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CHWP000

COMPANIES FORM No. 466(Scot)

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

466

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

Please do not
write in
this margin

Pursuant to section 410 and 466 of the Companies Act 1985

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

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

For official use

Company number

24

SC070429

Name of company

* EXOVA (UK) LIMITED

* insert full name
of company

Date of creation of the charge (note 1)

14 December 2018

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

Second Lien Bond and Floating Charge

Names of the persons entitled to the charge

ING Bank N.V., London Branch as Security Agent

Short particulars of all the property charged

See Paper Apart 1

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

Burness Pauli LLP
120 Bothwell Street
Glasgow
G2 7JL (DX GW 154)

MONDAY

For official use (02/06)
Charges Section



SCT

S7LZ3DNE
31/12/2018
COMPANIES HOUSE

#4

Post to: **COMPANIES HOUSE
EDINBURGH**

31 DEC 2018

FRONT DESK

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

See Paper Apart 2

*Please do not
write in
this margin*

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

Date(s) of execution of the instrument of alteration

14 December 2018

A statement of the provisions, if any, imposed by the instrument of alteration prohibiting or restricting the creation by the company of any fixed security or any other floating charge having, priority over, or ranking pari passu with the floating charge

See Paper Apart 3

Short particulars of any property released from the floating charge

N/A

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

N/A

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

*Please do not
write in
this margin*

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

See Paper Apart 4

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

Signed AKH LS For and on behalf Date _____
On behalf of [company] [chargee] of Business Panel LLP

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

Notes

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

This is the Paper Apart referred to in the foregoing Form 466 (Scotland) in respect of Exova (UK) Limited (the “Company”)

Company Number: SC070429

For definitions please see the attached Agreement and Intercreditor Agreement.

“Agreement” means the amendment deed to the Intercreditor Agreement dated 14 December 2018 and made between, among others, ING Bank N.V, London Branch as Initial Senior Agent, Initial Second Lien Agent and Security Agent and Greenrock Topco Limited as Original Parent; and

“Intercreditor Agreement” means the intercreditor agreement originally dated 19 April 2017, as amended by an amendment deed dated 29 June 2017 and as further amended by the Agreement between, among others, Greenrock Topco Limited as Original Parent ING Bank N.V., London Branch as Initial Senior Agent and Senior Security Agent and Initial Second Lien Security Agent.

Paper Apart 1

The whole of the property (including uncalled capital) which is or may be from time to time while the Instrument is in force comprised in the property and undertaking of the Company.

Paper Apart 2

Executed as follows:

- 1 for and on behalf of the Original Parent by Joseph Daniel Wetz, Director as director before Joelle Wong of Shearman & Sterling LLP, 9 Appold Street, EC2A 2AP as witness;
- 2 for and on behalf of the Initial Senior Agent by Andrew Brookes and Clare Roberts, both authorised signatories;
- 3 for and on behalf of the Security Agent by Andrew Brookes and Clare Roberts, both authorised signatories; and
- 4 for and on behalf of the Initial Second Lien Agent by Andrew Brookes and Clare Roberts, both authorised signatories.

Paper Apart 3

Until the Final Discharge Date, no Debtor shall, without the approval of the Majority Senior Secured Creditors and the Majority Second Lien Creditors, issue or allow to remain outstanding any Liabilities that:

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

in each case unless such ranking or subordination arises as a matter of law or the other terms of the Agreement.

Paper Apart 4

Each of the Parties agrees that:

- (a) the Transaction Security shall secure the Liabilities (but only to the extent that such Transaction Security is expressed to secure those Liabilities) in the following order:
 - (i) **first**, the Senior Secured Liabilities and the Hedging Liabilities *pari passu* and without any preference between them; and
 - (ii) **second**, the Second Lien Liabilities.



FILE COPY

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

COMPANY NO. 70429
CHARGE CODE SC07 0429 0024

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 14 DECEMBER 2018 WERE
DELIVERED PURSUANT TO SECTION 466 OF THE COMPANIES
ACT 1985
ON 31 DECEMBER 2018

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 14
DECEMBER 2018

BY EXOVA (UK) LIMITED

IN FAVOUR OF
ING BANK N.V., LONDON BRANCH AS THE SECURITY AGENT

GIVEN AT COMPANIES HOUSE, EDINBURGH 7 JANUARY 2019



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

AMENDMENT DEED

DATED 14 December 2018

FOR

ING BANK. N.V., LONDON BRANCH
AS INITIAL SENIOR AGENT

ING BANK. N.V., LONDON BRANCH
AS INITIAL SECOND LIEN AGENT

GREENROCK TOPCO LIMITED
AS ORIGINAL PARENT

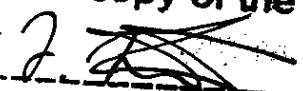
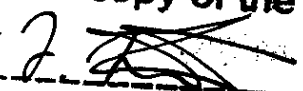
AND

ING BANK. N.V., LONDON BRANCH
AS SECURITY AGENT

AND

OTHERS

RELATING TO AN INTERCREDITOR AGREEMENT
ORIGINALLY DATED 19 APRIL 2017 AS AMENDED
ON 29 JUNE 2017

We hereby certify this
to be a true copy of the
original. 
Signed 
Clifford Chance LLP
10 Upper Bank Street
London E14 5JJ

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THIS DEED is dated 14 December 2018 and made between:

- (1) **ING BANK. N.V., LONDON BRANCH** as Initial Senior Agent;
- (2) **ING BANK. N.V., LONDON BRANCH** as Initial Second Lien Agent;
- (3) **GREENROCK TOPCO LIMITED**, a limited liability company incorporated under the laws of England and Wales, having its registered office at 5 Fleet Place, London, England registered number 10702564 (the "**Original Parent**"); and
- (4) **ING BANK. N.V., LONDON BRANCH** as security agent for the Secured Creditors and for and on behalf of the Primary Creditors (the "**Security Agent**").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"Conditions" means the terms and conditions of the Second Lien Notes attached as Schedule 1 to the Second Lien Deed of Covenant and Guarantee.

"Original Intercreditor Agreement" means the intercreditor agreement dated 19 April 2017, as amended by an amendment deed dated 29 June 2017, between, amongst others, the Initial Senior Agent, the Initial Second Lien Agent, the Initial Senior Lenders, the Initial Second Lien Lenders, the Original Parent, the Original Debtors, the Original Intra-Group Lenders, Holdco and the Security Agent (as amended and/or restated from time to time).

"Second Lien Agency Agreement" means the paying agency agreement dated on or around the date hereof between, among others, Greenrock Finance Inc., as the issuer and ING Bank N.V., London Branch as administrative agent (as amended and/or restated from time to time).

"Second Lien Deed of Covenant and Guarantee" means the deed of covenant and guarantee dated on or about the date hereof between, among others, Greenrock Finance Inc. as the company, and ING Bank N.V., London Branch as Collateral Agent and Agent, substantially in the form attached to the Second Lien Subscription Agreement (as amended and/or restated from time to time), including for the avoidance of doubt, the Conditions.

"Second Lien Note Documents" means each of the Second Lien Deed of Covenant and Guarantee, the Second Lien Notes, the Second Lien Agency Agreement, the Second Lien Transaction Security Documents and the Second Lien Subscription Agreement.

"Second Lien Notes" means the second lien dollar-denominated floating rate notes due 2025 in an aggregate principal amount of \$220,000,000 and any Incremental Notes (as defined in to the Conditions) issued from time to time pursuant to the Conditions.

"Second Lien Subscription Agreement" means the subscription agreement dated 23 November 2018 whereby Greenrock Finance, Inc., as the company agrees to issue and subscribers set out therein agree to subscribe and pay for an aggregate of USD 220,000,000 in principal amount of Second Lien Notes (as amended and/or restated from time to time).

"Second Lien Transaction Security Documents" means the "Transaction Security Documents", as such term is defined in the Conditions.

1.2 Incorporation of defined terms

- (a) Unless a contrary indication appears, a term defined in the Original Intercreditor Agreement has the same meaning in this Deed.
- (b) The principles of construction set out in the Original Intercreditor Agreement shall have effect as if set out in this Deed.

1.3 Clauses

In this Deed, any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires, a reference to a Clause in or a Schedule to this Deed.

1.4 Third party rights

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

1.5 Designation

In accordance with the Original Intercreditor Agreement, each of the Original Parent and the Security Agent designates this Deed as a Debt Document.

2. AMENDMENT AND RESTATEMENT

With effect from the date of this Agreement, the parties consent and agree that the Original Intercreditor Agreement shall be amended as set out in Schedule 1 (*Amendments to the Intercreditor Agreement*).

3. CONFIRMATION

Each party to this Agreement confirm and acknowledge that the Second Lien Note Documents are amended forms of the Second Lien Finance Documents (and therefore are Debt Documents) for the purposes of the Original Intercreditor Agreement and are designated as Debt Documents.

4. DEBT DOCUMENTS

Each party to this Agreement confirms that entering into this Deed shall not cause any breach of any Debt Document to which it is a party.

5. CONTINUITY AND FURTHER ASSURANCE

5.1 Continuing obligations

The provisions of the Original Intercreditor Agreement and the other Debt Documents shall, save as amended by this Deed, continue in full force and effect.

5.2 Further assurance

The Original Parent shall and shall procure that each other Debtor shall, at the request of the Security Agent (acting reasonably) and at such Debtor's own expense, promptly do all such acts and things necessary or desirable to give effect to the amendments effected or to be effected pursuant to this Deed.

6. FEES, COSTS AND EXPENSES

6.1 Transaction expenses

The Original Parent shall (or shall procure that another Debtor shall), within 10 Business Days of demand (along with an invoice including reasonable detail), pay (or cause to be paid to) the Security Agent the amount of all costs and expenses (including reasonable legal fees, notarial costs and disbursements of a single counsel in each jurisdiction) (together with any applicable VAT) reasonably incurred by the Security Agent in connection with the negotiation, preparation, printing, execution and perfection of this Deed.

7. MISCELLANEOUS

7.1 Incorporation of terms

The provisions of clause 27 (*Notices*), clause 28 (*Preservation*), clause 29.3 (*Effectiveness*) and clause 32 (*Enforcement*) of the Original Intercreditor Agreement shall be incorporated into this Deed as if set out in full in this Deed and as if references in those clauses to "this Agreement" or "the Debt Documents" are references to this Deed.

7.2 Counterparts

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

8. GOVERNING LAW

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

This Deed has been entered into, executed and delivered as a deed on the date stated at the beginning of this Deed.

SCHEDULE 1
AMENDMENTS TO THE INTERCREDITOR AGREEMENT

1. In clause 1.1 (*Definitions*), the definition of "Creditor/Creditor Representative Accession Undertaking" shall be deleted and replaced with the following:

""Creditor/Creditor Representative Accession Undertaking" means an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor/Creditor Representative Accession Undertaking*) (or in such form as the Common Security Agent and the Parent (each acting reasonably) may agree from time to time which may include an undertaking included in any transfer or assignment document in respect of any Initial Senior Facilities Finance Document, Additional Senior Secured Financing Document, Initial Second Lien Finance Document, Additional Second Lien Financing Document or Unsecured Finance Document) and, in the case of an acceding Debtor that accedes as an Intra-Group Lender in the relevant Debtor Accession Deed, that Debtor Accession Deed."

2. In clause 1.1 (*Definitions*), the definition of "Second Lien Finance Documents" shall be deleted and replaced with the following:

""Second Lien Finance Documents" means:

- (a) in relation to the Initial Second Lien Financing, the Initial Second Lien Finance Documents;
- (b) in relation to any Additional Second Lien Financing:
 - (i) in relation to any Second Lien Facility, the relevant Second Lien Facility Agreement and each other document or instrument designated by the relevant member of the Group and/or the relevant Creditor Representative as being a "Finance Document" or its equivalent under the relevant Second Lien Facility Agreement; and
 - (ii) in relation to any Second Lien Notes, the relevant Second Lien Notes Indenture, any related Notes Proceeds Loan documents and each other document or instrument designated by the relevant member of the Group and/or the relevant Creditor Representative as being a "Notes Document" or its equivalent under the relevant Second Lien Notes Indenture."

3. In clause 1.1 (*Definitions*), the definition of "Term Outstandings" shall be deleted and replaced with the following:


""Term Outstandings" means, at any time, the aggregate of the amounts of principal (not including any capitalised or deferred interest) then outstanding under any term loan facility (or the face value of all outstanding notes issued) under the Initial Senior Facilities Agreement, any other Credit Facility Agreement, the Initial Second Lien Facilities Agreement or any other Second Lien Facility Agreement (or, in each case, any refinancing thereof)."

SIGNATURES

GREENROCK TOPCO LIMITED
As the Original Parent

Executed as a Deed by
GREENROCK TOPCO LIMITED

By:
Director

Witnessed by: JOELLE WONG 

Name of witness:

Address of witness: Shearman & Sterling LLP
9 Appold Street
EC2A 2AP
London

Address:


Attention:

Fax:


THE INITIAL SENIOR AGENT

ING BANK N.V., LONDON BRANCH
As the Initial Senior Agent

Executed as a Deed by
ING BANK N.V., LONDON BRANCH

By: 

(Authorised signatory)
Andrew Brookes
Authorised Signatory
ING Bank N.V., London Branch

By:  Claire Roberts
(Authorised signatory) Authorised Signatory
ING Bank N.V., London Branch

Address: **ING BANK N.V.**
Attention: **LONDON BRANCH**
Fax: **8-10 MOORGATE**
Attention: **LONDON EC2R 6DA**

THE SECURITY AGENT

ING BANK N.V., LONDON BRANCH

As the Security Agent for itself and for and on behalf of the Primary Creditors

Executed as a Deed by

ING BANK N.V., LONDON BRANCH

By: 

(Authorised signatory)

Andrew Brookes

Authorised Signatory

ING Bank N.V., London Branch

By:  Claire Roberts

Authorised Signatory

(Authorised signatory) **ING Bank N.V., London Branch**

Address: **ING BANK N.V.**

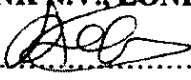
Attention: **LONDON BRANCH**


Fax: **8-10 MOORGATE**

Attention: **LONDON EC2R 6DA**

ING BANK N.V., LONDON BRANCH
As the Initial Second Lien Agent

Executed as a Deed by
ING BANK N.V., LONDON BRANCH

By: 
(Authorised signatory)
Andrew Brookes
Authorised Signatory
ING Bank N.V., London Branch

By:  Claire Roberts
..... ~~Authorised Signatory~~
(Authorised signatory) **ING Bank N.V., London Branch**

Address: **ING BANK N.V.**
Attention: **LONDON BRANCH**
Fax: **8-10 MOORGATE**
Attention: **LONDON EC2R 6DA**

ING BANK. N.V., LONDON BRANCH
AS INITIAL SENIOR AGENT

ING BANK. N.V., LONDON BRANCH
AS INITIAL SECOND LIEN AGENT

THE INITIAL SENIOR LENDERS

THE INITIAL SECOND LIEN LENDERS

GREENROCK TOPCO LIMITED
AS ORIGINAL PARENT

EMT HOLDINGS LIMITED
AS HOLDCO

THE ORIGINAL DEBTORS

ING BANK. N.V., LONDON BRANCH
AS SENIOR SECURITY AGENT, SECOND LIEN SECURITY AGENT
AND COMMON SECURITY AGENT

AND

OTHERS

INTERCREDITOR AGREEMENT

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THIS AGREEMENT is dated 11 March 2016 (as amended and restated on 29 June 2017) and made

BETWEEN:

- (1) **ING BANK. N.V., LONDON BRANCH** as Initial Senior Agent;
- (2) **ING BANK. N.V., LONDON BRANCH** as Initial Second Lien Agent;
- (3) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Initial Senior Lenders;
- (4) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Initial Second Lien Lenders;
- (5) **GREENROCK TOPCO LIMITED**, a limited liability company incorporated under the laws of England and Wales, having its registered office at 5 Fleet Place, London, England registered number 10702564 (the "**Original Parent**");
- (6) **THE SUBSIDIARIES** of the Parent named on the signing pages as Original Debtors (together with the Parent, the "**Original Debtors**");
- (7) **THE SUBSIDIARIES** of the Parent named on the signing pages as Original Intra-Group Lenders (together with the Parent, the "**Original Intra-Group Lenders**");
- (8) **EMT HOLDINGS LIMITED**, a limited liability company incorporated under the laws of England Wales and its registered office at 5 Fleet Place, London, England registration number 09915789 ("**Holdco**");
- (9) **ING BANK, N.V., LONDON BRANCH** as security agent for the Initial Senior Lenders in accordance with the Initial Senior Facilities Agreement (the "**Initial Senior Security Agent**");
- (10) **ING BANK, N.V., LONDON BRANCH** as security agent for the Initial Second Lien Lenders in accordance with the Initial Second Lien Facilities Agreement (the "**Initial Second Lien Security Agent**"); and
- (11) **ING BANK, N.V., LONDON BRANCH** as common security agent for all the Secured Creditors (the "**Common Security Agent**").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

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

"Acceleration Event" means a Senior Secured Liabilities Acceleration Event, a Second Lien Liabilities Acceleration Event or an Unsecured Liabilities Acceleration Event (as the context requires).

"Additional Second Lien Financing" means any indebtedness incurred under a Second Lien Facility (other than the Initial Second Lien Facilities) or any Second Lien Notes (and any related Notes Proceeds Loan), which is notified to the Common Security Agent by the Parent as being indebtedness that is an "Additional Second Lien Financing" pursuant to Clause 23.3 (*Further Creditor Notice*) **provided that:**

- (a) the incurrence of such indebtedness (and, to the extent applicable, such indebtedness sharing in the Transaction Security on the basis that it ranks after the Senior Secured Liabilities and *pari passu* with the Liabilities in respect of the Initial Second Lien Facilities as provided for in this Agreement) is not prohibited by the terms of the Secured Debt Documents;
- (b) the terms of such Second Lien Facility or Second Lien Notes comply with Clause 23.2 (*Terms of additional indebtedness*); and
- (c) the providers of such facility and their Creditor Representative have or the Creditor Representative in respect of such notes has agreed to become a Party to this Agreement as a Second Lien Lender or, as the case may be, Creditor Representative by executing and delivering to the Common Security Agent a Creditor/Creditor Representative Accession Undertaking.

"Additional Second Lien Financing Documents" means:

- (a) in relation to any Additional Second Lien Financing made available under a Second Lien Facility, the Second Lien Finance Documents in respect of such Second Lien Facility; and
- (b) in relation to any Additional Second Lien Financing made available under Second Lien Notes, the Second Lien Finance Documents in respect of such Second Lien Notes.

"Additional Senior Secured Financing" means any indebtedness incurred by any member of the Group under a Credit Facility (other than the Initial Senior Facilities Agreement) or Senior Secured Notes (and any related Notes Proceeds Loan), which is notified to the Common Security Agent by the Parent as being indebtedness that is an "Additional Senior Secured Financing" pursuant to Clause 23.3 (*Further Creditor Notice*), **provided that:**

- (a) the incurrence of such indebtedness (and, to the extent applicable, such indebtedness sharing in the Transaction Security on the basis that it ranks *pari passu* with the Liabilities in respect of the Initial Senior Facilities) is not prohibited by the terms of the Secured Debt Documents;

- (b) the terms of such Credit Facility or Senior Secured Notes (and any related Notes Proceeds Loan) comply with Clause 23.2 (*Terms of additional indebtedness*); and
- (c) either:
 - (i) in the case of an Additional Senior Secured Financing made available under a Credit Facility, each of the providers of such indebtedness have agreed to become a party to this Agreement as an Additional Senior Secured Financing Creditor and the facility agent (or nearest equivalent person) in respect of that Credit Facility has agreed to become a party to this Agreement as a Creditor Representative by, in each case, executing and delivering to the Common Security Agent a Creditor/Creditor Representative Accession Undertaking; or
 - (ii) in the case of an Additional Senior Secured Notes Financing, the agent, trustee or other relevant representative under that Additional Senior Secured Financing has agreed to become a party to this Agreement as a Creditor Representative on behalf of the providers of such indebtedness by executing and delivering to the Common Security Agent a Creditor/Creditor Representative Accession Undertaking.

"Additional Senior Secured Financing Agreement" means, in relation to any Additional Senior Secured Financing, the Credit Facility Agreement or Senior Secured Notes Indenture or other equivalent document by which that Additional Senior Secured Financing is made available or, as the case may be, issued.

"Additional Senior Secured Financing Creditors" means, in relation to any Additional Senior Secured Financing, each of the lenders or noteholders in respect of that Additional Senior Secured Financing (including the applicable Creditor Representative).

"Additional Senior Secured Financing Documents" means:

- (a) in relation to any Additional Senior Secured Financing made available under a Credit Facility, the Credit Facility Documents in respect of such Credit Facility; and
- (b) in relation to any Additional Senior Secured Notes Financing, the Senior Secured Notes Indenture, any related Notes Proceeds Loan documents and each other document or instrument designated by the Parent and/or relevant Creditor Representative as being a "Notes Document" or its equivalent under the relevant Additional Senior Secured Financing Agreement.

"Additional Senior Secured Financing Event of Default" means, in relation to any Additional Senior Secured Financing, an event of default (however described) under the Additional Senior Secured Financing Agreement which entitles the Additional Senior Secured Financing Creditors to give (or to instruct the relevant Creditor Representative to give) a notice of acceleration, otherwise triggers similar consequences in respect of such Additional Senior Secured Financing to those in section 8.02 (*Remedies Upon Event of Default*) of the Initial Senior Facilities

Agreement or which automatically triggers all or any part of the relevant Additional Senior Secured Financing Liabilities to be immediately due and payable.

"Additional Senior Secured Financing Liabilities" means:

- (a) in relation to any Additional Senior Secured Financing made available under a Credit Facility, the Credit Facility Lender Liabilities in respect of such Credit Facility; and
- (b) in relation to any Additional Senior Secured Notes Financing, the Liabilities owed by any Debtor to any Additional Senior Secured Financing Creditor under or in connection with the Additional Senior Secured Financing Documents in respect of such Additional Senior Secured Notes Financing.

"Additional Senior Secured Notes Financing" means an Additional Senior Secured Financing constituted by Senior Secured Notes.

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"Aggregate Commodity Hedging Amount" means, in relation to a Hedge Counterparty, the aggregate of the notional amounts hedged by the relevant Debtors under each Hedging Agreement which is a commodity hedging transaction and to which that Hedge Counterparty is party.

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

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

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

"Ancillary Facility" means any ancillary facility or fronted ancillary facility made available as permitted by a Credit Facility Agreement.

"Ancillary Lender" means a Credit Facility Lender (or Affiliate of a Credit Facility Lender) which makes available an Ancillary Facility.

"Automatic Acceleration Event" means the occurrence of an Event of Default under section 8.01(f) of the Initial Senior Facilities Agreement with respect to a Borrower (as defined in the Initial Senior Facilities Agreement) (or any equivalent event under another Debt Document).

"Borrowing Liabilities" means, in relation to a member of the Group, the liabilities (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to a Creditor Representative in its capacity as such) or a Debtor in respect of

indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities as a borrower under any Credit Facility Documents, Second Lien Finance Documents, Unsecured Finance Documents or as an issuer under any Notes).

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

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

"CFC" means a "controlled foreign corporation" as defined in Section 957(a) of the Code which has one or more United States Shareholders (as defined in Section 951 of the Code) that are members of the Group.

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

"Close-Out Netting" means:

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

"Code" means the U.S. Internal Revenue Code of 1986 and the regulations promulgated and rulings issued thereunder.

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

"Common Assurance" means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible, given to all the Secured Creditors in respect of their Liabilities.

"Common Currency" means USD.

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

"Common Secured Event of Default" means an Event of Default under the Senior Secured Debt Documents and/or the Second Lien Finance Documents.

"Common Secured Payment Default" means a Common Secured Event of Default arising by reason of any amount which is immediately due and payable under any Secured Debt Document, other than in respect of non-payment of any amount (a) not constituting principal or interest and (b) not exceeding \$150,000 (or its equivalent in other currencies).

"Common Secured Liabilities Discharge Date" means the first date on which each of the Senior Secured Liabilities Discharge Date and the Final Second Lien Discharge Date have occurred.

"Common Senior Secured Event of Default" means an Event of Default under the Initial Senior Facilities Finance Documents or an Additional Senior Secured Financing Event of Default.

"Common Senior Secured Payment Default" means a Common Senior Secured Event of Default arising by reason of non-payment of any amount which is immediately due and payable under any Senior Secured Debt Document, other than in respect of non-payment of any amount (a) not constituting principal or interest and (b) not exceeding \$150,000 (or its equivalent in other currencies).

"Common Transaction Security" means Security created under a Common Transaction Security Document.

"Common Transaction Security Document" means any Transaction Security Document creating Security for the Senior Secured Liabilities and the Second Lien Liabilities whether directly or through a parallel debt structure or equivalent.

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

"Credit Facility" means:

- (a) each of the Initial Senior Facilities; and
- (b) any other credit facility which by the terms of the Secured Debt Documents is permitted to share in the Transaction Security *pari passu* with the Senior Secured Liabilities as provided for in this Agreement,

in each case for so long as the relevant Credit Facility Discharge Date has not occurred.

"Credit Facility Acceleration Event" means, in relation to any Credit Facility, an Automatic Acceleration Event or the relevant Creditor Representative exercising any of its rights (other than a right to place amounts on demand but including, without

limitation, the making of a demand in respect of any amounts placed on demand) under any acceleration provision(s) of the relevant Credit Facility Agreement to declare all or part of the indebtedness outstanding thereunder to be immediately due and payable.

"Credit Facility Agreement" means:

- (a) in relation to the Initial Senior Facilities, the Initial Senior Facilities Agreement; and
- (b) in relation to any other Credit Facility, the agreement or other document or instrument pursuant to which the Credit Facility is made available, and which is designated by the Parent as a Credit Facility Agreement in the applicable Further Creditor Notice.

"Credit Facility Borrower", in relation to a Credit Facility, has the meaning given to the term "Borrower" (or equivalent) in the relevant Credit Facility Agreement.

"Credit Facility Cash Cover", in relation to a Credit Facility, has the meaning given to the term "cash collateralize" (or equivalent) in the relevant Credit Facility Agreement.

"Credit Facility Commitment", in relation to a Credit Facility, has the meaning given to the term "Commitment" (or equivalent) in the relevant Credit Facility Agreement.

"Credit Facility Discharge Date" means, in relation to a Credit Facility, the first date on which all Credit Facility Lender Liabilities owed to the Credit Facility Lenders in respect of such Credit Facility have been fully and finally discharged, whether or not as the result of enforcement, and such Credit Facility Lenders are under no further obligation to make advances or provide financial accommodation to any of the Debtors under the relevant Credit Facility Documents.

"Credit Facility Documents" means:

- (a) in relation to the Initial Senior Facilities, the Initial Senior Facilities Finance Documents; and
- (b) in relation to each other Credit Facility, each document or instrument designated by the Parent and/or the relevant Creditor Representative as being a "Finance Document" or its equivalent under the relevant Credit Facility Agreement.

"Credit Facility Guarantor" in relation to a Credit Facility, means any member of the Group that provides a guarantee in favour of any related Credit Facility Lender.

"Credit Facility Lender Cash Collateral" in relation to a Credit Facility, means any cash collateral provided by a Credit Facility Lender to an Issuing Bank pursuant to the terms of the relevant Credit Facility Document.

"Credit Facility Lender Liabilities" in relation to a Credit Facility, means the Liabilities owed by any Debtor to the relevant Credit Facility Lenders under or in connection with the relevant Credit Facility Documents.

"Credit Facility Lenders" in relation to a Credit Facility, means each Lender (under and as defined in the relevant Credit Facility Agreement), the relevant Creditor Representative and, if applicable, each Issuing Bank and Ancillary Lender.

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

"Creditor" means each Security Agent, each Senior Lender, each other Senior Secured Creditor, each Second Lien Creditor, each Unsecured Creditor, each Intra-Group Lender and each Shareholder Creditor.

"Creditor Conflict" means, at any time prior to the Common Secured Liabilities Discharge Date, a conflict between the interests of the Secured Creditors.

"Creditor/Creditor Representative Accession Undertaking" means an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor/Creditor Representative Accession Undertaking*) (or in such form as the Common Security Agent and the Parent (each acting reasonably) may agree from time to time which may include an undertaking included in any transfer or assignment document in respect of any Initial Senior Facilities Finance Document, Additional Senior Secured Financing Document, Initial Second Lien Facilities Finance Document, Additional Second Lien Financing Document or Unsecured Finance Document) and, in the case of an acceding Debtor that accedes as an Intra-Group Lender in the relevant Debtor Accession Deed, that Debtor Accession Deed.

"Creditor Representative" means:

- (a) in relation to the Initial Senior Lenders, the Initial Senior Agent and any replacement of the Initial Senior Agent notified by the Parent to the Security Agent to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking;
- (b) in relation to the Credit Facility Lenders under any other Credit Facility, the facility agent (or nearest equivalent person) in respect of that Credit Facility that is designated by the Parent as a Creditor Representative in the applicable Further Creditor Notice and any replacement of such Creditor Representative notified by the Parent to the Security Agent, in each case, to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking;
- (c) in relation to any Additional Senior Secured Financing Creditors in respect of an Additional Senior Secured Financing Constituted by Senior Secured Notes, the Senior Secured Notes Trustee under that Additional Senior Secured Financing that is designated by the Parent as a Creditor Representative in the applicable Further Creditor Notice and any replacement of such Creditor to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking;

- (d) in relation to the Initial Second Lien Lenders, the Initial Second Lien Agent and any replacement of the Initial Second Lien Agent notified by the Parent to the Security Agent to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking;
- (e) in relation to any other Second Lien Creditors, the relevant Second Lien Agent or Second Lien Notes Trustee;
- (f) in relation to any Unsecured Noteholders, the relevant Unsecured Notes Trustee; and
- (g) in relation to any Unsecured Lenders, the relevant Unsecured Agent.

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

"Creditor Representative Liabilities" means all present and future liabilities and obligations, actual and contingent, of any Debtor to any Creditor Representative under the relevant Debt Documents (in its capacity as such).

"Debt Document" means each of this Agreement, the Initial Senior Facilities Finance Documents, the Initial Second Lien Finance Documents, the Hedging Agreements, the Hedge Counterparty Guarantees, any other Credit Facility Documents, any Additional Senior Secured Financing Documents, any Additional Second Lien Financing Documents, any Unsecured Finance Documents, the Transaction Security Documents, any agreement evidencing the terms of the Intra-Group Liabilities or the Subordinated Shareholder Liabilities and any other document designated as such by the Common Security Agent and the Parent.

"Debt Purchase Transaction" means, in relation to a person, a transaction where such person:

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

any commitment or amount outstanding under any Debt Document.

"Debtor" means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 22 (*Changes to the Parties*).

"Debtor Accession Deed" means a deed substantially in the form set out in Schedule 1 (*Form of Debtor Accession Deed*) or in such form as the Security Agent and the Parent may agree from time to time.

"Debtor Liabilities" means, in relation to a member of the Group, any liabilities owed to any Debtor (whether actual or contingent and whether incurred solely or jointly) by that member of the Group.

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

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

"Delegate" means any delegate, agent, attorney or co-trustee appointed by a Security Agent.

"Designated Net Amount" means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility's maximum net amount.

"Disposal Proceeds" has the meaning given to that term in Clause 15.1 (*Definitions*).

"Distress Event" means any of:

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

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

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

"Enforcement" means the enforcement of any Transaction Security, the requesting of a Distressed Disposal and/or the release of claims and/or Transaction Security on a Distressed Disposal under Clause 16 (*Distressed Disposals*), the giving of instructions as to actions following an Insolvency Event under Clause 11.7 (*Security Agent instructions*) and the taking of any other actions consequential on (or necessary to effect) the enforcement of any Transaction Security.

"Enforcement Action" means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Primary Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents or a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on demand Liabilities to the extent that any resulting Payment would be a Permitted Intra-Group Payment);
 - (ii) the making of any declaration that any Liabilities are payable on demand;
 - (iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent that any resulting Payment would be a Permitted Intra-Group Payment);
 - (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent that any resulting Payment would be a Permitted Intra-Group Payment);
 - (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability other than in connection with an asset sale offer or a change of control offer (however defined in the Debt Documents)) but excluding any such right which arises as a result of section 10.07 (*Successors and Assigns*) of the Initial Senior Facilities Agreement (or any other similar or equivalent provision of any of the other Debt Documents) or open market purchases of, or any voluntary transfer offer or exchange offer for, Notes at a time at which no Default is continuing);
 - (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right:
 - (A) as Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (B) as Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (C) as Inter-Hedging Agreement Netting by a Hedge Counterparty;

- (D) as Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; and
- (E) which is otherwise not prohibited under the Debt Documents to the extent that the exercise of that right gives effect to a Payment permitted under this Agreement; and
- (vii) the suing for, commencing or joining of any legal or arbitration proceedings (in each case, other than proceedings of the type referred to in paragraph (c) below) against any member of the Group to recover any Liabilities;
- (b) the premature termination or close-out of any transaction under any Hedging Agreement save as permitted under this Agreement;
- (c) the taking of any formal steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (d) by reason of financial difficulties affecting a 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, the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities (other than any action permitted under Clause 22 (*Changes to the Parties*) or pursuant to any debt buyback, tender offer, exchange offer, or similar or equivalent arrangement not otherwise prohibited by the Debt Documents); or
- (e) by reason of financial difficulties affecting a member of the Group which owes any Liabilities, the petitioning, applying or voting for, or the taking of any formal 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, by reason of it being in financial difficulties, 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)(ii), (iii), (iv) and (vii) above or paragraph (e) 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;

- (ii) a Primary Creditor bringing legal proceedings against any person solely for the purpose of:
 - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
 - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
 - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages;
- (iii) the taking of any action pursuant to a merger, consolidation, reorganisation or any other similar or equivalent transaction that is permitted under the Credit Facility Documents, any other Senior Secured Debt Documents, the Second Lien Finance Documents and the Unsecured Finance Documents;
- (iv) the taking of any action necessary to create, register or perfect any Transaction Security by any method of perfection (other than any such action taken as a result of enforcement) or the taking of any action necessary to prove, preserve or protect (but not enforce) any Transaction Security;
- (v) to the extent entitled by law, the taking of any action against any Creditor (or any agent, trustee or receiver acting on behalf of that Creditor) to challenge the basis on which any sale or disposal is to take place pursuant to the powers granted to those persons under any relevant documentation;
- (vi) bringing legal proceedings against any person in connection with any securities violation, common fraud or securities or listing regulations; or
- (vii) allegations of material mis-statement or omissions made (1) in connection with the offering materials relating to any Notes or in any reports furnished to holders of any Notes or (2) to any exchange on which any Notes are listed.

"Enforcement Instructions" means instructions as to Enforcement (including the manner and timing of Enforcement) given by the relevant Instructing Group to each Security Agent **provided that** instructions not to undertake Enforcement or an absence of instructions as to Enforcement shall not constitute "Enforcement Instructions".

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

"Event of Default" means any event or circumstance specified as such in the Credit Facility Documents, the other Senior Secured Debt Documents, the Second Lien Finance Documents or the Unsecured Finance Documents.

"Final Discharge Date" means the later to occur of the Common Secured Liabilities Discharge Date and (if any Unsecured Liabilities have been incurred) the Final Unsecured Discharge Date.

"Final Second Lien Discharge Date" means the date on which all Second Lien Liabilities have been fully and finally discharged and the Second Lien Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Second Lien Finance Documents.

"Final Unsecured Discharge Date" means the first date on which all the Unsecured Liabilities have been fully and finally discharged, including by way of defeasance permitted in accordance with the relevant Unsecured Finance Documents, whether or not as the result of an enforcement.

