when a Second Lien Event of Default is continuing.

31.5 Change of Second Lien Agent

No person shall become a Second Lien Agent unless at the same time it accedes to this Agreement as a Second Lien Agent (as the case may be), pursuant to clause 31.13 (*Creditor Accession Undertaking*).

31.6 Change of Second Lien Security Agent

No person shall become a Second Lien Security Agent unless at the same time it accedes to this Agreement as a Second Lien Security Agent (as the case may be), pursuant to clause 28 (*The Second Lien Security Agent*) and clause 31.13 (*Creditor Accession Undertaking*).

31.7 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 31.13 (*Creditor Accession Undertaking*).

31.8 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 31.13 (*Creditor Accession Undertaking*).

31.9 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 31.13 (*Creditor Accession Undertaking*).

31.10 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 31.13 (*Creditor Accession Undertaking*).

31.11 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 31.13 (*Creditor Accession Undertaking*).

31.12 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 31.13 (*Creditor Accession Undertaking*).

31.13 Creditor Accession Undertaking

With effect from the date of acceptance by the Senior Lender (or the Second Lien Security Agent after the Senior Discharge Date or the Third Ranking Security Agent after the Second Lien 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 Lien Security Agent following the Senior Discharge Date or the Third Ranking Security Agent following the Second Lien 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.

31.14 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 31.14(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 Lien Security Agent after the Senior Discharge Date or the Third Ranking Security Agent after the Second Lien 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.

31.15 Additional parties

- (a) Each of the Parties appoints the Senior Lender (or the Second Lien Security Agent following the Senior Discharge Date or the Third Ranking Security Agent following the Second Lien 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.

31.16 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 Lien Security Agent or, following the Second Lien 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 Lien Security Agent following the Senior Discharge Date or the Third Ranking Security Agent following the Second Lien 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 Lien 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 Discharge Date has not occurred, the Senior Lender notifies the Second Lien 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 Lien Borrower and the Second Lien Creditors notify the Second Lien Security Agent that that Debtor is not a Second Lien 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 Lien Security Agent after the Senior Discharge Date or the Third Ranking Security Agent after the Second Lien 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, the Second Lien Security Agent 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, the Second Lien Security Agent 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, the Second Lien Security Agent 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, the Second Lien Security Agent 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, the Second Lien Security Agent 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, the Second Lien Security Agent 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, the Second Lien Security Agent 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, the Second Lien Security Agent and each Security Agent against any cost, loss or liability the Senior Lender, the Second Lien Security Agent 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 (or three per cent (3%) in the case of the Second Lien Security Agent) over the rate at which the Senior Lender, the Second Lien Security Agent 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, the Second Lien Security Agent 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, the Second Lien Security Agent and Security Agents

- (a) Each Debtor jointly and severally shall promptly indemnify the Senior Lender, the Second Lien Security Agent 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, the Second Lien Security Agent 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, the Second Lien Security Agent 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 Lien 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 Lien 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, the Second Lien Security Agent, each Security Agent and every Receiver and Delegate may, in priority to any payment to the Senior Secured Parties, Second Lien 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 Lien Creditors

The Parent shall promptly and as principal obligor indemnify the Second Lien Creditors 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 Lien 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 Lien 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 Lien Creditor, Third Ranking Creditor, Fourth Ranking Creditor, the Second Lien Security Agent, the Third Ranking Security Agent and the Fourth Ranking Security Agent to each other (whether or not through the Senior Lender, Second Lien 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 Lien Creditor, Third Ranking Creditor, Fourth Ranking Creditor, Second Lien 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 Event of Default occurs or ceases to be continuing, the Senior Lender shall notify each other Party or the Second Lien Agent after the Senior Discharge Date or the Third Ranking Security Agent following the Second Lien 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 Lien Payment Stop Event either occurs or ceases to be continuing, the Senior Lender shall notify the Second Lien Agent.
- (c) If a Senior Payment Default either occurs or ceases to be continuing, the Senior Lender shall notify the Second Lien Agent.
- (d) If a Second Lien Event of Default occurs or ceases to be continuing the Second Lien 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.
- (e) If a Second Lien Acceleration Event either occurs or ceases to be continuing the Second Lien Security Agent shall, upon becoming aware of that occurrence or cessation, notify the Senior Lender and each Security Agent.
- (f) If a Third Ranking Acceleration Event occurs the Third Ranking Security Agent shall notify the Senior Lender (or the Second Lien Agent after the Senior Discharge Date or the Third Ranking Security Agent following the Second Lien 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.
- (g) 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.
- (h) If a Fourth Ranking Acceleration Event occurs the Fourth Ranking Security Agent shall notify the Senior Lender (or the Second Lien Agent after the Senior Discharge Date or the Third Ranking Security Agent following the Second Lien 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.
- (i) 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.
- (j) If the Senior Lender enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.
- (k) If the Second Lien Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.
- (l) 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.
- (m) If a Senior Mandatory Prepayment is waived the Senior Lender shall notify the Second Lien Agent of the amount of the Senior Mandatory Prepayment waived.

