

**INTERCREDITOR AGREEMENT**

**Dated 23 January 2024**

**Between**

**Transit Bidco Limited**

**as Company**

**Alter Domus Agency Services (UK) Limited**

**as Senior Notes Agent**

**The Senior Noteholders**

**The Hedge Counterparties**

**The Original Debtors**

**Alter Domus Trustees (UK) Limited**

**as Security Agent**

**and others**

**SKADDEN, ARPS, MEAGHER SLATE & FLOM (UK) LLP  
22 BISHOPSGATE  
LONDON  
EC2N 4BQ**

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**THIS AGREEMENT** is dated 23 January 2024 and made between:

- (1) **ALTER DOMUS AGENCY SERVICES (UK) LIMITED** as Senior Notes Agent;
- (2) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Senior Noteholders;
- (3) **ALTER DOMUS AGENCY SERVICES (UK) LIMITED** as Super Senior Agent;
- (4) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Super Senior Lenders;
- (5) **BARCLAYS BANK PLC** as Super Senior Arranger;
- (6) **THE PERSONS** named on the signing pages as Hedge Counterparties (if any);
- (7) **TRANSIT MIDCO LIMITED**, a company incorporated under the laws of England and Wales with registered number 15239033 (the “**Original Investor**” and “**Original Third Party Security Provider**”);
- (8) **TRANSIT BIDCO LIMITED**, a company incorporated under the laws of England and Wales with registered number 15239006 (the “**Company**”);
- (9) **THE COMPANIES** named on the signing pages as Debtors (the “**Original Debtors**”);
- (10) **THE COMPANIES** named on the signing pages as Intra-Group Lenders;
- (11) **ALTER DOMUS TRUSTEES (UK) LIMITED** as security agent and trustee for the Secured Parties (the “**Security Agent**”); and
- (11) Upon accession each Second Lien Notes Trustee as trustee for and on behalf of each Second Lien Noteholder represented by such Second Lien Notes Trustee;

**IT IS AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement:

“**1992 ISDA Master Agreement**” means the Master Agreement (Multicurrency Cross Border) as published by the International Swaps and Derivatives Association, Inc.

“**2002 ISDA Master Agreement**” means the 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc.

“**Acceleration Event**” means a Super Senior Facility Acceleration Event, a Senior Notes Acceleration Event, a Permitted Senior Financing Acceleration Event, a Second Lien Facility Acceleration Event and/or a Second Lien Notes Acceleration Event, as the context requires.

“**Acquiring Hedge Creditors**” has the meaning given to that term in Clause 4.7 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*).

“**Affiliate**” has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

“**Agent**” means each of any Super Senior Agent, any Senior Notes Agent, any Second Lien Facility Agent, any Senior Creditor Representative, any Second Lien Notes Trustee and the Security Agent, as the context requires.

“**Agent Liabilities**” means all present and future liabilities and obligations, whether actual or contingent, of the Company, any Debtor and/or (only to the extent that it has expressly assumed any such liability or obligations) any Third Party Security Provider to any Agent under the Debt Documents.

“**Agreed Security Principles**” has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

“**Allocated Super Senior Hedging Amount**” means, with respect to a Super Senior Hedge Counterparty, the portion of the Super Senior Hedging Amount allocated to that Super Senior Hedge Counterparty less any portion released by that Super Senior Hedge Counterparty, in each case under Clause 5.15 (*Allocation of Super Senior Hedging Liabilities*).

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

“**Ancillary Facility**” means:

- (a) an “Ancillary Facility” or a “Fronted Ancillary Facility” as defined in the Super Senior Facility Agreement; and/or
- (b) any ancillary facility, fronted ancillary facility or similar or equivalent arrangement made available under or pursuant to the terms of any Permitted Super Senior Facility Agreement.

“**Ancillary Lender**” means each Super Senior Lender (or Affiliate of a Super Senior Lender) which makes an Ancillary Facility available pursuant to the terms of the Super Senior Facility Agreement and/or a Permitted Super Senior Facility Agreement.

“**Arranger**” means any Super Senior Arranger, any Permitted Senior Financing Arranger and any Second Lien Arranger.

“**Arranger Liabilities**” means all present and future liabilities and obligations, actual and contingent, of the Company and/or any Debtor and/or any Third Party Security Provider to any Arranger under the Debt Documents.

“**Available Shareholder Amounts**” has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

“**Borrowing Liabilities**” means, in relation to a member of the Group, the liabilities (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor or Debtor in respect of Indebtedness arising under the Debt Documents (whether incurred solely or jointly) and including, without limitation, liabilities as a “Borrower” under and as defined in the Super Senior Finance Documents, the Permitted Senior Financing Documents and/or the Second Lien Finance Documents and liabilities as “Issuer” under and as defined in the Senior Notes Finance Documents or Second Lien Notes Finance Documents.

“**Business Day**” has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

“**CFC**” means a “controlled foreign corporation” as defined in Section 957(a) of the US Internal Revenue Code.

“**Charged Property**” means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security.

“**Close-Out Netting**” means:

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

“**Commodity Exchange Act**” means the US Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Common Assurance**” means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible and subject to the Agreed Security Principles, given to, or expressed to be given to, the Senior Secured Parties in respect of their Senior Liabilities (for the avoidance of doubt, without prejudice to the ability of any other person to benefit from that guarantee, indemnity or other assurance to the extent not prohibited by this Agreement).

“**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 Security Agent’s Spot Rate of Exchange on the Business Day prior to the relevant calculation.

“**Common Transaction Security**” means any Transaction Security which, to the extent legally possible and subject to the Agreed Security Principles:

- (a) is created, or expressed to be created, in favour of the Security Agent as agent or trustee for the other Senior Secured Parties in respect of their Senior Liabilities; or
- (b) in the case of any jurisdiction in which effective Security cannot reasonably be granted in favour of the Security Agent as agent or trustee for the Secured Parties, is created, or expressed to be created, in favour of:
  - (i) all the Senior Secured Parties in respect of their Senior Liabilities; and/or
  - (ii) the Security Agent under a parallel debt, joint and several creditorship or other similar or equivalent structure for the benefit of all the Senior Secured Parties,

and which ranks in the order of priority contemplated in Clause 2.2 (*Transaction Security*) and/or is expressed to be subject to the terms of this Agreement (in each case, for the avoidance

of doubt, without prejudice to the ability of any other person to benefit from that Transaction Security to the extent not prohibited by this Agreement).

“**Consent**” means any consent, approval, release or waiver or agreement to any amendment.

“**Consolidated EBITDA**” has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

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

“**Creditor/Agent Accession Undertaking**” means:

- (a) an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor/Agent Accession Undertaking*) or in such other form as the Security Agent and the Company may agree from time to time (which may include any undertaking included in any transfer or assignment document contained in any Permitted Financing Document);
- (b) a New Lender Certificate or New Holder Certificate (each as defined in the relevant Debt Financing Agreement); or
- (c) an Increase Confirmation (as defined in the relevant Debt Financing Agreement),

as the context may require, or

- (d) in the case of an acceding Debtor which is expressed to accede as an Intra-Group Lender in the relevant Debtor/Third Party Security Provider Accession Deed, that Debtor/Third Party Security Provider Accession Deed.

“**Creditor Representative**” means a Senior Creditor Representative and/or a Second Lien Notes Trustee, as the context requires.

“**Creditors**” means the Senior Secured Creditors, the Hedge Counterparties, the Intra-Group Lenders and the Investors.

“**Debt Document**” means each of this Agreement, the Hedging Agreements, the Super Senior Finance Documents, the Senior Notes Finance Documents, the Second Lien Finance Documents, the Permitted Senior Financing Documents, the Second Lien Notes Finance Documents, the Second Lien Finance Documents, the Security Documents, any agreement evidencing the terms of the Intra-Group Liabilities, the Investor Liabilities and any other document designated as such by the Security Agent and the Company.

“**Debt Financing Agreement**” means the Super Senior Facility Agreement, any Permitted Super Senior Facility Agreement, the Senior Notes Indenture, any Permitted Senior Financing Agreement, any Second Lien Facility Agreement and/or any Second Lien Notes Indenture, as the context requires.

“**Debt Refinancing**” has the meaning given to that term in paragraph (a) of Clause 17.1 (*Debt Refinancing*).

“**Debtor**” means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 20 (*Changes to the Parties*).

“**Debtor/Third Party Security Provider Accession Deed**” means:

- (a) a deed substantially in the form set out in Schedule 1 (*Form of Debtor/Third Party Security Provider Accession Deed*) or in such other form as the Security Agent and the Company may agree from time to time (which may include any accession document contained in any Permitted Financing Document); or
- (b) (only in the case of a member of the Group which is acceding as a borrower or guarantor under a Debt Financing Agreement) an Accession Letter (as defined in the relevant Debt Financing Agreement).

**“Debtor Liabilities”** means, in relation to a Debtor, any liabilities owed to any other Debtor (whether actual or contingent and whether incurred solely or jointly) by that Debtor.

**“Debtor Resignation Request”** means a notice substantially in the form set out in Schedule 3 (*Form of Debtor Resignation Request*) or in such other form as the Security Agent and the Company may agree.

**“Default”** means an 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 relevant Secured Debt Document or any combination of any of the foregoing) be an Event of Default, provided that any such event or circumstance which requires the satisfaction of a condition as to materiality before it becomes an Event of Default shall not be a Default unless that condition is satisfied.

**“Delegate”** means any delegate, agent, attorney or co-trustee appointed by the Security Agent in accordance with the terms of the Secured Debt Documents.

**“Designated Gross Amount”** means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility’s maximum gross amount.

**“Designated Net Amount”** means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility’s maximum net amount.

**“Discharge Date”** means the Super Senior Lender Discharge Date, Super Senior Creditor Discharge Date, the Senior Creditor Discharge Date, the Senior Notes Discharge Date, the Permitted Senior Financing Discharge Date, the Second Lien Lender Discharge Date and/or the Second Lien Notes Discharge Date, as the context requires.

**“Disruption Event”** has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

**“Distress Event”** means, following the occurrence of an Acceleration Event which is continuing if prior to the Final Discharge Date, any of the Super Senior Agent (acting on the instructions of the Majority Super Senior Lenders), the Senior Notes Agent (acting on behalf of the Majority Senior Noteholders), the Second Lien Facility Agent (acting on the instructions of the Majority Second Lien Lenders), a Senior Creditor Representative (to the extent expressly permitted by the relevant Permitted Senior Financing Agreement and acting on the instructions of the Majority Permitted Senior Financing Creditors) or a Second Lien Notes Trustee (to the extent expressly permitted by the relevant Second Lien Notes Indenture and acting on the instructions of the Majority Second Lien Notes Creditors) declaring by written notice to the Security Agent, each other Agent and the Company that a “Distress Event” has occurred.

**“Distressed Disposal”** means a disposal of an asset of a member of the Group or, in the case of a Third Party Security Provider, any assets or shares which are subject to the Transaction Security, which is:

- (a) being effected at the request of an Instructing Group in circumstances where the Transaction Security has become enforceable in accordance with the terms of the relevant Security Documents;
- (b) being effected by enforcement of the Transaction Security in accordance with the terms of the relevant Security Documents; or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor or a Third Party Security Provider to a person or persons which is not a member of the Group or Third Party Security Provider.

**“Enforcement Action”** means:

- (a) in relation to any Liabilities:
  - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Secured Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, any of the Debt Documents);
  - (ii) the making of any declaration that any Liabilities are payable on demand;
  - (iii) the making of a demand in relation to a Liability that is payable on demand;
  - (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
  - (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability but excluding any such right which arises as a result of clause 35 (*Debt Purchases*) of the Notes Purchase Agreement (or any other similar or equivalent provision of any of the Secured Debt Documents) and/or any other Liabilities Acquisition, acquisition or transaction which any member of the Group is not prohibited from entering into by the terms of the Secured Debt Documents and excluding any mandatory offer arising on or as a result of a change of control or asset sale (however described) as set out in the Senior Notes Finance Documents (or any other similar or equivalent provision of any of the Secured Debt Documents));
  - (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right:
    - (A) as Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
    - (B) as Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
    - (C) as Inter-Hedging Agreement Netting by a Hedge Counterparty;
    - (D) as Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; and/or



- (E) which is otherwise permitted by the terms of any of the Secured Debt Documents, in each case to the extent that the exercise of that right gives effect to a Permitted Payment; and
- (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;
- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement (except to the extent permitted by this Agreement);
- (c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (d) the entering into of any composition, compromise, assignment or similar arrangement with any member of the Group or any Third Party Security Provider 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 20 (*Changes to the Parties*) or pursuant to any debt buy-back, tender offer, exchange offer or similar or equivalent arrangement not otherwise prohibited by the Debt Documents); or
- (e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, examiner, administrator or similar officer) in relation to, the winding up, dissolution, examinership, administration or reorganisation of any member of the Group or any Third Party Security Provider 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 or Third Party Security Provider's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group or Third Party Security Provider, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; or
- (ii) a Senior Secured Creditor bringing legal proceedings against any person solely for the purpose of:
  - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
  - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
  - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages; or

- (iii) bringing legal proceedings against any person in connection with any securities violation, securities or listing regulations or common law fraud; or
- (iv) to the extent entitled by law, the taking of any action against any Creditor (or any agent, trustee or receiver acting on behalf of that Creditor) to challenge the basis on which any sale or disposal is to take place pursuant to the powers granted to those persons under any relevant documentation; or
- (v) any person consenting to, or the taking of any other action pursuant to or in connection with, any merger, consolidation, reorganisation or any other similar or equivalent step or transaction initiated or undertaken by a member of the Group (or any analogous procedure or step in any jurisdiction) that is not prohibited by the terms of the Secured Debt Documents to which it is a party.

“**Equity Contribution**” has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

“**Event of Default**” means any event or circumstance specified as such in any of the Debt Financing Agreements, as the context requires.

“**Excluded Swap Obligation**” means, with respect to any Debtor, any Swap Obligation if, and only to the extent that, all or a portion of the guarantee of such Debtor of, or the grant by such Debtor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the US Commodity Futures Trading Commission (or the application or official interpretation of any thereof). If a Swap Obligation arises under a master agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guarantee or security interest is or becomes illegal.

“**Exposure**” has the meaning given to that term in Clause 16.1 (*Equalisation Definitions*).

“**Final Discharge Date**” means the later to occur of the Super Senior Creditor Discharge Date, the Senior Discharge Date and the Second Lien Discharge Date.

“**Financial Adviser**” means an internationally recognised investment bank or internationally recognised accounting firm selected by the Security Agent or, if all of the internationally recognised investment banks and internationally recognised accounting firms are subject to conflicting and client or potential client issues and are unable to act in relation to the relevant matter, any third party professional firm which is regularly engaged in providing valuations of businesses or assets similar or comparable to those subject to the relevant Transaction Security.

“**Financing Vehicle**” means a member of the Group which:

- (a) has been established for the purpose of, or whose principal purpose is, incurring or issuing indebtedness or making, purchasing or investing in loans, securities or other financial assets; and
- (b) does not own any shares or equivalent ownership interests in a member of the Group which is a Subsidiary of an issuer or, as the case may be, a borrower of any outstanding Senior Notes, outstanding Second Lien Debt, outstanding Permitted Senior Financing Debt or outstanding Second Lien Notes.

“**First Issuance Date**” has the meaning given to that term in the Notes Purchase Agreement.

“**Fraudulent Transfer Law**” means any applicable US Bankruptcy Code or any applicable US state fraudulent transfer or conveyance law.

“**Group**” has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

“**Group Company**” means any company that is a member of the Group.

“**Guarantee Agreements**” means the Hedging Agreements.

“**Guarantee Liabilities**” means, in relation to a member of the Group, the liabilities under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it has to a Creditor or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of any of the Secured Debt Documents).

“**Guarantee Limitations**” means, in respect of any Debtor and its Guarantee Liabilities, the limitations and restrictions applicable to such Debtor as set out in any relevant Debt Document.

“**Guarantee Parties**” means the Hedge Counterparties.

“**Hedge Counterparty**” means:

- (a) any person which is named on the signing pages as a Hedge Counterparty; and
- (b) any other person which becomes Party as a Hedge Counterparty pursuant to Clause 20.7 (*Creditor/Agent Accession Undertaking*),

provided that:

- (i) such person has not ceased to be a Hedge Counterparty pursuant to Clause 20.13 (*Resignation of Hedge Counterparties and Investors*); and
- (ii) if the Senior Debt Discharge Date has occurred, a person party to this Agreement as a Hedge Counterparty may agree with the Company that, without prejudice to the rights and obligations of the parties under the relevant Hedging Agreements, any hedging provided by that person shall cease to be subject to the terms of this Agreement and any Liabilities to that person under or in connection with the Hedging Agreements shall cease to constitute Hedging Liabilities (in which case such person shall cease to be a Hedge Counterparty for the purposes of the Secured Debt Documents).

“**Hedge Counterparty Obligations**” means the obligations owed by any Hedge Counterparty to the Debtors under or in connection with the Hedging Agreements.

“**Hedge Transfer**” means a transfer to all or any of the Senior Secured Creditors (or to a nominee or nominees of all or any of the Senior Secured Creditors) of each Hedging Agreement together with:

- (a) all the rights and benefits in respect of the Hedging Liabilities owed by the Debtors to each Hedge Counterparty; and
- (b) all the Hedge Counterparty Obligations owed by each Hedge Counterparty to the Debtors,

in accordance with Clause 20.4 (*Change of Hedge Counterparty*) as described in, and subject to, Clause 4.7 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*).

**“Hedging Agreement”** means, at the election of the Company, any agreement entered into or to be entered into by a Debtor (or any member of the Group that is to become a Debtor) and a Hedge Counterparty in relation to a derivative or hedging arrangement entered into (or which has or will be allocated):

- (a) to satisfy any minimum hedging requirements under any of the Debt Financing Agreements; and/or
- (b) for any purpose not prohibited by the terms of the Debt Financing Agreements at the time the relevant agreement is entered into.

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

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

**“Hedging Ancillary Lender”** means an Ancillary Lender to the extent that such Ancillary Lender makes available a Hedging Ancillary Facility.

**“Hedging Liabilities”** means the Liabilities owed by any Debtor to the Hedge Counterparties under or in connection with the Hedging Agreements, provided that the Hedging Liabilities of any Debtor shall not include any Excluded Swap Obligations of such Debtor.

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

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

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

**“Holding Company”** has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

“**Indebtedness**” has the meaning given to the term “Financial Indebtedness” in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

“**Insolvency Event**” means, in relation to any Group Company or Third Party Security Provider:

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

in each case to the extent constituting an Insolvency Event of Default which is continuing and provided that:

- (i) if prior to the Super Senior Lender Discharge Date, that Insolvency Event of Default is:
  - (A) a Super Senior Facilities Insolvency Default and the relevant Super Senior Agent (acting on behalf of the Majority Super Senior Lenders) has declared by written notice to the Security Agent, each other Agent and the Company that an “Insolvency Event” has occurred; or
  - (B) a Permitted Super Senior Insolvency Default and the relevant Super Senior Agent (to the extent expressly permitted by the relevant Permitted Super Senior Facility Agreement and acting on the instructions of the Majority Permitted Super Senior Financing Creditors) has declared by written notice to the Security Agent, each other Agent and the Company that an “Insolvency Event” has occurred;
- (ii) if prior to the Senior Discharge Date, that Insolvency Event of Default is:
  - (A) a Senior Notes Insolvency Default and the relevant Senior Notes Agent (acting on behalf of the Majority Senior Noteholders) has declared by written notice to the Security Agent, each other Agent and the Company that an “Insolvency Event” has occurred; or
  - (B) a Permitted Senior Financing Insolvency Default and the relevant Senior Creditor Representative (to the extent expressly permitted by the relevant Permitted Senior Financing Agreement and acting on the instructions of the Majority Permitted Senior Financing Creditors) has declared by written notice to the Security Agent, each other Agent and the Company that an “Insolvency Event” has occurred; or
- (iii) if prior to the Second Lien Discharge Date, that Insolvency Event of Default is:

- (A) a Second Lien Facility Insolvency Default and the relevant Second Lien Facility Agent (acting on the instructions of the Majority Second Lien Lenders) has declared by written notice to the Security Agent, each other Agent and the Company that an “Insolvency Event” has occurred; or
- (B) a Second Lien Notes Insolvency Default and the relevant Second Lien Notes Trustee (to the extent expressly permitted by the relevant Second Lien Notes Indenture and acting on the instructions of the Majority Second Lien Notes Creditors) has declared by written notice to the Security Agent, each other Agent and the Company that an “Insolvency Event” has occurred.

“**Insolvency Event of Default**” means:

- (a) prior to the Super Senior Lender Discharge Date, an Event of Default which is continuing under paragraph (f) (*Insolvency*) or paragraph (g) (*Insolvency Proceedings*) of clause 24 (*Events of Default*) of the Super Senior Facility Agreement (a “**Super Senior Facilities Insolvency Default**”);
- (b) prior to the Super Senior Lender Discharge Date, an equivalent insolvency Event of Default which is continuing under any Permitted Super Senior Facility Agreement (a “**Permitted Super Senior Facilities Insolvency Default**”);
- (c) prior to the Senior Notes Discharge Date, an Event of Default which is continuing under paragraphs (f) (*Insolvency*) or paragraph (g) (*Insolvency Proceedings*) of clause 24 (*Events of Default*) of the Notes Purchase Agreement (a “**Senior Notes Insolvency Default**”);
- (d) prior to the Second Lien Lender Discharge Date, an equivalent insolvency Event of Default which is continuing under any Second Lien Facility Agreement (a “**Second Lien Facility Insolvency Default**”);
- (e) prior to the Permitted Senior Financing Discharge Date, an equivalent insolvency Event of Default which is continuing under any Permitted Senior Financing Agreement (a “**Permitted Senior Financing Insolvency Default**”); or
- (f) prior to the Second Lien Notes Discharge Date, an equivalent insolvency Event of Default which is continuing under any Second Lien Notes Indenture (a “**Second Lien Notes Insolvency Default**”).

“**Instructing Group**” means at any time:

- (a) prior to the Senior Debt Discharge Date:
  - (i) whilst the Super Senior Majority Threshold Condition does not apply, in relation to any instructions to the Security Agent to enforce the Transaction Security or refrain or cease from enforcing the Transaction Security or to take any other Enforcement Action:
    - (A) the Majority Pari Passu Creditors; or
    - (B) if applicable and pursuant to and in accordance with Clause 3.5 (*Restrictions on Enforcement: Super Senior Lenders*), the Majority Super Senior Lenders;

- (ii) whilst the Super Senior Majority Threshold Condition does apply, in relation to any instructions to the Security Agent to enforce the Transaction Security or refrain or cease from enforcing the Transaction Security or to take any other Enforcement Action:
  - (A) those Senior Secured Creditors (other than the Second Lien Secured Creditors) whose Senior Secured Credit Participations at that time aggregate to at least 66.66 per cent. of the Total Senior Secured Credit Participations at that time; or
  - (B) if applicable and pursuant to and in accordance with Clause 3.5 (*Restrictions on Enforcement: Super Senior Lenders*), the Majority Super Senior Lenders;
- (iii) in relation to any other matter, the Majority Pari Passu Creditors;
- (b) on or after the Pari Passu Discharge Date but prior to the Super Senior Lender Discharge Date, the Majority Super Senior Lenders;
- (c) on or after the Super Senior Lender Discharge Date but prior to the Senior Discharge Date, those Senior Secured Creditors (other than the Second Lien Secured Creditors) whose Senior Credit Participations at that time aggregate to at least 66.66 per cent. of the Total Senior Credit Participations at that time; and
- (d) on or after the Senior Discharge Date but prior to the Second Lien Discharge Date, and subject always to Clause 6.9 (*Restrictions on enforcement by Second Lien Secured Creditors*), those Second Lien Secured Creditors whose Second Lien Secured Credit Participations at that time aggregate to at least 66.66 per cent. of the Total Second Lien Secured Credit Participations at that time,

in each case, excluding any Sponsor Affiliate and after the application of clause 34.5 (*Excluded Commitments*) and clause 35 (*Debt Purchases*) of the Notes Purchase Agreement and the Super Senior Facility Agreement, or any substantially equivalent provisions in any Debt Financing Agreement (as applicable)

**“Inter-Hedging Agreement Netting”** means the exercise of any right of set-off, account combination, close-out netting or payment netting (whether arising out of a cross agreement netting agreement or otherwise) by a Hedge Counterparty against liabilities owed to a Debtor by that Hedge Counterparty under a Hedging Agreement in respect of Hedging Liabilities owed to that Hedge Counterparty by that Debtor under another Hedging Agreement.

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

**“Intra-Group Lenders”** means each Debtor which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another Debtor 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 20 (*Changes to the Parties*).

**“Intra-Group Liabilities”** means the Liabilities owed by any Debtor to any of the Intra-Group Lenders in its capacity as such (for the avoidance of doubt, excluding any Liabilities which are Senior Liabilities).

**“Investor Documents”** means each document evidencing any loan made by an Investor to the Company or other indebtedness incurred by the Company to an Investor, which loan or indebtedness would but for the application of sub-paragraph (iii) of the second paragraph of the definition of Indebtedness excluding any amount due or outstanding in respect of any Equity Contribution, constitute Indebtedness.

**“Investor Liabilities”** means:

- (a) the Liabilities owed to the Investors by any member of the Group under the Investor Documents (for the avoidance of doubt, excluding any Liabilities which are Senior Liabilities); and
- (b) any other liabilities owed to an Investor by any member of the Group which have been notified to the Security Agent by that Investor and the Company (or relevant member of the Group) in writing as liabilities to be treated as “Investor Liabilities” for the purposes of this Agreement.

**“Investors”** means:

- (a) the Original Investor; and
- (b) any person which becomes a party as an Investor in accordance with the terms of Clause 20 (*Changes to the Parties*),

provided that such person has not ceased to be an Investor pursuant to Clause 20.13 (*Resignation of Hedge Counterparties and Investors*).

**“IPO Event”** has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

**“ISDA Master Agreement”** means a 1992 ISDA Master Agreement or a 2002 ISDA Master Agreement.

**“Issuing Bank”** means each “Issuing Bank” under and as defined in the Super Senior Facility Agreement.

**“Joint Venture”** has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

**“Letter of Credit”** means a “Bank Guarantee” as defined in the Super Senior Facility Agreement.

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

- (a) any refinancing, novation, deferral or extension;



- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Debtor or any Third Party Security Provider 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, provided that in respect of any Third Party Security Provider, any such liabilities and obligations will only be in relation to its liabilities and obligations under the Debt Documents in connection with the granting of Security under such Debt Documents, and any representations, warranties or undertakings given in such Debt Documents, not being Borrowing Liabilities or Guarantee Liabilities (other than to the extent that a Third Party Security Provider has expressly assumed any such Liabilities).

**“Liabilities Acquisition”** means, in relation to a person and to any Liabilities, a transaction where that person:

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

the rights and benefits in respect of those Liabilities.

**“Majority Pari Passu Creditors”** means, at any time, those Pari Passu Creditors whose Senior Credit Participations at that time aggregate to at least 66.66 per cent, of the total Senior Credit Participations (excluding the Senior Credit Participations of the Hedge Counterparties) at that time after the application of clause 34.5 (*Excluded Commitments*) and clause 35 (*Debt Purchases*) of the Notes Purchase Agreement, or any substantially equivalent provisions in any Permitted Senior Financing Agreement (as applicable).

**“Majority Permitted Senior Financing Creditors”** means, in relation to any Permitted Senior Financing Debt, the requisite number or percentage of Permitted Senior Financing Creditors under the Permitted Senior Financing Agreement on whose instructions the Senior Creditor Representative is required to act in relation to the relevant matter after the application of any provision in any Permitted Senior Financing Agreement substantially equivalent to clause 34.5 (*Excluded Commitments*) and clause 35 (*Debt Purchases*) of the Notes Purchase Agreement.

**“Majority Permitted Super Senior Financing Creditors”** means, in relation to any Permitted Super Senior Financing Debt, the requisite number or percentage of Permitted Super Senior Financing Creditors under the Permitted Super Senior Facility Agreement on whose instructions the Super Senior Agent is required to act in relation to the relevant matter after the application of clause 34.5 (*Excluded Commitments*) and clause 35 (*Debt Purchases*) of the Super Senior Facility Agreement, or any substantially equivalent provisions in any Permitted Super Senior Facility Agreement (as applicable).

**“Majority Priority Creditors”** means, at any time, those Priority Creditors whose Super Senior Credit Participations and Senior Credit Participations at that time aggregate to at least

66.66 per cent, of the total Super Senior Credit Participations and Senior Credit Participations (excluding the Super Senior Credit Participations and Senior Credit Participations of the Hedge Counterparties) at that time after the application of clause 34.5 (*Excluded Commitments*) and clause 35 (*Debt Purchases*) of the Notes Purchase Agreement, or any substantially equivalent provisions in any Permitted Super Senior Facility Agreement or Permitted Senior Financing Agreement (as applicable).

**“Majority Second Lien Creditors”** means, at any time, those Second Lien Secured Creditors whose Second Lien Secured Credit Participations at that time aggregate to at least 66.66 per cent. of the Total Second Lien Secured Credit Participations at that time after the application of any provision in any Second Lien Financing Agreement substantially equivalent to clause 34.5 (*Excluded Commitments*) and clause 35 (*Debt Purchases*) of the Notes Purchase Agreement.

**“Majority Second Lien Lenders”** has the meaning given to the term “Majority Lenders” in the relevant Second Lien Facility Agreement after the application of any provision in any Second Lien Facility Agreement substantially equivalent to clause 34.5 (*Excluded Commitments*) and clause 35 (*Debt Purchases*) of the Notes Purchase Agreement.

**“Majority Second Lien Notes Creditors”** means, in relation to any Second Lien Notes, the requisite number or percentage of Second Lien Notes Creditors under the Second Lien Notes Indenture on whose instructions the Second Lien Notes Trustee is required to act in relation to the relevant matter after the application of any provision in any Second Lien Notes Indenture substantially equivalent to clause 34.5 (*Excluded Commitments*) and clause 35 (*Debt Purchases*) of the Notes Purchase Agreement.

**“Majority Senior Creditors”** means, at any time, those Senior Creditors whose Senior Credit Participations at that time aggregate to at least 66.66 per cent. of the total Senior Credit Participations at that time after the application of clause 34.5 (*Excluded Commitments*) and clause 35 (*Debt Purchases*) of the Notes Purchase Agreement, or any substantially equivalent provisions in any Permitted Senior Financing Agreement (as applicable).

**“Majority Senior Noteholders”** has the meaning given to the term “Majority Holders” in the Notes Purchase Agreement.

**“Majority Super Senior Creditors”** means, at any time, those Super Senior Lenders and Super Senior Hedge Counterparties whose Super Senior Credit Participations at that time aggregate to at least 66.66 per cent. of the total aggregate amount of all Super Senior Credit Participations of all Super Senior Lenders and Super Senior Hedge Counterparties at that time after the application of clause 34.5 (*Excluded Commitments*) and clause 35 (*Debt Purchases*) of the Super Senior Facility Agreement, or any substantially equivalent provisions in any Permitted Super Senior Facility Agreement (as applicable).

**“Majority Super Senior Lenders”** means, at any time, those Super Senior Lenders whose Super Senior Credit Participations at that time aggregate to at least 66.66 of the total aggregate amount of all Super Senior Credit Participations of all Super Senior Lenders at that time after the application of clause 34.5 (*Excluded Commitments*) and clause 35 (*Debt Purchases*) of the Super Senior Facility Agreement, or any substantially equivalent provisions in any Permitted Super Senior Facility Agreement (as applicable).

**“Material Enforcement Action”** means:

- (a) the enforcement or disposal of any Transaction Security, the requesting of a Distressed Disposal and/or the release or disposal of claims and/or Transaction Security on a

Distressed Disposal (including the commencement of any Public Auction in anticipation of enforcement);

- (b) the giving of instructions as to actions with respect to the Transaction Security and/or the Charged Property following an Insolvency Event;
- (c) the taking of any other actions consequential on (or necessary to effect) any of the actions mentioned in paragraphs (a) or (b) above.

**“Material Event of Default”** means:

- (a) prior to the Senior Notes Discharge Date, an Event of Default which is continuing under sub-paragraph (i) of paragraph (b) (*Breach of other Obligations*), paragraph (f) (*Insolvency*), paragraph (g) (*Insolvency Proceedings*), paragraph (h) (*Similar Events Elsewhere*) or paragraph (i) (*Attachment*) of clause 24 (Events of Default) of the Notes Purchase Agreement;
- (b) prior to the Super Senior Lender Discharge Date, an Event of Default which is continuing under sub-paragraph (i) of paragraph (b) (*Breach of other Obligations*), paragraph (f) (*Insolvency*), paragraph (g) (*Insolvency Proceedings*), paragraph (h) (*Similar Events Elsewhere*) or paragraph (i) (*Attachment*) of clause 24 (Events of Default) of the Super Senior Facility Agreement or an equivalent Event of Default which is continuing under any Permitted Super Senior Facility Agreement; and
- (c) prior to the Permitted Senior Financing Discharge Date, an equivalent Event of Default which is continuing under any Permitted Senior Financing Agreement.

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

**“Multi-account Overdraft Liabilities”** means the Liabilities arising under any Multi-account Overdraft Facility.

**“Non-Credit Related Close-Out”** means a Permitted Hedge Close-Out described in any of sub-paragraphs (a)(ii) or (a)(v) of Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*).

**“Noteholders”** means the Senior Noteholders and/or the Second Lien Noteholders, as the context requires.

**“Notes Finance Documents”** means:

- (a) in respect of any Senior Notes, the Senior Notes Finance Documents relating to those Senior Notes; and
- (b) in respect of any Second Lien Notes, the Second Lien Notes Finance Documents relating to those Second Lien Notes.

**“Notes Indenture”** means:

- (a) in respect of any Senior Notes, the Senior Notes Indenture relating to those Senior Notes; and
- (b) in respect of any Second Lien Notes, the Second Lien Notes Indenture relating to those Second Lien Notes.

“**Notes Purchase Agreement**” means the Notes Purchase Agreement dated on or around the date of this Agreement relating to up to £110,000,000 Term Tranche Notes due February 2029 and up to £10,000,000 Capex and Acquisition Tranche Notes due February 2029.

“**Notes Security Costs**” means costs and expenses of any holder of Security in relation to the protection, preservation or enforcement of such Security.

“**Notes Trustee**” means:

- (a) in respect of any Senior Notes, each Senior Notes Agent appointed under or pursuant to the relevant Senior Notes Indenture; and
- (b) in respect of any Second Lien Notes, each Second Lien Notes Trustee appointed under or pursuant to the relevant Second Lien Notes Indenture.

“**Notes Trustee Amounts**” means the Senior Notes Agent Amounts and the Second Lien Notes Trustee Amounts.

“**Other Liabilities**” means, in relation to a member of the Group or any Third Party Security Provider, any trading and other liabilities (not being Borrowing Liabilities or Guarantee Liabilities) it may have to any Agent, Arranger under the Debt Documents or to an Intra-Group Lender or Debtor or Third Party Security Provider.

“**Pari Passu Creditor Liabilities**” means the Senior Notes Liabilities, the Permitted Senior Financing Liabilities and the Pari Passu Hedging Liabilities.

“**Pari Passu Creditors**” means the Senior Notes Creditors and the Permitted Senior Financing Creditors.

“**Pari Passu Discharge Date**” means the first date on which all Pari Passu Liabilities have been fully and finally discharged, including by way of defeasance permitted in accordance with the Notes Purchase Agreement, whether or not as the result of an enforcement.

“**Pari Passu Finance Documents**” means the Senior Notes Finance Documents, the Permitted Senior Financing Documents and the Hedging Agreements.

“**Pari Passu Hedge Counterparty**” means each Hedge Counterparty to the extent it is owed Pari Passu Hedging Liabilities.

“**Pari Passu Hedging Liabilities**” means Hedging Liabilities to the extent they are not Super Senior Hedging Liabilities.

“**Pari Passu Liabilities**” means the Senior Notes Liabilities and the Permitted Senior Financing Liabilities.

“**Party**” means a party to this Agreement.

“**Payment**” means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations).

“**Payment Netting**” means:

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

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

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

**“Permitted Hedge Close-Out”** means, in relation to a hedging transaction under a Hedging Agreement, a termination or close-out of that hedging transaction which is permitted pursuant to Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*).

**“Permitted Hedge Payments”** means the Payments permitted by Clause 5.3 (*Permitted Payments: Hedging Liabilities*).

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

**“Permitted Investor Payments”** means the Payments permitted by Clause 8.2 (*Permitted Payments: Investor Liabilities*).

**“Permitted Payment”** means a Permitted Hedge Payment, a Permitted Intra-Group Payment, a Permitted Second Lien Payment, a Permitted Senior Payment or a Permitted Investor Payment.

**“Permitted Second Lien Payments”** means the Payments permitted by Clause 6.2 (*Permitted Payments: Second Lien Liabilities*).

**“Permitted Senior Financing Acceleration Event”** means, in relation to any Permitted Senior Financing Debt and following the occurrence of a Permitted Senior Financing Event of Default which is continuing, the Senior Creditor Representative in respect of that Permitted Senior Financing Debt (or, as the case may be, any of the Permitted Senior Financing Creditors) exercising any of its rights under (and in accordance with the terms of) the Permitted Senior Financing Agreement to accelerate any amount outstanding under the Permitted Senior Financing Agreement or any acceleration provision being automatically invoked under the Permitted Senior Financing Agreement (in each case such that a principal amount outstanding in respect of that Permitted Senior Financing Agreement has become immediately due and payable prior to its scheduled maturity).

**“Permitted Senior Financing Agent Liabilities”** means the Agent Liabilities owed by the Debtors and (if any such Liabilities are owed by them) the Third Party Security Providers to the relevant Senior Creditor Representative under or in connection with the Permitted Senior Financing Documents.

**“Permitted Senior Financing Agreement”** means, in relation to any Permitted Senior Financing Debt, the facility agreement, indenture, notes purchase agreement or other equivalent document by which that Permitted Senior Financing Debt is made available or, as the case may be, issued.

**“Permitted Senior Financing Arranger”** means any Arranger under and as defined in a Permitted Senior Financing Agreement.

**“Permitted Senior Financing Arranger Liabilities”** means the Arranger Liabilities owed by the Debtors and (if any such Liabilities are owed by them) the Third Party Security Providers

to any Permitted Senior Financing Arranger under or in connection with the Permitted Senior Financing Documents.

**“Permitted Senior Financing Creditors”** means, in relation to any Permitted Senior Financing Debt, each of the lenders, holders or other creditors in respect of that Permitted Senior Financing Debt from time to time (including the applicable Senior Creditor Representative).

**“Permitted Senior Financing Debt”** means any indebtedness incurred by any member of the Group which is notified to the Security Agent by the Company in writing as indebtedness to be treated as “Permitted Senior Financing Debt” for the purposes of this Agreement provided that:

- (a) incurrence of such indebtedness is not prohibited by the terms of the Secured Debt Documents; and
- (b)
  - (i) if such indebtedness is incurred by way of loans, the providers of such indebtedness have agreed to become a party to this Agreement as a Senior Secured Creditor by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking; and
  - (ii) the agent, trustee or other relevant representative in respect of that Permitted Senior Financing Debt has agreed to become a Party to this Agreement as a Senior Secured Creditor and Senior Creditor Representative on behalf of the providers of such indebtedness by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking, in each case to the extent that the relevant person is not already party to this Agreement in that capacity.

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

**“Permitted Senior Financing Documents”** means, in relation to any Permitted Senior Financing Debt, the Permitted Senior Financing Agreement, any fee letter entered into under or in connection with the Permitted Senior Financing Agreement and any other document or instrument relating to that Permitted Senior Financing Debt and designated as such by the Company and the Senior Creditor Representative in respect of that Permitted Senior Financing Debt.

**“Permitted Senior Financing Event of Default”** means, in relation to any Permitted Senior Financing Debt, an event of default (however described) under the Permitted Senior Financing Agreement which entitles the Permitted Senior Financing Creditors to give (or to instruct the Senior Creditor Representative to give) a notice of acceleration constituting a Permitted Senior Financing Acceleration Event.

**“Permitted Senior Financing Liabilities”** means all Liabilities of any Debtor and (if any such Liabilities are owed by them) Third Party Security Provider to any Permitted Senior Financing Creditors under or in connection with the Permitted Senior Financing Documents.

**“Permitted Senior Payments”** means the Payments permitted by Clause 4.1 (*Payment of Senior Liabilities*).

**“Permitted Super Senior Facility Agreement”** means, in relation to any Permitted Super Senior Financing Debt, the facility agreement, credit agreement or other equivalent document by which that Permitted Super Senior Financing Debt is made available or, as the case may be, issued.

**“Permitted Super Senior Financing Creditors”** means, in relation to any Permitted Super Senior Financing Debt, each of the lenders, holders or other creditors in respect of that Permitted Super Senior Financing Debt from time to time (including the applicable Super Senior Agent).

**“Permitted Super Senior Financing Debt”** means any indebtedness incurred by any member of the Group which is notified to the Security Agent by the Company in writing as indebtedness to be treated as “Permitted Super Senior Financing Debt” for the purposes of this Agreement provided that:

- (c) incurrence of such indebtedness is not prohibited by the terms of the Secured Debt Documents; and
- (d) either:
  - (i) the providers of such indebtedness have agreed to become a party to this Agreement as a Senior Secured Creditor by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking; or
  - (ii) the agent or other relevant representative in respect of that Permitted Super Senior Financing Debt has agreed to become a Party to this Agreement as a Senior Secured Creditor and Super Senior Agent on behalf of the providers of such indebtedness by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking, in each case to the extent that the relevant person is not already party to this Agreement in that capacity.

**“Permitted Transaction”** has the meaning given to that term in Clause 14.1(e) (*Non-Distressed Disposals*).

**“Priority Creditors”** means the Super Senior Creditors and the Pari Passu Creditors.

**“Public Auction”** means an auction or other competitive sale process in which more than one bidder participates or is invited to participate, which may or may not be conducted through a court or other legal proceeding and which is conducted with the advice of a Financial Adviser.

**“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 paragraph (a) of Clause 15.1 (*Order of application*).

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

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

**“Relevant Liabilities”** means:

- (a) in the case of a Creditor:

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

**“Required Creditor Consent”** means the Required Super Senior Consent, the Required Senior Consent, and/or the Required Second Lien Consent, as the context requires.

**“Required Second Lien Consent”** means, in relation to any proposed matter, step or action (the **“Second Lien Proposed Action”**), the prior consent of:

- (a) if any Second Lien Debt has been incurred and the Second Lien Proposed Action is prohibited by the terms of the relevant Second Lien Facility Agreement, the Majority Second Lien Lenders; and
- (b) if any Second Lien Notes have been issued and the Second Lien Proposed Action is prohibited by the terms of the relevant Second Lien Notes Indenture, the Majority Second Lien Notes Creditors or the Creditor Representative in respect of that Second Lien Notes.

**“Required Senior Consent”** means, in relation to any proposed matter, step or action (the **“Senior Proposed Action”**), the prior consent of:

- (a) if the Senior Proposed Action is prohibited by the terms of the Notes Purchase Agreement, the Senior Notes Agent (acting on the instructions of Majority Senior Noteholders); and
- (b) if any Permitted Senior Financing Debt has been incurred and the Senior Proposed Action is prohibited by the terms of the relevant Permitted Senior Financing Agreement, the Majority Permitted Senior Financing Creditors or the Creditor Representative in respect of that Permitted Senior Financing Debt.