"Financial Adviser" means any:

- (a) independent internationally recognised investment bank;
- (b) independent internationally recognised accountancy firm; or
- (c) other independent internationally recognised professional services firm,

in each case, which is regularly engaged in providing valuations of businesses or financial assets of the relevant type or, where applicable, advising on competitive sales processes.

"Finco" means a subsidiary of a Holding Company of the Parent that is not a member of the Group which issues any Notes.

"Further Creditor Notice" has the meaning given to that term in Clause 23.3 (*Further Creditor Notice*).

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

"Group" means the Parent and its Subsidiaries at the relevant time.

"Guarantee Liabilities" means, in relation to a member of the Group, the liabilities under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (other than a Creditor Representative) or a Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities arising by way of guarantee, indemnity, contribution or subrogation).

"Hedge Counterparty" means any person which becomes Party as a Hedge Counterparty pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*) and appoints the relevant Senior Security Agent and receives the benefit of any security agency and trust constituted under such Senior Secured Debt

Document as contemplated by paragraph (a) of Clause 5.1 (*Identity of Hedge Counterparty*).

"Hedge Counterparty Guarantee" means any guarantee agreement from the Debtors in favour of all or any of the Hedge Counterparties.

"Hedge Transfer" means a transfer to some or all of the Second Lien Creditors (or to their nominee or nominees) of (subject to paragraph (b) of Clause 6.2 (*Hedge Transfer: Second Lien Creditors*)), each Hedging Agreement together with:

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

in accordance with Clause 22.4 (*New Hedge Counterparty or change in Hedge Counterparty*).

"Hedging Agreement" means any master agreement, confirmation, schedule or other agreement entered into by a member of the Group and a Hedge Counterparty from time to time for the purposes of any hedging or derivative arrangement that the Parent confirms in writing to the Security Agent (on behalf of the Senior Secured Creditors and the Second Lien Creditors (as applicable)) is permitted under the terms of the Credit Facility Documents, the other Senior Secured Debt Documents, the Second Lien Finance Documents and the Unsecured Finance Documents to share in the Transaction Security at the time such Hedging Agreement is entered into.

"Hedging Ancillary Document" means an Ancillary Document which relates to or evidences a Hedging Ancillary Facility.

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

"Hedging Ancillary Lender" means an Ancillary Lender to the extent that that Ancillary Lender makes available a Hedging Ancillary Facility.

"Hedging Force Majeure" means:

- (a) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
 - (i) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
 - (ii) an event similar in meaning and effect to a "Force Majeure Event" (as referred to in paragraph (b) below);
- (b) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement); or

- (c) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, any event similar in meaning and effect to an event described in paragraph (a) or (b) above.

"Hedging Liabilities" means the Liabilities owed by any Debtor to the Hedge Counterparties under or in connection with the Hedging Agreements.

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

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

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

"Holding Company" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"Initial Second Lien Facilities" means the "Facilities" under and as defined in the Initial Second Lien Facilities Agreement.

"Initial Second Lien Facilities Agreement" means the second lien facilities agreement made between the Parent, Greenrock Finance, Inc. as initial US borrower, Greenrock Midco Limited as initial UK borrower, ING Bank, N.V., London Branch as agent, ING Bank, N.V., London Branch as security agent and others dated on or about the date of this Agreement.

"Initial Second Lien Finance Documents" means the "Loan Documents" under and as defined in the Initial Second Lien Facilities Agreement.

"Initial Second Lien Financing" means any indebtedness incurred under the Initial Second Lien Finance Documents.

"Initial Second Lien Lenders" means the Initial Second Lien Agent, the Initial Second Lien Security Agent and each "Lender" as defined in the Initial Second Lien Facilities Agreement.

"Initial Senior Facilities" means the "Facilities" under and as defined in the Initial Senior Facilities Agreement.

"Initial Senior Facilities Agreement" means the senior facilities agreement made between the Parent, Greenrock Finance, Inc. as initial US borrower, Greenrock Midco Limited as initial UK borrower, ING Bank, N.V., London Branch as agent, ING Bank, N.V., London Branch as security agent and others dated on or about the date of this Agreement.

"Initial Senior Facilities Finance Documents" means the "Loan Documents" under and as defined in the Initial Senior Facilities Agreement.

"Initial Senior Lenders" means the Initial Senior Agent, the Initial Senior Security Agent, each Lender (as defined in the Initial Senior Facilities Agreement), each L/C Issuer (as defined in the Initial Senior Facilities Agreement) and each Ancillary Lender.

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

- (a) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of that member of the Group, a moratorium is declared in relation to any indebtedness of that member of the Group or an administrator is appointed to that member of the Group;
- (b) any composition, compromise, assignment or arrangement is made with any of its creditors by reason of financial difficulties affecting such member of the Group;
- (c) the appointment of any liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of that member of the Group or any of its assets with a value in excess of \$1,000,000 (or its equivalent in other currencies); or
- (d) any analogous procedure or step is taken in any jurisdiction,

save in each case any liquidation, reorganisation, arrangement, adjustment, proposal or composition which is in each case on a solvent basis of a relevant Debtor that is not an Event of Default under the Senior Secured Debt Documents.

"Insolvency Event of Default" means an Insolvency Event which is also an Event of Default.

"Instructing Group" means, at any time:

- (a) subject to paragraph (b) below:
 - (i) prior to the Senior Secured Liabilities Discharge Date, the Majority Senior Secured Creditors; and
 - (ii) after the Senior Secured Liabilities Discharge Date, the Majority Second Lien Creditors; and
- (b) in relation to instructions as to Enforcement with respect to the Transaction Security:
 - (i) subject to paragraph (c) of Clause 14.2 (*Enforcement Instructions*), prior to the Senior Secured Liabilities Discharge Date, the Majority Senior Secured Creditors; and
 - (ii) after the Senior Secured Liabilities Discharge Date, the Majority Second Lien Creditors.

"Intercreditor Amendment" means any amendment or waiver which is subject to Clause 29 (*Consents, Amendments and Override*).

"Interest Rate Hedge Excess" means the amount by which the Total Interest Rate Hedging exceeds any limit on Total Interest Rate Hedging in any Secured Debt Document.

"Interest Rate Hedging Proportion" means, in relation to a Hedge Counterparty and that Hedge Counterparty's Aggregate Interest Rate Hedging Amount, the proportion (expressed as a percentage) borne by that Hedge Counterparty's Aggregate Interest Rate Hedging Amount to the Total Interest Rate Hedging Amount.

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

"Inter-Hedging Ancillary Document Netting" means the exercise of any right of set-off, account combination, Close-Out Netting or Payment Netting (whether arising out of a cross agreement netting agreement or otherwise) by a Hedging Ancillary Lender against liabilities owed to a Debtor by that Hedging Ancillary Lender under a Hedging Ancillary Document in respect of Credit Facility Lender Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

"Intra-Group Lenders" means each Original Intra-Group Lender, each Debtor and each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which becomes a Party as an Intra-Group Lender in accordance with the terms of Clause 22 (*Changes to the Parties*).

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

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

"Issuing Bank" in relation to a Credit Facility (and if applicable) has the meaning given to the term "L/C Issuer" (or equivalent) in the relevant Credit Facility Documents.

"Letter of Credit" in relation to a Credit Facility has the meaning given to the term "Letter of Credit" (or equivalent) in the relevant Credit Facility Documents.

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

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings (including interest and fees that accrue after the commencement of any U.S. Insolvency Proceeding, regardless of whether such interest and fees are allowed claims in such proceeding) **provided that** the Liabilities shall not include Excluded Swap Obligations of a Debtor that is not a Qualified ECP Guarantor.

"Liabilities Acquisition" means, in relation to a person and to any Liabilities, a transaction where that person:

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

the rights and benefits in respect of those Liabilities.

"Liabilities Sale" means a disposal of Liabilities pursuant to paragraph (d) of Clause 16.1 (*Facilitation of Distressed Disposals*).

"Majority Lenders" has the meaning given to the term "Required Lenders" in the Initial Senior Facilities Agreement (or any equivalent term under any other relevant Credit Facility Agreement)

"Majority Second Lien Creditors" means, at any time, those Second Lien Creditors whose Second Lien Credit Participations at that time aggregate more than 50 per cent. of the total Second Lien Credit Participations at that time.

"Majority Senior Secured Creditors" means, at any time, those Senior Secured Creditors whose Senior Secured Credit Participations at that time aggregate more than 50 per cent. of the total Senior Secured Credit Participations at that time.

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

"Multi-account Overdraft Liabilities" means Liabilities arising under any Multi-account Overdraft Facility.

"Net Outstandings" means, in relation to a Multi-account Overdraft, the aggregate debit balance of overdrafts comprised in that Multi-account Overdraft, net of any credit balances on any account comprised in that Multi-account Overdraft, to the extent that the credit balances are freely available to be set-off by the relevant Ancillary Lender against Liabilities owed to it by the relevant Debtor under that Multi-account Overdraft.

"New Shareholder Injections" has the meaning given to such term in the Initial Senior Facilities Agreement (or any equivalent definition under another Credit Facility Agreement).

"Non-Credit Related Close-Out" means a Permitted Hedge Close-Out described in any of paragraph (a)(i), (a)(ii), (a)(vi), (a)(vii), (a)(ix) or (a)(x) of Clause 5.8 (*Permitted Enforcement: Hedge Counterparties*).

"Non-Distressed Disposal" has the meaning given to that term in Clause 15.1 (*Definitions*).

"Noteholders" means the Senior Secured Noteholders, the Second Lien Noteholders and/or the Unsecured Noteholders, as the context requires.

"Notes" means the Senior Secured Notes, Second Lien Notes and/or the Unsecured Notes, as the context requires.

"Notes Finance Documents" means:

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

- (c) in respect of any Unsecured Notes, the Unsecured Finance Documents under paragraph (b) thereof relating to those Unsecured Notes.

"Notes Indenture" means:

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

"Notes Issuer" means a holding company of the Parent or a Finco which (in each case) has issued Notes.

"Notes Proceeds Loan" means any loan from a Notes Issuer to the Parent, or the on-loan by Parent Holdco to the Parent, in each case made to on-lend the gross or net proceeds of an issue of Notes.

"Notes Trustee" means:

- (a) in respect of any Senior Secured Notes, the Senior Secured Notes Trustee in respect of those Senior Secured Notes;
- (b) in respect of any Second Lien Notes, the Second Lien Notes Trustee in respect of those Second Lien Notes Indenture; and
- (c) in respect of any Unsecured Notes, the Unsecured Notes Trustee in respect of those Unsecured Notes.

"Other Liabilities" means, in relation to a member of the Group, any trading and other liabilities (not being Borrowing Liabilities or Guarantee Liabilities) it may have to the Secured Creditors under the Debt Documents or to a Shareholder Creditor, an Intra-Group Lender or a Debtor.

"Parent" means, prior to the completion of the post-completion refinancing steps under the structure paper titled "Project Emerald Acquisition Structure Strawman Paper" dated on or about 29 June 2017 such that the entire share capital of Greenrock Topco Limited is held by EMT Holdings 2 Limited (the "**PC Reorganisation**"), the Original Parent and, following the completion thereof and the accession of such party to this Agreement pursuant to Clause 22.16 (*New Parent*), Element Materials Technology Limited or any other person that becomes "Holdings" under and in accordance with the Secured Debt Documents and accedes to this Agreement pursuant to Clause 22.16 (*New Parent*).

"Parent Holdco" means the holding company of Parent at the relevant time.

"Party" means a party to this Agreement.

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

"Payment Netting" means:

- (a) in respect of a Hedging Agreement or a Hedging Ancillary Document based on an ISDA Master Agreement, netting under section 2(c) of the relevant ISDA Master Agreement; and
- (b) in respect of a Hedging Agreement or a Hedging Ancillary Document not based on an ISDA Master Agreement, netting pursuant to any provision of that Hedging Agreement or a Hedging Ancillary Document which has a similar effect to the provision referenced in paragraph (a) above.

"Permitted Automatic Early Termination" means an Automatic Early Termination of a hedging transaction under a Hedging Agreement, the provision of which is permitted under Clause 5.11 (*Terms of Hedging Agreements*).

"Permitted Hedge Close-Out" means, in relation to a transaction under a Hedging Agreement, a termination or close-out of that transaction which is permitted pursuant to Clause 5.8 (*Permitted Enforcement: Hedge Counterparties*).

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

"Permitted Payments" means the Payments permitted by Clause 9.2 (*Permitted Payments: Intra-Group Liabilities*) and Clause 10.2 (*Permitted Payments: Subordinated Shareholder Liabilities*).

"Primary Creditors" means the Senior Secured Creditors, the Second Lien Creditors and the Unsecured Creditors.

"Priority Creditor Liabilities Transfer" means a transfer of the Senior Secured Liabilities described in Clause 6.1 (*Option to Purchase: Second Lien Creditors*).

"Public Auction" has the meaning given to that term in paragraph 2 of Schedule 4 (*Security Enforcement Principles*).

"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 18.1 (*Order of application*).

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

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

"Relevant Liabilities" means:

- (a) in the case of a Creditor, the Liabilities owed to Creditors ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to the Liabilities of that Creditor; and
- (b) in the case of a Debtor, the Liabilities owed to the Primary Creditors and the Shareholder Creditors together with the Creditor Representative Liabilities and all present and future liabilities and obligations, actual and contingent, of that Debtor to the Security Agent.

"Relevant Security Agent" means:

- (a) where the Majority Senior Secured Creditors constitute the Instructing Group, the Initial Senior Security Agent (or, after the Credit Facilities Discharge Date with respect to the Initial Senior Facilities, any other Senior Security Agent); and
- (b) where the Majority Second Lien Creditors constitute the Instructing Group, the Initial Second Lien Security Agent (or, after the Final Second Lien Discharge Date with respect to the Initial Second Lien Facilities, any other Second Lien Security Agent).

"Second Lien Agent" means the Initial Second Lien Agent and each other facility agent (or equivalent) under any other Second Lien Facility Agreement and any replacement of such facility agent (in each case to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking).

"Second Lien Credit Participation" means, in relation to a Second Lien Lender or a Second Lien Noteholder, the aggregate amount of Second Lien Liabilities owed to that Second Lien Lender or Second Lien Noteholder.

"Second Lien Creditor" means, in relation to a Second Lien Financing, the Second Lien Facility Creditors or the Second Lien Notes Creditors (as applicable).

"Second Lien Event of Default" means an Event of Default under the Second Lien Finance Documents.

"Second Lien Facility" means:

- (a) each of the Initial Second Lien Facilities; and
- (b) any other credit facility which, by the terms of the Secured Debt Documents, is permitted to share in the Transaction Security on the basis it ranks after the Senior Secured Liabilities and *pari passu* with the Initial Second Lien Facilities as provided for in this Agreement.

"Second Lien Facility Agreement" means:

- (a) in relation to the Initial Second Lien Facilities, the Initial Second Lien Facilities Agreement; and

- (b) in relation to any other Second Lien Facility, the facility agreement entered into after the date of this Agreement by the relevant member of the Group and designated by the Parent as a "Second Lien Facility Agreement" in the applicable Further Creditor Notice.

"Second Lien Facility Creditor" means:

- (a) in relation to the Initial Second Lien Facilities, the Initial Second Lien Agent and Initial Second Lien Lenders; and
- (b) in relation to any other Second Lien Facility, the Second Lien Agent and each Second Lien Lender in respect of that Second Lien Facility.

"Second Lien Finance Documents" means:

- (a) in relation to the Initial Second Lien Financing, the Initial Second Lien Facilities Finance Documents;
- (b) in relation to any Additional Second Lien Financing:
 - (i) in relation to any Second Lien Facility, the relevant Second Lien Facility Agreement and each other document or instrument designated by the relevant member of the Group and/or the relevant Creditor Representative as being a "Finance Document" or its equivalent under the relevant Second Lien Facility Agreement; and
 - (ii) in relation to any Second Lien Notes, the relevant Second Lien Notes Indenture, any related Notes Proceeds Loan documents and each other document or instrument designated by the relevant member of the Group and/or the relevant Creditor Representative as being a "Notes Document" or its equivalent under the relevant Second Lien Notes Indenture.

"Second Lien Financing" means the Initial Second Lien Financing and any Additional Second Lien Financing.

"Second Lien Lenders" means:

- (a) in relation to the Initial Second Lien Facilities, the Initial Second Lien Lenders; and
- (b) in relation to any other Second Lien Facility, each "Lender" (or equivalent) under and as defined in the relevant Second Lien Facility Agreement.

"Second Lien Liabilities" means, in respect of any Second Lien Financing, the Liabilities owed by any Debtors to the relevant Second Lien Creditors under or in connection with the Second Lien Finance Documents in respect of such Second Lien Financing.

"Second Lien Liabilities Acceleration Event" means in relation to a Second Lien Facility (including the Initial Second Lien Facilities) or Second Lien Notes, an Automatic Acceleration Event or the Creditor Representative in respect of such

Second Lien Facility or Second Lien Notes exercising any of its rights (other than a right to place amounts on demand but including, without limitation, the making of a demand in respect of any amounts placed on demand) under the acceleration provisions of the relevant Second Lien Finance Documents to declare all or part of the indebtedness outstanding thereunder to be immediately due and payable.

"Second Lien Noteholders" means, in respect of any Second Lien Financing constituted by Second Lien Notes, the holders from time to time of Second Lien Notes issued in respect of that Second Lien Financing.

"Second Lien Notes" means, in respect of a Second Lien Financing, any notes issued or to be issued by a Notes Issuer or a member of the Group in respect of any Second Lien Liabilities outstanding on the date such notes are issued under a Second Lien Notes Indenture.

"Second Lien Notes Creditors" means, in relation to any Second Lien Notes, the Second Lien Noteholders and each Second Lien Notes Trustee in respect of such Second Lien Notes.

"Second Lien Notes Indenture" means, in respect of any Second Lien Financing constituted by Second Lien Notes, the indenture or other issuing document entered into after the date of this Agreement by the Parent as a "Second Lien Notes Indenture" in the applicable Further Creditor Notice.

"Second Lien Notes Trustee" means each entity acting as trustee under any issue of Second Lien Notes and any replacement of such trustee notified by the Parent to the Security Agent (in each case to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking).

"Second Lien Payment Default" means a Second Lien Event of Default arising by reason of non-payment of any amount which is immediately due and payable under any Second Lien Finance Document, other than in respect of non-payment of any amount (a) not constituting principal or interest and (b) not exceeding \$150,000 (or its equivalent in other currencies).

"Second Lien Payment Stop Event" has the meaning given to such term in paragraph (a) of Clause 7.3 (*Issue of Second Lien Payment Stop Notice*).

"Second Lien Payment Stop Notice" has the meaning given to such term in paragraph (a) of Clause 7.3 (*Issue of Second Lien Payment Stop Notice*).

"Second Lien Restructuring Costs" means any fees, costs and expenses of:

- (a) a Second Lien Agent;
- (b) a Second Lien Notes Trustee; or
- (c) any third party professional advisers payable by the Second Lien Creditors in respect of restructuring advice or valuations relating to the Group other than those payable in connection with disputing any aspect of a Distressed Disposal or a Liabilities Sale or any provision of a Debt Document.

"Second Lien Security Agent" means the Initial Second Lien Security Agent and each other collateral agent (or equivalent) under any other Second Lien Facility Agreement or any Second Lien Notes Indenture and any replacement of such collateral agent (in each case to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking).

"Second Lien Standstill Period" has the meaning given to that term in paragraph (a)(ii)(B) of Clause 7.11 (*Permitted Enforcement: Second Lien Creditors*).

"Second Lien Transaction Security" means Transaction Security created under a Second Lien Transaction Security Document.

"Second Lien Transaction Security Document" means any Transaction Security Document creating Security only for the Second Lien Liabilities whether directly or through a parallel debt structure or equivalent.

"Secured Creditor" means:

- (a) the Security Agents and any Receiver or Delegate;
- (b) the Hedge Counterparties;
- (c) the Senior Secured Creditors; and
- (d) the Second Lien Creditors.

"Secured Debt Documents" means the Initial Senior Facilities Finance Documents, the Additional Senior Secured Financing Documents, the Initial Second Lien Finance Documents, the Additional Second Lien Financing Documents, the Hedging Agreements and any Hedge Counterparty Guarantee.

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

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

"Security Agent" means, as the context requires, one or more of or all of each Senior Security Agent, each Second Lien Security Agent and the Common Security Agent.

"Security Agent's Spot Rate of Exchange" means, in respect of the conversion of one currency (the **"First Currency"**) into another currency (the **"Second Currency"**), the Security Agent's spot rate of exchange for the purchase of the Second Currency with the First Currency in the European foreign exchange market at or about 11:00 am (Luxembourg time) on a particular day, which shall be notified by the Security Agent in accordance with paragraph (e) of Clause 20.4 (*Duties of the Security Agent*).

"Security Enforcement Principles" means the principles set out in Schedule 4 (*Security Enforcement Principles*).

"Security Property" means:

- (a) the Transaction Security expressed to be granted in favour of any Security Agent as agent or trustee for all or one or more classes of the Secured Creditors (or under or pursuant to any parallel debt, joint and several creditors or similar or equivalent structure) and/or in favour of the Secured Creditors (or any of them) and all proceeds of that Transaction Security (which shall include any payment or property received in any U.S. Insolvency Proceeding on account of any "secured claim" within the meaning of Section 506(b) of the U.S. Bankruptcy Code or any similar U.S. Debtor Relief Law);
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to any Security Agent as agent or trustee for all or one or more classes of the Secured Creditors (or under or pursuant to any parallel debt, joint and several creditors or semi or equivalent structure) and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of any Security Agent as agent or trustee for one or more classes of the Secured Creditors;
- (c) the Security Agent's interest in any trust fund created pursuant to Clause 12 (*Turnover of Receipts*); and
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which any Security Agent is required by the terms of the Debt Documents to hold as trustee and as agent on trust and as agent for (or otherwise for the benefit of) all or one or more classes of the Secured Creditors.

"Senior Secured Credit Participation" means, in relation to a Senior Secured Creditor, the aggregate of:

- (a) its aggregate Credit Facility Commitments, if any, in respect of each Credit Facility or, following a Credit Facility Acceleration Event in respect of a Credit Facility, the aggregate principal amount of the Credit Facility Lender Liabilities owed to it under such Credit Facility;
- (b) the aggregate principal amount of the Senior Secured Notes Liabilities owed to that Senior Secured Creditor;
- (c) in respect of any hedging transaction of that Senior Secured Creditor under any Hedging Agreement to the extent it constitutes a Hedging Liability that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Senior Secured Creditor and as calculated in accordance with the relevant Hedging Agreement) and to the extent it is a Hedging Liability; and

- (d) after the Senior Secured Debt Liabilities Discharge Date only, in respect of any hedging transaction of that Senior Secured Creditor under any Hedging Agreement to the extent it constitutes Hedging Liabilities that has, as of the date the calculation is made, not been terminated or closed out:
- (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement (to the extent they would constitute Hedging Liabilities) in respect of that hedging transaction, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
 - (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement (to the extent they would constitute Hedging Liabilities) in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

"Senior Secured Creditor Representative" means the Initial Senior Agent or, after the Credit Facilities Discharge Date with respect to the Initial Senior Facilities, any other representative that is a Creditor Representative of the type described in paragraph (b) of that definition (or, if there is no such Creditor Representative, of the type described in paragraph (c) of that definition) agreed by the Majority Senior Secured Creditors.

"Senior Secured Creditors" means the Initial Senior Lenders, the Additional Senior Secured Financing Creditors and the Hedge Counterparties.

"Senior Secured Debt Documents" means the Initial Senior Facilities Finance Documents, the Hedging Agreements, the Hedge Counterparty Guarantees and the Additional Senior Secured Financing Documents.

"Senior Secured Debt Liabilities Discharge Date" means the date on which all Senior Secured Liabilities (other than the Hedging Liabilities) have been fully and finally discharged in cash and the Senior Secured Creditors (other than the Hedge Counterparties) are under no further obligation to provide financial accommodation to any of the Debtors under the Senior Secured Debt Documents (other than the Hedging Agreements).

"Senior Secured Financing" means each of the Initial Senior Facilities and any Additional Senior Secured Financing.

"Senior Secured Liabilities" means the Credit Facility Lender Liabilities in respect of the Initial Senior Facilities, the Hedging Liabilities and the Additional Senior Secured Financing Liabilities.

"Senior Secured Liabilities Acceleration Event" means:

- (a) in relation to a Credit Facility (including the Initial Senior Facilities), a Credit Facility Acceleration Event in respect thereof; or
- (b) in relation to any Additional Senior Secured Financing constituted by Senior Secured Notes, following the occurrence of any Additional Senior Secured Financing Event of Default,
 - (i) the Creditor Representative in respect of that Additional Senior Secured Financing giving a notice of acceleration declaring all or part of the indebtedness outstanding under that Additional Senior Secured Financing to be immediately due and payable; or
 - (ii) all or part of such indebtedness becoming immediately due and payable automatically as a consequence of such Additional Senior Secured Financing Event of Default.

"Senior Secured Liabilities Discharge Date" means the date on which all Senior Secured Liabilities have been fully and finally discharged in cash and the Senior Secured Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Senior Secured Debt Documents.

"Senior Secured Noteholders" means, in respect of an Additional Senior Secured Notes Financing, the holders from time to time of Senior Secured Notes issued in respect of that Additional Senior Secured Financing.

"Senior Secured Notes" means, in respect of an Additional Senior Secured Notes Financing, any notes issued or to be issued by a Notes Issuer or a member of the Group under the Senior Secured Notes Indenture in respect of that Additional Senior Secured Notes Financing.

"Senior Secured Notes Creditors" means, in respect of an Additional Senior Secured Notes Financing, the Senior Secured Noteholders and the Senior Secured Notes Trustee in respect of that Additional Senior Secured Financing.

"Senior Secured Notes Indenture" means the indenture or other issuing document entered into after the date of this agreement by a Notes Issuer or a member of the Group and designated by the Parent as a "Senior Secured Notes Indenture" in the applicable Further Creditor Notice.

"Senior Secured Notes Liabilities" means, in respect of an Additional Senior Secured Notes Financing, the Liabilities owed by any Debtor to the relevant Senior Secured Notes Creditors under the Additional Senior Secured Financing Documents in respect of such Additional Senior Secured Notes Financing.

"Senior Secured Notes Trustee" means each entity acting as trustee under any issue of Senior Secured Notes (to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking).

"Senior Security Agent" means the Initial Senior Security Agent and each other collateral agent (or equivalent) under any Additional Senior Secured Financing Documents and any replacement of such collateral agent (in each case to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking).

"Senior Transaction Security" means Security created under a Senior Transaction Security Document.

"Senior Transaction Security Document" means any Transaction Document creating Security only for the Senior Secured Liabilities whether directly or through a parallel debt structure or equivalent.

"Shareholder Creditor" means (a) Holdco, (b) any Notes Issuer or affiliate of a Notes Issuer which is not a member of the Group and which in each case has lent the Notes Proceeds Loan in respect of the relevant Notes to the Parent and (c) any other person that has acceded to this Agreement as a Shareholder Creditor in accordance with Clause 22.2 (*Accession of Shareholder Creditor*).

"Subordinated Shareholder Liabilities" means the Liabilities owed to the Shareholder Creditors by a member of the Group which constitute Indebtedness (as defined in the Initial Senior Facilities Agreement) including any Notes Proceeds Loan.

"Subsidiary" means, in relation to any person, any entity which is controlled directly or indirectly by that person and any entity (whether or not so controlled) treated as a subsidiary in the latest financial statements of that person from time to time, and "control" for this purpose means the direct or indirect ownership of the majority of the voting share capital of such entity or the right or ability to determine the composition of a majority of the board of directors (or like board) of such entity, in each case whether by virtue of ownership or share capital, contract or otherwise.

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

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

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

"Term Outstandings" means, at any time, the aggregate of the amounts of principal (not including any capitalised or deferred interest) then outstanding under any term loan facility under the Initial Senior Facilities Agreement, any other Credit Facility Agreement, the Initial Second Lien Facilities Agreement or any other Second Lien Facility Agreement (or, in each case, any refinancing thereof).

"Total Commodity Hedging Amount" means, at any time, the aggregate of each Aggregate Commodity Hedging Amount at that time.

"Total Exchange Rate Hedging Amount" means, at any time, the aggregate of each Aggregate Exchange Rate Hedging Amount at that time.

"Total Hedged Amount" means, at any time, the aggregate of the Total Commodity Hedging Amount, Total Exchange Rate Hedging Amount and the Total Interest Rate Hedging Amount.

"Total Interest Rate Hedging Amount" means, at any time, the aggregate of each Aggregate Interest Rate Hedging Amount at that time.

"Transaction Security" means the Senior Transaction Security, the Second Lien Transaction Security, the Common Transaction Security and any other Security created or evidenced or expressed to be created or evidenced under or pursuant to the Transaction Security Documents and which, whether created under a single Transaction Security Document or, in a number of Transaction Security Documents, ranks in the order of priority contemplated in Clause 2.2 (*Transaction Security*).

"Transaction Security Documents" means any document entered into by any Debtor creating or expressed to create any Security over all or any part of its assets in respect of any of the obligations of any of the Debtors under the Secured Debt Documents.

"Unsecured Agent" means any Facility Agent (or equivalent) under any Unsecured Facility Agreement and any replacement of such facility agent (to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking).

"Unsecured Creditor" means each Unsecured Notes Creditor and each Unsecured Lender.

"Unsecured Facility" means any credit facility which is unsecured and ranks after the Secured Debt Documents under Clause 2.1 (*Primary Creditor Liabilities*).

"Unsecured Facility Agreement" means any facility agreement entered into after the date of this Agreement by the relevant member of the Group and designated by the Parent as an "Unsecured Facility Agreement" in the applicable Further Creditor Notice.

"Unsecured Finance Documents" means:

- (a) in relation to any Unsecured Facility, the relevant Unsecured Facility Agreement and each other document or instrument designated by a Finco, a member of the Group and/or the relevant Creditor Representative as being a **"Finance Document"** or its equivalent under the relevant Unsecured Facility Agreement; and
- (b) in relation to any Unsecured Financing, the Unsecured Notes Indenture, any related Notes Proceeds Loan documents and each other document or instrument designated by a Finco, a member of the Group and/or the relevant

Creditor Representative as being a "Notes Document" or its equivalent under the relevant Unsecured Notes Indenture.

"Unsecured Financing" means any indebtedness incurred by any member of the Group permitted to do so under the Secured Debt Documents (as issuer, together with the guarantees of the relevant Debtors) under Unsecured Notes (or any related Notes Proceeds Loan) or an Unsecured Facility which is notified to the Common Security Agent by the Parent in writing as being indebtedness that is an "Unsecured Financing" pursuant to Clause 23.3 (*Further Creditor Notice*) **provided that:**

- (a) incurrence of such indebtedness is not prohibited by the terms of the Secured Debt Documents;
- (b) the terms of such Unsecured Notes or Unsecured Facility comply with Clause 23.2 (*Terms of additional indebtedness*); and
- (c) either:
 - (i) the providers of such indebtedness have agreed to become a Party to this Agreement as an Unsecured Creditors by executing and delivering to the Security Agent a Creditor/Creditor Representative Accession Undertaking; or
 - (ii) the agent, trustee or other relevant representative in respect of that Unsecured Notes Financing has agreed to become a Party to this Agreement as a Creditor Representative on behalf of the providers of such indebtedness by executing and delivering to the Security Agent a Creditor/Creditor Representative Accession Undertaking,

in each case to the extent that the relevant person is not already party to this Agreement in that capacity.

"Unsecured Financing Event of Default" means, in relation to any Unsecured Financing, an event of default (however described) under the Unsecured Finance Documents which entitles the relevant Unsecured Creditors to give (or to instruct the Creditor Representative to give) a notice of acceleration or which automatically triggers all or any part of the Unsecured Liabilities to be immediately due and payable.

"Unsecured Lenders" means each "Lender" (or equivalent) under and as defined in the relevant Unsecured Facility Agreement.

"Unsecured Liabilities" means, in respect of an Unsecured Financing, the relevant Liabilities owed by any Debtors to the relevant Unsecured Creditors under the Unsecured Finance Documents in respect of such Unsecured Financing.

"Unsecured Liabilities Acceleration Event" means, in relation to any Unsecured Facility or Unsecured Notes:

- (a) the Creditor Representative in respect of such Unsecured Facility or Unsecured Notes exercising any of its rights (other than a right to place amounts on demand but including, without limitation, the making of a demand in respect of any amounts placed on demand) under the acceleration

provisions of the relevant Unsecured Finance Documents to declare all or part of the indebtedness outstanding thereunder to be immediately due and payable; or

- (b) all or part of such indebtedness becoming immediately due and payable automatically as a consequence of an Unsecured Financing Event of Default.

"Unsecured Noteholders" means, in respect of any Unsecured Notes Financing, the holders from time to time of the Unsecured Notes issued in respect of that Unsecured Notes Financing.

"Unsecured Notes" means, in respect of any Unsecured Notes Financing, any notes issued or to be issued by a Notes Issuer or a member of the Group under an Unsecured Notes Indenture in respect of that Unsecured Notes Financing.

"Unsecured Notes Creditors" means, in respect of any Unsecured Notes Financing, the Unsecured Noteholders and each Unsecured Notes Trustee in respect of that Unsecured Notes Financing.

"Unsecured Notes Indenture" means the indenture or other issuing document entered into after the date of this Agreement by a Notes Issuer or a member of the Group and designated by the Parent as an "Unsecured Notes Indenture" in the applicable Further Creditor Notice.

"Unsecured Notes Liabilities" means, in respect of an Unsecured Notes Financing, the relevant Liabilities owed by any Debtors to the relevant Unsecured Notes Creditors under the Unsecured Notes Finance Documents in respect of such Unsecured Notes Financing.

"Unsecured Payment Stop Notice" has the meaning given to such term in paragraph (a) of Clause 8.3 (*Issue of Unsecured Payment Stop Notice*).

"Unsecured Restructuring Costs" means any fees, costs and expenses of:

- (a) an Unsecured Agent;
- (b) an Unsecured Notes Trustee; or
- (c) any third party professional advisers payable by the Unsecured Creditors in respect of restructuring advice or valuations relating to the Group other than those payable in connection with disputing any aspect of a Distressed Disposal or a Liabilities Sale or any provision of a Debt Document.

"Unsecured Standstill Period" has the meaning given to that term in paragraph (a)(ii)(B) of Clause 8.10 (*Permitted Enforcement: Unsecured Creditors*).

"Unsecured Notes Trustee" means each entity acting as trustee under any issue of Unsecured Notes and any replacement of such trustee (in each case to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking).

"U.S. Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. 101 *et seq.*, entitled "Bankruptcy".

"U.S. Borrower" means any Borrower whose jurisdiction of organisation or incorporation is a state of the United States of America or the District of Columbia.

"U.S. Debtor Relief Laws" means the U.S. Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, judicial management or similar debtor relief laws of the United States from time to time in effect and affecting the rights of creditors generally.

"U.S. DIP Financing" means the obtaining of credit, incurrence of debt or use of cash collateral pursuant to Sections 363 or 364 of the U.S. Bankruptcy Code or any other U.S. Debtor Relief Law in any U.S. Insolvency Proceeding.

"U.S. Insolvency Proceeding" means any proceeding under clause 36.7 (*Insolvency proceedings*) of the Initial Senior Facilities Agreement (or any equivalent provision of a Credit Facility Agreement or Senior Secured Notes Indenture) in a U.S. court of competent jurisdiction.

"VAT" means:

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

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) any Party in a particular capacity shall be construed to be a reference to it in that capacity as such and not in any other capacity;
 - (ii) any Party or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees (including the surviving entity and any merger involving the person) and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
 - (iii) **"assets"** includes present and future properties, revenues and rights of every description;
 - (iv) a **"Debt Document"** or any other agreement 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 (however fundamentally) as permitted by this Agreement;

- (v) **"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 Common Security Agent;
 - (vi) a **"group of Creditors"** includes all the Creditors and a **"group of Primary Creditors"** includes all the Primary Creditors;
 - (vii) **"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;
 - (viii) 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;
 - (ix) 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);
 - (x) **"proceeds"** of a Distressed Disposal or of a Debt Disposal includes proceeds in cash;
 - (xi) 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;
 - (xii) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xiii) any requirement that any action or omission is permitted (or not prohibited) under Debt Documents shall only apply before the Common Secured Liabilities Discharge Date and to the Debt Documents which are in place at the relevant time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) any Default or Event of Default arising under the Debt Documents is **"continuing"** unless it has been remedied or, in accordance with the relevant Debt Documents, waived;
- (d) A Senior Secured Creditor providing **"cash cover"** for a Letter of Credit means a Senior Secured Creditor paying an amount in the currency of the Letter of Credit to an interest-bearing account in the name of the Senior Secured Creditor and the following conditions being met:
- (i) the account is with the relevant Issuing Bank;

- (ii) until no amount is or may be outstanding under that Letter of Credit, withdrawals from the account may only be made to pay an Issuing Bank amounts due and payable to it under the Credit Facility Documents in respect of that Letter of Credit; and
 - (iii) the Senior Secured Creditor has executed a security document over the account, in form and substance satisfactory to such Issuing Bank with which that account is held, creating a first ranking security interest over that account.
- (e) Contingent liabilities arising at law (such as the risk of clawback from a preference claim) where there is a no real possibility that such contingent liabilities become actual liabilities shall be disregarded when determining whether any liabilities have been fully and finally discharged.
- (f) References to any Creditor Representative acting on behalf of any specified group of Creditors means that Creditor Representative acting on behalf of such group of Creditors or, if applicable, with the consent of the requisite number of such group of Creditors required under and in accordance with the applicable Debt Documents. Such Creditor Representative will be entitled to seek instruction from the relevant group of Creditors which it represents to the extent required by the applicable Debt Documents as to any action to be taken by it under this Agreement.
- (g) Any reference in this Agreement to a Debtor or member of the Group being able to make any Payment or take any other action shall include a reference to that Debtor or member of the Group being permitted to make any arrangement in respect of that Payment or action or take any step or enter into any transaction to facilitate the making of that Payment or the taking of that action, provided such arrangement action or step is not otherwise prohibited by the Debt Documents.
- (h) Notwithstanding any other provision of this Agreement, until the relevant proceeds are released from escrow, the provisions of this Agreement shall not apply to or create any restriction in respect of any escrow arrangement pursuant to which the proceeds of any Credit Facility or Notes are subject and this Agreement shall not govern the rights and obligations of the relevant Creditors until such proceeds are released from such escrow arrangement in accordance with the terms thereof other than to redeem the Credit Facility or Notes pursuant to the terms of the relevant Debt Document.
- (i) In determining whether any indebtedness or other amount is prohibited by the terms of any Debt Document, the terms of any Debt Documents which:
 - (i) relate to any Liabilities which are to be refinanced in full or otherwise replaced in full with such indebtedness or other amount; or
 - (ii) will not exist or will cease to be in effect on the date on which such indebtedness or other amount is incurred by a member of the Group,
 shall not be taken into account.

- (j) Unless a contrary indication appears a term defined in the Initial Senior Facilities Agreement has the same meaning when used in this Agreement.
- (k) In this Agreement, where it relates to a Dutch entity, a reference to:
- (i) a "**winding-up**", "**administration**" or "**dissolution**" includes a Dutch entity being:
 - (A) declared bankrupt (*failliet verklaard*);
 - (B) dissolved (*ontbonden*);
 - (ii) a moratorium includes *surseance van betaling* and granted a moratorium includes *surseance verleend*;
 - (iii) a liquidator includes a *curator*;
 - (iv) an administrator includes a *bewindvoerder*;
 - (v) a "**receiver**" or an "**administrative receiver**" does not include a *curator or bewindvoerder*;
 - (vi) "**financial assistance**" means any act contemplated by section 2:98(c) of the Dutch Civil Code
 - (vii) any "step" or "procedure" taken in connection with insolvency proceedings includes a Dutch entity having filed a notice under section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*) or Section 60 of the Social Insurance Financing Act of the Netherlands (*Wet Financiering Sociale Verzekeringen*) in conjunction with Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*);
 - (viii) a "security interest" includes any mortgage (*hypotheek*), pledge (*pandrecht*), retention of title arrangement (*eigendomsvoorbehoud*), privilege (*voorrecht*), right of retention (*recht van retentie*), right to reclaim goods (*recht van reclame*) and, in general any right *in rem* (*beperkt recht*) created for the purpose of granting security (*goederenrechtelijk zekerheidsrecht*);
 - (ix) a "subsidiary" includes a *dochtermaatschappij* as defined in of the Dutch Civil Code;
 - (x) a "necessary action to authorise" includes without limitation:
 - (A) any action required to comply with the Dutch Works Councils Act (*Wet op de ondernemingsraden*); and
 - (B) obtaining a neutral or positive advice from the competent works council(s) provided such advice:
 - (1) is unconditional; or

(2) only contains conditions which can reasonably be expected to be satisfied without resulting in:

(I) non-compliance by any Obligor with any of the term of any Finance Document; or

(II) any representation or statement made or deemed to be made by an Obligor in any Finance Document or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document being or proving to have been incorrect or misleading;

(xi) an "attachment" includes a *conservatoir beslag* or *executorial beslag*.

1.3 Third Party Rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Rights Act**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in paragraph (b) of Clause 20.11 (*Exclusion of liability*) may, subject to this Clause 1.3 and the Third Parties Rights Act, rely on any Clause of this Agreement which expressly confers rights on it.
- (d) The Third Parties Rights Act shall apply to this Agreement in respect of any Noteholder which, by holding a Note, has effectively agreed to be bound by the provisions of this Agreement and will be deemed to receive the benefits hereof, and be subject to the terms and conditions hereof, as if such person was a Party hereto. For the purposes of this paragraph (d), upon any person becoming a Noteholder, such person shall be deemed a Party to this Agreement.
- (e) In relation to any amendment or waiver of this Agreement, no such person that is deemed to be a party to this Agreement by virtue of this Clause 1.3 is required to consent to or execute any amendment or waiver in order for such amendment or waiver to be effective.

2. RANKING AND PRIORITY

2.1 Primary Creditor Liabilities

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

- (a) **first**, the Senior Secured Liabilities and the Hedging Liabilities *pari passu* and without any preference amongst them;
- (b) **second**, the Second Lien Liabilities *pari passu* and without any preference amongst them; and
- (c) **third**, the Unsecured Liabilities *pari passu* and without any preference amongst them.

2.2 Transaction Security and Security Agents

Each of the Parties agrees that:

- (a) the Transaction Security shall secure the Liabilities (but only to the extent that such Transaction Security is expressed to secure those Liabilities) in the following order:
 - (i) **first**, the Senior Secured Liabilities and the Hedging Liabilities *pari passu* and without any preference between them; and
 - (ii) **second**, the Second Lien Liabilities; and
- (b) the roles of each Senior Security Agent, each Second Lien Security Agent and the Common Security Agent shall be held and performed by the same person at all times unless otherwise agreed by each Creditor Representative of Secured Creditors and references in this Agreement to "the Security Agent" refers to such person acting in each such capacity except where otherwise specified or the context otherwise requires;
- (c) in respect of the enforcement or release of any Senior Transaction Security and/or Second Lien Transaction Security, the Instructing Group shall give the same instructions to each Senior Security Agent and each Second Lien Security Agent at the same time; and
- (d) the Relevant Security Agent shall act in accordance with this Agreement; and
- (e) each Senior Security Agent and each Second Lien Security Agent shall each act in accordance with any instructions given to them by the Instructing Group.

2.3 Subordinated Shareholder and Intra-Group Liabilities

- (a) Each of the Parties agrees that the Subordinated Shareholder Liabilities and the Intra-Group Liabilities are postponed and subordinated to the Senior

Secured Liabilities, the Hedging Liabilities, the Second Lien Liabilities and the Unsecured Liabilities.

- (b) This Agreement does not purport to rank any of the Subordinated Shareholder Liabilities or the Intra-Group Liabilities as between themselves.

2.4 Anti-layering

Until the Final Discharge Date, no Debtor shall, without the approval of the Majority Senior Secured Creditors and the Majority Second Lien Creditors, issue or allow to remain outstanding any Liabilities that:

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

in each case unless such ranking or subordination arises as a matter of law or the other terms of this Agreement

3. CREDIT FACILITY LENDERS AND CREDIT FACILITY LENDER LIABILITIES

3.1 Payment of Credit Facility Lender Liabilities

- (a) Subject to paragraph (b) below, and without prejudice to any restrictions contained in any other Senior Secured Debt Document, the Debtors may make Payments of Credit Facility Lender Liabilities at any time in accordance with, and subject to the provisions of, the Credit Facility Documents.
- (b) Nothing in this Agreement shall prevent the payment by any Debtor, and demand, receipt and retention by a Creditor Representative in respect of a Credit Facility, of any Creditor Representative Amounts due to it.

3.2 Amendments and waivers: Credit Facility Lenders

- (a) Any Credit Facility Lenders and the Debtors may at any time amend or waive any of the terms of any Credit Facility Documents to which they are party in accordance with their terms (and subject to any relevant consent required in any such Credit Facility Documents, as applicable).
- (b) *Each Second Lien Creditor hereby consents to and acknowledges that as a consequence of any increase, extension, renewal, replacement, restatement, supplement, repayment, refund or refinance of any of the Senior Secured Liabilities, the Security Documents will or may be extended, amended and/or ratified or additional Security Documents may be entered into in order to*

secure any additional Senior Secured Liabilities and, where applicable, the Security granted in respect of any such additional Senior Secured Liabilities for the benefit of the Senior Secured Creditors shall remain ranking ahead of the Security granted for the benefit of the Second Lien Creditors.

3.3 Security: Credit Facility Lenders

Other than as set out in Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*), and subject to any necessary perfection requirements, the Credit Facility Lenders may take, accept or receive the benefit of:

- (a) any Security in respect of the Credit Facility Lender Liabilities in addition to the Senior Transaction Security entered into on or prior to the date of this Agreement if (except for any Security permitted under Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*)) and to the extent legally possible, at the same time equivalent Security is also offered:
 - (i) to each other Senior Security Agent as agent and/or (if applicable) trustee for the relevant Senior Secured Creditors in respect of their Secured Obligations in respect of the relevant Senior Secured Debt Documents;
 - (ii) to each Second Lien Security Agent as agent and/or (if applicable) trustee for the relevant Second Lien Creditors in respect of their Secured Obligations in respect of the relevant Second Lien Finance Documents;
 - (iii) in the case of any jurisdiction in which effective and enforceable Security cannot be granted in favour of each Second Lien Security Agent as agent and/or (if applicable) trustee for the relevant Second Lien Creditors in respect of their Secured Obligations in respect of the relevant Second Lien Finance Documents, to the Common Security Agent as trustee for the Secured Creditors in respect of their Secured Obligations by way of Common Transaction Security; and
 - (iv) in the case of any jurisdiction in which effective and enforceable Security cannot be granted in favour of a Security Agent as agent or (if applicable) trustee for all relevant Secured Creditors by way of Transaction Security without prejudicing the claims and/or ranking of the claims of any relevant Secured Creditors in the order contemplated by this Agreement:
 - (A) to the Secured Creditors (or their representatives, agents or trustees) in respect of their Secured Obligations; or
 - (B) to any Security Agent under a parallel debt structure for the benefit of the relevant Secured Creditors,

and which, whether created under a single document or in a number of documents, ranks in the same order of priority as that contemplated in

Clause 2.2 (*Transaction Security*) (either pursuant to this Agreement or otherwise); and

- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Credit Facility Lender Liabilities in addition to those in:
 - (i) the relevant Credit Facility Documents;
 - (ii) this Agreement; or
 - (iii) any Common Assurance,

if (except for any guarantee, indemnity or other assurance against loss permitted under Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*)) and to the extent legally possible, at the same time it or an equivalent guarantee, indemnity or other assistance (in each case however conferred) is also offered to the other Secured Creditors in respect of their respective Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*) (either pursuant to this Agreement or otherwise).

3.4 Security: Ancillary Lenders and Issuing Banks

No Ancillary Lender or Issuing Bank will, unless the prior written consent of the Majority Lenders under the relevant Credit Facility and (if prohibited by the terms of other Senior Secured Debt Documents) the relevant Creditor Representatives as applicable, is obtained, take, accept or receive from any member of the Group the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities owed to it other than:

- (a) the Senior Transaction Security or the Common Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
 - (i) the relevant Credit Facility Documents;
 - (ii) this Agreement; or
 - (iii) any Common Assurance;
- (c) indemnities and assurances against loss contained in the Ancillary Documents not materially greater in extent than any of those referred to in paragraph (b) above ignoring for this purpose differences arising as a result of guarantee limitation language) or customary in Ancillary Documents of the relevant type;
- (d) any Credit Facility Cash Cover permitted under the Credit Facility Documents relating to any Ancillary Facility or for any Letter of Credit issued by an Issuing Bank;
- (e) the indemnities contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Document which is based on an ISDA Master Agreement)

or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Ancillary Document which is not based on an ISDA Master Agreement); or

- (f) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities.

3.5 Restriction on Enforcement: Ancillary Lenders and Issuing Banks

Subject to Clause 3.6 (*Permitted Enforcement: Ancillary Lenders and Issuing Banks*), so long as any of the Senior Secured Liabilities (other than any Liabilities owed to the Ancillary Lenders and the Issuing Banks) are or may be outstanding, none of the Ancillary Lenders or the Issuing Banks shall be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it in such capacity.

3.6 Permitted Enforcement: Ancillary Lenders and Issuing Banks

- (a) The Ancillary Lenders and the Issuing Banks may take Enforcement Action if:
 - (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the relevant Credit Facility Lender Liabilities (excluding the Liabilities owing to Ancillary Lenders and the Issuing Banks), in which case the Ancillary Lenders and the Issuing Banks may take the same Enforcement Action as has been taken in respect of those Credit Facility Lender Liabilities;
 - (ii) that action is contemplated by the Initial Senior Facilities Agreement (or any applicable other Credit Facility Agreement) or Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*);
 - (iii) such Enforcement Action is the exercise of rights of set-off where the amount set-off is to be applied in discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Gross Outstanding of a Multi-account Overdraft Facility to or towards an amount equal to its Net Outstandings;
 - (iv) that Enforcement Action is taken in respect of Credit Facility Cash Cover which has been provided in accordance with the relevant Credit Facility Documents;
 - (v) at the same time as or prior to, that action, the consent of the Majority Lenders under the relevant Credit Facility and the Majority Senior Secured Creditors to that Enforcement Action is obtained; or

- (vi) an Insolvency Event of Default has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event of Default, each Ancillary Lender and each Issuing Bank shall be entitled (if it has not already done so) to exercise any right it may otherwise have and be entitled to exercise in respect of that member of the Group to:
 - (A) accelerate any of that member of the Group's Credit Facility Lender Liabilities or declare them prematurely due and payable on demand;
 - (B) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Credit Facility Lender Liabilities;
 - (C) exercise any right of set-off or take or receive any Payment in respect of any Credit Facility Lender Liabilities of that member of the Group; or
 - (D) claim and prove in the liquidation of that member of the Group for the Credit Facility Lender Liabilities owing to it.
- (b) *Clause 3.5 (Restriction on Enforcement: Ancillary Lenders and Issuing Banks)* shall not restrict any right of an Ancillary Lender:
 - (i) to demand repayment or prepayment of any of the Liabilities owed to it prior to the expiry date of the relevant Ancillary Facility; or
 - (ii) to net or set off in relation to a Multi-account Overdraft,

in accordance with the terms of the relevant Credit Facility Document and to the extent that the demand is required to reduce, or the netting or set-off represents a reduction from the Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings.

3.7 Restriction on enforcing guarantees: Credit Facility Lenders

After an Acceleration Event, none of the Credit Facility Lenders shall make any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group other than:

- (a) to the extent necessary to allow the Ancillary Lenders to exercise any right of set-off where the amount set-off is to be applied in discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction from the Gross Outstanding(s) of a Multi-account Overdraft Facility to or towards its Net Outstandings;
- (b) to the extent necessary to allow Ancillary Lenders to effect any Close-Out Netting, any Payment Netting or Inter-Hedging Ancillary Document Netting;

- (c) to create an actual liability the purpose of which is to facilitate the immediate enforcement of the Transaction Security Documents executed by such member of the Group;
- (d) after the enforcement of the Transaction Security Documents executed by such member of the Group has commenced;
- (e) after an Insolvency Event has occurred in respect of such member of the Group; or
- (f) with the consent of the Majority Senior Secured Creditors,

provided that notwithstanding anything to the contrary herein, upon any Automatic Acceleration Event any presentment, demand, protest or notice of any kind required by the foregoing clauses are expressly waived.

4. SENIOR SECURED NOTES CREDITORS AND SENIOR SECURED NOTES LIABILITIES

4.1 Payment of Senior Secured Notes Liabilities

- (a) Subject to paragraph (b) below, and without prejudice to any restrictions contained in any Credit Facility Documents, the Debtors may make Payments of the Senior Secured Notes Liabilities (including any Notes Proceeds Loan) at any time in accordance with, and subject to the provisions of, the applicable Additional Senior Secured Financing Documents.
- (b) Nothing in this Agreement shall prevent the payment by any Debtor, and demand, receipt and retention by a Senior Secured Notes Trustee, of any Creditor Representative Amounts due to it.

4.2 Amendments and waivers: Senior Secured Notes Creditors

- (a) Any Senior Secured Notes Creditors and the Debtors may at any time amend or waive any of the terms of any Additional Senior Secured Financing Documents to which they are party in accordance with their terms (and subject to any relevant consent required in any such Additional Senior Secured Financing Documents, as applicable).
- (b) Each Second Lien Creditor hereby consents to and acknowledges that as a consequence of any increase, extension, renewal, replacement, restatement, supplement, repayment, refund or refinance of any of the Senior Secured Liabilities, the Security Documents will or may be extended, amended and/or ratified or additional Security Documents may be entered into in order to secure any additional Senior Secured Liabilities and, where applicable, the Security granted in respect of any such additional Senior Secured Liabilities for the benefit of the Senior Secured Creditors shall remain ranking ahead of the Security granted for the benefit of the Second Lien Creditors.

4.3 Security: Senior Secured Notes Creditors

Subject to any necessary perfection requirements, the Senior Secured Notes Creditors may take, accept or receive the benefit of:

- (a) any Security in respect of the Senior Secured Notes Liabilities in addition to the Senior Transaction Security entered into on or prior to the date of this Agreement if, and to the extent legally possible, at the same time, equivalent Security is also offered:
 - (i) to each other Senior Security Agent as agent and/or (if applicable) trustee for the relevant Senior Secured Creditors in respect of their Secured Obligations in respect of the relevant Senior Secured Debt Documents;
 - (ii) to each Second Lien Security Agent as agent and/or (if applicable) trustee for the relevant Second Lien Creditors in respect of their Secured Obligations in respect of the relevant Second Lien Finance Documents;
 - (iii) in the case of any jurisdiction in which effective and enforceable Security cannot be granted in favour of each Second Lien Security Agent as agent and/or (if applicable) trustee for the relevant Second Lien Creditors in respect of their Secured Obligations in respect of the relevant Second Lien Finance Documents, to the Common Security Agent as trustee for the Secured Creditors in respect of their Secured Obligations by way of Common Transaction Security; and
 - (iv) in the case of any jurisdiction in which effective and enforceable Security cannot be granted in favour of a Security Agent as agent and/or (if applicable) trustee for all relevant Secured Creditors by way of Transaction Security without prejudicing the claims and/or ranking of the claims of any relevant Secured Creditors in the order contemplated by this Agreement:
 - (A) to the Secured Creditors (or to their representatives, agents or trustees) in respect of their Secured Obligations; or
 - (B) to any Security Agent under a parallel debt structure for the benefit of the relevant Secured Creditors,and which, whether created under a single document or in a number of documents, ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*) (either pursuant to this Agreement or otherwise); and
- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Senior Secured Notes Liabilities in addition to those in:
 - (i) the relevant Additional Senior Secured Financing Documents; or

- (ii) this Agreement; or
- (iii) any Common Assurance,

if, and to the extent legally possible, at the same time, it or an equivalent guarantee, indemnity or other assistance (in each case however conferred) is also offered to the other Senior Secured Creditors in respect of their respective Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*) (either pursuant to this Agreement or otherwise); and

- (c) any Security granted over the relevant cash or cash equivalents (and/or the relevant accounts and related rights) to or for the benefit of any Senior Secured Notes Creditors in respect of any defeasance, discharge or redemption of the Senior Secured Notes where such defeasance, discharge or redemption is not prohibited by the terms of any of the Debt Documents.

4.4 Restrictions on enforcing guarantees: Senior Secured Notes Creditors

After an Acceleration Event, none of the Senior Secured Notes Creditors shall make any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group other than:

- (a) to create an actual liability the purpose of which is to facilitate the immediate enforcement of the Transaction Security Documents executed by any such member of the Group;
- (b) after the enforcement of the Transaction Security Documents executed by such member of the Group has commenced;
- (c) after an Insolvency Event has occurred in respect of such member of the Group; or
- (d) with the consent of the Majority Senior Secured Creditors.

5. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

5.1 Identity of Hedge Counterparties

- (a) Subject to paragraph (b) below, no entity providing hedging arrangements to any Debtor shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities and obligations arising in relation to those hedging arrangements nor shall those liabilities and obligations be treated as Hedging Liabilities unless that entity is or becomes a Party as a Hedge Counterparty and appoints the relevant Senior Security Agent under the relevant Senior Secured Debt Document and receives the benefit of any security agency and trust constituted under such Senior Secured Debt Document in a manner acceptable to such Senior Security Agent and the Common Security Agent.
- (b) Paragraph (a) above shall not apply to a Hedging Ancillary Lender.

- (c) Any member of the Group may enter into any or all of three different types of hedging arrangements under which the relevant counterparty may share in the Transaction Security and in the benefit of a guarantee or indemnity under this Agreement. The three types of hedging arrangements are interest rate hedging, foreign exchange hedging or commodity hedging.

5.2 Restriction on Payments: Hedging Liabilities

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

- (a) that Payment is permitted under Clause 5.3 (*Permitted Payments: Hedging Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 5.8 (*Permitted Enforcement: Hedge Counterparties*).

5.3 Permitted Payments: Hedging Liabilities

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

- (iv) to the extent that:
 - (A) the relevant Debtor's obligation to make the Payment arises from:
 - (1) a Credit Related Close-Out in relation to that Hedging Agreement; or
 - (2) a Permitted Automatic Early Termination under that Hedging Agreement which arises as a result of an event relating to a Debtor; and
 - (B) no Event of Default under the Senior Secured Debt Documents is continuing at the time of that Payment or would result from that Payment;
- (v) to the extent that no Event of Default under the Senior Secured Debt Documents is continuing or would result from that Payment and the relevant Debtor's obligation to make the Payment arises as a result of a close-out or termination arising as a result of:
 - (A) section 5(a)(vii) (*Bankruptcy*) of the 1992 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 1992 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
 - (B) section 5(a)(vii) (*Bankruptcy*) of the 2002 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 2002 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
 - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraph (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement) and the equivalent event of default has occurred with respect to the relevant Hedge Counterparty; or
 - (D) the relevant Debtor terminating or closing-out the relevant Hedging Agreement as a result of a Hedging Force Majeure and the Termination Event (as defined in the relevant Hedging Agreement in the case of a Hedging Agreement based on an ISDA Master Agreement) or the equivalent termination event (in the case of a Hedging Agreement not based on an ISDA Master Agreement) has occurred; or
- (vi) if the Majority Senior Secured Creditors give prior consent to the Payment being made.

- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid unless:
 - (i) such scheduled payment has not been made by the Hedge Counterparty as a result of it exercising its rights to withhold payments under the relevant Hedging Agreement; or
 - (ii) the prior consent of the Majority Senior Secured Creditors is obtained.
- (c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to Clause 5.4 (*Payment obligations continue*), not result in a default (however described) in respect of that Debtor under that Hedging Agreement.

5.4 Payment obligations continue

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

5.5 No acquisition of Hedging Liabilities

Prior to the Credit Facility Discharge Date in respect of all Credit Facilities, the Debtors shall not, and shall procure that no other member of the Group will:

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

in respect of any of the Hedging Liabilities unless:

- (i) to the extent the same is otherwise prohibited by the terms of any Senior Secured Debt Documents, the consent of the relevant Creditor Representative is obtained;
- (ii) if an Acceleration Event has occurred and is continuing, the consent of the Majority Senior Secured Creditors is obtained; or
- (iii) the Liabilities Acquisition is in respect of a Payment or other liability payment of which is permitted pursuant to Clause 5.3 (*Permitted Payments: Hedging Liabilities*) at the time such Liability Acquisition is made.

5.6 Security: Hedge Counterparties

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

- (a) the Senior Transaction Security or the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) this Agreement;
 - (ii) any Common Assurance; or
 - (iii) the relevant Hedging Agreement not materially greater in extent than any of those referred to in paragraphs (b)(i) and (b)(ii) above;
- (c) as otherwise contemplated by Clause 3.3 (*Security: Credit Facility Lenders*); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

5.7 Restriction on Enforcement: Hedge Counterparties

Subject to Clause 5.8 (*Permitted Enforcement: Hedge Counterparties*) and Clause 5.9 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clauses 14.2 (*Enforcement Instructions*) and 14.3 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements.

5.8 Permitted Enforcement: Hedge Counterparties

- (a) To the extent it is able to do so under the relevant Hedging Agreement, a Hedge Counterparty may terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:
 - (i) if, prior to a Distress Event, the Parent has certified to that Hedge Counterparty that that termination or close-out would not result in a breach of any Senior Secured Debt Document;
 - (ii) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;
 - (iii) if a Distress Event has occurred;
 - (iv) if an Event of Default has occurred under section 8.01(f) (*Insolvency Proceedings, Etc.*) or section 8.01(g) (*Inability to Pay Debts*);

Attachment) of the Initial Senior Facilities Agreement (or any equivalent provision of a Credit Facility Agreement or Senior Secured Notes Indenture) in relation to a Debtor which is party to that Hedging Agreement;

- (v) if and to the extent such a termination or close-out would breach a Senior Secured Debt Document, each relevant Creditor Representative, gives prior consent to that termination or close-out being made;
- (vi) on or immediately following a refinancing (or repayment) and cancellation in full of a Credit Facility in respect of which the relevant Hedging Agreement relates;
- (vii) if the only Secured Obligations are the Hedging Liabilities;
- (viii) if the Hedging Liabilities and the other Senior Secured Liabilities cease to have *pari passu* entitlement to the proceeds of enforcement of the Transaction Security or any guarantee claims in relation to the Hedging Liabilities and the other Senior Secured Liabilities cease to rank *pari passu*;
- (ix)
 - (A) subject to paragraphs (B) and (C) below, if a Hedge Counterparty or any of its Affiliates which is a Credit Facility Lender or Second Lien Lender has its Senior Secured Credit Participation or Second Lien Credit Participation in respect of a Credit Facility or Second Lien Facility reduced to zero or no longer has any Senior Secured Credit Participation or Second Lien Credit Participation (as applicable), in each case as a result of the exercise of any right under section 3.07 (*Replacement of Lenders under Certain Circumstances*) of the Initial Senior Facilities Agreement (or any equivalent provision of a Credit Facility Agreement or Second Lien Facility Agreement);

- (B) in the circumstances to which paragraph (A) above relates, on or prior to the date on which such Lender's Senior Secured Credit Participation or Second Lien Credit Participation is reduced to zero or such Lender no longer has a Senior Secured Credit Participation or Second Lien Credit Participation, in each case, in respect of the Credit Facility or Second Lien Facility Agreement which the applicable Hedging Agreement relates to (the "**Relevant Date**"), the Parent may identify a person (an "**Eligible Transferee**") willing to accept the novation of the relevant Hedge Counterparty's rights and obligations under the relevant Hedging Agreement. Following delivery of a notice by the Parent identifying such person to the relevant Hedge Counterparty:
- (1) such Hedge Counterparty will (at the cost and expense of the Parent (but, for the avoidance of doubt, excluding any purchase price or similar payment to be made by the Eligible Transferee to the relevant Hedge Counterparty)) and negotiate (in good faith and acting reasonably) with the Eligible Transferee and use reasonable endeavours (taking into account any legal or regulatory impediments) with a view to agreeing and entering into the form of documentation required to effect the novation from that Hedge Counterparty to the Eligible Transferee on mutually satisfactory terms as soon as reasonably practicable;
 - (2) the relevant Hedge Counterparty shall only be obliged to enter into the novation documentation referred to in paragraph (1) above as soon as reasonable practicable after it is satisfied that it has complied with all necessary "*know your customer*" or other similar checks under all applicable laws and regulations in relation to that novation; and
 - (3) the relevant Hedge Counterparty shall perform the checks described in paragraph (B)(2) above and shall promptly notify the Eligible Transferee and the Parent after it is satisfied that it has complied with those checks; and
- (C) if no novation has been effected (on the terms set out in paragraph (B) above) on or prior to the date falling 5 Business Days following the Relevant Date, the Hedge Counterparty may terminate the relevant transaction(s) under its Hedging Agreement; or
- (x) to the extent that that termination or close-out is necessary to comply with paragraph (a) of Clause 5.12 (*Total Hedging*).

- (b) If a Debtor has defaulted on any Payment due under a Hedging Agreement after allowing any applicable notice or grace period and the default has continued unwaived and unremedied for more than 10 Business Days after notice thereof has been given to the Security Agent by the relevant Hedge Counterparty pursuant to paragraph (e) of Clause 26.3 (*Notification of prescribed events*), the relevant Hedge Counterparty:
 - (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any transaction under that Hedging Agreement; and
 - (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that an Acceleration Event has occurred, shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.
- (c) After the occurrence of an Insolvency Event in relation to any member of the Group, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have and be entitled to exercise in respect of that member of the Group to:
 - (i) prematurely close-out or terminate any Hedging Liabilities of that member of the Group in accordance with the terms of the relevant Hedging Agreement;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Hedging Liabilities;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Hedging Liabilities of that member of the Group; or
 - (iv) claim and prove in the liquidation of that member of the Group for the Hedging Liabilities owing to it.

5.9 Required Enforcement: Hedge Counterparties

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close-out in full any transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
 - (i) the occurrence of an Acceleration Event and delivery to it of a notice from the Security Agent that an Acceleration Event has occurred; and
 - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the relevant Instructing Group) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between any Debtor and any Primary Creditor with the purpose of bringing about that Acceleration Event.

- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under paragraph (b) of Clause 5.8 (*Permitted Enforcement: Hedge Counterparties*) (or would have been able to if that Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Security Agent (acting on the instructions of the relevant Instructing Group).

5.10 Treatment of Payments due to Debtors on termination of transactions under Hedging Agreements

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

5.11 Terms of Hedging Agreements

- (a) The Hedge Counterparties (to the extent party to the Hedging Agreement in question) and the Debtors party to the Hedging Agreements shall ensure that, at all times:
 - (i) each Hedging Agreement documents only hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of "Hedging Agreement" and that no other hedging arrangements are carried out under or pursuant to a Hedging Agreement;
 - (ii) each Hedging Agreement is based either:
 - (A) on an ISDA Master Agreement; or
 - (B) on another framework agreement which is similar in effect to an ISDA Master Agreement;
 - (iii) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of:
 - (A) a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement); or

- (B) an event similar in meaning and effect to either of those described in paragraph (A) above (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),

that Hedging Agreement will:

- (1) if it is based on a 1992 ISDA Master Agreement, provide for payments under the "Second Method" and will make no material amendment to section 6(e) (Payments on Early Termination) of the ISDA Master Agreement;
 - (2) if it is based on a 2002 ISDA Master Agreement, make no material amendment to section 6(e) (Payments on Early Termination) of the ISDA Master Agreement; or
 - (3) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Agreement is in its favour;
- (iv) each Hedging Agreement will not provide for Automatic Early Termination other than to the extent that:
 - (A) the provision of Automatic Early Termination is consistent with practice in the relevant derivatives market, taking into account the legal status and jurisdiction of incorporation of the parties to that Hedging Agreement; and
 - (B) that Automatic Early Termination is:
 - (1) as provided for in section 6(a) (Right to Terminate following Event of Default) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);
 - (2) as provided for in section 6(a) (Right to Terminate Following Event of Default) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
 - (3) similar in effect to that described in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
- (v) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date or otherwise be able to terminate each transaction under such Hedging

Agreement if so required pursuant to Clause 5.9 (*Required Enforcement: Hedge Counterparties*);

- (vi) each Hedging Agreement relating to Interest Rate Hedging will permit the relevant Hedge Counterparty and each relevant Debtor to take such action as may be necessary to comply with Clause 5.12 (*Total Hedging*).
- (b) In the event that a Hedging Counterparty does not consent to any amendment request under and/or replacement of any Hedging Agreement or other Debt Document required by the Parent (a "**Refinancing Request**") in order to facilitate in the event of any refinancing, replacement, increase, supplement or other restructuring of all or any part of the Senior Secured Liabilities, the Second Lien Liabilities or the Unsecured Liabilities (including by the designation of any Additional Senior Secured Financing, Second Lien Financing or Unsecured Financing pursuant to this Agreement) (a "**Refinancing**") or does not agree to any amendment or waiver requested by a member of the Group pursuant to Clause 29 (*Consents, Amendments and Override*) (in each case within the time period specified by the relevant member of the Group) each member of the Group shall be entitled to:
 - (i) terminate any hedging arrangements with that Hedging Counterparty (the "**Non-Consenting Counterparty**") (and the amount payable to or by the Non-Consenting Counterparty on such early termination shall be calculated on the basis that an Additional Termination Event has occurred and that the relevant member of the Group is the Affected Party); and/or
 - (ii) require that any of those arrangements (the "Transferred Arrangements") be transferred (and the Non-Consenting Counterparty will so transfer) to an Eligible Transferee selected by the Parent (the "Acquiring Counterparty") willing to assume the same in accordance with the terms of paragraphs (a)(ix)(B)(1), (2) and (3) of Clause 5.8 (*Permitted Enforcement: Hedge Counterparties*) above, provided, that if no such transfer of the relevant transaction(s) has been effected within 5 Business Days, the Non-Consenting Counterparty shall no longer be required to purport a transfer and relevant Debtor shall continue to be entitled to rely on paragraph (i) immediately above.
- (c) The terms "**Additional Termination Event**" and "**Affected Party**" as used in paragraph (b) above shall have the meaning given to them in the relevant Hedging Agreements based on the ISDA documents or if the Hedging Agreements are not based on an ISDA Master Agreement, the equivalent terms in such Hedging Agreement.

5.12 Total Hedging

- (a) If an Interest Rate Hedge Excess occurs then, on the same day as the occurrence of that Interest Rate Hedge Excess, the relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, reduce each Hedge Counterparty's Interest Rate Hedging by that Hedge Counterparty's

Interest Rate Hedging Proportion of that Interest Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary.

- (b) The relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) will, pay to that Hedge Counterparty (in accordance with the relevant Hedging Agreement) an amount equal to the sum of all payments (if any) that become due from each relevant Debtor to a Hedge Counterparty under the relevant Hedging Agreement(s) as a result of any action described in paragraph (a) above.
- (c) Each Hedge Counterparty shall co-operate in any process described in paragraph (b) above and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging Agreement(s) to a Debtor as a result of any action described in paragraph (a) above.

5.13 Restriction on enforcing guarantees: Hedge Counterparties

After an Acceleration Event, a Hedge Counterparty shall not make any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group other than:

- (a) to the extent necessary to allow such Hedge Counterparty to effect any Close-Out Netting, any Payment Netting or any Inter-Hedging Agreement Netting;
- (b) to create an actual liability the purpose of which is to facilitate the immediate enforcement of the Transaction Security Documents executed by such member of the Group;
- (c) after the enforcement of the Transaction Security Documents executed by such member of the Group has commenced;
- (d) after an Insolvency Event has occurred in respect of such member of the Group; and
- (e) with the consent of the Majority Senior Secured Creditors.

5.14 Termination of Hedging

Each Debtor shall have the right (but not the obligation) to terminate and cancel any Hedging Agreement to which it is a party upon 5 Business Days prior written notice to the relevant Hedge Counterparty (with a copy to the Security Agent) **provided that** there are no outstanding hedging transactions thereunder or any amount due and payable and that such termination and/or cancellation would not result in a breach of any Credit Facility Document or Additional Senior Secured Financing Document.

5.15 No Outstanding Transactions

If a Hedging Agreement is terminated by the relevant Debtor in circumstances where there are no outstanding transactions thereunder, as provided for in Clause 5.14 (*Termination of Hedging*), the Hedge Counterparty shall immediately cease to be a

Hedge Counterparty for the purposes of this Agreement and shall be discharged from further obligations to the Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to such termination).

6. OPTION TO PURCHASE AND HEDGE TRANSFER

6.1 Option to Purchase: Second Lien Creditors

- (a) Subject to paragraph (b) below, some or all of the Second Lien Creditors (the "**Purchasing Second Lien Creditors**") may after a Distress Event by giving not less than ten days' notice to the Common Security Agent, require the transfer to them (or to a nominee or nominees), in accordance with Clause 22.3 (*Accession of Credit Facility Lenders and Creditor Representatives*) and Clause 22.5 (*Accession of Senior Secured Notes Trustee*), of all, but not part, of the rights, benefits and obligations in respect of the Senior Secured Liabilities (other than the Hedging Liabilities) if:
 - (i) that transfer is lawful and subject to paragraph (ii) below, otherwise permitted by the terms of the relevant Senior Secured Debt Documents;
 - (ii) any conditions relating to such a transfer contained:
 - (A) in the relevant Debt Documents are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required; and
 - (B) to the extent that the Purchasing Second Lien Creditors provide cash cover for any Letter of Credit, the consent of the relevant Issuing Bank relating to such transfer shall not be required;
 - (iii) as applicable, the relevant Creditor Representatives, on behalf of each group of Senior Secured Creditors, are each paid an amount by the Purchasing Second Lien Creditors equal to the aggregate of:
 - (A) any amounts provided as cash cover by the Purchasing Second Lien Creditors for any Letter of Credit;
 - (B) all of the Senior Secured Liabilities (other than the Hedging Liabilities) at that time (whether or not due), including all amounts that would have been payable under the Debt Documents if the Senior Secured Liabilities were being prepaid by the relevant Debtors on the date of that payment; and
 - (C) all costs and expenses (including legal fees) incurred by the relevant Creditor Representatives and/or the other Senior Secured Creditors as a consequence of giving effect to that transfer;

- (iv) as a result of that transfer the Senior Secured Creditors have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
 - (v) an indemnity is provided from each Purchasing Second Lien Creditor exercising its rights pursuant to this Clause 6.1 (or from another third party acceptable to all the Senior Secured Creditors) in a form satisfactory to each such Creditor in respect of all losses which may be sustained or incurred by any such Creditor in consequence of any sum received or recovered by any such Creditor from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any such Creditor for any reason; and
 - (vi) the transfer is made without recourse to, or representation or warranty from, the Senior Secured Creditors, except that each such Creditor shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) Subject to paragraph (b) of Clause 6.2 (*Hedge Transfer: Second Lien Creditors*) all the Purchasing Second Lien Creditors may only require a Priority Creditor Liabilities Transfer if, at the same time, they require a Hedge Transfer in accordance with Clause 6.2 (*Hedge Transfer: Second Lien Creditors*) and if, for any reason, a Hedge Transfer cannot be made in accordance with Clause 6.2 (*Hedge Transfer: Second Lien Creditors*), no Priority Creditor Liabilities Transfer may be required to be made.
- (c) Each relevant Creditor Representative in respect of the Senior Secured Liabilities shall, at the request of the Purchasing Second Lien Creditors, notify the Purchasing Second Lien Creditors of:
- (i) the sum of the amounts described in paragraphs (a)(iii)(B) and (C) above; and
 - (ii) the amount of each Letter of Credit for which cash cover is to be provided by the Purchasing Second Lien Creditors.
- (d) If more than one Purchasing Second Lien Creditor wishes to exercise the option to purchase the Senior Secured Liabilities in accordance with paragraph (a) above, each such Purchasing Second Lien Creditor shall:
- (i) acquire the Senior Secured Liabilities *pro rata*, in the proportion that its Second Lien Credit Participation bears to the aggregate Second Lien Credit Participations of all the Purchasing Second Lien Creditors; and
 - (ii) inform each relevant Creditor Representative in accordance with the terms of the relevant Second Lien Finance Documents, who will determine (consulting with each other as required) the appropriate share of the Senior Secured Liabilities to be acquired by each such Purchasing Second Lien Creditor shall inform each such Purchasing Second Lien Creditor accordingly,

and the relevant Creditor Representative(s) shall promptly inform the Creditor Representatives of each of the Senior Secured Creditors of the Purchasing Second Lien Creditors' intention to exercise the option to purchase the Senior Secured Liabilities.

6.2 Hedge Transfer: Second Lien Creditors

- (a) The Purchasing Second Lien Creditors may, by giving not less than ten days' notice to the Common Security Agent, require a Hedge Transfer of all, but not part of, the rights, benefits and obligations in respect of the Hedging Liabilities:
 - (i) if either:
 - (A) the Purchasing Second Lien Creditors require, at the same time, a Priority Creditor Liabilities Transfer under Clause 6.1 (*Option to Purchase: Second Lien Creditors*); or
 - (B) the Purchasing Second Lien Creditors require that Hedge Transfer at any time on or after the first date on which all Credit Facility Lender Liabilities in respect of the Initial Senior Facilities and any Additional Senior Secured Financing Liabilities have been duly and finally discharged to the satisfaction of the relevant Creditor Representative(s), whether or not as the result of an enforcement and none of the Senior Secured Creditors in respect of the Initial Senior Facilities and any Additional Senior Secured Financing Liabilities are under any further obligation to provide financial accommodation to any of the Debtors under the Debt Documents; and
 - (ii) if:
 - (A) (x) that transfer is lawful; (y) at the time of the transfer, each relevant Debtor ("**Party B**") and each relevant Second Lien Creditor that is becoming a party to the Hedging Agreement (such Second Lien Creditor (the "**Assignee**") shall have entered into a master agreement (the "**Transferee Agreement**") in form of the ISDA Master Agreement (Multicurrency-Cross Border), and such Transferee Agreement shall include a Schedule in the form of the Schedule between the assignor and Party B with appropriate changes to the Schedule to reflect the status and identity of the Assignee and to put Party B in no worse a position (including any requirement to make any withholding for which any additional amount is required to be paid by Party B in respect of Tax) than Party B would have been in if the transfer had not occurred; and (z) Party B will not, and there is not a substantial likelihood that it will, receive any payment under the Transferee Agreement from which an amount is required to be withheld or deducted for or on account of a Tax with respect to which no additional amount is required to be paid by the Assignee under Section 2(d)(i)(4) of the Transferee Agreement (other than by reason of Section

2(d)(i)(4)(A) or (B) thereof) in which case no Debtor or other member of the Group shall be entitled to withhold its consent to that transfer;

- (B) any conditions (other than the consent of, or any consultation with, any Debtor or other member of the Group) relating to that transfer contained in the Hedging Agreements are complied with;
 - (C) each Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of (i) the Hedging Purchase Amount in respect of the hedging transactions under the relevant Hedging Agreement at that time and (ii) all costs and expenses (including legal fees) incurred as a consequence of giving effect to that transfer;
 - (D) as a result of that transfer, the Hedge Counterparties have no further actual or contingent liability to any Debtor under the relevant Hedging Agreements;
 - (E) an indemnity is provided from each Purchasing Second Lien Creditor exercising its rights pursuant to this Clause 6.2 which is receiving (or for which a nominee is receiving) that transfer (or from another third party acceptable to the relevant Hedge Counterparty) in a form satisfactory to the relevant Hedge Counterparty in respect of all losses which may be sustained or incurred by that Hedge Counterparty in consequence of any sum received or recovered by that Hedge Counterparty being required (or it being alleged that it is required) to be paid back by or clawed back from the Hedge Counterparty for any reason;
 - (F) that transfer is made without recourse to, or representation or warranty from, the relevant Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer; and
 - (G) the relevant Hedge Counterparty has completed all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such transfer.
- (b) The Purchasing Second Lien Creditors and any Hedge Counterparty may agree (in respect of the relevant Hedging Agreements (or one or more of them) to which that Hedge Counterparty is a party) that a Hedge Transfer required by the Purchasing Second Lien Creditor pursuant to paragraph (a) above shall not apply to such Hedging Agreement(s) or to the Hedging Liabilities and Hedge Counterparty Obligations under such Hedging Agreement(s).

7. SECOND LIEN CREDITORS AND SECOND LIEN LIABILITIES

7.1 Restriction on Payment: Second Lien Liabilities

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

- (a) that Payment is permitted under Clause 7.2 (*Permitted Payments: Second Lien Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (b)(iii) of Clause 7.11 (*Permitted Enforcement: Second Lien Creditors*).

7.2 Permitted Payments: Second Lien Liabilities

The members of the Group may:

- (a) prior to the Senior Secured Liabilities Discharge Date, make Payments to the Second Lien Creditors in respect of the relevant Second Lien Liabilities then due in accordance with the relevant Second Lien Finance Documents:

- (i) if:

- (A) the Payment is of:

- (1) any of the principal amount of the Second Lien Liabilities in accordance with any provision contained in a Second Lien Finance Documents under which a Second Lien Creditor can be prepaid as a result of (i) it becoming illegal for such Second Lien Creditor to participate in the Second Lien Financing, (ii) such Second Lien Creditor claiming for increased costs or an indemnification in respect of tax or (iii) the borrower or issuer in respect of the Second Lien Financing being obliged to gross-up interest payments to such Second Lien Creditor or redeem Second Lien Notes as a result of a redemption upon the occurrence of a tax event;
 - (2) any of the principal amount of the Second Lien Liabilities in an amount not exceeding the amount of payments of Second Lien Liabilities permitted under section 7.08 (*Prepayments, Etc. of Indebtedness*) under the Initial Senior Facilities Agreement (and any other similar or equivalent provision of any of the other Debt Documents) at such time;
 - (3) consent and/or waiver fees reasonably incurred by the relevant Debtor (acting in good faith) in respect of any amendment of, or consent or waiver relating to, any provision of a Second Lien Finance Document;

- (4) any amounts where the amount is outstanding as a result of the accrual of cash interest payable in respect of the Second Lien Liabilities during a period when a Second Lien Payment Stop Notice was outstanding (which has since expired);
 - (5) any amount of cash interest, tax gross-up or tax indemnity payments in accordance with the Second Lien Finance Documents;
 - (6) the capitalisation of interest or the issuance of a non-cash pay financial instrument evidencing the same which is subordinated to the Senior Secured Liabilities pursuant to this Agreement on the same terms as the Second Lien Liabilities; or
 - (7) any closing payment due pursuant to any purchase agreement (or equivalent) in respect of any Second Lien Notes or arrangement or other upfront fees due in respect of any Second Lien Facility Agreement; and
- (B) no Second Lien Payment Stop Notice is outstanding; and
- (C) no Common Senior Secured Payment Default has occurred and is continuing;
- (ii) if the Majority Senior Secured Creditors give prior consent to that Payment being made;
 - (iii) if the Payment is of a Creditor Representative Amount to a Second Lien Notes Trustee or Second Lien Agent;
 - (iv) if a Second Lien Payment Stop Notice is outstanding and/or a Common Senior Secured Payment Default is continuing and such Payment is a payment of any amount referred to in paragraph (i)(A)(6) or (i)(A)(7) above;
 - (v) of costs, commissions, taxes, expenses and, to the extent consistent with market comparables at the time committed to be paid (or otherwise reasonable), fees incurred in respect of or in relation to (or reasonably incidental to) any Second Lien Finance Documents (including in relation to any reporting or listing requirements in respect of any Second Lien Notes);
 - (vi) if the Payment is funded directly or indirectly with the proceeds of indebtedness permitted to be incurred for such purpose under the Debt Documents (after giving *pro forma* effect to such incurrence and the application of such indebtedness) **provided that**, if the Senior Secured Liabilities are not being refinanced simultaneously, no Second Lien Payment Stop Notice is outstanding and no Common Senior Secured Payment Default is continuing; or

- (vii) if:
 - (A) an Event of Default has occurred under the Second Lien Finance Documents and is continuing and the Payment is of Second Lien Restructuring Costs, the Common Currency Amount of which, when aggregated with the Common Currency Amount of any other such amounts paid pursuant to this paragraph (vii), does not exceed \$2,000,000; and
 - (B) no Common Senior Secured Payment Default has occurred and is continuing; and
- (b) on or after the Senior Secured Liabilities Discharge Date, make Payments to the Second Lien Creditors in respect of the Second Lien Liabilities in accordance with the Second Lien Finance Documents.

7.3 Issue of Second Lien Payment Stop Notice

- (a) A Second Lien Payment Stop Notice is "outstanding" during the period from the date on which, following the occurrence of a Common Senior Secured Event of Default (other than a Common Senior Secured Payment Default) (a "**Second Lien Payment Stop Event**"), the Security Agent (acting on the instructions of the relevant Instructing Group) issues a notice (a "**Second Lien Payment Stop Notice**") to a Second Lien Creditor Representative (with a copy to the Parent) advising that a Second Lien Payment Stop Event has occurred and is continuing and suspending Payments of the Second Lien Liabilities (other than those permitted under Clause 7.2 (*Permitted Payments: Second Lien Liabilities*) during such time) until the first to occur of:
 - (i) the date which is 120 days after the date of issue of that Second Lien Payment Stop Notice;
 - (ii) if a Second Lien Standstill Period commences after the issue of a Second Lien Payment Stop Notice, the date on which that Second Lien Standstill Period expires;
 - (iii) the date on which the relevant Second Lien Payment Stop Event in respect of which that Second Lien Payment Stop Notice was issued is no longer continuing;
 - (iv) the date on which the Security Agent (acting on the instructions of the relevant Instructing Group) cancels that Second Lien Payment Stop Notice by notice to the Second Lien Creditor Representative (with a copy to the Parent); and
 - (v) the date on which the Senior Secured Liabilities Discharge Date has occurred.
- (b) Subject to paragraph (e) below, no Second Lien Payment Stop Notice may be served by the Security Agent in reliance on a particular Second Lien Payment Stop Event more than 120 days after the relevant Creditor Representative receives a notice under the relevant Debt Document advising of the occurrence

of that Common Senior Secured Event of Default constituting that Second Lien Payment Stop Event.

- (c) Subject to paragraph (e) below, no more than one Second Lien Payment Stop Notice may be served with respect to the same event or set of circumstances.
- (d) Subject to paragraph (e) below, no more than one Second Lien Payment Stop Notice may be served in any period of 365 days.
- (e) If the Security Agent is instructed to serve (or cancel) a Second Lien Payment Stop Notice under this Clause 7.3 it shall also serve an (or, as the case may be, cancel each) equivalent Second Lien Payment Stop Notice in respect of any other Second Lien Financing.

7.4 Effect of Second Lien Payment Stop Event or Common Senior Secured Payment Default

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

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

7.5 Payment obligations and capitalisation of interest continue

- (a) No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Second Lien Finance Document by the operation of Clauses 7.1 (*Restriction on Payment: Second Lien Liabilities*) to 7.4 (*Effect of Second Lien Payment Stop Event or Common Senior Secured Payment Default*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.
- (b) The accrual and (if applicable) capitalisation of interest in accordance with the Second Lien Finance Documents shall continue notwithstanding the issue of a Second Lien Payment Stop Notice or the occurrence of a Common Senior Secured Payment Default.

7.6 Cure of Payment Stop: Second Lien Creditors

If:

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

Finance Documents and which would have been Permitted Second Lien Payments but for that Second Lien Payment Stop Notice or Common Senior Secured Payment Default,

then any Event of Default (including any cross default or similar provision under any other Debt Document) which may have occurred as a result of that suspension of Payments shall be waived and any Second Lien Enforcement Notice which may have been issued as a result of that Event of Default shall be deemed to be cancelled, in each case without any further action being required on the part of the Second Lien Creditors or any other Creditor and notwithstanding the terms of any Second Lien Finance Documents.

7.7 Second Lien Debt Purchase Transactions

- (a) Subject to paragraph (b) below, the Parent shall not, and shall procure that no other member of the Group will, enter into any Debt Purchase Transaction in respect of the Second Lien Liabilities or beneficially own all or any part of the share capital of a company that is a Second Lien Creditor or a party to a Debt Purchase Transaction in respect of the Second Lien Liabilities.
- (b) Paragraph (a) above shall not apply in respect of any action which occurs:
 - (i) prior to the Senior Secured Liabilities Discharge Date if the commitment or amount outstanding that is the subject of the Debt Purchase Transaction is an amount not exceeding the amount of purchases of Second Lien Liabilities permitted under section 7.08 (*Prepayments, Etc. of Indebtedness*) under the Initial Senior Facilities Agreement (and any other similar or equivalent provision of any of the other Debt Documents) at such time.

provided that in each case:

- (A) such Payment is in accordance with the relevant Second Lien Facility Agreement or the relevant Second Lien Notes Indenture;
 - (B) no Second Lien Payment Stop Notice is outstanding; and
 - (C) no Common Senior Secured Payment Default has occurred and is continuing; or
- (ii) prior to the Senior Secured Liabilities Discharge date if the Debt Purchase Transaction is funded with amounts referred to in, and subject to the requirements of, paragraph (a)(vi) of Clause 7.2 (*Permitted Payments: Second Lien Liabilities*); or
 - (iii)
 - (A) on or after the Senior Secured Liabilities Discharge Date; or
 - (B) with the prior consent of the Majority Senior Secured Creditors,

in each case, in accordance with the relevant Second Lien Facility Agreement or the relevant Second Lien Notes Indenture.

7.8 Amendments and Waivers: Second Lien Creditors

- (a) Subject to paragraph (b) below, the Second Lien Creditors may amend, vary or waive the terms of the Second Lien Finance Documents (other than this Agreement or any Transaction Security Document) in accordance with their terms (and subject only to any consent required under them) at any time.
- (b) Until the Senior Secured Liabilities Discharge Date has occurred, the Second Lien Creditors may not amend, vary or waive the terms of the Second Lien Finance Documents without the prior consent of the applicable Creditor and/or Creditor Representative if the amendment or waiver would result in the terms of the Second Lien Finance Documents failing to comply with the terms of any Senior Secured Debt Document.

7.9 Security: Second Lien Creditors

Until the Senior Secured Liabilities Discharge Date has occurred the Second Lien Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from (or over the assets of or over the shares in) any member of the Group in respect of the Second Lien Liabilities other than:

- (a) the Second Lien Transaction Security;
- (b) in the case of any jurisdiction in which effective and enforceable Security cannot be granted in favour of each Second Lien Security Agent as agent and/or (if applicable) trustee for all the relevant Second Lien Creditors by way of Second Lien Transaction Security, the Common Transaction Security;
- (c) in the case of any jurisdiction in which effective and enforceable Security cannot be granted in favour of a Security Agent as agent and/or (if applicable) trustee for all relevant Secured Creditors by way of Transaction Security without prejudicing the claims and/or ranking of the claims of any relevant Secured Creditors in the order contemplated by this Agreement:
 - (A) to the other Secured Creditors (or their representatives, agents or trustees) in respect of their Secured Obligations; or
 - (B) to any Security Agent under a parallel debt structure for the benefit of the relevant Secured Creditors,

and which, whether created under a single document or in a number of documents, ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*) (either pursuant to this Agreement or otherwise); and

- (d) any guarantee, indemnity or other assurance against loss contained in:
 - (i) the Second Lien Finance Documents **provided that** in the case of any guarantee, indemnity or other assurance against financial loss given

after the date of this Agreement the relevant member of the Group has also given a guarantee, indemnity or similar assurance to the other Secured Creditors in respect of their respective Liabilities;

- (ii) this Agreement; or
- (iii) any Common Assurance,

unless the prior consent of the Majority Senior Secured Creditors is obtained.

7.10 Restriction on Enforcement: Second Lien Creditors

Subject to Clause 7.11 (*Permitted Enforcement: Second Lien Creditors*), until the Senior Secured Liabilities Discharge Date has occurred no Second Lien Creditor shall be entitled to take any Enforcement Action in respect of any of the Second Lien Liabilities.

7.11 Permitted Enforcement: Second Lien Creditors

(a) Each Second Lien Creditor may take any Enforcement Action which would be available to it but for Clause 7.10 (*Restriction on Enforcement: Second Lien Creditors*) in respect of any of the Second Lien Liabilities if at the same time as, or prior to, that action and subject to Clause 7.12 (*Restriction on Enforcement against Debtors: Second Lien Creditors*):

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

(ii)

(A) the Second Lien Creditor Representative has given notice (a "**Second Lien Enforcement Notice**") to the Security Agent specifying that an Event of Default under the relevant Second Lien Finance Documents has occurred and is continuing; and

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

(1) 90 days in the case of a failure to make a payment of an amount of principal, interest and fees representing the Second Lien Liabilities; or

(2) 179 days in the case of any other Event of Default under the Second Lien Facility Agreement,

has elapsed from the date on which that Second Lien Enforcement Notice becomes effective in accordance with Clause 27.4 (*Delivery*) or Clause 27.6 (*Electronic communication*); and

- (C) that Event of Default is continuing at the end of the Second Lien Standstill Period; or
 - (iii) the Majority Senior Secured Creditors have given their prior consent.
- (b) After the occurrence of an Insolvency Event in relation to any Debtor, each Second Lien 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 Second Lien Creditor in accordance with Clause 11.5 (*Filing of claims*)) exercise any right it may otherwise have and be entitled to exercise against that Debtor to:
 - (i) accelerate any of that Debtor's Second Lien Liabilities or declare them prematurely due and payable or payable on demand;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that Debtor member of the Group in respect of any Second Lien Liabilities;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Second Lien Liabilities of that Debtor; or
 - (iv) claim and prove in the liquidation of that Debtor for the Second Lien Liabilities owing to it,

provided that notwithstanding anything to the contrary herein, upon any Automatic Acceleration Event any presentment, demand, protest or notice of any kind required by the foregoing clauses are expressly waived.

7.12 Restriction on Enforcement against Debtors: Second Lien Creditors

- (a) Subject to paragraph (b) below, if the Security Agent (or any Receiver or Delegate appointed under any of the Transaction Security Documents) has given notice to the Second Lien Creditor Representative that the Transaction Security over shares in a Debtor member of the Group or any Holding Company of a Debtor member of the Group is being enforced (or that any formal steps are being taken to enforce that Transaction Security) by the sale or appropriation of shares which are subject to that Transaction Security, the Second Lien Creditors may not take Enforcement Action against that Debtor member of the Group or against any Property of that Debtor member of the Group in respect of any of the Second Lien Liabilities until the earlier of:
 - (i) the date which is 180 days after the date on which the Security Agent (or that Receiver or Delegate) gave that notice; and
 - (ii) the date on which the Security Agent (or that Receiver or Delegate) notifies the Creditor Representative of the relevant Second Lien Financing (which it shall do promptly) that such action is no longer being taken.

- (b) Paragraph (a) above shall not apply:
 - (i) to the extent that the Security Agent is taking that action on the instructions of the Majority Second Lien Creditors pursuant to Clause 14.3 (*Manner of enforcement*); or
 - (ii) to action taken pursuant to paragraph (b) of Clause 7.11 (*Permitted Enforcement: Second Lien Creditors*).

8. UNSECURED CREDITORS AND UNSECURED LIABILITIES

8.1 Restriction on Payment and dealings: Unsecured Liabilities

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

- (a) that Payment is permitted under Clause 8.2 (*Permitted Payments: Unsecured Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (b)(iii) of Clause 8.10 (*Permitted Enforcement: Unsecured Creditors*).

8.2 Permitted Payments: Unsecured Liabilities

The members of the Group may:

- (a) until the Common Secured Liabilities Discharge Date has occurred, directly or indirectly make any Payment directly or indirectly in respect of the relevant Unsecured Liabilities (including any Payment in respect of a Notes Proceeds Loan) then due in accordance with the relevant Unsecured Finance Documents:
 - (i) if:
 - (A) the Payment is of:
 - (1) any of the principal amount (including any interest which has been capitalised to become an amount of principal) of the Unsecured Liabilities which is:
 - (a) not prohibited by the Secured Debt Documents; or
 - (b) paid on or after the final maturity date of the relevant Unsecured Liabilities (**provided that** such final maturity date has not been amended to fall on a date which would have breached the Secured Debt Documents which remain in full force and effect if it had been the original final maturity date for such Unsecured Liabilities), or
 - (c) any other amount which is not an amount of principal or capitalised interest and which is

payable in accordance with the terms of the Unsecured Finance Documents;

- (2) consent and/or waiver fees reasonably incurred by the relevant Debtor (acting in good faith) in respect of any amendment of, or consent relating to, any provision of an Unsecured Finance Document;
 - (3) any amounts where the amount is outstanding as a result of the accrual of cash interest payable in respect of the Unsecured Liabilities during a period when an Unsecured Payment Stop Notice was outstanding (which has since expired);
 - (4) any amount of cash interest, tax gross-up or tax indemnity payments in accordance with the Unsecured Finance Documents;
 - (5) the capitalisation of interest or the issuance of a non-cash pay financial instrument evidencing the same which is subordinated to the Senior Secured Liabilities pursuant to this Agreement on the same terms as the Unsecured Liabilities; or
 - (6) any closing payment due pursuant to any purchase agreement (or equivalent) in respect of any Unsecured Notes; and
- (B) no Unsecured Payment Stop Notice is outstanding; and
- (C) no Common Secured Payment Default has occurred and is continuing;
- (ii) if the Majority Senior Secured Creditors and the Majority Second Lien Creditors give prior consent to that Payment being made;
 - (iii) if an Unsecured Payment Stop Notice is outstanding and/or a Common Secured Payment Default is continuing and such Payment is a payment of any amount referred to in paragraph (i)(A)(5) or (i)(A)(6) above;
 - (iv) if the Payment is of a Creditor Representative Amount to an Unsecured Notes Trustee or Unsecured Agent;
 - (v) of costs, commissions, taxes, expenses and, to the extent consistent with market comparables at the time committed to be paid (or otherwise reasonable), fees incurred in respect of or in relation to (or reasonably incidental to) any Unsecured Notes Finance Documents (including in relation to any reporting or listing requirements under the Unsecured Notes Finance Documents); or

- (vi) if:
 - (A) an Event of Default has occurred under the Unsecured Finance Documents and is continuing and the Payment is of Unsecured Restructuring Costs, the Common Currency Amount of which, when aggregated with the Common Currency Amount of any other such amounts paid pursuant to this paragraph (vi), does not exceed \$2,000,000; and
 - (B) no Common Senior Secured Payment Default or Second Lien Payment Default has occurred and is continuing; and
- (b) on or after the Common Secured Liabilities Discharge Date, make any Payment directly or indirectly (including any payment in respect of a Notes Proceeds Loan) in respect of the Unsecured Liabilities at any time.

8.3 Issue of Unsecured Payment Stop Notice

- (a) An Unsecured Payment Stop Notice is "outstanding" during the period from the date on which, following the occurrence of a Common Secured Event of Default (other than a Common Secured Payment Default) (an "**Unsecured Payment Stop Event**"), the Security Agent (acting on the instructions of the relevant Instructing Group) issues a notice (an "**Unsecured Payment Stop Notice**") to a Creditor Representative in respect of Unsecured Liabilities (with a copy to the Parent) advising that an Unsecured Payment Stop Event has occurred and is continuing and suspending Payments of the Unsecured Liabilities (other than those permitted under Clause 8.2 (*Permitted Payments: Unsecured Liabilities*)) until the first to occur of:
 - (i) the date which is 179 days after the date of issue of that Unsecured Payment Stop Notice;
 - (ii) if an Unsecured Standstill Period commences after the issue of an Unsecured Payment Stop Notice, the date on which that Unsecured Standstill Period expires;
 - (iii) the date on which the relevant Unsecured Payment Stop Event in respect of which that Unsecured Payment Stop Notice was issued is no longer continuing;
 - (iv) the date on which the Security Agent (acting on the instructions of the relevant Instructing Group) cancels that Unsecured Payment Stop Notice by notice to the Creditor Representatives in respect of Unsecured Liabilities (with a copy to the Parent); and
 - (v) the date on which the Common Secured Liabilities Discharge Date has occurred.
- (b) Subject to paragraph (e) below, no Unsecured Payment Stop Notice may be served by the Security Agent in reliance on a particular Common Secured Event of Default more than six months after the relevant Creditor Representative receives a notice under the relevant Debt Document advising

of the occurrence of that Common Secured Event of Default constituting that Unsecured Payment Stop Event.

- (c) Subject to paragraph (e) below, no more than one Unsecured Payment Stop Notice may be served with respect to the same event or set of circumstances.
- (d) Subject to paragraph (e) below, no more than one Unsecured Payment Stop Notice may be served in any period of 365 days.
- (e) If the Security Agent is instructed to serve (or cancel) an Unsecured Payment Stop Notice under this Clause 8.3 it shall also serve an (or, as the case may be, cancel each) equivalent Unsecured Payment Stop Notice in respect of any other Unsecured Financing.

8.4 Effect of Unsecured Payment Stop Event or Common Secured Payment Default

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

- (a) the occurrence of an Event of Default under the relevant Unsecured Notes Finance Documents as a consequence of that failure to make a Payment in relation to the relevant Unsecured Finance Document; or
- (b) the issue of an Unsecured Enforcement Notice on behalf of the Unsecured Creditors in accordance with the terms of this Agreement.

8.5 Payment obligations and capitalisation of interest continue

- (a) Neither a Finco nor any Debtor member of the Group shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Unsecured Finance Document by the operation of Clauses 8.1 (*Restriction on Payment and dealings: Unsecured Liabilities*) to 8.4 (*Effect of Unsecured Payment Stop Event or Common Secured Payment Default*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.
- (b) The accrual and (if applicable) capitalisation of interest in accordance with the Unsecured Finance Documents shall continue notwithstanding the issue of an Unsecured Payment Stop Notice or the occurrence of a Common Secured Payment Default.

8.6 Cure of Payment Stop: Unsecured Creditors

If:

- (a) at any time following the issue of an Unsecured Payment Stop Notice or the occurrence of a Common Secured Payment Default, that Unsecured Payment Stop Notice ceases to be outstanding and/or (as the case may be) the Common Secured Payment Default ceases to be continuing; and

- (b) the Finco or relevant Debtor then promptly pays to the Unsecured Creditors an amount equal to any Payments which had accrued under the Unsecured Finance Documents and which would have been permitted under Clause 8.2 (*Permitted Payments: Unsecured Liabilities*) but for that Unsecured Payment Stop Notice or Common Secured Payment Default,

then any Event of Default (including any cross default or similar provision under any other Debt Document) which may have occurred as a result of that suspension of Payments shall be waived and any Unsecured Enforcement Notice which may have been issued as a result of that Event of Default shall be deemed to be cancelled, in each case without any further action being required on the part of the Unsecured Creditors or any other Creditor and notwithstanding the terms of any Unsecured Finance Document.

8.7 Amendments and Waivers: Unsecured Creditors

- (a) Subject to paragraph (b) below, the Unsecured Creditors, a Finco and the members of the Group may at any time amend, vary or waive the terms of the Unsecured Finance Documents in accordance with their respective terms from time to time (and subject only to any consent required under them).
- (b) Until the Senior Secured Liabilities Discharge Date and the Final Second Lien Discharge Date shall each have occurred, the Unsecured Creditors may not amend, vary or waive the terms of the Unsecured Finance Documents if the amendment or waiver would result in any Unsecured Finance Documents not complying with the terms of any Secured Debt Documents or the other provisions of this Agreement without the consent of the Majority Senior Secured Creditors and the Majority Second Lien Creditors.

8.8 Security: Unsecured Creditors

Until the Common Secured Liabilities Discharge Date has occurred the Unsecured Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from (or over the assets of or over the shares in) any member of the Group in respect of the Unsecured Liabilities other than:

any guarantee, indemnity or other assurance against loss contained in:

- (a) the Unsecured Finance Documents **provided that** in the case of any guarantee, indemnity or other assurance against financial loss given after the date of this Agreement the relevant member of the Group has also given a guarantee, indemnity or similar assurance to all the Secured Creditors in respect of their respective Liabilities; or
- (b) this Agreement,

unless the prior consent of the Majority Senior Secured Creditors and the Majority Second Lien Creditors is obtained.

8.9 **Restriction on Enforcement: Unsecured Creditors**

Subject to Clause 8.10 (*Permitted Enforcement: Unsecured Creditors*), until the Common Secured Liabilities Discharge Date has occurred no Unsecured Creditor shall be entitled to take any Enforcement Action in respect of any of the Unsecured Liabilities.

8.10 **Permitted Enforcement: Unsecured Creditors**

- (a) Each Unsecured Creditor may take any Enforcement Action which would be available to it but for Clause 8.9 (*Restriction on Enforcement: Unsecured Creditors*) in respect of any of the Unsecured Liabilities if at the same time as, or prior to, that action and subject to Clause 8.11 (*Restriction on Enforcement against Finco and Debtors: Unsecured Creditors*):
 - (i) a Senior Secured Liabilities Acceleration Event or Second Lien Liabilities Acceleration Event has occurred, in which case each Unsecured Creditor may take the same Enforcement Action (but in respect of the Unsecured Liabilities) as constitutes that said Acceleration Event; or
 - (ii)
 - (A) the Creditor Representative of the relevant Unsecured has given notice (an "**Unsecured Enforcement Notice**") to the Security Agent specifying that an Event of Default under the relevant Unsecured Finance Documents has occurred and is continuing; and
 - (B) a period (an "**Unsecured Standstill Period**") of not less than 179 days has elapsed from the date on which that Unsecured Enforcement Notice becomes effective in accordance with Clause 27.4 (*Delivery*) and Clause 27.6 (*Electronic communication*); and
 - (C) that Event of Default is continuing at the end of the Unsecured Standstill Period; or
 - (iii) the Majority Senior Secured Creditors and the Majority Second Lien Creditors have given their prior consent.
- (b) After the occurrence of an Insolvency Event in relation to any member of the Group, each Unsecured 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 Unsecured Creditor in accordance with Clause 11.5 (*Filing of claims*)) exercise any right they may otherwise have and be entitled to exercise against a Finco or any Debtor to:
 - (i) accelerate any of that Finco's or Debtor's Unsecured Liabilities or declare them prematurely due and payable or payable on demand;

- (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that Finco or Debtor in respect of any Unsecured Liabilities;
- (iii) exercise any right of set-off or take or receive any Payment in respect of any Unsecured Liabilities of that Finco or Debtor; or
- (iv) claim and prove in the liquidation of that Finco or Debtor for the Unsecured Liabilities owing to it.

8.11 Restriction on Enforcement against Finco and Debtors: Unsecured Creditors

- (a) Subject to paragraph (b) below, if the Security Agent (or any Receiver or Delegate appointed under any of the Transaction Security Documents) has given notice to the Unsecured Trustee that the Transaction Security over shares in a Debtor or any Holding Company of a Debtor is being enforced (or that any formal steps are being taken to enforce that Transaction Security) by the sale or appropriation of shares which are subject to that Transaction Security, the Unsecured Creditors may not take Enforcement Action against that Debtor or against any Property of that Debtor in respect of any of the Unsecured Liabilities until the earlier of:
 - (i) the date which is 180 days after the date on which the Security Agent (or that Receiver or Delegate) gave that notice; and
 - (ii) the date on which the Security Agent (or that Receiver or Delegate) notifies the Creditor Representative of the relevant Unsecured Liabilities (which it shall do promptly) that such action is no longer being taken.
- (b) Paragraph (a) above shall not apply to action taken pursuant to paragraph (b) of Clause 8.10 (*Permitted Enforcement: Unsecured Notes Creditors*).

8.12 Unsecured Debt Purchase Transactions

- (a) Subject to paragraph (b) below, the Parent shall not, and shall procure that no other member of the Group will, enter into any Debt Purchase Transaction in respect of the Unsecured Liabilities or beneficially own all or any part of the share capital of a company that is a Unsecured Creditor or a party to a Debt Purchase Transaction in respect of the Unsecured Liabilities.
- (b) Paragraph (a) above shall not apply in respect of any action which occurs:
 - (i) prior to the Common Secured Liabilities Discharge Date if the amount outstanding the subject of the Debt Purchase Transaction is an amount not exceeding the amount permitted under section 7.08 (*Prepayments, Etc. of Indebtedness*) under the Initial Senior Facilities Agreement (and any other similar or equivalent provision of any of the other Debt Documents) at such time;
 - (ii) if the Payment is funded directly or indirectly with the proceeds of indebtedness permitted to be incurred under the Debt Documents (after

giving pro-forma effect to such incurrence and the application of such indebtedness) **provided that**, if the Senior Secured Liabilities and the Second Lien Liabilities are not being refinanced simultaneously, no Unsecured Payment Stop Notice is outstanding; or

- (iii) on or after the Common Secured Liabilities Discharge Date where such action is in accordance with the relevant Unsecured Finance Documents.

9. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES

9.1 Restriction on Payment: Intra-Group Liabilities

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

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

9.2 Permitted Payments: Intra-Group Liabilities

- (a) Subject to paragraph (b) below, the Debtors and any other members of the Group may make Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) from time to time and the Intra-Group Lenders may accept or agree to accept any such payment from time to time.
- (b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred unless:
 - (i) the consent of the relevant Instructing Group is obtained; or
 - (ii) that Payment is made to facilitate the making of a Payment to a Creditor that is permitted by this Agreement.
- (c) Nothing in this Clause 9.2 shall prevent the Intra-Group Liabilities of a Debtor being reduced in accordance with the guarantee limitation provisions included in a Debtor Accession Deed.

9.3 Payment obligations continue

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 9.1 (*Restriction on Payment: Intra-Group Liabilities*) and 9.2 (*Permitted Payments: Intra-Group Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

9.4 Acquisition of Intra-Group Liabilities

- (a) Subject to paragraphs (b) and (c) below, each Debtor may, and may permit any other member of the Group to:
 - (i) enter into any Liabilities Acquisition; or
 - (ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,in respect of any Intra-Group Liabilities at any time.
- (b) Subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities if:
 - (i) that action would result in a breach of a Debt Document; or
 - (ii) at the time of that action, an Acceleration Event has occurred and is continuing or would occur under any of the Debt Documents.
- (c) The restrictions in paragraph (b) above shall not apply if:
 - (i) the relevant Instructing Group consent to that action;
 - (ii) at that time, the Security Agent is obliged to give effect to instructions from the Majority Second Lien Creditors as to the manner of enforcement of the Transaction Security pursuant to paragraph (b) of Clause 14.3 (*Manner of enforcement*) and the Majority Second Lien Creditors consent to that Payment being made; or
 - (iii) that action is taken to facilitate the making of a Payment to a Creditor that is permitted by this Agreement.

9.5 Security: Intra-Group Lenders

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

- (a) that Security, guarantee, indemnity or other assurance against loss is expressly permitted by the Debt Documents; or
- (b) the prior consent of the relevant Instructing Group is obtained.

9.6 Restriction on enforcement: Intra-Group Lenders

Subject to Clause 9.7 (*Permitted Enforcement: Intra-Group Lenders*), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date, other than exercising any right of set-off, account combination or payment netting which is permitted under by the Debt Documents and for so long as no Acceleration Event has occurred.

9.7 Permitted Enforcement: Intra-Group Lenders

After the occurrence of an Insolvency Event in relation to any member of the Group, each Intra-Group Lender may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Intra-Group Lender in accordance with Clause 11.5 (*Filing of claims*)), exercise any right it may otherwise have and be entitled to exercise against that member of the Group to:

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

10. SUBORDINATED SHAREHOLDER LIABILITIES

10.1 Restriction on Payment: Subordinated Shareholder Liabilities

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

- (a) that Payment is permitted under Clause 10.2 (*Permitted Payments: Subordinated Shareholder Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under Clause 10.8 (*Permitted Enforcement: Shareholder Creditors*).

10.2 Permitted Payments: Subordinated Shareholder Liabilities

The Parent or the relevant Debtor may make Payments in respect of the Subordinated Shareholder Liabilities then due if:

- (a) the Payment is not prohibited by the Debt Documents;
- (b) the payment is made in respect of a Notes Proceeds Loan and (1) is permitted to be made under (as applicable) Clause 4.1 (*Payment of Senior Secured Notes Liabilities*), Clause 7.2 (*Permitted Payments: Second Lien Liabilities*) or Clause 8.2 (*Permitted Payments: Unsecured Liabilities*) and (2) within 4 Business Days of its receipt by a Notes Issuer or (where the creditor of such Notes Proceeds Loan is Parent Holdco) Parent Holdco such amount is applied by the relevant Notes Issuer in paying an equivalent amount in respect of the relevant Notes; or

- (c) the Majority Senior Secured Creditors and the Majority Second Lien Creditors give prior consent to that Payment being made.

10.3 Payment obligations continue

Neither the Parent nor any other Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 10.1 (*Restriction on Payment: Subordinated Shareholder Liabilities*) and 10.2 (*Permitted Payments: Subordinated Shareholder Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

10.4 No acquisition of Subordinated Shareholder Liabilities

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

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

in respect of any of the Subordinated Shareholder Liabilities unless the prior consent of the relevant Instructing Group is obtained.

10.5 Amendments and Waivers: Subordinated Shareholder Liabilities

- (a) Prior to the Final Discharge Date, a Shareholder Creditor may not amend or waive the terms of any agreement evidencing the terms of the Subordinated Shareholder Liabilities unless:
 - (i) the amendment or waiver is not materially prejudicial to the Primary Creditors;
 - (ii) the amendment or waiver is permitted by the Debt Documents; or
 - (iii) the prior consent of the Majority Senior Secured Creditors and the Majority Second Lien Creditors is obtained.
- (b) Notwithstanding paragraph (a) above, prior to the Final Discharge Date, and only for so long as any Credit Facility, Senior Secured Notes, Second Lien Facilities, Second Lien Notes or Unsecured Notes are rated by Moody's Investors Service Limited, no Shareholder Creditor shall enter into, amend or waive the terms of any agreement evidencing the terms of the Subordinated Shareholder Liabilities (excluding Notes Proceeds Loans) in a manner which would result in such Subordinated Shareholder Liabilities not complying with any the following:
 - (i) ranking junior to all unsubordinated liabilities or Second Lien Liabilities of the Parent, including without limitation liabilities owed to trade creditors;

- (ii) not including (1) any covenants (other than information covenants), (2) any ability to declare a default or event of default or accelerate the Subordinated Shareholder Liabilities, (3) other than as permitted by the Debt Documents, any amortisation or any form of mandatory prepayment or redemption and (4) any enforceable put options providing for exercise prior to the Final Discharge Date;
- (iii) having a maturity which is at least six months after the Final Discharge Date; and
- (iv) only being transferable or assignable to (other than small differences in ownership) any person where contemporaneously with the transfer or assignment, the Shareholder Creditor transfers to the proposed transferee or assignee such shares in the Parent as may be in the same proportions as (x) the aggregate nominal value of the Subordinated Shareholder Liabilities outstanding under the agreement evidencing the terms of such Subordinated Shareholder Liabilities and the aggregate number of shares of the Parent respectively bear to (y) the total nominal value of the interests in the Subordinated Shareholder Liabilities outstanding under the agreement evidencing the terms of such Subordinated Shareholder Liabilities held by the Shareholder Creditor and the total number of shares held by the Shareholder Creditor immediately prior to the relevant transfer,

unless prior consent is received from the Majority Senior Secured Creditors and the Majority Second Lien Creditors.

10.6 Security: Subordinated Shareholder Liabilities

- (a) Prior to the Final Discharge Date, the Shareholder Creditors may not take, accept or receive the benefit of any Security from any member of the Group, or any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Subordinated Shareholder Liabilities other than as permitted by all the Debt Documents.
- (b) Nothing in this Agreement shall be construed as preventing the Shareholder Creditor from granting any Security over or in relation to the Subordinated Shareholder Liabilities or any related rights in respect thereof.

10.7 Restriction on Enforcement: Shareholder Creditors

Subject to Clause 10.8 (*Permitted Enforcement: Shareholder Creditors*), the Shareholder Creditors shall not be entitled to take any Enforcement Action in respect of any of the Subordinated Shareholder Liabilities at any time prior to the Final Discharge Date other than exercising any right of set-off, account combination or payment netting which is, or is made to facilitate, a payment permitted under clause 29 (*Limitation on Restricted Payments*) in the Initial Senior Facilities Agreement and its equivalent in any other Debt Document **provided that** this shall not prevent the enforcement by the Second Lien Notes Creditors or (as applicable) the Unsecured Notes Creditors of any security over or in respect of a Notes Proceeds Loan made at a time they are not prohibited from taking Enforcement Action in respect of any Second Lien Liabilities or (as applicable) Unsecured Liabilities pursuant to (as applicable)

Clause 7.10 (*Restriction on Enforcement: Second Lien Creditors*), Clause 8.9 (*Restriction on Enforcement: Unsecured Creditors*) or Clause 8.11 (*Restriction on Enforcement against Finco and Debtors: Unsecured Creditors*) so long as the Creditor Representative of the Second Lien Notes Creditors or (as applicable) the Unsecured Notes Creditors ensures that any assignee or transferee of such Notes Proceeds Loan accedes to this Agreement as a Shareholder Creditor pursuant to Clause 22.2 (*Accession of Shareholder Creditor*).

10.8 Permitted Enforcement: Shareholder Creditors

After the occurrence of an Insolvency Event in relation to any member of the Group, each Shareholder Creditor may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of the Shareholder Creditor in accordance with Clause 11.5 (*Filing of claims*)), exercise any right it may otherwise have and be entitled to exercise against that member of the Group to:

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

10.9 Exclusions: Subordinated Shareholder Liabilities

Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall prohibit or otherwise restrict:

- (a) any payment or other return in respect of the Subordinated Shareholder Liabilities made by way of a roll-up or capitalisation of any amount; or
- (b) any forgiveness, write-off or capitalisation of the Subordinated Shareholder Liabilities (or other similar step).

11. EFFECT OF INSOLVENCY EVENT

11.1 Credit Facility Cash Cover

This Clause 11 is subject to Clause 18.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*).

11.2 Payment of Distributions

- (a) 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 any

member of the Group in respect of Liabilities owed to that Party shall, subject to receiving payment instructions and any other relevant information from the Relevant Security Agent and to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to pay that distribution to the Security Agent until the Liabilities owing to the Secured Creditors have been paid in full.

- (b) The Relevant Security Agent shall apply distributions paid to it under paragraph (a) above in accordance with Clause 18 (*Application of Proceeds*).

11.3 Set-Off

- (a) Subject to paragraph (b) below, to the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, 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 Relevant Security Agent for application in accordance with Clause 18 (*Application of Proceeds*).
- (b) Paragraph (a) above shall not apply to:
 - (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings;
 - (ii) any Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iii) any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty; and
 - (v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender.

11.4 Non-cash distributions

If any Security Agent or any other Secured Creditor receives a distribution in a form other than cash in respect of any of the Liabilities (other than in accordance with Clause 11.7 (*Security Agent instructions*)), 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.

11.5 Filing of claims

Without prejudice to any Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that the netting or set-off represents a reduction of the Gross Outstandings of that Multi-account Overdraft Facility to or towards an amount equal to its Net Outstandings) after the occurrence of an

Insolvency Event in relation to any member of the Group, each Creditor irrevocably authorises the Relevant Security Agent on its behalf, to:

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

11.6 Further assurance – Insolvency Event

Each Creditor will:

- (a) do all things that the Relevant Security Agent (acting in accordance with Clause 11.7 (*Security Agent instructions*)) reasonably requests in order to give effect to this Clause 11; and
- (b) if the Relevant Security Agent is not entitled to take any of the actions contemplated by this Clause 11 or if the Relevant Security Agent reasonably requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Relevant Security Agent (acting in accordance with Clause 11.7 (*Security Agent instructions*)) or grant a power of attorney to the Relevant Security Agent (on such terms as the Relevant Security Agent (acting in accordance with Clause 11.7 (*Security Agent instructions*)) may reasonably require) to enable that Relevant Security Agent to take such action.

11.7 Security Agent instructions

- (a) For the purposes of Clause 11.2 (*Payment of Distributions*), Clause 11.5 (*Filing of claims*) and Clause 11.6 (*Further assurance – Insolvency Event*) the Relevant Security Agent shall act:
 - (i) on the instructions of the relevant Instructing Group entitled, at that time, to give instructions under Clause 14.2 (*Enforcement Instructions*) or Clause 14.3 (*Manner of enforcement*); or
 - (ii) in the absence of any such instructions, as the Relevant Security Agent sees fit acting in good faith accordance with the Security Enforcement Principles.
- (b) Each Relevant Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 11.7.

11.8 Provisions Related to U.S. Insolvency Proceedings

- (a) Notwithstanding anything to the contrary contained herein or in any other Secured Debt Documents, (i) the grant of security interests pursuant to the Senior Secured Debt Documents and the grant of security interests pursuant to the Second Lien Finance Documents create two separate and distinct security interests created pursuant to such documents in the assets of the Debtors, (ii) the secured claims of the Senior Secured Creditors against any Debtor shall be separately classified in any U.S. Insolvency Proceeding of such Debtor from the claims of the Second Lien Creditors (and all other Creditors) against such Debtor, including under any plan of reorganization or liquidation and (iii) if it is held that the claims of the Senior Secured Creditors and Second Lien Creditors in respect of the Transaction Security constitute only one secured claim, then the Senior Secured Creditors shall still be entitled to post petition interest, fees and other amounts, irrespective of whether any claims therefore are allowed in such U.S. Insolvency Proceeding, before any distribution in respect of any Transaction Security is made to the Second Lien Creditors (or any other Creditors).
- (b) In any U.S. Insolvency Proceeding of any Debtor, each Creditor (other than the Senior Secured Creditors) hereby agrees that, until the Senior Secured Liabilities Discharge Date, it shall not:
 - (i) oppose or otherwise contest any U.S. DIP Financing provided by the Senior Secured Creditors or oppose or otherwise contest any U.S. DIP Financing provided by any third party that is consented to (or otherwise not opposed or contested) by the Majority Senior Secured Creditors (or the Senior Secured Creditor Representative acting on their behalf) (and the Second Lien Creditors shall be deemed to subordinate their liens to the liens securing such U.S. DIP Financing and all obligations related thereto); provided, that any Second Lien Creditor may seek adequate protection consisting solely of (x) replacement liens on any additional collateral on which replacement liens are granted as adequate protection to the Senior Secured Creditors, subordinated to the liens securing the Senior Secured Liabilities and such U.S. DIP Financing on the same basis as the other liens securing the Second Lien Liabilities are so subordinated to the Senior Secured Liabilities and (y) superpriority claims junior in all respects to any superpriority claims granted to the Senior Secured Creditors; provided, further, that any such U.S. DIP Financing and the liens securing such DIP Financing are *pari passu* with or superior in priority to the outstanding Senior Secured Liabilities and the other liens securing the Senior Secured Liabilities;
 - (ii) provide any U.S. DIP Financing secured by liens equal or senior in priority to the liens securing any Senior Secured Liabilities prior to the Senior Secured Liabilities Discharge Date;
 - (iii) oppose or otherwise contest any sale or other disposition (including bidding procedures) in respect of any assets constituting Transaction Security under Section 363 of the U.S. Bankruptcy Code or any other

U.S. Debtor Relief Law if the Senior Secured Creditors shall have consented to such sale or disposition (including bidding procedures) and all liens shall attach to the proceeds thereof in the same relative and respective priorities as set forth in this Agreement and the Transaction Security Documents; provided, that any Second Lien Creditor may seek adequate protection consistent with Clause 11.8(b) above; provided, further, that the parties hereto shall use commercially reasonable efforts to ensure that any such sale or disposition is consistent with the terms of Clause 4(b)(i) and 4(b)(ii)(A) of Schedule 4 (*Security Enforcement Principles*);

- (iv) oppose or otherwise contest the rights of, or any request by, the Senior Secured Creditors to receive adequate protection or payments under Section 506(b) of the Bankruptcy Code to the extent of the value of their security interests or any similar relief;
 - (v) assert (A) any claim under Sections 506(c) or 552 of the U.S. Bankruptcy Code as against any Senior Secured Creditor or any Second Lien Creditor or any of the Transaction Security or (B) any claim arising out of any election by the Senior Secured Creditors or the Second Lien Creditors of the application of Section 1111(b) of the U.S. Bankruptcy Code; and
 - (vi) vote to accept or otherwise support any plan of reorganization or liquidation or any motion, application or other request for relief that (A) does not provide for (or is otherwise inconsistent with) the payment in full in cash of the Senior Secured Liabilities in accordance with the senior priority payment and distribution rights of the Senior Secured Creditors hereunder or (B) is inconsistent with the terms of this Agreement, unless such plan, motion, application or other request for relief is supported by the number of Senior Secured Creditors required under Section 1126(c) of the Bankruptcy Code.
- (c) After the Senior Secured Liabilities Discharge Date, in any U.S. Insolvency Proceeding of any Debtor:
- (i) any Second Lien Creditor may provide U.S. DIP Financing or seek adequate protection or payments under Section 506(b) of the Bankruptcy Code to the extent of the value of their security interests or any similar relief and each Creditor (other than the Second Lien Creditors) hereby agrees that, until the Second Lien Liabilities Discharge Date, it shall not oppose or otherwise contest any such relief; and
 - (ii) each Unsecured Creditor, each Intra-Group Lender and each Shareholder Creditor hereby agrees that, until the Second Lien Liabilities Discharge Date, it shall not vote to accept or otherwise support any plan of reorganization or liquidation or any motion, application or other request for relief that (A) does not provide for (or is otherwise inconsistent with) the payment in full in cash of the Second Lien Liabilities in accordance with the senior priority payment

and distribution rights of the Second Lien Creditors hereunder or (B) is inconsistent with the terms of this Agreement, unless such plan, motion, application or other request for relief is supported by the number of Second Lien Creditors required under Section 1126(c) of the Bankruptcy Code.

- (d) The parties hereby agree that the Second Lien Creditors may exercise any rights and remedies as an unsecured creditor against any Debtor that has guaranteed or granted Transaction Security to secure the Second Lien Liabilities in accordance with the terms of the Second Lien Finance Documents and applicable law (other than initiating or joining in an involuntary case or proceeding under any insolvency proceedings with respect to any Debtor prior to the end of any Second Lien Standstill Period) provided that (i) any such exercise shall not be directly or indirectly inconsistent with or prohibited by the terms of this Agreement (including this Clause 11.8 and, without limitation, any provision prohibiting or restricting the Second Lien Creditors from taking various actions or making various objections, including without limitation, voting for or otherwise supporting any plan of reorganisation or liquidation for any Debtor that does not provide for the payment in full in cash for the Senior Secured Liabilities and (ii) in the event that any Second Lien Creditor becomes a judgment lien creditor in respect of any Security as a result of its enforcement of its rights as an unsecured creditor with respect to the Second Lien Liabilities, such judgment lien shall be subject to the terms of this Agreement for all purposes (including in relation to the Senior Secured Liabilities) as the other Security securing the Second Lien Liabilities are subject to this Agreement. Nothing in this Agreement impairs or otherwise adversely affects any rights or obligations that any Senior Secured Creditor may have with respect to any Transaction Security securing any Senior Secured Liabilities.
- (e) If, in any U.S. Insolvency Proceeding, debt obligations of the reorganized Debtor secured by liens upon any property of the reorganized Debtor are distributed, pursuant to a plan under chapter 11 of the U.S. Bankruptcy Code, both on account of Senior Secured Liabilities and on account of Second Lien Liabilities, then, to the extent the debt obligations distributed on account of the Senior Secured Liabilities and on account of the Second Lien Liabilities are secured by liens upon the same property, the provisions of this Agreement shall survive such distributions pursuant to such plan and shall apply with like effect to the liens securing such debt obligations.
- (f) For the purposes of any guarantee limitation or savings provisions contained in the Debt Documents, the amount of the liabilities shall be determined as follows: (i) first, by giving effect to such provisions in the Senior Secured Debt Documents in determining the amount of the Senior Secured Liabilities, as if no other liabilities existed, (ii) second, by giving effect to such provisions in the Second Lien Finance Documents in determining the amount of the Second Lien Liabilities (which determination shall give effect to prior payment of the Senior Secured Liabilities) and (iii) thereafter, by giving effect to such provisions in all other Debt Documents in determining the amount of the Liabilities thereunder in accordance with their relative and respective

priorities (which determination shall give effect to prior payment of the Senior Secured Liabilities and the Second Lien Liabilities).

- (g) This Agreement shall constitute a "subordination agreement" for the purposes of Section 510(a) of the U.S. Bankruptcy Code and shall be enforceable in any U.S. Insolvency Proceeding in accordance with its terms.

12. TURNOVER OF RECEIPTS

12.1 Credit Facility Cash Cover

This Clause 12 is subject to Clause 18.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*) and Clause 21.5 (*Turnover obligations*).

12.2 Turnover by the Creditors

Subject to Clause 12.4 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Creditor receives or recovers from any member of the Group:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is neither:
 - (i) a Permitted Payment; nor
 - (ii) made in accordance with Clause 18 (*Application of Proceeds*);
- (b) other than where paragraph (a) of Clause 11.3 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- (c) notwithstanding paragraph (a) or (b) above, and other than where paragraph (a) of Clause 11.3 (*Set-Off*) applies, any amount:
 - (i) on account of, or in relation to, any of the Liabilities:
 - (A) after the occurrence of a Distress Event; or
 - (B) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
 - (ii) (subject to Clause 10.9 (*Exclusions: Subordinated Shareholder Liabilities*)) 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 18 (*Application of Proceeds*); or

- (d) other than where paragraph (a) of Clause 11.3 (*Set-Off*) applies, any distribution in cash or in kind or Payment of, or on account of or in relation to, any of the Liabilities owed by a member of the Group which is not in

accordance with Clause 18 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,

that Creditor will:

- (i) in relation to receipts and recoveries not received or recovered by way of set-off 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 Relevant Security Agent and promptly pay or distribute that amount to the Relevant Security Agent for application in accordance with the terms of this Agreement; and
- (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Relevant Security Agent for application in accordance with the terms of this Agreement.

12.3 Exclusions

Clause 12.2 (*Turnover by the Creditors*) shall not apply to any receipt or recovery:

- (a) by way of:
 - (i) Close-Out Netting by a Hedge Counterparty;
 - (ii) Payment Netting by a Hedge Counterparty; or
 - (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that that netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount); or
- (c) made in accordance with Clause 19 (*Equalisation*).

12.4 Permitted assurance and receipts

Nothing in this Agreement shall restrict the ability of any Primary Creditor to:

- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by Clause 22 (*Changes to the Parties*),

which:

- (i) is not prohibited by the Debt Documents; and

(ii) is not in breach of:

- (A) Clause 5.5 (*No acquisition of Hedging Liabilities*); or
- (B) Clause 10.4 (*No acquisition of Subordinated Shareholder Liabilities*),

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

12.5 Sums received by Debtors

If after the occurrence of a Distress Event any of the Debtors receives or recovers any sum which, under the terms of any of the Debt Documents, should have been paid to the Relevant Security Agent, that Debtor will:

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

12.6 Saving provision

If, for any reason, any of the trusts expressed to be created in this Clause (a) 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 Relevant Security Agent to be held on trust and as agent by the Relevant Security Agent for application in accordance with the terms of this Agreement.

12.7 Recoveries

If a Secured Creditor (other than the Common Security Agent and, in the case of a Notes Trustee, subject to Clauses 21.5 (*Turnover obligations*)) receives any Enforcement Proceeds other than pursuant to Clause 18 (*Application of Proceeds*) such Secured Creditor shall hold such Enforcement Proceeds on trust for the Relevant Security Agent and promptly pay that amount to the Relevant Security Agent for application in accordance with the terms of this Agreement.

13. REDISTRIBUTION

13.1 Recovering Creditor's rights

- (a) Any amount paid by a Creditor a ("**Recovering Creditor**") to the Relevant Security Agent under Clause 11 (*Effect of Insolvency Event*) or Clause 12 (*Turnover of Receipts*) shall be treated as having been paid by the relevant Debtor and distributed to the Creditors (each a "**Sharing Creditor**") in accordance with the terms of this Agreement.

- (b) On a distribution by the Relevant Security Agent under paragraph (a) above of a Payment 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 to the Relevant Security Agent (the "**Shared Amount**") will be treated as not having been paid by that Debtor.

13.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor and is repaid by that Recovering Creditor to that Debtor, then:
 - (i) each Sharing Creditor shall (subject to Clause 21 (*Notes Trustee Protections*)) with respect to a Notes Trustee, upon request of the Relevant Security Agent, pay to the Relevant Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and
 - (ii) as between the relevant Debtor and each relevant Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Debtor.
- (b) The Relevant Security Agent shall not be obliged to pay any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

13.3 Subrogation rights of the Creditors

Without prejudice to Clause 13.4 (*Deferral of Subrogation*) below, should the provisions of Clause 13.1 (*Recovering Creditor's rights*) above be ineffective, in whole or in part, for any reason, then:

- (a) any amount paid by the affected Recovering Creditor to the Relevant Security Agent under Clause 11 (*Effect of Insolvency Event*) or Clause 12 (*Turnover of Receipts*) shall be treated as having been paid by the relevant Debtor to that Recovering Creditor;
- (b) that Recovering Creditor shall be deemed to have paid the Shared Amount to each relevant Sharing Creditor to which all or part of such Shared Amount is to be distributed in accordance with the terms of this Agreement; and
- (c) unless otherwise arising by operation of law, that Recovering Creditor shall be subrogated in the rights arising in connection with the Liabilities owed by that Debtor to each such Sharing Creditor *pro tanto* the amount of any such Liabilities discharged as a consequence of the payment(s) made in accordance with paragraph (b) above.

13.4 Deferral of Subrogation

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

14. ENFORCEMENT OF TRANSACTION SECURITY

14.1 Credit Facility Cash Cover

This Clause 14 is subject to Clause 18.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*).

14.2 Enforcement Instructions

- (a) Each Security Agent may refrain from enforcing the Transaction Security or taking any other action as to Enforcement unless instructed otherwise by the relevant Instructing Group **provided that** where the Instructing Group enforces any Senior Transaction Security, the Instructing Group shall give the same instructions to each Second Lien Security Agent at the same time as any instructions are given to any Senior Security Agent, to take the same action in respect of the corresponding Second Lien Transaction Security in respect of the same assets and to the same extent as such action is or will be taken in respect of any Senior Transaction Security.
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms the relevant Instructing Group may give or refrain from giving instructions to the Security Agent to take action as to Enforcement in accordance with the Security Enforcement Principles **provided that** where the Instructing Group gives or refrains from giving instructions in respect of any Senior Transaction Security, the Instructing Group shall give or refrain from giving corresponding instructions at the same time to each Second Lien Security Agent to take the same action (including any inaction) in respect of the corresponding Second Lien Transaction Security in respect of the same assets and to the same extent as such action (or inaction) is taken in respect of any Senior Transaction Security.

- (c) Prior to the Senior Secured Liabilities Discharge Date:
 - (i) if the relevant Instructing Group has instructed any Senior Security Agent and/or the Common Security Agent to cease or not to proceed with Enforcement; or
 - (ii) in the absence of instructions as to Enforcement from the relevant Instructing Group,

and, in each case, the relevant Instructing Group has not required any Debtor to make a Distressed Disposal, each Security Agent shall give effect to any instructions to enforce the Transaction Security which the Majority Second Lien Creditors give to it **provided that** they are entitled to take Enforcement Action at that time under Clause 7.11 (*Permitted Enforcement: Second Lien Creditors*).

- (d) Each Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 14.2.

14.3 Manner of enforcement

If the Transaction Security is being enforced or other action as to Enforcement is being taken pursuant to Clause 14.2 (*Enforcement Instructions*) (including by way of a Distressed Disposal), each Security Agent shall enforce the Transaction Security or take other action as to Enforcement in such manner (including, without limitation, the selection of any administrator of any Debtor to be appointed by that Security Agent):

- (a) as the relevant Instructing Group shall instruct; or
- (b) prior to the Senior Secured Debt Liabilities Discharge Date, if:
 - (i) any Security Agent has, pursuant to paragraph (c) of Clause 14.2 (*Enforcement Instructions*), given effect to instructions given by the Majority Second Lien Creditors to enforce the Transaction Security; and
 - (ii) the relevant Instructing Group has not given instructions as to the manner of enforcement of the Transaction Security,

as the Majority Second Lien Creditors shall instruct; or

- (c) in the absence of any such instructions, as the Relevant Security Agent sees fit, in each case in good faith in accordance with the Security Enforcement Principles.

14.4 Exercise of voting rights

- (a) Each Shareholder Creditor and each Intra-Group Lender agrees with each Security Agent that, if required in writing to do so by the Relevant Security Agent, it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings (other than,

prior to a Distress Event, in respect of any consolidations, mergers, reorganisations or other similar transactions, actions, steps or matters not prohibited under the Senior Secured Debt Documents) relating to any member of the Group as instructed by the Relevant Security Agent.

- (b) The Relevant Security Agent shall give instructions for the purposes of paragraph (a) above as directed by the relevant Instructing Group provided such instructions have been given in accordance with Clause 14.2 (*Enforcement Instructions*).
- (c) Nothing in this Clause 14.4 entitles any party to exercise or require any other Primary Creditor to exercise such power of voting or representation to waive, reduce, discharge, extend the due date for (or change the basis for accrual of any) payment of or reschedule any of the Liabilities owed to that Primary Creditor.

14.5 Waiver of rights

To the extent permitted under applicable law and subject to Clause 14.2 (*Enforcement Instructions*), Clause 14.3 (*Manner of enforcement*), Clause 16.2 (*Proceeds of Disposals and Liability Sales*) and Clause 18 (*Application of Proceeds*), each of the Secured Creditors and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

14.6 Enforcement through Security Agent

The Secured Creditors shall not have any independent power to enforce any of the Transaction Security or to exercise any right, power, authority or discretion under, the Transaction Security Documents except through the relevant Security Agent (or on the instructions of an Instructing Group at the time at which such Instructing Group is entitled to give instructions under this Agreement in respect of the Transaction Security Documents).

14.7 Duties owed

Each of the Secured Creditors and the Debtors acknowledges that, in the event that any Security Agent enforces or is instructed to enforce the Transaction Security prior to the Final Discharge Date, the duties of that Security Agent and of any Receiver or Delegate owed to them in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to Clause 16.2 (*Proceeds of Disposals and Liability Sales*), be no different to or greater than the duty that is owed by that Security Agent, Receiver or Delegate to the Debtors under general law.

14.8 Enforcement of separate Transaction Security Documents

If asset(s) subject to enforcement are secured under separate Transaction Security Documents in respect of separate Secured Obligations, to the extent legally practicable each Security Agent will enforce each such Transaction Security Document such that any enforcement proceeds which are recovered in respect of such relevant asset(s) which are not applied in repaying prior ranking Secured Obligations can be applied against lower ranking Secured Obligations in accordance with Clause 18 (Application of Proceeds).

15. NON-DISTRESSED DISPOSALS

15.1 Definitions

In this Clause 15:

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

"Non-Distressed Disposal" means a disposal of:

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

to a person or persons outside the Group where in each case:

- (i) the Parent certifies for the benefit of each Security Agent and each Creditor Representative that such disposal, and the release of the Transaction Security over the asset(s) the subject of such disposal, (1) is permitted under the Senior Secured Finance Documents, the Second Lien Finance Documents and the Unsecured Debt Documents or (2) the relevant Creditor Representatives have agreed to such disposal and such release; or
- (ii) the asset(s) subject to such disposal are subject to Transaction Security governed by the laws of a state of the United States of America which provides for the automatic release of the security thereunder upon such a disposal and such disposal is permitted under the Senior Secured Debt Documents, the Second Lien Finance Documents and the Unsecured Finance Documents,

provided that in either case such disposal is not a Distressed Disposal.

15.2 Facilitation of Non-Distressed Disposals

- (a) If a disposal of an asset is a Non-Distressed Disposal, subject to the provision of the certification under paragraph (b)(i) of the definition of Non-Distressed Disposal, each Security Agent will, and is irrevocably authorised (at the cost of the relevant Debtor or Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Creditor or Debtor) but subject to paragraph (c) below:

- (i) to give consent under or to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;
 - (ii) where that asset consists of shares in the capital of a 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 assets and/or shares and/or assets of any of its Subsidiaries; and
 - (iii) to execute and deliver or enter into any consent under or release of the Security and/or the Transaction Security or any claim described in paragraphs (i) and (ii) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Common Security Agent, be considered necessary or desirable.
- (b) Each release of Transaction Security or any claim described in paragraph (a) above shall become automatically effective on the making of the relevant Non-Distressed Disposal. To the extent that a release is not automatically effective in a jurisdiction, the Security Agent is authorised to, and as soon as reasonably practicable shall, take all such steps in order the release such Transaction Security and provide evidence reasonably obtainable of such release to the Parent.
 - (c) If that Non-Distressed Disposal is not made, each release of Transaction Security or any claim described in paragraph (a) above shall have no effect and the Transaction Security or claim subject to that release shall continue in such force and effect as if that release had not been effected.
 - (d) If any Disposal Proceeds are required to be applied in prepayment of the Liabilities, then the Disposal Proceeds shall be applied in accordance with the Debt Documents and the consent of any other Party shall not be required for that application.

16. DISTRESSED DISPOSALS

16.1 Facilitation of Distressed Disposals

Subject to Clause 16.3 (*Restriction on Distressed Disposals – Unsecured Notes Creditors*) and the Security Enforcement Principles, if a Distressed Disposal is being effected each Security Agent is irrevocably authorised (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor or a Debtor):

- (a) *release of Transaction Security/non-crystallisation certificates*: to release the Transaction Security or any other claim over that asset 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 that Security Agent, be considered necessary or desirable;

(b) *release of liabilities and Transaction Security on a share sale (Debtor)*: if the asset which is disposed of consists of all the shares in the capital of a Debtor, to release:

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

on behalf of the relevant Creditors and the Debtors;

(c) *release of liabilities and Transaction Security on a share sale (Holding Company)*: if the asset which is disposed of consists of all the shares in the capital of any Holding Company of (or other direct or indirect shareholder of) a Debtor, to release:

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

on behalf of the relevant Creditors and Debtors;

(d) *disposal of liabilities on a share sale*: if the asset which is disposed of consists of all the shares in the capital of a Debtor or the Holding Company (or other direct or indirect shareholder) of a Debtor and the relevant Security Agent (acting in accordance with Clause 14.2 (*Enforcement Instructions*)) decides to dispose of all or any part of:

- (i) the Liabilities; or
- (ii) the Debtor Liabilities,

owed by that Debtor or Holding Company (or other direct or indirect shareholder) or any Subsidiary of that Debtor or Holding Company (or other direct or indirect shareholder):

- (A) (if that Security Agent (acting in accordance with Clause 14.2 (*Enforcement Instructions*)) does not intend that any transferee of those Liabilities or Debtor Liabilities (the "**Transferee**") will be treated as a Primary Creditor or a Secured Creditor for the purposes of this Agreement) to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtor Liabilities **provided that** notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Primary Creditor or a Secured Creditor for the purposes of this Agreement; and
- (B) (if that Security Agent (acting in accordance with Clause 14.2 (*Enforcement Instructions*)) does intend that any Transferee will be treated as a Primary Creditor or a Secured Creditor for the purposes of this Agreement) to execute and deliver or enter into any agreement to dispose of:
 - (1) all (and not part only) of the Liabilities owed to the Primary Creditors; and
 - (2) all or part of any other Liabilities and the Debtor Liabilities,

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

- (e) *transfer of obligations in respect of liabilities on a share sale*: if the asset which is disposed of consists of all the shares in the capital of a Debtor or the Holding Company (or other direct or indirect shareholder) of a Debtor (the "**Disposed Entity**") and the relevant Security Agent (acting in accordance with Clause 16.4 (*Appointment of Financial Adviser*)) decides to transfer to another Debtor (the "**Receiving Entity**") all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of the Intra-Group Liabilities or the Debtor Liabilities, to execute and deliver or enter into any agreement to:
 - (i) agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities on behalf of the relevant Intra-Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
 - (ii) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities on behalf of the Receiving

Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities are to be transferred.

16.2 Proceeds of Disposals and Liability Sales

The net proceeds of each Distressed Disposal (and the net proceeds of any disposal of Liabilities or Debtor Liabilities pursuant to Clause 16.1 (*Facilitation of Distressed Disposals*)) shall be paid to the Relevant Security Agent for application in accordance with Clause 18 (*Application of Proceeds*) as if those proceeds were the proceeds of an enforcement of the Transaction Security and, to the extent that any disposal of Liabilities or Debtor Liabilities has occurred pursuant to Clause 16.1 (*Facilitation of Distressed Disposals*), as if that disposal of Liabilities or Debtor Liabilities had not occurred.

16.3 Restriction on Distressed Disposals – Unsecured Creditors

If at a time any Unsecured Financing is outstanding a Distressed Disposal is being effected such that any member of the Group that guarantees the Unsecured Liabilities will be released from its liabilities as guarantor of the Unsecured Liabilities or its assets will be released from the Transaction Security it is a further condition to the release that either:

- (a) the Creditor Representative in respect of any such Unsecured Financing has approved the release; or
- (b) where assets of such member of the Group are sold:
 - (i) the proceeds of such sale or disposal are received in cash (or substantially in cash); and
 - (ii) all claims of the Secured Creditors (other than in relation to performance bonds or guarantees or similar instruments) against a member of the Group (if any) all of whose shares (other than any minority interest not owned by members of the Group) are sold or disposed of pursuant to such Enforcement Action, are unconditionally released and discharged or sold or disposed of concurrently with such sale (and are not assumed by the purchaser or one of its Affiliates) and all Transaction Security in respect of the assets that are sold or disposed of is simultaneously and unconditionally released and discharged concurrently with such sale, **provided that** if each relevant Creditor Representative (acting reasonably and in good faith):
 - (A) determines that the Secured Creditors will recover a greater amount if any such claim is sold or otherwise transferred to the purchaser or one of its Affiliates and not released and discharged; and
 - (B) serves a written notice on the Relevant Security Agent confirming the same,

the relevant Security Agent shall be entitled to sell or otherwise transfer such claim to the purchaser or one of its Affiliates; and

- (iii) such sale or disposal is made:
 - (A) pursuant to a Public Auction; or
 - (B) where a Financial Adviser selected by the Relevant Security Agent has delivered an opinion addressed to each Security Agent in respect of such sale or disposal that the amount received in connection therewith is fair from a financial point of view, taking into account all relevant circumstances, including the method of enforcement, **provided that** the liability of such Financial Adviser may be limited to the amount of its fees in respect of such engagement (it being acknowledged that the Relevant Security Agent shall have no obligation to select or engage any Financial Adviser unless it shall have been indemnified and/or secured and/or prefunded to its satisfaction).

16.4 Appointment of Financial Adviser

Without prejudice to Clause 20.8 (*Rights and discretions*), the Relevant 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 the 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 in accordance with Schedule 4 (*Security Enforcement Principles*) and/or Clause 16.3 (*Restriction on Distressed Disposals – Unsecured Creditors*).

17. CREDITORS' AND DEBTORS' ACTIONS

Each Creditor and each Debtor will:

- (a) do all things that the relevant Security Agent reasonably requests in order to give effect to Clause 15 (*Non-Distressed Disposals*) and Clause 16 (*Distressed Disposals*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the relevant Security Agent may reasonably consider to be necessary to give effect to the releases or disposals contemplated by those Clauses); and
- (b) if the relevant Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the relevant Security Agent reasonably requests that any Creditor or any Debtor take any such action, take that action itself in accordance with the instructions of the relevant Security Agent,

provided that the proceeds of those disposals are applied in accordance with Clause 15 (*Non-Distressed Disposals*) or Clause 16 (*Distressed Disposals*) as the case may be.

18. APPLICATION OF PROCEEDS

18.1 Order of application

Subject to Clause 18.2 (*Prospective liabilities*) and Clause 18.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*), all amounts from time to time paid to each Security Agent under any of Clauses 11.3 (*Set-Off*), 12 (*Turnover of Receipts*), 13 (*Redistribution*), 16 (*Distressed Disposals*), 18.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*) or 20.2 (*Parallel Debt (Covenant to pay the Security Agent)*) of this Agreement or received or recovered by any 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 18, the "**Recoveries**") shall be held by that Security Agent on trust or as agent for the relevant Secured Creditors (as applicable) to apply them at any time as the relevant Security Agent (in its discretion) determines and directs, to the extent permitted by applicable law (and subject to the provisions of this Clause 18), in the following order of priority:

- (a) in discharging any sums owing to each Security Agent, any Receiver or any Delegate;
- (b) *pro rata* and *pari passu*, in payment of:
 - (i) Creditor Representative Amounts to each Creditor Representative on its own behalf (in accordance with the relevant Debt Documents);
 - (ii) all fees, costs and expenses incurred by the Security Agent and any Delegate (and payable in accordance with any Debt Document);
- (c) in payment to:
 - (i) in respect of each Senior Secured Financing, the relevant Creditor Representative on its own behalf and on behalf of the relevant Senior Secured Creditors;
 - (ii) the Hedge Counterparties; andfor application towards the discharge of:
 - (A) in the case of (i) above, the Senior Secured Liabilities owed to the relevant Senior Secured Creditors (in accordance with the terms of the relevant Senior Secured Debt Documents on a *pro rata* basis between the relevant Senior Secured Financings); and
 - (B) in the case of (ii) above, the Hedging Liabilities on a *pro rata* basis between the Hedging Liabilities of each Hedge Counterparty,on a *pro rata* basis as between paragraphs (A) and (B);

- (d) in respect of each Second Lien Financing, in payment to the relevant Second Lien Creditor Representative on its own behalf and on behalf of the relevant Second Lien Creditors for application towards the discharge of the Second Lien Liabilities in accordance with the terms of the Second Lien Finance Documents on a *pro rata* basis between the relevant Second Lien Financings;
- (e) if none of the Debtors is under any further actual or contingent liability under any Hedging Agreement, Hedge Counterparty Guarantee, Senior Secured Debt Document or Second Lien Finance Document, in payment to any person to whom the Security Agent is obliged to pay in priority to any Debtor; and
- (f) the balance, if any, in payment to the relevant Debtor.

18.2 Prospective liabilities

Following a Distress Event each Security Agent may, in its discretion, hold any amount of the Recoveries received by it in an interest bearing suspense or impersonal account(s) in the name of that Security Agent with such financial institution (including itself) and for so long as that Security Agent shall think fit (the interest being credited to the relevant account) for later application under Clause 18.1 (*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 that Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

18.3 Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral

- (a) Nothing in this Agreement shall prevent any Issuing Bank or Ancillary Lender taking any Enforcement Action in respect of any Credit Facility Cash Cover which has been provided for it in accordance with the Credit Facility Documents.
- (b) To the extent that any Credit Facility Cash Cover is not held with the Relevant Issuing Bank or Relevant Ancillary Lender, all amounts from time to time received or recovered in connection with the realisation or enforcement of that Credit Facility Cash Cover shall be paid to the Relevant Security Agent and shall be held by the Relevant Security Agent on trust and as agent to apply them at any time as the Relevant Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:
 - (i) to the Relevant Issuing Bank or Relevant Ancillary Lender towards the discharge of the Credit Facility Lender Liabilities for which that Credit Facility Cash Cover was provided; and
 - (ii) the balance, if any, in accordance with Clause 18.1 (*Order of application*).

- (c) To the extent that any Credit Facility Cash Cover is held with the Relevant Issuing Bank and Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Issuing Bank or Relevant Ancillary Lender receiving and retaining any amount in respect of that Credit Facility Cash Cover.
- (d) Nothing in this Agreement shall prevent any Issuing Bank receiving and retaining any amount in respect of any Credit Facility Lender Cash Collateral provided for it in accordance with the terms of the Credit Facility Documents.

18.4 Investment of proceeds

Prior to the application of the proceeds of the Security Property in accordance with Clause 18.1 (*Order of application*) each Security Agent may, in its discretion, hold all or part of those proceeds received by it in an interest bearing suspense or impersonal account(s) in the name of that Security Agent with such financial institution (including itself) and for so long as that Security Agent shall think fit unless otherwise directed by the relevant Instructing Group (the interest being credited to the relevant account) pending the application from time to time of those monies in that Security Agent's discretion in accordance with the provisions of this Clause 18.

18.5 Currency Conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations each Security Agent may:
 - (i) convert any moneys received or recovered by that Security Agent from one currency to another, at the Security Agent's Spot Rate of Exchange; and
 - (ii) notionally convert the valuation provided in any opinion or valuation from one currency to another at the Security Agent's Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

18.6 Permitted Deductions

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

18.7 Good Discharge

- (a) Any payment to be made in respect of the Secured Obligations by any Security Agent:
 - (i) may be made to the relevant Creditor Representatives on behalf of its Creditors;
 - (ii) may be made to the Relevant Issuing Bank or Relevant Ancillary Lender in accordance with paragraph (b)(i) of Clause 18.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*); or
 - (iii) shall be made directly to the Hedge Counterparties,and any payment made in that way shall be a good discharge, to the extent of that payment, by such Security Agent.
- (b) No Security Agent is under any obligation to make the payments to the Creditor Representatives or the Hedge Counterparties under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Creditor(s) are denominated under the relevant Debt Documents to the extent not received in that currency.

18.8 Calculation of Amounts

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

- (a) notionally convert the Liabilities owed to any person into the Common Currency, that notional conversion to be made at the spot rate at which that Security Agent is able to purchase the Common Currency with the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made;
- (b) assume that all moneys received or recovered as a result of the enforcement or realisation of any Security Property are applied in discharge of the Liabilities in accordance with the terms of the Debt Documents under which those Liabilities have arisen; and
- (c) rely on a certificate from the Initial Senior Agent, any Second Lien Creditor Representative or any Secured Creditor giving details of:
 - (i) any sum due or owing to any Secured Creditor as at any date specified therein; and
 - (ii) any other matters requested by that Security Agent.

18.9 Application and consideration

- (a) In consideration for the covenants given to the Common Security Agent by each Debtor in Clause 20.2 (*Parallel Debt (Covenant to pay the Security*

Agent)), the Common Security Agent agrees with each Debtor to apply all moneys from time to time paid by such Debtor to the Common Security Agent in accordance with the provisions of Clause 18.1 (*Order of application*).

- (b) In consideration for the covenants given to each Senior Security Agent by each relevant Debtor in section 10.23 (*Parallel Debt*) of the Initial Senior Facilities Agreement (or any equivalent provision of a Senior Secured Debt Document), each Senior Security Agent agrees with each such Debtor to apply all moneys from time to time paid by such Debtor to such Senior Security Agent in accordance with the provisions of Clause 18.1 (*Order of application*).
- (c) In consideration for the covenants given to each Second Lien Security Agent by each relevant Debtor in section 10.23 (*Parallel Debt*) the Initial Second Lien Facilities Agreement (or any equivalent provision of a Second Lien Finance Document), each Second Lien Security Agent agrees with each such Debtor to apply all moneys from time to time paid by such Debtor to such Second Lien Security Agent in accordance with the provisions of Clause 18.1 (*Order of application*).

19. EQUALISATION

19.1 Equalisation definitions

For the purposes of this Clause 19:

"Exposure" means the Second Lien Exposure and the Senior Secured Exposure.

"Enforcement Date" means the Senior Secured Enforcement Date and the Second Lien Enforcement Date.

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

"Second Lien Exposure" means, in relation to a Second Lien Creditor, the Second Lien Liabilities owed by the Debtors to that Second Lien Creditor.

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

"Senior Secured Exposure" means:

- (a) in relation to a Senior Secured Creditor (other than a Senior Secured Notes Creditor or Hedge Counterparty), the aggregate amount of its outstanding participation (if any, and without double counting) under any Credit Facility Agreement at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of

actual maturity in respect of those liabilities) and assuming any transfer of claims in respect of amounts outstanding under the Revolving Facility and each Ancillary Facility in accordance with clause 9.6 (*Adjustment for Ancillary Facilities upon acceleration*) of the Initial Senior Facilities Agreement (or any substantially equivalent provision in another Credit Facility Agreement (as the context requires)) which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Initial Senior Facilities Agreement or any other Credit Facility Agreement (as the context requires) and amounts owed to it by a Debtor in respect of any Ancillary Facility but excluding:

- (i) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent that that amount would not be outstanding but for a breach by that Senior Secured Creditor of any provision of clause 9 (Ancillary Facilities) of the Initial Senior Facilities Agreement (or any substantially equivalent provision in any other Credit Facility Agreement (as the context requires));
- (ii) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that Credit Facility Cash Cover has been provided by a Debtor in respect of that amount and is available to that Senior Secured Creditor pursuant to the relevant Credit Facility Documents; and
- (iii) any amount outstanding in respect of a Letter of Credit to the extent (and in the amount) that Credit Facility Cash Cover has been provided by a Debtor in respect of that amount and is available to the relevant Senior Secured Creditor pursuant to the relevant Credit Facility Documents,

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

- (b) in relation to a Senior Secured Notes Creditor, the Senior Secured Notes Liabilities owed by the Debtors to that Senior Secured Notes Creditor;
- (c) in relation to a Hedge Counterparty:
 - (i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement in accordance with the terms of this Agreement on or prior to the Enforcement Date, the amount, if any, payable to it under that Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and

- (ii) if that Hedge Counterparty has not terminated or closed out any hedging transaction under any Hedging Agreement on or prior to the Enforcement Date:
 - (A) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
 - (B) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

"Utilisation" has the meaning given to the term "Utilisation" in the Initial Senior Facilities Agreement or any equivalent term in each other relevant Credit Facility Agreement (as the context requires).

19.2 Implementation of senior secured equalisation

The provisions of this Clause 19 shall be applied at such time or times after the Enforcement Date as the Relevant Security Agent shall in good faith consider appropriate. Without prejudice to the generality of the preceding sentence, if the provisions of this Clause 19 have been applied before all the Liabilities have matured and/or been finally quantified, the Relevant Security Agent may elect to re-apply those provisions on the basis of revised Senior Secured Exposures and the Senior Secured Creditors shall make appropriate adjustment payments amongst themselves.

19.3 Implementation of second lien equalisation

The provisions of this Clause 19 shall be applied at such time or times after the Enforcement Date as the Relevant Security Agent shall in good faith consider appropriate. Without prejudice to the generality of the preceding sentence, if the provisions of this Clause 19 have been applied before all the Liabilities have matured and/or been finally quantified, the Relevant Security Agent may elect to re-apply those provisions on the basis of revised Second Lien Exposures and the Second Lien Creditors shall make appropriate adjustment payments amongst themselves.

19.4 Senior Equalisation

If, for any reason, any Senior Secured Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the Senior Secured Creditors in the proportions which their respective Senior Secured Exposures at the Enforcement Date bore to the aggregate Senior Secured Exposures of all the Senior Secured Creditors at the Enforcement Date, the Senior Secured Creditors will make such payments amongst themselves as the Relevant Security Agent shall require to put the Senior Secured Creditors in such a position that (after taking into account such payments) those losses are borne in those proportions.

19.5 Second Lien Equalisation

If, for any reason, any Second Lien Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the Second Lien Creditors in the proportions which their respective Second Lien Exposures at the Enforcement Date bore to the aggregate Second Lien Exposures of all the Second Lien Creditors at the Enforcement Date, the Second Lien Creditors will make such payments amongst themselves as the Relevant Security Agent shall require to put the Senior Secured Creditors in such a position that (after taking into account such payments) those losses are borne in those proportions.

19.6 Turnover of enforcement proceeds

If:

- (a) the Relevant Security Agent or any relevant Creditor Representative is not entitled, for reasons of applicable law, to pay or distribute amounts received pursuant to the making of a demand under any guarantee, indemnity or other assurance against loss or the enforcement of the Transaction Security to the Senior Secured Creditors or the Second Lien Creditors but is entitled to pay or distribute those amounts to Creditors (such Creditors, the "**Receiving Creditors**") who, in accordance with the terms of this Agreement, are subordinated in right and priority of payment to the Senior Secured Creditors or (as applicable) the Second Lien Creditors; and
- (b) the Senior Secured Liabilities Discharge Date or, as the case may be, the Final Second Lien Discharge Date has not yet occurred (nor would occur after taking into account such payments),

then the Receiving Creditors shall make such payments to the Senior Secured Creditors or, as the case may be, the Second Lien Creditors as the Relevant Security Agent shall require to place the Senior Secured Creditors or, as the case may be, the Second Lien Creditors in the position they would have been in had such amounts been available for application against the Senior Secured Liabilities or, as the case maybe, the Second Lien Liabilities in accordance with Clause 18.1 (*Order of application*) **provided that** this Clause 19.6 shall not apply to any receipt or recovery that has been distributed by the Senior Secured Notes Trustee to the Senior Secured Noteholders in accordance with the Senior Secured Finance Documents or, as the case may be, the Second Lien Notes Trustee to the Second Lien Notes Creditors in accordance with the Second Lien Finance Documents unless the Senior Secured Notes Trustee or, as the

case may be, the Second Lien Notes Trustee had received at least two Business Days' prior written notice (in accordance with this Agreement) that an Acceleration Event or Insolvency Event in relation to a Debtor had occurred or that the receipt or recovery falls within Clause 10.2 (*Turnover by the Creditors*).

19.7 Notification of Exposure

Before each occasion on which it intends to implement the provisions of this Clause 19, the Relevant Security Agent shall send a notice to each Senior Secured Creditor Representative and each Hedge Counterparty or, as the case may be, each Second Lien Agent and each Second Lien Notes Trustee requesting that it notify the Relevant Security Agent of, respectively, its Exposure and the Exposure of each relevant Senior Secured Creditor or, as the case may be, Second Lien Creditor.

19.8 Default in payment

If a Creditor fails to make a payment due from it under this Clause 19, the Relevant Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Secured Creditor(s) or, as the case may be, the Second Lien Creditor(s), to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Senior Secured Creditor(s) or, as the case may be, the Second Lien Creditor(s), in respect of costs) but shall have no liability or obligation towards such Senior Secured Creditor(s) or, as the case may be, the Second Lien Creditor(s), any other Senior Secured Creditor or, as the case may be, the Second Lien Creditor(s), or Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

20. THE SECURITY AGENT

20.1 Common Security Agent

- (a) The Common Security Agent declares that it holds the Common Transaction Security on trust and as agent for and/or for the benefit of the Secured Creditors on the terms contained in this Agreement (including via Parallel Debt).
- (b) Each of the Secured Creditors authorises the Common Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Common Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions.
- (c) Subject to Clause 18.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*), the Secured Creditors shall not have any independent power to enforce, or have recourse to, any of the Common Transaction Security or to exercise any rights or powers arising under the Common Transaction Security Documents except through the Common Security Agent.

20.2 **Parallel Debt (Covenant to pay the Common Security Agent)**

- (a) Notwithstanding any other provision of this Agreement, each Debtor hereby irrevocably and unconditionally undertakes to the extent legally possible to pay to the Common Security Agent (each a "**Parallel Debt**"), as creditor in its own right and not as representative of the other Secured Creditors, sums equal to and in the currency of each amount payable by such Debtor to each of the Secured Creditors under each of the Debt Documents (including any Liabilities under a Permitted Debt Exchange Offer under a Debt Document) as and when that amount falls due for payment under the relevant Debt Document or would have fallen due but for any discharge resulting from failure of another Secured Creditor to take appropriate steps, in insolvency proceedings affecting that Debtor, to preserve its entitlement to be paid that amount.
- (b) The Common Security Agent shall have its own independent right to demand payment of the amounts payable by each Debtor under this Clause 20.2, irrespective of any discharge of such Debtor's obligation to pay those amounts to the other Secured Creditors resulting from failure by them to take appropriate steps, in insolvency proceedings affecting that Debtor, to preserve their entitlement to be paid those amounts.
- (c) Any amount due and payable by a Debtor to the Common Security Agent under this Clause 20.2 shall be decreased to the extent that the other Secured Creditors have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Debt Documents and any amount due and payable by a Debtor to the other Secured Creditors under those provisions shall be decreased to the extent that the Common Security Agent has received (and is able to retain) payment in full of the corresponding amount under this Clause 20.2.
- (d) The rights of the Secured Creditors (other than the Common Security Agent) to receive payment of amounts payable by each Debtor under the Debt Documents are several and are separate and independent from, and without prejudice to, the rights of the Common Security Agent to receive payment under this Clause 20.2.

20.3 **Instructions**

- (a) Each Security Agent shall:
 - (i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the relevant Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors); and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in

accordance with instructions given to it by that Creditor or group of Creditors).

- (b) Each Security Agent shall be entitled to request instructions, or clarification of any instruction, from the relevant Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and that Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to a Security Agent by the relevant Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) shall override any conflicting instructions given by any other Parties and will be binding on all Secured Creditors.
- (d) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires any Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the relevant Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the relevant Secured Creditors including, without limitation, Clauses 20.6 (*No duty to account*) to Clause 20.11 (*Exclusion of liability*), Clause 20.14 (*Confidentiality*) to Clause 20.21 (*Custodians and nominees*) and Clause 20.24 (*Acceptance of title*) to Clause 20.27 (*Disapplication of Trustee Acts*);
 - (iv) in respect of the exercise of any Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 15 (*Non-Distressed Disposals*);
 - (B) Clause 18.1 (*Order of application*);
 - (C) Clause 18.2 (*Prospective liabilities*);
 - (D) Clause 18.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*); and
 - (E) Clause 18.6 (*Permitted Deductions*).
- (e) If giving effect to instructions given by the relevant Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) would (in the relevant Security Agent's reasonable opinion) have an effect equivalent to an

Intercreditor Amendment, that Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the relevant Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.

- (f) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:
 - (i) it has not received any instructions from the relevant Instructing Group (or if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,the Common Security Agent shall:
 - (A) other than where paragraph (B) below applies, do so having regard to the interests of all the relevant Secured Creditors; and
 - (B) if (in its opinion) there is a Creditor Conflict in relation to the matter in respect of which the discretion is to be exercised, do so having regard only to the interests of all the Senior Secured Creditors.
- (g) Each 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 (acting reasonably) require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the provisions of Clause 14 (*Enforcement of Transaction Security*) and the remainder of this Clause 20.3, in the absence of instructions, the Common Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

20.4 Duties of each Security Agent

- (a) Each Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) Each Security Agent shall promptly:
 - (i) forward to each relevant Creditor Representative and (in the case of the Common Security Agent and any Senior Security Agent) to each Hedge Counterparty a copy of any document (excluding ongoing administrative information delivered under Security Documents and any documents delivered in relation to the perfection of the security interest under the Security Document) received by that Security Agent from any Debtor under any Debt Document; and

- (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Debt Document specifically provides otherwise, no Security Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) Without prejudice to Clause 26.3 (*Notification of prescribed events*), if the Common Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Primary Creditors.
- (e) To the extent that a Party (other than a Security Agent) is required to calculate a Common Currency Amount, the relevant Security Agent shall upon a request by that Party, promptly notify that Party of the Security Agent's Spot Rate of Exchange.
- (f) Each 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).

20.5 No fiduciary duties to Debtors or Shareholder Creditors

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

20.6 No duty to account

No Security Agent shall not be bound to account to any other Secured Creditor for any sum or the profit element of any sum received by it for its own account.

20.7 Business with the Parent and the Group

Each 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.

20.8 Rights and discretions

- (a) Each Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the relevant Instructing Group, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and

- (C) if it receives any instructions to act in relation to the Transaction Security and unless it is on notice to the contrary, that all applicable conditions under the Debt Documents for so acting have been satisfied; and
- (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) Each Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee and as security agent for the relevant Secured Creditors) that:
 - (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and
 - (iii) any notice made by the Parent is made on behalf of and with the consent and knowledge of all the Debtors.
- (c) Each Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, each Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to that Security Agent (and so separate from any lawyers instructed by any Primary Creditor) if that Security Agent in its reasonable opinion deems this to be desirable.
- (e) Each 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 that Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) Each Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or

- (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

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

- (g) Unless this Agreement expressly specifies otherwise, each Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee and security agent under this Agreement.
- (h) Notwithstanding any provision of any Debt Document to the contrary, no Security Agent is 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.

20.9 Responsibility for documentation

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

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, a Debtor or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Secured Creditor is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

20.10 No duty to monitor

No Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Debt Document; or
- (c) whether any other event specified in any Debt Document has occurred.

20.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of any Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the relevant Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of that Security Agent, a Receiver or a Delegate in respect of any claim it might have against that 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 that Security Agent, a Receiver or a

Delegate may rely on this Clause subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Act.

- (c) Nothing in this Agreement shall oblige any Security Agent to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Secured Creditor,

on behalf of any Secured Creditor and each Secured Creditor confirms to each relevant 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 that Security Agent.

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

20.12 Secured Creditors' indemnity to the Common Security Agent

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

- (b) For the purposes only of paragraph (a) above, to the extent that any hedging transaction under a Hedging Agreement has not been terminated or closed-out, the Hedging Liabilities due to any Hedge Counterparty in respect of that hedging transaction will be deemed to be:
- (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of those hedging transactions, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
 - (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

that amount, in each case as calculated in accordance with the relevant Hedging Agreement.

- (c) Subject to paragraph (d) below, the Parent shall immediately on demand reimburse any Secured Creditor for any payment that Secured Creditor makes to the Common Security Agent pursuant to paragraph (a) above.
- (d) Paragraph (c) above shall not apply to the extent that the indemnity payment in respect of which the Secured Creditor claims reimbursement relates to a liability of the Common Security Agent to a Debtor.

20.13 Resignation of the Common Security Agent

- (a) The Common Security Agent may (after consultation with the Parent) resign and appoint one of its Affiliates as successor by giving notice to the Secured Creditors and the Parent.
- (b) Alternatively the Common Security Agent may resign by giving 30 days' notice to the Secured Creditors and the Parent, in which case the Majority Senior Secured Creditors or, following the Senior Secured Liabilities Discharge Date, the Majority Second Lien Creditors may, with the consent of the Parent, appoint a successor Common Security Agent (such consent not to be unreasonably withheld or delayed, **provided that**, for the avoidance of doubt, it shall not be unreasonably to withhold or delayed consent where the Parent has made reasonable requests for information about the proposed successor Common Security Agent and that information has not been provided).

- (c) If the Majority Senior Secured Creditors or, following the Senior Secured Liabilities Discharge Date, the Majority Second Lien Creditors have not appointed a successor Common Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the relevant retiring Common Security Agent (after consultation with the relevant Creditor Representatives, the Hedge Counterparties and the Parent) may, with the consent of the Parent, appoint a successor Common Security Agent (such consent not to be unreasonably withheld or delayed, **provided that**, for the avoidance of doubt, it shall not be unreasonably to withhold or delay consent where the Parent has made reasonable requests for information about the proposed successor Common Security Agent and that information has not been provided).
- (d) The retiring Common Security Agent shall make available to the successor Common Security Agent such documents and records and provide such assistance as the successor Common Security Agent may reasonably request for the purposes of performing its functions as Common Security Agent under the Debt Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Common Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Common Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Common Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 20.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 20.13 and Clause 25.1 (*Indemnity to the Security Agent*) (and any Common Security Agent fees for the account of the retiring Common Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Senior Secured Creditors or, following the Senior Secured Liabilities Discharge Date, the Majority Second Lien Creditors may, by notice to the Common Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above.

20.14 Confidentiality

- (a) In acting as trustee and agent for the Secured Creditors, the Common Security Agent shall be regarded as acting through its trustee or agency division which shall be treated as a separate entity from any other of its divisions or departments.

- (b) If information is received by another division or department of the Common Security Agent, it may be treated as confidential to that division or department and the Common Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Debt Document to the contrary, the Common Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

20.15 Information from the Creditors

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

20.16 Credit appraisal by the Secured Creditors

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

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

20.17 Security Agent's management time and additional remuneration

- (a) In the event of:
 - (i) a Default;
 - (ii) any Security Agent being requested by a Debtor or the relevant Instructing Group to undertake duties which that 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;
 - (iii) the proposed accession of any Secured Creditors pursuant to Clause 22 (*Changes to the Parties*); or
 - (iv) any Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

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

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

20.18 Reliance and engagement letters

Each 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).

20.19 No responsibility to perfect Transaction Security

No Security Agent shall be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Debtor to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Debt Document or the Transaction Security;

- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Debt Document or of the Transaction Security;
- (d) take, or to require any Debtor to take, any step to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Transaction Security Document.

20.20 Insurance by Security Agent

- (a) No Security Agent shall be obliged:
 - (i) to insure any of the Charged Property;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Debt Document,

and no Security Agent shall be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where any 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 relevant Instructing Group requests it to do so in writing and that Security Agent fails to do so within fourteen days after receipt of that request.

20.21 Custodians and nominees

Each 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 and/or agency as that Security Agent (acting reasonably) may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust and/or agency created under this Agreement and that 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.

20.22 Delegation by the Security Agent

- (a) Any Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that that Security Agent,

that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the relevant Secured Creditors.

- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

20.23 Additional Common Security Agent

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

and the Common Security Agent shall give prior notice to the Parent and the Secured Creditors of that appointment.

- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Common Security Agent under or in connection with the Debt Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Common Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) reasonably 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 Common Security Agent.

20.24 Acceptance of title

The Common 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.

20.25 Winding up of trust and/or agency

If the Common Security Agent, with the approval of each Creditor Representative and each Hedge Counterparty, determines that:

- (a) all of the Secured Obligations and all other obligations secured by the Transaction Security Documents have been fully and finally discharged; and

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

then:

- (i) the trusts set out in this Agreement shall be wound up and the Common Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Common Security Agent under each of the Transaction Security Documents; and
- (ii) any Common Security Agent which has resigned pursuant to Clause 20.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Transaction Security Document.

20.26 Powers supplemental to Trustee Acts

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

20.27 Disapplication of Trustee Acts

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

20.28 Power of Attorney

Each Senior Secured Creditor, Second Lien Creditor, Unsecured Notes Creditor, Intra-Group Lender, Shareholder Creditor and Debtor by way of security for its obligations under this Agreement irrevocably appoints each Security Agent to be its attorney to do anything which that Senior Secured Creditor, Second Lien Creditor, Unsecured Notes Creditor, Intra-Group Lender, Shareholder Creditor and Debtor has authorised that 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 within 10 Business Days of the relevant Senior Secured Creditor, Second Lien Creditor, Unsecured Notes Creditor, Intra-Group Lender, Shareholder Creditor or Debtor being notified of that failure (and that Security Agent may delegate that power on such terms as it sees fit (acting reasonably)).

21. NOTES TRUSTEE PROTECTIONS

21.1 Limitation of Notes Trustee Liability

It is expressly understood and agreed by the Parties that this Agreement is executed and delivered by each Notes Trustee not individually or personally but solely in its capacity as a Notes Trustee in the exercise of the powers and authority conferred and vested in it under the relevant Debt Documents. It is further understood by the Parties that in no case shall a Notes Trustee be (i) responsible or accountable in damages or otherwise to any other Party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by it in good faith in accordance with this Agreement and in a manner that the relevant Notes Trustee believed to be within the scope of the authority conferred on the Notes Trustee by this Agreement and the relevant Debt Documents or by law, or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party, **provided however, that a Notes Trustee shall be personally liable under this Agreement for its own gross negligence or wilful misconduct.** It is also acknowledged that a Notes Trustee shall not have any responsibility for the actions of any individual Noteholder.

21.2 Notes Trustee not fiduciary for other Creditors

A Notes Trustee shall not be deemed to owe any fiduciary duty to any of the Creditors (other than the Noteholders for which it is the Creditor Representative) or any member of the Group and shall not be liable to any Creditor (other than the Noteholders for which it is the Creditor Representative) or any member of the Group if a Notes Trustee shall in good faith mistakenly pay over or distribute to the Noteholders for which it the Creditor Representative or to any other person cash, property or securities to which any Creditor (other than the Noteholders for which it is the Creditor Representative) shall be entitled by virtue of this Agreement or otherwise. With respect to the Creditors (other than the Noteholders for which it is the Creditor Representative), each Notes Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in the relevant Debt Documents (including this Agreement) and no implied covenants or obligations with respect to Creditors (other than the Noteholders for which it is the Creditor Representative) shall be read into this Agreement against a Notes Trustee.

21.3 Reliance on certificates

A Notes Trustee may rely without enquiry on any notice, consent or certificate of the Security Agent, any other Creditor Representative or any Hedge Counterparty as to the matters certified therein.

21.4 Notes Trustee

In acting under and in accordance with this Agreement a Notes Trustee shall act in accordance with the relevant Notes Indenture and shall seek any necessary instruction from the relevant Noteholders, to the extent provided for, and in accordance with, the relevant Notes Indenture, and where it so acts on the instructions of the relevant Noteholders, a Notes Trustee shall not incur any liability to any person for so acting

other than in accordance with the relevant Notes Indenture. Furthermore, prior to taking any action under this Agreement or the relevant Debt Documents as the case may be the relevant Notes Trustee may reasonably request and rely upon an opinion of counsel or opinion of another qualified expert, at the Parent's expense, as applicable; **provided, however, that** any such opinions shall be at the expense of the relevant Noteholders, if such actions are on the instructions of the relevant Noteholders.

21.5 Turnover obligations

Notwithstanding any provision in this Agreement to the contrary, a Notes Trustee shall only have an obligation to turn over or repay amounts received or recovered under this Agreement by it (i) if it had actual knowledge that the receipt or recovery is an amount received in breach of a provision of this Agreement (a "**Turnover Receipt**") and (ii) to the extent that, prior to receiving that knowledge, it has not distributed the amount of the Turnover Receipt to the Noteholders for which it is the Creditor Representative in accordance with the provisions of the relevant Notes Indenture. For the purpose of this Clause 21.5, (i) "actual knowledge" of the Notes Trustee shall be construed to mean the Notes Trustee shall not be charged with knowledge (actual or otherwise) of the existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless a responsible officer of such Notes Trustee has received, not less than two Business Days' prior to the date of such payment, a written notice that such payments are required or prohibited by this Agreement; and (ii) "responsible officer" when used in relation to the Notes Trustee means any person who is an officer within the corporate trust and agency department of the relevant Notes Trustee, including any director, associate director, vice president, assistance vice president, senior associate, assistant treasurer, trust officer, or any other officer of the relevant Notes Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement.

21.6 Creditors and the Notes Trustees

In acting pursuant to this Agreement and the relevant Notes Indenture, a Notes Trustee is not required to have any regard to the interests of the Creditors (other than the Noteholders for which it is the Creditor Representative).

21.7 Notes Trustee; reliance and information

- (a) A Notes Trustee may rely and shall be fully protected in acting or refraining from acting upon any notice or other document reasonably believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person.
- (b) Without affecting the responsibility of any Debtor for information supplied by it or on its behalf in connection with any Debt Document, each Primary Creditor (other than the Noteholders for which it is the Creditor Representative) confirms that it has not relied exclusively on any information provided to it by a Notes Trustee in connection with any Debt Document. A

Notes Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another party.

(c) A Notes Trustee is entitled to assume that:

- (i) any payment or other distribution made in respect of the Liabilities owed to itself and the Noteholders for which it is the Creditor Representative has been made in accordance with the provisions of this Agreement;
- (ii) any Security granted in respect of such Liabilities is in accordance with this Agreement;
- (iii) no Default has occurred; and
- (iv) the Senior Secured Liabilities Discharge Date or the Unsecured Discharge Date (as applicable) has not occurred,

unless it has actual notice to the contrary. A Notes Trustee is not obliged to monitor or enquire whether any such default has occurred.

21.8 No action

A Notes Trustee shall not have any obligation to take any action under this Agreement unless it is indemnified or secured to its satisfaction (whether by way of payment in advance or otherwise) by the Debtors or the Noteholders for which it is the Creditor Representative, as applicable, in accordance with the terms of the relevant Notes Indenture. A Notes Trustee is not required to indemnify any other person, whether or not a Party in respect of the transactions contemplated by this Agreement.

21.9 Departmentalisation

In acting as a Notes Trustee, a Notes Trustee shall be treated as acting through its agency division which shall be treated as a separate entity from its other divisions and departments. Any information received or acquired by a Notes Trustee which is received or acquired by some other division or department or otherwise than in its capacity as Notes Trustee may be treated as confidential by that Notes Trustee and will not be treated as information possessed by that Notes Trustee in its capacity as such.

21.10 Other parties not affected

This Clause 21 is intended to afford protection to each Notes Trustee only and no provision of this Clause 21 shall alter or change the rights and obligations as between the other parties in respect of each other.

21.11 Security Agent and the Notes Trustees

- (a) A Notes Trustee is not responsible for the appointment or for monitoring the performance of the Security Agent.

- (b) A Notes Trustee shall be under no obligation to instruct or direct the Security Agent to take any Security enforcement action unless it shall have been instructed to do so by the Noteholders for which it is the Creditor Representative and indemnified and/or secured to its satisfaction.
- (c) The Security Agent acknowledges and agrees that it has no claims for any fees, costs or expenses from, or indemnification against, a Notes Trustee.

21.12 Provision of information

A Notes Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party. A Notes Trustee is not responsible for:

- (a) providing any Creditor with any credit or other information concerning the risks arising under or in connection with the Transaction Security Documents or Debt Documents (including any information relating to the financial condition or affairs of any Debtor or their related entities or the nature or extent of recourse against any party or its assets) whether coming into its possession before, on or after the date of this Agreement; or
- (b) obtaining any certificate or other document from any Creditor.

21.13 Disclosure of information

Each Debtor irrevocably authorises each Notes Trustee to disclose to any other Debtor any information that is received by that Notes Trustee in its capacity as Notes Trustee.

21.14 Illegality

A Notes Trustee may refrain from doing anything (including disclosing any information) which might, in its opinion, constitute a breach of any law or regulation and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.

21.15 Resignation of Notes Trustee

A Notes Trustee may resign or be removed in accordance with the terms of the relevant Notes Indenture, **provided that** a replacement of such Notes Trustee agrees with the Parties to become the replacement trustee under this Agreement by the execution of a Creditor/Creditor Representative Accession Undertaking.

21.16 Agents

A Notes Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with reasonable care by it hereunder.

21.17 No Requirement for Bond or Security

A Notes Trustee shall not be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Agreement.

21.18 Provisions Survive Termination

The provisions of this Clause 21 shall survive any termination or discharge of this Agreement.

22. CHANGES TO THE PARTIES

22.1 Assignments and transfers

No Party may:

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

in respect of any Debt Documents or the Liabilities except as permitted by this Clause 22.

22.2 Accession of Shareholder Creditor

- (a) Subject to Clause 10.4 (*No acquisition of Subordinated Shareholder Liabilities*), a Shareholder Creditor may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Subordinated Shareholder Liabilities owed to it if any assignee or transferee has (if not already a Party to this Agreement as a Shareholder Creditor) acceded to this Agreement as a Shareholder Creditor pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) If any other person makes available to the Parent any indebtedness which, if made available by Holdco, would constitute Subordinated Shareholder Liabilities, that person shall accede to this Agreement as a Shareholder Creditor pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

22.3 Accession of Credit Facility Lenders and Creditor Representatives and Senior Security Agent

- (a) In order for any credit facility (other than the Initial Senior Facilities) to be a "Credit Facility" for the purposes of this Agreement:
 - (i) each creditor in respect of that credit facility shall accede to this Agreement as a Credit Facility Lender;
 - (ii) the facility agent in respect of that credit facility shall accede to this Agreement as the Creditor Representative in relation to that credit facility pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*);
 - (iii) the collateral agent in respect of that credit facility shall accede to this Agreement as the security agent and trustee in relation to that credit facility pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*); and

- (b) A Credit Facility Lender under an existing Credit Facility may:
 - (i) assign any of its rights; or
 - (ii) transfer by novation any of its rights and obligations,
 in respect of any Debt Documents or the Liabilities if:
 - (A) that assignment or transfer is in accordance with the terms of the Credit Facility Documents to which it is a party; and
 - (B) subject to paragraph (c) below, any assignee or transferee has (if not already a Party as a Credit Facility Lender) acceded to this Agreement, as a Credit Facility Lender, pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).
- (c) Paragraph (a)(ii) above shall not apply in respect of:
 - (i) any Debt Purchase Transaction (as defined in the Initial Senior Facilities Agreement) permitted by clause 38.1 (*Permitted Debt Purchase Transactions*) of the Initial Senior Facilities Agreement or any equivalent provision of any other Credit Facility Document; and
 - (ii) any Liabilities Acquisition of the Credit Facility Liabilities by a member of the Group permitted under the relevant Credit Facility Document and pursuant to which the relevant Liabilities are discharged,
 effected in accordance with the terms of the Debt Documents.
- (d) No creditor under a Credit Facility shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of this Agreement unless such creditor is already a party as a Credit Facility Lender or has acceded to this Agreement as a Credit Facility Lender and the relevant Senior Security Agent has acceded to this Agreement, in each case in accordance with paragraph (a) or (c) above.

22.4 New Hedge Counterparty or change in Hedge Counterparty

- (a) No person shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to any Hedging Agreement unless it has acceded to this Agreement as a Hedge Counterparty.
- (b) A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights and benefits or obligations in respect of the Hedging Agreements to which it is a party and (if required) the Hedge Counterparty Guarantee if any transferee has (if not already party to this Agreement as a Hedge Counterparty) acceded to this Agreement as a Hedge Counterparty pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

22.5 Accession of Senior Secured Notes Trustee and Senior Security Agent

- (a) At any time, if any person makes available any indebtedness to any member of the Group to the extent contemplated by the definition of "Additional Senior Secured Notes Financing", the relevant Senior Secured Notes Trustee shall accede to this Agreement on behalf of the providers of such indebtedness as the Creditor Representative in relation to that Additional Senior Secured Financing and the relevant Senior Security Agent shall accede to this Agreement, in each case pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) A Senior Secured Notes Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if that assignment or transfer is in accordance with the terms of the relevant Additional Senior Secured Financing Documents.
- (c) No creditor, who would otherwise be a Senior Secured Notes Creditor shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of this Agreement unless the relevant Senior Secured Notes Trustee in respect of that Additional Senior Secured Notes Financing has acceded to this Agreement as a Creditor Representative on its behalf and the relevant Senior Security Agent has acceded to this Agreement, in each case in accordance with paragraph (a) or (b) above.

22.6 Accession of Second Lien Lenders and their Creditor Representatives and their Second Lien Security Agents

- (a) At any time, if any person makes available any indebtedness to any member of the Group to the extent contemplated by the definition of "Second Lien Facility", each such person shall accede to this Agreement as a Second Lien Lender and the relevant Second Lien Agent and the relevant Second Lien Security Agent shall accede to this Agreement as the Creditor Representative in relation to that Second Lien Facility pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) A Second Lien Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits 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 relevant Second Lien Finance Documents; and
 - (ii) any assignee or transferee has (if not already party to this Agreement as a Second Lien Lender) acceded to this Agreement as a Second Lien Lender pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).
- (c) No creditor, who would otherwise be a Second Lien Lender shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of

this Agreement unless such creditor has acceded to this Agreement in accordance with paragraph (a) or (b) above.

22.7 Accession of a Second Lien Notes Trustee

- (a) At any time, if any person makes available any indebtedness to any member of the Group to the extent contemplated by the definition of "Second Lien Notes" the relevant Second Lien Notes Trustee shall accede to this Agreement as the Creditor Representative in relation to such Second Lien Notes Financing and the relevant Second Lien Security Agent shall accede to this Agreement, in each case pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) A Second Lien Notes Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if that assignment or transfer is in accordance with the terms of the relevant Second Lien Finance Documents.
- (c) No creditor, who would otherwise be a Second Lien Notes Creditor shall be entitled to share the benefit of any provisions of this Agreement unless the relevant Second Lien Notes Trustee and the relevant Second Lien Security Agent has acceded to this Agreement in accordance with paragraph (a) above.

22.8 Accession of Unsecured Lenders and their Creditor Representatives

- (a) At any time, if any person makes available any indebtedness to any member of the Group to the extent contemplated by the definition of "Unsecured Facility", each such person shall accede to this Agreement as an Unsecured Lender and the relevant Unsecured Agent shall accede to this Agreement as the Creditor Representative in relation to that Unsecured Facility pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) An Unsecured Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits 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 relevant Unsecured Finance Documents; and
 - (ii) any assignee or transferee has (if not already party to this Agreement as an Unsecured Lender) acceded to this Agreement as an Unsecured Lender pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).
- (c) No creditor, who would otherwise be an Unsecured Lender shall be entitled to share in the benefit of any provisions of this Agreement unless such creditor has acceded to this Agreement in accordance with paragraph (a) or (b) above

22.9 Accession of an Unsecured Notes Trustee

- (a) At any time, if any person makes available any indebtedness to any member of the Group to the extent contemplated by the definition of "Unsecured Notes

Financing" the relevant Unsecured Notes Trustee shall accede to this Agreement as the Creditor Representative in relation to that Unsecured Notes Financing pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

- (b) An Unsecured Notes Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if that assignment or transfer is in accordance with the terms of the relevant Unsecured Notes Finance Documents.
- (c) No creditor, who would otherwise be an Unsecured Notes Creditor shall be entitled to share the benefit of any provisions of this Agreement unless the relevant Unsecured Notes Trustee has acceded to this Agreement in accordance with paragraph (a) above.

22.10 Change of Creditor Representative

A Creditor Representative may resign or be re-appointed in accordance with the relevant Debt Documents governing its appointment. No person replacing such Creditor Representative shall become a Creditor Representative unless at the same time, it accedes to this Agreement as a Creditor Representative pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

22.11 New Ancillary Lender

If any Affiliate of a Credit Facility Lender becomes an Ancillary Lender in accordance with the relevant Credit Facility Agreement, it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already party to this Agreement as a Credit Facility Lender) acceded to this Agreement as a Credit Facility Lender pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

22.12 Creditor/Creditor Representative Accession Undertaking

With effect from the date of acceptance by the Common Security Agent and, in the case of an Affiliate of a Credit Facility Lender, the Creditor Representative in relation to the relevant Credit Facility, of a Creditor/Creditor Representative Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor/Creditor Representative Accession Undertaking:

- (a) any Party ceasing entirely to be a Creditor, Shareholder Creditor, Creditor Representative or Security Agent (other than the Common Security Agent) shall be discharged from further obligations towards the Common Security Agent and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and

- (b) as from that date, the replacement or new Creditor, Shareholder Creditor, Creditor Representative or Security Agent shall assume the same obligations, and become entitled to the same rights, as if it had been an original Party to this Agreement in that capacity.

22.13 New Debtor

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

the Debtors will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor, in accordance with paragraph (c) below, no later than contemporaneously with the incurrence of those Liabilities or the giving of that assurance.

- (b) If any Affiliate of a Credit Facility Borrower becomes a borrower of an Ancillary Facility in accordance with the relevant Credit Facility Agreement, the relevant Credit Facility Borrower shall procure that such Affiliate accedes to this Agreement as a Debtor no later than contemporaneously with the date on which it becomes a borrower.
- (c) With effect from the date of acceptance by the Common Security Agent of a Debtor Accession Deed duly executed and delivered to the Common Security Agent by the new Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party to this Agreement as a Debtor.

22.14 New Intra-Group Lender

If any Intra-Group Lender or any member of the Group (other than the Parent) makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount in relation to a particular Debtor of \$15,000,000 (or its equivalent in other currencies) or more, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Intra-Group Lender) accedes to this Agreement as an Intra-Group Lender, pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

22.15 Change of Intra-Group Lender

Subject to Clause 9.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may:

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

in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already a Party as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

22.16 New Parent

- (a) The Original Parent shall ensure that Element Materials Technology Limited and any other Person that becomes "Holdings" under and in accordance with the Secured Debt Documents (each a "**New Holdings**") shall accede to this Agreement as the Parent and as a Debtor by delivery to the Common Security Agent of a Debtor Accession Deed no later than, in the case Element Materials Technology Limited, contemporaneously with the completion of the PC Reorganisation and, in the case of any other New Holdings, the date on which the relevant conditions under the Secured Debt Documents are satisfied.
- (b) With effect from the date of acceptance by the Common Security Agent of a Debtor Accession Deed duly executed and delivered to the Common Security Agent or, if later, the date specified in the Debtor Accession Deed, Element Materials Technology Limited or, as applicable, any other New Holdings as the new Parent and Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party to this Agreement as Parent and a Debtor.

22.17 Additional parties

- (a) Each of the Parties appoints the Common Security Agent to receive on its behalf each Debtor Accession Deed and Creditor/Creditor Representative Accession Undertaking delivered to the Common Security Agent and the Common Security Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Debt Document.
- (b) In the case of a Creditor/Creditor Representative Accession Undertaking delivered to the Common Security Agent by any new Ancillary Lender (which is an Affiliate of a Credit Facility Lender):
 - (i) the Common Security Agent shall, as soon as practicable after signing and accepting that Creditor/Creditor Representative Accession Undertaking in accordance with paragraph (a) above, deliver that Creditor/Creditor Representative Accession Undertaking to the relevant Creditor Representative; and
 - (ii) the relevant Creditor Representative shall, as soon as practicable after receipt by it, sign and accept that Creditor/Creditor Representative Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.

- (c) The relevant Creditor Representative shall be obliged to sign and accept a Debtor Accession Deed or Creditor/Creditor Representative Accession Undertaking received by it promptly after receipt by it **provided that** it is satisfied that it has complied with all necessary "know your customer" or similar other checks under all applicable laws and regulations in relation to the accession by the prospective party to this Agreement.
- (d) Each Party shall promptly upon the request of the Common Security Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Common Security Agent (for itself) from time to time in order for the Common Security Agent to carry out and be satisfied with the results of all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Debt Documents.
- (e) The Parent shall provide the Common Security Agent with copies (certified by a director of the Parent to be true and complete) of each Debt Document to which a member of the Group is party as soon as reasonably practicable upon execution (unless the Common Security Agent is also a party to that document).

22.18 Resignation of a Debtor

- (a) The Parent may request that a Debtor ceases to be a Debtor by delivering to the Common Security Agent a Debtor Resignation Request.
- (b) The Common Security Agent shall accept a Debtor Resignation Request and notify the Parent and each other Party of its acceptance if:
 - (i) the Parent has confirmed that no Event of Default is continuing or would result from the acceptance of the Debtor Resignation Request;
 - (ii) each Hedge Counterparty notifies the Common Security Agent that that Debtor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities;
 - (iii) to the extent that the Senior Secured Liabilities Discharge Date has not occurred, the relevant Creditor Representatives notifies the Common Security Agent that that Debtor is not, or has ceased to be a Credit Facility Borrower, Credit Facility Guarantor, issuer or a guarantor of Senior Secured Notes (as applicable) and, if applicable, the relevant Creditor Representative notifies the Common Security Agent that the Debtor has no liabilities either as principal or guarantor under any of the Additional Senior Secured Financing Documents in respect of any Additional Senior Secured Notes Financing;
 - (iv) to the extent that the Final Second Lien Discharge Date has not occurred the relevant Creditor Representatives notifies the Common Security Agent that the Debtor is not, or has ceased to be, a borrower, issuer and guarantor (as applicable) under any Second Lien Financing, and

- (v) the Parent confirms that the Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities that would require it to become a Party under Clause 22.14 (*New Intra-Group Lender*).
- (c) Upon notification by the Common Security Agent to the Parent of its acceptance of the resignation of a Debtor, that member of the Group shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.
- (d) The Common Security Agent shall, promptly upon receipt of a Debtor Resignation Request, request the notifications required in paragraph (b) above and each party required to give a notification under paragraph (b) above shall, promptly following receipt of the request (and provided the relevant conditions in paragraph (b) above have been met) give such notification.

23. ADDITIONAL INDEBTEDNESS

23.1 Incurrence of additional indebtedness

If the Parent gives written notice to the Common Security Agent, the Creditor Representatives and the Hedge Counterparties that a Debtor intends to incur any Additional Senior Secured Financing Liabilities, any Liabilities in relation to any Additional Second Lien Financing, any Unsecured Notes Liabilities or other Indebtedness permitted by the Debt Documents (the "**Additional Liabilities**") which comply with the other provisions of this Agreement and where the incurrence of the Additional Liabilities is not prohibited by the terms of the Debt Documents, then the Parties will (at the cost of the Parent) enter into such documentation as may, in the opinion of the Parent (acting reasonably), be necessary to ensure that any obligations and liabilities incurred by the Debtors in respect of such Additional Liabilities will have the applicable ranking and the benefit of the Transaction Security and that each Creditor under such Additional Liabilities will have the rights and obligations permitted to be conferred upon it in accordance with the Debt Documents (including, without limitation, the entry into a new intercreditor agreement on then current market terms) and the Common Security Agent is authorised to execute, and will execute if requested by the Parent, without the need for any further authority from the Secured Creditors (unless required by applicable law), any such documentation on behalf of the Secured Creditors **provided that** none of the parties shall be obliged to enter into any such documentation that purports to release or release and retake any of the Transaction Security if doing so would require consent under the applicable Debt Documents (as applicable) and that consent has not been obtained or (in respect of any Senior Transaction Security or Second Lien Transaction Security) where any Additional Senior Secured Financing Liabilities or any Liabilities in relation to any Additional Second Lien Financing are being incurred. For the avoidance of doubt, this Clause is without prejudice to any obligations of any of the Parties under any of the other Debt Documents to enter into any documents or take any other action in connection with indebtedness permitted to be incurred by the Group and permitted to be secured by the Transaction Security and the proviso above will not override any agreement between the relevant Creditors and Debtors in the respective Debt Documents.

23.2 Terms of additional indebtedness

- (a) The terms of any Credit Facility which is to be an Additional Senior Secured Financing shall comply with any requirements set out in each applicable Debt Document.
- (b) The terms of any Senior Secured Notes which are to be an Additional Senior Secured Financing shall comply with any requirements set out in each applicable Debt Document.
- (c) The terms of any Second Lien Facility or Second Lien Notes which, in each case, is to be an Additional Second Lien Financing shall comply with any requirements set out in each applicable Debt Document.
- (d) The terms of any Unsecured Facility or Unsecured Notes which, in each case is to be an Unsecured Financing shall comply with any requirements set out in each applicable Debt Document.

23.3 Further Creditor Notice

- (a) Without prejudice to Clause 23.1 (*Incurrence of additional indebtedness*) if:
 - (i) a Debtor is to incur Additional Senior Secured Financing Liabilities; or
 - (ii) a Debtor is to incur Liabilities in relation to any Additional Second Lien Financing;
 - (iii) a Debtor is to incur Liabilities in relation to any Unsecured Financing,the Parent shall serve on the Common Security Agent a duly completed notice (a "**Further Creditor Notice**") substantially in the form set out in Schedule 5 (*Form of Further Creditor Notice*) (or any other form agreed between the Parent and the Security Agent, each acting reasonably).
- (b) It is acknowledged and agreed that on receipt by the Common Security Agent of a duly completed Further Creditor Notice to the extent permitted by the terms of the relevant Transaction Security Documents and all relevant law, any indebtedness under the Additional Senior Secured Financing Liabilities or Liabilities in relation to any Additional Second Lien Financing referred to in the Further Creditor Notice shall be secured by the Transaction Security.

23.4 Authorisation of Creditor Representatives

- (a) A Notes Trustee is authorised to and shall enter into the documentation described in Clause 23.1 (*Incurrence of additional indebtedness*) on behalf of itself and the Noteholders it represents and the same shall be binding for all purposes on such Noteholders.
- (b) If any Primary Creditor (other than a Noteholder) fails to enter into the documentation described in Clause 23.1 (*Incurrence of additional indebtedness*) within 10 Business Days of being requested to do so by the Security Agent or a Debtor, that Primary Creditor's Creditor Representative is

authorised to and shall (**provided that** the relevant Creditor has not notified the relevant Creditor Representative prior to such date that the entry into such documentation would be illegal for or contrary to any regulation with which the relevant Primary Creditor is required to comply or customarily complies) enter into such documentation on such Primary Creditor's behalf and the same shall be binding for all purposes on such Primary Creditor.

- (c) For the avoidance of doubt, no consent or approval from a Primary Creditor is required to enable a Creditor Representative to act pursuant to this Clause 23.4.

24. COSTS AND EXPENSES

24.1 Transaction expenses

The Parent shall (or shall procure that another Debtor shall), within 10 Business Days of demand (along with an invoice including reasonable detail), pay (or cause to be paid to) the Security Agent the amount of all costs and expenses (including reasonable legal fees, notarial costs and disbursements of a single counsel in each jurisdiction) (together with any applicable VAT) reasonably incurred by the Security Agent and by any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and
- (b) any other Debt Documents executed after the date of this Agreement,

provided that the Parent shall not be obliged to pay (or cause to be paid) any such costs and expenses for any fees of counsel, accountants, surveyors or other experts or advisors whose engagement has not been approved by the Parent or where such payment is also due and owing under any Debt Document or is inconsistent with the transaction expenses provisions in any relevant Debt Document.

24.2 Amendment costs

If a Debtor requests an amendment, waiver or consent, the Parent shall, within 10 Business Days of demand (along with an invoice including reasonable detail), reimburse (or procure the reimbursement of) the Security Agent for the amount of all costs and expenses (including reasonable legal fees of a single counsel in each jurisdiction) (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.

24.3 Enforcement and preservation costs

The Parent shall, within five Business Days of demand, pay (or procure to be paid) 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.

24.4 Stamp taxes

The Parent shall pay (or procure payment of) and, within ten 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 other than a Debt Document pursuant to which any rights under a Debt Document are assigned or transferred by a Creditor and the Parent shall not pay or, indemnify any Creditor to the extent that such stamp duty, registration and other similar Taxes become payable upon registration, submission or filing of any Debt Document which is or was made on a purely voluntary basis (which shall mean that such registration, submission or filing is (i) not mandatory and (ii) not required to maintain, defend or preserve the rights of such Creditor under any Debt Document).

24.5 Interest on demand

Without duplication of any default interest payable under any Debt Document, if any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall (to the extent such accrual does not result in any double counting under the provisions of this Agreement and the provisions of the other Debt Documents) 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 1 per cent. per annum over the rate at which the Common 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 Common 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.

25. OTHER INDEMNITIES

25.1 Indemnity to the Security Agent

- (a) Each relevant Debtor jointly and severally shall promptly indemnify each Senior Security Agent, each Second Lien Security Agent and the Common Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) reasonably incurred by any of them as a result of:
 - (i) any failure by the Parent to comply with its obligations under Clause 24 (*Costs and Expenses*);
 - (ii) acting or relying on any notice, request or instruction received pursuant to and in accordance with the terms of any Debt Document which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent (or, if applicable, the relevant

Secured Creditor), each Receiver and each Delegate by the Debt Documents or by law;

- (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
- (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
- (vii) acting as the Security Agent, Secured Creditor, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Common Transaction Security,

save, in each case, to the extent such event or circumstance arises as a result of the relevant Security Agent's, Secured Creditor's, Receiver's or Delegate's (as applicable) own gross negligence or wilful misconduct.

- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 25.1 will not be prejudiced by any release or disposal under Clause 16 (*Distressed Disposals*) taking into account the operation of that Clause 16 (*Distressed Disposals*).
- (c) Each Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Creditors, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 25.1 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.

25.2 Parent's indemnity to Primary Creditors

The Parent shall promptly and as principal obligor indemnify each Primary Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable incurred by any of them in relation to or arising out of the operation of Clause 16 (*Distressed Disposals*).

26. INFORMATION

26.1 Information and dealing

- (a) The Secured Creditors and the Shareholder Creditors shall provide to each Security Agent from time to time (through their respective Creditor Representative where applicable) any information that that Security Agent may reasonably specify as being necessary or desirable to enable that Security Agent to perform its functions as trustee and agent.
- (b) Subject to clause 45.5 (*Communication when Agent is Impaired Agent*) of the Initial Senior Facilities Agreement (or, any equivalent provision of any other Debt Document) each Creditor shall deal with the Security Agent exclusively through its Creditor Representative and the Hedge Counterparties shall deal

directly with each Senior Security Agent and/or (as applicable Common Security Agent and shall not deal through any agent.

- (c) No Creditor Representative shall be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.

26.2 Disclosure

Provided that they are otherwise in compliance with any confidentiality provisions under the relevant Debt Documents, each of the Debtors and Shareholder Creditors consents, until the Final Discharge Date, to the disclosure by any of the Primary Creditors and any Security Agent to each other (whether or not through a Creditor Representative or any Security Agent) of such information concerning the Debtors and the Shareholder Creditors as any Primary Creditor or any Security Agent, acting reasonably, shall see fit.

26.3 Notification of prescribed events

- (a) If an Event of Default either occurs or ceases to be continuing under any of the Debt Documents the relevant Creditor Representative shall, upon becoming aware of that occurrence or cessation, notify the Relevant Security Agent and the Relevant Security Agent shall, upon receiving that notification, notify each other Creditor Representative and each Hedge Counterparty.
- (b) If any Acceleration Event occurs the relevant Creditor Representative shall notify the Relevant Security Agent in writing and the Relevant Security Agent shall, upon receiving that notification, notify each other Creditor Representative and each Hedge Counterparty.
- (c) If a Second Lien Payment Stop Notice or an Unsecured Notes Payment Stop Notice is served or ceases to be continuing the relevant Security Agent shall notify each Party.
- (d) If any Security Agent receives a Second Lien Enforcement Notice or an Unsecured Notes Enforcement Notice it shall, upon receiving that notice, notify, and send a copy of that notice to, each Creditor Representative and each Hedge Counterparty.
- (e) If a Common Senior Secured Payment Default either occurs or ceases to be continuing, the relevant Creditor Representative shall notify the Relevant Security Agent and the Relevant Security Agent shall, upon receiving that notification, notify each Creditor Representative in respect of a Second Lien Financing or an Unsecured Notes Financing and the Parent.
- (f) If any Liabilities are accelerated by virtue of an Acceleration Event, the relevant Creditor Representative shall, upon so accelerating, notify each other Party.
- (g) If any Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.

- (h) If any Secured Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Relevant Security Agent and the Relevant Security Agent shall, upon receiving that notification, notify each Party of that action.
- (i) If a Debtor defaults on any Payment due under a Hedging Agreement or any Hedge Counterparty Guarantee, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Relevant Security Agent and the Relevant Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.
- (j) If a Hedge Counterparty terminates or closes-out, in whole or in part, any transaction under any Hedging Agreement under Clause 5.8 (*Permitted Enforcement: Hedge Counterparties*) it shall notify the Relevant Security Agent and the Relevant Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.
- (k) If any of the Term Outstandings are to be reduced other than by way of a scheduled repayment set out in any Credit Facility Agreement, (whether by way of repayment, prepayment, cancellation or otherwise) the Parent shall notify each Hedge Counterparty of:
 - (i) the date and amount of that proposed reduction; and
 - (ii) any Interest Rate Hedge Excess that would result from that proposed reduction and that Hedge Counterparty's Interest Rate Hedging Proportion (if any) of that Interest Rate Hedge Excess.
- (l) If any Security Agent receives a notice under paragraph (a) of Clause 6.1 (*Option to Purchase: Second Lien Creditors*) it shall upon receiving that notice, notify, and send a copy of that notice to, each Creditor Representative and the Hedge Counterparties.
- (m) If any Security Agent receives a notice under paragraph (a) of Clause 6.2 (*Hedge Transfer: Second Lien Creditors*) it shall upon receiving that notice, notify, and send a copy of that notice to, each Hedge Counterparty.
- (n) Each relevant Hedge Counterparty shall provide to the Parent or the Common Security Agent (as applicable) the aggregate mark to market value and notional amount of all of its transactions under Hedging Agreements as at the close of business on any trading date requested by the Parent or the Common Security Agent from time to time. Each relevant Hedge Counterparty shall provide such information to the Parent or the Common Security Agent (as applicable) no later than one Business Day after receiving a written request therefore from the Parent or the Common Security Agent.

27. NOTICES

27.1 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.

27.2 Security Agent's communications with Primary Creditors

Each Security Agent shall be entitled to carry out all dealings:

- (a) with the Primary Creditors (other than Creditor Representatives) through their respective Creditor Representatives and may give to the Creditor Representatives, as applicable, any notice or other communication required to be given by the Security Agent to the Primary Creditors that it represents; and
- (b) with each Hedge Counterparty directly with that Hedge Counterparty.

27.3 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

- (a) in the case of the Parent, that identified with its name below;
- (b) in the case of each Security Agent, that identified with its name below; and
- (c) in the case of each other Party, that identified with its name on the signature pages to this Agreement or 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.

27.4 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 27.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to a Security Agent will be effective only when actually received by that Security Agent and then only if it is expressly marked for the attention of the department or officer identified with that Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Parent in accordance with this Clause 27.4 will be deemed to have been made or delivered to each of the Debtors.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following Business Day.

27.5 Notification of address and fax number

Promptly upon receipt of notification of an address, email address and fax number or change of address or fax number pursuant to Clause 27.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

27.6 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) 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
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between a Shareholder Creditor or a Debtor and the Security Agent or a Primary 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.
- (c) Any such electronic communication as specified in paragraph (a) above to be 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.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. 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 Business Day.

- (e) 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 27.6 unless expressly stated otherwise.

27.7 English language

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the 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.

27.8 Hedging Agreements

For the avoidance of doubt, this Clause 27 shall not apply to any communication between a Hedge Counterparty and a Debtor under or in connection with a Hedging Agreement.

28. PRESERVATION

28.1 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.

28.2 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.

28.3 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Secured Creditor, any right or remedy under this Agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of any Secured Creditor shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and

remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

28.4 Waiver of defences

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 28.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor or other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;
- (g) any intermediate Payment of any of the Liabilities owing to the Primary Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

28.5 Priorities not affected

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

- (a) not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities owing to the Secured Creditors or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;
- (b) apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and

- (c) secure the Liabilities owing to the Secured Creditors in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

29. **CONSENTS, AMENDMENTS AND OVERRIDE**

29.1 **Required consents**

- (a) Subject to paragraph (b) below and Clause 23 (*Additional Indebtedness*), this Agreement may be amended or waived only with the written consent of:

- (i) each Creditor Representative acting in accordance with the provisions of the Debt Documents to which it is party, **provided that** the consent of a Creditor Representative shall only be required if and to the extent such amendment or waiver would require consent under the relevant Debt Documents;
- (ii) if a Hedge Counterparty is providing hedging to a Debtor, that Hedge Counterparty in each case only to the extent that the amendment or waiver would materially prejudice the continuing rights and obligations of that Hedge Counterparty under this Agreement or is an amendment or waiver expressed to require the consent of that Hedge Counterparty under the applicable Hedging Agreement, as notified by the Parent to the Security Agent that the time of the relevant proposed amendment (other than any amendment specifically provided for under this Agreement and any amendment or waiver affecting the Senior Secured Creditors generally);
- (iii) the Shareholder Creditors (to the extent that the amendment or waiver (A) directly relates to and adversely affects the rights or obligations of the Shareholder Creditors under Clause 10 (*Subordinated Shareholder Liabilities*) or (B) would materially prejudice the rights and obligations of that Shareholder Creditor under this Agreement (other than any amendment specifically provided for under this Agreement); and
- (iv) the Parent,

except for amendments and waivers to (A) cure defects, typographical or manifest errors or resolve ambiguities, (B) reflect changes of a technical or administrative nature, or (C) for the purposes of addressing technical issues arising under local law and in connection with the Transaction Security, which in each case may be effected by the relevant Security Agent and the Parent without the consent of any other Party.

- (b) An amendment or waiver that has the effect of changing or which relates to:
 - (i) Clause 13 (*Redistribution*), Clause 18 (*Application of Proceeds*) or this Clause 29;
 - (ii) paragraphs (e) and (f) of Clause 20.3 (*Instructions*); or
 - (iii) the order of priority or subordination under this Agreement,

shall not be made without the consent of:

- (A) the Creditor Representatives;
- (B) the Credit Facility Lenders under a Credit Facility in the requisite percentage required by the Credit Facility Agreement in respect of that Credit Facility;
- (C) the Senior Secured Notes Trustee on behalf of the Senior Secured Noteholders;
- (D) the Second Lien Lenders;
- (E) the Second Lien Notes Trustee on behalf of the Second Lien Noteholders;
- (F) the Unsecured Lenders in the requisite percentage required by the relevant underlying Unsecured Facility;
- (G) the Unsecured Notes Trustee on behalf of the Unsecured Notes Trustee;
- (H) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty);
- (I) each Security Agent; and
- (J) the Parent,

provided that an amendment or waiver that has the effect of changing or which relates to Clause 13 (*Redistribution*) or Clause 18 (*Application of Proceeds*) or which is described in paragraph (i) or (iii) above shall only require the consent of the Parent, those Senior Secured Creditors, Second Lien Creditors and Unsecured Creditors which will be materially prejudiced by the proposed amendment or waiver and each Security Agent to the extent that it will be materially prejudiced by the proposed amendment or waiver.

- (c) An amendment or waiver of this Agreement which relates to the rights or obligations of any Security Agent (in each case in such capacity) may not be effected without the consent of that Security Agent at such time.

29.2 Amendments and Waivers: Transaction Security Documents

Unless the provisions of any Debt Document expressly provide otherwise, the Common Security Agent may, if authorised by the Senior Secured Creditor Representative (who shall so authorise if in accordance with or otherwise permitted or contemplated by the terms of the relevant Debt Documents), and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Common Transaction Security Documents which shall be binding on each Party **provided** such amendment is not materially adverse to the interests of the Second Lien Creditors.

29.3 Effectiveness

Any amendment, waiver or consent given, made or effected in accordance with any of the provisions of this Clause 29, or in accordance with any other term of this Agreement, will be binding on all Parties and the relevant Security Agent may effect, on behalf of any Creditor Representative or Primary Creditor, any amendment, waiver or consent permitted by this Clause 29. Each Creditor Representative, Arranger and Primary Creditor irrevocably and unconditionally authorises and instructs the relevant Security Agent (for the benefit of that Security Agent and the Parent) to execute any documentation relating to a proposed amendment or waiver as soon as the requisite consent is received (or on such later date as may be agreed by that Security Agent and Parent).

29.4 Calculation amounts

For the purpose of ascertaining whether any relevant percentage of Senior Secured Credit Participations and/or Second Lien Credit Participations has been obtained under this Agreement, a Security Agent may notionally convert amounts into their Common Currency Amounts and may rely on any confirmation of compliance with the requirements of the amendment provisions of the relevant Debt Documents given by any Creditor Representative.

29.5 Second Lien and Unsecured Administrative Consents

If the Creditor Representatives in respect of a Senior Secured Financing, or the Senior Secured Creditor Representative or the requisite Senior Secured Creditors at any time in respect of any Senior Secured Debt Documents give any Consent of a minor technical or administrative nature which does not adversely affect the interests of the Second Lien Creditors or the Unsecured Creditors or change the commercial terms contained in the Second Lien Finance Documents or the Unsecured Finance Documents then, if that action was permitted by the terms of this Agreement, the Second Lien Creditors and the Unsecured Creditors will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each Second Lien Finance Document or Unsecured Finance Document to which they are a party; and
- (b) do anything (including executing any document) that the relevant Senior Secured Creditors may reasonably require to give effect to this Clause 29.5.

29.6 Deemed consent

If, at any time prior to the Final Discharge Date, the Secured Creditors and the Unsecured Creditors give a Consent in respect of the Debt Documents then, if that action was permitted by the terms of this Agreement, the Shareholder Creditors and the Intra-Group Lenders 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 Secured Creditors and the Unsecured Creditors may reasonably require to give effect to paragraph (a) above.

29.7 Excluded consents

Clause 29.6 (*Deemed consent*) does not apply to any Consent which has the effect of:

- (a) increasing or decreasing the Liabilities;
- (b) changing the basis upon which any Permitted Payments are calculated (including the timing, currency or amount of such Payments); or
- (c) changing the terms of this Agreement or of any Security Document.

29.8 No liability

None of the Primary Creditors will be liable to any other Primary Creditor, any Shareholder Creditor, any other Creditor Representative or any member of the Group for any Consent given or deemed to be given under this Clause 29.8.

29.9 Agreement to override

- (a) Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents (other than any Transaction Security Documents which are governed by Dutch law but only to the extent mandatory Dutch law applies) to the contrary, **provided that** nothing in this Agreement shall override any consent rights of any member of the Group arising under the Initial Senior Facilities Documents, any Additional Senior Secured Financing Document, any Second Lien Finance Document or any Unsecured Finance Document.
- (b) Notwithstanding anything to the contrary in this Agreement, the preceding paragraph (a) as between any Primary Creditor and any member of the Group will not cure, postpone, waive or negate in any manner any default or event of default (however described) under any Debt Document as provided in the relevant Debt Document.

30. 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.

31. GOVERNING LAW

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

32. ENFORCEMENT

32.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual or other obligations arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 32.1 is for the benefit of the Creditors only. As a result, no Creditor shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Creditors may take concurrent proceedings in any number of jurisdictions.

32.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law:
 - (i) each Debtor (unless incorporated in England and Wales):
 - (A) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and the Parent, by its execution of this Agreement, accepts that appointment; and
 - (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned;
 - (ii) each Shareholder Creditor (unless incorporated in England and Wales):
 - (A) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
 - (B) agrees that failure by a process agent to notify the relevant Shareholder Creditor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (in the case of an agent for service of process for a Debtor) or the relevant Shareholder Creditor must immediately (and in any event within 10 Business Days of such event taking place) appoint another agent on terms reasonably acceptable to each Creditor Representative and each Hedge Counterparty. Failing this, the relevant

Creditor Representative or Hedge Counterparty (as the case may be) may appoint another agent for this purpose.

- (c) The Parent expressly agrees and consents to the provisions of this Clause 32 and Clause 31 (*Governing Law*).

33. WAIVER OF JURY TRIAL

EACH OF THE PARTIES TO THIS AGREEMENT AGREES TO WAIVE IRREVOCABLY ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE DOCUMENTS REFERRED TO IN THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN THIS AGREEMENT. This waiver is intended to apply to all Disputes. Each party acknowledges that (a) this waiver is a material inducement to enter into this Agreement, (b) it has already relied on this waiver in entering into this Agreement and (c) it will continue to rely on this waiver in future dealings. Each party represents that it has reviewed this waiver with its legal advisers and that it knowingly and voluntarily waives its jury trial rights after consultation with its legal advisers. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

This Agreement has been executed as a deed by the Senior Secured Creditors, Second Lien Creditors, Intra-Group Lenders, Shareholder Creditors and Debtors and shall take effect as a deed notwithstanding the fact that the other parties hereto have executed this Agreement under hand.

SCHEDULE 1
FORM OF DEBTOR ACCESSION DEED

THIS DEED is made on [•] and made

BETWEEN:

- (1) [Insert Full Name of New Debtor] (registration number [•]) as acceding Debtor [and as acceding Parent]¹ ([such capacities together,]² the "**Acceding Debtor**"); and
- (2) [Insert Full Name of current Common Security Agent] (the "**Common Security Agent**"), for itself and each of the other parties to the Intercreditor Agreement referred to below.

This deed is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the "**Intercreditor Agreement**") dated [•] 2017 between, amongst others, [•] as Parent, [•] as Holdco, [•] as common security agent, senior security agent, second lien security agent and initial senior agent, [•] as initial second lien agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

The Acceding Debtor intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

[Insert details (date, parties and description) of relevant documents]

the "**Relevant Documents**".

IT IS AGREED as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Deed, bear the same meaning when used in this Deed.
2. The Acceding Debtor and the Common Security Agent agree that the Common Security Agent shall hold:
 - (a) any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
 - (b) all proceeds of that Security; and
 - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Common Security Agent as trustee and agent for the Secured Creditors (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Common Security Agent as trustee and agent for the Secured Creditors,

¹ Only include in relation to the accession of Element Materials Technology Limited / other New Holdings

² Only include in relation to the accession of Element Materials Technology Limited / other New Holdings

on trust or as agent for and/or for the benefit of the Secured Creditors on the terms and conditions contained in the Intercreditor Agreement.

3. [The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as Parent, undertakes to perform all the obligations expressed to be assumed by the Parent under the Intercreditor Agreement and agrees that it shall be bound by and entitled under all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement in such capacity.]³
4. The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by and entitled under all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
5. In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.
6. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by, English law.

THIS DEED has been signed on behalf of the Common Security Agent and executed as a deed by the Acceding Debtor and is delivered on the date stated above.

The Acceding Debtor

[EXECUTED AS A DEED

By: *[Full Name of Acceding Debtor]*

)

)

Director

Director/Secretary

³ Only include in relation to the accession of Element Materials Technology Limited / other New Holdings

OR

[EXECUTED AS A DEED

By: *[Full name of Acceding Debtor]*

Signature of Director

Name of Director

in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness]

Address for notices:

Address:

Fax:

The Common Security Agent

[Full Name of current Common Security Agent]

By:

Date:

SCHEDULE 2
FORM OF CREDITOR/CREDITOR REPRESENTATIVE ACCESSION
UNDERTAKING

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

[To: *[Insert full name of current Creditor Representative in relation to relevant Credit Facility]* as [•].]

From: *[Acceding Creditor/Creditor Representative/Security Agent]*

THIS UNDERTAKING is made on [•] by [insert full name of new Creditor/Creditor Representative/Security Agent (the "**Acceding [Creditor/Creditor Representative]**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated [•] 2017 between, among others, [•] as Parent, [•] as Holdco, [•] as Senior Security Agent, Second Lien Security Agent and Common Security Agent and Initial Senior Agent, [•] as Initial Second Lien Agent and the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding [Creditor/Creditor Representative] being accepted as a [Senior Lender]/[Initial Senior Agent]/[Hedge Counterparty]/[Senior Secured Notes Trustee]/[Senior Secured Creditor Representative]/[Second Lien Lender]/[Second Lien Agent]/[Second Lien Notes Trustee]/[Unsecured Lender]/[Unsecured Agent]/[Unsecured Notes Trustee]/[Additional Senior Secured Financing Creditor]/[Shareholder Creditor]/[Intra-Group Lender]/[Senior Security Agent]/[Second Lien Security Agent] for the purposes of the Intercreditor Agreement, the Acceding [Creditor/Creditor Representative] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Senior Lender]/[Initial Senior Agent]/[Hedge Counterparty]/[Senior Secured Notes Trustee]/[Senior Secured Creditor Representative]/[Second Lien Lender]/[Second Lien Agent]/[Second Lien Notes Trustee]/[Unsecured Lender]/[Unsecured Agent]/[Unsecured Notes Trustee]/[Additional Senior Secured Financing Creditor]/[Shareholder Creditor]/[Intra-Group Lender] / [Senior Security Agent]/[Second Lien Security Agent] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Senior Lender]/[Initial Senior Agent]/[Hedge Counterparty]/[Senior Secured Notes Trustee]/[Senior Secured Creditor Representative]/[Second Lien Lender]/[Second Lien Agent]/[Second Lien Notes Trustee]/[Unsecured Lender]/[Unsecured Agent]/[Unsecured Notes Trustee]/[Additional Senior Secured Financing Creditor]/[Shareholder Creditor]/[Intra-Group Lender] / [Senior Security Agent]/[Second Lien Security Agent] and agrees that it shall be bound by and entitled under all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[[The Acceding Creditor is an Affiliate of a [Senior Lender]/a Credit Facility Lender] and has become a provider of an Ancillary Facility. In consideration of the Acceding Creditor being accepted as an Ancillary Lender for the purposes of the *[relevant facility agreement]*, the Acceding Creditor confirms, for the benefit of the parties to the *[relevant facility agreement]*,

* Include only in the case of an Ancillary Lender which is an Affiliate of an RCF Lender.

that, as from [date], it intends to be party to the [*relevant facility agreement*] as an Ancillary Lender, and undertakes to perform all the obligations expressed in the [*relevant facility agreement*] to be assumed by an Ancillary Lender and agrees that it shall be bound by all the provisions of the [*relevant facility agreement*], as if it had been an original party to it as an Ancillary Lender.]]

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

THIS UNDERTAKING has been entered into on the date stated above and is executed as a deed by the Acceding Creditor and is delivered on the date stated above.

Acceding [Creditor/Creditor Representative/Security Agent]

EXECUTED as a DEED

[*insert full name of Acceding Creditor/Creditor Representative*]

By:

Address:

Fax:

Accepted by the Common Security Agent

[Accepted by the [*relevant Creditor Representative*]]

for and on behalf of
[*Insert full name of current Common Security Agent*]

for and on behalf of
[*Insert full name of relevant Creditor Representative*]

Date:

Date:]**

** Include Creditor Representative signature block only in the case of an Ancillary Lender which is an Affiliate of an RCF Lender.

SCHEDULE 3
FORM OF DEBTOR RESIGNATION REQUEST

To: [•] as Common Security Agent

From: [resigning Debtor] and [Parent]

Dated:

Dear Sirs

[•]- [•] Intercreditor Agreement
dated [•] 2017 (the "Intercreditor Agreement")

1. We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
2. Pursuant to clause 22.18 (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [resigning Debtor] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) [resigning Debtor] is under no actual or contingent obligations in respect of the Intra-Group Liabilities and the Parent Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Parent]

[resigning Debtor]

By:

By:

SCHEDULE 4
SECURITY ENFORCEMENT PRINCIPLES

1. The security enforcement principles (the "**Security Enforcement Principles**") are set out in this Schedule 4.

2. In this Agreement:

"Enforcement Objective" means the objective of maximising the Recoveries on any Enforcement of the Transaction Security by way of a prompt and expeditious Enforcement of the Transaction Security which is consistent with the rights and obligations of each Security Agent under this Agreement, the relevant Debt Document and applicable law.

"Fairness Opinion" means, in respect of an Enforcement, an opinion from a Financial Adviser that the proceeds received or recovered in connection with that Enforcement are fair from a financial point of view taking into account all relevant circumstances.

"Public Auction" shall mean an auction or other competitive sale process in which more than one bidder participates or is invited to participate, which may or may not be conducted through a court or other legal proceeding.

3. Any Enforcement of the Transaction Security shall be consistent with the Enforcement Objective and any Distressed Disposal or Liabilities Sale shall be consistent with paragraph 4 below.
4. As between the Senior Secured Creditors and the Second Lien Creditors:

- (a) In the case of:

- (i) a Distressed Disposal or;

- (ii) a Liabilities Sale,

effected by, or at the request of, any Security Agent, the Relevant Security Agent only shall conduct, direct and/or institute such process and the Relevant Security Agent shall take reasonable care to obtain a fair market price having regard to the prevailing market conditions (though the Relevant Security Agent shall have no obligation to postpone (or request the postponement of) any Distressed Disposal or Liabilities Sale in order to achieve a higher price) **provided that**, prior to the Final Second Lien Discharge Date, any Distressed Disposal or Liabilities Sale shall only be made in accordance with paragraph (b) below).

(b) The requirement in paragraph (a) above shall be satisfied (and as between the Creditors and the Debtors shall be conclusively presumed to be satisfied) and each Security Agent will be taken to have discharged all its obligations in this respect under this Agreement, the other Debt Documents and generally at law if:

(i) the proceeds of such Distressed Disposal or Liabilities Sale is received in cash (or substantially in cash) and/or other marketable securities and such proceeds are applied in accordance with the terms of this Agreement; and

(ii) that Distressed Disposal or Liabilities Sale is made:

(A) pursuant to:

(1) a Public Auction;

(2) any other competitive bid process; or

(3) any other process agreed to by the Creditor Representative in relation to each Second Lien Financing,

in each case, consistent with the Enforcement Objective in which:

(a) the Second Lien Creditors (on the basis of equal information and access rights as other bidders and financiers involved); and

(b) if such auction or other process otherwise results in no bidders or a bid of less than the aggregate par value of the outstanding Senior Secured Liabilities, the Senior Secured Creditors,

in each case, are entitled to participate as bidders or financiers to the potential purchaser(s) or (following the sale) the Group; and

(B) the Relevant Security Agent has, in respect of an auction or process referred to in paragraph (A) above, consulted with a Financial Advisor engaged by the Relevant Security Agent (acting reasonably) with respect to the procedures which may reasonably be expected to be used to obtain a fair market price taking into account all relevant circumstances (and with a view to facilitating a prompt and expeditious Distressed Disposal or Liabilities Sale at a fair market price taking into account all relevant circumstances (though the Relevant Security Agent shall have no obligation to postpone (or request the postponement of) any Distressed Disposal in order to achieve a higher price) and has implemented (to the extent permitted by law) in all material respects the procedures recommended by

such Financial Advisor in relation to such auction or process, unless the Relevant Security Agent (acting in good faith) confirms that it has reasonable grounds to believe that the implementation of all or part of such recommended procedures is not in the best interests of the Senior Secured Creditors; or

(C) in circumstances where:

(1) the Relevant Security Agent (acting in good faith) considers that a sale or disposal in accordance with paragraph (B) above is not reasonably practicable taking into account all relevant circumstances; and/or

(2) the Senior Secured Creditors make the highest final binding offer of all the offers received for those shares or assets pursuant to such auction or other process but that offer is less than the aggregate par value of the outstanding Senior Secured Liabilities, the Security Agent has received an opinion (which is addressed to each Security Agent and can be relied upon by each Security Agent and disclosed to the Creditor Representatives in relation to the Senior Secured Creditors and that Second Lien Creditors) from a Financial Advisor selected by the Relevant Security Agent confirming that the Distressed Disposal or Liabilities Sales price is fair from a financial point of view taking into account all relevant circumstances including the method of enforcement (although there shall be no obligation to postpone any such sale, disposal or transfer in order to achieve a higher price); and

(iii) after the Final Second Lien Discharge Date or with the prior consent of the Majority Second Lien Lenders, a Financial Adviser appointed by the Relevant Security Agent pursuant to Clause 16.4 (*Appointment of Financial Adviser*) has delivered a Fairness Opinion to the Relevant Security Agent in respect of that Distressed Disposal of Liabilities Sale.

(c) If, at any time prior to the occurrence of the Senior Secured Liabilities Discharge Date, a Distressed Disposal or a Liabilities Sale is being effected at a time when the Majority Second Lien Creditors are entitled to give, and have given, instructions under Clause 14.3 (*Manner of enforcement*) on which the relevant Security Agents are acting, no Security Agent is authorised to release any Debtor, Subsidiary or Holding Company from any Borrowing Liabilities or Guarantee Liabilities owed to any Senior Secured Creditor unless those Borrowing Liabilities or Guarantee Liabilities and any other Senior Secured Liabilities will be paid (or repaid) in full (or, in the case of any contingent Liability relating to a Letter of Credit or an Ancillary Facility, made the subject of cash collateral arrangements acceptable to the relevant Creditor), following that release.

5. No Security Agent shall be under any obligation to appoint a Financial Adviser unless expressly required to do so by this Schedule or any other provision of this Agreement.
6. Any Fairness Opinion given in relation to a Distressed Disposal of a particular asset shall be conclusive evidence that the Enforcement Objective has been met in relation to such Enforcement or Distressed Disposal.
7. It is acknowledged that if an administrator, administrative receiver or other equivalent insolvency official is appointed he or she will comply with applicable law in dealing with the relevant assets subject to the Transaction Security and will not be obliged to follow the Security Enforcement Principles.

SCHEDULE 5
FORM OF FURTHER CREDITOR NOTICE

To: [•] as Security Agent

From: The Parent

Dated:

Dear Sirs

Intercreditor Agreement dated [•] 2017 between, among others, [•] as Parent, [•] as Holdco, [•] as Senior Security Agent, Second Lien Security Agent and Common Security Agent and Initial Senior Agent, [•] as Initial Second Lien Agent (the "Intercreditor Agreement")

1. We refer to the Intercreditor Agreement. This is a Further Creditor Notice. Terms defined in this Notice have the meaning given to those terms in the Intercreditor Agreement.
2. Pursuant to Clause 23.3 (*Further Creditor Notice*) we notify you [of the financing details which are listed below which liabilities are to be classified as [Additional Senior Secured Financing Liabilities / Second Lien Liabilities / Unsecured Liabilities].

Debtor: [•]

Guarantors: [•]

Description of financing: [•]

[Credit Facility Agreement/Second Lien Facility Agreement/Unsecured Facility Agreement/Second Lien Notes Indenture/Senior Secured Notes Indenture/Unsecured Notes Indenture]: [•]

Creditor Representative: [•]

[Notes Issuer: [•]]

Interest Rate: [•]

Final Maturity Date: [•]

This Notice and any other contractual obligations arising out of or in connection with it are governed by English law.

[Parent]

By:

SIGNATURES

GREENROCK TOPCO LIMITED
As the Original Parent

Executed as a Deed by **GREENROCK TOPCO LIMITED**

By:
Director

Witnessed by:

Name of witness:

Address of witness:

Address:

Attention:

Fax:

EMT HOLDINGS LIMITED
As the Holdco

Executed as a Deed by **EMT HOLDINGS LIMITED**

By:
Director

Witnessed by:

Name of witness:

Address of witness:

Address:

Attention:

Fax:

GREENROCK MIDCO LIMITED
As an Original Debtor

By:
Director

Witnessed by:

Name of witness:

Address of witness:

Address:

Attention:

Fax:

GREENROCK FINANCE, INC.
As an Original Debtor

Executed as a Deed by **GREENROCK FINANCE, INC.**

By:
Director

Witnessed by:

Name of witness:

Address of witness:

Address:

Attention:

Fax:

GREENROCK TOPCO LIMITED
As an Original Intra-Group Lender

Executed as a Deed by **GREENROCK TOPCO LIMITED**

By:
Director

Witnessed by:

Name of witness:

Address of witness:

Address:

Attention:

Fax:

GREENROCK MIDCO LIMITED
As an Original Intra-Group Lender

Executed as a Deed by **GREENROCK MIDCO LIMITED**

By:
Director

Witnessed by:

Name of witness:

Address of witness:

Address:

Attention:

Fax:

GREENROCK FINANCE INC.
As an Original Intra-Group Lender

Executed as a Deed by **GREENROCK FINANCE INC.**

By:
Director

Witnessed by:

Name of witness:

Address of witness:

Address:

Attention:

Fax:

**BANK OF AMERICA, N.A.,
As an Initial Senior Lender**

Executed as a Deed by **BANK OF AMERICA, N.A.,**

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED
As an Initial Senior Lender

Executed as a Deed by
BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

BARCLAYS BANK PLC
As an Initial Senior Lender

Executed as a Deed by
BARCLAYS BANK PLC

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

HSBC BANK PLC
As an Initial Senior Lender

Executed as a Deed by **HSBC BANK PLC**

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

ING BANK N.V., LONDON BRANCH
As an Initial Senior Lender

Executed as a Deed by **ING BANK N.V., LONDON BRANCH**

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

GSMP VI ONSHORE INTERNATIONAL HOLDINGS, S.À R.L.
As an Initial Second Lien Lender

Executed as a Deed by
GSMP VI ONSHORE INTERNATIONAL HOLDINGS, S.À R.L.

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

GSMP VI OFFSHORE INTERNATIONAL HOLDINGS, S.À R.L.
As an Initial Second Lien Lender

Executed as a Deed by
GSMP VI OFFSHORE INTERNATIONAL HOLDINGS, S.À R.L.

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

BROAD STREET CREDIT HOLDINGS, LLC
As an Initial Second Lien Lender

Executed as a Deed by
BROAD STREET CREDIT HOLDINGS, LLC

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

THE INITIAL SENIOR AGENT

ING BANK N.V., LONDON BRANCH
As the Initial Senior Agent

Executed as a Deed by **ING BANK N.V., LONDON BRANCH**

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:

Attention:

Fax:

Attention:

THE SENIOR SECURITY AGENT

ING BANK N.V., LONDON BRANCH

As the Senior Security Agent

Executed as a Dccd by ING BANK N.V., LONDON BRANCH

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

THE SECOND LIEN SECURITY AGENT

ING BANK N.V., LONDON BRANCH
As the Second Lien Security Agent

Executed as a Deed by **ING BANK N.V., LONDON BRANCH**

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

THE COMMON SECURITY AGENT

ING BANK N.V., LONDON BRANCH
As the Common Security Agent

Executed as a Deed by ING BANK N.V., LONDON BRANCH

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

THE INITIAL SECOND LIEN AGENT

ING BANK N.V., LONDON BRANCH
As the Initial Second Lien Agent

Executed as a Deed by **ING BANK N.V., LONDON BRANCH**

By:
(Authorised signatory)

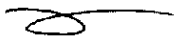
By:
(Authorised signatory)

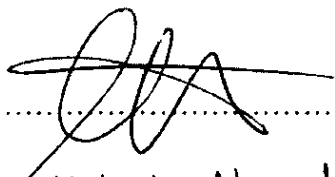
Address:
Attention:
Fax:
Attention:

SIGNATURES

GREENROCK TOPCO LIMITED
As the Original Parent

Executed as a Deed by
GREENROCK TOPCO LIMITED

By: 
Director

Witnessed by: 

Name of witness: Michelle Newall

Address of witness: 64 Sydenham Park Road
London
SE26 4LL

Address:

Attention:

Fax:

EMT HOLDINGS LIMITED
As the Holdco

Executed as a Deed by
EMT HOLDINGS LIMITED

By:
Director

Witnessed by:

Name of witness: EMMA OWEN

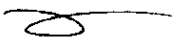
Address of witness: 95 WIGMORE STREET
LONDON
W1U 1FB

Address:

Attention:

Fax:

GREENROCK MIDCO LIMITED
As a Debtor

By: 
Director

Witnessed by: 

Name of witness: Michelle Newall

Address of witness: 64 Sydenham Park Road
London
SE26 4LL

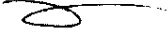
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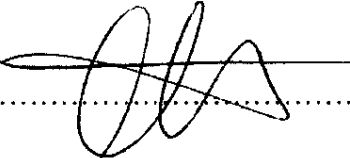
Attention:

Fax:

GREENROCK FINANCE, INC.
As a Debtor

Executed as a Deed by
GREENROCK FINANCE, INC.

By: 
Director

Witnessed by: 

Name of witness: Michelle Newall

Address of witness: 64 Sydenham Park Road
London
SE26 4LL


Address:

Attention:

Fax:

GREENROCK TOPCO LIMITED
As an Intra-Group Lender

Executed as a Deed by
GREENROCK TOPCO LIMITED

By: 
Director

Witnessed by: 

Name of witness: Michelle Newall

Address of witness: 64 Sydenham Road
Park
London
SE26 4LL

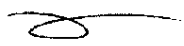
Address:

Attention:

Fax:

GREENROCK MIDCO LIMITED
As an Intra-Group Lender

Executed as a Deed by
GREENROCK MIDCO LIMITED

By: 
.....
Director

Witnessed by: 
.....

Name of witness: Michelle Newall

Address of witness: 64 Sydenham Park Road
London
SE26 4LL

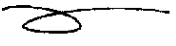
Address:

Attention:

Fax:

GREENROCK FINANCE INC.
As an Intra-Group Lender

Executed as a Deed by
GREENROCK FINANCE INC.

By: 

Director

Witnessed by: 

Name of witness: Michelle Newall

Address of witness: 64 Sydenham Park Road
London
SE26 4LL

Address:

Attention:

Fax:

GSMP VI ONSHORE INTERNATIONAL HOLDINGS, S.À R.L.
As an Initial Second Lien Lender

Executed as a Deed by
GSMP VI ONSHORE INTERNATIONAL HOLDINGS, S.À R.L.

By: ~~Marielle Stijger~~
(Authorised ~~Manager~~ signatory)

Address: 2, rue du Fossé
L-1536 Luxembourg
Attention: Marielle Stijger
Email: GSLMSBanksandAgents@gslms.lu

Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

Executed as a Deed by
GSMP VI OFFSHORE INTERNATIONAL HOLDINGS, S.À R.L.

Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

BROAD STREET CREDIT HOLDINGS, LLC
As an Initial Second Lien Lender

Executed as a Deed by
BROAD STREET CREDIT HOLDINGS, LLC

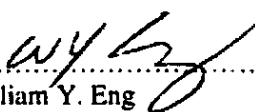
By: 
William Y. Eng
Vice President

Address: 200 West Street
New York
NY 10282
Attention: William Y. Eng
Email: Bill.Eng@ny.ibd.email.gs.com

Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

BROAD STREET SENIOR CREDIT PARTNERS, L.P.
As an Initial Senior Lender

Executed as a Deed by
BROAD STREET SENIOR CREDIT PARTNERS, L.P.
By: Goldman Sachs & Co. LLC, as Attorney-in-Fact

By: 
William Y. Eng
Attorney-in-Fact

Address: 200 West Street
New York
NY 10282
Attention: William Y. Eng
Email: Bill.Eng@ny.ibd.email.gs.com

Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

BROAD STREET SENIOR CREDIT PARTNERS OFFSHORE, L.P.
As an Initial Senior Lender

Executed as a Deed by

BROAD STREET SENIOR CREDIT PARTNERS OFFSHORE, L.P.

By: Goldman Sachs & Co. LLC, in its capacity as Collateral Servicer and Duly Authorized
Agent of the General Partner

By:
William Y. Eng
Attorney-in-Fact

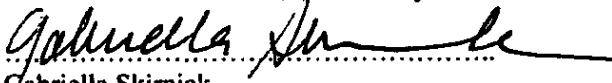
Address: 2, rue du Fossé
L-1536 Luxembourg
Attention: Marielle Stijger
Email: GSLMSBanksandAgents@gsllms.lu

Copy to:
Attention: William Y. Eng
Email: Bill.Eng@ny.ibd.email.gs.com

Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

MPS INVESTMENTS S.À R.L
As an Initial Senior Lender

Executed as a Deed by
MPS INVESTMENTS S.À R.L
By: Goldman Sachs & Co. LLC, its Attorney-in-Fact

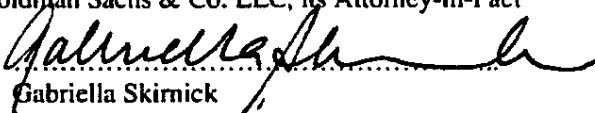
By: 
.....
Gabriella Skirnack
Attorney-in-Fact

Address: 200 West Street
New York
NY 10282
Attention: Gabriella Skirnack
Email: Gabriella.Skirnick@gs.com

Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

BCSSS INVESTMENTS S.À R.L
As an Initial Senior Lender

Executed as a Deed by
BCSSS INVESTMENTS S.À R.L
By: Goldman Sachs & Co. LLC, its Attorney-in-Fact

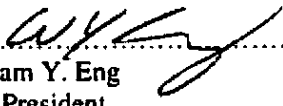
By: 
.....
Gabriella Skirnick
Attorney-in-Fact

Address: 200 West Street
New York
NY 10282
Attention: Gabriella Skirnick
Email: Gabriella.Skirnick@gs.com

Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

BROAD STREET CREDIT INVESTMENTS LLC
As an Initial Senior Lender

Executed as a Deed by
BROAD STREET CREDIT INVESTMENTS LLC

By:
William Y. Eng
Vice President

Address: 200 West Street
New York
NY 10282
Attention: William Y. Eng
Email: Bill.Eng@ny.ibd.email.gs.com

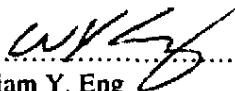
Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

BROAD STREET LOAN PARTNERS III OFFSHORE, L.P.
As an Initial Senior Lender

Executed as a Deed by

BROAD STREET LOAN PARTNERS III OFFSHORE, L.P.

By: Goldman Sachs & Co. LLC, Duly Authorized Agent of the General Partner


By: 
William Y. Eng
Attorney-in-Fact

Address: PO Box 309
Ugland House
South Church Street
George Town
Cayman Islands
KY1-1104
Attention: William Y. Eng
Email: Bill.Eng@ny.ibd.email.gs.com

Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

BROAD STREET LOAN PARTNERS 2013 ONSHORE L.P.
As an Initial Senior Lender

Executed as a Deed by
BROAD STREET LOAN PARTNERS 2013 ONSHORE L.P.
By: Goldman Sachs & Co. LLC, as Attorney-in-Fact

By:
William Y. Eng
Attorney-in-Fact

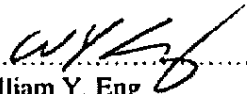
Address: 200 West Street
New York
NY 10282
Attention: William Y. Eng
Email: Bill.Eng@ny.ibd.email.gs.com
Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

BROAD STREET LOAN PARTNERS 2013 L.P.
As an Initial Senior Lender

Executed as a Deed by

BROAD STREET LOAN PARTNERS 2013 L.P.

By: Goldman Sachs & Co. LLC, Duly Authorized Agent of the General Partner

By: 
William Y. Eng
Attorney-in-Fact

Address: 2, rue du Fossé
L-1536 Luxembourg
Attention: Marielle Stijger
Email: GSLMSBanksandAgents@gsllms.lu

Copy to:
Attention: William Y. Eng
Email: Bill.Eng@ny.ibd.email.gs.com

Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

BROAD STREET LOAN PARTNERS 2013 EUROPE L.P.
As an Initial Senior Lender

Executed as a Deed by

BROAD STREET LOAN PARTNERS 2013 EUROPE L.P.

By: Goldman Sachs & Co. LLC, Duly Authorized Agent of the General Partner

By:
William Y. Eng
Attorney-in-Fact

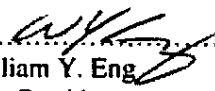
Address: 2, rue du Fossé
L-1536 Luxembourg
Attention: Marielle Stijger
Email: GSLMSBanksandAgents@gsllms.lu

Copy to:
Attention: William Y. Eng
Email: Bill.Eng@ny.ibd.email.gs.com

Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

BROAD STREET CREDIT HOLDINGS LLC
As an Initial Senior Lender

Executed as a Deed by
BROAD STREET CREDIT HOLDINGS LLC

By: 
William Y. Eng
Vice President

Address: 200 West Street
New York
NY 10282
Attention: William Y. Eng
Email: Bill.Eng@ny.ibd.email.gs.com

Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

BROAD STREET LONDON PARTNERS #1, L.P.
As an Initial Senior Lender

Executed as a Deed by

BROAD STREET LONDON PARTNERS #1, L.P.

By: Goldman Sachs & Co. LLC, in its capacity as Collateral Servicer and Duly Authorized
Agent of the General Partner

By:
William Y. Eng
Attorney-in-Fact

Address: c/o Maples Corporate Services Limited
PO Box 309
Ugland House
Grand Cayman KY1-1104
Cayman Islands
Attention: William Y. Eng
Email: Bill.Eng@ny.ibd.email.gs.com

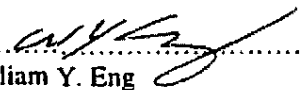
Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

BROAD STREET LONDON PARTNERS #2, L.P.
As an Initial Senior Lender

Executed as a Deed by

BROAD STREET LONDON PARTNERS #2, L.P.

By: Goldman Sachs & Co. LLC, in its capacity as Collateral Servicer and Duly Authorized
Agent of the General Partner

By:
William Y. Eng
Attorney-in-Fact

Address: c/o Maples Corporate Services Limited
PO Box 309
Ugland House
Grand Cayman KY1-1104
Cayman Islands
Attention: William Y. Eng
Email: Bill.Eng@ny.ibd.email.gs.com

Copy to:
Attention: Amitayush Bahri
Email: amitayush.bahri@gs.com

THE INITIAL SENIOR AGENT

ING BANK N.V., LONDON BRANCH
As the Initial Senior Agent

Executed as a Deed by
ING BANK N.V., LONDON BRANCH

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

THE SECURITY AGENT

ING BANK N.V., LONDON BRANCH

As the Security Agent for itself and for and on behalf of the Primary Creditors

Executed as a Deed by

ING BANK N.V., LONDON BRANCH

By:

(Authorised signatory)

By:

(Authorised signatory)

Address:

Attention:

Fax:

Attention:

THE INITIAL SENIOR SECURITY AGENT

ING BANK N.V., LONDON BRANCH

As the Initial Senior Security Agent

Executed as a Deed by

ING BANK N.V., LONDON BRANCH

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:

Attention:

Fax:

Attention:

THE INITIAL SECOND LIEN SECURITY AGENT

ING BANK N.V., LONDON BRANCH
As the Initial Second Lien Security Agent

Executed as a Deed by
ING BANK N.V., LONDON BRANCH

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention:

ING BANK N.V., LONDON BRANCH
As the Initial Second Lien Agent

Executed as a Deed by
ING BANK N.V., LONDON BRANCH

By:
(Authorised signatory)

By:
(Authorised signatory)

Address:
Attention:
Fax:
Attention: