



**Registration of a Charge**

Company name: **HEATHROW TOP LIMITED**

Company number: **08806247**



X7CP9MDN

Received for Electronic Filing: **20/08/2018**

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**Details of Charge**

Date of creation: **10/08/2018**

Charge code: **0880 6247 0004**

Persons entitled: **WISE TRADING LIMITED (COMPANY NUMBER: 02328215)**

Brief description: **1 STATUS PARK, NOBEL DRIVE, HARLINGTON, UB3 5EY (LAND REGISTRY TITLE NUMBER: AGL42610) THIS IS THE SECOND CHARGE AND THE CHARGE DATED 10 AUGUST 2018 IN FAVOUR OF THE ROYAL BANK OF SCOTLAND PLC RANKS AHEAD OF THIS CHARGE.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **IBB SOLICITORS**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 8806247

Charge code: 0880 6247 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 10th August 2018 and created by HEATHROW TOP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th August 2018 .

Given at Companies House, Cardiff on 22nd August 2018

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

Date

10 August

2018

**(1) WISE TRADING LIMITED**

and

**(2) HEATHROW TOP LIMITED**

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**LEGAL CHARGE**

in relation to 1 Status Park, Nobel Drive, Harlington, UB3 5EY

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**This Charge is entered into subject to the terms of the Intercreditor Agreement (as defined herein)**

THIS LEGAL CHARGE is made the 10th day of August 2018

BETWEEN

- (1) **WISE TRADING LIMITED** a company registered in England and Wales with registered number 02328215 and whose registered office is at Long Drive, Station Approach, South Ruislip, Middlesex, HA4 0HN (the "**Chargee**")
- (2) **HEATHROW TOP LIMITED** a company registered in England and Wales with registered number 08806247 and whose registered office is at Long Drive, Station Approach, South Ruislip, Middlesex, HA4 0HN (the "**Chargor**")

WHEREAS

- i By virtue of the provisions of a Facility Agreement of (the "**Agreement**") dated 6 August 2018 made between the Chargee (1) and the Chargor (2) the Chargee made the Loan (as defined in the Agreement) to the Chargor.
- ii The Loan and any money that may become payable to the Chargee under the Agreement are together hereinafter referred to as the "**Secured Money**".
- iii As security for payment of the Secured Money the Chargor has agreed to grant a charge over the property defined in the Schedule (the "**Charged Property**") to the Chargee on the terms herein contained.
- iv This Agreement is subject to the terms of an intercreditor agreement dated on or about the date of this Charge made between, amongst others, the Chargee (as subordinated creditor) and The Royal Bank of Scotland plc (as agent and security agent) (the "**Intercreditor Agreement**") and to the extent that there is any inconsistency between this Charge and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall prevail.
- v Any reference to "**Business Day**" in this Agreement means a day (other than a Saturday or a Sunday) on which banks are open for general business in London.

NOW THIS DEED WITNESSETH as follows:

1. **Covenant to Pay**

Subject to the terms of the Intercreditor Agreement:

- 1.1 the Chargor covenants with the Chargee to pay to the Chargee the Secured Money as and when the amounts that comprise the Secured Money respectively fall due for payment together (in default) with interest as stipulated in the Agreement; and
- 1.2. the Chargor as continuing security for the Secured Money with full title guarantee hereby charges to the Chargee by way of legal mortgage the Charged Property.

1.3. The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 (the "LPA") (as varied or extended by this Charge) shall, as between the Chargee and a purchaser from the Chargee, arise upon and be exercisable at any time after the execution hereof but as between the Chargor and the Chargee the Chargee shall not exercise the said powers and each of them shall only become exercisable on the happening of any one or more of the following events:-

(a) if the Chargor fails to pay the Secured Money to the Chargee in accordance with the provisions of the Agreement;

(b) in the event of any material non-observance or non-performance of the obligations of the Chargor contained in the Agreement; or

(c) in the event of:

- i. the appointment of an administrator in respect of the company or the filing at court of a notice of intention to appoint an administrator or the issue of an application for an administration order;
- ii. any person becoming entitled to exercise in relation to the company the powers conferred on an administrative receiver or any person being appointed as administrative receiver in respect of the company;
- iii. the making of an order or the passing of a resolution to wind up the company;
- iv. the appointment of a provisional liquidator in respect of the company;
- v. the making of a proposal under Part 1 of the Insolvency Act 1986 for a voluntary arrangement in respect of the company;
- vi. the making of a proposal for a compromise or arrangement under Part 26 of the Companies Act 2006 in respect of the company;

then the whole of the Secured Money shall become immediately payable, this Charge shall become enforceable and the Chargee may exercise all statutory powers conferred on mortgagees by the LPA or any Act amending the same subject to any Order of the Court thereby required for the exercise of such powers

## **2. Chargor Covenants**

The Chargor hereby covenants with the Chargee as follows:

(a) to observe and perform all covenants, stipulations, obligations and/or restrictions of whatever kind affecting the Charged Property or any part or parts thereof or the use of it or borrowings by or securities issued by the Chargor and the Chargor hereby warrants and represents that the Chargor is not and will not as a result of the creation of this Charge or the borrowing of any monies intended to be hereby secured be in breach of any such obligations or restrictions;

(b) to pay and indemnify the Chargee (and any Receiver) against all existing and future rents, taxes, rates, duties, fees, charges, assessments, impositions and outgoings whatsoever (whether imposed by deed, statute or otherwise and whether in the nature of capital or revenue and even though of a wholly novel

character) which may now or in the future be properly payable in respect of the Charged Property or by its owner or occupier.

### **3. Statutory powers**

Section 103 of the LPA (restricting the power of sale) does not apply to the security constituted by this Charge.

### **4. Release**

On the repayment in full of the Loan (but not otherwise), the Chargee shall, at the request and cost of the Chargor, take whatever action is necessary to release the Property from the security constituted by this Charge.

### **5. Assignment and Transfer**

The Chargor may not assign any of its rights, or transfer any of its obligations, under this Charge or enter into any transaction which would result in any of those rights or obligations passing to another person.

### **6. Continuing Security etc.**

- 6.1 This Charge shall remain in full force and effect as a continuing security for the Secured Money unless and until the Chargee discharges this Charge in writing.
- 6.2 The rights and powers of the Chargee conferred by this Charge are cumulative, may be exercised as often as the Chargee considers appropriate, and are in addition to its rights and powers under the general law.
- 6.3 Any waiver or variation of any right by the Chargee (whether arising under this Charge or under the general law) shall only be effective if it is in writing and signed by the Chargee and applies only in the circumstances for which it was given, and shall not prevent the Lender from subsequently relying on the relevant provision.
- 6.4 No act or course of conduct or negotiation by or on behalf of the Chargee shall, in any way, preclude the Chargee from exercising any right or power under this Charge or constitute a suspension or variation of any such right or power.
- 6.5 No delay or failure to exercise any right or power under this Charge shall operate as a waiver.

### **7. Notices**

- 7.1 Each notice or other communication required to be given under, or in connection with, this Charge shall be:
  - (a) in writing, delivered personally or sent by pre-paid first-class letter; and
  - (b) sent:

- (i) to the Chargor at
- (ii) to the Chargee at

or to such other address as is notified in writing by one party to the other from time to time.

7.2 Any notice or other communication shall be deemed to have been received:

- (a) if given by hand, at the time of actual delivery; and
- (b) if posted, on the second Business Day (being a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London) after the day it was sent by pre-paid first-class post.

7.3 A notice or other communication given as described in clause 9.1 on a day which is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## **8. Counterparts**

This Charge may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which when taken together shall constitute a single document.