**“Required Super Senior Consent”** means, in relation to any proposed matter, step or action (the **“Super Senior Proposed Action”**), the prior consent of:

- (a) if the Super Senior Proposed Action is prohibited by the terms of the Super Senior Facility Agreement, the Super Senior Agent (acting on the instructions of Majority Super Senior Lenders or all Super Senior Lenders (as applicable)); and
- (b) if any Permitted Super Senior Facility Agreement has been incurred and the Super Senior Proposed Action is prohibited by the terms of the relevant Permitted Super Senior Facility Agreement, the Majority Permitted Super Senior Financing Creditors or the Creditor Representative in respect of that Permitted Super Senior Financing Debt.



**“Responsible Officer”** means any officer within the corporate trust, agency or securities services department (however described) of any Notes Trustee, including any director, associate director, vice president, assistant vice president, assistant treasurer, trust officer or any other officer of such Notes Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement and any Senior Notes Indenture or Second Lien Notes Indenture (as applicable) to which that Notes Trustee is a party.

**“Retiring Security Agent”** has the meaning given to that term in paragraph (d) of Clause 19.1 (*Resignation of the Security Agent*).

**“Second Lien Acceleration Event”** means a Second Lien Facility Acceleration Event and/or a Second Lien Notes Acceleration Event, as the context requires.

**“Second Lien Agent”** means the Second Lien Facility Agent and/or any Second Lien Notes Trustee, as the context requires.

**“Second Lien Agent Liabilities”** means the Agent Liabilities owed by the Debtors and (if any such Liabilities are owed by them) Third Party Security Providers to any Second Lien Agent under or in connection with any Second Lien Debt Document.

**“Second Lien Arranger”** means any Arranger under and as defined in the Second Lien Facility Agreement.

**“Second Lien Arranger Liabilities”** means the Arranger Liabilities owed by the Debtors and (if any such Liabilities are owed by them) Third Party Security Providers to any Second Lien Arranger under or in connection with the Second Lien Finance Documents.

**“Second Lien Borrower”** has the meaning given to the term “Borrower” in the Second Lien Facility Agreement.

**“Second Lien Commitment”** has the meaning given to the term “Commitment” in the Second Lien Facility Agreement.

**“Second Lien Debt”** means Indebtedness outstanding under any Second Lien Facility.

**“Second Lien Debt Documents”** means the Second Lien Finance Documents and the Second Lien Notes Finance Documents.

**“Second Lien Discharge Date”** means the first date on which each of the Second Lien Lender Discharge Date and the Second Lien Notes Discharge Date has occurred.

**“Second Lien Event of Default”** means an Event of Default under a Second Lien Financing Agreement.

**“Second Lien Facility”** has the meaning given to the term “Facility” in the Second Lien Facility Agreement.

**“Second Lien Facility Acceleration Event”** means the occurrence of an “Acceleration Date” under and as defined in the Second Lien Facility Agreement.

**“Second Lien Facility Agent”** means the Facility Agent under and as defined in the Second Lien Facility Agreement.

“**Second Lien Facility Agreement**” means any facility agreement entered into or to be entered into by a member of the Group which is notified to the Security Agent by the Company in writing as a facility agreement to be treated as the “Second Lien Facility Agreement” for the purposes of this Agreement, provided that:

- (a) incurrence of such indebtedness is not prohibited by the terms of the Secured Debt Documents; and
- (b)
  - (i) if such indebtedness is incurred by way of loans, the providers of such indebtedness have agreed to become a party to this Agreement as a Second Lien Secured Creditor by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking; and
  - (ii) the agent, trustee or other relevant representative in respect of that Second Lien Debt has agreed to become a Party to this Agreement as a Senior Secured Creditor and Second Lien Agent on behalf of the providers of such indebtedness by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking, in each case to the extent that the relevant person is not already party to this Agreement in that capacity.

“**Second Lien Facility Finance Parties**” has the meaning given to the term “Finance Parties” in the Second Lien Facility Agreement.

“**Second Lien Finance Documents**” has the meaning given to the term “Finance Documents” in the Second Lien Facility Agreement.

“**Second Lien Financing Agreement**” means the Second Lien Facility Agreement and/or any Second Lien Notes Indenture, as the context requires.

“**Second Lien Guarantor**” has the meaning given to the term “Guarantor” in the Second Lien Facility Agreement.

“**Second Lien Lender Discharge Date**” means the first date on which all Second Lien Lender Liabilities have been fully and finally discharged, whether or not as the result of an enforcement, and the Second Lien Lenders are under no further obligation to provide financial accommodation to any of the Debtors under any of the Second Lien Finance Documents.

“**Second Lien Lender Liabilities**” means the Liabilities owed by the Debtors and (to the extent such Liabilities are owed by them) the Third Party Security Providers to the Second Lien Lenders under the Second Lien Finance Documents.

“**Second Lien Lenders**” means each Lender under and as defined in the Second Lien Facility Agreement.

“**Second Lien Liabilities**” means the Second Lien Lender Liabilities and any Second Lien Notes Liabilities.

“**Second Lien Noteholders**” means the registered holders from time to time of the applicable Second Lien Notes, as determined in accordance with the relevant Second Lien Notes Indenture(s).

“**Second Lien Notes**” means high yield notes, exchange notes, debt securities and/or other debt instruments issued or to be issued by any member of the Group which are notified to the

Security Agent by the Company in writing as indebtedness to be treated as “Second Lien Notes” for the purposes of this Agreement provided that:

- (a) incurrence of such indebtedness is not prohibited by the terms of the Secured Debt Documents; and
- (b) either:
  - (i) the providers of such indebtedness have agreed to become a party to this Agreement as a Senior Secured Creditor by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking; or
  - (ii) the agent, trustee or other relevant representative in respect of that Permitted Senior Financing Debt has agreed to become a Party to this Agreement as a Senior Secured Creditor and Senior Creditor Representative on behalf of the providers of such indebtedness by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking, in each case to the extent that the relevant person is not already party to this Agreement in that capacity.

“**Second Lien Notes Acceleration Event**” means following the occurrence of a Second Lien Event of Default which is continuing under a Second Lien Notes Indenture, the Second Lien Notes Trustee (or any Second Lien Noteholder) exercising any of its rights under (and in accordance with the terms of) the Second Lien Notes Indenture to accelerate any amount outstanding under the Second Lien Notes or Second Lien Notes Indenture or any acceleration provision being automatically invoked under any Second Lien Notes Indenture (in each case such that a principal amount outstanding under the Second Lien Notes or Second Lien Notes Indenture has become immediately due and payable prior to its scheduled maturity).

“**Second Lien Notes Creditors**” means, on and from the first Second Lien Notes Issue Date, the Second Lien Noteholders and each Second Lien Notes Trustee.

“**Second Lien Notes Discharge Date**” means the first date on which all the Second Lien Notes Liabilities have been fully and finally discharged, including by way of defeasance permitted in accordance with the Second Lien Notes Finance Documents, whether or not as the result of an enforcement.

“**Second Lien Notes Finance Documents**” means the Second Lien Notes, each Second Lien Notes Indenture, each guarantee granted by a member of the Group in respect of the Second Lien Notes, this Agreement, the Security Documents and any other document entered into in connection with the Second Lien Notes and designated a Second Lien Notes Finance Document by the Company and the applicable Second Lien Notes Trustee (which, for the avoidance of doubt, excludes any document to the extent it sets out rights of the initial purchasers of the Second Lien Notes (in their capacities as initial purchasers) against any member of the Group).

“**Second Lien Notes Finance Parties**” means any Second Lien Notes Trustee (on behalf of itself and the Second Lien Noteholders which it represents), any Second Lien Noteholder and the Security Agent.

“**Second Lien Notes Indenture**” means each indenture or notes purchase agreement pursuant to which any Second Lien Notes are issued.

“**Second Lien Notes Issue Date**” means, in respect of each Second Lien Notes Indenture, the first date on which a Second Lien Note is issued pursuant to that Second Lien Notes Indenture.

**“Second Lien Notes Liabilities”** means the Liabilities owed by the Debtors and the Third Party Security Providers to the Second Lien Notes Finance Parties under the Second Lien Notes Finance Documents (excluding any Second Lien Notes Trustee Amounts).

**“Second Lien Notes Trustee”** means any entity acting as trustee under any issue of Second Lien Notes (to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Agent Accession Undertaking), in each case as the context requires.

**“Second Lien Notes Trustee Amounts”** means, in relation to a Second Lien Notes Trustee, amounts in respect of costs and expenses (including legal fees and together with any applicable VAT) payable to that Second Lien Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof under the Second Lien Notes Finance Documents, any provisions (including indemnity provisions) for costs and expenses in favour of that Second Lien Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof contained in the Second Lien Notes Finance Documents, all compensation for services provided by that Second Lien Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof which is payable to that Second Lien Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof pursuant to the terms of the Second Lien Notes Finance Documents and all out-of-pocket costs and expenses properly incurred by that Second Lien Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof in carrying out its duties or performing any service pursuant to the terms of the Second Lien Notes Finance Documents, including, without limitation, (a) compensation for the costs and expenses of the collection by that Second Lien Notes Trustee of any amount payable to that Second Lien Notes Trustee for the benefit of the Second Lien Noteholders and (b) costs and expenses of that Second Lien Notes Trustee’s advisers, receivers, delegates, attorneys, agents or appointees (but excluding (i) any payment in relation to any unpaid costs and expenses incurred in respect of any litigation initiated by that Second Lien Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee on behalf of that Second Lien Notes Trustee against any of the Second Lien Notes Creditors and (ii) any payment made, directly or indirectly, on or in respect of any amounts owing under any Second Lien Notes (including principal, interest, premium or any other amounts to any of the Second Lien Noteholders)), all such amounts above including VAT where applicable.

**“Second Lien Payment Default”** means an Event of Default arising by reason of non-payment of any amount which is immediately due and payable under the Second Lien Debt Documents, other than in respect of non-payment of any amount (a) not constituting principal or interest or (b) not exceeding £10,000,000 (or its equivalent in other currencies).

**“Second Lien Secured Credit Participation”** means:

- (a) in relation to a Second Lien Lender, its Second Lien Commitment; and
- (b) in relation to a Second Lien Notes Creditor, the principal amount of outstanding Second Lien Liabilities held by that Second Lien Notes Creditor (as applicable and without double counting).

**“Second Lien Secured Creditors”** means the Second Lien Facility Finance Parties and/or the Second Lien Notes Creditors, as the context requires.

**“Secured Debt Documents”** means the Super Senior Finance Documents, the Senior Notes Finance Documents, the Permitted Senior Financing Documents, the Hedging Agreements, the Second Lien Finance Documents and/or the Second Lien Notes Finance Documents, as the context requires.

“**Secured Obligations**” means, to the extent legally possible and subject to the Agreed Security Principles, all the Liabilities and all other present and future obligations at any time due, owing or incurred by any member of the Group to any Secured Party under the Secured Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

“**Secured Party**” means, to the extent legally possible and subject to the Agreed Security Principles, each of the Security Agent, any Receiver or Delegate and each of the Agents, the Arrangers and the Senior Secured Creditors from time to time but, to the extent required by this Agreement, only if it is a party to this Agreement or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 20.7 (*Creditor/Agent Accession Undertaking*).

“**Security**” means a mortgage, charge, pledge, lien or other security interest having a similar effect.

“**Security Agent’s Spot Rate of Exchange**” means, in respect of the conversion of one currency (the “**First Currency**”) into another currency (the “**Second Currency**”) the Security Agent’s spot rate of exchange for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11:00 am (London time) on a particular day, which shall be notified by the Security Agent in accordance with paragraph (d) of Clause 18.7 (*Security Agent’s obligations*).

“**Security Documents**” means:

- (a) each of the Transaction Security Documents; and
- (b) any other document entered into at any time by any of the Debtors or Third Party Security Providers creating or expressed to create any Security over all or any part of its assets in respect of any of the obligations of any member of the Group to any of the Secured Parties (in such capacity) under any of the Secured Debt Documents.

“**Security Property**” means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as agent or trustee for the Secured Parties (or under or pursuant to any parallel debt, joint and several creditorship or similar or equivalent structure) and/or in favour of all or any relevant Secured Parties (as applicable under the relevant governing law) and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor or a Third Party Security Provider to pay amounts in respect of the Liabilities to the Security Agent as agent or trustee for the Secured Parties (or under or pursuant to any parallel debt (including, for the avoidance of doubt, under Clause 18.2 (*Parallel Debt (Covenant to pay the Security Agent)*), joint and several creditorship or similar or equivalent structure)) and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor or a Third Party Security Provider in favour of the Security Agent as trustee or security agent for the Secured Parties;
- (c) the 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 Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for (or otherwise for the benefit of) the Secured Parties.

“**Senior Acceleration Event**” means a Super Senior Acceleration Event, Senior Notes Acceleration Event and/or a Permitted Senior Financing Acceleration Event, as the context requires.

“**Senior Acquiring Creditors**” has the meaning given to that term in Clause 4.7 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*).

“**Senior Agent**” means each of the Super Senior Agent, Senior Notes Agent, any Senior Creditor Representative, any Second Lien Facility Agent, and/or any Second Lien Notes Trustee, as the context requires.

“**Senior Cash Discharge**” means the payment (or repayment) in full and in cash of the Senior Creditor Liabilities.

“**Senior Commitment**” has the meaning given to the term “Commitment” or any substantially equivalent term under and defined in the Permitted Senior Financing Agreement.

“**Senior Credit Participation**” means, in relation to a Senior Creditor, the aggregate of:

- (a) the principal amount of outstanding Senior Notes Liabilities held by that Senior Noteholder;
- (b) its aggregate Senior Commitments (whether drawn or undrawn), if any; and
- (c) in respect of any hedging transaction of that Senior Creditor under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Senior Creditor and as calculated in accordance with the relevant Hedging Agreement); and
- (d) after the Pari Passu Discharge Date, in respect of any hedging transaction of that Senior Creditor under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out:
  - (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
  - (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

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

**“Senior Creditor Liabilities”** means the Senior Notes Liabilities, Permitted Senior Financing Liabilities, and the Hedging Liabilities.

**“Senior Creditor Representative”** means, in relation to any Permitted Senior Financing Debt, the agent, trustee or other relevant representative in respect of that Permitted Senior Financing Debt.

**“Senior Creditors”** means the Senior Noteholders, Permitted Senior Financing Creditors and the Hedge Counterparties.

**“Senior Debt Discharge Date”** means the first date on which each of the Super Senior Lender Discharge Date, the Senior Notes Discharge Date and the Permitted Senior Financing Discharge Date has occurred.

**“Senior Debt Documents”** means the Senior Notes Finance Documents and/or the Permitted Senior Financing Documents, as the context requires.

**“Senior Discharge Date”** means the first date on which each of the Super Senior Creditor Discharge Date, Senior Creditor Discharge Date, the Senior Notes Discharge Date and the Permitted Senior Financing Discharge Date has occurred.

**“Senior Distress Event”** means, following the occurrence of a Senior Acceleration Event which is continuing, any of the Super Senior Agent (acting on behalf of the Super Senior Lenders), the Senior Notes Agent (acting on behalf of the Senior Noteholders) or a Senior Creditor Representative (to the extent expressly permitted by the relevant Permitted Senior Financing Agreement and acting on the instructions of the Majority Permitted Senior Financing Creditors) declaring by written notice to the Security Agent, each other Agent and the Company that a “Senior Distress Event” has occurred.

**“Senior Event of Default”** means an Event of Default under a Senior Financing Agreement.

**“Senior Financing Agreement”** means the Super Senior Facility Agreement, any Senior Notes Indenture and/or any Permitted Senior Financing Agreement, as the context requires.

**“Senior Guarantor”** has the meaning given to the term “Guarantor” in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

**“Senior Issuer”** has the meaning given to the term “Issuer” in the Notes Purchase Agreement.

**“Senior Liabilities”** means the Super Senior Liabilities, the Senior Creditor Liabilities, the Second Lien Lender Liabilities, the Senior Notes Liabilities, the Permitted Senior Financing Liabilities and the Second Lien Notes Liabilities.

**“Senior Liabilities Transfer”** means a transfer of the Senior Notes Liabilities and/or Permitted Senior Financing Liabilities to all or any of the Senior Secured Creditors described in

paragraph (a) of Clause 4.5 (*Option to purchase: Senior Notes Creditors and Permitted Senior Financing Creditors*).

**“Senior Noteholders”** means the registered holders from time to time of the applicable Senior Notes, as determined in accordance with the relevant Senior Notes Indenture(s).

**“Senior Notes”** means the notes issued by the Company or the Senior Issuers pursuant to the Notes Purchase Agreement.

**“Senior Notes Acceleration Event”** has the meaning given to the term “Acceleration Event” in the Notes Purchase Agreement.

**“Senior Notes Agent”** means the “Agent” under and as defined in the Notes Purchase Agreement.

**“Senior Notes Agent Amounts”** means the Agent Liabilities owed by the Debtors and (to the extent such Liabilities are owed by them) the Third Party Security Providers to the Senior Agent under or in connection with the Senior Notes Finance Documents.

**“Senior Notes Creditors”** means, on and from the applicable Senior Notes Issue Date, the Senior Noteholders and each Senior Notes Agent.

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

**“Senior Notes Finance Documents”** has the meaning given to the term “Finance Documents” in the Notes Purchase Agreement.

**“Senior Notes Finance Parties”** has the meaning given to the term “Finance Parties” in the Notes Purchase Agreement.

**“Senior Notes Indenture”** means the Notes Purchase Agreement.

**“Senior Notes Issue Date”** means, in respect of each Senior Notes Indenture, the first date on which a Senior Note is issued pursuant to that Senior Notes Indenture.

**“Senior Notes Liabilities”** means the Liabilities owed by the Debtors and the Third Party Security Providers to the Senior Notes Finance Parties under the Senior Notes Finance Documents (excluding any Senior Notes Agent Amounts).

**“Senior Notes/Permitted Financing Credit Participations”** means the aggregate of all the Senior Credit Participations at any time of the Senior Notes Creditors and the Permitted Senior Financing Creditors.

**“Senior Notes/Permitted Financing Creditors”** means the Senior Notes Creditors and the Permitted Senior Financing Creditors.

**“Senior Notes Representative”** means, on or after the applicable Senior Notes Issue Date, each Senior Notes Agent in respect of the applicable Senior Notes that are outstanding.

**“Senior Payment Default”** means a Senior Event of Default arising by reason of non-payment of any amount which is immediately due and payable under the Senior Debt Documents, other



than in respect of non-payment of any amount (a) not constituting principal or interest or (b) not exceeding £10,000,000 (or its equivalent in other currencies).

**“Senior Secured Acquiring Creditors”** has the meaning given to that term in Clause 4.5 (*Option to purchase: Senior Notes Creditors and Permitted Senior Financing Creditors*).

**“Senior Secured Creditors”** means the Super Senior Creditors, the Senior Creditors, the Senior Notes Creditors, the Second Lien Lenders, the Permitted Senior Financing Creditors and/or the Second Lien Notes Creditors, as the context requires.

**“Senior Secured Credit Participations”** means Super Senior Credit Participations and/or Senior Credit Participations, as the context requires.

**“Senior Secured Liabilities”** means the Super Senior Lender Liabilities, the Second Lien Lender Liabilities, the Senior Notes Liabilities, any Permitted Senior Financing Liabilities and any Second Lien Notes Liabilities.

**“Senior Secured Liabilities Transfer”** means a transfer of the Super Senior Lender Liabilities, the Senior Notes Liabilities and any Permitted Senior Financing Liabilities to all or any of the Second Lien Secured Creditors as described in Clause 6.14 (*Option to purchase: Second Lien Secured Creditors*).

**“Senior Secured Parties”** means the Secured Parties.

**“SFA Cash Cover”** has the meaning given to the term “cash cover” in the Super Senior Facility Agreement (or any equivalent term or concept in any relevant Permitted Super Senior Facility Agreement).

**“SFA Cash Cover Document”** means, in relation to any SFA Cash Cover:

- (a) in the case of any SFA Cash Cover provided pursuant to the Super Senior Facility Agreement, any Super Senior Finance Document which creates or evidences, or is expressed to create or evidence, the Security required to be provided over that SFA Cash Cover by the final paragraph of the term “cash cover” as used in the Super Senior Facility Agreement; and
- (b) in the case of any SFA Cash Cover provided pursuant to a Permitted Super Senior Facility Agreement, any Super Senior Finance Document which creates or evidences, or is expressed to create or evidence, any Security required to be provided over that SFA Cash Cover by the terms of that Permitted Super Senior Facility Agreement.

**“Sponsor Affiliate”** has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

**“Subsidiary”** has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

**“Super Senior Acceleration Event”** means the occurrence of an “Acceleration Event” under and as defined in the Super Senior Facility Agreement.

**“Super Senior Agent”** means:

- (a) the Facility Agent under and as defined in the Super Senior Facility Agreement; or

- (b) any facility agent or any substantially equivalent term under and as defined in any Permitted Super Senior Facility Agreement, which has acceded to this Agreement as a Super Senior Agent pursuant to Clause 20.7 (*Creditor/Agent Accession Undertaking*),

as the context requires.

**“Super Senior Agent Liabilities”** means the Agent Liabilities owed by the Debtors and (to the extent such Liabilities are owed by them) the Third Party Security Providers to the Super Senior Agent under or in connection with the Super Senior Finance Documents.

**“Super Senior Arranger”** means any Arranger under and as defined in the Super Senior Facility Agreement.

**“Super Senior Arranger Liabilities”** means the Arranger Liabilities owed by the Debtors and (to the extent such Liabilities are owed by them) the Third Party Security Providers to any Super Senior Arranger under or in connection with the Super Senior Finance Documents.

**“Super Senior Borrower”** has the meaning given to the term “Borrower” in the Super Senior Facility Agreement.

**“Super Senior Cash Collateral”** means any cash collateral provided by a Super Senior Lender to an Issuing Bank pursuant to any Permitted Super Senior Facility Agreement.

**“Super Senior Cash Discharge”** means:

- (a) the payment (or repayment) in full and in cash; or
- (b) in the case of any contingent Liability relating to a Letter of Credit or an Ancillary Facility, the making subject to cash collateral arrangements acceptable to the relevant Super Senior Lender of the Super Senior Lender Liabilities and the Super Senior Hedging Liabilities,

of the Super Senior Lender Liabilities and the Super Senior Hedging Liabilities.

**“Super Senior Commitment”** has the meaning given to the term “Commitment” or any substantially equivalent term under and defined in the Super Senior Facility Agreement.

**“Super Senior Credit Participation”** means, in relation to a Super Senior Creditor, the aggregate of:

- (a) its aggregate Super Senior Commitments (whether drawn or undrawn), if any; and
- (b) in respect of any hedging transaction of that Super Senior Creditor under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Senior Creditor and as calculated in accordance with the relevant Hedging Agreement); and
- (c) after the Super Senior Lender Discharge Date, in respect of any hedging transaction of that Senior Creditor under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out:

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

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

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

**“Super Senior Creditors”** means the Super Senior Lenders and the Super Senior Hedge Counterparties.

**“Super Senior Enforcement Notice”** has the meaning given to it in Clause 3.5 (*Restrictions on Enforcement: Super Senior Lenders*).

**“Super Senior Facilities”** has the meaning given to the term “Revolving Facility” in the Super Senior Facility Agreement and any substantially equivalent term under and as defined in any Permitted Super Senior Facility Agreement, as the context so requires.

**“Super Senior Facilities Acquiring Creditors”** has the meaning given to that term in Clause 4.7 (*Hedge Transfer: Senior Notes Creditor and Permitted Senior Financing Creditors*).

**“Super Senior Facility Acceleration Event”** means the occurrence of an “Acceleration Event” under and as defined in the Super Senior Facility Agreement or any substantially equivalent term under and as defined in any Permitted Super Senior Facility Agreement, as the context so requires.

**“Super Senior Facility Agreement”** means the revolving facility agreement dated on or about the date of this Agreement and made between the Company, the Super Senior Lenders, the Super Senior Agent and others.

**“Super Senior Finance Documents”** has the meaning given to the term “Finance Documents” in the Super Senior Facility Agreement or any substantially equivalent term under and as defined in any Permitted Super Senior Facility Agreement, as the context so requires.

**“Super Senior Guarantor”** has the meaning given to the term “Guarantor” in the Super Senior Facility Agreement or any substantially equivalent term under and as defined in any Permitted Super Senior Facility Agreement, as the context so requires.

**“Super Senior Hedge Counterparty”** means each Hedge Counterparty to the extent it is owed Super Senior Hedging Liabilities.

**“Super Senior Hedging Amount”** means an amount of Hedging Liabilities amount equal to the greater of £4,000,000 and 10 per cent of the Consolidated EBITDA of the Group, calculated on a mark-to-market basis.

**“Super Senior Hedging Certificate”** means a certificate substantially in the form set out in Schedule 4 (*Form of Super Senior Hedging Certificate*) or in such other form as the Security Agent and the Company may agree.

**“Super Senior Hedging Liabilities”** means any Hedging Liabilities owed to any Hedge Counterparty in a Common Currency Amount not exceeding such Hedge Counterparty’s Allocated Super Senior Hedging Amount.

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

**“Super Senior Lender Liabilities”** means the Liabilities owed by the Debtors and (to the extent such Liabilities are owed by them) the Third Party Security Providers to the Super Senior Lenders under the Super Senior Facilities.

**“Super Senior Lenders”** means each Lender under and as defined in the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement, as the context so requires, together with each Issuing Bank and Ancillary Lender under the Super Senior Finance Documents.

**“Super Senior Liabilities”** means the Super Senior Lender Liabilities and the Super Senior Hedging Liabilities.

**“Super Senior Liabilities Transfer”** means a transfer of the Super Senior Lender Liabilities to all or any of the Senior Noteholders and/or Pari Passu Creditors as described in Clause 4.6 (*Option to purchase: Pari Passu Creditors*).

**“Super Senior Material Default”** means:

- (a) the occurrence of any other event or circumstance which expressly requires the consent of the Super Senior Lenders or Majority Super Senior Lenders (as applicable) under paragraph (a) of Clause 26.7 (*Excluded consents*) where that consent has not been obtained; or
- (b) the occurrence of any of the following Events of Default which is continuing under:
  - (i) clause 24(a) (*Payment Default*) in relation to any amount of principal, interest or fees which are immediately due and payable under the Revolving Facility (as defined in the Super Senior Facility Agreement);
  - (ii) paragraph (i) of clause 24(b) (*Breach of other Obligations*);
  - (iii) paragraph (ii) of clause 24(b) (*Breach of other Obligations*), but only to the extent it consists of a breach of:

- (A) the undertaking contained in clause 23(r) (*Limitation on Disposals*) in relation to a Significant Disposal (as defined in the Super Senior Facility Agreement);
  - (B) the undertakings contained in clause 23(o) (*Negative Pledge*) or clause 23(l) (*Limitation on Financial Indebtedness*) in respect of any Security or Indebtedness that would rank *pari passu* or senior to the Revolving Facility;
  - (C) the undertakings contained in clause 23(cc) (*Anti-Corruption law*) provided that the failure to comply is materially prejudicial to the interests of the Super Senior Lenders taken as whole under the Super Senior Finance Documents; or
  - (D) the undertakings contained in clause 23(dd) (*Sanctions*);
- (iv) paragraph (iii) of clause 24(b) (*Breach of other Obligations*), but only to the extent it consists of a breach of the requirement to deliver any financial statements or a compliance certificate to the Super Senior Lenders, in each case provided that such Event of Default has been continuing for not less than 10 Business Days;
  - (v) clause 24(f) (*Insolvency*), clause 24(g) (*Insolvency Proceedings*) or 24(h) (*Similar Events Elsewhere*); or
  - (vi) clause 24(d) (*Invalidity, Unlawfulness and Repudiation*), in each case provided that the relevant event or circumstance is materially prejudicial to the interests of the Super Senior Lenders taken as whole under the Super Senior Finance Documents,

of the Super Senior Facility Agreement or any clauses or definitions (as applicable) in any Permitted Super Senior Facility Agreement which are substantially equivalent to the clauses or definitions (as applicable) described in paragraph (i) to (vi) above.

**“Super Senior Majority Threshold Condition”** means, at any time, if the Super Senior Lenders' Senior Secured Credit Participations constitute at that time at least 66.66 per cent. of the Total Senior Secured Credit Participations at that time.

**“Super Senior Secured Acquiring Creditors”** has the meaning given to that term in Clause 4.6 (*Option to purchase: Pari Passu Creditors*).

**“Swap”** means any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

**“Swap Obligation”** means, with respect to any person, any obligation to pay or perform under any Swap.

**“Taxes”** has the meaning given to that term in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

**“Third Party Security Provider”** means:

- (a) the Original Third Party Security Provider; or

- (b) any person that has provided Transaction Security over any or all of its assets but is not a Debtor in respect of any of the direct Borrowing Liabilities or Guarantee Liabilities of the Secured Obligations to which that Transaction Security relates and which is designated as such by the Company (in its discretion) by written notice to each Agent who is a party to this Agreement at such time,

and, in each case, which entity has not ceased to be a Third Party Security Provider in accordance with the terms of this Agreement.

**“Total Second Lien Secured Credit Participations”** means the aggregate of all the Second Lien Secured Credit Participations at any time.

**“Total Senior Credit Participations”** means the aggregate of all the Senior Credit Participations at any time.

**“Total Secured Credit Participations”** means the aggregate of all the Senior Secured Credit Participations at any time.

**“Transaction Security”** means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Security Documents.

**“Transaction Security Documents”** has the meaning given to the term “Security Documents” in the Notes Purchase Agreement and the Super Senior Facility Agreement (as applicable).

**“US”** and **“United States”** means the United States of America, its territories and possessions.

**“US Bankruptcy Code”** means Title 11 of the United States Code entitled “Bankruptcy” as amended from time to time.

**“US Debtor”** means a Debtor created or organised in or under the laws of the United States, any state or territory thereof, or the District of Columbia.

**“US Internal Revenue Code”** means the United States Internal Revenue Code of 1986, as amended.

**“US Person”** means a “United States Person” as defined in Section 7701(a)(30) of the US Internal Revenue Code and includes an entity disregarded as being an entity separate from its owner for US federal income tax purposes if such owner is a “United States Person”.

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

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) any **“Agent”**, **“Ancillary Lender”**, **“Arranger”**, **“Creditor”**, **“Debtor”**, **“Group Company”**, **“Hedge Counterparty”**, **“Intra-Group Lender”**, **“Investor”**, **“Third Party Security Provider”**, **“Issuer”**, **“Issuing Bank”**, **“Company”**, **“Party”**, **“Pari Passu Hedge Counterparty”**, **“Pari Passu Creditor”**, **“Permitted Senior Financing Arranger”**, **“Permitted Senior Financing Creditor”**, **“Second Lien Agent”**, **“Second Lien Arranger”**, **“Second Lien Borrower”**, **“Second Lien Guarantor”**, **“Second Lien Lender”**, **“Second Lien Notes Creditor”**, **“Second Lien Notes Trustee”**, **“Second Lien Secured Creditor”**, **“Security Agent”**, **“Senior Agent”**,

- “**Senior Borrower**”, “**Senior Creditor**”, “**Senior Guarantor**”, “**Senior Creditor Representative**”, “**Senior Issuer**”, “**Senior Noteholder**”, “**Senior Notes Agent**”, “**Super Senior Agent**”, “**Super Senior Arranger**”, “**Super Senior Borrower**”, “**Super Senior Guarantor**”, “**Super Senior Hedge Counterparty**” or “**Super Senior Lender**” shall be construed to be a reference to it in its capacity as such and not in any other capacity;
- (ii) any “**Agent**”, “**Ancillary Lender**”, “**Arranger**”, “**Creditor**”, “**Debtor**”, “**Hedge Counterparty**”, “**Investor**”, “**Third Party Security Provider**”, “**Issuing Bank**”, any “**Party**” or the “**Security Agent**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees (including the surviving entity of any merger involving that person) and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
- (iii) “**assets**” includes present and future properties, revenues and rights of every description;
- (iv) a “**Debt Document**” or any other agreement is to be construed as a reference to that Debt Document or agreement as it may be from time to time be amended (including any increase in, extension of or change to any facility made available under that Debt Document or agreement) but excluding for this purpose any amendment which is prohibited by this Agreement;
- (v) “**enforcing**” (or any derivation) the Transaction Security shall include the appointment of an administrator of a Debtor or a Third Party Security Provider by the Security Agent;
- (vi) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (vii) a “**person**” includes any individual, trust, firm, fund, company, corporation, partnership, joint venture, government, state or agency of a state or any undertaking or other association (whether or not having separate legal personality) or any two or more of the foregoing;
- (viii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law, but if not having the force of law being one with which it is the practice of the relevant person to comply) of any agency of state; and
- (ix) 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 or an Event of Default is “**continuing**” if it has not been remedied or waived.
- (d) An Acceleration Event is “**continuing**” if it has not been revoked or otherwise ceases to be continuing in accordance with the terms of the relevant Debt Financing Agreement.
- (e) The right or requirement of any Party to take or not take any action on or following the occurrence of an Insolvency Event shall cease to apply if the relevant Insolvency Event

of Default in respect of that Insolvency Event is no longer continuing (unless an Acceleration Event has occurred and is continuing and without prejudice to any action taken or not taken in accordance with the terms of this Agreement while that Insolvency Event of Default was continuing).

- (f) The determination that a Second Lien Payment Stop Notice is “**outstanding**” is to be made by reference to the provisions of Clause 6.3 (*Issue of Second Lien Payment Stop Notice*).
- (g) Any reference in this Agreement to a Debtor, member of the Group or Third Party Security Provider being able to make any Payment or take any other action shall include a reference to that Debtor, member of the Group or Third Party Security Provider being permitted to make any arrangement in respect of that Payment or action or take any step or enter into any transaction to facilitate the making of that Payment or the taking of that action.
- (h) Notwithstanding anything to the contrary, where any provision of this Agreement refers to or otherwise contemplates any consent, approval, release, waiver, agreement, notification or other step or action being required from or by any person:
  - (i) which is not a Party;
  - (ii) in respect of any agreement which is not in existence;
  - (iii) in respect of any indebtedness which has not been or is no longer committed or incurred;
  - (iv) in respect of Liabilities of Creditors or other persons for which the relevant Discharge Date has occurred,

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

- (i) References to the Senior Notes Agent acting on behalf of the Senior Noteholders means such Senior Notes Agent acting on behalf of the Senior Noteholders which it represents or, if applicable, with the consent of the requisite number of Senior Noteholders required under and in accordance with the applicable Senior Notes Indenture. A Senior Notes Agent will be entitled to seek instructions from the Senior Noteholders which it represents to the extent required by the applicable Senior Notes Indenture as to any action to be taken by it under this Agreement.
- (j) References to a Senior Creditor Representative acting on behalf of the Permitted Senior Financing Creditors means such Senior Creditor Representative acting on behalf of the Permitted Senior Financing Creditors which it represents or, if applicable, with the consent of the requisite number of Permitted Senior Financing Creditors required under and in accordance with the applicable Permitted Senior Financing Agreement. A Senior Creditor Representative will be entitled to seek instructions from the Permitted Senior Financing Creditors which it represents to the extent required by the applicable Permitted Senior Financing Agreement as to any action to be taken by it under this Agreement.



- (k) References to a Second Lien Notes Trustee acting on behalf of the Second Lien Notes Creditors means such Second Lien Notes Trustee acting on behalf of the Second Lien Notes Creditors which it represents or, if applicable, with the consent of the requisite number of Second Lien Notes Creditors required under and in accordance with the applicable Second Lien Notes Indenture. A Second Lien Notes Trustee will be entitled to seek instructions from the Second Lien Notes Creditors which it represents to the extent required by the applicable Second Lien Notes Indenture as to any action to be taken by it under this Agreement.
- (l) In the event that any Permitted Senior Financing Debt is incurred by way of an issue of high yield notes, debt securities or other similar instruments, if and to the extent required by the Company, the Senior Creditor Representative in respect of that Permitted Senior Financing Debt shall be treated in the same manner as a Senior Notes Agent for all relevant purposes under this Agreement (including, without limitation, as regards amounts owing to that Senior Creditor Representative being, and ranking and being secured in the same manner as, Senior Notes Agent Amounts and that Senior Creditor Representative benefiting from all rights and protections provided to the Senior Notes Agents under or pursuant to Clause 27 (*Notes Trustee*)). If the Company requires that this Clause should operate in relation to any Senior Creditor Representative it shall notify the Security Agent in writing accordingly (such notice to include details of which provisions of this Agreement will apply to that Senior Creditor Representative and to what extent). Following receipt of any such notice by the Security Agent this Agreement shall be construed for all purposes in accordance with the terms of this paragraph (o) and that notice.
- (m) Prior to the Senior Notes Discharge Date:
  - (i) terms defined in the Notes Purchase Agreement shall have the same meaning when used in this Agreement (unless separately defined in this Agreement); and
  - (ii) the provisions of clause 1.2 (*Construction*) of the Notes Purchase Agreement apply to this Agreement as though they were set out in full in this Agreement (except that references to the Notes Purchase Agreement are to be construed as references to this Agreement).

Following the Senior Notes Discharge Date, references in this Agreement to any term being defined by reference to a definition in, or the provisions of clause 1.2 (*Construction*) of, the Notes Purchase Agreement shall:

- (A) be construed as a reference to the relevant definition in, or the provisions of such clause of, the Notes Purchase Agreement as at the Senior Notes Discharge Date; or
  - (B) if required by the Company, be construed as a reference to any equivalent term or terms in, or provision or provisions of, any other Secured Debt Documents which remain in existence (in each case as notified in writing by the Company to the Security Agent from time to time).
- (n) In the event that the proceeds of any Senior Notes, Permitted Senior Financing Debt and/or Second Lien Notes are held in escrow (or similar or equivalent arrangements) prior to being released to a member of the Group, until such time as the relevant proceeds are released from such escrow (or those similar or equivalent arrangements), the provisions of this Agreement shall not apply to or create any restriction in respect of any arrangement pursuant to which the proceeds are subject and this Agreement

shall not govern the rights and obligations of the Creditors concerned until such proceeds are released from such escrow arrangement (or those similar or equivalent arrangements) in accordance with the terms thereof.

- (o) Notwithstanding anything to the contrary in this Agreement or any other Debt Document, nothing in this Agreement or any Debt Document shall prohibit a non-cash contribution of any asset (including, without limitation, any participation, claim, commitment, rights, benefits and/or obligations in respect of any Liabilities and/or any other indebtedness borrowed or issued by any member of the Group from time to time) to the Company (and subsequently any other members of the Group).
- (p) If the terms of any Secured Debt Document:
  - (i) require the relevant Agent, Creditors to provide approval (or deem approval to have been provided) for a particular matter, step or action (for the avoidance of doubt, excluding any such terms which expressly entitle the relevant Agent, Creditors to withhold their approval for that matter, step or action); or
  - (ii) do not seek to regulate a particular matter, step or action (which shall be the case if the relevant matter, step or action is not the subject of an express requirement or restriction in that Secured Debt Document),

for the purpose of this Agreement that matter, step or action shall not be prohibited by the terms of that Secured Debt Document.

- (q) In determining whether any indebtedness or other amount (including, without limitation, any Debt Refinancing, any Permitted Senior Financing Debt and any Second Lien Notes) is prohibited by the terms of any Debt Document, the terms of any Debt Documents which:
  - (i) relate to any Liabilities which are to be refinanced or otherwise replaced with such indebtedness or other amount; or
  - (ii) will not exist or will cease to be in effect on the date on which such indebtedness or other amount is incurred by a member of the Group,

shall not be taken into account.

- (r) In determining whether or not any Liabilities have been fully and finally discharged, contingent liabilities (such as the risk of clawback flowing from a preference) will be disregarded, except to the extent that there is a reasonable likelihood that those liabilities will become actual liabilities.
- (s) For the avoidance of doubt and notwithstanding anything to the contrary in this Agreement or any other Debt Document, nothing in this Agreement or any other Debt Document shall prohibit any debt exchange, non-cash rollover or other similar or equivalent transaction in relation to any Liabilities.
- (t) If there is any conflict between the terms of this Agreement and any other Debt Document, the terms of this Agreement will prevail (save to the extent that to do so would result in or have the effect of any member of the Group contravening any applicable law or regulation, or present a material risk of liability for any member of the Group and/or its directors or officers, or give rise to a material risk of breach of fiduciary or statutory duties).

- (u) Notwithstanding anything to the contrary in this Agreement or any other Debt Document, no payments made by or amounts received or recovered from a CFC shall be applied to any obligations of a United States shareholder (within the meaning of Section 951(b) of the US Internal Revenue Code) of such CFC (whether under Clause 15 (*Application of Proceeds*) or otherwise), provided that, for purposes of this paragraph (u), the term “United States shareholder” shall not include any US Person that is a United States shareholder solely as a result of the repeal of Section 958(b)(4) of the US Internal Revenue Code.
- (v) The obligations, liabilities and restrictions in relation to each Debtor and each Intra-Group Lender, as well as the rights, entitlement and authorisation of each Agent under this Agreement, shall be subject to, and shall be limited to the extent necessary to avoid any breach of, the Guarantee Limitations, which shall be deemed to be part of and apply to this Agreement *mutatis mutandis*.

### 1.3 Third Party Rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Rights Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in Clause 18.10 (*No proceedings*) may, subject to this Clause 1.3 and the Third Parties Rights Act, rely on any Clause of this Agreement which expressly confers rights on it.
- (d) The Third Parties Rights Act shall apply to this Agreement in respect of any Senior Noteholder, Permitted Senior Financing Creditor or Second Lien Notes Creditor, which, by holding a Senior Note, Permitted Senior Financing Debt, Second Lien Notes, as the case may be, has effectively agreed to be bound by the provisions of this Agreement and will be deemed to receive the benefits hereof, and be subject to the terms and conditions hereof, as if such person was a Party hereto. For the purposes of the preceding sentence, upon any such person becoming a Senior Noteholder, Permitted Senior Financing Creditor, Second Lien Notes Creditor, that person shall be deemed a Party to this Agreement, provided that such person is deemed to be a Party to this Agreement under the terms of the relevant Notes Indenture, Permitted Senior Financing Agreement or Second Lien Notes Indenture. In relation to any amendment or waiver of this Agreement, no such person that is deemed to be a party to this Agreement by virtue of this Clause 1.3 is required to consent to or execute any amendment or waiver in order for such amendment or waiver to be effective.

### 1.4 Termination

Unless otherwise notified by the Company in writing on or prior to the Final Discharge Date, this Agreement shall terminate in full and cease to have any further effect on the Final Discharge Date.

### 1.5 Irish terms

- (a) “**examiner**” means an examiner or interim examiner appointed pursuant to Section 509 of the Irish Companies Act and “**examinership**” shall be construed accordingly;
- (b) “**Ireland**” means the island of Ireland, exclusive of Northern Ireland;

- (c) “**Irish Companies Act**” means the Companies Act 2014 of Ireland (as amended);
- (d) “**Irish Debtor**” means a Debtor that is incorporated in Ireland.