- (n) If a Second Lien Mandatory Prepayment is waived the Second Lien Security Agent shall notify the Senior Lender of the amount of the Second Lien Mandatory Prepayment waived.
- (o) If a member of the Group becomes aware of the occurrence of a Senior Event of Default, it shall promptly upon becoming aware of the occurrence of such event, notify the Second Lien Agent in writing.

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 Lien Creditors, through the Second Lien 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 Lien 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 Lien Security Agent following the Senior Discharge Date or the Third Ranking Security Agent following the Second Lien 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 Lien Security Agent will be effective only when actually received by the Second Lien Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Second Lien Security Agent's signature below (or any substitute department or officer as the Second Lien 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, the Second Lien Security

Agent or a Security Agent only if it is addressed in such a manner as the Senior Lender, the Second Lien Security Agent 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, the Second Lien Agent 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 any 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 Lien Lenders, the Majority Third Ranking Creditors the Majority Fourth Ranking Noteholder, 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 30.2(d)(iii), 30.2(e) and 30.2(f); or
- (iii) the order of priority or subordination under this Agreement;

shall not be made without the consent of:

- (A) the Senior Lender;
- (B) the Second Lien Lenders;
- (C) the Second Lien Security Agent;
- (D) the Third Ranking Creditors;
- (E) the Fourth Ranking Noteholders;
- (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 Lien Debt Document expressly provide otherwise, the Second Lien Security Agent may and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Second Lien 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 Lien 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 Lien Transaction Security are distributed; or
 - (iii) the release of any Second Lien Transaction Security,

shall not be made without the prior consent of the Second Lien Creditors whose consent to that amendment, waiver or consent is required under the Second Lien Facility Agreement.

- (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 on behalf of the Senior Lender only any amendment, waiver or consent permitted by this clause 37 and the Second Lien Security Agent may effect, on behalf of the Second Lien Creditors, 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 Lien 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:
 - (i) may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:
 - (A) 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;
 - (B) 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
 - (C) 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); or
 - (ii) would be prejudicial to the interests of any other Party and/or would result in the scope of the relevant Transaction Security Document(s) being inconsistent with the scope of any other Transaction Security Documents,

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 Lien Creditor (including, without limitation, any ability of the Second Lien 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 Lien Lender, the Third Ranking Security Agent or the Fourth Ranking Agent as applicable.
- (c) Clauses 37.4(a), 37.4(b) and 37.2(a) 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 Lien Security Agent gives in accordance with clause 18 (*Non-Distressed Disposals*), clause 19 (*Senior Distressed Disposals and Appropriation*), clause 20 (*Second Lien Distressed Disposals and Appropriation*), clause 21 (*Third Ranking Distressed Disposals and Appropriation*) or clause 22 (*Fourth Ranking Distressed Disposals and Appropriation*) or clause 24 (*Acquisition and 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 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 Lien Discharge Date, the Second Lien Creditors give a Consent in respect of the Second Lien 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 Lien Creditors may reasonably require to give effect to this clause 37.5.
- (c) If, at any time after the Second Lien 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 Second Lien administrative consents

If the Senior Lender gives or give any Consent which is of a minor technical or administrative nature, or which corrects a manifest error, in respect of the Senior Finance Documents which does not adversely affect the interests of the Second Lien Creditors or change the commercial terms contained in the Second Lien Debt Documents then, if that action was permitted by the terms of this Agreement, the Second Lien Agent will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
- (b) do anything (including executing any document) that the Senior Lender may reasonably require to give effect to this clause 37.7.

37.8 No liability

None of the Senior Lender, the Second Lien 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.