## **9. Governing Law**

This Charge and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

IN WITNESS whereof this document has been executed as a deed and delivered by the Chargor the day and year first before written

## **SCHEDULE**

ALL THAT property known as 1 Status Park, Nobel Drive, Harlington, UB3 5EY registered at the Land Registry under title number AGL42610



**EXECUTED** as a Deed  
by **WISE TRADING LIMITED**  
acting by two Directors or a Director  
and its Secretary:-

) Pashmi J. Bhargava  
)  
)  
)  
)

B.S. V

Director

Director/Secretary

**EXECUTED** as a Deed  
by **HEATHROW TOP LIMITED**  
acting by two Directors or a Director  
and its Secretary:-

) Pashmi J. Bhargava  
)  
)  
)  
)

B.S. V

Director

Director/Secretary

**DATED** 10 August 2018

**EXECUTION VERSION**  
**AS06/71376.09760/WHJO**

**(1) THE ROYAL BANK OF SCOTLAND PLC**  
**as Facility Agent**

**(2) THE SENIOR LENDERS**

**(3) THE SUBORDINATED CREDITOR**

**(4) HEATHROW TOP LIMITED**  
**as Borrower**

**(5) THE ROYAL BANK OF SCOTLAND PLC**  
**acting as Security Agent**

**AND OTHERS**

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**INTERCREDITOR AGREEMENT**

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THIS AGREEMENT is made on

10 August

2018

BETWEEN:-

- (1) THE ROYAL BANK OF SCOTLAND PLC (the "Facility Agent");
- (2) THE ROYAL BANK OF SCOTLAND PLC (the "Arranger");
- (3) THE FINANCIAL INSTITUTIONS named on the signing pages (the "Senior Lenders");
- (4) WISE TRADING LIMITED, a company incorporated under the laws of England and Wales with company number 02328215 (the "Subordinated Creditor");
- (5) SAVERA LONDON HOLDINGS LTD a company incorporated under the laws of England and Wales with company number 10405693 (the "Parent");
- (6) HEATHROW TOP LIMITED a company incorporated under the laws of England and Wales with company number 08806247 (the "Borrower");
- (7) THE SUBSIDIARIES of the Parent named on the signing pages as Debtors (together with the Parent and the Borrower, the "Original Debtors"); and
- (8) THE ROYAL BANK OF SCOTLAND PLC as security trustee for the Secured Parties (the "Security Agent").

IT IS AGREED as follows:-

## SECTION 1

### INTERPRETATION

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Agreement:-

|                         |   |
|-------------------------|---|
| "Acceleration Event"    | means the Facility Agent exercising any of its rights under clause 25.20 ( <i>Acceleration</i> ) of the Senior Facilities Agreement   |
| "Affiliate"             | means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company   |
| "Appropriation"         | means the appropriation (or similar process) of the shares in the capital of a member of the Group by the Security Agent (or any Receiver or Delegate) which is effected (to the extent permitted under the relevant Security Document and applicable law) by enforcement of the Transaction Security |
| "Available Commitment"  | in relation to a Senior Lender, has the meaning given to the term "Available Commitment" in the Senior Facilities Agreement   |
| "Borrowing Liabilities" | means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to a   |

Arranger or a Facility Agent) or a Debtor in respect of Financial Indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a borrower under the Senior Finance Documents)

|                                  |  |
|----------------------------------|--|
| "Business Day"                   | has the meaning given to the term <b>"Business Day"</b> in the Senior Facilities Agreement   |
| "Cash Proceeds"                  | means:- <ul style="list-style-type: none"><li>(a) proceeds of the Security Property which are in the form of cash and</li><li>(b) any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any proceeds of the Security Property which are in the form of Non-Cash Consideration</li></ul>  |
| "Charged Property"               | means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security   |
| "Commitment"                     | means a Senior Commitment  |
| "Consent"                        | means any consent, approval, release or waiver or agreement to any amendment   |
| "Creditor Accession Undertaking" | means:- <ul style="list-style-type: none"><li>(a) an undertaking substantially in the form set out in Schedule 1 (<i>Form of Creditor Accession Undertaking</i>) or</li><li>(b) a Transfer Certificate, Assignment Agreement, Increase Confirmation (each as defined in the relevant Facility Agreement) (<b>provided that</b> it contains an accession to this Agreement which is substantially in the form set out in Schedule 1 (<i>Form of Creditor Accession Undertaking</i>))</li></ul> as the context may require |
| "Creditors"                      | means the Senior Creditors and the Subordinated Creditor   |
| "Debt Disposal"                  | means any disposal of any Liabilities pursuant to Clause 9.1.4   |
| "Debt Document"                  | means each of this Agreement, the Senior Finance Documents, the Subordinated Finance Documents, the Security Documents and any other document designated as such by the Security Agent and the Parent  |
| "Debtor"                         | means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 14 ( <i>Changes to the Parties</i> )  |

|                              |  |
|------------------------------|--|
| <b>"Default"</b>             | means an Event of Default or any event or circumstance specified in clause 25 ( <i>Events of Default</i> ) of the Senior Facilities Agreement which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Senior Finance Documents or any combination of any of the foregoing) be an Event of Default  |
| <b>"Delegate"</b>            | means any delegate, agent, attorney or co-trustee appointed by the Security Agent  |
| <b>"Distress Event"</b>      | means any of:- <ul style="list-style-type: none"> <li>(a) an Acceleration Event or</li> <li>(b) the enforcement of any Transaction Security</li> </ul>   |
| <b>"Distressed Disposal"</b> | means a disposal of an asset of a member of the Group which is:- <ul style="list-style-type: none"> <li>(a) being effected at the request of the Majority Senior Lenders in circumstances where the Transaction Security has become enforceable</li> <li>(b) being effected by enforcement of the Transaction Security (including the disposal of any Property of a member of the Group, the shares in which have been subject to an Appropriation) or</li> <li>(c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is, or are, not a member, or members, of the Group</li> </ul>   |
| <b>"Enforcement Action"</b>  | means:- <ul style="list-style-type: none"> <li>(a) in relation to any Liabilities:- <ul style="list-style-type: none"> <li>(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 Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Senior Finance Documents)</li> <li>(ii) the making of any declaration that any Liabilities are payable on demand</li> <li>(iii) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group</li> <li>(iv) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put</li> </ul> </li> </ul> |

or call option against any member of the Group for the redemption or purchase of any Liability

- (v) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities
- (b) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security)
- (c) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 14 (*Changes to the Parties*)) or
- (d) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:-

- (i) the taking of any action falling within paragraphs (a)(v) or (d) 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

|                                  |  |
|----------------------------------|--|
| <b>"Event of Default"</b>        | means any event or circumstance specified as such in the Senior Facilities Agreement   |
| <b>"Financial Adviser"</b>       | means any:- <ul style="list-style-type: none"> <li>(a) valuer or surveyor</li> <li>(b) independent investment bank</li> <li>(c) independent accountancy firm or</li> <li>(d) other independent professional services firm</li> </ul>   |
| <b>"Financial Indebtedness"</b>  | has the meaning given to that term in the Senior Facilities Agreement  |
| <b>"Group"</b>                   | means the Parent and each of its Subsidiaries for the time being   |
| <b>"Guarantee Liabilities"</b>   | means, in relation to a member of the Group, the liabilities and obligations under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (other than to a Arranger or a Facility Agent) or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Senior Finance Documents)   |
| <b>"Holding Company"</b>         | has the meaning given to the term <b>"Holding Company"</b> in the Senior Facilities Agreement  |
| <b>"Insolvency Event"</b>        | means, in relation to any member of the Group:- <ul style="list-style-type: none"> <li>(a) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of that member of the Group, a moratorium is declared in relation to any indebtedness of that member of the Group or an administrator is appointed to that member of the Group</li> <li>(b) any composition, compromise, assignment or arrangement is made with any of its creditors</li> <li>(c) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that member of the Group or any of its assets or</li> <li>(d) any analogous procedure or step is taken in any jurisdiction</li> </ul> |
| <b>"Intercreditor Amendment"</b> | means any amendment or waiver which is subject to Clause 20 ( <i>Consents, Amendments and Override</i> )   |



|  |  |
|--|--|
| <b>"Liabilities"</b>                     | <p>means all present and future liabilities and obligations at any time of any member of the Group to any Creditor under the Debt Documents, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:-</p> <ul style="list-style-type: none"> <li>(a) any refinancing, novation, deferral or extension</li> <li>(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</li> <li>(c) any claim for damages or restitution and</li> <li>(d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,</li> </ul> <p>and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings</p> |
| <b>"Liabilities Acquisition"</b>         | <p>means, in relation to a person and to any Liabilities, a transaction where that person:-</p> <ul style="list-style-type: none"> <li>(a) purchases by way of assignment or transfer</li> <li>(b) enters into any sub-participation in respect of or</li> <li>(c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,</li> </ul> <p>the rights in respect of those Liabilities</p>   |
| <b>"Liabilities Sale"</b>                | means a Debt Disposal pursuant to Clause 9.1.5   |
| <b>"Majority Senior Lenders"</b>         | means the <b>"Majority Lenders"</b> under and as defined in the Senior Facilities Agreement  |
| <b>"Subordinated Facility Agreement"</b> | means the subordinated facility agreement made between the Borrower and the Subordinated Creditor dated on the date of this Agreement  |
| <b>"Subordinated Finance Documents"</b>  | means the Subordinated Facility Agreement and the Subordinated Security Document   |
| <b>"Non-Cash Consideration"</b>          | means consideration in a form other than cash  |
| <b>"Non-Cash Recoveries"</b>             | means:-  |