## 1.6 Segregated Liability

- (a) Any Party’s recourse against the ICAV in respect of any claims arising under or in relation to this Agreement against a Pricoa Fund (“**Fund Claims**”) shall be limited to the assets of the Pricoa Fund to which the Fund Claims relate and no Party shall have any recourse to any other assets of the ICAV or any other sub-fund of the ICAV. If, following the realisation of all of the assets of the applicable Pricoa Fund and the application of such realisation proceeds in payment of all Fund Claims relating to that Pricoa Fund (if any) and all other liabilities (if any) of that Pricoa Fund ranking *pari passu* with or senior to the Fund Claims which have recourse to that Pricoa Fund, the Fund Claims are not paid in full:
  - (i) the amount outstanding in respect of the Fund Claims relating to that Pricoa Fund shall be automatically extinguished; and
  - (ii) no Party shall have any further right of payment in respect thereof.
- (b) Any Party’s recourse against the ICAV in respect of any claims arising under or in relation to this Agreement against the ICAV (“**ICAV Claims**”) shall be limited to the assets of the ICAV excluding the assets of any sub-fund of the ICAV. If, following the realisation of all of the assets of ICAV, excluding the assets of any sub-fund of the ICAV, and the application of such realisation proceeds in payment of all ICAV Claims and all other liabilities (if any) of the ICAV ranking *pari passu* with or senior to the ICAV Claims which have recourse to the ICAV, the ICAV Claims are not paid in full:
  - (i) the amount outstanding in respect of the ICAV Claims shall be automatically extinguished; and
  - (ii) no Party shall have any further right of payment in respect thereof.
- (c) For purposes of this paragraph 0:
  - (i) “**ICAV**” means PGIM Private Capital Fund (Ireland) ICAV; and
  - (ii) “**Pricoa Fund**” means each of PGIM Senior Debt II Levered Fund, PGIM Senior Debt II Unlevered Fund and PGIM Senior Debt II Levered Supplemental Fund.

## 2. RANKING AND PRIORITY

### 2.1 Senior Secured Creditor Liabilities

Each of the Parties agrees that the Super Senior Lender Liabilities, the Senior Notes Liabilities, the Permitted Senior Financing Liabilities, the Hedging Liabilities, the Second Lien Lender Liabilities, the Second Lien Notes Liabilities, the Super Senior Arranger Liabilities, the Permitted Senior Financing Arranger Liabilities, the Second Lien Arranger Liabilities, Super Senior Agent Liabilities, the Senior Notes Agent Amounts, the Permitted Senior Financing Agent Liabilities, the Second Lien Agent Liabilities and the Second Lien Notes Trustee Amounts shall rank *pari passu* in right and priority of payment and without any preference amongst them.

## 2.2 Transaction Security

Subject to Clause 15 (*Application of Proceeds*), each of the Parties agrees that the Transaction Security shall secure the Liabilities (but only to the extent that such Transaction Security is expressed to secure those Liabilities) in the following order:

- (a) **first**, the Super Senior Lender Liabilities, the Senior Notes Liabilities, the Permitted Senior Financing Liabilities, the Hedging Liabilities, the Super Senior Arranger Liabilities, the Super Senior Agent Liabilities, the Senior Notes Agent Amounts, the Permitted Senior Financing Agent Liabilities, Second Lien Agent Liabilities and the Second Lien Notes Trustee Amounts *pari passu* and without any preference amongst them; and
- (b) **second**, the Second Lien Lender Liabilities, the Second Lien Notes Liabilities and the Second Lien Arranger Liabilities *pari passu* and without any preference amongst them.

## 2.3 Investor and Intra-Group Liabilities

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

## 2.4 Additional and/or Refinancing Debt

- (a) The Creditors acknowledge that the Debtors or Third Party Security Providers (or any of them) may wish to:
  - (i) incur incremental Borrowing Liabilities and/or Guarantee Liabilities in respect of incremental Borrowing Liabilities (and/or incur any other indebtedness, which indebtedness may be made available on a secured or unsecured basis, ranking *pari passu* with or senior or junior to other indebtedness and with or without the benefit of any guarantee, indemnity, Transaction Security or other assurance against loss); or
  - (ii) refinance or replace Borrowing Liabilities and/or incur Guarantee Liabilities in respect of any such refinancing or replacement of Borrowing Liabilities, which in any such case is intended to rank *pari passu* with any other Liabilities and/or share *pari passu* in any Transaction Security and/or to rank behind any other Liabilities and/or to share in any Transaction Security behind any such other Liabilities.
- (b) The Creditors each confirm and undertake that, if and to the extent any incurrence, financing, refinancing or replacement referred to in paragraph (a) above and such ranking and such Security is not prohibited by the terms of the Debt Financing Agreements at such time, they will (at the cost of the Debtors) co-operate with the Company and the Debtors with a view to enabling and facilitating such incurrence, financing, refinancing or replacement and such sharing in the Security to take place in a timely manner. In particular, but without limitation, each of the Secured Parties hereby authorises and directs each of their respective Agents and the Security Agent to execute any amendment to this Agreement and such other Debt Documents required by the Company to reflect, enable and/or facilitate any such arrangements (including as regards the ranking of any such arrangements) to the extent such incurrence,

financing, refinancing, replacement and/or sharing is not prohibited by the Debt Financing Agreements to which the relevant Secured Party is a party. This Clause 2.5 is without prejudice to any obligations of any Secured Party set out in or contemplated by Clause 17 (*Additional Debt*).

## **2.5 Transaction Security: New Debt Financing**

Without prejudice to Clause 2 (*Ranking and Priority*), Clause 15 (*Application of Proceeds*), Clause 17 (*Additional Debt*) and the other rights of the Debtors or Third Party Security Providers under this Agreement and the Debt Documents, if any Debtor or Third Party Security Provider wishes to incur any new, additional or increased Liabilities under any Secured Debt Document and/or in connection with any Debt Refinancing (each a “**New Debt Financing**”), at the option of the Company, any Debtor or Third Party Security Provider may (but subject to the relevant New Debt Financing being elected to be secured in accordance with the applicable terms of this Agreement and subject to the Agreed Security Principles) grant to the relevant Secured Parties in respect of all or any part of such New Debt Financing additional security by executing additional Security Documents which will benefit from the order of priority and ranking set out in Clause 2 (*Ranking and Priority*) and Clause 15 (*Application of Proceeds*) of this Agreement.

## **3. SUPER SENIOR LIABILITIES**

### **3.1 Payment of Super Senior Liabilities**

Subject to Clause 5 (*Hedge Counterparties and Hedging Liabilities*), the Company, the Debtors and the Third Party Security Providers may make Payments of the Super Senior Liabilities at any time.

### **3.2 Amendments and Waivers: Super Senior Lenders**

The Super Senior Lenders, the Company, the Debtors and the Third Party Security Providers may at any time amend or waive any of the terms of the Super Senior Finance Documents in accordance with their respective terms from time to time (and subject only to any consent required under them).

### **3.3 Security and Guarantees: Super Senior Creditors**

Any of the Super Senior Lenders (and/or the Security Agent, a Super Senior Agent and/or any other person acting on behalf any of them) may take, accept or receive the benefit of:

- (a) any Security from any member of the Group or a Third Party Security Provider (the “**Security Provider**”) in respect of any of the Super Senior Liabilities (in addition to the Common Transaction Security) provided that (except for any Security permitted under paragraphs (a) to (f) of Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*)), to the extent legally possible and subject to the Agreed Security Principles:
  - (i) is also offered either:
    - (A) to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
    - (B) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties:

- (C) to the other Secured Parties in respect of their Liabilities; or
    - (D) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties;
  - (ii) ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*); and
  - (iii) all amounts actually received or recovered by any Super Senior Lender with respect to any such Security shall immediately be paid to the Security Agent and applied in accordance with Clause 15 (*Application of Proceeds*).
- (b) any guarantee, indemnity or other assurance against loss from any member of the Group (the “**Guarantee Provider**”) in respect of any of the Super Senior Lender Liabilities in addition to those in:
- (i) the Super Senior Facility Agreement, any Permitted Super Senior Facility Agreement, any Senior Notes Indenture, any Permitted Senior Financing Document, any Second Lien Facility Agreement or any Second Lien Notes Finance Document;
  - (ii) this Agreement; or
  - (iii) any Common Assurance,

provided that (except for any guarantee, indemnity or other assurance against loss permitted under paragraphs (a) to (f) of Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*)), to the extent legally possible and subject to the Agreed Security Principles:

- (A) the Guarantee Provider becomes party to this Agreement as a Debtor (if not already a party in that capacity); and
  - (B) such guarantee, indemnity or assurance against loss is expressed to be subject to the terms of this Agreement; and
- (c) any Security, guarantee, indemnity or other assurance against loss from any member of the Group in connection with:
- (i) any escrow or similar or equivalent arrangements entered into in respect of amounts which are being held (or will be held) by a person which is not a member of the Group prior to release of those amounts to a member of the Group; or
  - (ii) any actual or proposed defeasance, redemption, prepayment, repayment, purchase or other discharge of any Super Senior Liabilities, Senior Notes Liabilities, Permitted Senior Financing Liabilities and/or Second Lien Liabilities (in each case provided that such defeasance, redemption, prepayment, repayment, purchase or other discharge is not prohibited by the terms of this Agreement).

### 3.4 Security: Ancillary Lenders and Issuing Banks

No Ancillary Lender or Issuing Bank will, unless the prior consent of the Majority Super Senior Lenders (in the case of any Ancillary Lender or Issuing Bank under the Super Senior Facility

Agreement or any Permitted Super Senior Facility Agreement) is obtained, take, accept or receive from any member of the Group the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities owed to it other than:

- (a) the Common Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
  - (i) the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement;
  - (ii) this Agreement; or
  - (iii) any Common Assurance;
- (c) indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in paragraph (b) above;
- (d) any SFA Cash Cover permitted under the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement relating to any Ancillary Facility or for any Letter of Credit issued by the Issuing Bank;
- (e) the indemnities or any netting or set-off arrangements contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Document which is based on an ISDA Master Agreement) or any indemnities or any netting or set-off arrangements which are similar in meaning and effect to those indemnities, netting or set-off arrangements (in the case of a Hedging Ancillary Document which is not based on an ISDA Master Agreement);
- (f) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities; or
- (g) any Security, guarantee, indemnity or other assurance against loss permitted under Clause 3.3 (*Security and Guarantees: Super Senior Lenders*).

### **3.5 Restrictions on Enforcement: Super Senior Lenders**

- (a) Prior to the Super Senior Lender Discharge Date and subject to Clause 3.7 (*Permitted Enforcement: Ancillary Lenders and Issuing Banks*):
  - (i) Subject to paragraph (ii) below, so long as any of the Senior Notes Liabilities and/or Pari Passu Liabilities are or may be outstanding, none of the Super Senior Lenders shall (in such capacity) be entitled to take any Enforcement Action in respect of any of the Super Senior Lender Liabilities owed to them under the Super Senior Finance Documents.
  - (ii) The Majority Super Senior Lenders may take Enforcement Action available to them in respect of the Super Senior Lender Liabilities if:
    - (A) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Pari Passu Liabilities, in which case the Super Senior Lenders may take the same Enforcement Action as has been taken in respect of those Pari Passu Liabilities;



- (B) at the time that Enforcement Action occurs:
- (1) the Super Senior Agent has delivered a notice to the Security Agent specifying that a Super Senior Material Default has occurred and is continuing and such notice is being delivered for the purpose of this Clause 3.5 (a “**Super Senior Enforcement Notice**”);
  - (2) a Super Senior Cash Discharge has not occurred in respect of all Super Senior Lender Liabilities and a period of:
    - (aa) in the case of a Super Senior Material Default under paragraph (b)(i) of such definition, 90 days;
    - (bb) in the case of a Super Senior Material Default under paragraph (b)(ii) of such definition, 120 days; or
    - (cc) in the case of any other Super Senior Material Default, 150 days,

has elapsed since the date of the relevant Super Senior Enforcement Notice and the Security Agent (acting on the instructions of the Majority Pari Passu Creditors) has not been instructed to take any Enforcement Action;
  - (3) the Super Senior Lenders (or a duly authorised representative on behalf of the relevant Super Senior Lenders) have complied with the consultation obligations set out in Clause 13.7 (*Consultation Period*) in relation to the relevant Enforcement Action;
  - (4) no Senior Noteholders or Permitted Senior Financing Creditors have exercised their rights under Clause 4.6 (*Option to purchase: Pari Passu Creditors*) or, having exercised such rights, have not failed to complete the acquisition of the relevant Super Senior Lender Liabilities in accordance with Clause 4.6 (*Option to purchase: Pari Passu Creditors*);
  - (5) no Material Enforcement Action has been taken by the Majority Pari Passu Creditors; and
  - (6) the Super Senior Material Default referred to in the Super Senior Enforcement Notice is continuing.
- (C) if a Super Senior Cash Discharge has not occurred within 180 days of the earlier of (i) delivery of a Super Senior Enforcement Notice, and (ii) the date the Majority Pari Passu Creditors commenced any Material Enforcement Action, provided that:
- (1) no Senior Noteholders or Permitted Senior Financing Creditors have exercised their rights under Clause 4.6 (*Option to purchase: Pari Passu Creditors*) or, having exercised such rights, have not failed to complete the acquisition of the relevant Super Senior Lender Liabilities in accordance with Clause 4.6 (*Option to purchase: Pari Passu Creditors*); and

(2) the Material Event of Default is continuing,

in which event the Security Agent shall take Enforcement Action in such manner (including as to the selection of an administrator of any Debtor) as the Majority Super Senior Lenders shall instruct;

(D) at the same time as or prior to, that Enforcement Action, the consent of the Majority Pari Passu Creditors to that Enforcement Action is obtained; or

(E) (unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Super Senior Lender in accordance with Clause 10.5 (*Filing of claims*), provided that no Super Senior Lender may give any directions to the Security Agent pursuant to or in reliance of this paragraph (D) in relation to any enforcement of Transaction Security) an Insolvency Event has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event, each Super Senior Lender shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group to:

(1) accelerate any of that member of the Group's Super Senior Lender Liabilities or declare them prematurely due and payable on demand;

(2) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Super Senior Lender Liabilities;

(3) exercise any right of set-off or take or receive any Payment in respect of any Super Senior Lender Liabilities of that member of the Group; or

(4) claim and prove in the liquidation or administration of that member of the Group for the Super Senior Lender Liabilities owing to it.

(b) Subject to paragraph (a) above:

(i) No Super Senior Lender may take any Enforcement Action under paragraphs (c), (d) or (e) of the definition thereof without the prior written consent of an Instructing Group.

(ii) If an Instructing Group provides consent to any Super Senior Lender to take any Enforcement Action, such consent shall apply equally to all Super Senior Lenders to take the same Enforcement Action (in each case to the extent permitted by the terms of the relevant Debt Documents) and notice of any such consent shall be provided to all the Agents, the Security Agent and each Hedge Counterparty as soon as reasonably practicable.

(iii) Notwithstanding paragraph (i) above or anything to the contrary in this Agreement, after the occurrence of an Insolvency Event in relation to a Debtor or a Third Party Security Provider (the "**Insolvent Party**"), each Super Senior Lender may, to the extent it is permitted to do so by the terms of the relevant Debt Documents, take Enforcement Action under paragraph (e) of that

definition against the Insolvent Party and/or claim in any winding-up, dissolution, administration, reorganisation or other similar insolvency event or process in relation to the Insolvent Party for Liabilities owing to it (provided that no Super Senior Lender may give any directions to the Security Agent pursuant to or in reliance on this paragraph (iii) in relation to any enforcement of any Transaction Security).

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

Subject to Clause 3.7 (*Permitted Enforcement: Ancillary Lenders and Issuing Banks*) in the case of any Ancillary Lender or Issuing Bank under the Super Senior Finance Documents, so long as any of the Super Senior Lender Liabilities (other than any Liabilities owed to the Ancillary Lenders or Issuing Banks) are or may be outstanding, none of the Ancillary Lenders nor the Issuing Banks shall (in such capacity) be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it.

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

- (a) The Ancillary Lenders and Issuing Banks may take Enforcement Action if:
- (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Super Senior Lender Liabilities (excluding the Liabilities owing to Ancillary Lenders and the Issuing Banks), in which case the Ancillary Lenders and the Issuing Banks may take the same Enforcement Action as has been taken in respect of those Super Senior Lender Liabilities;
  - (ii) that Enforcement Action is taken in respect of SFA Cash Cover which has been provided in accordance with the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement;
  - (iii) at the same time as or prior to, that action, the consent of the Majority Pari Passu Creditors for that Enforcement Action is obtained; or
  - (iv) an Insolvency Event has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event, each Ancillary Lender and each Issuing Bank shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group to:
    - (A) accelerate any of that member of the Group's Super Senior Lender Liabilities or declare them prematurely due and payable on demand;
    - (B) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Super Senior Lender Liabilities;
    - (C) exercise any right of set-off or take or receive any Payment in respect of any Super Senior Lender Liabilities of that member of the Group; or
    - (D) claim and prove in the liquidation of that member of the Group for the Super Senior Lender Liabilities owing to it.
- (b) Clause 3.6 (*Restriction on Enforcement: Ancillary Lenders and Issuing Banks*) shall not restrict any right of an Ancillary Lender to net or set-off in relation to a Multi-

account Overdraft Facility, in accordance with the terms of the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement, to the extent that the netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount.

#### **4. PARI PASSU LIABILITIES**

##### **4.1 Payment of Pari Passu Liabilities**

Subject to Clause 5 (*Hedge Counterparties and Hedging Liabilities*), the Company, the Debtors and the Third Party Security Providers may make Payments of the Pari Passu Liabilities at any time.

##### **4.2 Amendments and Waivers: Pari Passu Creditors**

The Pari Passu Creditors, the Company, the Debtors and the Third Party Security Providers may at any time amend or waive any of the terms of the Senior Notes Finance Documents and/or the Permitted Senior Financing Documents in accordance with their respective terms from time to time (and subject only to any consent required under them).

##### **4.3 Security and Guarantees: Pari Passu Creditors**

Any of the Pari Passu Creditors (and/or the Security Agent, a Senior Agent and/or any other person acting on behalf any of them) may take, accept or receive the benefit of:

- (a) any Security from any Security Provider in respect of any of the Pari Passu Liabilities (in addition to the Common Transaction Security) provided that, to the extent legally possible and subject to the Agreed Security Principles:
  - (i) is also offered either:
    - (A) to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
    - (B) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties;
    - (C) to the other Secured Parties in respect of their Liabilities; or
    - (D) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties;
  - (ii) ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*); and:
  - (iii) all amounts actually received or recovered by any Pari Passu Creditor with respect to any such Security shall immediately be paid to the Security Agent and applied in accordance with Clause 15 (*Application of Proceeds*).
- (b) any guarantee, indemnity or other assurance against loss from any Guarantee Provider in respect of any of the Senior Liabilities in addition to those in:
  - (i) the Super Senior Facility Agreement, any Permitted Super Senior Facility Agreement, any Senior Notes Indenture, any Permitted Senior Financing

Document, any Second Lien Facility Agreement or any Second Lien Notes Finance Document;

(ii) this Agreement; or

(iii) any Common Assurance,

provided that, to the extent legally possible and subject to the Agreed Security Principles:

(A) the Guarantee Provider becomes party to this Agreement as a Debtor (if not already a party in that capacity); and

(B) such guarantee, indemnity or assurance against loss is expressed to be subject to the terms of this Agreement; and

(c) any Security, guarantee, indemnity or other assurance against loss from any member of the Group in connection with:

(i) any escrow or similar or equivalent arrangements entered into in respect of amounts which are being held (or will be held) by a person which is not a member of the Group prior to release of those amounts to a member of the Group; or

(ii) any actual or proposed defeasance, redemption, prepayment, repayment, purchase or other discharge of any Super Senior Lender Liabilities, Senior Notes Liabilities, Permitted Senior Financing Liabilities and/or Second Lien Liabilities (in each case provided that such defeasance, redemption, prepayment, repayment, purchase or other discharge is not prohibited by the terms of this Agreement).

#### **4.4 Restrictions on Enforcement: Senior Notes Creditors and Permitted Senior Financing Creditors**

(a) No Senior Notes Creditor or Permitted Senior Financing Creditor may take any Enforcement Action under paragraphs (c), (d) or (e) of the definition thereof without the prior written consent of an Instructing Group.

(b) If an Instructing Group provides consent to any Senior Notes Creditor, Permitted Senior Financing Creditor or Hedge Counterparty to take any Enforcement Action, such consent shall apply equally to all Senior Notes Creditors, Permitted Senior Financing Creditors and Hedge Counterparties to take the same Enforcement Action (in each case to the extent permitted by the terms of the relevant Debt Documents) and notice of any such consent shall be provided to all the Agents, the Security Agent and each Hedge Counterparty as soon as reasonably practicable.

(c) Notwithstanding paragraph (a) above or anything to the contrary in this Agreement, after the occurrence of an Insolvency Event in relation to the Company, a Debtor or a Third Party Security Provider (the “**Insolvent Party**”), each Senior Notes Creditor and/or Permitted Senior Financing Creditor may, to the extent it is permitted to do so by the terms of the relevant Debt Documents, take Enforcement Action under paragraph (e) of that definition against the Insolvent Party and/or claim in any winding-up, dissolution, administration, reorganisation or other similar insolvency event or process in relation to the Insolvent Party for Liabilities owing to it (provided that no Senior Secured Creditor may give any directions to the Security Agent pursuant to or

in reliance on this paragraph (c) in relation to any enforcement of any Transaction Security).

#### 4.5 Option to purchase: Senior Notes Creditors and Permitted Senior Financing Creditors

- (a) Senior Notes Creditors holding some or all of the Senior Notes Liabilities or Permitted Senior Financing Creditors holding some or all of the Permitted Senior Financing Liabilities (the “**Senior Secured Acquiring Creditors**”) may, after an Acceleration Event which is continuing, by giving not less than ten (10) days’ notice to the Security Agent (with the first notice to prevail in the event that more than one set of Creditors serves such a notice), require the transfer to them (or to a nominee or nominees), in accordance with Clause 20.3 (*Change of Super Senior Lender, Second Lien Lender, Permitted Senior Financing Creditor, Senior Notes Creditors or Second Lien Notes Creditor*), of all, but not part, of the rights, benefits and obligations in respect of the Senior Notes Liabilities or Permitted Senior Financing Liabilities (as applicable) if:
- (i) that transfer is lawful and, subject to paragraph (ii) below, otherwise permitted by the terms of the Senior Notes Indenture or the Permitted Senior Financing Agreement (as applicable);
  - (ii) any conditions relating to such a transfer contained in the Senior Notes Indenture or the Permitted Senior Financing Agreement are complied with, other than any requirement to obtain the consent of, or consult with any Debtor or any other member of the Group in relation to such transfer, which consent or consultation shall not be required;
  - (iii) the Senior Notes Agent, on behalf of the relevant Senior Notes Creditors, and/or the applicable Senior Creditor Representative, on behalf of the relevant Permitted Senior Financing Creditors is paid an amount equal to the aggregate of:
    - (A) all of the Senior Notes Liabilities at that time (whether or not due), including all amounts that would have been payable (including any prepayment premium or make-whole amount) under the Senior Notes Indenture if the Senior Notes were being redeemed by the relevant Debtors on the date of that payment; and
    - (B) all of the Permitted Senior Financing Liabilities at that time (whether or not due), including all amounts that would have been payable (including any prepayment premium or make-whole amount) under the Permitted Senior Financing Documents if the Permitted Senior Financing Debt was being prepaid or redeemed (as applicable) by the relevant Debtors on the date of that payment;
    - (C) all costs and expenses (including legal fees) incurred by the Senior Notes Agent, the Senior Notes Creditors, the Senior Creditor Representative, the Permitted Senior Financing Creditors and/or the Security Agent as a consequence of giving effect to that transfer; or
  - (iv) as a result of that transfer the Senior Notes Creditors or Permitted Senior Financing Creditors (as applicable) have no further actual or contingent liability to a Debtor under the Senior Notes Indenture or the Permitted Senior Financing Agreement (as applicable);

- (v) an indemnity is provided from each of the Senior Secured Acquiring Creditors (other than any Senior Agent) or from another third party acceptable to all the Senior Notes Creditors or Permitted Senior Financing Creditors (as applicable) in a form reasonably satisfactory to each Senior Notes Creditor or Permitted Senior Financing Creditor (as applicable) in respect of all costs, expenses, losses and liabilities which may be sustained or incurred by any Senior Notes Creditor or Permitted Senior Financing Creditor (as applicable) in consequence of any sum received or recovered by any Senior Notes Creditor or Permitted Senior Financing Creditor (as applicable) from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Senior Notes Creditor or Permitted Senior Financing Creditor (as applicable) for any reason; and
  - (vi) the transfer is made without recourse to, or representation or warranty from, the Senior Notes Creditors or Permitted Senior Financing Creditors (as applicable) except that each Senior Notes Creditor or Permitted Senior Financing Creditor (as applicable) shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) Subject to paragraph (b) of Clause 4.7 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*) the Senior Secured Acquiring Creditors may only require a Senior Liabilities Transfer if, at the same time, they require a Hedge Transfer in accordance with Clause 4.7 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*) and if, for any reason, a Hedge Transfer cannot be made in accordance with Clause 4.7 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*), no Senior Liabilities Transfer may be required to be made.
  - (c) At the request of a Senior Agent (on behalf of the Senior Secured Acquiring Creditors), the Senior Notes Agent and/or the applicable Senior Creditor Representative, shall notify that Senior Agent of the sum of the amounts described in paragraph (a)(iii) above.

#### 4.6 Option to purchase: **Pari Passu Creditors**

- (a) Senior Noteholders holding some or all of the Senior Notes Liabilities or Permitted Senior Financing Creditors holding some or all of the Permitted Senior Financing Liabilities (the “**Super Senior Secured Acquiring Creditors**”) may, after the occurrence of a Super Senior Material Default which is continuing and delivery of a Super Senior Enforcement Notice to the Security Agent, by giving not less than ten (10) days’ notice to the Security Agent, require the transfer to them (or to a nominee or nominees), in accordance with Clause 20.3 (*Change of Super Senior Lender, Second Lien Lender, Permitted Senior Financing Creditor or Second Lien Notes Creditor*), of all, but not part, of the rights, benefits and obligations in respect of the Super Senior Lender Liabilities if:
  - (i) that transfer is lawful and, subject to paragraph (ii) below, otherwise permitted by the terms of the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement;
  - (ii) any conditions relating to such a transfer contained in the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement are complied with, other than:

- (A) any requirement to obtain the consent of, or consult with any Debtor or any other member of the Group in relation to such transfer, which consent or consultation shall not be required; and
    - (B) to the extent to which all the Super Senior Secured Acquiring Creditors provide cash cover for any Letter of Credit, the consent of the relevant Issuing Bank relating to such transfer;
  - (iii) the Super Senior Agent, on behalf of the Super Senior Lenders, is paid an amount equal to the aggregate of:
    - (A) any amounts provided as cash cover by the Super Senior Secured Acquiring Creditors for any Letter of Credit (as envisaged in paragraph (a)(ii)(B) above);
    - (B) all of the Super Senior Lender Liabilities at that time (whether or not due), including all amounts that would have been payable under the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement if the Super Senior Facilities were being prepaid by the relevant Debtors on the date of that payment; and
    - (C) all costs and expenses (including legal fees) incurred by the Super Senior Agent and/or the Super Senior Lenders and/or the Security Agent as a consequence of giving effect to that transfer;
  - (iv) as a result of that transfer the Super Senior Lenders have no further actual or contingent liability to a Debtor under the Super Senior Finance Documents;
  - (v) an indemnity is provided from each of the Super Senior Secured Acquiring Creditors (other than any Senior Agent) or from another third party acceptable to all the Super Senior Lenders in a form reasonably satisfactory to each Super Senior Lender in respect of all costs, expenses, losses and liabilities which may be sustained or incurred by any Super Senior Lender in consequence of any sum received or recovered by any Super 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 Super Senior Lender for any reason; and
  - (vi) the transfer is made without recourse to, or representation or warranty from, the Super Senior Lenders except that each Super Senior Lender shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) Subject to paragraph (b) of Clause 4.7 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*) the Super Senior Secured Acquiring Creditors may only require a Super Senior Liabilities Transfer if, at the same time, they require a Hedge Transfer of the Super Senior Hedging Liabilities in accordance with Clause 4.7 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*) and if, for any reason, a Hedge Transfer of the Super Senior Hedging Liabilities cannot be made in accordance with Clause 4.7 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*), no Super Senior Liabilities Transfer may be required to be made.
- (c) At the request of a Senior Agent (on behalf of the Super Senior Secured Acquiring Creditors):



- (i) the Super Senior Agent shall notify that Senior Agent of:
  - (A) the sum of the amounts described in paragraphs (a)(iii)(B) and (C) above; and
  - (B) the amount of each Letter of Credit for which cash cover is to be provided to it by the Super Senior Secured Acquiring Creditors.

#### 4.7 Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors

- (a) In the event that:
  - (1) an Acceleration Event is continuing, Senior Notes Creditors holding some or all of the Senior Notes Liabilities or Permitted Senior Financing Creditors holding some or all of the Permitted Senior Financing Liabilities (the “**Senior Acquiring Creditors**” and, together with the Super Senior Facilities Acquiring Creditors, the “**Acquiring Hedge Creditors**”) may; and
  - (2) a Super Senior Material Default is continuing and the Senior Agent has delivered a Super Senior Enforcement Notice to the Security Agent, Senior Notes Creditors holding some or all of the Senior Notes Liabilities or Permitted Senior Financing Creditors holding some or all of the Permitted Senior Financing Liabilities (the “**Super Senior Facilities Acquiring Creditors**”) may,

by giving not less than ten days’ notice to the Security Agent (in the case of paragraph (1) above, with the first notice to prevail in the event that more than one set of Creditors serves such a notice), require a Hedge Transfer (provided in the case of paragraph (2) above it is of the Super Senior Hedging Liabilities only):

- (i) if the Senior Acquiring Creditors require, at the same time, a Senior Liabilities Transfer under Clause 4.5 (*Option to purchase: Senior Notes Creditors and Permitted Senior Financing Creditors*) or, as the case may be, the Super Senior Facilities Acquiring Creditors require, at the same time, a Super Senior Liabilities Transfer under Clause 4.6 (*Option to purchase: Pari Passu Creditors*); and
- (ii) if:
  - (A) that transfer is lawful and otherwise permitted by the terms of the Hedging Agreements, in which case no Debtor or other member of the Group party to the relevant Hedging Agreements shall be entitled to withhold its consent to that transfer;
  - (B) any conditions (other than the consent of, or any consultation with, any Debtor or other member of the Group) relating to that transfer contained in the Hedging Agreements are complied with;
  - (C) each Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of (1) the Hedging Purchase Amount in respect of the hedging transactions under the relevant Hedging Agreement at that time and (2) all costs and expenses (including legal fees) incurred by such Hedge Counterparty as a consequence of giving effect to that transfer;

- (D) as a result of that transfer, the Hedge Counterparties have no further actual or contingent liability to any Debtor under the Hedging Agreements;
  - (E) an indemnity is provided from each of the Acquiring Hedge Creditors (other than any Senior Agent) which is receiving (or for which a nominee is receiving) that transfer (or from another third party acceptable to the relevant Hedge Counterparty) in a form reasonably satisfactory to the relevant Hedge Counterparty in respect of all losses which may be sustained or incurred by that Hedge Counterparty in consequence of any sum received or recovered by that Hedge Counterparty being required (or it being alleged that it is required) to be paid back by or clawed back from the Hedge Counterparty for any reason; and
  - (F) that transfer is made without recourse to, or representation or warranty from, the relevant Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) The Acquiring Hedge Creditors and any Hedge Counterparty may agree (in respect of the Hedging Agreements (or one or more of them) to which that Hedge Counterparty is a party) that a Hedge Transfer required by the Acquiring Hedge Creditors pursuant to paragraph (a) above shall not apply to that Hedging Agreement(s) or to the Hedging Liabilities and Hedge Counterparty Obligations under that Hedging Agreement(s).
  - (c) If the Acquiring Hedge Creditors are entitled to require a Hedge Transfer under this Clause 4.7, the Hedge Counterparties shall at the request of a Senior Agent (on behalf of the Acquiring Hedge Creditors) provide details of the amounts referred to in paragraph (a)(ii)(C) above.

## **5. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES**

### **5.1 Identity of Hedge Counterparties**

- (a) Subject to paragraph (b) below, no person providing hedging arrangements to any Debtor shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity under any of the Secured Debt Documents in respect of any of the liabilities arising in relation to those hedging arrangements nor shall those liabilities be treated as Hedging Liabilities unless that person is or becomes a party to this Agreement as a Hedge Counterparty.
- (b) Paragraph (a) above shall not apply to a Hedging Ancillary Lender.

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

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

- (a) that Payment is permitted under Clause 5.3 (*Permitted Payments: Hedging Liabilities*);  
or

- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*).

### 5.3 Permitted Payments: Hedging Liabilities

- (a) Any member of the Group may at any time make any Payment of the Hedging Liabilities:
- (i) if the Payment is a scheduled Payment arising under a Hedging Agreement (or another ordinary course payment under a Hedging Agreement, including any payment in relation to fees, costs and expenses);
  - (ii) to the extent that the relevant Debtor's obligation to make the Payment arises as a result of the operation of:
    - (A) any of sections 2(d) (Deduction or Withholding for Tax), 2(e) (Default Interest; Other Amounts), 8(a) (Payment in the Contractual Currency), 8(b) (Judgments) and 11 (Expenses) of the 1992 ISDA Master Agreement of that Hedging Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);
    - (B) any of sections 2(d) (Deduction or Withholding for Tax), 8(a) (Payment in the Contractual Currency), 8(b) (Judgments), 9(h)(i) (Prior to Early Termination) and 11 (Expenses) of the 2002 ISDA Master Agreement of that Hedging Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
    - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraph (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
  - (iii) to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out;
  - (iv) to the extent that:
    - (A) the relevant Debtor's obligation to make the Payment arises from a Credit Related Close-Out in relation a Hedging Agreement; and
    - (B) no Senior Event of Default (other than an Event of Default under a Second Lien Facility Agreement and/or a Second Lien Notes Indenture) is continuing at the time of that Payment or such payment is not prohibited by the Debt Financing Agreements;
  - (v) subject to Clause 5.13 (*On or after Senior Debt Discharge Date*), if the Majority Pari Passu Creditors and the relevant member of the Group give prior consent to the Payment being made;
  - (vi) if the Payment is a Payment pursuant to Clause 15.1 (*Order of application*); or
  - (vii) if the Payment arises directly or indirectly as a result of any close-out, termination or other similar or equivalent action by a member of the Group (provided that the Group will remain in compliance with any minimum hedging requirements under the Debt Financing Agreements).

- (b) Without prejudice to the terms and requirements of any Hedging Agreement, nothing in this Agreement obliges a Hedge Counterparty to make a payment to a Debtor under a Hedging Agreement to which they are both party if any scheduled Payment due from that Debtor to the Hedge Counterparty under that Hedging Agreement is due but unpaid. This provision shall not affect any Payment which is due from a Hedge Counterparty to a Debtor as a result of a Hedging Agreement to which they are both a party being terminated or closed out.

#### **5.4 Payment obligations continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 5.2 (*Restriction on Payment: Hedging Liabilities*) and 5.3 (*Permitted Payments: Hedging Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

#### **5.5 No acquisition of Hedging Liabilities**

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

- (a) enter into any Liabilities Acquisition in respect of any of the Hedging Liabilities with any person which is not a member of the Group; or
- (b) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition in respect of any of the Hedging Liabilities (unless that Liabilities Acquisition would not have been prohibited by this Clause 5.5 if made by a member of the Group),

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

- (i) subject to Clause 5.13 (*On or after Senior Debt Discharge Date*), the prior consent of the Majority Pari Passu Creditors is obtained; or
- (ii) the relevant Liabilities Acquisition relates to Hedging Liabilities (or rights, benefits and/or obligations in relation thereto) in respect of which a Payment could be made under Clause 5.3 (*Permitted Payments: Hedging Liabilities*) (including any Hedging Liabilities in respect of which a Payment could be made under paragraph (a)(vii) of that Clause following a close-out, termination or any other similar or equivalent action by a member of the Group).

#### **5.6 Amendments and Waivers: Hedging Agreements**

- (a) Subject to paragraph (b) below, the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.
- (b) A Hedge Counterparty and any member of the Group may at any time amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement from time to time (and subject only to any consent required under that Hedging Agreement) if:
  - (i) that amendment or waiver does not breach another term of this Agreement; and

- (ii) that amendment or waiver will not result in the Group ceasing to be in compliance with any minimum hedging requirements under the Debt Financing Agreements.

### **5.7 Security: Hedge Counterparties**

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

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
  - (i) the Super Senior Facility Agreement, any Permitted Super Senior Facility Agreement, any Senior Notes Indenture or any Permitted Senior Financing Document;
  - (ii) this Agreement;
  - (iii) any Common Assurance; or
  - (iv) the relevant Hedging Agreement (provided any such guarantee, indemnity or other assurance against loss is no greater in extent than any of those referred to in paragraphs (i) to (iii) above, ignoring for this purpose any limitations applicable to any guarantee, indemnity or other assurance referred to in paragraphs (i) to (iii) above);
- (c) as otherwise contemplated by Clause 4.3 (*Security and Guarantees: Senior Secured Creditors*); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

### **5.8 Restriction on Enforcement: Hedge Counterparties**

Subject to Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*) and Clause 5.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clauses 13.2 (*Enforcement Instructions*) and 13.3 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

### **5.9 Permitted Enforcement: Hedge Counterparties**

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

- (A) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
    - (1) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
    - (2) an event similar in meaning and effect to a “Force Majeure Event” (as defined in paragraph (B) below),has occurred in respect of that Hedging Agreement;
  - (B) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement) has occurred in respect of that Hedging Agreement; or
  - (C) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, any event similar in meaning and effect to an event described in paragraphs (A) or (B) above has occurred under and in respect of that Hedging Agreement;
- (iii) if an Insolvency Event of Default has occurred and is continuing in relation to a Debtor which is party to that Hedging Agreement;
  - (iv) subject to Clause 5.13 (*On or after Senior Debt Discharge Date*), if the Majority Senior Creditors and the member of the Group party to the relevant Hedging Agreement give prior consent to that termination or close-out being made; or
  - (v) for the purpose of ensuring that the aggregate notional amount of all hedging entered into by the Group with one or more hedging counterparty in respect of any specific indebtedness or other exposure does not exceed the maximum aggregate amount of that indebtedness, its Allocated Super Senior Hedging Amount or other exposure from time to time (in each case to the extent agreed by the member of the Group party to that Hedging Agreement, it being noted that the Group may wish to enter into basis rate swaps and/or other arrangements which may result in the notional amount of hedging being increased as part of a general hedging strategy).
- (b) If a Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than five Business Days after notice of that default has been given to the Security Agent pursuant to paragraph (i) of Clause 23.3 (*Notification of prescribed events*), the relevant Hedge Counterparty:
    - (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and
    - (ii) until the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced, or that any formal steps are being taken to enforce the Transaction Security, in each case in accordance with the terms of this Agreement and the relevant Security Documents, shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal

or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.

- (c) After the occurrence of an Insolvency Event in relation to any Group Company, to the extent permitted by the relevant Hedging Agreement, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that Group Company to:
  - (i) prematurely close-out or terminate any Hedging Liabilities of that Group Company in accordance with the terms of the relevant Hedging Agreement;
  - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that Group Company in respect of any relevant Hedging Liabilities;
  - (iii) exercise any right of set-off or take or receive any Payment in respect of any relevant Hedging Liabilities of that Group Company; or
  - (iv) claim and prove in the liquidation of that Group Company for the Hedging Liabilities owing to it.

#### **5.10 Required Enforcement: Hedge Counterparties**

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
  - (i) the occurrence of a Senior Acceleration Event which is continuing and delivery to it of a notice from the Security Agent that such Senior Acceleration Event has occurred and is continuing; and
  - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of an Instructing Group) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that such Senior Acceleration Event occurred as a result of an arrangement made between any Debtor and any Senior Secured Creditor with the purpose of bringing about that Senior Acceleration Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under paragraph (b) of Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*) (or would have been able to if that Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Security Agent (acting on the instructions of an Instructing Group).

#### **5.11 Treatment of Payments due to Debtors on termination of hedging transactions**

- (a) If, on termination of any hedging transaction under any Hedging Agreement occurring after a Distress Event, a settlement amount or other amount (following the application of any Close-Out Netting, Payment Netting or Inter-Hedging Agreement Netting in respect of that Hedging Agreement) falls due from a Hedge Counterparty to the relevant Debtor then that amount shall be paid by that Hedge Counterparty to the Security Agent, treated as the proceeds of enforcement of the Transaction Security and applied in accordance with the terms of this Agreement.

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

## 5.12 Terms of Hedging Agreements

- (a) The Hedge Counterparties (to the extent party to the Hedging Agreement in question) and the Debtors party to the Hedging Agreements shall ensure that, at all times:
  - (i) each Hedging Agreement is based either:
    - (A) on an ISDA Master Agreement; or
    - (B) on another framework agreement which is similar in effect to an ISDA Master Agreement;
  - (ii) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of:
    - (A) a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement); or
    - (B) an event similar in meaning and effect to either of those described in paragraph (A) above (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),that Hedging Agreement will:
    - (1) if it is based on a 1992 ISDA Master Agreement, provide for payments under the "Second Method" and will make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement;
    - (2) if it is based on a 2002 ISDA Master Agreement, make no material amendment to the provisions of section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement; or
    - (3) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Agreement is in its favour; and
  - (iii) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to paragraphs (a) and (b) of Clause 5.10 (*Required Enforcement: Hedge Counterparties*).
- (b) Unless otherwise agreed by the Company from time to time:
  - (i) each Hedging Agreement shall be documented using the 1992 ISDA Master Agreement;



- (ii) each Hedging Agreement shall include only standard ISDA representations and undertakings (and not, for the avoidance of doubt, any additional representations and undertakings contained in the Debt Financing Agreements), in each case amended as necessary so as to be no more onerous on any member of the Group than the provisions of the Debt Financing Agreements;
- (iii) no Hedging Agreement shall contain any events of default (however described) other than the following:
  - (A) failure by the member of the Group party to that Hedging Agreement to pay on the due date any amount payable by it under that Hedging Agreement (subject to any applicable grace period);
  - (B) the occurrence of a Senior Acceleration Event which is continuing; and
  - (C) the occurrence of an Insolvency Event of Default in relation to the member of the Group which is party to that Hedging Agreement,

provided that, for the avoidance of doubt, a Hedging Agreement may contain standard ISDA termination events relating to illegality, tax events and force majeure;

- (iv) in the event of any refinancing, replacement, increase or other restructuring of all or any part of the Senior Secured Liabilities (a “**Refinancing**”) each Hedge Counterparty shall promptly provide its consent to any amendment to, request under and/or replacement of any Hedging Agreement or other Debt Document required by the Company in order to facilitate that Refinancing (a “**Refinancing Request**”), in each case unless such Refinancing is materially prejudicial to the interests of that Hedge Counterparty (provided that such Refinancing shall not be considered materially prejudicial if any amended or replacement intercreditor arrangements place that Hedge Counterparty in substantially the same, or a better, position relative to the other Senior Secured Creditors as it was in under the intercreditor arrangements existing immediately prior to such amendment or replacement); and
- (v) in the event that a Hedge Counterparty (1) does not consent to any Refinancing Request (without prejudice to its obligations under sub-paragraph (iv) above) or (2) does not consent to any other amendment or waiver requested by a member of the Group pursuant to Clause 26 (*Consents, Amendments and Override*) (in each case within the time period specified by the relevant member of the Group for consent to be provided, which shall not be shorter than five Business Days from the date the relevant request is made by a member of the Group), each member of the Group shall be entitled to:
  - (A) terminate any hedging arrangements with that Hedge Counterparty (the “**Non-Consenting Counterparty**”) (and the amount payable to or by the Non-Consenting Counterparty on such early termination shall be calculated on the basis that an Additional Termination Event has occurred and that both the Non-Consenting Counterparty and the relevant member of the Group are Affected Parties or on such other basis as may be agreed by the Non-Consenting Counterparty and the relevant member of the Group); and/or

- (B) require that any of those arrangements (the “**Transferred Arrangements**”) be transferred (and the Non-Consenting Counterparty will so transfer) to another person selected by the Company (the “**Acquiring Counterparty**”) willing to assume the same (with the transfer price payable by the Acquiring Counterparty or, as the case may be, the Non-Consenting Counterparty being equal to the amount that would have been payable to or by the Non-Consenting Counterparty upon the early termination of the Transferred Arrangements under the relevant Hedging Agreements by reason of an Additional Termination Event on the proposed transfer date, and on the basis that both the Non-Consenting Counterparty and the relevant Debtor are Affected Parties or as otherwise agreed by the Non-Consenting Counterparty and the relevant member of the Group),

where the terms “Additional Termination Event” and “Affected Parties” as used above shall have the meaning given to them in the relevant Hedging Agreements (or if a Hedging Agreement is not based on an ISDA Master Agreement, such terms shall have the meaning given to the equivalent provisions used in that Hedging Agreement).

Each Hedge Counterparty will, on the request of the Company, as soon as reasonably practical execute any document and/or take such other action as is reasonably required to effect any amendment, replacement, waiver or release of a Hedging Agreement or other Debt Document requested by the Company in accordance with paragraph (iv) above.

- (c) Notwithstanding anything to the contrary in any Secured Debt Document but without prejudice to any minimum hedging requirements in the Debt Financing Agreements, no default (however described) under the terms of a Hedging Agreement (or the termination of a Hedging Agreement) shall constitute an Event of Default (other than any non-payment default constituting a Senior Payment Default).
- (d) Notwithstanding anything to the contrary in any Hedging Agreement, no Hedging Agreement shall prohibit or restrict any action by any member of the Group not prohibited or restricted under the Debt Financing Agreements.
- (e) Any hedging agreement executed by any member of the Group prior to the date on which it became a member of the Group which the Company intends should become a Hedging Agreement (an “**Existing Hedging Agreement**”) shall be deemed amended by this Agreement to the extent necessary so as to ensure that the terms of such Existing Hedging Agreement comply with the terms of this Agreement in all respects (and the relevant Debtor and the Hedge Counterparty party to such Existing Hedging Agreement each consent and agree to all such amendments by their execution of, or accession to, this Agreement and acknowledge and confirm that the Existing Hedging Agreement will be construed accordingly).
- (f) To the extent that the terms of a Hedging Agreement are inconsistent with the terms of this Agreement the terms of this Agreement shall prevail.

### 5.13 On or after Senior Debt Discharge Date

At any time on or after the Senior Debt Discharge Date, any action which is permitted under any of Clause 5.3 (*Permitted Payments: Hedging Liabilities*), Clause 5.5 (*No acquisition of Hedging Liabilities*) or Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*) by reason of the prior consent of the Majority Senior Creditors will, unless otherwise agreed by the

Company by reference to this Clause 5.13, be permitted to the extent that such action would not result in the Group ceasing to be in compliance with any minimum hedging requirements under any Second Lien Financing Agreement (unless the prior consent of the relevant Senior Agent is obtained or the Second Lien Discharge Date has occurred).

#### **5.14 Notice and acknowledgement of Transaction Security**

- (a) Each Debtor that has created Transaction Security over any of its rights under any Hedging Agreement hereby gives notice (including in terms as required by the applicable Security Document) to each Hedge Counterparty of the Transaction Security over such Hedging Agreements created pursuant to the Security Documents.
- (b) Each Hedge Counterparty, by its entry into this Agreement (or, as the case may be, by its entry into a Creditor/Agent Accession Undertaking as a Hedge Counterparty):
  - (i) agrees and consents to any Debtor granting Transaction Security (by way of assignment, charge or otherwise) over all or any part of its rights under any Hedging Agreement to which that Hedge Counterparty is a party; and
  - (ii) acknowledges receipt of the notice given under paragraph (a) above and that it will continue to deal solely with the relevant Debtor in relation to that Hedging Agreement until such time as it receives any written notice (as permitted by the applicable Security Document) to the contrary from the Security Agent following the occurrence of an Acceleration Event which is continuing.

#### **5.15 Allocation of Super Senior Hedging Liabilities**

- (a) The Company may from time to time allocate (or reallocate or effect the release of any previous allocation of) the Super Senior Hedging Amount in whole or in part to one or more Hedge Counterparties subject to this Clause 5.15.
- (b) Any allocation or reallocation or release of any previous allocation of the Super Senior Hedging Amount (whether in whole or in part) by the Company shall only take effect on receipt by the Security Agent (which receipt shall be acknowledged promptly) of a Super Senior Hedging Certificate which complies with the conditions set out in this Clause 5.15.
- (c) The Security Agent shall only be required to recognise and give effect to any allocation, reallocation or release of the Super Senior Hedging Amount requested by the Company pursuant to any Super Senior Hedging Certificate to the extent such Super Senior Hedging Certificate:
  - (i) is substantially in the form set out in Schedule 4 (*Form of Super Senior Hedging Certificate*) or in such other form as the Security Agent and the Company may agree;
  - (ii) has been duly executed by (A) the Company, (B) the Hedge Counterparty to whom any portion of the available Super Senior Hedging Amount is to be allocated and (C) if applicable, any Hedge Counterparty who is to release any portion of any Super Senior Hedging Amount previously allocated to it in accordance with this Clause 5.15;
  - (iii) identifies the portion of the Super Senior Hedging Amount (by reference to an amount in the Common Currency) that is to be allocated to the proposed new

- Super Senior Hedge Counterparty and/or released by an existing Super Senior Hedge Counterparty;
- (iv) identifies the relevant Hedging Agreement pursuant to which the relevant Hedging Liabilities arise; and
  - (v) complies with paragraph (d) below and does not otherwise purport to allocate any part of the Super Senior Hedging Amount which is not available for allocation or which has previously been allocated and not released to any other Hedge Counterparty pursuant to this Clause 5.15.
- (d) No Allocated Super Senior Hedging Amount may, whether on an individual basis or when aggregated with all previously Allocated Super Senior Hedging Amounts (to the extent not released pursuant to this Clause 5.15), exceed the Super Senior Hedging Amount.
- (e) The Security Agent shall not accept or give effect to any Super Senior Hedging Certificate to the extent it allocates or purports to allocate any part of the Super Senior Hedging Amount in breach of paragraph (d) above.
- (f) An Allocated Super Senior Hedging Amount may not be:
- (i) changed without the prior written consent of the relevant Hedge Counterparty to whom such Allocated Super Senior Hedging Amount has been allocated pursuant to this Clause 5.15; or
  - (ii) allocated to another Hedge Counterparty or to any other Hedging Liabilities or Hedging Agreement other than through delivery of a Super Senior Hedging Certificate duly executed by the Company and each Hedge Counterparty who agrees to release or reallocate any part of the Allocated Super Senior Hedging Amount.
- (g) The Security Agent shall maintain a register for the recording of the names and addresses of the Hedge Counterparties and the Allocated Super Senior Hedging Amounts of each such Hedge Counterparty (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and the Company, the Security Agent and the Hedge Counterparties shall treat each person whose name is recorded in the Register as a Super Senior Hedge Counterparty for the purposes of this Agreement to the extent of its Super Senior Hedging Liabilities. The Register shall be available for inspection by the Company and any Hedge Counterparty, at all reasonable times and on reasonable notice to the Security Agent.

## **6. SECOND LIEN SECURED CREDITORS AND SECOND LIEN LIABILITIES**

### **6.1 Restriction on Payment: Second Lien Liabilities**

Prior to the Senior Discharge Date, the Debtors and Third Party Security Providers shall not, and the Company shall procure that no other member of the Group will, make any Payment (other than, for the avoidance of doubt, a capitalisation of any amount) of the Second Lien Liabilities at any time unless:

- (a) that Payment is permitted under Clause 6.2 (*Permitted Payments: Second Lien Liabilities*), Clause 10.5 (*Filing of claims*) or Clause 17 (*Additional Debt*); or

- (b) the taking or receipt of that Payment is permitted under Clause 6.10 (*Permitted Second Lien enforcement*).

## **6.2 Permitted Payments: Second Lien Liabilities**

Any member of the Group and any Third Party Security Provider may:

- (a) prior to the Senior Discharge Date, directly or indirectly make any Payment directly or indirectly in respect of the Second Lien Liabilities at any time:
  - (i) if the Payment is of any of the Second Lien Liabilities which is either:
    - (A) not prohibited by the Senior Financing Agreements; or
    - (B) paid on or after the final maturity date of the relevant Second Lien Liabilities (provided that, unless the Pari Passu Discharge Date has occurred or as otherwise agreed by the Majority Pari Passu Creditors and the Company, such final maturity date does not fall on a date prior to the later of (i) the date falling six months after the final scheduled maturity date for the Super Senior Facilities, and (ii) the date falling 60 months after the First Issuance Date).
  - (ii) if the Required Senior Consent has been obtained;
  - (iii) if the Payment is of Second Lien Agent Liabilities;
  - (iv) of costs, commissions, taxes, fees and expenses incurred in respect of or in relation to (or reasonably incidental to) any Second Lien Debt Documents (including in relation to any reporting or listing requirements under the Second Lien Debt Documents);
  - (v) if the Payment is funded directly or indirectly with Second Lien Debt, Second Lien Notes and/or the proceeds of any indebtedness incurred under or pursuant to any Second Lien Debt Document to the extent such indebtedness is incurred pursuant to Clause 17 (*Additional Debt*) or any New Debt Financing; or
  - (vi) if the Payment is funded directly or indirectly with the proceeds of an Equity Contribution, Permitted Funding or Available Shareholder Amounts; and
- (b) on or after the Senior Discharge Date, make any Payment directly or indirectly in respect of the Second Lien Liabilities at any time.

A reference in this Clause 6.2 to a Payment shall be construed to include any other direct or indirect step, matter, action or dealing in relation to any Second Lien Liabilities which are otherwise prohibited under Clause 6.1 (*Restriction on Payment: Second Lien Liabilities*).

**6.3** [*Reserved*]

**6.4** [*Reserved*]

## **6.5 Payment obligations and capitalisation of interest continue**

- (a) No Debtor or Third Party Security Provider shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Second Lien Debt Document by the operation of Clause 6.1 (*Restriction on Payment:*

*Second Lien Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of that Clause.

- (b) The accrual and capitalisation of interest (if any) in accordance with the Second Lien Debt Documents shall continue notwithstanding the issue of a Second Lien Payment Stop Notice.

**6.6 [Reserved]**

**6.7 Amendments and Waivers: Second Lien Secured Creditors**

The Second Lien Facility Finance Parties, the Second Lien Notes Finance Parties, the Company, the Debtors and the Third Party Security Providers may at any time amend or waive any of the terms of the Second Lien Finance Documents and/or the Second Lien Notes Finance Documents in accordance with their respective terms from time to time (and subject only to any consent required under them).

**6.8 Security and Guarantees: Second Lien Secured Creditors**

Any of the Second Lien Secured Creditors (and/or the Security Agent, a Senior Agent and/or any other person acting on behalf any of them) may take, accept or receive the benefit of:

- (a) any Security from any Security Provider in respect of any of the Second Lien Liabilities (in addition to the Common Transaction Security) provided that, to the extent legally possible and subject to the Agreed Security Principles:
  - (i) the Security Provider becomes party to this Agreement as a Debtor or Third Party Security Provider, as applicable (if not already a Party in that capacity);
  - (ii) all amounts actually received or recovered by any Second Lien Secured Creditor with respect to any such Security shall immediately be paid to the Security Agent and applied in accordance with Clause 15 (*Application of Proceeds*); and
  - (iii) such Security may only be enforced in accordance with Clause 13.6 (*Security held by other Creditors*).
- (b) any guarantee, indemnity or other assurance against loss from any Guarantee Provider in respect of any of the Senior Liabilities in addition to those in:
  - (i) the Super Senior Facility Agreement, any Permitted Super Senior Facility Agreement, any Senior Notes Indenture, any Permitted Senior Financing Document, any Second Lien Facility Agreement or any Second Lien Notes Finance Document;
  - (ii) this Agreement; or
  - (iii) any Common Assurance,provided that to the extent legally possible and subject to the Agreed Security Principles:
  - (A) the Guarantee Provider becomes party to this Agreement as a Debtor (if not already a party in that capacity); and

- (B) such guarantee, indemnity or assurance against loss is expressed to be subject to the terms of this Agreement; and
- (c) any Security, guarantee, indemnity or other assurance against loss from any member of the Group in connection with:
  - (i) any escrow or similar or equivalent arrangements entered into in respect of amounts which are being held (or will be held) by a person which is not a member of the Group prior to release of those amounts to a member of the Group; or
  - (ii) any actual or proposed defeasance, redemption, prepayment, repayment, purchase or other discharge of any Super Senior Lender Liabilities, Senior Notes Liabilities, Permitted Senior Financing Liabilities and/or Second Lien Liabilities (in each case provided that such defeasance, redemption, prepayment, repayment, purchase or other discharge is not prohibited by the terms of this Agreement).

#### 6.9 Restrictions on enforcement by Second Lien Secured Creditors

Until the Senior Discharge Date, except with the prior consent of or as required by an Instructing Group:

- (a) no Second Lien Secured Creditor shall direct the Security Agent to enforce or otherwise require the enforcement of any Transaction Security; and
- (b) no Second Lien Secured Creditor shall take or require the taking of any Enforcement Action in relation to the Second Lien Liabilities,

except as permitted under Clause 6.10 (*Permitted Second Lien enforcement*), provided, however, that no such action required by the Security Agent need be taken except to the extent the Security Agent is otherwise entitled under this Agreement to direct such action.

#### 6.10 Permitted Second Lien enforcement

- (a) Subject to Clause 6.13 (*Enforcement on behalf of Second Lien Secured Creditors*), the restrictions in Clause 6.9 (*Restrictions on enforcement by Second Lien Secured Creditors*) will not apply if:
  - (i) a Second Lien Event of Default (the “**Relevant Second Lien Default**”) is continuing;
  - (ii) each Senior Agent has received a notice of the Relevant Second Lien Default specifying the event or circumstance in relation to the Relevant Second Lien Default from the relevant Second Lien Agent;
  - (iii) a Second Lien Standstill Period (as defined below) has elapsed; and
  - (iv) the Relevant Second Lien Default is continuing at the end of the relevant Second Lien Standstill Period.
- (b) Promptly upon becoming aware of a Second Lien Event of Default, the relevant Second Lien Agent may by notice (a “**Second Lien Enforcement Notice**”) in writing notify the Senior Agents of the existence of such Second Lien Event of Default.

### 6.11 Second Lien Standstill Period

In relation to a Relevant Second Lien Default, a Second Lien Standstill Period shall mean the period beginning on the date (the “**Second Lien Standstill Start Date**”) the relevant Second Lien Agent serves a Second Lien Enforcement Notice on each of the Senior Agents in respect of such Relevant Second Lien Default (save for and except if arising pursuant to a breach of any provisions in the relevant Second Lien Facility Agreement or Second Lien Notes Indenture) relating to cross default or cross acceleration in respect of other Indebtedness of the Group (including to the Super Senior Facility Agreement, any Permitted Super Senior Facility Agreement, the Senior Notes Indenture and any Permitted Senior Financing Agreement) and ending on the earliest to occur of:

- (a) the date the Senior Secured Parties (other than the Second Lien Secured Creditors) take any Enforcement Action in relation to a particular Second Lien Borrower or Second Lien Guarantor, provided, however, that if a Second Lien Standstill Period ends pursuant to this paragraph (a), the Second Lien Secured Creditors may only take the same Enforcement Action in relation to the relevant Second Lien Borrower or Second Lien Guarantor as the Enforcement Action taken by the Senior Secured Parties (other than the Second Lien Secured Creditors) against such Second Lien Borrower or Second Lien Guarantor and not against any other member of the Group;
- (b) the date of an Insolvency Event in relation to the relevant Second Lien Borrower or a particular Second Lien Guarantor against whom Enforcement Action is to be taken;
- (c) the expiry of any other Second Lien Standstill Period outstanding at the date such first-mentioned Second Lien Standstill Period commenced (unless that expiry occurs as a result of a cure, waiver or other permitted remedy); and
- (d) the date on which the consent of each of the Super Senior Agent (acting on behalf of the Majority Super Senior Lenders), the Senior Notes Agent (acting on behalf of the Majority Senior Noteholders) and any Senior Creditor Representative (acting on the instructions the Majority Permitted Senior Financing Creditors) has been obtained,

the “**Second Lien Standstill Period**”.

### 6.12 Subsequent Second Lien Facility Defaults

The Second Lien Secured Creditors may take Enforcement Action under Clause 6.10 (*Permitted Second Lien enforcement*) in relation to a Relevant Second Lien Default even if, at the end of any relevant Second Lien Standstill Period or at any later time, a further Second Lien Standstill Period has begun as a result of any other Second Lien Event of Default.

### 6.13 Enforcement on behalf of Second Lien Secured Creditors

If the Security Agent has notified the Second Lien Agents that it is enforcing Security created pursuant to any Security Document over shares or assets of a Debtor, no Second Lien Secured Creditor may take any action referred to in Clause 6.10 (*Permitted Second Lien enforcement*) against that Debtor (or any Subsidiary of that Debtor) or instruct the Security Agent to cease any ongoing Enforcement Action, in each case while the Security Agent is taking steps to enforce that Security in accordance with the instructions of an Instructing Group where such action might be reasonably likely to adversely affect such enforcement or the amount of proceeds to be derived therefrom.



#### 6.14 Option to purchase: Second Lien Secured Creditors

- (a) Subject to paragraphs (b) and (c) below, any of the Second Lien Agent(s) (on behalf of the Second Lien Secured Creditors) may, after a Senior Acceleration Event, by giving not less than ten days' notice to the Security Agent, require the transfer to the Second Lien Secured Creditors (or to a nominee or nominees), in accordance with Clause 20.3 (*Change of Super Senior Lender, Second Lien Lender, Permitted Senior Financing Creditor or Second Lien Notes Creditor*), of all, but not part, of the rights, benefits and obligations in respect of the Super Senior Liabilities, the Senior Notes Liabilities, any Permitted Senior Financing Liabilities if:
- (i) that transfer is lawful and, subject to paragraph (ii) below, otherwise permitted by the terms of the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement pursuant to which any Super Senior Facilities remain outstanding (in the case of the Super Senior Lender Liabilities), Senior Notes Indenture(s) pursuant to which any Senior Notes remain outstanding (in the case of the Senior Notes Liabilities), any Permitted Senior Financing Agreement pursuant to which any relevant Permitted Senior Financing Liabilities remain outstanding (in the case of the Permitted Senior Financing Liabilities);
- (ii) any conditions relating to such a transfer contained in the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement pursuant to which any Super Senior Facilities remain outstanding (in the case of the Super Senior Lender Liabilities), the Senior Notes Indenture(s) pursuant to which any Senior Notes remain outstanding (in the case of the Senior Notes Liabilities), any Permitted Senior Financing Agreement pursuant to which any relevant Permitted Senior Financing Liabilities remain outstanding (in the case of the Permitted Senior Financing Liabilities) are complied with, other than:
- (A) 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; and
- (B) to the extent to which all the Second Lien Secured Creditors (acting as a whole) provide cash cover for any Letter of Credit, the consent of the relevant Issuing Bank relating to such transfer;
- (iii)
- (A) the Super Senior Agent, on behalf of the Super Senior Lenders, is paid an amount equal to the aggregate of:
- (1) any amounts provided as cash cover by the Second Lien Secured Creditors for any Letter of Credit (as envisaged in paragraph (a)(ii)(B) above);
- (2) all of the Super Senior Lender Liabilities at that time (whether or not due), including all amounts that would have been payable under the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement if the Super Senior Facilities were being prepaid by the relevant Debtors on the date of that payment; and

- (3) all costs and expenses (including legal fees) incurred by the Super Senior Agent, the Super Senior Lenders and/or the Security Agent as a consequence of giving effect to that transfer; and
  - (B) the applicable Senior Notes Agent, on behalf of the relevant Senior Notes Creditors, is paid an amount equal to the aggregate of:
    - (1) all of the Senior Notes Liabilities at that time (whether or not due), including all amounts that would have been payable (including any prepayment premium or make-whole amount) under the Senior Notes Indenture if the Senior Notes were being redeemed by the relevant Debtors on the date of that payment; and
    - (2) all costs and expenses (including legal fees) incurred by the Senior Notes Agent and/or the Senior Notes Creditors as a consequence of giving effect to that transfer;
  - (C) the applicable Senior Creditor Representative, on behalf of the relevant Permitted Senior Financing Creditors, is paid an amount equal to the aggregate of:
    - (1) all of the Permitted Senior Financing Liabilities at that time (whether or not due), including all amounts that would have been payable (including any prepayment premium or make-whole amount) under the Permitted Senior Financing Documents if the Permitted Senior Financing Debt was being prepaid or redeemed (as applicable) by the relevant Debtors on the date of that payment; and
    - (2) all costs and expenses (including legal fees) incurred by the Senior Creditor Representative, the Permitted Senior Financing Creditors and/or the Security Agent as a consequence of giving effect to that transfer; and
- (iv) as a result of that transfer the Senior Notes Creditors, the Super Senior Lenders and the Permitted Senior Financing Creditors have no further actual or contingent liability to the Company or any other Debtor under the relevant Secured Debt Documents;
- (v) an indemnity is provided from each Second Lien Secured Creditor (other than any Second Lien Agent) (or from another third party acceptable to all the Senior Notes Creditors, the Super Senior Lenders and the Permitted Senior Financing Creditors) in a form reasonably satisfactory to each Senior Notes Creditor, the Super Senior Lenders and Permitted Senior Financing Creditor in respect of all costs, expenses, losses and liabilities which may be sustained or incurred by any Senior Notes Creditor, the Super Senior Lenders or Permitted Senior Financing Creditor in consequence of any sum received or recovered by any Senior Notes Creditor, the Super Senior Lenders or Permitted Senior Financing Creditor from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Senior Notes Creditor, the Super Senior Lenders or Permitted Senior Financing Creditor for any reason; and

- (vi) the transfer is made without recourse to, or representation or warranty from, the Senior Notes Creditors, the Super Senior Lenders or the Permitted Senior Financing Creditors, except that each Senior Notes Creditor, the Super Senior Lenders and Permitted Senior Financing Creditor shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) Subject to paragraph (b) of Clause 6.15 (*Hedge Transfer: Second Lien Secured Creditors*), a Second Lien Agent (on behalf of all the Second Lien Secured Creditors) may only require a Senior Secured Liabilities Transfer if, at the same time, they require a Hedge Transfer in accordance with Clause 6.15 (*Hedge Transfer: Second Lien Secured Creditors*) and if, for any reason, a Hedge Transfer cannot be made in accordance with Clause 6.15 (*Hedge Transfer: Second Lien Secured Creditors*), no Senior Secured Liabilities Transfer may be required to be made.
- (c) At the request of a Second Lien Agent (on behalf of all the Second Lien Secured Creditors):
  - (i) the Super Senior Agent shall notify the Second Lien Agents of:
    - (A) the sum of the amounts described in paragraphs (a)(iii)(A)(2) and (3) above; and
    - (B) the amount of each Letter of Credit for which cash cover is to be provided to it by all the Second Lien Secured Creditors (acting as a whole);
  - (ii) any relevant Senior Notes Agent shall notify the Second Lien Agents of the sum of amounts described in paragraphs (a)(iii)(B)(1) and (2) above;
  - (iii) any relevant Senior Creditor Representative shall notify the Second Lien Agents of the sum of the amounts described in paragraphs (a)(iii)(C)(1) and (2) above.

#### **6.15 Hedge Transfer: Second Lien Secured Creditors**

- (a) A Second Lien Agent (on behalf of all the Second Lien Secured Creditors, acting as a whole) may, by giving not less than 10 days' notice to the Security Agent, require a Hedge Transfer:
  - (i) if either:
    - (A) the Second Lien Secured Creditors require, at the same time, a Senior Secured Liabilities Transfer under Clause 6.14 (*Option to purchase: Second Lien Secured Creditors*); or
    - (B) all the Second Lien Secured Creditors (acting as a whole) require that Hedge Transfer at any time on or after the Senior Discharge Date; and
  - (ii) if:

- (A) that transfer is lawful and otherwise permitted by the terms of the Hedging Agreements, in which case no Debtor or other member of the Group shall be entitled to withhold its consent to that transfer;
  - (B) any conditions (other than the consent of, or any consultation with, any Debtor or other member of the Group) relating to that transfer contained in the Hedging Agreements are complied with;
  - (C) each Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of (1) the Hedging Purchase Amount in respect of the hedging transactions under the relevant Hedging Agreement at that time and (2) all costs and expenses (including legal fees) incurred by such Hedge Counterparty as a consequence of giving effect to that transfer;
  - (D) as a result of that transfer, the Hedge Counterparties have no further actual or contingent liability to any Debtor under the Hedging Agreements;
  - (E) an indemnity is provided from each Second Lien Secured Creditor (other than any Second Lien Agent) which is receiving (or for which a nominee is receiving) that transfer (or from another third party acceptable to the relevant Hedge Counterparty) in a form reasonably satisfactory to the relevant Hedge Counterparty in respect of all losses which may be sustained or incurred by that Hedge Counterparty in consequence of any sum received or recovered by that Hedge Counterparty being required (or it being alleged that it is required) to be paid back by or clawed back from the Hedge Counterparty for any reason; and
  - (F) that transfer is made without recourse to, or representation or warranty from, the relevant Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) A Second Lien Agent (acting on behalf of all the Second Lien Secured Creditors) and any Hedge Counterparty may agree (in respect of the Hedging Agreements (or one or more of them) to which that Hedge Counterparty is a party) that a Hedge Transfer required by all the Second Lien Secured Creditors (acting as a whole) pursuant to paragraph (a) above shall not apply to that/those Hedging Agreement(s) or to the Hedging Liabilities and Hedge Counterparty Obligations under that/those Hedging Agreement(s).
- (c) If a Second Lien Agent is entitled to require a Hedge Transfer under this Clause 6.15, the Hedge Counterparties shall at the request of any Second Lien Agent provide details of the amounts referred to in paragraph (a)(ii)(C) above.

7. **[RESERVED]**

8. **INVESTOR LIABILITIES**

8.1 **Restriction on Payment: Investor Liabilities**

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

- (a) that Payment is permitted under Clause 8.2 (*Permitted Payments: Investor Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under Clause 8.7 (*Permitted Enforcement: Investors*).

8.2 **Permitted Payments: Investor Liabilities**

Any member of the Group may directly or indirectly make any Payments in respect of Investor Liabilities (whether of principal, interest or otherwise) at any time if:

- (a) the Payment is not prohibited by the Debt Financing Agreements; or
- (b) in relation to each Debt Financing Agreement that prohibits the Payment, the requisite Senior Secured Creditors under that Debt Financing Agreement consent to that Payment being made.

8.3 **Payment obligations continue**

Neither the Company 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 8.1 (*Restriction on Payment: Investor Liabilities*) and 8.2 (*Permitted Payments: Investor Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

8.4 **No acquisition of Investor 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 in respect of any of the Investor Liabilities with any person which is not a member of the Group; 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 Investor Liabilities (unless that Liabilities Acquisition would not have been prohibited by this Clause 8.4 if made by a member of the Group),

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

- (i) that action is not prohibited by the Debt Financing Agreements;
- (ii) the relevant Liabilities Acquisition relates to Investor Liabilities (or rights, benefits and/or obligations in relation thereto) in respect of which a Payment could be made under Clause 8.2 (*Permitted Payments: Investor Liabilities*); or

- (iii) in relation to each Debt Financing Agreement that prohibits that action, the requisite Senior Secured Creditors under that Debt Financing Agreement consent to that action.

#### **8.5 Security: Investors**

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

- (a) that Security, guarantee, indemnity or other assurance against loss is not prohibited by the Debt Financing Agreements; or
- (b) in relation to each Debt Financing Agreement that prohibits that Security, guarantee, indemnity or other assurance against loss, the requisite Senior Secured Creditors under that Debt Financing Agreement consent to that Security, guarantee, indemnity or other assurance against loss.

#### **8.6 Restrictions on Enforcement: Investors**

Subject to Clause 8.7 (*Permitted Enforcement: Investors*) and unless otherwise agreed by an Instructing Group, the Investors shall not be entitled to take any Enforcement Action in respect of any of Investor Liabilities at any time prior to the Final Discharge Date.

#### **8.7 Permitted Enforcement: Investors**

After the occurrence of an Insolvency Event in relation to the Company, the Investors may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of the Investors in accordance with Clause 10.5 (*Filing of claims*)), exercise any right it may otherwise have against the Company to:

- (a) accelerate any of the Investor 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 in respect of any Investor Liabilities;
- (c) exercise any right of set-off or take or receive any Payment in respect of any Investor Liabilities; or
- (d) claim and prove in the liquidation of the Company for any Investor Liabilities owing to it.

#### **8.8 Investor Liabilities: Exceptions**

Notwithstanding anything to the contrary, nothing in this Agreement or any of the Secured Debt Documents shall prohibit or restrict:

- (a) any Payment made to an Investor under and in accordance with the terms of any Secured Debt Document (provided that, for the avoidance of doubt, this paragraph (a) shall not apply to a Payment which is not made under a Secured Debt Document or a Payment which is expressly prohibited by Clause 5 (*Hedge Counterparties and Hedging Liabilities*) and/or Clause 6 (*Second Lien Secured Creditors and Second Lien Liabilities*));

- (b) any Payment or other return made by way of a roll-up or capitalisation of any amount, an issue of shares, an incurrence of indebtedness constituting Investor Liabilities (including the issue of payment-in-kind instruments) or any other similar or equivalent step, action or arrangement;
- (c) any forgiveness, write-off or capitalisation of Investor Liabilities (or any other similar or equivalent step or action);
- (d) any payment made (whether cash or in kind) or other step or action taken to facilitate any Payment (or other matter) in respect of any Investor Liabilities (in each case to the extent that such Payment or other matter is not prohibited by this Clause 8);
- (e) any Liabilities Acquisition (including pursuant to clause 35 (*Debt Purchases*) of the Notes Purchase Agreement and any equivalent provisions of the other Debt Financing Agreements) and any payments or other actions arising in connection therewith (in each case unless that Liabilities Acquisition is otherwise prohibited by the terms of the Debt Financing Agreements); or
- (f) any Investor from granting any Security over or in relation to the Investor Liabilities or any related rights in respect thereof.

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

### **9.1 Restriction on Payment: Intra-Group Liabilities**

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

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

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

- (a) Subject to paragraph (b) below, the Debtors may directly or indirectly make any Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) at any time.
- (b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred and is continuing and the Security Agent (acting on the instructions of an Instructing Group) has delivered a written notice to the Company stating that no Payments may be made in respect of the Intra-Group Liabilities, in each case unless:
  - (i) an Instructing Group consents to that Payment being made; or
  - (ii) in relation to each Debt Financing Agreement that prohibits that Payment being made, the requisite Senior Secured Creditors under that Debt Financing Agreement consent to that action; or
  - (iii) that Payment is made to facilitate Payment of any Senior Liabilities and Senior Notes Agent Amounts.

### **9.3 Payment obligations continue**

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

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

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

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

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

(b) Subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities if, at the time of that action, an Acceleration Event has occurred and is continuing and the Security Agent (acting on the instructions of an Instructing Group) has delivered a written notice to the Company stating that no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities.

(c) The restrictions in paragraph (b) above shall not apply if:

- (i) an Instructing Group consents to that action; or
- (ii) that action is taken to facilitate Payment of any Senior Liabilities and/or Senior Notes Agent Amounts.

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

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

- (a) that Security, guarantee, indemnity or other assurance against loss is not prohibited by the Debt Financing Agreements; or
- (b) in relation to each Debt Financing Agreement that prohibits that Security, guarantee, indemnity or other assurance against loss, the requisite Senior Secured Creditors under that Debt Financing Agreement consent to that Security, guarantee, indemnity or other assurance against loss.

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

Subject to Clause 9.7 (*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.



## 9.7 Permitted Enforcement: Intra-Group Lenders

After the occurrence of an Insolvency Event in relation to any Group Company, each Intra-Group Lender may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Intra-Group Lender in accordance with Clause 10.5 (*Filing of claims*)), exercise any right it may otherwise have against that Group Company to:

- (a) accelerate any of that Group Company'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 Group Company 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 Group Company; or
- (d) claim and prove in the liquidation of that Group Company for the Intra-Group Liabilities owing to it.

## 9.8 Intra-Group Liabilities: Exceptions

- (a) Notwithstanding anything to the contrary in this Agreement or any other Secured Debt Document and without imposing any additional obligation or restriction on any member of the Group, nothing in this Agreement (including this Clause 9 or Clause 20 (*Changes to the Parties*)) or any other Secured Debt Document shall prohibit or restrict any capitalisation, forgiveness, write-off, waiver, release, transfer or other discharge of any Intra-Group Liabilities (or any amounts due, payable or owing in connection therewith) or any other amount due, payable or owing by one member of the Group to another member of the Group, in the case of Intra-Group Liabilities unless an Acceleration Event has occurred and is continuing and the Security Agent (acting on the instructions of an Instructing Group) has delivered a written notice to the Company stating that no such action shall be permitted without the prior consent of an Instructing Group.

## 9.9 Notice and Acknowledgment of Transaction Security

- (a) By virtue of being a party to this Agreement, each Debtor shall be deemed to have notice of, and to have acknowledged, any assignment or other Security created under any Transaction Security Document over any Intra-Group Liabilities or Investor Liabilities pursuant to which any amounts or other obligations are owed by them to another Debtor, Intra-Group Lender or Investor.

## 10. EFFECT OF INSOLVENCY EVENT

### 10.1 SFA Cash Cover

This Clause 10 is subject to Clause 15.4 (*Treatment of SFA Cash Cover and Super Senior Lender Cash Collateral*) and, in the case of a Notes Trustee only, to Clause 27.1 (*Liability*).

### 10.2 Payment of distributions

- (a) After the occurrence of an Insolvency Event in relation to any Debtor or, following an Acceleration Event which is continuing, any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of

Liabilities owed to that Party shall (in the case of any Creditor, only to the extent that such distribution would otherwise constitute a receipt or recovery of a type subject to the provisions of Clause 11.2 (*Turnover by the Creditors*) and, in all cases if prior to a Distress Event, only if required by the Security Agent acting on the instructions of an Instructing Group), subject to receiving payment instructions and any other relevant information from the 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 pay that distribution to the Security Agent until the Liabilities owing to the Secured Parties have been paid in full.

- (b) The Security Agent shall apply distributions paid to it under paragraph (a) above in accordance with Clause 15 (*Application of Proceeds*).

### **10.3 Set-Off**

- (a) Subject to paragraph (b) below, to the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group and any Creditor which benefited from that set-off shall (in the case of any Creditor, only to the extent that the relevant discharge constitutes a receipt or recovery of a type subject to the provisions of Clause 11.2 (*Turnover by the Creditors*) and, in all cases if prior to a Distress Event, only if required by the Security Agent acting on the instructions of an Instructing Group), subject to receiving payment instructions and any other relevant information from the Security Agent, pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 15 (*Application of Proceeds*).
- (b) Paragraph (a) above shall not apply to:
  - (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction from a Permitted Gross Amount of a Multi-account Overdraft Facility to or towards its Designated Net Amount;
  - (ii) any Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (iii) any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty;
  - (v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; and
  - (vi) any set-off which gives effect to a Permitted Payment (or another payment or distribution not prohibited by the terms of this Agreement) which is otherwise permitted to be made under this Agreement notwithstanding the occurrence of the relevant Insolvency Event.

### **10.4 Non-cash distributions**

Subject to Clause 15.1 (*Order of application*), if the Security Agent or any other Secured Party receives a distribution in a form other than in cash in respect of any of the Liabilities, the Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Liabilities.

### **10.5 Filing of claims**

Without prejudice to any Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that the netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount), after the occurrence of an Insolvency Event in relation to any Debtor (or, following an Acceleration Event which is continuing, any member of the Group), each Creditor irrevocably authorises the Security Agent (acting in accordance with Clause 10.7 (*Security Agent instructions*)), on its behalf, to:

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

### **10.6 Creditors' actions**

Each Creditor will:

- (a) do all things that the Security Agent (acting in accordance with Clause 10.7 (*Security Agent instructions*)) reasonably requests in order to give effect to this Clause 10; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 10 or if the Security Agent (acting in accordance with Clause 10.7 (*Security Agent instructions*)) requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent (acting in accordance with Clause 10.7 (*Security Agent instructions*)) or grant a power of attorney to the Security Agent (on such terms as the Security Agent (acting in accordance with Clause 10.7 (*Security Agent instructions*)) may reasonably require, although no Notes Trustee shall be under any obligation to grant such powers of attorney) to enable the Security Agent to take such action.

### **10.7 Security Agent instructions**

For the purposes of Clause 10.5 (*Filing of claims*) and Clause 10.6 (*Creditors' actions*) the Security Agent shall act:

- (a) on the instructions of the group of Senior Secured Creditors entitled, at that time, to give instructions under Clause 13.2 (*Enforcement Instructions*) or Clause 13.3 (*Manner of enforcement*); or
- (b) in the absence of any such instructions, as the Security Agent sees fit.

## 11. TURNOVER OF RECEIPTS

### 11.1 SFA Cash Cover

This Clause 11 is subject to Clause 15.4 (*Treatment of SFA Cash Cover and Super Senior Lender Cash Collateral*) and, in the case of a Notes Trustee only, to Clause 27.1 (*Liability*).

### 11.2 Turnover by the Creditors

Subject to Clause 11.3 (*Exclusions*), Clause 11.4 (*Permitted assurance and receipts*), Clause 17 (*Additional Debt*) and, in the case of a Notes Trustee only, to Clause 27.1 (*Liability*), if at any time prior to the Final Discharge Date, any Creditor receives or recovers from any member of the Group:

- (a) any Payment or distribution of, or on account of or in relation to:
  - (i) any of the Liabilities which is prohibited by the terms of this Agreement; or
  - (ii) following the occurrence of a Senior Distress Event which is continuing, any Super Senior Lender Liabilities, Hedging Liabilities, Senior Notes Liabilities, Permitted Senior Financing Liabilities;
- (b) other than where Clause 10.3 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment (or another payment or distribution not otherwise prohibited by the terms of this Agreement);
- (c) notwithstanding paragraphs (a) and (b) above, and other than where Clause 10.3 (*Set-Off*) applies, any amount:
  - (i) on account of, or in relation to, any of the Liabilities after the occurrence of a Distress Event (including as a result of any 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:
  - (A) any amount received or recovered in accordance with Clause 15 (*Application of Proceeds*); and
  - (B) in the case of Intra-Group Liabilities, any amount received or recovered in accordance with Clause 9 (*Intra-Group Lenders and Intra-Group Liabilities*) (to the extent permitted to be received or recovered notwithstanding that an Acceleration Event is continuing);
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 15 (*Application of Proceeds*); or
- (e) other than where Clause 10.3 (*Set-Off*) or Clause 17 (*Additional Debt*) applies, any distribution in cash or in kind or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with

Clause 15 (*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 (in the case of any receipts and recoveries referred to in paragraph (e) above, if a Distress Event has not occurred, only if required by the Security Agent acting on the instructions of an Instructing Group):

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

### 11.3 Exclusions

Clause 11.2 (*Turnover by the Creditors*) shall not apply to any receipt or recovery:

- (a) by way of:
  - (i) Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (ii) Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
  - (iv) Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; or
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that that netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount);
- (c) made in accordance with Clause 16 (*Equalisation*);
- (d) to the extent that such receipt or recovery was funded directly or indirectly with indebtedness incurred under Clause 17 (*Additional Debt*) or any New Debt Financing, any Permitted Senior Financing Debt, Second Lien Debt, Second Lien Notes and/or the proceeds of any indebtedness incurred under or pursuant to any Permitted Super Senior Facility Agreement;

- (e) in respect of funds received by the Security Agent for its own account; or
- (f) that has been distributed by a Senior Notes Agent to the Senior Noteholders in accordance with the Senior Notes Finance Documents unless the Senior Notes Agent had received at least two Business Days' prior notice that an Acceleration Event or an Insolvency Event has occurred in relation to a Debtor or that the receipt or recovery falls within Clause 11.2 (*Turnover by the Creditors*) in each case prior to distribution of the relevant amount.

#### **11.4 Permitted assurance and receipts**

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

- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub participation); or
- (b) make any assignment or transfer permitted by Clause 20 (*Changes to the Parties*),

which:

- (i) is not prohibited by any Debt Financing Agreement; and
- (ii) is not in breach of:
  - (A) Clause 5.5 (*No acquisition of Hedging Liabilities*); or
  - (B) Clause 8.4 (*No acquisition of Investor Liabilities*),

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

#### **11.5 Sums received by Debtors and Third Party Security Providers**

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

- (a) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and, unless otherwise agreed by the Security Agent and subject to receiving payment instructions and any other relevant information from the Security Agent, promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement; and
- (b) unless otherwise agreed by the Security Agent and subject to receiving payment instructions and any other relevant information from the Security Agent, promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement.

#### **11.6 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, Third Party Security Provider or Debtor will, unless otherwise agreed by the Security Agent and subject to receiving payment instructions and any

other relevant information from the Security Agent, promptly pay an amount equal to that receipt or recovery to the Security Agent for application in accordance with the terms of this Agreement.

## 12. REDISTRIBUTION

### 12.1 Recovering Creditor's rights

- (a) Any amount paid by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 10 (*Effect of Insolvency Event*) or Clause 11 (*Turnover of Receipts*) shall be treated as having been paid by the relevant Debtor or Third Party Security Provider and distributed to the Security Agent, other Agents, Arrangers and Senior Secured Creditors (each a "**Sharing Creditor**") in accordance with the terms of this Agreement.
- (b) On a distribution by the Security Agent under paragraph (a) above of a Payment received by a Recovering Creditor from a Debtor or Third Party Security Provider, as between the relevant Debtor or Third Party Security Provider and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid to the Security Agent (the "**Shared Amount**") will be treated as not having been paid by that Debtor or Third Party Security Provider.

### 12.2 Reversal of redistribution

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

### 12.3 Deferral of Subrogation

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

- (b) No Investor or Intra-Group Lender 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 other prior ranking Creditor until such time as all of the Liabilities owing to each prior ranking Creditor have been irrevocably paid in full.

### **13. ENFORCEMENT OF TRANSACTION SECURITY**

#### **13.1 SFA Cash Cover**

This Clause 13 is subject to Clause 15.4 (*Treatment of SFA Cash Cover and Super Senior Lender Cash Collateral*).

#### **13.2 Enforcement Instructions**

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by:
  - (i) an Instructing Group; or
  - (ii) if required under paragraph (c) below, the Majority Second Lien Creditors.
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms:
  - (i) an Instructing Group; or
  - (ii) to the extent permitted to enforce or to require the enforcement of the Transaction Security prior to the Senior Discharge Date under Clause 6.10 (*Permitted Second Lien enforcement*), the Majority Second Lien Creditors,

may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.
- (c) Prior to the Senior Discharge Date:
  - (i) if an Instructing Group has instructed the Security Agent not to enforce or to cease enforcing the Transaction Security; or
  - (ii) in the absence of instructions from an Instructing Group,

and, in each case, an Instructing Group has not required any Debtor or Third Party Security Provider to make a Distressed Disposal, the Security Agent shall give effect to any instructions to enforce the Transaction Security which the Majority Second Lien Creditors are then entitled to give to the Security Agent under Clause 6.10 (*Permitted Second Lien enforcement*).
- (d) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 13.2.
- (e) Subject to Clause 13.6 (*Security held by other Creditors*), no Secured Party:
  - (i) shall have any independent power to enforce, or to have recourse to, any Transaction Security or to exercise any rights or powers arising under the Security Documents; or



- (ii) may enforce or have recourse to any Transaction Security,  
except through the Security Agent in the manner contemplated by this Agreement.

### **13.3 Manner of enforcement**

If the Transaction Security is being enforced pursuant to Clause 13.2 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator, examiner or equivalent officer of any Debtor or Third Party Security Provider to be appointed by the Security Agent) as:

- (a) an Instructing Group;
- (b) prior to the Senior Discharge Date, if:
  - (i) the Security Agent has, pursuant to paragraph (c) of Clause 13.2 (*Enforcement Instructions*), given effect to instructions given by the Majority Second Lien Creditors to enforce the Transaction Security; and
  - (ii) an Instructing Group has not given instructions as to the manner of enforcement of the Transaction Security,  
  
the Majority Second Lien Creditors,

shall instruct or, in the absence of any such instructions, as the Security Agent sees fit (it being understood that, absent such instructions the Security Agent may elect to take no action).

### **13.4 Exercise of voting rights**

- (a) To the fullest extent permitted under applicable law, each Creditor (other than any Notes Trustee) agrees with the Security Agent that it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent.
- (b) The Security Agent shall give instructions for the purposes of paragraph (a) above as directed by an Instructing Group.
- (c) Nothing in this Clause 13.4 entitles any Party to exercise or require any other Creditor to exercise such power of voting or representation to waive, reduce, discharge, extend the due date for payment or otherwise reschedule any of the Liabilities owed to that Creditor.

### **13.5 Waiver of rights**

To the extent permitted under applicable law and subject to Clause 13.2 (*Enforcement Instructions*), Clause 13.3 (*Manner of enforcement*), Clause 15 (*Application of Proceeds*) and paragraph (c) of Clause 14.2 (*Distressed Disposals*), each of the Secured Parties and the Debtors and Third Party Security Provider waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

### 13.6 Security held by other Creditors

If any Transaction Security is held by a Creditor other than the Security Agent, then that Creditor may only enforce that Transaction Security in accordance with instructions given by an Instructing Group pursuant to this Clause 13 (and, for this purpose, reference to the “Security Agent” shall be construed as references to that Creditor).

### 13.7 Consultation Period

- (a) Subject to paragraph (c) below, before giving any instructions to the Security Agent to enforce the Transaction Security or refrain or cease from enforcing the Transaction Security or to take any other Enforcement Action, the Agent(s) of the Creditors represented in the Instructing Group concerned (or the Creditors themselves or another duly authorised representative of the relevant Creditors), shall consult with each other Agent in good faith about the instructions to be given by the Instructing Group for a period of not less than 10 Business Days from the date on which details of the proposed instructions are received by such Agents and the Security Agent (or such shorter period as each relevant Agent or the relevant Creditors agree) (the “**Consultation Period**”), and only following the expiry of a Consultation Period shall the Instructing Group be entitled to give any instructions to the Security Agent to enforce the Transaction Security or refrain or cease from enforcing the Transaction Security or take any other Enforcement Action. Each person participating in any such consultation agrees to act in good faith in conducting that consultation.
- (b) Prior to the Senior Debt Discharge Date, in the event that the Majority Super Senior Lenders are permitted to take Enforcement Action pursuant to Clause 3.4 (*Restrictions on Enforcement: Super Senior Lenders*), the Security Agent shall follow any relevant instructions given by the Majority Super Senior Lenders (in each case provided that such instructions are consistent with any applicable requirements of this Agreement and the Security Documents) and the Majority Super Senior Lenders shall constitute an Instructing Group for this purpose.
- (c) Without prejudice to paragraph (b) above, no Agent, Hedge Counterparty or other person shall be obliged to consult in accordance with paragraph (a) above and an Instructing Group shall be entitled to give any instructions to the Security Agent to enforce the Transaction Security or take any other Enforcement Action prior to the end of a Consultation Period (in each case provided that such instructions are consistent with any applicable requirements of this Agreement and the Security Documents) if:
- (i) the Transaction Security has become enforceable as a result of an Insolvency Event; or
  - (ii) the Instructing Group or any Agent of the Creditors represented in the Instructing Group determines in good faith (and notifies each other Agent, the Hedge Counterparties and the Security Agent) that to enter into such consultations and thereby delay the commencement of enforcement of the Transaction Security would reasonably be expected to have a material adverse effect on:
    - (A) the Security Agent’s ability to enforce any of the Transaction Security; or
    - (B) the realisation proceeds of any enforcement of the Transaction Security,

and, where this paragraph (c) applies:

- (1) any instructions shall be limited to those necessary to protect or preserve the interests of the Senior Secured Creditors on behalf of which the relevant Instructing Group is acting in relation to the matters referred to in (A) and (B) above; and
  - (2) the Security Agent shall act in accordance with the instructions of the Instructing Group.
- (d) As soon as reasonably practicable following receipt of any instructions from an Instructing Group to enforce the Transaction Security, refrain or cease from enforcing the Transaction Security or, as the case may be, take any other Enforcement Action, the Security Agent shall provide a copy of such instructions to each Agent, Hedge Counterparty (unless it received those instructions from that person).

#### **14. PROCEEDS OF DISPOSALS AND ADJUSTMENT OF MANDATORY PREPAYMENTS**

##### **14.1 Non-Distressed Disposals**

- (a) The Security Agent (on behalf of itself and the Secured Parties) hereby agrees (and is irrevocably authorised and instructed to do so without any consent, sanction, authority or further confirmation from any Creditor, Debtor or Third Party Security Provider) that it shall (at the request and cost of the relevant Debtor or the Company) promptly release (or procure that any other relevant person releases) from the Transaction Security and the Secured Debt Documents:
- (i) any Security (and/or any other claim relating to a Debt Document) over any asset which is the subject of:
    - (A) a disposal not prohibited by the terms of any Debt Financing Agreement (or, to the extent any applicable Debt Financing Agreement prohibits such disposal, the applicable Senior Agent authorises the release in accordance with the terms of the applicable Debt Financing Agreement or the Required Creditor Consent for such disposal has been obtained) (including a disposal to a member of the Group, but without prejudice to any obligation of any member of the Group in a Debt Financing Agreement to provide replacement security); or
    - (B) any other transaction not prohibited by the terms of any Debt Financing Agreement pursuant to which that asset will cease to be held or owned by a member of the Group (or, to the extent any applicable Debt Financing Agreement prohibits such transaction, the applicable Senior Agent authorises the release in accordance with the terms of the applicable Debt Financing Agreement or the Required Creditor Consent for such transaction has been obtained);
  - (ii) any Security (and/or any other claim relating to a Debt Document) over any document or other agreement requested in order for any member of the Group to effect any amendment or waiver in respect of that document or agreement or otherwise exercise any rights, comply with any obligations or take any action in relation to that document or agreement (in each case to the extent not prohibited by the terms of any Debt Financing Agreement);

- (iii) any Security (and/or any other claim relating to a Debt Document) over any asset of any member of the Group which has ceased to be a Debtor, Guarantor or Third Party Security Provider (or will cease to be a Debtor, Guarantor or Third Party Security Provider simultaneously with such release); and
- (iv) any Security (and/or any other claim relating to a Debt Document) over any other asset to the extent that such release is in accordance with the terms of the Debt Financing Agreements.

In the case of a disposal of shares or other ownership interests in a Debtor (or any Holding Company of any Debtor), or any other transaction pursuant to which a Debtor (or any Holding Company of any Debtor) will cease to be a member of the Group or a Debtor (including, without limitation, pursuant to Clause 20.12 (*Resignation of a Debtor*)), the Security Agent (on behalf of itself and the Secured Parties) hereby agrees (and is irrevocably authorised and instructed to do so without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) that it shall (at the request and cost of the relevant Debtor or the Company) promptly release (or procure that any other relevant person releases) that Debtor and its Subsidiaries from all present and future liabilities (both actual and contingent) under the Secured Debt Documents and the respective assets of such Debtor and its Subsidiaries (and the shares in any such Debtor and/or Subsidiary) from the Transaction Security and the Secured Debt Documents (including any claim relating to a Debt Document and any Guarantee Liabilities or Other Liabilities).

- (b) When making any request for a release pursuant to sub-paragraph (a)(i), (a)(ii) or (a)(iv) of this Clause 14.1 the Company shall confirm in writing to the Security Agent that:
  - (i) in the case of any release requested pursuant to sub-paragraph (a)(i), (a)(ii) or the final paragraph of sub-paragraph (a) above, the relevant disposal or other action is not prohibited by the terms of any Debt Financing Agreement; or
  - (ii) in the case of any release requested pursuant to paragraph (a)(iv) above, the relevant release is in accordance with terms of the Debt Financing Agreements,

and the Security Agent shall be entitled to rely on that confirmation for all purposes under the Secured Debt Documents.

- (c) The Security Agent shall (at the cost and expense of the relevant Debtor or the Company but without the need for any further consent, sanction, authority or further confirmation from any Creditor, other Secured Party, Debtor or Third Party Security Provider) promptly enter into (or procure that any relevant person enters into) and deliver such documentation and/or take such other action as the Company (acting reasonably) shall require to give effect to any release or other matter contemplated by this Clause 14.1 (including the issuance of any certificates of non-crystallisation of floating charges, any consent to dealing or any other similar or equivalent document that may be required or desirable).
- (d) Without prejudice to the foregoing and for the avoidance of doubt, if requested by the Company in accordance with the terms of any of the Debt Financing Agreements (and provided that the requested action is not expressly prohibited by any of the other Debt Financing Agreements), the Security Agent and the other Creditors shall (at the cost of the relevant Debtor and/or the Company) promptly execute any guarantee, security or other release and/or any amendment, supplement or other documentation relating to the Security Documents as contemplated by the terms of any of the Debt Financing

Agreements (and the Security Agent is authorised to execute, and will promptly execute if requested by the Company, without the need for any further consent, sanction, authority or further confirmation from any Creditor, any such release or document on behalf of the Creditors). When making any request pursuant to this paragraph (d) the Company shall confirm in writing to the Security Agent that such request is in accordance with the terms of a Debt Financing Agreement (and the requested action is not expressly prohibited by any of the other Debt Financing Agreements) and the Security Agent shall be entitled to rely on that confirmation for all purposes under the Secured Debt Documents.

- (e) Notwithstanding anything to the contrary in any Debt Document, nothing in any Security Document shall operate or be construed so as to prevent any transaction, matter or other step not prohibited by the terms of this Agreement or the Debt Financing Agreements (a “**Permitted Transaction**”). The Security Agent (on behalf of itself and the Secured Parties) hereby agrees (and is irrevocably authorised and instructed to do so without any consent, sanction, authority or further confirmation from any Party) that it shall (at the request and cost of the relevant Debtor or the Company) promptly execute any release or other document and/or take such other action under or in relation to any Debt Document (or any asset subject or expressed to be subject to any Security Document) as is requested by the Company in order to complete, implement or facilitate a Permitted Transaction. In the event that the Company makes any request pursuant to and in reliance on the preceding sentence, the Security Agent shall be permitted to request a confirmation from the Company that the relevant transaction, matter or other step is a Permitted Transaction and the Security Agent shall be entitled to rely on that confirmation for all purposes under the Secured Debt Documents.
- (f) The Security Agent is irrevocably authorised by each Secured Party to (and will on the request and at the cost of the Company):
  - (i) release the Transaction Security; and
  - (ii) release each Investor, each Debtor, each Third Party Security Provider and each other member of the Group from all liabilities, undertakings and other obligations under the Secured Debt Documents,

on the Final Discharge Date (or at any time following such date on the request of the Company).

## 14.2 Distressed Disposals

- (a) Subject to paragraph (d) below, if a Distressed Disposal is being effected the Security Agent is irrevocably authorised (at the cost of the relevant Debtor or the Company and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party, Debtor or Third Party Security Provider):
  - (i) *release of Transaction Security/non-crystallisation certificates*: to release the Transaction Security or any other claim over the asset which is the subject of the Distressed Disposal and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
  - (ii) *release of liabilities and Transaction Security on a share sale (Debtor)*: if the asset which is disposed of consists of shares in the capital of a Debtor, to release:

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

on behalf of the relevant Creditors, Debtors, Third Party Security Providers and Agents;

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

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

on behalf of the relevant Creditors, Debtors, Third Party Security Providers and Agents;

- (iv) *disposal of liabilities on a share sale*: if the asset which is disposed of consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent (acting in accordance with paragraph (i) below) decides to dispose of all or any part of:

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

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

- (I) (if the Security Agent, acting in accordance with paragraph (i) below, does not intend that any transferee of those Liabilities or Debtor Liabilities (the "Transferee") will be treated as a Senior Secured

Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtor Liabilities provided that notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Senior Secured Creditor or a Secured Party for the purposes of this Agreement; and

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

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

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

on behalf of, in each case, the relevant Creditors, Debtors and Third Party Security Providers;

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

(A) the Intra-Group Liabilities; or

(B) the Debtor Liabilities,

to execute and deliver or enter into any agreement to:

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

(II) (if the Receiving Entity is a Holding Company of the Disposed Entity which is also a guarantor of Senior Liabilities) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities are to be transferred.

(b) The net proceeds of each Distressed Disposal (and the net proceeds of any disposal of Liabilities or Debtor Liabilities pursuant to paragraph (a)(iv) above) shall be paid to the Security Agent for application in accordance with Clause 15 (*Application of Proceeds*) (to the extent that the asset disposed of constituted Charged Property, as if those proceeds were the proceeds of an enforcement of the Transaction Security and, to the extent that any disposal of Liabilities or Debtor Liabilities has occurred pursuant to paragraph (a)(iv)(II) above, as if that disposal of Liabilities or Debtor Liabilities had not occurred).

- (c) In the case of a Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (a)(iv)(II) above (a “**Liabilities Sale**”)) effected by or at the request of the Security Agent (acting in accordance with paragraph (i) below), the Security Agent shall take reasonable care to obtain a fair market price in the prevailing market conditions (though the Security Agent shall have no obligation to postpone any such Distressed Disposal or disposal of Liabilities in order to achieve a higher price).
- (d) Where Borrowing Liabilities, Guarantee Liabilities and/or Other Liabilities would otherwise be released pursuant to paragraph (a) above, the Creditor concerned may elect to have those Borrowing Liabilities, Guarantee Liabilities and/or, as the case may be, Other Liabilities transferred to the Company in which case the Security Agent is irrevocably authorized (to the extent legally possible and at the cost of the relevant Debtor or the Company and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party, Third Party Security Provider or Debtor) to execute such documents as are required to so transfer those Borrowing Liabilities, Guarantee Liabilities and/or, as the case may be, Other Liabilities.
- (e) Subject to paragraphs (f) and (g) below, if, prior to the Senior Creditor Discharge Date, a Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (a)(iv) above) is being effected by or at the request of the Security Agent (acting in accordance with paragraph (i) below), such that any Pari Passu Liabilities will be released or disposed of, or any Transaction Security securing the Pari Passu Liabilities will be released, unless the consent of the Majority Pari Passu Creditors is otherwise obtained, it is a further condition to any release, transfer or disposal under paragraph (a) above that (1) where such Distressed Disposal (or such disposal of Liabilities) is being effected by or at the request of the Security Agent acting in accordance with the instructions of the Majority Super Senior Lenders (or the Instructing Group if paragraph (ii) of that definition applies), the entire consideration for such sale or disposal is cash and (2) such sale or disposal is made:
- (i) pursuant to any process or proceedings approved or supervised by or on behalf of any court of law which includes an adjudication of value;
  - (ii) pursuant to a Public Auction in respect of which the Senior Secured Creditors are entitled to participate; or
  - (iii) where the Security Agent has determined (acting reasonably) that a Public Auction is not reasonably practicable in the circumstances, a Financial Adviser selected by the Security Agent has delivered an opinion in respect of such sale or disposal that the amount received in connection therewith is fair from a financial point of view, taking into account all relevant circumstances, including the method of enforcement, provided that the liability of such Financial Adviser may be limited to the amount of its fees in respect of such engagement (it being acknowledged that the Security Agent shall have no obligation to select or engage any Financial Adviser unless it shall have been indemnified and/or secured and/or prefunded to its satisfaction).

For the purposes of this Agreement, “entitled to participate” shall be interpreted to mean that (i) any offer, or indication of a potential offer, that a holder of any Senior Liabilities makes shall be considered by those running the Public Auction against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder and (ii) any holder of any Senior Liabilities that is considering making an offer in any Public Auction is provided (subject to applicable securities laws or regulations) with the same information, including any due diligence reports, and access to management that is being provided to any other bidder at the same stage of the



process. For the avoidance of doubt, if, after having applied those same criteria, the offer or indication of a potential offer made by a holder of any Senior Liabilities is not considered by those running the Public Auction to be sufficient to continue in the public auction process, such consideration being against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder (such continuation may include being invited to review additional information or being invited to have an opportunity to make a subsequent or revised offer, whether in another round of bidding or otherwise), then the right to participate which a holder of any Senior Liabilities under this Agreement shall be deemed to be satisfied.

- (f) If prior to the Second Lien Discharge Date a Distressed Disposal is being effected such that any Second Lien Liabilities will be released or disposed of, or any Transaction Security securing the Second Lien Liabilities will be released, it is a further condition to the release that either:
- (i) each Second Lien Agent has approved the release; or
  - (ii) where shares or assets of a Second Lien Borrower or a Second Lien Guarantor are sold:
    - (A) all claims (for the avoidance of doubt, whether with or without the benefit of Transaction Security) of the Senior Creditors, the Senior Notes Creditors, the Super Senior Lenders and the Permitted Senior Financing Creditors (other than in relation to performance bonds or guarantees or similar instruments) against a member of the Group (if any) all of whose shares (other than any minority interest not owned by members of the Group) or assets are sold or disposed of pursuant to such Enforcement Action, are unconditionally released and discharged or sold or disposed of concurrently with such sale (and are not assumed by the purchaser or one of its Affiliates) and all Security under the Security Documents in respect of such shares or assets that are sold or disposed of is simultaneously and unconditionally released and discharged concurrently with such sale, provided that if each of the Super Senior Agent, any Senior Notes Agent and any Senior Creditor Representative (acting reasonably and in good faith):
      - (1) determines that the Senior Secured Creditors will recover a greater amount if any such claim (for the avoidance of doubt, whether with or without the benefit of Transaction Security) is sold or otherwise transferred to the purchaser or one of its Affiliates and not released and discharged; and
      - (2) serves a written notice on the Security Agent confirming the same,

the Security Agent shall be entitled to sell or otherwise transfer such claim to the purchaser or one of its Affiliates; and
    - (B) such sale or disposal is made:
      - (1) pursuant to a Public Auction in respect of which the Senior Secured Creditors are entitled to participate; or
      - (2) where a Financial Adviser selected by the Security Agent has delivered an opinion in respect of such sale or disposal that the

amount received in connection therewith is fair from a financial point of view, taking into account all relevant circumstances, including the method of enforcement, provided that the liability of such Financial Adviser may be limited to the amount of its fees in respect of such engagement (it being acknowledged that the Security Agent shall have no obligation to select or engage any Financial Adviser unless it shall have been indemnified and/or secured and/or prefunded to its satisfaction).

For the purposes of this Agreement, “entitled to participate” shall be interpreted to mean that (i) any offer, or indication of a potential offer, that a holder of any Senior Liabilities makes shall be considered by those running the Public Auction against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder and (ii) any holder of any Senior Liabilities that is considering making an offer in any Public Auction is provided (subject to applicable securities laws or regulations) with the same information, including any due diligence reports, and access to management that is being provided to any other bidder at the same stage of the process. For the avoidance of doubt, if, after having applied those same criteria, the offer or indication of a potential offer made by a holder of any Senior Liabilities is not considered by those running the Public Auction to be sufficient to continue in the public auction process, such consideration being against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder (such continuation may include being invited to review additional information or being invited to have an opportunity to make a subsequent or revised offer, whether in another round of bidding or otherwise), then the right to participate which a holder of any Senior Liabilities under this Agreement shall be deemed to be satisfied.

- (g) Subject to paragraph (f) above, in the case of a Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (a)(iv) above) effected by or at the request of the Security Agent (acting on the instructions of the Majority Pari Passu Creditors), unless the consent of the Majority Super Senior Creditors is otherwise obtained, it is a further condition to any release, transfer or disposal under paragraph (a) above that a Super Senior Cash Discharge will occur following that Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (a)(iv) above).
- (h) Subject to paragraph (f) above, in the case of a Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (a)(iv) above) effected by or at the request of the Security Agent (acting on the instructions of the Majority Second Lien Creditors), unless the consent of the Majority Super Senior Creditors and Majority Senior Noteholders is otherwise obtained, it is a further condition to any release, transfer or disposal under paragraph (a) above that a Super Senior Cash Discharge and Senior Cash Discharge will occur following that Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (a)(iv) above).
- (i) For the purposes of paragraphs (a)(ii), (a)(iii), (a)(iv), (a)(v), (c), and (f) above, the Security Agent shall act:

- (i) if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security in accordance with Clause 13.3 (*Manner of enforcement*); and
- (ii) in any other case:
  - (A) on the instructions of an Instructing Group; or
  - (B) in the absence of any such instructions, as the Security Agent sees fit.
- (j) If any Transaction Security proposed to be released under this Clause 14.2 includes SFA Cash Cover, the Security created or evidenced, or expressed to be created or evidenced, under or pursuant to the relevant document in relation to such cash cover shall not be released without the consent of the Security Agent or the Issuing Bank or Ancillary Lender with which that SFA Cash Cover is held.
- (k) The requirement in paragraph (c) above shall be satisfied (and as between the Creditors and the Debtors and any Third Party Security Provider shall be conclusively presumed to be satisfied) and the Security Agent will be taken to have discharged all its obligations in this respect under this Agreement, the other Debt Documents and generally at law if:
  - (i) 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;
  - (ii) that Distressed Disposal or Liabilities Sale is made by, at the direction of or under the control of, a liquidator, administrator, compulsory manager or other similar officer (or any analogous officer in any jurisdiction) appointed in respect of a member of the Group or the assets of a member of the Group any Third Party Security Provider ; or
  - (iii) that Distressed Disposal or Liabilities Sale is made pursuant to a Public Auction.

#### **14.3 Claims and Proceeds (before Distress Event)**

- (a) So long as the requirements of paragraph (b) below are met (or the Company has confirmed that if and when applicable they will be met), if any contractual, insurance or other claim is to be made, or is made, by a member of the Group prior to a Distress Event and that claim (or the proceeds of any such claim) is or are expressed to be subject to the Transaction Security, the Security Agent is irrevocably authorised (and shall at the request and the cost of the relevant Debtor or the Company and without need of any letter of authority or further confirmation from any Creditor, other Secured Party, Third Party Security Provider or Debtor) to:
  - (i) give a consent under or release the Transaction Security, or any other claim, over any relevant document, policy or other asset to the extent necessary to allow that member of the Group to make that claim (and to allow each member of the Group to comply with any obligations in respect of that claim and those proceeds under the Secured Debt Documents); 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 Company, be necessary or desirable.

- (b) If any claim proceeds the subject of any action taken under paragraph (a)(i) or (a)(ii) above are required to be applied in mandatory prepayment of any Senior Liabilities, then, subject to Clause 14.4 (*Adjustment of Mandatory Prepayments*), those proceeds shall be applied as required by the terms of the Secured Debt Documents.

#### 14.4 Adjustment of Mandatory Prepayments

If the making of any mandatory prepayment by any member of the Group in respect of any of the Super Senior Lender Liabilities, the Senior Notes Liabilities and/or the Permitted Senior Financing Liabilities (an “**Original Mandatory Prepayment**”) would directly or indirectly result in a payment (a “**Hedge Reduction Payment**”) being made to any Hedge Counterparty as a consequence of any close-out or termination (in whole or in part) which is intended to ensure that the maximum aggregate notional amount of any hedging does not exceed the maximum aggregate amount of any indebtedness or the exposure the subject of that hedging, if elected by the Company, the maximum aggregate amount of the mandatory prepayment required to be made by the Group will be reduced so that the aggregate of:

- (a) the amount of the reduced mandatory prepayment; and
- (b) each Hedge Reduction Payment which would result from that reduced mandatory payment

is equal to the amount of the Original Mandatory Prepayment.

#### 14.5 Creditors’ and Debtors’ actions

- (a) Each Creditor, Third Party Security Provider and Debtor will:
  - (i) do all things that the Security Agent reasonably requests in order to give effect to this Clause 14 (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by this Clause 14); and
  - (ii) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 14 or if the Security Agent requests that any Creditor, other Secured Party, Third Party Security Provider or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

provided that the proceeds of any relevant disposal or other step or action are applied in accordance with Clause 14.1 (*Non-Distressed Disposals*) or Clause 14.2 (*Distressed Disposals*) as the case may be.

- (b) Each Secured Party irrevocably authorises and instructs the Security Agent (at the cost of the relevant Secured Party and without any consent, sanction, authority or further confirmation from any Secured Party) to be its agent to do anything which that Secured Party has authorized the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement, but has failed to do (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary) to give effect to the release and disposals contemplated by this Clause 14.

#### 14.6 Cash Recoveries for Super Senior Liabilities

If, prior to the Super Senior Discharge Date, a Distressed Disposal or a Liabilities Sale is being effected at a time when the Majority Second Lien Creditors are entitled to give and have given instructions under Clause 13.3 (*Manner of enforcement*) on which the Security Agent is acting, the Security Agent is not authorised to release any Debtor, Subsidiary or Holding Company of that Debtor from any Borrowing Liabilities, Guarantee Liabilities or Other Liabilities owed to any Super Senior Creditor unless the net cash proceeds of such Distressed Disposal or Liabilities Sale received are sufficient to ensure that, when those proceeds are applied in accordance with Clause 15 (*Application of Proceeds*) any Super Senior Lender Liabilities or Super Senior Hedging Liabilities will be paid (or repaid) in full in cash (unless the relevant Super Senior Creditor consents to receiving non-cash consideration).

### 15. APPLICATION OF PROCEEDS

#### 15.1 Order of application

(a) Subject to paragraph (b) of Clause 14.2 (*Distressed Disposals*), Clause 15.3 (*Prospective liabilities*) and Clause 15.4 (*Treatment of SFA Cash Cover and Super Senior Lender Cash Collateral*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 15, the “**Recoveries**”) shall be applied by the Security Agent at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 15), in the following order of priority:

- (i) in discharging any sums owing to any Super Senior Agent (in respect of Super Senior Agent Liabilities), any Senior Creditor Representative (in respect of Permitted Senior Financing Agent Liabilities), any Second Lien Agent (in respect of Second Lien Agent Liabilities), any Senior Notes Agent Amounts or any Second Lien Notes Trustee Amounts, or any sums owing to the Security Agent, any Receiver or any Delegate on a pro rata and *pari passu* basis;
- (ii) in payment of all costs and expenses incurred by any Agent, Senior Secured Creditor in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 10.6 (*Creditors’ actions*);
- (iii) in respect of Recoveries resulting from the realisation or enforcement of all or any part of the Transaction Security or a transaction in lieu thereof, in payment to:
  - (A) the Super Senior Agent on its own behalf and on behalf of the Super Senior Lenders; and
  - (B) the Super Senior Hedge Counterparties;

for application towards the discharge of:

- (1) the Super Senior Arranger Liabilities and the Super Senior Lender Liabilities (in accordance with the terms of the Super Senior Finance Documents); and

- (2) the Super Senior Hedging Liabilities (on a pro rata basis between the Super Senior Hedging Liabilities of each Super Senior Hedge Counterparty),

on a pro rata basis and *pari passu* between paragraphs (1) to (2) above;

(iv) in payment to:

- (A) the Hedge Counterparties (but in the case of the Super Senior Hedge Counterparties, only to the extent that their Super Senior Hedging Liabilities have not been discharged pursuant to paragraph (iii) above);
- (B) each Senior Notes Agent on its own behalf and on behalf of the Senior Noteholders; and
- (C) each Senior Creditor Representative on its own behalf and on behalf of the Permitted Senior Financing Arrangers and the Permitted Senior Financing Creditors,

for application towards the discharge of:

- (1) the Hedging Liabilities (on a pro rata basis between the Hedging Liabilities of each Hedge Counterparty);
- (2) the Senior Notes Liabilities (other than sums owing to the Security Agent) (in accordance with the terms of the Senior Notes Finance Documents); and
- (3) the Permitted Senior Financing Arranger Liabilities and the Permitted Senior Financing Liabilities (other than the Permitted Senior Financing Agent Liabilities) (in accordance with the terms of the Permitted Senior Financing Documents and, if there is more than one Permitted Senior Financing Agreement, on a pro rata basis between the Permitted Senior Financing Debt in respect of each Permitted Senior Financing Agreement),

on a pro rata basis and *pari passu* between paragraphs (1) to (3) above;

(v) in payment to:

- (A) the Second Lien Facility Agent on its own behalf and on behalf of the Second Lien Arrangers and the Second Lien Lenders; and
- (B) each Second Lien Notes Trustee on its own behalf and on behalf of the Second Lien Notes Creditors,

for application towards the discharge of:

- (1) the Second Lien Arranger Liabilities and the Second Lien Lender Liabilities (in accordance with the terms of the Second Lien Finance Documents); and
- (2) the Second Lien Notes Liabilities (other than the Second Lien Notes Trustee Amounts) (in accordance with the terms of the Second Lien

Notes Finance Documents and, if there is more than one Second Lien Notes Indenture, on a pro rata basis between the Second Lien Notes in respect of each Second Lien Notes Indenture),

on a pro rata basis and *pari passu* between paragraphs (1) and (2) above;

- (vi) if none of the Debtors or Third Party Security Providers is under any further actual or contingent liability under any Secured Debt Document, in payment to any person to whom the Security Agent is obliged to pay in priority to any Debtor or Third Party Security Provider; and
  - (vii) the balance, if any, in payment to the relevant Debtor or Third Party Security Provider.
- (b) Each Secured Party authorises the Security Agent to hold any non-cash consideration received or recovered in connection with the realization or enforcement of all or any part of the Transaction Security until cash is received for any such non-cash consideration, provided that the Security Agent may distribute any such non-cash consideration to a Secured Party which has agreed, on terms satisfactory to the Security Agent, to receive such non-cash consideration and the Liabilities owed to that Secured Party shall be reduced by an amount equal to the value of that non-cash consideration upon receipt by that Secured Party of that non-cash consideration.

## 15.2 [Reserved]

## 15.3 Prospective liabilities

Following an Acceleration Event the Security Agent may, in its discretion, hold any amount of the Recoveries not in excess of the Expected Amount (as defined below) in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit or until otherwise directed by an Instructing Group (the interest being credited to the relevant account) for later application under Clause 15.1 (*Order of application*) in respect of:

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

that the Security Agent reasonably considers, in each case, is reasonably likely to become due or owing at any time in the future (the “**Expected Amount**”).

## 15.4 Treatment of SFA Cash Cover and Super Senior Lender Cash Collateral

- (a) Nothing in this Agreement shall prevent any Issuing Bank or Ancillary Lender taking any Enforcement Action in respect of any SFA Cash Cover which has been provided for it in accordance with the Super Senior Facility Agreement or a Permitted Super Senior Facility Agreement.
- (b) To the extent that any SFA Cash Cover is not held with the Relevant Issuing Bank or Relevant Ancillary Lender, all amounts from time to time received or recovered in connection with the realisation or enforcement of that SFA Cash Cover shall be paid to the Security Agent and shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:

- (i) to the Relevant Issuing Bank or Relevant Ancillary Lender towards the discharge of the Super Senior Lender Liabilities for which that SFA Cash Cover was provided; and
  - (ii) the balance, if any, in accordance with Clause 15.1 (*Order of application*).
- (c) To the extent that any SFA Cash Cover is held with the Relevant Issuing Bank or Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Issuing Bank or Relevant Ancillary Lender receiving and retaining any amount in respect of that SFA Cash Cover.
- (d) Nothing in this Agreement shall prevent any Issuing Bank receiving and retaining any amount in respect of any Super Senior Cash Collateral provided for it in accordance with the terms of the Super Senior Facility Agreement or, as the case may be, a Permitted Super Senior Facility Agreement.

### **15.5 Investment of proceeds**

Prior to the application of the proceeds of the Security Property in accordance with Clause 15.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of those proceeds (but not in excess of the amounts due or to become due, and while so held the excess of the interest charged on the Liabilities shall not exceed the interest earned on such account(s)) in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this Clause 15.

### **15.6 Currency Conversion**

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

### **15.7 Permitted Deductions**

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

### **15.8 Good Discharge**

- (a) Any payment to be made in respect of the Secured Obligations by the Security Agent:
  - (i) may be made to the relevant Agent on behalf of its Creditors;



- (ii) may be made to the Relevant Issuing Bank or Relevant Ancillary Lender in accordance with paragraph (b)(i) of Clause 15.4 (*Treatment of SFA Cash Cover and Super Senior Lender Cash Collateral*); or
- (iii) shall be made directly to the Hedge Counterparties,

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

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

## 15.9 Calculation of Amounts

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

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

## 16. EQUALISATION

### 16.1 Equalisation Definitions

For the purposes of this Clause 16:

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

**"Exposure"** means any Senior Exposure or Super Senior Exposure, as the context requires.

**"Senior Exposure"** means:

- (a) in relation to a Senior Notes Creditor, the Senior Notes Liabilities owed by the Debtors to that Senior Notes Creditor;
- (b) in relation to a Permitted Senior Financing Creditor, the aggregate amount of its participation (if any, and without double counting) in all utilisations outstanding under the Permitted Senior Financing Agreement at the Enforcement Date (whether by way of loan or otherwise and assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities)) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Permitted Senior Financing Agreement;

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

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

**“Super Senior Exposure”** means:

- (a) in relation to a Super Senior Lender, the aggregate amount of its participation (if any, and without double counting) in all utilisations outstanding under the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement at the Enforcement Date (whether by way of loan, Letter of Credit or otherwise and assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims in respect of amounts outstanding under each Ancillary Facility (and any related facilities under which the Ancillary Facilities are provided) in accordance with the terms of the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement and amounts owed to it by a Debtor in respect of any Ancillary Facility but excluding:

- (i) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent that that amount would not be outstanding but for a breach by that Super Senior Lender of any provision of clause 8 (*Ancillary Facilities*) of the Super Senior Facility Agreement or any substantially equivalent provision of any Permitted Super Senior Facility Agreement;
- (ii) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that SFA Cash Cover has been provided by a Debtor in respect of that amount and is available to that Super Senior Lender pursuant to the relevant SFA Cash Cover Document; and
- (iii) any amount outstanding in respect of a Letter of Credit to the extent (and in the amount) that SFA Cash Cover has been provided by a Debtor in respect of that amount and is available to that Super Senior Lender pursuant to the relevant SFA Cash Cover Document,

plus, in each case, all other Super Senior Lender Liabilities owed by the Debtors to that Super Senior Lender to the extent not already taken into account in the foregoing provisions of this paragraph (a);

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

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

## **16.2 Implementation of equalisation**

The provisions of this Clause 16 shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate. Without prejudice to the generality of the preceding sentence, if the provisions of this Clause 16 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and (i) the Super Senior Lenders and Super Senior Hedge Counterparties (as contemplated by paragraph (a) of Clause 16.3 (*Equalisation*)) and (ii) the Senior Secured Creditors excluding the Super Senior Lenders and Super Senior Hedge Counterparties (as contemplated by paragraph (b) of Clause 16.3 (*Equalisation*)) shall make appropriate adjustment payments amongst themselves.

## **16.3 Equalisation**

- (a) If, for any reason, any Super Senior Lender Liabilities or Super Senior Hedging Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the relevant Super Senior Lenders and Super Senior Hedge Counterparties in the proportions which their respective Super Senior Exposures at the Enforcement Date bore to the aggregate Super Senior Exposures of all the relevant Super Senior Lenders and Super Senior Hedge Counterparties at the Enforcement Date (or, in the case of Recoveries resulting from the realisation or enforcement of all or any part of the Transaction Security or a transaction in lieu thereof, in a manner reflecting the order of priority contemplated in Clause 15.1 (*Order of application*)) the relevant Super Senior Lenders and Super Senior Hedge Counterparties will make such payments amongst themselves as the Security Agent shall require to put the relevant Super Senior Lenders and Super Senior Hedge Counterparties in such a position that (after taking into account such payments) those losses are borne in those proportions (or, as the case may be, to otherwise reflect the order of priority contemplated in Clause 15.1 (*Order of application*)).
- (b) If, for any reason, any Pari Passu Liabilities or Pari Passu Hedging Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the relevant Pari Passu Creditors or Pari Passu Hedge Counterparties in the proportions which their respective Senior Exposures at the Enforcement Date bore to the aggregate Senior Exposures of all the relevant Pari Passu Creditors and Pari Passu Hedge Counterparties at the Enforcement Date (or, in the case of Recoveries resulting from the realisation or enforcement of all or any part of the Transaction Security or a transaction in lieu thereof, in a manner reflecting the order of priority contemplated in Clause 15.1 (*Order of application*)) the relevant Pari Passu Creditors and Pari Passu Hedge Counterparties will make such payments amongst themselves as the Security Agent shall require to put the relevant Pari Passu Creditors and Pari Passu Hedge Counterparties in such a position that (after taking into account such payments) those losses are borne in those proportions (or, as the case may be, to otherwise reflect the order of priority contemplated in Clause 15.1 (*Order of application*)).

## **16.4 Turnover of enforcement proceeds**

If:

- (a) the Security Agent or the relevant Agent is not entitled, for reasons of applicable law, to pay amounts received pursuant to the making of a demand under any guarantee, indemnity or other assurance against loss or the enforcement of the Transaction

Security to the Super Senior Lenders, the Super Senior Hedge Counterparties, the Pari Passu Creditors and the Pari Passu Hedge Counterparties (as the case may be) but is entitled to distribute those amounts to Creditors (such Creditors, the “**Receiving Creditors**”) who, in accordance with the terms of this Agreement, are subordinated in right and priority of payment to the Super Senior Lenders, the Super Senior Hedge Counterparties, the Pari Passu Creditors and the Pari Passu Hedge Counterparties, the Senior Notes Creditors (as the case may be); and

- (b) the Final Discharge Date has not yet occurred (nor would occur after taking into account such payments),

then the Receiving Creditors shall make such payments to the Super Senior Lenders, the Super Senior Hedge Counterparties, the Pari Passu Creditors and the Pari Passu Hedge Counterparties (as the case may be) as the Security Agent shall require to place the Super Senior Lenders, the Super Senior Hedge Counterparties, the Pari Passu Creditors and the Pari Passu Hedge Counterparties in the position they would have been in had such amounts been available for application against the relevant Senior Liabilities, provided that this Clause 16.4 shall not apply to any receipt or recovery that has been distributed by:

- (i) a Senior Notes Agent to the Senior Noteholders in accordance with the Senior Notes Finance Documents;
- (ii) a Senior Creditor Representative to the Permitted Senior Financing Creditors in accordance with the Permitted Senior Financing Documents (in each case to the extent that paragraph (p) of Clause 1.2 (*Construction*) has been applied in respect of that Senior Creditor Representative);
- (iii) a Second Lien Notes Trustee to the Second Lien Notes Creditors in accordance with the Second Lien Notes Finance Documents (in each case to the extent that paragraph (p) of Clause 1.2 (*Construction*) has been applied in respect of that Second Lien Creditor Representative); or
- (iv) a Second Lien Facility Agent to the Second Lien Lenders in accordance with the Second Lien Finance Documents (in each case to the extent that paragraph (p) of Clause 1.2 (*Construction*) has been applied in respect of that Second Lien Facility Agent),

unless the Senior Notes Agent, the Senior Creditor Representative, the Second Lien Facility Agent or the Second Lien Notes Trustee (as applicable) had received at least two Business Days’ prior written notice (in accordance with this Agreement) that an Acceleration Event or an Insolvency Event in relation to a Debtor or a Third Party Security Provider had occurred or that the receipt or recovery falls within Clause 11.2 (*Turnover by the Creditors*) prior to distribution of the relevant amount.

## **16.5 Notification of Exposure**

Before each occasion on which it intends to implement the provisions of this Clause 16, the Security Agent shall send notice to each Hedge Counterparty and each relevant Agent (on behalf of the relevant Senior Secured Creditors) requesting that it notify it of, respectively, its Exposure and that of each Senior Secured Creditor (if any).

## **16.6 Default in payment**

If a Creditor fails to make a payment due from it under this Clause 16, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Secured Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such

Senior Secured Creditor(s) in respect of costs) but shall have no liability or obligation towards such Senior Secured Creditor(s) or any other Senior Secured Creditor or Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

## 17. ADDITIONAL DEBT

### 17.1 Debt Refinancing

- (a) Notwithstanding anything to the contrary in this Agreement or any Security Document, any of the Liabilities (or any other liabilities and obligations subject to or intended to be subject to the terms of this Agreement from time to time) may be refinanced, replaced, increased, incurred or otherwise restructured in whole or in part from time to time (including, without limitation, by way of the incurrence of Permitted Super Senior Financing Debt, Permitted Senior Financing Debt, Senior Notes, Second Lien Debt and/or Second Lien Notes, the issue of additional Senior Notes or the incurrence of indebtedness as contemplated by Clause 2.4 (*Additional and/or Refinancing Debt*) (a “**Debt Refinancing**”), in each case provided that the incurrence and terms of that Debt Refinancing are not otherwise prohibited by the Debt Documents.
- (b) Notwithstanding anything to the contrary in any Secured Debt Document, each Party shall be required to enter into any amendment to or replacement of the then current Secured Debt Documents (including for the purpose of reflecting the terms and ranking of any Debt Refinancing in the Secured Debt Documents and/or any amendment required by the Company (acting reasonably) pursuant to Clause 17.3 (*Senior Debt Refinancing*)) and/or take such other action as is required by the Company (acting reasonably) in order to facilitate any Debt Refinancing, including in relation to any changes to, the taking of, or the release coupled with the retaking of, any guarantee or Security, provided that the Security Agent shall not be required to execute a release of assets from any existing Transaction Security pursuant to this paragraph (b) unless the Company has confirmed in writing to the Security Agent that it has determined in good faith (taking into account any applicable legal limitations and other relevant considerations in relation to the Debt Refinancing) that it is either not possible or not desirable to implement the Debt Refinancing on terms satisfactory to the Company by instead granting additional Transaction Security and/or amending the terms of the existing Transaction Security. Each Agent and the Security Agent is irrevocably authorised and instructed by each Party (other than the Debtors), each Secured Party and each Senior Secured Creditor to execute any such amended or replacement Secured Debt Documents and/or take such action on behalf of the Parties, the Secured Parties and the Senior Secured Creditors (and shall promptly do so on the request of and at the cost of the Company).

### 17.2 Debt Refinancing Terms

For the avoidance of doubt, at the option of the Company:

- (a) a Debt Refinancing may be made available on a basis which is senior to, *pari passu* with or junior to any of the other Liabilities;
- (b) a Debt Refinancing shall be entitled to benefit from all or any of the Transaction Security;
- (c) a Debt Refinancing may be made available on a secured or unsecured basis (without prejudice to Clause 4.3 (*Security and Guarantees: Senior Secured Creditors*));

- (d) a Debt Refinancing may be effected in whole or in part by way of a debt exchange, non-cash rollover or other similar or equivalent transaction,

in each case unless otherwise prohibited by the Debt Financing Agreements.

### **17.3 Senior Debt Refinancing**

In the event of any refinancing or replacement of all or any part of the Pari Passu Liabilities (or any such refinancing or replacement indebtedness from time to time), the Company shall be entitled to require that the definition of Instructing Group is amended such that the relevant refinancing or replacement indebtedness is treated in the same manner as the Senior Notes and/or Permitted Senior Financing Debt.

### **17.4 Further Assurance**

Without prejudice to the other provisions of this Clause 17, each Agent, each Secured Party and each Senior Secured Creditor agrees that it shall co-operate with the Company, each other member of the Group, each Third Party Security Provider and each Agent in order to facilitate any Debt Refinancing (including by way of, at the request and cost of the Company, executing any document or agreement and/or giving instructions to any person).

## **18. THE SECURITY AGENT**

### **18.1 Appointment by Secured Parties**

- (a) Each Secured Party (other than the Security Agent) irrevocably appoints the Security Agent to act as its agent, trustee, joint and several creditor or beneficiary of parallel debt (as the case may be) under this Agreement and with respect to the Security Documents and irrevocably authorizes the Security Agent on its behalf to execute each Security Document expressed to be executed by the Security Agent on its behalf and perform such duties and exercise such rights and powers under this Agreement and the Security Documents as are specifically delegated to the Security Agent by the terms thereof, together with such rights, powers and discretions as are reasonably incidental thereto.
- (b) The Security Agent declares that, unless expressly provided to the contrary in any Debt Document, it shall hold the Security Property on trust for the Secured Parties on the terms set out in this Agreement.
- (c) Each of the Parties to this Agreement agrees that the Security Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Security Documents to which the Security Agent is expressed to be a party (and no others shall be implied).
- (d) The Security Agent shall be and is hereby authorised by each of the Secured Parties (and to the extent it may have any interest therein, every other Party) to execute on behalf of itself and each Secured Party and other Party where relevant:
  - (i) following the occurrence of the Final Discharge Date, any release of any Transaction Security granted under the Security Documents; and
  - (ii) to the extent contemplated or otherwise permitted or required under the terms of this Agreement and/or any relevant Debt Document, any other release of any Transaction Security.

## 18.2 Parallel Debt (Covenant to pay the Security Agent)

- (a) In this Clause 18.2:
- “**Secured Creditor Claim**” means, in relation to a Debtor, any amount which that Debtor owes to a Secured Party under or in connection with the Secured Debt Documents.
- “**Security Agent Claim**” means, in relation to a Debtor, any amount which that Debtor owes to the Security Agent under paragraph (c) of this Clause 18.2.
- (b) Unless expressly provided to the contrary in any Debt Document, the Security Agent holds:
- (i) any Security created by a Security Document governed by any law other than English law (and any other law agreed in writing by the Company and the Security Agent from time to time);
  - (ii) the benefit of any Security Agent Claims; and
  - (iii) any proceeds of Transaction Security,
- for the benefit, and as the property, of the Secured Parties and so that they are not available to the personal creditors of the Security Agent.
- (c) Each Debtor must pay to the Security Agent as an independent and separate creditor, an amount equal to the Secured Creditor Claims owed by it on its due date.
- (d) For the purpose of this Clause 18.2:
- (i) the Security Agent acts in its own name and not as representative or trustee of the other Secured Parties;
  - (ii) the claims of the Security Agent in respect of the Security Agent Claims shall not be held on trust; and
  - (iii) the Transaction Security granted to the Security Agent to secure the Security Agent Claims is granted to the Security Agent in its capacity as creditor of the Security Agent Claims and shall be held by the Security Agent as security agent for the Secured Parties on the terms set out in this Agreement and shall not be held on trust.
- (e) The Security Agent may enforce performance of any Security Agent Claim in its own name as an independent and separate right. This includes any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in respect of any kind of insolvency proceeding.
- (f) Each Secured Party must, at the request of the Security Agent, perform any act required in connection with the enforcement of any Security Agent Claim. This includes joining in any proceedings as co-claimant with the Security Agent.
- (g)
- (i) Discharge by a Debtor of a Secured Creditor Claim will discharge the corresponding Security Agent Claim in the same amount.



- (ii) Discharge by a Debtor of a Security Agent Claim will discharge the corresponding Secured Creditor Claim in the same amount.
- (h) The aggregate amount of the Security Agent Claims will never exceed the aggregate amount of Secured Creditor Claims.
- (i) A defect affecting a Security Agent Claim against a Debtor will not affect any Secured Creditor Claim.
- (j) A defect affecting a Secured Creditor Claim against a Debtor will not affect any Security Agent Claim.
- (k) If the Security Agent returns to any Debtor, whether in any kind of insolvency proceedings or otherwise, any recovery in respect of which it has made a payment to a Secured Party, that Secured Party must repay an amount equal to that recovery to the Security Agent.
- (l) Paragraphs (c) to (k) above apply, inter alia, for the purpose of determining the Secured Obligations in the Security Documents governed by any law other than English law (and any other law agreed in writing by the Company and the Security Agent from time to time).
- (m) For the avoidance of doubt, the Guarantee Limitations shall apply *mutatis mutandis* to any Security Agent Claim to same extent that they are applicable to the relevant Secured Creditor Claim.

### **18.3 No independent power**

Subject to Clause 13.6 (*Security held by other Creditors*) and Clause 15.4 (*Treatment of SFA Cash Cover and Super Senior Lender Cash Collateral*), the Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Security Documents (excluding, for the avoidance of doubt, any relevant Debt Financing Agreement) except through the Security Agent.

### **18.4 Instructions to Security Agent and exercise of discretion**

- (a) Subject to paragraphs (d) and (e) below, the Security Agent shall act in accordance with any instructions given to it by an Instructing Group or, if so instructed by an Instructing Group, refrain from exercising any right, power, authority or discretion vested in it as Security Agent or as a holder of a Security Agent Claim and shall be entitled to assume that (i) any instructions received by it from an Agent, the Creditors or a group of Creditors are duly given in accordance with the terms of the Debt Documents and (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any direction, from an Instructing Group (or from the Majority Second Lien Creditors, to the extent they are entitled to give instructions to the Security Agent) as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Security Agent may refrain from acting unless and until those instructions or clarification are received by it.

- (c) Save as provided in Clause 13 (*Enforcement of Transaction Security*), any instructions given to the Security Agent by an Instructing Group shall override any conflicting instructions given by any other Parties.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in this Agreement (including under Clause 26 (*Consents, Amendments and Override*));
  - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role as Security Agent for the Secured Parties including, without limitation, the provisions set out in Clause 18.6 (*Security Agent's discretions*) to Clause 18.21 (*Disapplication*);
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 14.1 (*Non-Distressed Disposals*);
    - (B) Clause 15.1 (*Order of application*);
    - (C) Clause 15.3 (*Prospective liabilities*);
    - (D) Clause 15.4 (*Treatment of SFA Cash Cover and Super Senior Lender Cash Collateral*); and
    - (E) Clause 15.7 (*Permitted Deductions*).
- (e) In exercising any discretion to exercise a right, power or authority under this Agreement where either:
  - (i) it has not received any instructions from an Instructing Group as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,

the Security Agent shall other than where paragraph (B) below applies, do so having regard to the interests of all the Secured Parties.

### **18.5 Security Agent's Actions**

Without prejudice to the provisions of Clause 13 (*Enforcement of Transaction Security*) and Clause 18.4 (*Instructions to Security Agent and exercise of discretion*), the Security Agent may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Secured Debt Documents as it considers in its discretion to be appropriate.

### **18.6 Security Agent's discretions**

The Security Agent may:

- (a) assume (unless it has received actual notice to the contrary from a Hedge Counterparty or from one of the Agents in its capacity as Security Agent) that (i) no Default has

occurred and no Debtor or Third Party Security Provider is in breach of or default under its obligations under any of the Debt Documents and (ii) any right, power, authority or discretion vested by any Debt Document in any person has not been exercised;

- (b) if it receives any instructions or directions under Clause 13 (*Enforcement of Transaction Security*) to take any action in relation to the Transaction Security, assume that all applicable conditions under the Debt Documents for taking that action have been satisfied;
- (c) subject to pre-agreed limits on any applicable fees and costs, engage, pay for and rely on the advice or services of any legal advisers (up to a maximum of one counsel per relevant jurisdiction), accountants, tax advisers, surveyors or other experts (whether obtained by the Security Agent or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable (without liability to any person);
- (d) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party, any Creditor, any Third Party Security Provider or any Debtor, upon a certificate signed by or on behalf of that person (without liability to any person);
- (e) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Debt Documents) until it has received any indemnification and/or security that it may in its discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in so acting;
- (f) act under the Debt Documents through its personnel or agents; and
- (g) assume that (i) the Super Senior Lender Discharge Date has not occurred until notified by the Super Senior Agent or the Company to the contrary, (ii) the Second Lien Lender Discharge Date has not occurred until notified by the Second Lien Facility Agent or the Company to the contrary, (iii) the Senior Notes Discharge Date has not occurred until notified by the Senior Notes Agent or the Company to the contrary, (iv) the Permitted Senior Financing Discharge Date has not occurred until notified by the relevant Senior Creditor Representative or the Company to the contrary, (v) the Second Lien Notes Discharge Date has not occurred until notified by the relevant Second Lien Notes Trustee or the Company to the contrary or (vi) the Second Lien Discharge Date has not occurred until notified by the relevant Second Lien Facility Agent or the Company to the contrary.

#### **18.7 Security Agent's obligations**

The Security Agent:

- (a) may copy to each Agent and each Hedge Counterparty the contents of any notice or document received by it from any Debtor or Third Party Security Provider under any Secured Debt Document;
- (b) shall promptly forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party **provided that**, except where a Debt Document expressly provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party;

- (c) shall promptly inform each Agent and each Hedge Counterparty of the occurrence of any Default or any default by a Debtor or Third Party Security Provider in the due performance of or compliance with its obligations under any Secured Debt Document of which the Security Agent has received notice from any other party to this Agreement; and
- (d) shall promptly to the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, and upon a request by that Party, notify that Party of the relevant Security Agent's Spot Rate of Exchange.

#### **18.8 Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in the Debt Documents, the Security Agent shall not:

- (a) be bound to enquire as to (i) whether or not any Default has occurred or (ii) the performance, default or any breach by a Debtor or Third Party Security Provider of its obligations under any of the Debt Documents and until it has received notice of any such Default, non-performance, default or breach shall be entitled to assume that no such event has occurred;
- (b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;
- (d) have or be deemed to have any relationship of trust or agency with, any Debtor, Third Party Security Provider or any Investor; or
- (e) be obliged 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 Creditor, on behalf of any Creditor and each Creditor confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.

#### **18.9 Exclusion of liability**

None of the Security Agent, any Receiver nor any Delegate shall accept responsibility or be liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;

- (c) any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Debt Documents, the Security Property or otherwise, whether in accordance with an instruction from an Agent, an Instructing Group or otherwise unless directly caused by its gross negligence, wilful misconduct or wilful default;
- (d) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Debt Documents, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Debt Documents or the Security Property;
- (e) any shortfall which arises on the enforcement or realisation of the Security Property;
- (f) any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
  - (i) any act, event or circumstance not reasonably within its control; or
  - (ii) 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 (including any Disruption Event); 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; or
- (g) special, indirect, punitive or consequential loss or damages of any kind whatsoever (including but not limited to loss of business, goodwill, opportunity or profits) whether or not foreseeable even if the Security Agent has been advised of the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in gross negligence, for breach of contract or otherwise.

#### **18.10 No proceedings**

No Party (other than the Security Agent, that Receiver or that Delegate) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause 18.10 subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Rights Act.

#### **18.11 Own responsibility**

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

- (a) the financial condition, status and nature of each member of the Group;

- (b) the legality, validity, effectiveness, adequacy and enforceability of any Debt Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Security Property, the transactions contemplated by the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Security Agent or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property,

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

#### **18.12 No responsibility to perfect Transaction Security**

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

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

#### **18.13 Insurance by Security Agent**

- (a) The Security Agent shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Debt Documents. The

Security Agent shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party or loss payee, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless an Agent shall have requested it to do so in writing and the Security Agent shall have failed to do so within fourteen days after receipt of that request.

#### **18.14 Custodians and nominees**

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets of the trust created under this Agreement as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

#### **18.15 Acceptance of title**

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

#### **18.16 Refrain from illegality**

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

#### **18.17 Business with the Debtors or Third Party Security Providers**

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

#### **18.18 Winding up of trust**

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

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

### **18.19 Powers supplemental**

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

### **18.20 Trustee division separate**

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

### **18.21 Disapplication**

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

### **18.22 Intra-Group Lenders, Third Party Security Providers and Debtors: Power of Attorney**

Each Intra-Group Lender, Third Party Security Provider and Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Intra-Group Lender, Third Party Security Provider or Debtor has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Security Agent may delegate that power on such terms as it sees fit).

## **19. CHANGE OF SECURITY AGENT AND DELEGATION**

### **19.1 Resignation of the Security Agent**

- (a) The Security Agent may, with the consent of the Company (not to be unreasonably withheld or delayed), resign and appoint one of its affiliates as successor by giving notice to the Company, each Agent and the Hedge Counterparties provided that:
  - (i) such Security Agent shall also resign as security agent under each Debt Financing Agreement; and
  - (ii) the Security Agent shall appoint one of its affiliates acting through an office in the United Kingdom (or any other jurisdiction approved by the Company) being a reputable bank experienced in multi-jurisdictional transactions of this type as a successor and the same affiliate shall be appointed under the applicable Debt Financing Agreements as Security Agent (provided that such affiliate may not be incorporated, domiciled, established, located, resident or acting through an office situated in a Non-Cooperative Jurisdiction).



- (b) Alternatively the Security Agent may, after consultation with the Company for not less than 30 days, resign by giving notice to the other Parties in which case an Instructing Group may appoint a successor Security Agent provided that:
  - (i) such successor Security Agent is also appointed under each Debt Financing Agreement; and
  - (ii) if it succeeds the Security Agent, such successor Security Agent is acting through an office in the United Kingdom (or any other jurisdiction approved by the Company) being a reputable bank experienced in multi-jurisdictional transactions of this type (provided that such successor Security Agent may not be incorporated, domiciled, established, located, resident or acting through an office situated in a Non-Cooperative Jurisdiction).
- (c) If an Instructing Group has not appointed a successor Security Agent in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Agent (after consultation with the Company and the Agents) may appoint a successor Security Agent acting through an office in the United Kingdom (or any other jurisdiction approved by the Company) being a reputable bank experienced in multi-jurisdictional transactions of this type (provided that such successor Security Agent may not be incorporated, domiciled, established, located, resident or acting through an office situated in a Non-Cooperative Jurisdiction).
- (d) The retiring Security Agent (the “**Retiring Security Agent**”) shall, at its own cost (i) enter into and deliver such documents and effect such registrations as may be required to transfer or assign all of its rights, benefits and obligations under the Debt Documents to the successor Security Agent and (ii) make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents.
- (e) The Security Agent’s resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer of all of the Security Property to that successor.
- (f) Upon the appointment of a successor, the Retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 18.18 (*Winding up of trust*) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Agent, remain entitled to the benefit of Clauses 18 (*The Security Agent*), 22.1 (*Debtors’ indemnity*) and 22.3 (*Senior Secured Creditors’ indemnity*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) An Instructing Group may, after consultation with the Company, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above.

## 19.2 Delegation

- (a) Each of the Security Agent, any Receiver and any Delegate may (at any time and at the expense of the Senior Secured Creditors, other than any Notes Trustee, in proportions determined in a manner consistent with paragraph (a) of Clause 22.3 (*Senior Secured Creditors’ indemnity*)) delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Debt Documents.

- (b) That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub delegate.

### **19.3 Additional Security Agents**

- (a) The Security Agent may (at the expense of the Senior Secured Creditors, other than any Notes Trustee, in proportions determined in a manner consistent with paragraph (a) of Clause 22.3 (*Senior Secured Creditors' indemnity*)) 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 Secured Parties or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant or (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Agent shall give prior notice to the Company and each of the Agents of that appointment.
- (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Agent by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.
- (c) No person shall be so appointed if they would fail to satisfy the requirements of Clause 19.4 (*Location of Security Agent*) if they were the Security Agent.

### **19.4 Location of Security Agent**

Unless otherwise agreed by the Company, the Security Agent will not, for the purposes of the European Council Directive 2003/48/EC (including, for the avoidance of doubt, any national legislation implementing that Directive or any predecessor or supplement to it) and in relation to payments made or received under any Debt Document by it in its capacity as Security Agent, be established in, change its place of establishment to, act through any office situated or established in, maintain any account used for making or receiving payments in relation to the Debt Documents in, or delegate any of its duties, trusts, powers, authorities and discretions vested in it under the Debt Documents to, any person established in or acting from Austria.

## **20. CHANGES TO THE PARTIES**

### **20.1 Assignments and transfers**

No Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities except as permitted by this Clause 20, provided that any member of the Group may assign any of its rights and benefits or transfer any of its rights, benefits and obligations:

- (a) pursuant to any re-organisation or other transaction not prohibited by the terms of the Debt Documents (and, for the avoidance of doubt and ignoring any prohibition set out in this Clause 20, provided that such assignment or, as the case may be, transfer is not expressly prohibited by the terms of the relevant Debt Document); and/or
- (b) as otherwise contemplated or permitted by any Debt Document.

## 20.2 Change of Investor

- (a) Subject to Clause 8.4 (*No acquisition of Investor Liabilities*) and Clause 20.13 (*Resignation of Hedge Counterparties and Investors*), an Investor may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Investor Liabilities owed to it (provided that any assignee or transferee shall (if not already party to this Agreement as an Investor) accede to this Agreement, as an Investor, pursuant to Clause 20.7 (*Creditor/Agent Accession Undertaking*)).
- (b) If any person makes (or agrees to make) available to the Company any loan or other indebtedness (or the Company has incurred or will incur other liabilities to any person that it is intended will become Investor Liabilities), that person may with the consent of the Company accede to this Agreement as an Investor pursuant to Clause 20.7 (*Creditor/Agent Accession Undertaking*) by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking.

## 20.3 Change of Super Senior Lender, Second Lien Lender, Permitted Senior Financing Creditor, Senior Notes Creditors or Second Lien Notes Creditor

- (a) A Super Senior Lender, Second Lien Lender, Permitted Senior Financing Creditor, Senior Notes Creditor or Second Lien Notes Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Secured Debt Documents or the Liabilities if:
  - (i) in the case of a Super Senior Lender, that assignment or transfer is in accordance with the terms of the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement;
  - (ii) in the case of a Senior Noteholder, that assignment or transfer is in accordance with the terms of the Senior Notes Indenture;
  - (iii) in the case of a Second Lien Lender, that assignment or transfer is in accordance with the terms of any Second Lien Facility Agreement to which it is a party;
  - (iv) in the case of a Permitted Senior Financing Creditor, that assignment or transfer is in accordance with the terms of the Permitted Senior Financing Agreement to which it is a party;
  - (v) in the case of a Second Lien Notes Creditor, that assignment or transfer is in accordance with the terms of the Second Lien Notes Indenture to which it is a party,

provided that, subject to paragraph (b) below, any assignee or transferee has (if not already party to this Agreement as a Super Senior Lender, Second Lien Lender, Permitted Senior Financing Creditor, Senior Notes Creditor or Second Lien Notes Creditor, as the case may be) acceded to this Agreement, as a Super Senior Lender, Second Lien Lender, Permitted Senior Financing Creditor, Senior Notes Creditor or Second Lien Notes Creditor, as the case may be, pursuant to Clause 20.7 (*Creditor/Agent Accession Undertaking*).

- (b) The proviso to paragraph (a) above shall not apply in respect of:
  - (i) any Liabilities Acquisition entered into by a member of the Group and effected in accordance with the terms of the relevant Debt Financing Agreement; or

- (ii) any Permitted Senior Financing Debt, Senior Notes or Second Lien Notes where the relevant Creditor Representative has become party to this Agreement on behalf of the relevant Permitted Senior Financing Creditors, Senior Notes Creditors or, as the case may be, the Second Lien Notes Creditors.

#### **20.4 Change of Hedge Counterparty**

A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights and benefits or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already party to this Agreement as a Hedge Counterparty) acceded to this Agreement as a Hedge Counterparty pursuant to Clause 20.7 (*Creditor/Agent Accession Undertaking*).

#### **20.5 Change of Agent**

No person shall become a Super Senior Agent, a Senior Creditor Representative, a Senior Notes Agent, a Second Lien Facility Agent or a Second Lien Notes Trustee, as the case may be, under any of the Debt Documents unless at the same time, it accedes to this Agreement as a Super Senior Agent, a Senior Creditor Representative, a Senior Notes Agent, a Second Lien Facility Agent or a Second Lien Notes Trustee, as the case may be, pursuant to Clause 20.7 (*Creditor/Agent Accession Undertaking*). In connection with the foregoing, the Security Agent is authorised to and shall make such changes to the terms of this Agreement relating to the rights and duties of any such Super Senior Agent, Senior Creditor Representative, a Second Lien Facility Agent or Second Lien Notes Trustee, as the case may be, and any other Party as are jointly required by such Super Senior Agent, Senior Creditor Representative, a Second Lien Facility Agent or Second Lien Notes Trustee and the Company without the consent of any other Party, in each case provided that such changes would not be materially prejudicial to the interests of the other Parties.

#### **20.6 New Ancillary Lender**

- (a) If any Affiliate of a Super Senior Lender becomes an Ancillary Lender in accordance with terms of the Super Senior Facility Agreement or, as the case may be, a Permitted Super Senior Facility Agreement, it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already party to this Agreement as a Super Senior Lender) acceded to this Agreement as a Super Senior Lender pursuant to Clause 20.7 (*Creditor/Agent Accession Undertaking*).

#### **20.7 Creditor/Agent Accession Undertaking**

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

- (a) any Party ceasing entirely to be a Creditor or an Agent shall be discharged from further obligations towards the Security Agent and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and

- (b) as from that date, the replacement or new Creditor or Agent shall assume the same obligations and become entitled to the same rights, as if it had been an original Party to this Agreement in that capacity.

## **20.8 Accession of Senior Notes Agent**

The Company shall ensure that, prior to any Senior Notes Issue Date, the relevant Senior Notes Agent (and, if such entity ceases to act as trustee in relation to the Senior Notes for any reason, any successor or other person which is appointed or acts as trustee under the relevant Senior Notes Indenture) shall, unless already a Party in such capacity, complete, sign and deliver to the Security Agent a Creditor/Agent Accession Undertaking under which such Senior Notes Agent agrees to be bound by this Agreement as a Senior Notes Agent as if it had originally been a Party to this Agreement in such capacity. In connection with the foregoing, the Security Agent is authorised to and shall make such changes to the terms of this Agreement relating to the rights and duties of such Senior Notes Agent and any other Party as are jointly required by such Senior Notes Agent and the Company without the consent of any other Party, in each case provided that such changes would not be materially prejudicial to the interests of the other Parties.

## **20.9 [Reserved]**

## **20.10 New Debtor / Intra-Group Lender / Third Party Security Provider**

- (a) Subject to paragraph (c) below, if any member of the Group which is not a Debtor:
  - (i) incurs any Senior Liabilities; or
  - (ii) gives any security, guarantee, indemnity or other assurance against loss in respect of any of the Senior Liabilities,

the Debtors will procure the member of the Group incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor and an Intra-Group Lender or Third Party Security Provider (as applicable), in accordance with paragraph (b) below, no later than contemporaneously with the incurrance of those Liabilities or the giving of that assurance (or on such later date as the Security Agent accepts the relevant Debtor/Third Party Security Provider Accession Deed), provided that this paragraph (a) shall not apply to any member of the Group which becomes a borrower or guarantor of an Ancillary Facility but is not otherwise an Obligor under and as defined in the Super Senior Facility Agreement or, as the case may be, a borrower or guarantor under the relevant Permitted Super Senior Facility Agreement.

- (b) With effect from the date of acceptance by the Security Agent of a Debtor/Third Party Security Provider Accession Deed duly executed and delivered to the Security Agent by the new Debtor or Third Party Security Provider (as applicable) or, if later, the date specified in the Debtor/Third Party Security Provider Accession Deed, the new Debtor or Third Party Security Provider (as applicable) shall assume the same obligations and become entitled to the same rights as if it had been an original Party to this Agreement as a Debtor or Third Party Security Provider (as applicable).
- (c) Notwithstanding anything to the contrary, a member of the Group shall only be required to accede to this Agreement to the extent that the relevant member of the Group becoming a Debtor would not breach any applicable law or present a material risk of liability for any member of the Group and/or its officers or directors, or give rise to a material risk of breach of fiduciary or statutory duties.

- (d) Subject to paragraph (c) above, if any member of the Group that is not an Intra-Group Lender is a creditor in respect of Intra-Group Liabilities to one or more Debtors in a total aggregate principal amount outstanding greater the higher of £4,000,000 and 10 per cent of the Consolidated EBITDA of the Group, the Debtors will procure that such member of the Group accedes to this Agreement as an Intra-Group Lender, in accordance with paragraph (b) above, as soon as reasonably practicable following it becoming aware of the same (or on such later date as the Security Agent accepts the relevant Debtor/Third Party Security Provider Accession Deed).

#### **20.11 Additional Parties**

- (a) Each of the Parties appoints the Security Agent to receive and execute on its behalf each Debtor/Third Party Security Provider Accession Deed and Creditor/Agent Accession Undertaking delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Debt Financing Agreement.
- (b) In the case of a Creditor/Agent Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Super Senior Lender):
  - (i) the Security Agent shall, as soon as practicable after signing and accepting that Creditor/Agent Accession Undertaking in accordance with paragraph (a) above, deliver that Creditor/Agent Accession Undertaking to the Super Senior Agent; and
  - (ii) the Super Senior Agent shall, as soon as practicable after receipt by it, sign and accept that Creditor/Agent Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.
- (c) For the avoidance of doubt, any person shall be permitted to become party to this Agreement as:
  - (i) a Permitted Senior Financing Creditor and/or a Senior Creditor Representative as contemplated by the definition of Permitted Senior Financing Debt; and
  - (ii) a Second Lien Notes Creditor and/or a Second Lien Notes Trustee as contemplated by the definition of Second Lien Notes; and
  - (iii) a Second Lien Lender and/or a Second Lien Facility Agent as contemplated by the definition of Second Lien Debt.

#### **20.12 Resignation of a Debtor**

- (a) The Company may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (b) The Security Agent shall promptly accept a Debtor Resignation Request and notify the Company and each other Party of its acceptance if:
  - (i) to the extent that the Super Senior Lender Discharge Date has not occurred, the Super Senior Agent notifies the Security Agent that the Debtor is not, or has ceased to be, a Super Senior Borrower or a Super Senior Guarantor (or will

- cease to be a Super Senior Borrower or a Super Senior Guarantor on or prior to its resignation as a Debtor becoming effective);
- (ii) to the extent that the Senior Notes Discharge Date has not occurred, the Senior Notes Agent notifies the Security Agent that the Debtor is not, or has ceased to be, a Senior Issuer or a Senior Guarantor (or will cease to be a Senior Issuer or a Senior Guarantor on or prior to its resignation as a Debtor becoming effective) or that such resignation is not prohibited by the relevant Senior Notes Finance Document;
  - (iii) to the extent that the Second Lien Lender Discharge Date has not occurred, the Second Lien Facility Agent notifies the Security Agent that the Debtor is not, or has ceased to be, a Second Lien Borrower or a Second Lien Guarantor (or will cease to be a Second Lien Borrower or a Second Lien Guarantor on or prior to its resignation as a Debtor becoming effective);
  - (iv) to the extent that the Permitted Senior Financing Discharge Date has not occurred any Senior Creditor Representative notifies the Security Agent that the Debtor is not, or has ceased to be, an issuer, borrower or guarantor under any applicable Permitted Senior Financing Documents (or will cease to be such an issuer, borrower or guarantor on or prior to its resignation as a Debtor becoming effective) or that such resignation is not prohibited by the relevant Permitted Senior Financing Documents; and
  - (v) to the extent that the Second Lien Notes Discharge Date has not occurred any Second Lien Notes Trustee notifies the Security Agent that the Debtor is not, or has ceased to be, an issuer or guarantor under any applicable Second Lien Notes Finance Documents (or will cease to be such an issuer, borrower or guarantor on or prior to its resignation as a Debtor becoming effective) or that such resignation is not prohibited by the relevant Second Lien Notes Finance Documents.

No Agent may unreasonably withhold or delay any such notification. If an Agent does not provide the required confirmation to the Security Agent (or notify the Security Agent that the required confirmation cannot be given due to the fact that the relevant conditions set out above are not satisfied) within three Business Days of request by the Company, such notification shall be deemed given to the Security Agent.

- (c) Upon notification by the Security Agent to the Company of its acceptance of the resignation of a Debtor (with such notification to be given within one Business Day of the date on which all required confirmations have been delivered, or deemed to be given, under paragraph (b) above), 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. For the avoidance of doubt, if a Debtor ceases to be a member of the Group pursuant to a transaction not prohibited by the Debt Financing Agreements, that Debtor shall automatically cease to be a Debtor for all purposes and shall have no further rights or obligations under this Agreement as a Debtor.

### **20.13 Resignation of Hedge Counterparties and Investors**

- (a) In the event that a person party to this Agreement as a Hedge Counterparty is no longer providing any hedging to any of the Debtors under a Hedging Agreement, that person may resign (and will resign if required by the Company) as a Hedge Counterparty by giving notice to the Security Agent and the Company. From the date of receipt by the Security Agent and the Company of any such notice of resignation that person shall

cease to be party to this Agreement as a Hedge Counterparty and shall have no further rights or obligations under this Agreement as a Hedge Counterparty.

- (b) In the event that a person party to this Agreement as an Investor is no longer a creditor in respect of any Investor Liabilities, that person may resign (and will resign if required by the Company) as an Investor by giving notice to the Security Agent and the Company. From the date of receipt by the Security Agent and the Company of any such notice of resignation that person shall cease to be party to this Agreement as an Investor and shall have no further rights or obligations under this Agreement as an Investor.
- (c) Notwithstanding anything to the contrary in any Debt Document, if at any time an IPO Event occurs:
  - (i) with the prior written consent of the Company, any person may resign as an Investor by giving notice to the Security Agent and the Company (and from the date of receipt by the Security Agent and the Company of any such notice of resignation that person shall cease to be party to this Agreement as an Investor and shall have no further rights or obligations under this Agreement as an Investor); and
  - (ii) unless otherwise required by the Company, there shall be no obligation or requirement for any person to become party to this Agreement as an Investor.
- (d) In the event that any person resigns or does not become party to this Agreement as an Investor as a consequence of this paragraph (d), any term of any Debt Document which requires or assumes that any person be an Investor or that any liabilities or obligations to such person be subject to this Agreement or otherwise subordinated shall cease to apply.

#### **20.14 Cessation of a Third Party Security Provider**

Following the release of all Transaction Security granted by a Third Party Security Provider (in accordance with the terms of the Debt Documents and this Agreement), such Third Party Security Provider shall cease to be a Third Party Security Provider and shall have no further rights or obligations under this Agreement as a Third Party Security Provider.

### **21. COSTS AND EXPENSES**

#### **21.1 Transaction expenses**

The Company shall (or shall procure that another Debtor shall), promptly on demand, pay the Security Agent the amount of all reasonable third party costs and expenses (including legal fees together with any applicable VAT) reasonably incurred by the Security Agent and any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of:

- (a) this Agreement and any other Secured Debt Documents referred to in this Agreement and the Transaction Security; and
- (b) any other Secured Debt Documents executed after the date of this Agreement,

subject in each case to the First Issuance Date having occurred (other than in respect of legal fees up to a cap agreed by the Company) and on a basis and up to an amount between the Arrangers and the Company from time to time.



**21.2 Stamp taxes**

The Company shall (or shall procure that another Debtor shall) pay and, within 10 Business Days of demand, indemnify the Security Agent against any third party cost, loss or liability the Security Agent reasonably incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Secured Debt Document, other than any such Tax payable in connection with any certificate or other document relating to the assignment or transfer by any Secured Party of any of its rights and/or obligations under any Debt Document.

**21.3 Enforcement and preservation costs**

The Company shall (or shall procure that another Debtor will) within 10 Business Days of demand, pay to the Security Agent the amount of all third party 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 Secured Debt Document and the Transaction Security (in each case in accordance with the terms of this Agreement and/or the relevant Secured Debt Document) and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights (excluding any costs and expenses arising as a result of the Security Agent's gross negligence, wilful misconduct or wilful default).

**21.4 Transfer costs and expenses**

Notwithstanding any other term of this Agreement, if a Secured Party assigns or transfers any of its rights, benefits or obligations under the Secured Debt Documents no member of the Group shall be required to pay any fees, costs, expenses or other amounts relating to or arising in connection with that assignment or transfer (including, without limitation, any Taxes and any amounts relating to the perfection or amendment of the Transaction Security).

**21.5 Cost Details**

Notwithstanding any other term of this Agreement, no member of the Group shall be required to pay any fees, costs, expenses or other amounts (other than principal and interest) unless:

- (a) it has first been provided with reasonable details of the circumstances giving rise to such payment and of the calculation of the relevant amount (including, where applicable, details of hours worked, rates and individuals involved); and
- (b) in the case of costs and expenses, it has received satisfactory evidence that such costs and expenses have been properly incurred (including that all security costs relate only to Security Documents entered into, or related actions taken, in accordance with the Secured Debt Documents and approved in advance by the Company).

**22. INDEMNITIES****22.1 Debtors' indemnity**

Subject to any limitations applicable to any guarantee and indemnity obligations of any Debtor under the Secured Debt Documents, each Debtor shall within 10 Business Days of written demand (such demand to be accompanied by reasonable calculations and details of the amount so demanded) indemnify the Security Agent and every Receiver and Delegate against any third party cost, loss or liability (together with any applicable VAT) reasonably incurred by any of them (but excluding any cost, loss or liability (and any applicable VAT) arising as a result of the Security Agent's or such Receiver or Delegate's gross negligence, wilful misconduct or wilful default):

- (a) in relation to or as a result of:
  - (i) any failure by the Company to comply with obligations under Clause 21 (*Costs and Expenses*);
  - (ii) the taking, holding, protection or enforcement of the Transaction Security in accordance with the terms of each of the Secured Debt Documents;
  - (iii) the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent, each Receiver and each Delegate by the Secured Debt Documents or by law;
  - (iv) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement and subject to any pre-agreed limits on any applicable fees and costs;
  - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Secured Debt Documents; or
- (b) which otherwise relates to any of the Security Property or the performance of the terms of this Agreement (otherwise than as a result of its gross negligence, wilful misconduct or wilful default).
- (c) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 22.1 will not be prejudiced by any release or disposal permitted under the Debt Documents.

## **22.2 Priority of indemnity**

To the extent permitted by applicable law, the Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in Clause 22.1 (*Debtors' indemnity*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

## **22.3 Senior Secured Creditors' indemnity**

- (a) Each Senior Secured Creditor (other than any Notes Trustee) shall (in the proportion that the Liabilities due to it bears to the aggregate of the Liabilities due to all the Senior Secured Creditors for the time being (or, if the Liabilities due to each of those Senior Secured Creditors is zero, immediately prior to their Liabilities being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any third party cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence, wilful misconduct or wilful default) in acting as Security Agent, Receiver or Delegate under the Secured Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).
- (b) For the purposes only of paragraph (a) above, to the extent that any hedging transaction under a Hedging Agreement has not been terminated or closed out, the Hedging Liabilities due to any Hedge Counterparty in respect of that hedging transaction will be deemed to be:

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

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

## **23. INFORMATION**

### **23.1 Information and dealing**

- (a) The Creditors shall provide to the Security Agent from time to time (through their respective Agents where applicable) any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as trustee.
- (b) Subject to clause 30.10 (*Communication when Agent is Impaired Agent*) of the Notes Purchase Agreement and any similar or equivalent provision in any other Secured Debt Document, each Super Senior Lender, Senior Noteholders, Second Lien Lender, Permitted Senior Financing Creditor and Second Lien Notes Creditor shall deal with the Security Agent exclusively through its Agent and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through any Agent.
- (c) No Agent shall be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.

### **23.2 Disclosure**

Subject to any confidentiality obligations set out in any of the Secured Debt Documents but notwithstanding any other agreement to the contrary, each of the Debtors and Third Party Security Providers consent, until the Final Discharge Date, to the disclosure by any of the Senior Secured Creditors, the Agents, the Arrangers and the Security Agent to each other (whether or not through an Agent or the Security Agent) of such information concerning the Debtors or Third Party Security Providers as any Senior Secured Creditor, any Agent, any Arranger or the Security Agent shall see fit (acting reasonably), provided such disclosure is made on a confidential 'need to know' basis and (i) does not breach any applicable law or regulation and (ii) prior to the taking of an Enforcement Action, would not result in a Senior Noteholder (or any other Senior Secured Creditor which has notified the Agents, the Arrangers and the Security Agent that it does not wish to receive material non-public information) receiving any material non-public information.

### 23.3 Notification of prescribed events

- (a) If a Senior Event of Default either occurs or ceases to be continuing the relevant Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the other Agents and each Hedge Counterparty.
- (b) If a Senior Payment Default either occurs or ceases to be continuing the relevant Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the other Agents and each Hedge Counterparty.
- (c) If a Second Lien Payment Default either occurs or ceases to be continuing the relevant Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the other Agents and each Hedge Counterparty.
- (d) If an Acceleration Event occurs the relevant Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (e) If a Second Lien Standstill Period occurs or ceases to be continuing the Security Agent shall notify each Agent.
- (f) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each other Party of that action.
- (g) If any Senior Secured Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.
- (h) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Agent and each other Hedge Counterparty.
- (i) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under Clause 5.9 (Permitted Enforcement: Hedge Counterparties) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Agent and each other Hedge Counterparty.
- (j) If the Security Agent receives a notice under paragraph (a) of Clause 4.5 (*Option to purchase: Senior Notes Creditors and Permitted Senior Financing Creditors*) it shall upon receiving that notice, notify, and send a copy of that notice to, the Senior Notes Agent and Senior Creditor Representative (as applicable).
- (k) If the Security Agent receives a notice under paragraph (a) of Clause 4.6 (*Option to purchase: Pari Passu Creditors*) it shall upon receiving that notice, notify, and send a copy of that notice to, the Super Senior Agent.
- (l) If the Security Agent receives a notice under paragraph (a) of Clause 4.7 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*) it shall upon receiving that notice, notify, and send a copy of that notice to, each Hedge Counterparty.

- (m) If the Security Agent receives a notice under paragraph (a) of Clause 6.14 (*Option to purchase: Second Lien Secured Creditors*)) it shall upon receiving that notice, notify, and send a copy of that notice to, each relevant Agent.
- (n) If the Security Agent receives a notice under paragraph (a) of Clause 6.15 (*Hedge Transfer: Second Lien Secured Creditors*) it shall upon receiving that notice, notify, and send a copy of that notice to, each Hedge Counterparty.

## **24. NOTICES**

### **24.1 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.

### **24.2 Security Agent's communications with Senior Secured Creditors**

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

- (a) with the Secured Parties through their respective Agents and may give to the Agents, as applicable, any notice or other communication required to be given by the Security Agent to a Secured Party; and
- (b) with each Hedge Counterparty directly with that Hedge Counterparty.

### **24.3 Addresses**

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

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

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

### **24.4 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 24.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Company in accordance with this Clause 24.4 will be deemed to have been made or delivered to each of the Debtors and Third Party Security Providers. The Company is for this purpose released from the restrictions on self-dealing and representation of more than one party with respect to one and the same transaction under any applicable laws.

#### **24.5 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 24.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

#### **24.6 Electronic communication**

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

#### **24.7 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 reasonably required by the Security Agent, accompanied by a certified English translation and, in this case, the English

translation will prevail unless the document is a constitutional, statutory or other official document.

## **25. PRESERVATION**

### **25.1 Partial invalidity**

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

### **25.2 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.

### **25.3 Remedies and waivers**

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

### **25.4 Waiver of defences**

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 25.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

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

- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;
- (g) any intermediate Payment of any of the Liabilities owing to the Senior Secured Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

## **25.5 Priorities not affected**

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

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

## **26. CONSENTS, AMENDMENTS AND OVERRIDE**

### **26.1 Required consents**

- (a) Subject to paragraphs (b) to (f) below, Clause 26.2 (*Amendments and Waivers: Security Documents*) and Clause 26.4 (*Exceptions*), this Agreement and/or a Security Document may be amended or waived only with the written consent of:
  - (i) if the relevant amendment or waiver (the “**Proposed Amendment**”) is prohibited by the Senior Notes Indenture, the Senior Notes Agent (acting on the instructions of the requisite Senior Noteholders in accordance with clause 34 (*Amendments and Waivers*) of the Senior Notes Indenture);
  - (ii) if the Proposed Amendment is prohibited by the terms of the relevant Super Senior Facility Agreement, the Super Senior Agent (acting on the instructions of the requisite Super Senior Lenders in accordance with clause 34 (*Amendments and Waivers*) of the Super Senior Facility Agreement);
  - (iii) if the Proposed Amendment is prohibited by the terms of the relevant Permitted Super Senior Facility Agreement, the Super Senior Agent (acting on the instructions of the requisite Super Senior Lenders the terms of the Permitted Super Senior Facility Agreement);
  - (iv) if any Second Lien Debt has been incurred and the Proposed Amendment is prohibited by the terms of the relevant Second Lien Facility Agreement, the Second Lien Facility Agent in respect of that Second Lien Debt (if applicable), (acting on the instructions of the requisite Second Lien Lenders in accordance with the terms of that Second Lien Facility Agreement);



- (v) if any Permitted Senior Financing Debt has been incurred and the Proposed Amendment is prohibited by the terms of the relevant Permitted Senior Financing Agreement, the Senior Creditor Representative in respect of that Permitted Senior Financing Debt (if applicable, acting on the instructions of the Majority Permitted Senior Financing Creditors);
  - (vi) if any Second Lien Notes have been issued and the Proposed Amendment is prohibited by the terms of the relevant Second Lien Notes Indenture, the Second Lien Notes Trustee in respect of that Second Lien Notes (if applicable, acting on the instructions of the Majority Second Lien Notes Creditors);
  - (vii) if a Hedge Counterparty is providing hedging to a Debtor under a Hedging Agreement, that Hedge Counterparty (in each case only to the extent that the relevant amendment or waiver adversely affects the continuing rights and/or obligations of that Hedge Counterparty and is an amendment or waiver which is expressed to require the consent of that Hedge Counterparty under the applicable Hedging Agreement, as notified by the Company to the Security Agent at the time of the relevant amendment or waiver);
  - (viii) the Investors; and
  - (ix) the Company.
- (b) Notwithstanding anything to the contrary, any amendment or waiver of any Secured Debt Document made or effected in accordance with:
- (i) Clause 2.5 (*Additional and/or Refinancing Debt*), Clause 14.1 (*Non-Distressed Disposals*), Clause 17 (*Additional Debt*) or any other provision of this Agreement; or
  - (ii) any other provision of any Secured Debt Document (provided that such amendment or waiver is not expressly prohibited by the terms of any other Secured Debt Document),

shall be binding on all Parties.

- (c) Any amendment, waiver or consent which relates only to the rights or obligations applicable to Creditors under a particular Debt Financing Agreement (and which does not materially and adversely affect the rights or interests of Creditors under other Debt Financing Agreements) may be approved with only the consent of the Agent in respect of that Debt Financing Agreement (if applicable, acting on the instructions of the requisite Creditors under that Debt Financing Agreement) and the Company. For the avoidance of doubt, this paragraph (c) is without prejudice to the ability to effect, make or grant any amendment, waiver or consent pursuant to or in accordance with paragraph (a) above or any other provision of this Clause 26.
- (d) Notwithstanding anything to the contrary in the Secured Debt Documents, a Secured Party may unilaterally waive, relinquish or otherwise irrevocably give up all or any of its rights under any Secured Debt Document with the consent of the Company.
- (e) Any term of this Agreement or a Security Document may be amended or waived by the Company and the Security Agent without the consent of any other Party if that amendment or waiver is:

- (i) to cure defects or omissions, resolve ambiguities or inconsistencies or reflect changes of a minor, technical or administrative nature; or
  - (ii) otherwise for the benefit of all or any of the Secured Parties.
- (f) Notwithstanding anything to the contrary, if any amendment, waiver or consent requested by the Company in relation to this Agreement and/or the Security Documents:
- (i) is not prohibited by the terms of any Debt Financing Agreement (provided that, for the avoidance of doubt, this paragraph (i) shall not override (A) any express requirement or restriction in a Debt Financing Agreement in relation to the matter, step or action the subject of the proposed amendment, waiver or consent or (B) any express requirement for consent under Clause 5.3 (*Permitted Payments: Hedging Liabilities*)); or
  - (ii) has been approved by the requisite Senior Secured Creditors under each Debt Financing Agreement that otherwise prohibits that amendment, waiver or consent,

that amendment, waiver or consent shall be automatically and immediately deemed to have been approved and given for all purposes under this Agreement (and, if applicable, the relevant Security Documents). If the terms of any Debt Financing Agreement:

- (A) require the relevant Agent or Creditors to provide approval (or deem approval to have been provided) for any particular amendment, waiver or consent (for the avoidance of doubt, excluding any such terms which expressly entitle the relevant Agent or Creditors to withhold their approval for that amendment, waiver or consent); or
- (B) do not seek to regulate the relevant matter, step or action the subject of the amendment, waiver or consent (which shall be the case if the amendment or waiver of any relevant document or agreement is not expressly regulated by that Debt Financing Agreement and such amendment or waiver does not relate to a matter, step or action which is the subject of an express requirement or restriction in that Debt Financing Agreement),

for the purpose of this Clause 26 that amendment, waiver or consent shall not be prohibited by the terms of that Debt Financing Agreement.

For the purpose of this paragraph (f) and paragraph (a) of Clause 17.2 (*Debt Refinancing Terms*) only, the term Debt Financing Agreement shall include any Hedging Agreement pursuant to which the consent of a Hedge Counterparty is expressly required for the relevant amendment or waiver under and in accordance with sub-paragraph (a)(ix) above.

## **26.2 Amendments and Waivers: Security Documents**

- (a) Without prejudice to any amendment, waiver or consent approved in accordance with Clause 26.1 (*Required consents*) and subject to paragraph (b) below and to paragraph (b) of Clause 26.4 (*Exceptions*), the Security Agent may, if authorised by an Instructing Group, and if the Company consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Security Documents which shall be binding on each Party.

- (b) Subject to paragraphs (b) and (c) of Clause 26.4 (*Exceptions*), in case of any amendment or waiver of, or consent under, any Security Document which would adversely affect the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed, that amendment, waiver or consent shall require approval in accordance with Clause 26.1 (*Required consents*).

### **26.3 Effectiveness**

- (a) Any amendment, waiver or consent given, made or effected in accordance with any of the provisions of this Clause 26, or in accordance with any other term of any Secured Debt Document, will be binding on all Parties and the Security Agent may effect, on behalf of any Agent, Arranger or Creditor, any amendment, waiver or consent permitted by this Clause 26 or any other term of any Secured Debt Document.
- (b) Each Agent, Arranger and Creditor irrevocably and unconditionally authorises and instructs the Security Agent (for the benefit of the Security Agent and the Company) to execute any documentation relating to a proposed amendment, waiver or consent as soon as the requisite Creditor consent is received (or on such later date as may be agreed by the Security Agent and the Company).
- (c) The Company may effect, as agent for each Debtor, Third Party Security Provider and Intra-Group Lender, any amendment, waiver or consent given, made or effected in accordance with any of the provisions of this Clause 26 or in accordance with any other term of any Debt Document (and is for this purpose released from the restrictions on self-dealing and representation of more than one party with respect to one and the same transaction under any applicable laws).

### **26.4 Exceptions**

- (a) Subject to paragraphs (b) and (c) below, an amendment, waiver or consent which adversely relates to the express rights or obligations of an Agent, an Arranger or the Security Agent (in each case in such capacity) may not be effected without the consent of that Agent, that Arranger or the Security Agent (as the case may be) at such time.
- (b) Neither paragraph (a) above nor Clause 26.2 (*Amendments and Waivers: Security Documents*) shall apply:
  - (i) to any release of Transaction Security, claim or Liabilities; or
  - (ii) to any consent,which, in each case, the Security Agent gives in accordance with Clause 14 (*Proceeds of Disposals and Adjustment of Mandatory Prepayments*).
- (c) Paragraph (a) above shall apply to an Arranger only to the extent that Arranger Liabilities are then owed to that Arranger.

### **26.5 Calculation of Credit Participations**

- (a) For the purpose of ascertaining whether any relevant percentage of Super Senior Credit Participations, Senior Credit Participations or Second Lien Secured Credit Participations has been obtained under this Agreement, the relevant Agent or the Security Agent may notionally convert any Super Senior Credit Participations, Senior

Credit Participations or, as the case may be, Second Lien Secured Credit Participations into their Common Currency Amounts.

- (b) Each Agent will, upon request from the Security Agent, promptly provide the Security Agent with:
- (i) details of the Super Senior Credit Participations of the Super Senior Creditors whom it represents and (if applicable) details of the extent to which such Super Senior Participations have been voted for or against any request;
  - (ii) details of the Senior Credit Participations of the Senior Secured Creditors whom it represents and (if applicable) details of the extent to which such Senior Credit Participations have been voted for or against any request;
  - (iii) details of the Second Lien Secured Credit Participations of the Second Lien Secured Creditors whom it represents and (if applicable) details of the extent to which such Second Lien Secured Credit Participations have been voted for or against any request.
- (c) Each Hedge Counterparty will, upon request from the Security Agent or any other Agent, promptly provide the Security Agent with details of its Senior Credit Participations (which shall be calculated as at the same time stipulated by the Security Agent or the relevant Agent (as applicable) in such request) and (if applicable) details of the extent to which such Senior Credit Participations have been voted for or against any request.

#### **26.6 Deemed consent**

- (a) Subject at all time to the other terms of this Clause 26, at any time prior to the Super Senior Lender Discharge Date and following a request by a member of the Group, if the Majority Priority Creditors give a Consent in respect of any of the Super Senior Finance Documents, Senior Notes Finance Documents or Permitted Senior Financing Documents to which such Super Senior Lenders, Senior Notes Creditors or Permitted Senior Financing Creditors (as the case may be) are a party then, if that action was permitted by the terms of this Agreement, the Super Senior Creditors, Senior Notes Creditors or Permitted Senior Financing 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 relevant Agent may reasonably require to give effect to paragraph (a)(i) above.
- (b) If the Senior Secured Creditors (or the requisite Senior Secured Creditors) and the Company give a Consent in respect of any Debt Financing Agreement then, if that action was permitted by the terms of this Agreement, the Intra-Group Lenders 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 Security Agent and the Company may reasonably require by written notice to give effect to this paragraph (b).

## 26.7 Excluded consents

- (a) Paragraph (a) of Clause 26.6 (*Deemed consent*) does not apply to any Consent which has the effect of:
- (i) amending the definitions of “Change of Control”, “Facility Change”, “Majority Lenders”, “Super Majority Lenders”, or “Super Senior Material Default” under the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement;
  - (ii) changes to the borrowers or guarantors under the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement (other than in accordance with the terms of the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement);
  - (iii) amending the clauses or definitions (as applicable) of:
    - (A) clause 2.2 (*Finance Parties’ Rights and Obligations*);
    - (B) clause 4 (*Conditions of Utilisation*) in relation to any conditions which relate only and specifically to drawing under the Super Senior Facilities;
    - (C) clause 10.2 (*Mandatory Prepayment on Change of Control*) other than a waiver by an affected Lender of its right of prepayment;
    - (D) clause 11.2 (*Voluntary Cancellation*) but only to the extent the proposed amendment or waiver has the effect of reducing the relevant Super Senior Lender’s Super Senior Commitment with respect to that available facility other than on a pro rata basis;
    - (E) clause 12.5 (*Partial Payments*);
    - (F) the definition of “Significant Disposal” and/or clause 23(r) (*Limitation on Disposals*), in each case, to the extent any such amendment or waiver is to permit a Significant Disposal;
    - (G) clause 22.2 (*Financial Condition*) (or any definitions related thereto) or clause 22.4 (*Cure*) (to the extent it relates to the financial covenant set out in paragraph (a) of clause 22.2 (*Financial Condition*));
    - (H) clause 25 (*Changes to the Lenders*) (to the extent restricting the rights of Lenders to assign, transfer or sub-participate their rights or obligations under the Finance Documents);
    - (I) clause 28 (*Sharing Among the Finance Parties*);
    - (J) clause 34 (*Amendments and Waivers*); or
    - (K) clause 40 (*Governing Law*) or clause 41.1 (*Jurisdiction of English Courts*),

of the Super Senior Facility Agreement or any clauses or definitions (as applicable) in any Permitted Super Senior Facility Agreement which are

substantially equivalent to the clauses or definitions (as applicable) described in paragraphs (A) to (K) above;

- (iv) any amendment to the order of priority or subordination under this Agreement (in each case to the extent relating to the rights and/or obligations of the Super Senior Lenders (in such capacity), if any, under any such clause);
- (v) amending or waiving the “Guarantor Coverage Test” or definition of “Material Subsidiary” or any equivalent provision under the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement relating to the accession of material subsidiaries and/or any definitions related thereto;
- (vi) amending the maturity date of the Senior Notes or any Permitted Senior Financing Debt such that the maturity date of the Senior Notes or any Permitted Senior Financing Debt shall fall earlier than the date falling six months after the final scheduled maturity date for the Super Senior Facilities;
- (vii) amending or waiving the purpose or acceleration provisions of the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement;
- (viii) amending or waiving any requirement to deliver financial statements or compliance certificates to the Super Senior Lenders (in each case to the extent such amendment or waiver is (1) materially prejudicial to the interests of the Super Senior Lenders taken as whole (in their capacity as such) and (2) materially adverse to the interests of the Super Senior Lenders taken as a whole to a materially greater extent than the impact on the Pari Passu Creditors);
- (ix) amending the clauses or definitions (as applicable) of:
  - (A) clause 10.1 (*Voluntary Prepayments*);
  - (B) clause 10.3 (*Mandatory Prepayments from Receipts*);
  - (C) clause 10.4 (*Prepayments: Order of Application*);
  - (D) clause 12.1 (*By Lenders*);
  - (E) clause 20(v) (*Anti-Corruption law*), clause 20(w) (*Sanctions*), clause 23(cc) (*Anti-Corruption law*) and 23(dd) (*Sanctions*);
  - (F) clause 24(f) (*Insolvency*), clause 24(g) (*Insolvency Proceedings*) or clause 24(h) (*Similar Events Elsewhere*),

of the Super Senior Facility Agreement or any clauses or definitions (as applicable) in any Permitted Super Senior Facility Agreement which are substantially equivalent to the clauses or definitions (as applicable) described in paragraphs (A) to (F) above, in each case, only to the extent such amendment or waiver is (1) materially prejudicial to the interests of the Super Senior Lenders taken as whole (in their capacity as such) and (2) materially adverse to the interests of the Super Senior Lenders taken as a whole to a materially greater extent than the impact on the Pari Passu Creditors);

- (x) enabling the Group to incur additional Indebtedness which will rank pari passu with, or in priority to, the Super Senior Facilities in respect of the proceeds of enforcement of the Transaction Security pursuant to this Agreement (in each

case to the extent that such Indebtedness is not otherwise permitted by the provisions of this Agreement, the Super Senior Facility Agreement or the Permitted Super Senior Facility Agreement);

- (xi) increasing any of the Super Senior Commitments or any extension of the availability period of any Super Senior Commitment;
- (xii) extending the date, reducing the amount, or changing the currency of, any payment of any principal, interest (including margin), fees, commission or other amount payable under the Super Senior Facility Agreement or any Permitted Super Senior Facility Agreement;
- (xiii) amending or waiving the definition of “Specified Time”, clause 5.1 (*Delivery of a Utilisation Request*), paragraph (b) of clause 5.3 (*Currency and Amount*) or the Reference Rate Terms of the Super Senior Facility Agreement or any substantially equivalent clauses or definitions (as applicable) in any Permitted Super Senior Facility Agreement;
- (xiv) amending or waiving the following provisions of this Agreement:
  - (A) the definition of “Instructing Group”, “Majority Super Senior Lenders”, “Majority Super Senior Creditors”, “Material Event of Default” or “Super Senior Material Default”;
  - (B) Clause 3.5 (*Restrictions on Enforcement: Super Senior Lenders*);
  - (C) Clause 12 (*Redistribution*);
  - (D) paragraph (c) of Clause 13.7 (*Consultation Period*) and/or any other exceptions to the consultation requirements under paragraph (a) of Clause 13.7 (*Consultation Period*) of this Agreement;
  - (E) Clause 14.2 (*Distressed Disposals*);
  - (F) Clause 15 (*Application of proceeds*);
  - (G) paragraphs (c), (d) and (e) of Clause 18.4 (*Instructions to Security Agent and exercise of discretion*); and/or
  - (H) Clause 26 (*Consents, Amendments and Override*),

in each case, other than any such amendments, waivers or releases in accordance with Clause 2.5 (*Additional and/or Refinancing Debt*), Clause 14.1 (*Non-Distressed Disposals*) or Clause 17 (*Additional Debt*).

- (b) Paragraph (b) of Clause 26.6 (*Deemed consent*) does not apply to any Consent which has the effect of:
  - (i) increasing or decreasing the Liabilities;
  - (ii) changing the basis upon which any Permitted Payments are calculated (including the timing, currency or amount of such Payments); or
  - (iii) changing the terms of this Agreement or of any Security Document.

**26.8 Snooze/lose**

If in relation to:

- (a) a request for a Consent in relation to any of the terms of this Agreement;
- (b) a request to participate in any other vote of Super Senior Creditors, Super Senior Lenders, Permitted Super Senior Financing Creditors, Pari Passu Creditors, Permitted Senior Financing Creditors, Senior Noteholders, Senior Creditors, Second Lien Notes Creditors, Second Lien Lenders or Second Lien Creditors (or any class thereof);
- (c) a request to approve any other action under this Agreement; or
- (d) a request to provide any confirmation or notification under this Agreement, then, in each case, any Senior Secured Creditor:
  - (i) fails to respond to that request within ten Business Days (or any other period of time notified by the Company, with the prior agreement of the Senior Agents if the period for this provision to operate is less than ten Business Days) of that request being made; or
  - (ii) fails to provide details of its Super Senior Credit Participation, Senior Credit Participation or Second Lien Credit Participation to the Security Agent within the timescale specified by the Security Agent:
    - (A) in the case of paragraphs (a) to (c) above, that Senior Secured Creditor's Super Senior Credit Participation, Senior Credit Participation or Second Lien Credit Participation (as the case may be) shall be deemed to be zero for the purpose of calculating the Super Senior Credit Participation, Senior Credit Participation or Second Lien Credit Participation when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations, Senior Credit Participations or Second Lien Credit Participation has been obtained to give that Consent, carry that vote or approve that action;
    - (B) in the case of paragraphs (a) to (c) above, that Senior Secured Creditor's status as a Super Senior Creditor, Permitted Super Senior Financing Creditor, Super Senior Lender, Pari Passu Creditor, Permitted Senior Financing Creditor, Senior Noteholder, Senior Creditor, Second Lien Notes Creditor, Second Lien Lender or Second Lien Creditor shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of Senior Secured Creditors has been obtained to give that Consent, carry that vote or approve that action; and
    - (C) in the case of paragraph (d) above, that confirmation or notification shall be deemed to have been given.

**26.9 Disenfranchisement of Defaulting Lenders**

- (a) For so long as a Defaulting Lender or Defaulting Holder has any Available Commitment in ascertaining:



- (i) any of the Majority Pari Passu Creditors, Majority Permitted Senior Financing Creditors, Majority Permitted Super Senior Financing Creditors, Majority Second Lien Creditors, Majority Second Lien Lenders, Majority Second Lien Notes Creditors, Majority Senior Creditors, Majority Senior Noteholders, Majority Super Senior Creditors or Majority Super Senior Lenders; or
- (ii) whether:
  - (A) any relevant percentage (including, for the avoidance of doubt, unanimity) of Credit Participations; or
  - (B) the agreement of any specified group of Senior Secured Creditors, has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

that Defaulting Lender's Available Commitments will be reduced to zero.

- (b) For the purposes of this Clause 26.9, the relevant Senior Agent and the Security Agent may assume that the following Senior Secured Creditors are Defaulting Lenders or Defaulting Holders (as applicable):
  - (i) any Senior Secured Creditor which has notified the Security Agent and its relevant Senior Agent that it has become a Defaulting Lender or Defaulting Holder;
  - (ii) any Senior Secured Creditor if the relevant Senior Agent has notified the Security Agent that that Senior Secured Creditor is a Defaulting Lender or Defaulting Holder;
  - (iii) any Senior Secured Creditor if the Company has notified the Security Agent that that Senior Secured Creditor is a Defaulting Lender or Defaulting Holder; and
  - (iv) any Senior Secured Creditor in relation to which it is aware that any of the events or circumstances referred to in the definition of Defaulting Lender in the Super Senior Facility Agreement (or any Permitted Super Senior Facility Agreement, any Permitted Senior Financing Agreement and any Second Lien Facility Agreement), or the definition of Defaulting Holder in any Senior Notes Indenture or any Second Lien Notes Indenture has occurred,

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

- (c) For the purposes of this Clause 26.9:
  - (i) a "**Defaulting Holder**" has the meaning given to that term in the Notes Purchase Agreement and any substantially equivalent term in any Second Lien Notes Indenture; and
  - (ii) a "**Defaulting Lender**" has the meaning given to that term in the Super Senior Facility Agreement or any substantially equivalent term in any Permitted Super Senior Facility Agreement, any Permitted Senior Financing Agreement or any Second Lien Facility Agreement.

## 26.10 Disenfranchisement of Senior Noteholders

- (a) For so long as any Senior Noteholder or Senior Noteholder under any Senior Notes that is not a Super Senior Facility (each a "**Relevant Senior Noteholder**"):
- (i) beneficially owns a Commitment under any Super Senior Facility/ies (directly or indirectly and in any manner whatsoever); or
  - (ii) has entered into a sub-participation agreement which carries voting rights relating to a Commitment under any Super Senior Facility/ies or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining:

- (A) the Majority Super Senior Lenders or the Majority Super Senior Creditors; or
- (B) whether:
  - (1) any given percentage (including, for the avoidance of doubt, unanimity) of the aggregate Super Senior Commitments under the relevant Facilities; or
  - (2) the agreement of any specified group of Senior Lenders or Creditors,

has been obtained to approve any request for a consent, waiver, amendment or other vote of Senior Lenders or Creditors under the Finance Documents,

the aggregate of all Relevant Senior Lender's Commitments under the Super Senior Facility/ies shall be deemed to be zero.

- (b) For so long as any Affiliate or Related Fund of a Senior Noteholder or Senior Noteholders under any Senior Note that is not a Super Senior Facility (each a "**Relevant Related Noteholder**"):
- (i) beneficially owns a Commitment under any Super Senior Facility/ies (directly or indirectly and in any manner whatsoever); or
  - (ii) has entered into a sub-participation agreement which carries voting rights relating to a Commitment under any Super Senior Facility/ies or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining:

- (A) the Majority Super Senior Lenders or the Majority Super Senior Creditors; or
- (B) whether:
  - (1) any given percentage (including, for the avoidance of doubt, unanimity) of the aggregate Commitments under the relevant Facilities; or

- (2) the agreement of any specified group of Senior Lenders or Creditors,

has been obtained to approve any request for a consent, waiver, amendment or other vote of Senior Lenders or Creditors under the Finance Documents,

the aggregate of all Relevant Related Lender's Commitments under the Super Senior Facility/ies shall be deemed to be zero.

- (c) Notwithstanding paragraphs (a) and (b) of this Clause 26.10 (*Disenfranchisement of Senior Noteholders*), if:

- (i) the Relevant Senior Noteholder(s) are exercising their right to effect a Super Senior Lender Liabilities Transfer under Clause 4.6 (*Option to purchase: Pari Passu Creditors*) in respect of all outstanding Super Senior Lender Liabilities or any Relevant Senior Lender otherwise holds 100 per cent. of the Super Senior Facility Commitments; or

- (ii) any vote in respect of a consent, waiver, amendment or other vote of Lenders or Creditors under the Super Senior Finance Documents affects the rights of any Relevant Senior Lender or any Relevant Related Lender and treats the Relevant Senior Lender or Relevant Related Lender in a materially and adverse manner to the rights of other Lenders or Creditors in the same Facility,

paragraphs (a) and (b) of this Clause 26.10 (*Disenfranchisement of Senior Noteholders*) shall not apply.

- (d) In circumstances where paragraphs(a) and (b) of this Clause 26.10 (*Disenfranchisement of Senior Noteholders*) both apply in respect of the same Facility, the provisions of paragraph (a) shall be applied first.

#### **26.11 No liability**

None of the Senior Secured Creditors or the Agents will be liable to any other Creditor, Agent, Third Party Security Provider or Debtor for any Consent given or deemed to be given under this Clause 26.

#### **26.12 Agreement to override**

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

### **27. NOTES TRUSTEE**

#### **27.1 Liability**

- (a) Each Notes Trustee enters into this Agreement not individually or personally but solely in its capacity as trustee in the exercise of the powers and authority conferred and vested in it under the relevant Notes Finance Documents for and on behalf of the Noteholders for which the Notes Trustee acts as trustee. Each Notes Trustee shall have no liability for acting for itself or in any capacity other than as trustee and nothing in this Agreement shall impose on it any obligation to pay any amount out of its personal assets. Notwithstanding any other provision of this Agreement, its obligations hereunder (if any) to make any payment of any amount or to hold any amount on trust

shall be only to make payment of such amount to or hold any such amount on trust to the extent that (i) it has actual knowledge that such obligation has arisen and (ii) it has received and, on the date on which it acquires such actual knowledge, has not distributed to the Noteholders for which it acts as trustee in accordance with the relevant Notes Indenture any such amount.

- (b) In no case shall any Notes Trustee be (i) personally responsible, liable or accountable in damages or otherwise to any other Party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by that Notes Trustee in good faith in accordance with this Agreement or any of the Notes Finance Documents in a manner that such Notes Trustee believed to be within the scope of the authority conferred on it by this Agreement or any of the Notes Finance Documents or by law, or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party; provided however, that each Note Trustee shall be personally liable under this Agreement for its own gross negligence or willful misconduct. It is also acknowledged and agreed that no Notes Trustee shall have any responsibility or liability for the actions of any individual Creditor or Noteholder (save in respect of its own actions).
- (c) Notwithstanding anything in this Agreement to the contrary, each Notes Trustee shall only have an obligation to turn over or repay amounts received under this Agreement by it if (i) it had actual knowledge that the receipt or recovery is an amount received in breach of this Agreement and (ii) to the extent that, prior to receiving such knowledge, it had not distributed the amount of such receipt or recovery in accordance with the relevant Notes Indenture. No Notes Trustee shall be charged with knowledge (actual or otherwise) or existence of facts that would impose any obligation on it hereunder to make any payment or prohibit it from making any payment unless, not less than two Business Days prior to the date of such payment, a Responsible Officer of the Notes Trustee receives written notice satisfactory to it that such payments are required or prohibited by this Agreement.
- (d) Notwithstanding anything contained herein, no provision of this Agreement shall alter or otherwise affect the rights and obligations of the Company or any other Debtor to make payments in respect of Notes Trustee Amounts as and when the same are due and payable pursuant to the applicable Notes Finance Documents or the receipt and retention by any Notes Trustee of the same or the taking of any step or action by any Notes Trustee in respect of its rights under the applicable Notes Finance Documents to the same.
- (e) No Notes Trustee is responsible for the appointment or for monitoring the performance of the Security Agent.
- (f) The Security Agent agrees and acknowledges that it shall have no claim against any Notes Trustee in respect of any fees, costs, expenses and liabilities due and payable to, or incurred by, the Security Agent.
- (g) No Notes Trustee shall be under any obligation to instruct or direct the Security Agent to take any Enforcement Action unless it has been instructed to do so by the relevant Noteholders and has been indemnified and/or secured and/or prefunded to its satisfaction.
- (h) The provisions of this Clause 27 shall survive the termination of this Agreement.

**27.2 No action**

- (a) Notwithstanding any other provision of this Agreement, no Notes Trustee shall have any obligation to take any action under this Agreement unless it is indemnified and/or secured and/or prefunded to its satisfaction in respect of all costs, expenses and liabilities which it would in its opinion thereby incur (including legal fees together with any associated VAT). No Notes Trustee shall have an obligation to indemnify any other person, whether or not a Party, in respect of any of the transactions contemplated by this Agreement. In no event shall the permissive rights of a Notes Trustee to take action under this Agreement be construed as an obligation to do so.
- (b) Prior to taking any action under this Agreement any Notes Trustee may request and rely upon an opinion of counsel or opinion of another qualified expert, at the expense of the Company or another Debtor.
- (c) Notwithstanding any other provisions of this Agreement or any other Notes Finance Document to which a Notes Trustee is a party, in no event shall a Notes Trustee be liable for special, indirect, punitive or consequential loss or damages of any kind whatsoever (including but not limited to loss of business, goodwill, opportunity or profits) whether or not foreseeable even if such Notes Trustee has been advised of the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in gross negligence, for breach of contract or otherwise.

**27.3 Reliance on certificates**

Any Notes Trustee shall be entitled to and may rely on any notice, consent or certificate given or granted by any Party without being under any obligation to enquire or otherwise determine whether any such notice, consent or certificate has been given or granted by such Party properly acting in accordance with the provisions of this Agreement.

**27.4 No fiduciary duty**

No Notes Trustee shall be deemed to owe any fiduciary duty to any Creditor (save in respect of such persons for whom it acts as trustee) and shall not be personally liable to any Creditor if it shall in good faith mistakenly pay over or, distribute to any Creditor or to any other person cash, property or securities to which the other Creditor shall be entitled by virtue of this Agreement or otherwise. With respect to the Creditors, each Notes Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in the Notes Finance Documents pursuant to which it acts as trustee and this Agreement and no implied agreement, covenants or obligations with respect to the other Creditors shall be read into this Agreement against any Notes Trustee.

**27.5 Debt assumptions**

- (a) Each Notes Trustee is entitled to assume that in respect of the Senior Liabilities:
  - (i) no Senior Payment Default has occurred;
  - (ii) no Second Lien Payment Default has occurred;
  - (iii) none of the Senior Creditor Liabilities or Second Lien Liabilities have been accelerated;
  - (iv) no Default, Event of Default or termination event (however described) has occurred; and

(v) the Final Discharge Date has not occurred,  
unless a Responsible Officer of the relevant Notes Trustee has actual knowledge to the contrary.

(b) No Notes Trustee is obliged to monitor or enquire whether any Event of Default has occurred.

#### **27.6 Creditors**

(a) In acting pursuant to this Agreement and the relevant Senior Notes Indenture, no Senior Notes Agent is required to have any regard to the interests of any Creditor other than the Senior Noteholders for which it is Senior Notes Agent.

(b) In acting pursuant to this Agreement and the relevant Second Lien Notes Indenture, no Second Lien Notes Trustee is required to have any regard to the interests of any Creditor other than the Second Lien Noteholders for which it is Second Lien Notes Trustee.

#### **27.7 Reliance and advice**

Each Notes Trustee may:

(a) rely on any notice or document believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person;

(b) rely on any statement made by any person regarding any matters which may be assumed to be within its powers to verify; and

(c) engage, pay for and rely on professional advisers selected by it (including those representing a person other than such Notes Trustee).

#### **27.8 Other Parties not affected**

No provision of this Clause 27 shall alter or change the rights and obligations as between the other Parties in respect of each other. This Clause 27 is intended to afford protection to the Notes Trustees only.

#### **27.9 Instructions**

In acting under this Agreement, each Notes Trustee is entitled to seek instructions from the Noteholders for whom it is acting as trustee at any time and, where it acts on the instructions of the Noteholders, no Notes Trustee shall incur any liability to any person for so acting. No Notes Trustee is liable to any person for any loss suffered as a result of any delay caused as a result of its seeking instructions from such Noteholders.

#### **27.10 Responsibility of Notes Trustee**

(a) No Notes Trustee shall be responsible to any other Secured Party for the legality, validity, effectiveness, enforceability, adequacy, accuracy, completeness or performance of:

(i) any Secured Debt Document or any other document;

(ii) any statement or information (whether written or oral) made in or supplied in connection with any Secured Debt Document or any other document; or

- (iii) any observance by any Debtor or Third Party Security Provider of its obligations under any Secured Debt Document or any other document.
- (b) Each Notes Trustee may rely and shall be fully protected in acting or refraining from acting upon any notice, certificate or other document reasonably believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person.

#### **27.11 Confirmation**

Without affecting the responsibility of any Debtor, Third Party Security Provider or the Company for information supplied by it or on its behalf in connection with any Debt Document, each Secured Party (other than the Notes Trustees (in their personal capacity) and the Security Agent) confirms that it:

- (a) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Secured Debt Documents (including the financial condition and affairs of each Debtor, Third Party Security Provider or their related entities and the nature and extent of any recourse against any Party or its assets); and
- (b) has not relied on any information provided to it by any Notes Trustee in connection with any Secured Debt Documents.

#### **27.12 Provision of information**

No Notes Trustee is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party. No Notes Trustee is responsible for:

- (a) providing any Secured Party with any credit or other information concerning the risks arising under or in connection with the Debt Documents (including any information relating to the financial condition or affairs of any Debtor, the Company or their related entities or the nature or extent of recourse against any Party or its assets) whether coming into its possession before, on or after the date of this Agreement; or
- (b) obtaining any certificate or other document from any Debtor or the Company.

#### **27.13 Departmentalism**

In acting as a Notes Trustee, each Notes Trustee shall be treated as acting through its agency division which shall be treated as a separate entity from its other divisions and departments. Any information received or acquired by a Notes Trustee which, in its opinion, is received or acquired by some other division or department or otherwise than in its capacity as a Notes Trustee may be treated as confidential by such Notes Trustee and will not be treated as information possessed by a Notes Trustee in its capacity as such.

#### **27.14 Disclosure of information**

Each Debtor and Third Party Security Provider irrevocably authorizes any Notes Trustee to disclose to any Secured Party any information that is received by that Notes Trustee in its capacity as a Notes Trustee.

### **27.15 Illegality**

Each Notes Trustee may refrain from doing anything (including disclosing any information) which might, in its opinion, constitute a breach of any law or regulation and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.

### **27.16 Resignation of Notes Trustee**

Each Notes Trustee may resign or be removed in accordance with the terms of the applicable Notes Indenture, provided that a replacement Notes Trustee agrees with the Parties to become the replacement trustee under this Agreement by the execution of a Creditor/Agent Accession Undertaking.

### **27.17 Notes Trustee assumptions**

- (a) Each Notes Trustee is entitled to assume that:
- (i) any payment or other distribution made pursuant to this Agreement in respect of the Second Lien Liabilities or Senior Notes Liabilities (as the case may be) has been made in accordance with the ranking in Clause 2 (*Ranking and Priority*) and is not prohibited by any provisions of this Agreement and is made in accordance with these provisions;
  - (ii) the proceeds of enforcement of any Security conferred by the Security Documents have been applied in the order set out in Clause 15 (*Application of Proceeds*);
  - (iii) any Security, collateral, guarantee or indemnity or other assurance granted to it has been done so in compliance with Clause 4.3 (*Security and Guarantees: Senior Secured Creditors*); and
  - (iv) any Senior Notes and/or Second Lien Notes issued comply with the provisions of this Agreement,

unless a Responsible Officer of such Notes Trustee has actual knowledge to the contrary.

- (b) No Notes Trustee shall have any obligation under Clause 10 (*Effect of Insolvency Event*) or Clause 12 (*Redistribution*) in respect of amounts received or recovered by it unless (i) a Responsible Officer has actual knowledge that such Clauses apply to the receipt or recovery, and (ii) it has not distributed to the relevant Noteholders in accordance with the Notes Indenture any amount so received or recovered.

### **27.18 Agents**

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

### **27.19 No Requirement for Bond or Surety**

No Notes Trustee shall be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Agreement.



## **28. GUARANTEE AND INDEMNITY**

### **28.1 Guarantee and indemnity**

Each Debtor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Guarantee Party punctual performance by each other Debtor of all that Debtor's payment obligations to it under the Guarantee Agreements;
- (b) undertakes with each Guarantee Party that whenever another Debtor does not pay any amount when due to it under or in connection with any Guarantee Agreement, that Debtor shall immediately on demand pay that amount as if it was the principal Debtor; and
- (c) agrees with each Guarantee Party that if, for any reason, any amount claimed by a Guarantee Party under this Clause 28 is not recoverable on the basis of a guarantee, it will be liable as a principal debtor and primary obligor to indemnify that Guarantee Party against any cost, loss or liability it incurs as a result of a Debtor not paying any amount expressed to be payable by it to that Guarantee Party under any Guarantee Agreement on the date when it is expressed to be due. The amount payable by a Debtor under this indemnity will not exceed the amount it would have had to pay under this Clause 28 if the amount claimed had been recoverable on the basis of a guarantee,

subject to any limitation referred to in Clause 28.11 (*Limitations on Guarantees*) or in any Debtor/Third Party Security Provider Accession Deed by which it became a Debtor.

### **28.2 Continuing guarantee**

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

### **28.3 Reinstatement**

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

- (a) the liability of each Debtor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) each Guarantee Party shall be entitled to recover the value or amount of that security or payment from the Debtor, as if the payment, discharge, avoidance or reduction had not occurred.

### **28.4 Waiver of defences**

The obligations of each Debtor under this Clause 28 will not be affected by any act, omission, matter or thing which, but for this Clause 28, would reduce, release or prejudice any of its obligations under this Clause 28 (without limitation and whether or not known to it or any Guarantee Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;

- (b) the release of any other Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Debtor or any other person;
- (e) any amendment (however fundamental) or replacement of a Guarantee Agreement or any other document or security provided that a Debtor shall be a party thereto;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Guarantee Agreement or any other document or security; or
- (g) any insolvency or similar proceedings.

#### **28.5 Debtor intent**

Without prejudice to the generality of Clause 28.4 (*Waiver of defences*) but subject to Clause 28.11 (*Limitations on Guarantees*), each Debtor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Guarantee Agreements.

#### **28.6 Immediate recourse**

- (a) Each Debtor waives any right it may have of first requiring any Guarantee Party (or any Security Agent or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Debtor under this Clause 28. This waiver applies irrespective of any law or any provision of a Guarantee Agreement to the contrary.

#### **28.7 Appropriations**

Until all amounts which may be or become payable by the Debtors to it under or in connection with the Guarantee Agreements have been irrevocably paid in full, each Guarantee Party (or any Security Agent or agent on its behalf) may:

- (a) refrain from applying or enforcing any other monies, security or rights held or received by that Guarantee Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Debtor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any monies received from any Debtor or on account of any Debtor's liability under this Clause 28.

#### **28.8 Deferral of Debtor's rights**

- (a) Until all amounts which may be or become payable by the Debtors under or in connection with the Guarantee Agreements have been irrevocably paid in full and unless any relevant Guarantee Party otherwise directs or as permitted by this

Agreement, no Debtor will exercise any rights which it may have by reason of performance by it of its obligations under the Guarantee Agreements:

- (i) to be indemnified by a Debtor;
  - (ii) to claim any contribution from any other guarantor of any Debtor's obligations under the Guarantee Agreements;
  - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Guarantee Parties under the Guarantee Agreements or of any other guarantee or security taken pursuant to, or in connection with, the Guarantee Agreements by any Guarantee Party;
  - (iv) to bring legal or other proceedings for an order requiring any Debtor to make any payment, or perform any obligation, in respect of which any Debtor has given a guarantee, undertaking or indemnity under Clause 28.1 (*Guarantee and indemnity*);
  - (v) to exercise any right of set-off against any Debtor; and/or
  - (vi) to claim or prove as a creditor of any Debtor in competition with any Guarantee Party.
- (b) If a Debtor receives any benefit, payment or distribution in relation to such rights, it shall, other than to the extent such Debtor is permitted to retain such benefit, payment or distribution in accordance with this Agreement, hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the relevant Guarantee Party by the Debtors under or in connection with the Guarantee Agreements to be repaid in full on trust (to the extent it is able to do so in accordance with any law applicable to it) for that Guarantee Party.

### **28.9 Additional security**

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

### **28.10 Release of Debtors' right of contribution**

If any Debtor (a "**Retiring Debtor**") ceases to be a Debtor in accordance with the terms of this Agreement, then on the date such Retiring Debtor ceases to be a Debtor:

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

## 28.11 Limitations on Guarantees

Notwithstanding anything to the contrary in this Agreement or any other Debt Document:

- (a) *Financial Assistance*: This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of Section 678 or 679 of the Companies Act 2006 or any equivalent provision of any applicable law.
- (b) *Guarantee Limitations for Irish Debtors*:
  - (i) This guarantee does not apply to any liability of any Irish Debtor to the extent that it would result in this guarantee (A) constituting unlawful financial assistance within the meaning of Section 82 of the Irish Companies Act or (B) constituting a breach of Section 239 of the Irish Companies Act.
  - (ii) Each Irish Debtor acknowledges that, to the extent that this guarantee has been validated under Section 202 of the Irish Companies Act, it shall not constitute unlawful financial assistance under Section 82 of the Irish Companies Act and to the extent that Section 243 of the Irish Companies Act applies it shall not constitute a breach of Section 239 of the Irish Companies Act.
- (c) *Excluded Swap Obligations*: The guarantee of each Debtor under this Clause 28 does not apply to any Excluded Swap Obligation of such Debtor (and no amount received from any Debtor under any Debt Document shall be applied to any Excluded Swap Obligation of such Debtor, whether under Clause 15 (*Application of Proceeds*) or otherwise).
- (d) *Additional Debtors*: In relation to any person which becomes a Debtor after the date of this Agreement, the guarantee of that Debtor shall in addition be subject to any limitations relating to that Debtor set out in any relevant Debtor/Third Party Security Provider Accession Deed.

## 29. 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.

## 30. GOVERNING LAW

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

## 31. ENFORCEMENT

### 31.1 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) Subject to paragraph (d) below, this Clause 31.1 shall not (and shall not be construed so as to) limit the right of any Secured Party to take proceedings against any Debtor in

the courts of any country in which any Debtor has assets or in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

### **31.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law each Debtor or Third Party Security Provider (unless incorporated in England and Wales):
  - (i) irrevocably appoints the Company as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
  - (ii) agrees that failure by a process agent to notify the relevant Debtor or Third Party Security Provider of the process will not invalidate the proceedings concerned.
- (b) A Debtor or Third Party Security Provider may irrevocably appoint another person as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement, subject to notifying the Security Agent accordingly. In the case of any replacement of an existing agent for service of process, following the new process agent's appointment and notification to the Security Agent of such new appointment, the existing process agent may resign.

**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 and the Debtors and is intended to be and is delivered by them as a deed on the date specified above.**

## SCHEDULE 1

### FORM OF DEBTOR/THIRD PARTY SECURITY PROVIDER ACCESSION DEED

**THIS AGREEMENT** is made on [ ] and made between:

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

This agreement is made on [date] by the Acceding [Debtor]/[Third Party Security Provider] in relation to an intercreditor agreement (the “**Intercreditor Agreement**”) dated [ ] between, amongst others, [ ] as company, [ ] as security agent, [ ] as senior agent, the other Creditors, Third Party Security Providers and the other Debtors (each as defined in the Intercreditor Agreement).

The Acceding [Debtor]/[Third Party Security Provider] 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]/[provide third party security in respect of Liabilities under the following documents]:

*[Insert details (date, parties and description) of relevant documents, including as the case may be, any limitation language applicable to the relevant Debtor/Third Party Security Provider]*

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. Subject to the terms of the Intercreditor Agreement, the Acceding [Debtor]/[Third Party Security Provider] and the Security Agent agree that the Security Agent shall hold:
  - (a) [any Security in respect of Liabilities or any Security Agent Claim created or expressed to be created pursuant to the Relevant Documents;
  - (b) all proceeds of that Security; and]\*
  - (c) all obligations expressed to be undertaken by the Acceding [Debtor]/[Third Party Security Provider] to pay amounts in respect of the Liabilities to the Security Agent as trustee or security agent for the Secured Parties (in the Relevant Documents or otherwise, including any Security Agent Claim) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding [Debtor]/[Third Party Security Provider] (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee or security agent for the Secured Parties,

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\*\* This Debtor/Third Party Security Provider Accession Deed may be amended as necessary to ensure that the relevant Acceding Debtor becoming party to the Intercreditor Agreement would not breach any applicable law or present a material risk of liability for any member of the Group and/or its officers or directors, or give rise to a material risk of breach of fiduciary or statutory duties.

\* Include to the extent that the Security created in the Relevant Documents is expressed to be granted to the Security Agent as trustee for the Secured Parties.

on trust or as security agent for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

- 3. The Acceding [Debtor]/[Third Party Security Provider] confirms that it intends to be party to the Intercreditor Agreement as a [Debtor]/[Third Party Security Provider], undertakes to perform all the obligations expressed to be assumed by a [Debtor]/[Third Party Security Provider] 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 (in each case subject always to any applicable limitations set out in Clause 28.11 (*Limitations on Guarantees*) or the other terms of the Intercreditor Agreement).
- 4. [In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].\*\*
- 5. [*Include any additional limitations required by the Acceding [Debtor]/[Third Party Security Provider]*].

[4]/[5]/[6] 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]/[Third Party Security Provider] and is delivered on the date stated above.

The Acceding Debtor

[EXECUTED AS A DEED )  
By: [*Full Name of Acceding [Debtor]/[Third Party Security Provider]*] )

\_\_\_\_\_ Director  
\_\_\_\_\_ Director/Secretary

**OR**

[EXECUTED AS A DEED  
By: [*Full name of Acceding [Debtor]/[Third Party Security Provider]*]

\_\_\_\_\_ Signature of Director  
\_\_\_\_\_ Name of Director  
\_\_\_\_\_

in the presence of

\_\_\_\_\_   
\*\* Include this paragraph in the relevant Debtor/Third Party Security Provider Accession Deed if the Acceding Debtor is also to accede as an Intra-Group Lender to the Intercreditor Agreement.

\_\_\_\_\_  
\_\_\_\_\_

Signature of witness

\_\_\_\_\_  
\_\_\_\_\_

Name of witness

\_\_\_\_\_  
\_\_\_\_\_

Address of witness

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Occupation of witness]

Address for notices:

Address:

Fax:

**The Security Agent**

*[Full Name of Current Security Agent]*

By:

Date:



## SCHEDULE 2

### FORM OF CREDITOR/AGENT ACCESSION UNDERTAKING

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

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

From: *[Acceding Creditor/Agent]*

THIS UNDERTAKING is made on *[date]* by *[insert full name of new Senior Noteholder/Super Senior Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Senior Creditor Representative/Investor/Senior Notes Agent]* (the “**Acceding [Senior Noteholder/Super Senior Lender/Second Lien Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Second Lien Notes Creditor/Senior Creditor Representative/Second Lien Notes Trustee/Investor/Senior Notes Agent/Super Senior Agent]**”) in relation to the intercreditor agreement (the “**Intercreditor Agreement**”) dated *[ ]* between, among others, *[INSERT NAME OF THE COMPANY]* as company, *[INSERT NAME OF SECURITY AGENT]* as security agent, *[INSERT NAME OF SENIOR AGENT]* as senior 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 Noteholder/Super Senior Lender/Second Lien Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Second Lien Notes Creditor/Senior Creditor Representative/Second Lien Notes Trustee/Investor/Senior Notes Agent/Super Senior Agent]* being accepted as a *[Senior Noteholder/Super Senior Lender/Second Lien Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Second Lien Notes Creditor/Senior Creditor Representative/Second Lien Notes Trustee/Investor/Senior Notes Agent/Super Senior Agent]* for the purposes of the Intercreditor Agreement, the Acceding *[Senior Noteholder/Super Senior Lender/Second Lien Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Second Lien Notes Creditor/Senior Creditor Representative/Second Lien Notes Trustee/Investor/Senior Notes Agent/Super Senior Agent]* confirms that, as from *[date]*, it intends to be party to the Intercreditor Agreement as a *[Senior Noteholder/Super Senior Lender/Second Lien Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Second Lien Notes Creditor/Senior Creditor Representative/Second Lien Notes Trustee/Investor/Senior Notes Agent/Super Senior Agent]* and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a *[Senior Noteholder/Super Senior Lender/Second Lien Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Second Lien Notes Creditor/Senior Creditor Representative/Second Lien Notes Trustee/Investor/Senior Notes Agent/Super Senior Agent]* and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[The Acceding Super Senior Lender is an Affiliate of a *[Super Senior Lender]* and has become a provider of an Ancillary Facility. In consideration of the Acceding Super Senior Lender being accepted as an Ancillary Lender for the purposes of the *[Super Senior Facility Agreement/Permitted Super Senior Facility Agreement]*, the Acceding Super Senior Lender confirms, for the benefit of the parties to the *[Super Senior Facility Agreement/Permitted Super Senior Facility Agreement]*, that, as from *[date]*, it intends to be party to the *[Super Senior Facility Agreement/Permitted Super Senior Facility Agreement]* as an Ancillary Lender, and undertakes to perform all the obligations expressed in the *[Super Senior Facility Agreement/Permitted Super Senior Facility Agreement]* to be assumed by a *[Finance Party]*

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\* Include only in the case of (i) a Hedge Counterparty or (ii) an Ancillary Lender which is an Affiliate of a Super Senior Lender.

and agrees that it shall be bound by all the provisions of the [Super Senior Facility Agreement/Permitted Super Senior Facility Agreement], as if it had been an original party to the [Super Senior Facility Agreement/Permitted Super Senior Facility Agreement] as an Ancillary Lender.]

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

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

Acceding [Creditor/Agent]

**[EXECUTED as a DEED]**  
*[insert full name of Acceding Creditor/Agent]*

By:

Address:

Fax:

Accepted by the Security Agent

[Accepted by the Senior Agent]

\_\_\_\_\_   
for and on behalf of

\_\_\_\_\_   
for and on behalf of

*[Insert full name of current Security Agent]*

*[Insert full name of Senior Agent]*

Date:

Date:]\*\*

\_\_\_\_\_  
\*\* Include only in the case of (i) a Hedge Counterparty or (ii) an Ancillary Lender which is an Affiliate of a Super Senior Lender.

### SCHEDULE 3

#### FORM OF DEBTOR RESIGNATION REQUEST

To: [ ] as Security Agent

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

Dated:

Dear Madams and Sirs

**[*Company*] - [ ] Intercreditor Agreement  
dated [ ] (the “Intercreditor Agreement”)**

1. We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
2. Pursuant to Clause 20.12 (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [*resigning Debtor*] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[*Company*]

[*resigning Debtor*]

By:

By:

## SCHEDULE 4

### FORM OF SUPER SENIOR HEDGING CERTIFICATE

To: [ ] as Security Agent

From: [new Super Senior Hedge Counterparty]/[existing Super Senior Hedge Counterparty] and [Company]

Dated:

Dear Madams and Sirs

**[Company] - [●] Intercreditor Agreement  
dated [●] (the “Intercreditor Agreement”)**

1. We refer to the Intercreditor Agreement. This is a Super Senior Hedging Certificate. Terms defined in the Intercreditor Agreement have the same meaning in this Super Senior Hedging Certificate unless given a different meaning in this Super Senior Hedging Certificate.
2. Pursuant to Clause 5.15 (*Allocation of Super Senior Hedging Liabilities*) of the Intercreditor Agreement we request that with effect from the date of your acknowledgement of this Super Senior Hedging Certificate:
  - (a) [the Hedging Liabilities owed to [name of new Super Senior Hedge Counterparty] under [details of Hedging Agreement and/or trade confirmation or other equivalent documentation to be inserted] shall be designated and treated as Super Senior Hedging Liabilities with an Allocated Super Senior Hedging Amount equal to [insert amount in Common Currency][.]; and/or
  - (b) the Hedging Liabilities owed to [name of existing Super Senior Hedge Counterparty] under [details of Hedging Agreement and/or trade confirmation or other equivalent documentation to be inserted] shall no longer be designated as Super Senior Hedging Liabilities and the corresponding Allocated Super Senior Hedging Amount of [insert amount in Common Currency] shall be released and be available for designation towards other Hedging Liabilities as Super Senior Hedging Liabilities under the Intercreditor Agreement.]
3. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Company]

By:

[existing Super Senior Hedge Counterparty]

By:

*[new Super Senior Hedge Counterparty]*

By:

Acknowledged and accepted on [insert date]:

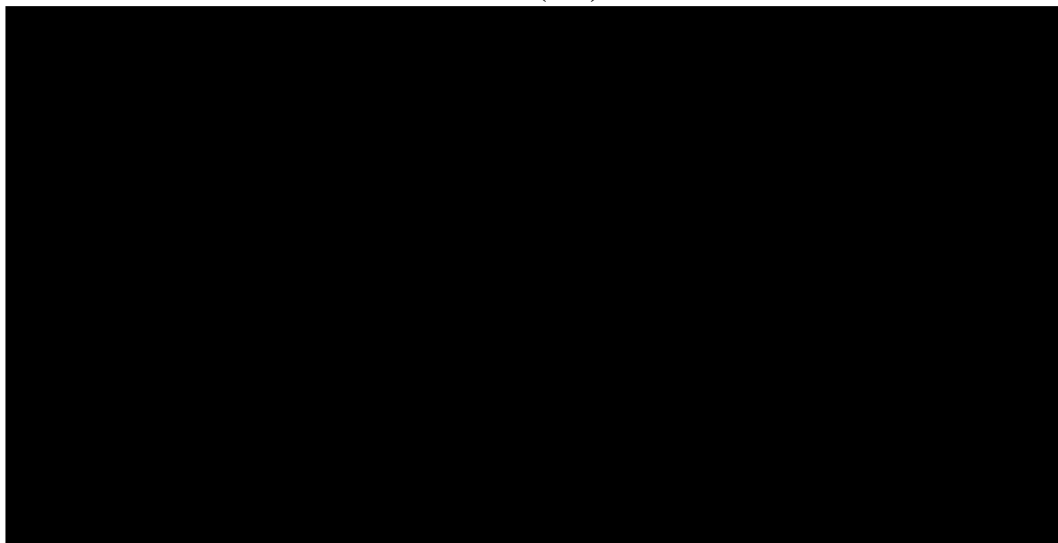
*[Security Agent]*

By:

**SIGNATURES**

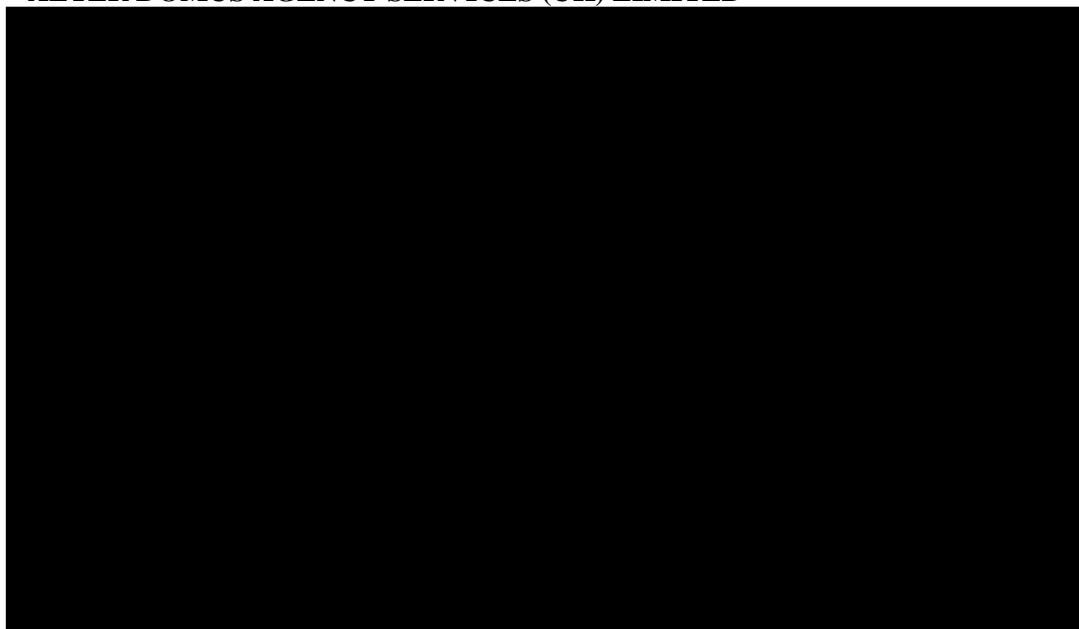
**The Senior Notes Agent**

**ALTER DOMUS AGENCY SERVICES (UK) LIMITED**



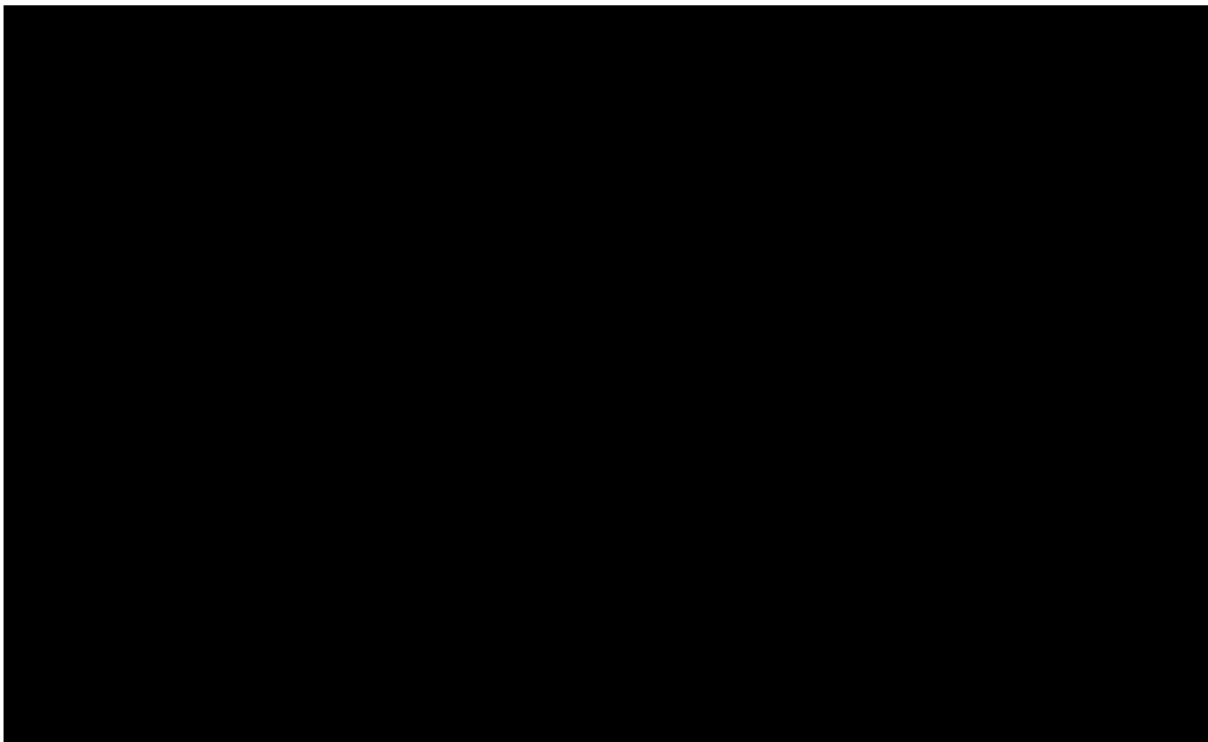
**The Super Senior Agent**

**ALTER DOMUS AGENCY SERVICES (UK) LIMITED**



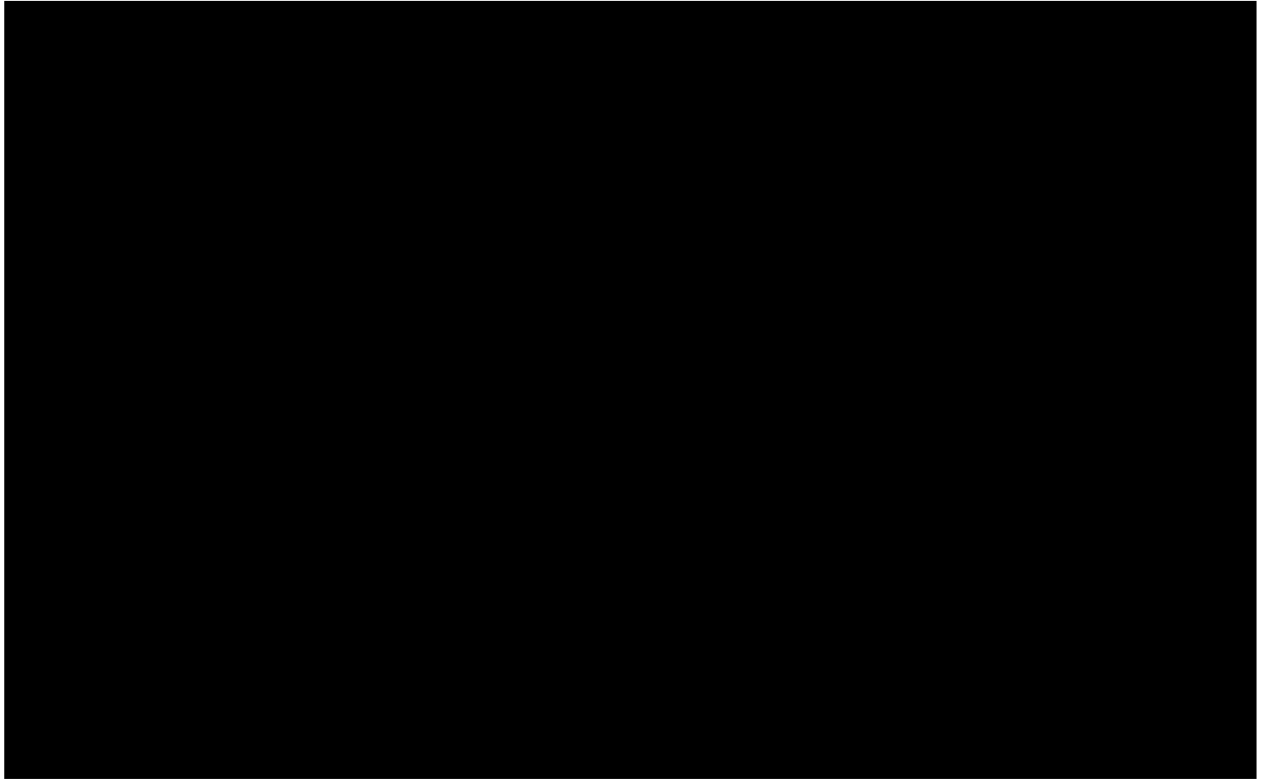
**The Super Senior Arranger**

**BARCLAYS BANK PLC**



**The Super Senior Lenders**

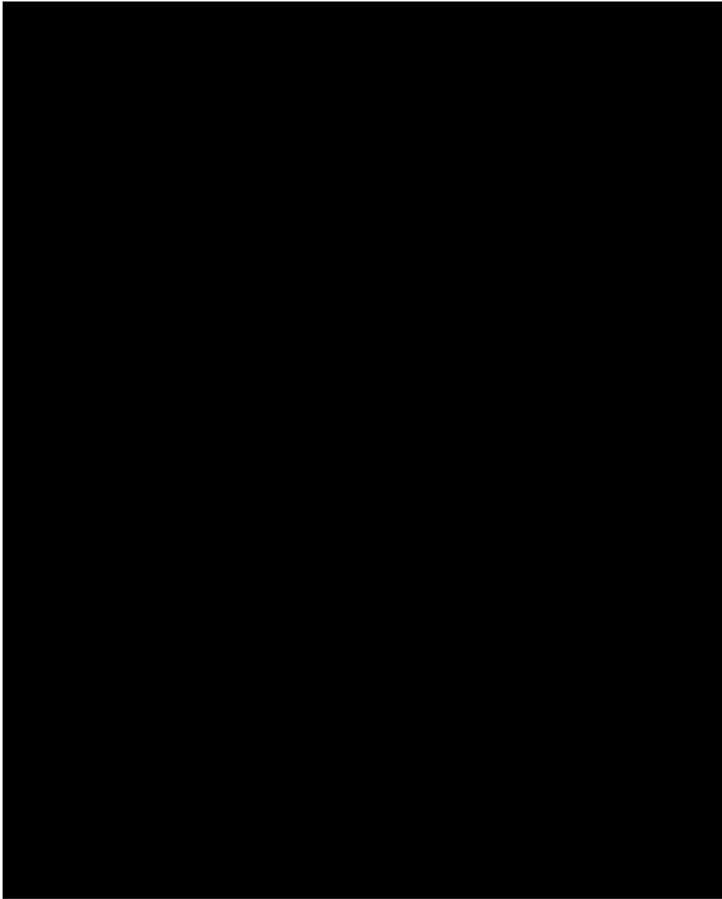
**BARCLAYS BANK PLC**





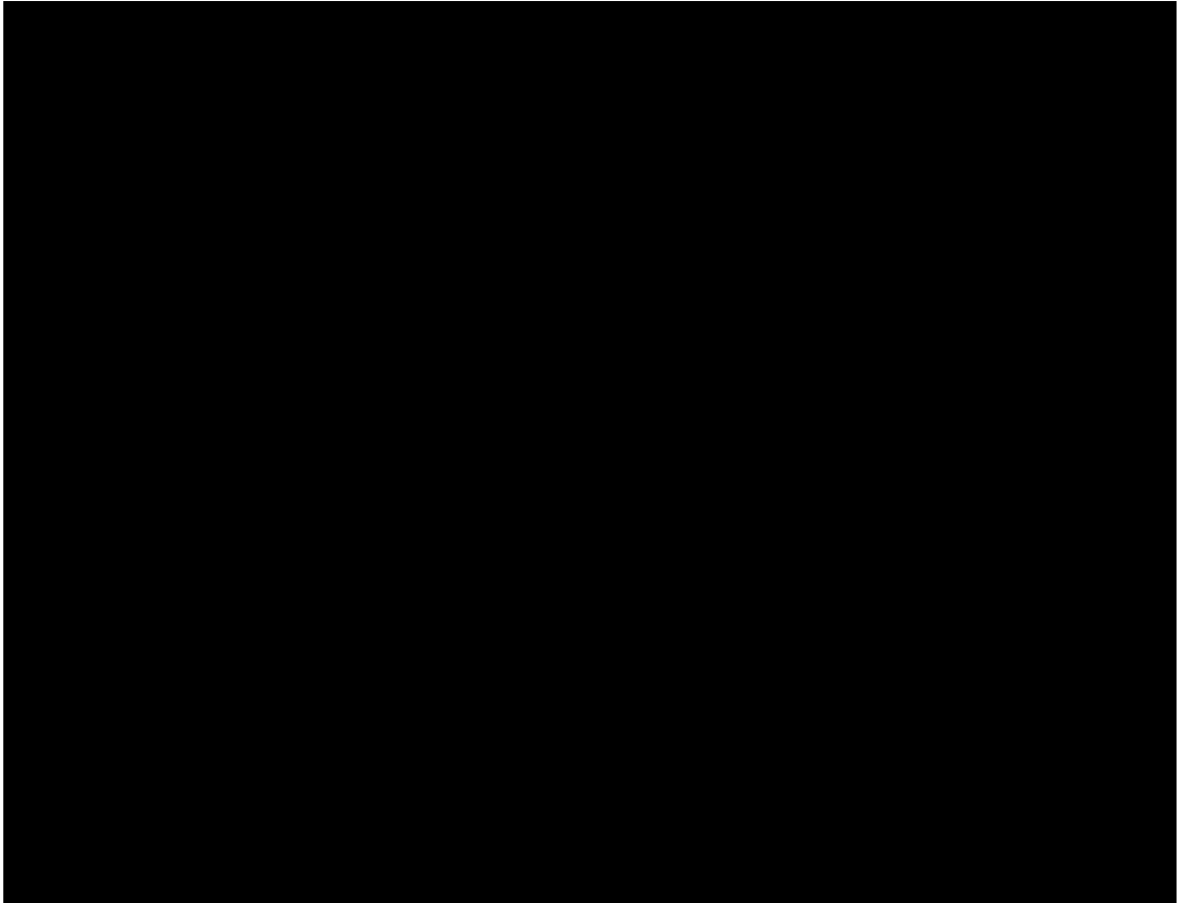
**The Senior Noteholders**

**NOMURA INTERNATIONAL PLC**



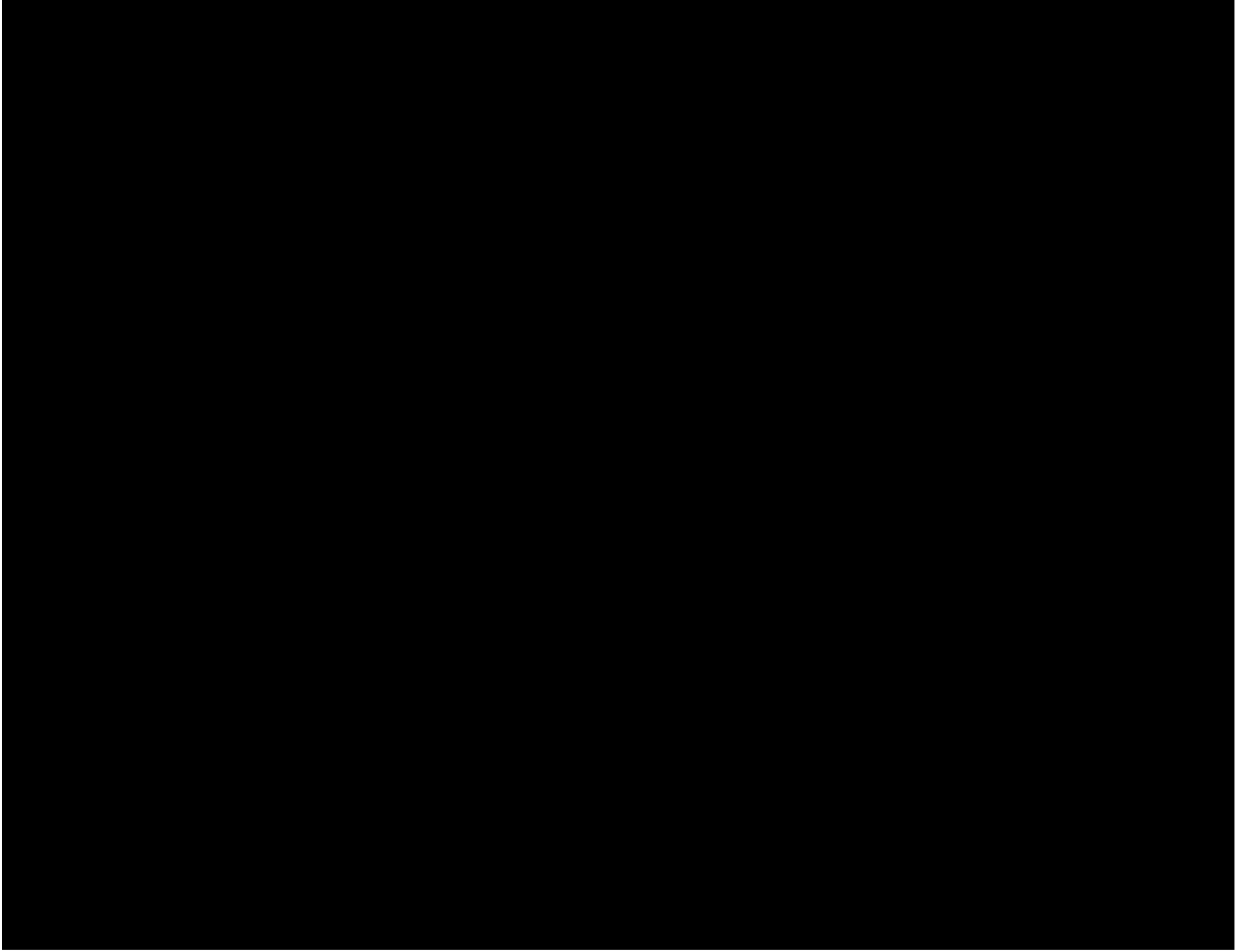
**The Senior Noteholders**

**PGIM SENIOR DEBT II LEVERED FUND**



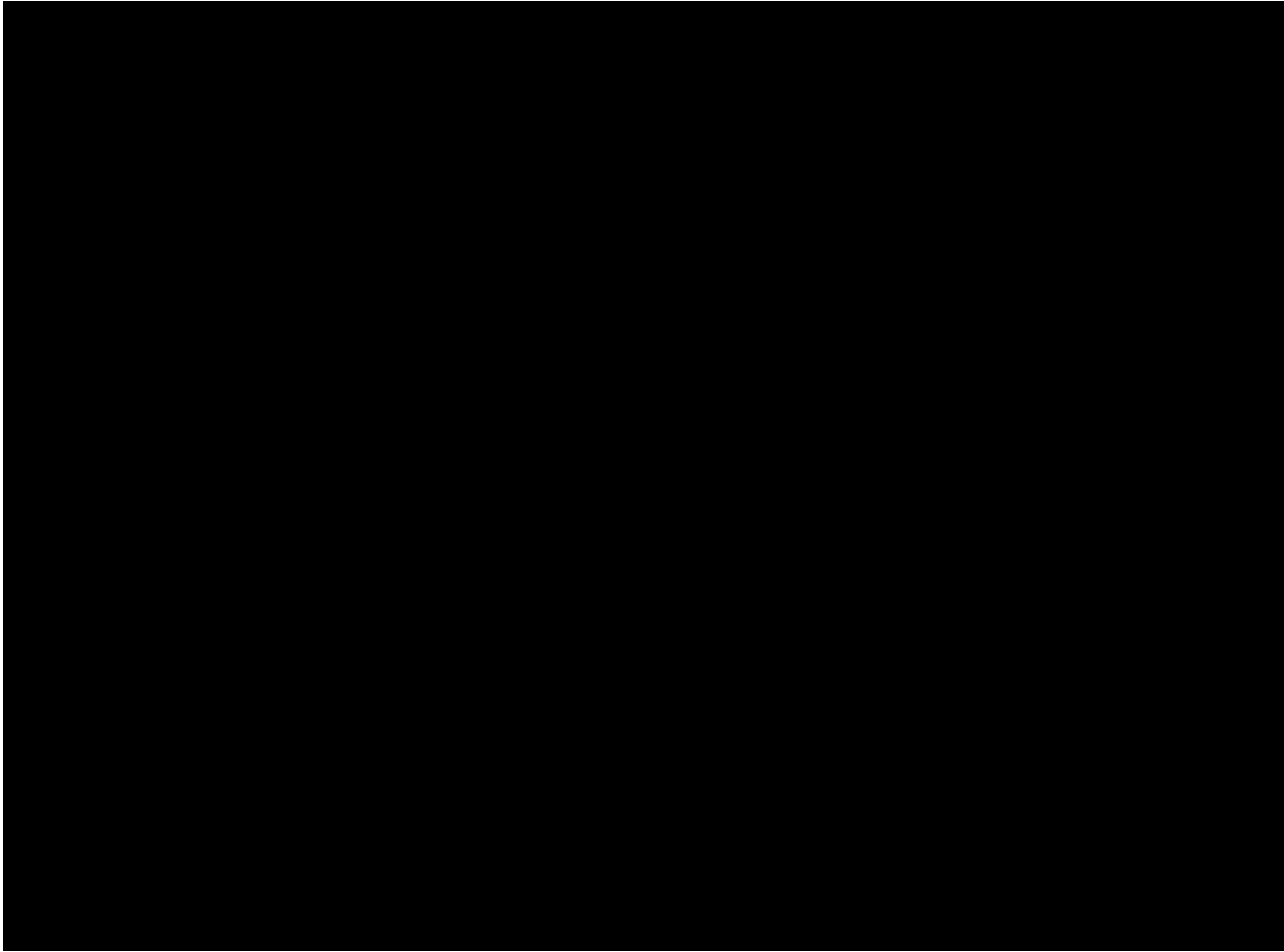
**The Senior Noteholders**

**PGIM SENIOR DEBT II LEVERED SUPPLEMENTAL FUND**



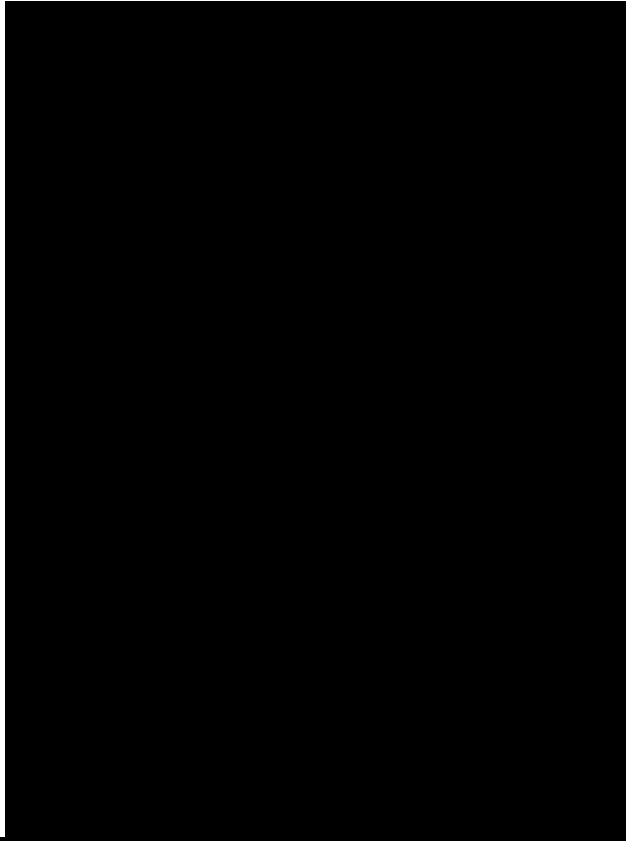
**The Senior Noteholders**

**PGIM SENIOR DEBT II UNLEVERED FUND**

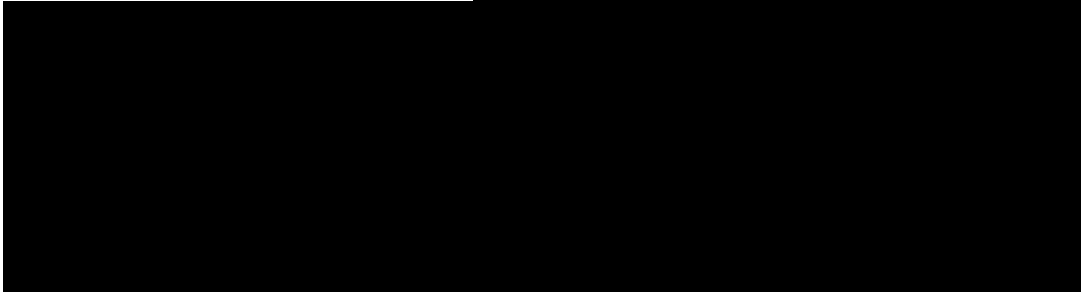


**The Investors**

**EXECUTED as a DEED by  
TRANSIT MIDCO LIMITED**  
acting by



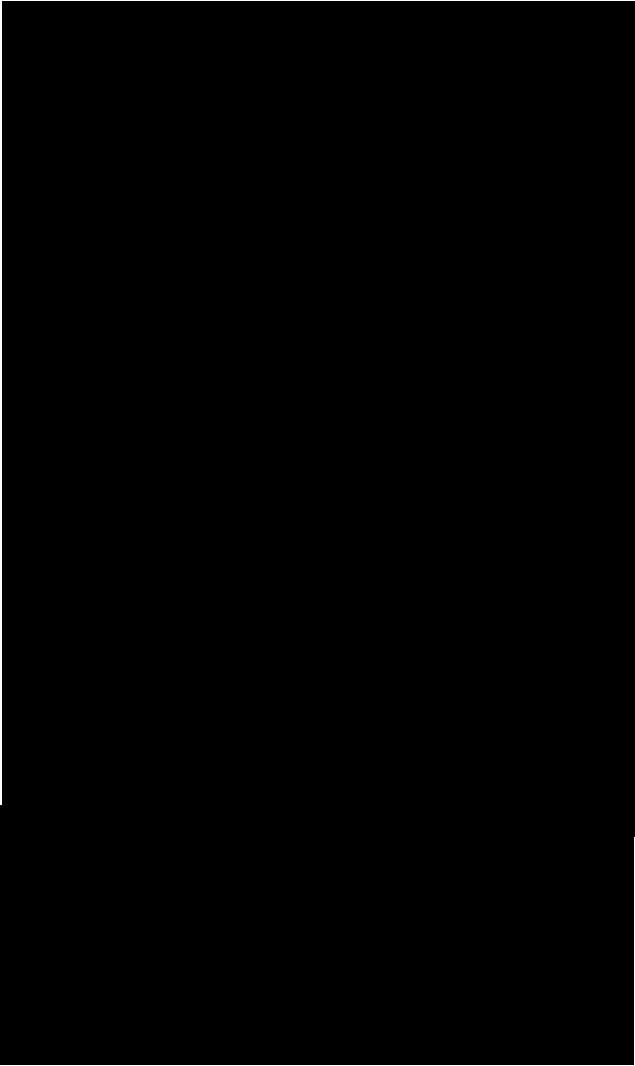
**EXECUTED as a DEED by  
TRANSIT MIDCO LIMITED**  
acting by



**The Third Party Security Providers**

**EXECUTED as a DEED by  
TRANSIT MIDCO LIMITED**  
acting by

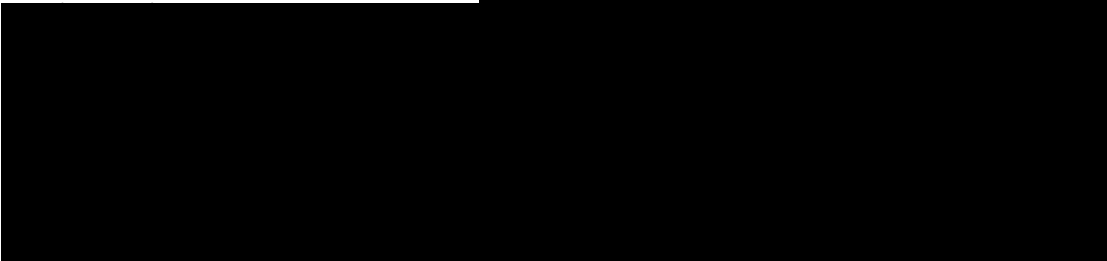
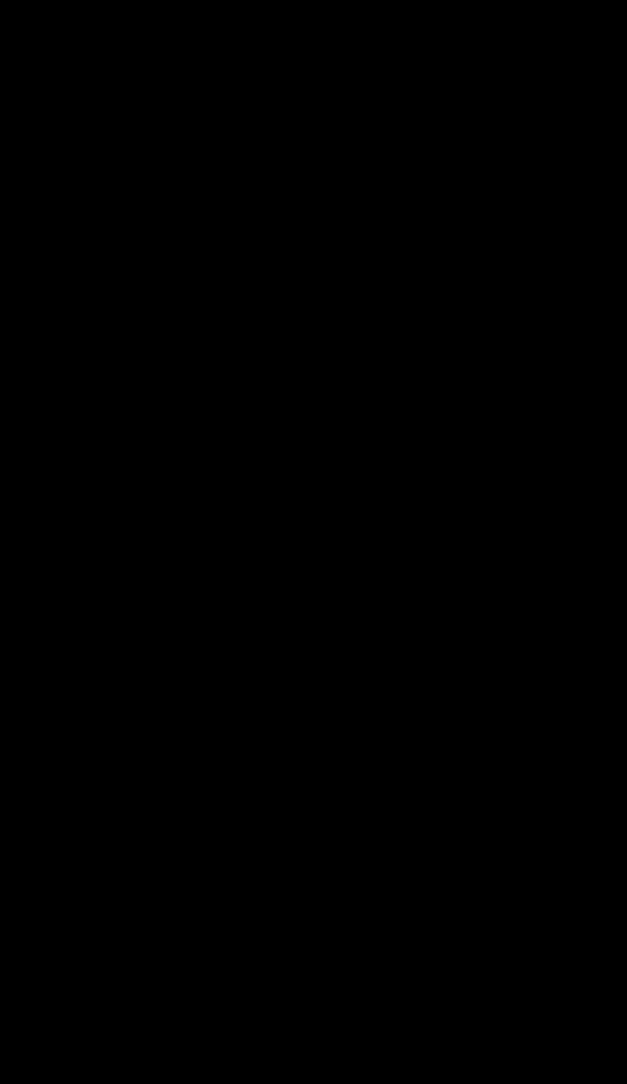
**EXECUTED as a DEED by  
TRANSIT MIDCO LIMITED**  
acting by



**The Company**

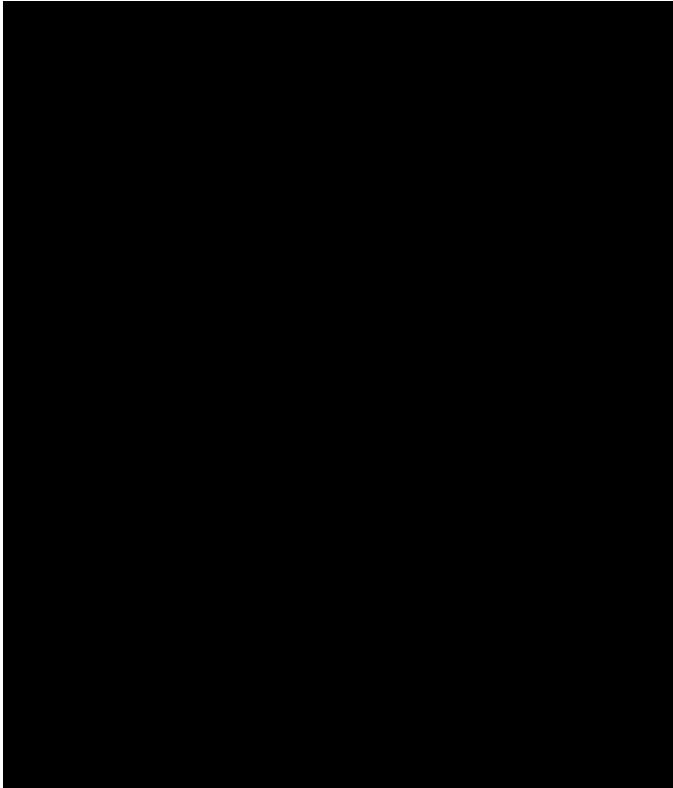
**EXECUTED** as a **DEED** by  
**TRANSIT BIDCO LIMITED**  
acting by

**EXECUTED** as a **DEED** by  
**TRANSIT BIDCO LIMITED**  
acting by

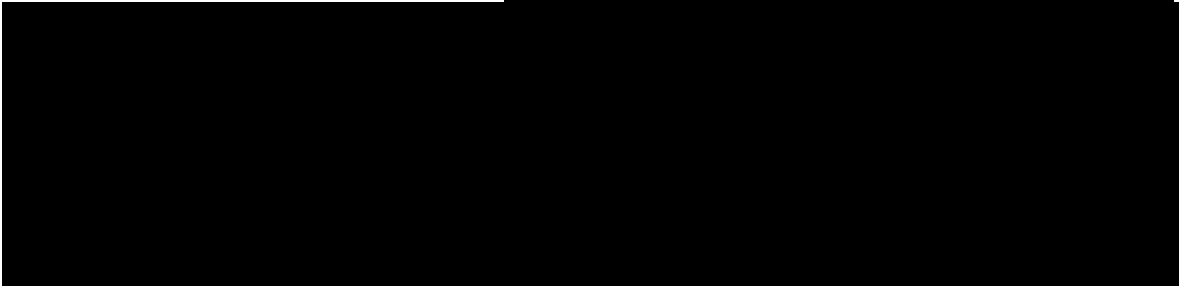


**The Original Debtors**

**EXECUTED** as a **DEED** by  
**TRANSIT BIDCO LIMITED**  
acting by



**EXECUTED** as a **DEED** by  
**TRANSIT BIDCO LIMITED**  
acting by

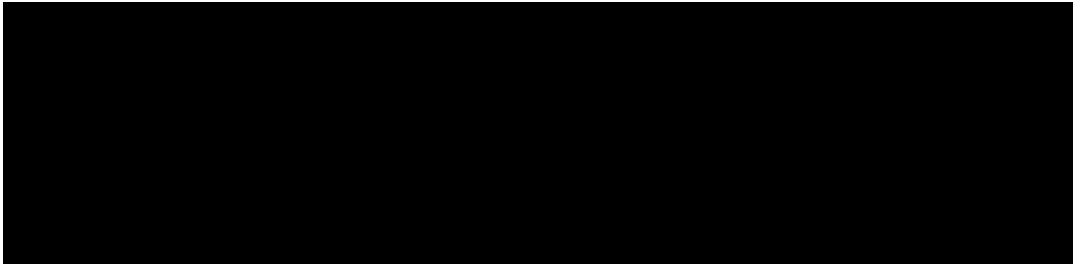
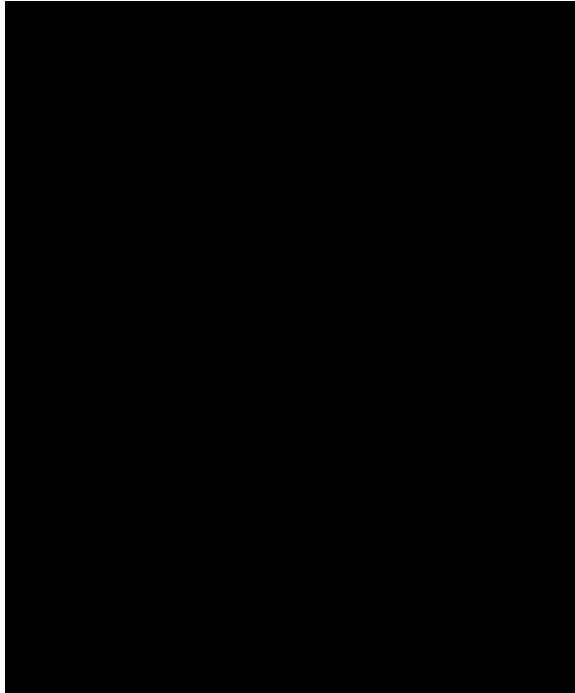




**The Intra-Group Lenders**

**EXECUTED** as a **DEED** by  
**TRANSIT BIDCO LIMITED**  
acting by

**EXECUTED** as a **DEED** by  
**TRANSIT BIDCO LIMITED**  
acting by



**The Security Agent**

**ALTER DOMUS TRUSTEES (UK) LIMITED**