37.9 Agreement to override

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

37.10 Subordinated Loan Notes

Subject to clause 37.11 (*Restrictions on override*), the Fourth Ranking Noteholders shall, either after the Third Ranking Discharge Date (and provided that, at such time, the Final Priority Ranking Discharge Date has occurred) or with the prior written consent of the Senior Lender, Second Lien Agent and Majority Third Ranking Creditors (or, after the Senior Discharge Date, the Second Lien Agent 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.

37.11 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 37.10 (*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 37.10 (*Subordinated Loan Notes*) and 37.11, 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 37.10 (*Subordinated Loan Notes*) or the Loan Note Consent to be given pursuant to clause 37.10 (*Subordinated Loan Notes*), as the case may be.

37.12 Amendments to return on redemption

If, either after the Third Ranking Discharge Date or with the prior written consent of the Senior Lender, the Second Lien Agent and the Majority Third Ranking Creditors (or, after the Senior Discharge Date, the Second Lien Agent 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.

37.13 Power of Attorney

In the event that a Fourth Ranking Noteholder exercises its rights under clause 37.10 (*Subordinated Loan Notes*) or clause 37.12 (*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 37.10 (*Subordinated Loan Notes*) or clause 37.12 (*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 Lien Secured Parties only. As a result, no Senior Secured Party or Second Lien 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 Lien 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 Lien Security Agent or after the Second Lien 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 Lien 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: Second Lien Lenders**

Name of Second Lien Lender	Registration number (or equivalent, if any) or Address
Tosca Debt Capital Fund Designated Activity Company	Beaux Lane House, Mercer Street Lower, Dublin 2

Part 2: 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
Lane-Smith Consulting Limited	07983218, England and Wales

Part 3: 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 4: 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
Lomond Mortgages Limited	SC390469, Scotland
Mountview Property (Scotland) Limited	SC476925, Scotland
Managed Space Limited	SC250257, Scotland

Part 5: 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	Garnock House 16 Kenilworth Road Bridge of Allan Stirlingshire FK9 4DU
Lane-Smith Consulting Limited	07983218, England and Wales
Robert Hamilton	23 Murrayfield Avenue Edinburgh EH12 6AU
Vernon Powell	20 Helena Street Wellington Point Queensland 4160 Australia

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 Lien Lender)] (the "Security Agent"), for itself and each of the other parties to the intercreditor agreement referred to below.

This agreement is made on [◆]] 20[◆] by the Acceding Debtor in relation to an intercreditor agreement (the "Intercreditor Agreement") dated [◆]] 2017 as amended and restated on [◆] between, amongst others, Lomond Capital Limited as parent, Lomond Capital No. 1 Ltd as company, Clydesdale Bank plc as senior lender, [Toscafund GP Limited] as Second Lien Lender, the Second Lien 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 Lien Lender agree that the Second Lien Security Agent shall hold:
 - (a) [any Second Lien Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
 - (b) all proceeds of that Second Lien Security; and]
 - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Second Lien Security Agent as trustee for the Second Lien Secured Parties (in the Relevant Documents or otherwise) and secured by the Second Lien 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 Lien Security Agent,

on trust for the Second Lien Creditors 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 Lien Security Agent

[Full Name of current Second Lien 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 Lien Lender 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[♦] by insert full name of new Senior Lender/Intra-Group Lender/Second Lien Creditor/Third Ranking Creditor/ Fourth Ranking Creditor/Subordinated Creditor (the "Acceding [Senior Lender/Intra-Group Lender/Second Lien Creditor/Third Ranking Creditor/Fourth Ranking Creditor/Subordinated Creditor]") in relation to the intercreditor agreement (the "Intercreditor Agreement") dated [♦] 2017 between, among others, Lomond Capital Limited as parent, Lomond Capital No. 1 Ltd as company, Clydesdale Bank plc as senior lender, [Toscafund GP Limited] as the Second Lien 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 Lien Creditor/Third Ranking Creditor/Fourth Ranking Creditor/Subordinated Creditor] being accepted as a [Senior Lender/Intra-Group Lender/Second Lien Creditor/Third Ranking Creditor/Fourth Ranking Creditor/Subordinated Creditor] for the purposes of the Intercreditor Agreement, the Acceding [Senior Lender/Intra-Group Lender/Second Lien 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 Lien 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 Lien 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 Lien 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 [] 2016 (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 [31.16] (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [resigning Debtor] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) [resigning Debtor] is under no actual or contingent obligations in respect of the 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 ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

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

Signature of Authorised Signatory

CRAIG STEWART

Name of Authorised Signatory

in the presence of:

Signature of witness

SUZANNE MILLER

Name of witness

110 30 ST VINCENT PLACE

Address of witness

ASSOCIATE DIRECTOR

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 LANE-SMITH)
CONSULTING LIMITED by its attorney, in)
the presence of a witness:)

Signature



Attorney

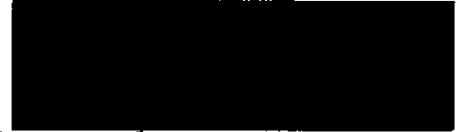
as attorney for
LANE-SMITH CONSULTING LIMITED

Name (block
capitals)

STUART PENDER

in the presence of:

Signature of witness



Name of witness

ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 STUART PENDER

Signature of Designated Member

Name of Designated Member

in the presence of:

Signature of witness

Name of witness ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 *Stuart Pender*

Name of Designated Member

in the presence of:

Signature of witness

Name of witness **ALLAN FRASER**

Address of witness **16 CHARLOTTE SQUARE, EDINBURGH**

Occupation of witness **SOLICITOR**

Address: **c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET**

Fax: **+44 131 624 6901**

Attention: **Stuart Pender**

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



A. Harney

as attorney for
THE BETSY S AUBREY TRUST

Name (block capitals) STUART PENDER

in the presence of:

Signature of witness



Name of witness

ALLAN FRASER

Address of witness

16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness

SOLICITOR

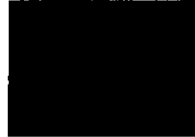
Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, in)
the name and on behalf of LANE-SMITH)
CONSULTING LIMITED by its attorney in)
the presence of a witness:)

Signature



Attorney

as attorney for
LANE-SMITH CONSULTING LIMITED

Name (block
capitals)

STUART PENDER

in the presence of:

Signature of witness



Name of witness

ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

THE SECOND LIEN ARRANGER

Given under the common seal of and)
executed as a deed but not delivered until)
the first date specified on page 1, by)
TOSCA DEBT CAPITAL FUND)
DESIGNATED ACTIVITY COMPANY



Signature

[Redacted signature]

Name (block capitals)

Sean O'Sullivan

Director

Signature

[Redacted signature]

Name (block capitals)

Julian Dunphy

Secretary / Director

Address: Beaux Lane House
Mercer Street Lower
Dublin 2

Fax:

Attention:

THE SECOND LIEN AGENT

EXECUTED as a DEED but not delivered)
until the first date specified on page 1, by)
TOSCAFUND GP LIMITED)
)

Authorised Attorney

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address:

Fax:

Attention:

THE SECOND LIEN ARRANGER

Given under the common seal of and)
executed as a deed but not delivered until)
the first date specified on page 1, by)
TOSCA DEBT CAPITAL FUND)
DESIGNATED ACTIVITY COMPANY

Signature

Name (block capitals)

Director

Signature

Name (block capitals)

Secretary / Director

Address:

Fax:

Attention:

THE SECOND LIEN AGENT

EXECUTED as a DEED but not delivered)
until the first date specified on page 1; by)
TOSCAFUND GP LIMITED)
)

in the presence of:

Authorised Attorney

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address:

Fax:

Attention:

90 LONG ACRE, LONDON WC2E 9EA

MARTIN HOLCOMB

THE SECOND LIEN SECURITY AGENT
EXECUTED as a DEED but not delivered)
until the first date specified on page 1, by)
TOSCAFUND GP LIMITED)
)



in the presence of:

Authorised Attorney



Signature of witness

Name of witness

Jack Patrick

Address of witness

90 LONG ARMS

Occupation of witness

Solicitor

Address:

90 LONG ARMS, LONDON WC2E 9RA

Fax:

Attention:

MARTIN MCKAY

THE SECOND LIEN LENDER

Given under the common seal of and)
executed as a deed but not delivered until)
the first date specified on page 1, by)
TOSCA DEBT CAPITAL FUND)
DESIGNATED ACTIVITY COMPANY



Signature



Name (block capitals)

Director

Sean O'Sullivan

Signature



Name (block capitals)

Secretary / Director

Julian Dunphy

Address:

Beaux Lane 1
Mercer Street
Dublin 2

Fax:

Attention:

THE INTRA-GROUP LENDERS

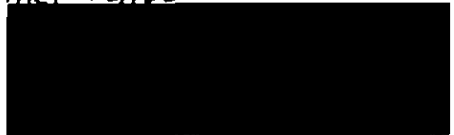
EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND CAPITAL LIMITED

Signature of Director



Name of Director STUART PENDER

Signature of witness



Name of witness ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 *ALLAN FRASER*

Address of witness *16 CHARLOTTE SQUARE, EDINBURGH*

Occupation of witness *SOLICITOR*

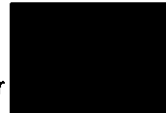
Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
BONDSAVE LIMITED

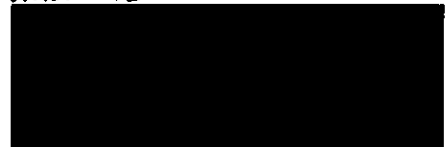
Signature of Director



Name of Director *STUART PENDELL*

in the presence of:

Signature of witness



Name of witness *ALLAN FRASER*

Address of witness *16 CHARLOTTE SQUARE, EDINBURGH*

Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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

ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
THORNLEY GROVES ESTATE AGENTS
LIMITED

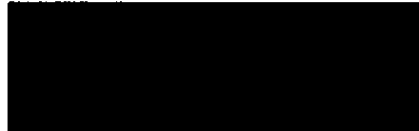
Signature of Director



Name of Director STUART PENDER

in the presence of:

Signature of witness



Name of witness ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
**JOHN SHEPHERD ESTATE AGENTS
LIMITED**

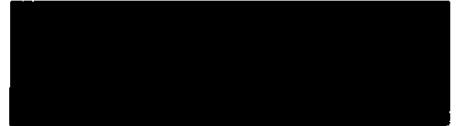
Signature of Director



Name of Director *STUART PENDER*

in the presence of:

Signature of witness



Name of witness *ALLAN FRASER*

Address of witness *16 CHARLOTTE SQUARE, EDINBURGH*

Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
JOHN SHEPHERD LETTINGS LIMITED

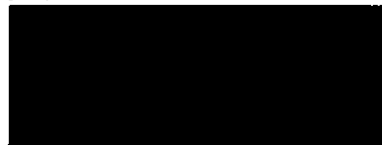
Signature of Director



Name of Director **STUART PENDER**

in the presence of.

Signature of witness



Name of witness **ALLAN FRASER**

Address of witness **16 CHARLOTTE SQUARE, EDINBURGH**

Occupation of witness **SOLICITOR**

Address: **32 Charlotte Square
Edinburgh
EH2 4ET**

Fax: **+44 131 624 6901**

Attention: **Stuart Pender**

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 **ALLAN FRASER**

Address of witness **16 CHARLOTTE SQUARE, EDINBURGH**

Occupation of witness **SOLICITOR**

Address: **32 Charlotte Square
Edinburgh
EH2 4ET**

Fax: **+44 131 624 6901**

Attention: **Stuart Pender**

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 ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET
Fax: +44 131 624 6901

Attention: Stuart Pender

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 ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET
Fax: +44 131 624 6901

Attention: Stuart Pender

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 **ALLAN FRASER**

Address of witness **16 CHARLOTTE SQUARE, EDINBURGH**

Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET
Fax: +44 131 624 6901
Attention: Stuart Pender

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 ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LOMOND MAINTENANCE LIMITED

Signature of Director

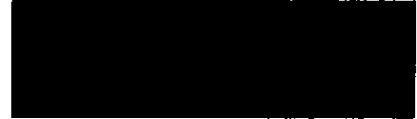


Name of Director

STUART PENDER

in the presence of:

Signature of witness



Name of witness

ALLAN FRASER

Address of witness

16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness

SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 *ALLAN FRASER*

Address of witness *16 CHARLOTTE SQUARE, EDINBURGH*

Occupation of witness *SOLICITOR*

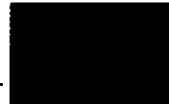
Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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

ALLAN FRASER

Address of witness

16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness

SOLICITOR

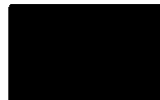
Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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

ALLAN FRABER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 *ALLAN FRASER*

Address of witness *16 CHARLOTTE SQUARE, EDINBURGH*

Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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

ALLAN FRASER

Address of witness

16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness

SOLICITOR

Address: 32 Charlotte Square
Edinburgh

EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 **ALLAN FRASER**

Address of witness **16 CHARLOTTE SQUARE, EDINBURGH**

Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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 **ALLAN FRASER**