- (a) any proceeds of a Distressed Disposal or a Debt Disposal or
- (b) any amount distributed to the Security Agent pursuant to Clause 5.1 (Turnover by the Creditors),

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

**"Non-Distressed Disposal"** has the meaning given to that term in Clause 8 (*Non-Distressed Disposals*)

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

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

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

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

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

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

**"Recoveries"** has the meaning given to that term in Clause 12.1 (*Order of Application*)

**"Relevant Liabilities"** means:-

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

|                              |  |
|------------------------------|--|
| <b>"Secured Obligations"</b> | means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity   |
| <b>"Secured Parties"</b>     | means the Security Agent, any Receiver or Delegate and each of the Senior Creditors from time to time but, in the case of each Senior Creditor, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 14.4 ( <i>Creditor Accession Undertaking</i> )   |
| <b>"Security"</b>            | means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect  |
| <b>"Security Documents"</b>  | means:- <ul style="list-style-type: none"> <li>(a) each of the Transaction Security Documents</li> <li>(b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured Obligations and</li> <li>(c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b) above</li> </ul>  |
| <b>"Security Property"</b>   | means:- <ul style="list-style-type: none"> <li>(a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security</li> <li>(b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as trustee for the Secured Parties</li> <li>(c) the Security Agent's interest in any trust fund created pursuant to Clause 5 (<i>Turnover of Receipts</i>)</li> <li>(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 the Secured Parties</li> </ul> |
| <b>"Senior Commitment"</b>   | means a "Commitment" under and as defined in the   |

|   |   |
|---|---|
|   | Senior Facilities Agreement   |
| <b>"Senior Credit Participation"</b>    | means, in relation to a Senior Lender the aggregate of its aggregate Senior Commitments, if any   |
| <b>"Senior Creditors"</b>               | means the Facility Agent, the Arranger and each Senior Lender   |
| <b>"Senior Default"</b>                 | means a Default under the Senior Facilities Agreement   |
| <b>"Senior Discharge Date"</b>          | means the first date on which all Senior Liabilities have been fully and finally discharged to the satisfaction of the Facility Agent, 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 Debt Documents |
| <b>"Senior Facilities Agreement"</b>    | means the senior facilities agreement made between the Parent, the Borrower, the Senior Creditors and others dated on or about the date of this Agreement   |
| <b>"Senior Facility"</b>                | has the meaning given to the term <b>"Facility"</b> in the Senior Facilities Agreement  |
| <b>"Senior Facility Liabilities"</b>    | means the Liabilities owed by the Debtors to the Senior Creditors under the Senior Finance Documents  |
| <b>"Senior Finance Documents"</b>       | has the meaning given to the term <b>"Finance Documents"</b> in the Senior Facilities Agreement   |
| <b>"Senior Lenders"</b>                 | means each Lender (as defined in the Senior Facilities Agreement)   |
| <b>"Senior Termination Date"</b>        | means the date by which all the Senior Facilities are scheduled to have been repaid in full pursuant to the Senior Facilities Agreement   |
| <b>"Subordinated Liabilities"</b>       | means the Liabilities owed to the Subordinated Creditor by the Borrower under the Subordinated Facility Agreement   |
| <b>"Subordinated Security Document"</b> | means the legal charge dated on the date of this Agreement granted by the Borrower in favour of the Subordinated Creditor   |
| <b>"Subsidiary"</b>                     | has the meaning given to the term <b>"Subsidiary"</b> in the Senior Facilities Agreement  |
| <b>"Tax"</b>                            | means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same)   |
| <b>"Transaction Security"</b>           | means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Security Documents   |
| <b>"Transaction Security Documents"</b> | means the <b>"Transaction Security Documents"</b> under and as defined in the Senior Facilities Agreement   |

**"VAT"**

means:-

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

**1.2 Construction**

1.2.1 Unless a contrary indication appears, a reference in this Agreement to:-

- (a) any **"Arranger"**, **"Borrower"**, **"Creditor"**, **"Debtor"**, **"Facility Agent"**, **"Parent"**, **"Party"**, **"Senior Creditor"**, **"Security Agent"**, **"Senior Creditor"**, **"Senior Lender"** or **"Subordinated Creditor"** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
- (b) any **"Arranger"**, **"Creditor"**, **"Debtor"**, **"Facility Agent"**, any **"Party"**, the **"Security Agent"** or **"Subordinated Creditor"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with this Agreement;
- (c) an **"amount"** includes an amount of cash and an amount of Non-Cash Consideration;
- (d) **"assets"** includes present and future properties, revenues and rights of every description;
- (e) a **"Debt Document"** or any other agreement or instrument is (other than a reference to a **"Debt Document"** or any other agreement or instrument in **"original form"**) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
- (f) a **"distribution"** of or out of the assets of a member of the Group, includes a distribution of cash and a distribution of Non-Cash Consideration;
- (g) **"enforcing"** (or any derivation) the Transaction Security includes the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor by the Security Agent;
- (h) a **"group of Creditors"** includes all the Creditors and a **"group of Senior Creditors"** includes all the Senior Creditors;
- (i) **"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;

- (j) the "**original form**" of a "**Debt Document**" or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
- (k) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (l) "**proceeds**" of a Distressed Disposal or of a Debt Disposal includes proceeds in cash and in Non Cash Consideration;
- (m) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- (n) a provision of law is a reference to that provision as amended or re-enacted.

1.2.2 Section, Clause and Schedule headings are for ease of reference only.

1.2.3 A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

### 1.3 Third party rights

1.3.1 Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.

1.3.2 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.

1.3.3 Any Receiver, Delegate or any other person described in Clause 13.10.2 may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

## **SECTION 2**

### **RANKING AND SENIOR CREDITORS**

#### **2. RANKING AND PRIORITY**

##### **2.1 Senior Creditor and Subordinated Liabilities**

2.1.1 Each of the Parties agrees that the Subordinated Liabilities are postponed and subordinated to the Liabilities owed by the Debtors to the Senior Creditors.

2.1.2 This Agreement does not provide for, and does not intend to provide for, any ranking as between different indebtedness comprised within the Subordinated Liabilities or between Intra-Group Liabilities.

##### **2.2 Security**

Each of the Parties agrees that the Security constituted by the Subordinated Security Document shall rank and secure the Subordinated Liabilities second, and after all Liabilities owed to any Senior Creditor at all times and in all circumstances.

## SECTION 3

### OTHER CREDITORS

#### 3. SUBORDINATED LIABILITIES

##### 3.1 Restriction on Payment: Subordinated Liabilities

Prior to the Senior Discharge Date, neither the Parent nor any other Debtor shall, and the Parent shall procure that no other member of the Group will, make any Payment of the Subordinated Liabilities at any time unless the taking or receipt of that Payment is permitted under Clause 3.7 (*Permitted Enforcement: Subordinated Creditor*).

##### 3.2 Payment obligations continue

Neither the Parent nor any other Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 3.1 (*Restriction on Payment: Subordinated Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

##### 3.3 No acquisition of Subordinated Liabilities

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

3.3.1 enter into any Liabilities Acquisition; or

3.3.2 beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

in respect of any of the Subordinated Liabilities, unless prior to the Senior Discharge Date, the prior consent of the Majority Senior Lenders is obtained.

##### 3.4 Amendments and Waivers: Subordinated Creditor

Prior to the Senior Discharge Date, the Subordinated Creditor may not amend, waive or agree the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted unless:-

3.4.1 the prior consent of the Majority Senior Lenders is obtained; or

3.4.2 that amendment, waiver or agreement is of a minor and administrative nature and is not prejudicial to the Senior Creditors.

##### 3.5 Security: Subordinated Creditor

The Subordinated Creditor may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from any member of the Group in respect of any of the Subordinated Liabilities prior to the Senior Discharge Date other than the Security created by the Subordinated Security Document.

##### 3.6 Restriction on Enforcement: Subordinated Creditor

Subject to Clause 3.7 (*Permitted Enforcement: Subordinated Creditor*), the Subordinated Creditor shall not be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Senior Discharge Date.



### **3.7 Permitted Enforcement: Subordinated Creditor**

After the occurrence of an Insolvency Event in relation to any member of the Group, the Subordinated Creditor may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Subordinated Creditor in accordance with Clause 4.4 (*Filing of claims*)) exercise any right it may otherwise have in respect of that member of the Group to:-

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

### **3.8 Representations: Subordinated Creditor**

The Subordinated Creditor represents and warrants to the Senior Creditors and the Security Agent that:-

- 3.8.1 it is a corporation, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- 3.8.2 the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
- 3.8.3 the entry into and performance by it of this Agreement does not and will not:-
  - (a) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
  - (b) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

## **SECTION 4**

### **INSOLVENCY, TURNOVER AND ENFORCEMENT**

#### **4. EFFECT OF INSOLVENCY EVENT**

##### **4.1 Distributions**

4.1.1 After the occurrence of an Insolvency Event in relation to any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to make that distribution to the Security Agent (or to such other person as the Security Agent shall direct) until the Liabilities owing to the Secured Parties have been paid in full.

4.1.2 The Security Agent shall apply distributions made to it under Clause 4.1.1 above in accordance with Clause 12 (*Application of Proceeds*).

##### **4.2 Set-Off**

To the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 12 (*Application of Proceeds*).

##### **4.3 Non-cash distributions**

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

##### **4.4 Filing of claims**

After the occurrence of an Insolvency Event in relation to any member of the Group, each Senior Creditor irrevocably authorises the Security Agent, on its behalf, to:-

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

4.4.2 demand, sue, prove and give receipt for any or all of that member of the Group's Liabilities;

4.4.3 collect and receive all distributions on, or on account of, any or all of that member of the Group's Liabilities; and

4.4.4 file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover that member of the Group's Liabilities.

##### **4.5 Further assurance – Insolvency Event**

Each Senior Creditor will:-

4.5.1 do all things that the Security Agent requests in order to give effect to this Clause 4; and

- 4.5.2 If the Security Agent is not entitled to take any of the actions contemplated by this Clause 4 or if the Security Agent requests that a Senior Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action.

#### **4.6 Security Agent Instructions**

For the purposes of Clause 4.1 (*Distributions*), Clause 4.4 (*Filing of claims*) and Clause 4.5 (*Further assurance – Insolvency Event*) the Security Agent shall act:-

- 4.6.1 on the Instructions of the group of Senior Creditors entitled, at that time, to give instructions under Clause 7.1 (*Enforcement Instructions*) or Clause 7.2 (*Manner of enforcement*); or
- 4.6.2 in the absence of any such instructions, as the Security Agent sees fit.

### **5. TURNOVER OF RECEIPTS**

#### **5.1 Turnover by the Creditors**

Subject to Clause 5.2 (*Permitted assurance and receipts*), If at any time prior to the Senior Discharge Date, any Creditor receives or recovers:-

- 5.1.1 any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not made in accordance with Clause 12 (*Application of Proceeds*);
- 5.1.2 any amount by way of set-off in respect of any of the Liabilities owed to it;
- 5.1.3 notwithstanding Clauses 5.1.1 and 5.1.2 above, any amount:-
- (a) on account of, or in relation to, any of the Liabilities:-
    - (i) after the occurrence of a Distress Event; or
    - (ii) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
  - (b) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,
- other than, in each case, any amount received or recovered in accordance with Clause 12 (*Application of Proceeds*);
- 5.1.4 the proceeds of any enforcement of any Transaction Security except in accordance with Clause 12 (*Application of Proceeds*); or
- 5.1.5 any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with Clause 12 (*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:-

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

- (i) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and
  - (ii) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and
- (b) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement/

## **5.2 Permitted assurance and receipts**

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

- 5.2.1 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
- 5.2.2 make any assignment or transfer permitted by Clause 14 (*Changes to the Parties*), and that Senior Creditor shall not be obliged to account to any other Party for any sum received by it as a result of that action.

## **5.3 Amounts received by Debtors**

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

- 5.3.1 hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement; and
- 5.3.2 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.

## **5.4 Saving provision**

If, for any reason, any of the trusts expressed to be created in this Clause 5 should fail or be unenforceable, the affected Creditor or Debtor will promptly pay or distribute an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

## **5.5 Turnover of Non-Cash Consideration**

For the purposes of this Clause 5, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to Clause 5.1 (*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 10.2 (*Cash value of Non-Cash Recoveries*).

## 6. REDISTRIBUTION

### 6.1 Recovering Creditor's rights

6.1.1 Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 4 (*Effect of Insolvency Event*) or Clause 5 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and shall be applied by the Security Agent in accordance with Clause 12 (*Application of Proceeds*).

6.1.2 On an application by the Security Agent pursuant to Clause 12 (*Application of Proceeds*) of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent by the Recovering Creditor (the "**Shared Amount**") will be treated as not having been paid or distributed by that Debtor.

### 6.2 Reversal of redistribution

6.2.1 If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returned by that Recovering Creditor to that Debtor, then:-

(a) each Party that received any part of that Shared Amount pursuant to an application by the Security Agent of that Shared Amount under Clause 6.1 (*Recovering Creditor's rights*) (a "**Sharing Party**") shall, upon request of the Security Agent, pay or distribute to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and

(b) as between the relevant Debtor and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor.

6.2.2 The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under Clause 6.2.1(a) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Party.

## 7. ENFORCEMENT OF TRANSACTION SECURITY

### 7.1 Enforcement Instructions

7.1.1 The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by the Majority Senior Lenders.

7.1.2 Subject to the Transaction Security having become enforceable in accordance with its terms the Majority Senior Lenders may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.

7.1.3 The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 7.1.

**7.2 Manner of enforcement**

If the Transaction Security is being enforced pursuant to Clause 7.1 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Security Agent) as the Majority Senior Lenders shall instruct or, in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate.

**7.3 Waiver of rights**

To the extent permitted under applicable law and subject to Clause 7.1 (*Enforcement Instructions*), Clause 7.2 (*Manner of enforcement*) and Clause 12 (*Application of Proceeds*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount 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.

## **SECTION 5**

### **NON-DISTRESSED DISPOSALS, DISTRESSED DISPOSALS AND CLAIMS**

#### **8. NON-DISTRESSED DISPOSALS**

##### **8.1 Definitions**

In this Clause 8:-

**"Disposal Proceeds"** means the proceeds of a Non-Distressed Disposal; and

**"Non-Distressed Disposal"** means a disposal of:-

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

to a person or persons outside the Group where:-

- (i) (prior to the Senior Facilities Discharge Date) the Facility Agent notifies the Security Agent that that disposal is permitted under the Senior Finance Documents; and
- (ii) that disposal is not a Distressed Disposal.

##### **8.2 Facilitation of Non-Distressed Disposals**

8.2.1 If a disposal of an asset is a Non-Distressed Disposal, the Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) but subject to Clause 8.2.2 below:-

- (a) to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;
- (b) where that asset consists of shares in the capital of a member of the Group, to release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group's Property; and
- (c) to execute and deliver or enter into any release of the Transaction Security or any claim described in Clauses 8.2.1(a) and 8.2.1(b) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.

8.2.2 Each release of Transaction Security or any claim described in Clause 8.2.1 above shall become effective only on the making of the relevant Non-Distressed Disposal.

##### **8.3 Disposal Proceeds**

If any Disposal Proceeds are required to be applied in mandatory prepayment of the Senior Facility Liabilities then those Disposal Proceeds shall be applied in or towards Payment of

the Senior Facility Liabilities in accordance with the terms of the Senior Facilities Agreement and the consent of any other Party shall not be required for that application.

## 9. DISTRESSED DISPOSALS AND APPROPRIATION

### 9.1 Facilitation of Distressed Disposals and Appropriation

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

9.1.1 **release of Transaction Security/non-crystallisation certificates:** to release the Transaction Security or any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that 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;

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

- (a) that Debtor and any Subsidiary of that Debtor from all or any part of:-
  - (i) its Borrowing Liabilities;
  - (ii) its Guarantee Liabilities; and
  - (iii) its Other Liabilities;
- (b) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
- (c) any other claim of a Subordinated Creditor, or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

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

- (a) that Holding Company and any Subsidiary of that Holding Company from all or any part of:-
  - (i) its Borrowing Liabilities;
  - (ii) its Guarantee Liabilities; and
  - (iii) its Other Liabilities;
- (b) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and
- (c) any other claim of a Subordinated Creditor or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtors;



9.1.4 **facilitative disposal of liabilities on a share sale/Appropriation:** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of the Liabilities (other than Liabilities due to any Facility Agent or Arranger) owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities (the "Transferee") will not be treated as a Senior 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 on behalf of the relevant Creditors and Debtors **provided that** notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement;

9.1.5 **sale of liabilities on a share sale/Appropriation:** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of the Liabilities (other than Liabilities due to any Facility Agent or Arranger) owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of:-

- (a) all (and not part only) of the Liabilities owed to the Senior Creditors (other than to any Facility Agent or any Arranger); and
- (b) all or part of any other Liabilities (other than Liabilities owed to any Facility Agent or any Arranger) ,

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

## 9.2 **Form of consideration for Distressed Disposals and Debt Disposals**

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

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

The net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Security Agent for application in accordance with Clause 12 (*Application of Proceeds*) and, to the extent that:-

- 9.3.1 any Liabilities Sale has occurred; or
- 9.3.2 any Appropriation has occurred,

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

## 9.4 **Appointment of Financial Adviser**

9.4.1 Without prejudice to Clause 13.7 (*Rights and discretions*), the Security Agent may engage, or approve the engagement of, (in each case on such terms as it may consider appropriate (including, without limitation, restrictions on that Financial Adviser's liability and the extent to which any advice, valuation or opinion may be relied on or disclosed)), pay for and rely on the services of a Financial Adviser to provide advice, a valuation or an opinion in connection with:-

- (a) a Distressed Disposal or a Debt Disposal;

- (b) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal; or
- (c) any amount of Non-Cash Consideration which is subject to Clause 5.1 (*Turnover by the Creditors*).

9.4.2 For the purposes of Clause 9.4.1 above, the Security Agent shall:

- (a) on the instructions of the Senior Lenders if the Financial Adviser is providing a valuation for the purposes of Clause 10.2 (*Cash value of Non-Cash Recoveries*); or
- (b) act in accordance with Clause 9.5 (Security Agent's actions).

## 9.5 Security Agent's actions

For the purposes of Clause 9.1 (*Facilitation of Distressed Disposals and Appropriation*), Clause 9.2 (*Form of consideration for Distressed Disposals and Debt Disposals*) the Security Agent shall act:-

9.5.1 in the case of an Appropriation or if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 7.2 (*Manner of enforcement*); and

9.5.2 in any other case:-

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

## 10. NON-CASH RECOVERIES

### 10.1 Security Agent and Non-Cash Recoveries

To the extent the Security Agent receives or recovers any Non-Cash Recoveries, it may (acting on the instructions of the Senior Lenders) but without prejudice to its ability to exercise discretion under Clause 12.2 (*Prospective liabilities*):-

- 10.1.1 distribute those Non-Cash Recoveries pursuant to Clause 12 (*Application of proceeds*) as if they were Cash Proceeds;
- 10.1.2 hold, manage, exploit, collect, realise and dispose of those Non-Cash Recoveries; and
- 10.1.3 hold, manage, exploit, collect, realise and distribute any resulting Cash Proceeds.

### 10.2 Cash value of Non-Cash Recoveries

- 10.2.1 The cash value of any Non-Cash Recoveries shall be determined by reference to a valuation obtained by the Security Agent from a Financial Adviser appointed by the Security Agent pursuant to Clause 9.4 (*Appointment of Financial Adviser*).
- 10.2.2 If any Non-Cash Recoveries are distributed pursuant to Clause 12 (*Application of proceeds*), the extent to which such distribution is treated as discharging the Liabilities shall be determined by reference to the cash value of those Non-Cash Recoveries determined pursuant to Clause 10.2.1 above.

### 10.3 Facility Agent and Non-Cash Recoveries

10.3.1 Subject to Clause 10.3.2 below and to Clause 10.4 (*Alternative to Non-Cash Consideration*), if, pursuant to Clause 12.1 (*Order of application*), the Facility Agent receives Non-Cash Recoveries for application towards the discharge of any Liabilities, the Facility Agent shall apply those Non-Cash Recoveries in accordance with the relevant Facility Agreement as if they were Cash Proceeds.

10.3.2 The Facility Agent may:-

- (a) use any reasonably suitable method of distribution, as it may determine in its discretion, to distribute those Non-Cash Recoveries in the order of priority that would apply under the relevant Facility Agreement if those Non-Cash Recoveries were Cash Proceeds;
- (b) hold any Non-Cash Recoveries through another person; and
- (c) hold any amount of Non-Cash Recoveries for so long as that Facility Agent shall think fit for later application pursuant to Clause 10.3.1 above.

#### 10.4 **Alternative to Non-Cash Consideration**

10.4.1 If any Non-Cash Recoveries are to be distributed pursuant to Clause 12 (*Application of proceeds*), the Security Agent shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify the Senior Creditors entitled to receive those Non-Cash Recoveries pursuant to that distribution (the "**Entitled Creditors**").

10.4.2 If:-

- (a) it would be unlawful for an Entitled Creditor to receive such Non-Cash Recoveries (or it would otherwise conflict with that Entitled Creditor's constitutional documents for it to do so); and
- (b) that Entitled Creditor promptly so notifies the Security Agent and supplies such supporting evidence as the Security Agent may reasonably require,

that Senior Creditor shall be a "**Cash Only Creditor**" and the Non-Cash Recoveries to which it is entitled shall be "**Retained Non-Cash**".

10.4.3 To the extent that, in relation to any distribution of Non-Cash Recoveries, there is a Cash Only Creditor:-

- (a) the Security Agent shall not distribute any Retained Non-Cash to that Cash Only Creditor (or to any Facility Agent on behalf of that Cash Only Creditor) but shall otherwise treat the Non-Cash Recoveries in accordance with this Agreement;
- (b) if that Cash Only Creditor is a Senior Creditor the Security Agent shall notify the relevant Facility Agent of that Cash Only Creditor's identity and its status as a Cash Only Creditor; and
- (c) to the extent notified pursuant to Clause 10.4.3(b) above, no Facility Agent shall distribute any of those Non-Cash Recoveries to that Cash Only Creditor.

10.4.4 Subject to Clause 10.5 (*Security Agent protection*), the Security Agent shall hold any Retained Non-Cash and shall, acting on the instructions of the Cash Only Creditor entitled to it, manage, exploit, collect, realise and dispose of that Retained Non-Cash for cash consideration and shall distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 12 (*Application of proceeds*).

10.4.5 On any such distribution of Cash Proceeds which are attributable to a disposal of any Retained Non-Cash, the extent to which such distribution is treated as discharging the Liabilities due to the relevant Cash Only Creditor shall be determined by reference to:-

- (a) the valuation which determined the extent to which the distribution of the Non-Cash Recoveries to the other Entitled Creditors discharged the Liabilities due to those Entitled Creditors; and
- (b) the Retained Non-Cash to which those Cash Proceeds are attributable.

10.4.6 Each Senior Creditor shall, following a request by the Security Agent (acting in accordance with Clause 9.5 (*Security Agent's actions*)), notify the Security Agent of the extent to which Clause 10.4.2(a) above would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries.

## 10.5 Security Agent protection

10.5.1 No Distressed Disposal or Debt Disposal may be made in whole or part for Non-Cash Consideration if the Security Agent has reasonable grounds for believing that its receiving, distributing, holding, managing, exploiting, collecting, realising or disposing of that Non-Cash Consideration would have an adverse effect on it.

10.5.2 If Non-Cash Consideration is distributed to the Security Agent pursuant to Clause 5.1 (*Turnover by the Creditors*) the Security Agent may, at any time after notifying the Creditors entitled to that Non-Cash Consideration and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Non-Cash Consideration for cash consideration (and distribute any Cash Proceeds of that Non-Cash Consideration to the relevant Creditors in accordance with Clause 12 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.

10.5.3 If the Security Agent holds Retained Non-Cash for a Cash Only Creditor (each as defined in Clause 10.4 (*Alternative to Non-Cash Consideration*)) the Security Agent may at any time, after notifying that Cash Only Creditor and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Retained Non-Cash for cash consideration (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 12 (*Application of proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Retained Non-Cash would have an adverse effect on it.

## 11. FURTHER ASSURANCE – DISPOSALS AND RELEASES

Each Creditor and Debtor will:-

11.1.1 do all things that the Security Agent requests in order to give effect to Clause 8 (*Non-Distressed Disposals*) and Clause 9 (*Distressed Disposals and Appropriation*) (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 those Clauses); and

11.1.2 if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

**provided that the proceeds of those disposals are applied in accordance with Clause 8 (*Non-Distressed Disposals*) or Clause 9 (*Distressed Disposals and Appropriation*) as the case may be.**

## SECTION 6

### PROCEEDS

#### 12. APPLICATION OF PROCEEDS

##### 12.1 Order of application

Subject to Clause 12.2 (*Prospective liabilities*), 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 12, the "**Recoveries**") shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 12), in the following order of priority:-

- 12.1.1 in discharging any sums owing to the Security Agent, any Receiver or any Delegate;
- 12.1.2 in discharging all costs and expenses incurred by any Senior 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 4.5 (*Further assurance – Insolvency Event*);
- 12.1.3 in payment or distribution to the Facility Agent on its own behalf and on behalf of the other Senior Creditors; and for application towards the discharge of the Senior Facility Liabilities (in accordance with the terms of the Senior Finance Documents); and
- 12.1.4 in payment to the Subordinated Creditor;
- 12.1.5 if none of the Debtors is under any further actual or contingent liability under any Senior Finance Document or Subordinated Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and
- 12.1.6 the balance, if any, in payment or distribution to the relevant Debtor.

##### 12.2 Prospective liabilities

Following a Distress Event the Security Agent may, in its discretion:-

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

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

in each case for so long as the Security Agent shall think fit for later application under Clause 12.1 (Order of application) in respect of:-

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

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

### **12.3 Investment of Cash Proceeds**

Prior to the application of the proceeds of the Security Property in accordance with Clause 12.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of any Cash Proceeds in one or more interest bearing suspense or impersonal accounts in the name of the 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 12.

### **12.4 Permitted Deductions**

The Security Agent shall be entitled, in its discretion:-

12.4.1 to set aside by way of reserve amounts required to meet; and

12.4.2 to make and pay,

any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any law or regulation to make from any distribution or payment made by it under this Agreement, and to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties or exercising its rights, powers, authorities and discretions, or by virtue of its capacity as Security Agent under any of the Debt Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

### **12.5 Good Discharge**

12.5.1 Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent may be made to the Facility Agent on behalf of the Senior Creditors. Any such distribution or payment shall be a good discharge, to the extent of that payment or distribution, by the Security Agent:

(a) in the case of a payment made in cash, to the extent of that payment; and

(b) in the case of a distribution of Non-Cash Recoveries, as determined by Clause 10.2 (*Cash value of Non-Cash Recoveries*).

12.5.2 The Security Agent is under no obligation to make the payments to the Facility Agents under Clause 12.5.1 above in the same currency as that in which the Liabilities owing to the relevant Senior Creditor are denominated pursuant to the relevant Debt Document.

### **12.6 Calculation of Amounts**

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

12.6.1 notionally convert the Liabilities owed to any person into a common base currency (decided in its discretion by the Security Agent), that notional conversion to be made at the spot rate at which the Security Agent is able to purchase the notional base currency with the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made; and

12.6.2 assume that all amounts received or recovered as a result of the enforcement or realisation of the Security Property are applied in discharge of the Liabilities in

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



## SECTION 7

### THE PARTIES

#### 13. THE SECURITY AGENT

##### 13.1 Security Agent as trustee

13.1.1 The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.

13.1.2 Each of the Senior Creditors authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions.

##### 13.2 Instructions

13.2.1 The Security Agent shall:-

- (a) subject to Clauses 13.2.4 and 13.2.5 below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Majority Senior Lenders; and
- (b) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with Clause 13.2.1(a) above (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in accordance with instructions given to it by that Creditor or group of Creditors).

13.2.2 The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Senior Lenders (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.

13.2.3 Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Majority Senior Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.

13.2.4 Clause 13.2.1 above shall not apply:-

- (a) where a contrary indication appears in this Agreement;
- (b) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
- (c) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clauses 13.5 (*No duty to account*) to Clause 13.10 (*Exclusion of liability*), Clause 13.13 (*Confidentiality*) to Clause 13.20 (*Custodians and nominees*) and Clause 13.23 (*Acceptance of title*) to Clause 13.26 (*Disapplication of Trustee Acts*);

- (d) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:-
  - (i) Clause 8 (*Non-Distressed Disposals*);
  - (ii) Clause 12.1 (*Order of application*);
  - (iii) Clause 12.2 (*Prospective liabilities*); and
  - (iv) Clause 12.4 (*Permitted Deductions*).
- 13.2.5 If giving effect to instructions given by the Majority Senior Lenders would (in the Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.
- 13.2.6 In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:-
  - (a) it has not received any instructions as to the exercise of that discretion; or
  - (b) the exercise of that discretion is subject to Clause 13.2.4(d) above,
 the Security Agent shall do so having regard to the interests of all the Secured Parties.
- 13.2.7 The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- 13.2.8 Without prejudice to the provisions of Clause 7 (*Enforcement of Transaction Security*) and the remainder of this Clause 13.2, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

### 13.3 Duties of the Security Agent

- 13.3.1 The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- 13.3.2 The Security Agent shall promptly:-
  - (a) forward to each Facility Agent a copy of any document received by the Security Agent from any Debtor under any Debt Document; and
  - (b) 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.
- 13.3.3 Except where a Debt Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

13.3.4 The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied).

**13.4 No fiduciary duties to Debtors or Subordinated Creditors**

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

**13.5 No duty to account**

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

**13.6 Business with the Group**

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

**13.7 Rights and discretions**

13.7.1 The Security Agent may:-

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

as sufficient evidence that that is the case and, in the case of Clause 13.7.1(c)(i) above, may assume the truth and accuracy of that certificate.

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

- (a) no Default has occurred;
- (b) any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and

- (c) any notice made by the Parent is made on behalf of and with the consent and knowledge of all the Debtors.

13.7.3 The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

13.7.4 Without prejudice to the generality of Clause 13.7.3 above or Clause 13.7.5 below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Senior Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.

13.7.5 The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

13.7.6 The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:-

- (a) be liable for any error of judgment made by any such person; or
- (b) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.

13.7.7 Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.

13.7.8 Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

13.7.9 Notwithstanding any provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

### **13.8 Responsibility for documentation**

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

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

13.8.2 the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property or any other agreement, arrangement or

document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property; or

- 13.8.3 any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

### **13.9 No duty to monitor**

The Security Agent shall not be bound to enquire:-

- 13.9.1 whether or not any Default has occurred;
- 13.9.2 as to the performance, default or any breach by any Party of its obligations under any Debt Document; or
- 13.9.3 whether any other event specified in any Debt Document has occurred.

### **13.10 Exclusion of liability**

- 13.10.1 Without limiting Clause 13.10.2 below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:-

- (a) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
- (b) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document or the Security Property;
- (c) any shortfall which arises on the enforcement or realisation of the Security Property; or
- (d) without prejudice to the generality of Clauses 13.10.1(a) to 13.10.1(c) above, any damages, costs, losses, 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; 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.

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

13.10.3 Nothing in this Agreement shall oblige the Security Agent to carry out:-

- (a) any "know your customer" or other checks in relation to any person; or
- (b) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Senior Creditor,

on behalf of any Senior Creditor and each Senior 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.

13.10.4 Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Debt Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

### **13.11 Senior Creditors' indemnity to the Security Agent**

13.11.1 Each Senior Creditor shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Senior Creditors for the time being (or, if the Liabilities due to the Senior Creditors are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within five Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).

13.11.2 Subject to Clause 13.11.3 below, the Parent shall immediately on demand reimburse any Senior Creditor for any payment that Senior Creditor makes to the Security Agent pursuant to Clause 13.11.1 above.

13.11.3 Clause 13.11.2 above shall not apply to the extent that the indemnity payment in respect of which the Senior Creditor claims reimbursement relates to a liability of the Security Agent to a Debtor.

### **13.12 Resignation of the Security Agent**

- 13.12.1 The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Senior Creditors and the Parent.
- 13.12.2 Alternatively the Security Agent may resign by giving 30 days' notice to the Senior Creditors and the Parent, in which case the Majority Senior Lenders may appoint a successor Security Agent.
- 13.12.3 If the Majority Senior Lenders has not appointed a successor Security Agent in accordance with Clause 13.12.2 above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Facility Agents) may appoint a successor Security Agent.
- 13.12.4 The retiring Security Agent shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents. The Parent shall, within five Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- 13.12.5 The Security Agent's resignation notice shall only take effect upon:-
- (a) the appointment of a successor; and
  - (b) the transfer of all the Security Property to that successor.
- 13.12.6 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 Clause 13.24.2 and Clause 13.12.4) but shall remain entitled to the benefit of this Clause 13 and Clause 16.1 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- 13.12.7 The Majority Senior Lenders may, by notice to the Security Agent, require it to resign in accordance with Clause 13.12.2 above. In this event, the Security Agent shall resign in accordance with Clause 13.12.2 above but the cost referred to in Clause 13.12.4 above shall be for the account of the Parent.

### **13.13 Confidentiality**

- 13.13.1 In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments.
- 13.13.2 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.
- 13.13.3 Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to disclose to any other person:-
- (a) any confidential information; or
  - (b) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

#### **13.14 Information from the Creditors**

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

#### **13.15 Credit appraisal by the Secured Parties**

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

- 13.15.1 the financial condition, status and nature of each member of the Group;
- 13.15.2 the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- 13.15.3 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;
- 13.15.4 the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and
- 13.15.5 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.

#### **13.16 Security Agent's management time and additional remuneration**

- 13.16.1 Any amount payable to the Security Agent under Clause 13.11 (*Senior Creditors' indemnity to the Security Agent*), Clause 15 (*Costs and expenses*) or Clause 16.1 (*Indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Parent and the Senior Creditors, and is in addition to any other fee paid or payable to the Security Agent.
- 13.16.2 Without prejudice to Clause 13.16.1 above, in the event of:-
  - (a) a Default; or
  - (b) the Security Agent being requested by a Debtor or the Majority Senior Lenders to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Debt Documents; or
  - (c) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,



the Parent shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to Clause 13.16.3 below.

- 13.16.3 If the Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in Clause 13.16.2 above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the Parties.

#### **13.17 Reliance and engagement letters**

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

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

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

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

#### **13.19 Insurance by Security Agent**

13.19.1 The Security Agent shall not be obliged:-

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

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

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

**13.20 Custodians and nominees**

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

**13.21 Delegation by the Security Agent**

- 13.21.1 Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- 13.21.2 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.
- 13.21.3 No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

**13.22 Additional Security Agents**

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

**13.23 Acceptance of title**

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

**13.24 Winding up of trust**

If the Security Agent, with the approval of the Facility Agent, determines that:-

13.24.1 all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and

13.24.2 no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor pursuant to the Debt Documents,

then:-

(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 Security Agent which has resigned pursuant to Clause 13.12 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

**13.25 Powers supplemental to Trustee Acts**

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

**13.26 Disapplication of Trustee Acts**

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

**13.27 Debtors: Power of Attorney**

Each 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 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).

**14. CHANGES TO THE PARTIES**

**14.1 Assignments and transfers**

No Party may:-

14.1.1 assign any of its rights; or

14.1.2 transfer any of its rights and obligations,

in respect of any Debt Documents or the Liabilities except as permitted by this Clause 14.

#### **14.2 Change of Senior Lender**

14.2.1 A Senior Lender may:-

(a) assign any of its rights; or

(b) transfer by novation any of its rights and obligations,

in respect of any Debt Documents or the Liabilities if:-

(i) that assignment or transfer is in accordance with the terms of the Facility Agreement to which it is a party; and

(ii) any assignee or transferee has (if not already a Party as a Senior Lender) acceded to this Agreement, as a Senior Lender, pursuant to Clause 14.4 (*Creditor Accession Undertaking*).

#### **14.3 Change of Facility Agent**

No person shall become a Facility Agent unless at the same time, it accedes to this Agreement as a Facility Agent), pursuant to Clause 14.4 (*Creditor Accession Undertaking*).

#### **14.4 Creditor Accession Undertaking**

With effect from the date of acceptance by the Security Agent and by the Facility Agent, of a Creditor Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor Accession Undertaking:-

14.4.1 any Party ceasing entirely to be a Creditor 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

14.4.2 as from that date, the replacement or new Creditor shall assume the same obligations and become entitled to the same rights, as if it had been an original Party in the capacity specified in the Creditor Accession Undertaking.

#### **14.5 Additional parties**

14.5.1 Each of the Parties appoints the Security Agent to receive on its behalf each Creditor Accession Undertaking delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Facility Agreement.

## **SECTION 8**

### **ADDITIONAL PAYMENT OBLIGATIONS**

#### **15. COSTS AND EXPENSES**

##### **15.1 Transaction expenses**

The Parent shall, promptly on demand, pay the Security Agent the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent and by any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of:-

15.1.1 this Agreement and any other documents referred to in this Agreement and the Transaction Security; and

15.1.2 any other Debt Documents executed after the date of this Agreement.

##### **15.2 Amendment costs**

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

##### **15.3 Enforcement and preservation costs**

The Parent shall, within five Business Days of demand, pay to the Security Agent the amount of all costs and expenses (including legal fees and together with any applicable VAT) incurred by it in connection with the enforcement of or the preservation of any rights under any Debt Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

##### **15.4 Stamp taxes**

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

##### **15.5 Interest on demand**

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is 2 per cent. per annum over the rate at which the Security Agent would be able to obtain by placing on deposit with a leading bank an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select **provided that** if any such rate is below zero, that rate will be deemed to be zero.

#### **16. OTHER INDEMNITIES**

##### **16.1 Indemnity to the Security Agent**

16.1.1 Each Debtor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them as a result of:-

- (a) any failure by the Parent to comply with its obligations under Clause 15 (*Costs and expenses*);
  - (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (c) the taking, holding, protection or enforcement of the Transaction Security;
  - (d) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;
  - (e) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
  - (f) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
  - (g) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- 16.1.2 Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 16.1 will not be prejudiced by any release or disposal under Clause 9 (*Distressed Disposals and Appropriation*) taking into account the operation of that Clause 9.
- 16.1.3 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 this Clause 16.1 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

## 16.2 **Parent's indemnity to Senior Creditors**

The Parent shall promptly and as principal obligor indemnify each Senior Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 9 (*Distressed Disposals and Appropriation*).

**SECTION 9**  
**ADMINISTRATION**

**17. INFORMATION**

**17.1 Dealings with Security Agent and Facility Agents**

Each Senior Creditor shall deal with the Security Agent exclusively through the Facility Agent.

**18. NOTICES**

**18.1 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.

**18.2 Security Agent's communications with Senior Creditors**

The Security Agent shall be entitled to carry out all dealings with the Senior Creditors through their respective Facility Agents and may give to the Facility Agents, as applicable, any notice, a document or other communication required to be given by the Security Agent to a Senior Creditor.

**18.3 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:-

18.3.1 in the case of the Parent or the Company, that identified with its name below;

18.3.2 in the case of the Security Agent, that identified with its name below; and

18.3.3 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.

**18.4 Delivery**

18.4.1 Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:-

(a) if by way of fax, when received in legible form; or

(b) 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 18.3 (*Addresses*), if addressed to that department or officer.

18.4.2 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).

18.4.3 Any communication or document made or delivered to the Parent in accordance with this Clause 18.4 will be deemed to have been made or delivered to each of the Debtors.

18.4.4 Any communication or document which becomes effective, in accordance with Clauses 18.4.1 to 18.4.3 above, after 5:00 pm in the place of receipt shall be deemed only to become effective on the following day.

**18.5 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 18.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

**18.6 Electronic communication**

18.6.1 Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:-

(a) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and

(b) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

18.6.2 Any such electronic communication as specified in Clause 18.6.1 above to be made between a Subordinated Creditor, a Debtor and the Security Agent or a Senior Creditor may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

18.6.3 Any such electronic communication as specified in Clause 18.6.1 above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

18.6.4 Any electronic communication which becomes effective, in accordance with Clause 18.6.3 above, after 5.00 pm in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

18.6.5 Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 18.6.

**18.7 English language**

18.7.1 Any notice given under or in connection with this Agreement must be in English.

18.7.2 All other documents provided under or in connection with this Agreement must be:

(a) in English; or



- (b) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **19. PRESERVATION**

### **19.1 Partial invalidity**

If, at any time, any provision of a Debt Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.

### **19.2 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.

### **19.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Debt Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Debt Document. No election to affirm any Debt Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Debt Document are cumulative and not exclusive of any rights or remedies provided by law.

### **19.4 Waiver of defences**

The provisions of this Agreement or any Transaction Security will not be affected by an act, omission, matter or thing which, but for this Clause 19.4, 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):-

- 19.4.1 any time, waiver or consent granted to, or composition with, any Debtor or other person;
- 19.4.2 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;
- 19.4.3 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;
- 19.4.4 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;
- 19.4.5 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;

- 19.4.6 any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;
- 19.4.7 any intermediate Payment of any of the Liabilities owing to the Senior Creditors in whole or in part; or
- 19.4.8 any insolvency or similar proceedings.

**19.5 Priorities not affected**

Except as otherwise provided in this Agreement the priorities referred to in Clause 2 (*Ranking and Priority*) will:-

- 19.5.1 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 Creditors or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;
- 19.5.2 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
- 19.5.3 secure the Liabilities owing to the Senior 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.

**20. CONSENTS, AMENDMENTS AND OVERRIDE**

**20.1 Required consents**

20.1.1 Subject to Clause 20.1.2 below and to Clause 20.4 (*Exceptions*) this Agreement may be amended or waived only with the consent of the Facility Agents, the Majority Senior Lenders and the Security Agent.

20.1.2 An amendment or waiver that has the effect of changing or which relates to:-

- (a) Clause 6 (*Redistribution*), Clause 12 (*Application of Proceeds*) or this Clause 20 (*Consents, amendments and override*);
- (b) Clauses 13.2.4(c), 13.2.5 and 13.2.6;
- (c) the order of priority or subordination under this Agreement;

shall not be made without the consent of:-

- (i) the Facility Agent;
- (ii) the Senior Lenders; and
- (iii) the Security Agent.

**20.2 Amendments and Waivers: Transaction Security Documents**

20.2.1 Subject to Clause 20.2.2 below and to Clause 20.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Majority Senior Lenders, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.

20.2.2 Subject to Clause 20.4.3, any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:-

- (a) the nature or scope of the Charged Property;
- (b) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
- (c) the release of any Transaction Security,

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

### 20.3 Effectiveness

20.3.1 Any amendment, waiver or consent given in accordance with this Clause 20 will be binding on all Parties and the Security Agent may effect, on behalf of any Senior Creditor, any amendment, waiver or consent permitted by this Clause 20.

20.3.2 Without prejudice to the generality of Clause 13.7 (*Rights and discretions*) the Security Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

### 20.4 Exceptions

20.4.1 Subject to Clauses 20.4.3 and 20.4.4 below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:-

- (a) in the case of a Senior Creditor (other than any Facility Agent or any Arranger), in a way which affects or would affect Senior Creditors of that Party's class generally; or
- (b) in the case of a Debtor, to the extent consented to by the Parent under Clause 20.2.1,

the consent of that Party is required.

20.4.2 Subject to Clauses 20.4.3 and 20.4.4 below, an amendment, waiver or consent which relates to the rights or obligations of a Facility Agent, an Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) may not be effected without the consent of the Facility Agent or, as the case may be, that Arranger or the Security Agent.

20.4.3 Neither Clause 20.4.1 nor 20.4.2 above, nor Clause 20.2.2 shall apply:-

- (a) to any release of Transaction Security, claim or Liabilities; or
- (b) to any consent

which, in each case, the Security Agent gives in accordance with Clause 8 (*Non-Distressed Disposals*) or Clause 9 (*Distressed Disposals and Appropriation*).

20.4.4 Clauses 20.4.1 and 20.4.2 above shall apply to an Arranger only to the extent that Liabilities are then owed to that Arranger.

**20.5 Deemed consent**

20.5.1 If, at any time prior to the Senior Discharge Date, the Senior Creditors give a Consent in respect of the Senior Finance Documents then, if that action was permitted by the terms of this Agreement and the Subordinated Creditor will (or will be deemed to):-

- (a) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
- (b) do anything (including executing any document) that the Senior Creditors may reasonably require to give effect to this Clause 20.5.1.

**20.6 Excluded consents**

Clause 20.5 (*Deemed consent*) does not apply to any Consent which has the effect of:-

20.6.1 increasing or decreasing the Liabilities; or

20.6.2 changing the terms of this Agreement or of any Security Document.

**20.7 No liability**

None of the Senior Creditors will be liable to any other Creditor, or Debtor for any Consent given or deemed to be given under this Clause 20.

**20.8 Agreement to override**

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

**21. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## **SECTION 10**

### **GOVERNING LAW AND ENFORCEMENT**

#### **22. GOVERNING LAW**

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

#### **23. JURISDICTION AND ENFORCEMENT**

23.1 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**").

23.2 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.

23.3 Notwithstanding Clause 23.1 above, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

**This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Debtors and the Subordinated Creditor] and is intended to be and is delivered by them as a deed on the date specified above.**

## SCHEDULE 1

### FORM OF CREDITOR ACCESSION UNDERTAKING

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

[To: *[Insert full name of current Facility Agent]* as Facility Agent.]

From: *[Acceding Creditor]*

THIS UNDERTAKING is made on [date] by *[insert full name of new Senior Lender/Facility Agent/Mezzanine Agent/Arranger]* (the "**Acceding Senior Lender/Facility Agent/ Arranger**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated [ ] between, among others, Savera London Holdings Ltd as parent, Heathrow Top Limited as borrower, The Royal Bank of Scotland plc as security agent, The Royal Bank of Scotland plc as facility agent and Wise Trading Limited as subordinated creditor . Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding *[Senior Lender/Facility Agent/ Arranger]* being accepted as a *[Senior Lender/Facility Agent/Arranger]* for the purposes of the Intercreditor Agreement, the Acceding *[Senior Lender/Facility Agent/Arranger]* confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a *[Senior Lender/Facility Agent/ Arranger]* and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a *[Senior Lender/Facility Agent/Arranger]* and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

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

**THIS UNDERTAKING** has been entered into on the date stated above.

Acceding *[Creditor]*

*[insert full name of Acceding Creditor]*

By:

Address:

Fax:

Accepted by the Security Agent

\_\_\_\_\_  
for and on behalf of

*[Insert full name of current Security Agent]*

Date:

### EXECUTION PAGES

**The Original Debtors**

**The Parent**

EXECUTED AS A DEED

By: **SAVERA LONDON HOLDINGS LTD** acting by:-

*Talbir S. Bhal*

director

*B.S. D*

director/~~secretary~~

Address:

**The Borrower**

EXECUTED AS A DEED

By: **HEATHROW TOP LIMITED** acting by:-

*Talbir S. Bhal*

director

*B.S. D*

director/~~secretary~~

**The other Original Debtors**

Address:

EXECUTED AS A DEED

By: **SAVERA HEATHROW HOTEL LTD** acting by:-

*Talbir S. Bhal*

director

*B.S. D*

director/~~secretary~~

EXECUTED AS A DEED

By: **SAVERA HOSPITALITY LTD** acting by:-

*Talbir S. Bhal*

director

*B.S. D*

director/~~secretary~~

**The Security Agent**

**THE ROYAL BANK OF SCOTLAND PLC**

By:

Address:

Fax:

Attention:

**The Facility Agent**

**THE ROYAL BANK OF SCOTLAND PLC**

By:

**The Senior Lenders**

**THE ROYAL BANK OF SCOTLAND PLC**

By:

**The Arranger**

**THE ROYAL BANK OF SCOTLAND PLC**

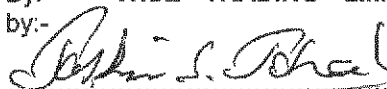
By:

**The Subordinated Creditor**

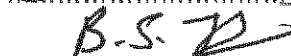
EXECUTED AS A DEED

By: **WISE TRADING LIMITED** acting

by:-



Director



Director/~~Secretary~~