Address of witness **16 CHARLOTTE SQUARE, EDINBURGH**


Occupation of witness **SOLICITOR**

Address: 32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901


Attention: Stuart Pender

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 *ALLAN FRASER*


Address of witness *16 CHARLOTTE SQUARE, EDINBURGH*

Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET
Fax: +44 131 624 6901

Attention: Stuart Pender

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 *ALLAN FRASER*

Address of witness *16 CHARLOTTE SQUARE, EDINBURGH*

Occupation of witness *SOLICITOR*

Address: 32 Charlotte Square
Edinburgh
EH2 4ET
Fax: +44 131 624 6901

Attention: Stuart Pender

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

Signature of Director

Name of Director

Anke Jager
Director

Signature of Witness

Name of Witness

Cecile Sverlaug

Address of Witness

Aztec Financial Services (Luxembourg) S.A.
7, rue Lou Hemmer
L-1748 Luxembourg-Findel
Tel : +352 2461 6000

Occupation of Witness

Fund Administrator

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

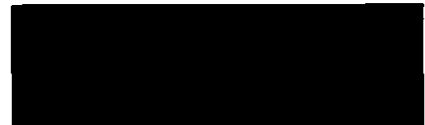


Name (Block
Capitals)

STUART PENDER

in the presence of:

Signature Of Witness



Name Of Witness

ALLAN FRASER

Address Of Witness

16 CHARLOTTE SQUARE, EDINBURGH

Occupation Of Witness

SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

EXECUTED AS A DEED but not delivered)
until the first date specified on page 1, by)
LANE-SMITH CONSULTING LIMITED

Signature of Director

Name of Director

STUART PENDER

in the presence of:

Signature of witness

Name of witness ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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



A Horney

Name (block
capitals)

STUART PENDER

Signature of witness



Name of witness

ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET
Fax: +44 131 624 6901

Attention: Stuart Pender

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:)

Signature



Attorney


as attorney for
VERNON POWELL

Name (block
capitals)

STUART PENDER

in the presence of:

Signature of witness



Name of witness ALLAN FRASER

Address of witness 16 CHARLOTTE SQUARE, EDINBURGH

Occupation of witness SOLICITOR

Address: c/o Lomond Capital Limited
32 Charlotte Square
Edinburgh
EH2 4ET

Fax: +44 131 624 6901

Attention: Stuart Pender

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

Signature of Designated Member.
Name of Designated Member

IAN WALLIS

Signature of Designated Member

Name of Designated Member

in the presence of:

Signature of witness

Name of witness SAMANTHA LEWIS

Address of witness C/O 30 CROWN PLACE,
LONDON, EC2A 4ES.

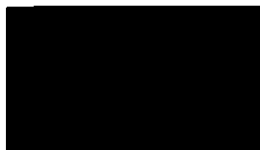
Occupation of witness

TRAINEE SOLICITOR

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

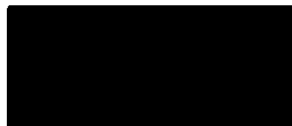


Signature of Director

Name of Director

IAN WALLIS

Signature of Witness



Name of Witness SAMANTHA LEWIS

Address of Witness C/O 30 CROWN PLACE,
LONDON, EC2A 4ES.

Occupation of Witness
TRAINEE SOLICITOR

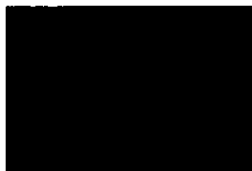
Address:

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



Signature of Designated Member

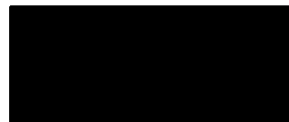
Name of Designated Member IAN WALLIS

Signature of Designated Member

Name of Designated Member

in the presence of:

Signature of witness



Name of witness SAMANTHA LEWIS

Address of witness C/O 30 CROWN PLACE,
LONDON, EC2A 4ES.

Occupation of witness
TRAINEE SOLICITOR

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

Signature of Director

Name of Director

Anke Jager
Director

Signature of Witness

Name of Witness Cocu Soelana

Address of Witness

Aztec Financial Services (Luxembourg) S.A.
7, rue Lou Hemmer
L-1748 Luxembourg-Findel
Tel : +352 2461 6000

Occupation of Witness

Fund Administrator

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

Signature of Designated Member

Name of Designated Member

Signature of Designated Member

Name of Designated Member

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address:

Fax:

Attention: