

# M

COMPANIES FORM No. 466(Scot)

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

CHFP025

**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

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

For official use

Company number

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

112

SC272679

Name of company

\* Underwater Engineering Services Limited (the "Chargor")

*\* insert full name  
of Company*

Date of creation of the charge (note 1)

28 June 2012

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

Bond and floating charge (the "Charge")

Names of the persons entitled to charge

NBGI Private Equity (Tranche II) LP

Short particulars of all the property charged

Undertaking &amp; all property &amp; assets present &amp; future, including uncalled capital.

Presentor's name address and  
reference (if any):  
BURNES PAULL LLP  
UNION PLAZA  
1 UNION WYND  
ABERDEEN  
AB10 1DQ  
AB35 ABERDEENFor official use (06/2005)  
Charges Section

Post room

FRIDAY



SCT

\*S4BCHE0P\*  
10/07/2015  
COMPANIES HOUSE

#240

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

ATR Offshore Holdings Limited - Union Plaza (6<sup>th</sup> Floor), 1 Union Wynd, Aberdeen, AB10 1DQ;  
ATR Offshore Group Limited - Union Plaza (6<sup>th</sup> Floor), 1 Union Wynd, Aberdeen, AB10 1DQ;  
ATR Holdings Limited - Union Plaza (6<sup>th</sup> Floor), 1 Union Wynd, Aberdeen, AB10 1DQ;  
ATR Power Solutions Limited - Union Plaza (6<sup>th</sup> Floor), 1 Union Wynd, Aberdeen, AB10 1DQ;  
ATR Equipment Solutions Ltd - Union Plaza (6<sup>th</sup> Floor), 1 Union Wynd, Aberdeen, AB10 1DQ;  
ATR Overseas Limited - Union Plaza (6<sup>th</sup> Floor), 1 Union Wynd, Aberdeen, AB10 1DQ;  
the Chargor - Union Plaza (6<sup>th</sup> Floor), 1 Union Wynd, Aberdeen, AB10 1DQ; Continued on the paper  
apart to this form M466

*Please do not  
write in  
this margin*

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

Date(s) of execution of the instrument of alteration

29 June 2015

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

All capitalised terms used in this form M466 shall have the meaning given to them in the paper apart to this form M466.

No Ancillary Lender will, unless the prior written consent of the Majority Senior Creditors 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:

1.1 the Common Transaction Security;

1.2 each guarantee, indemnity or other assurance against loss contained in:

1.2.1 the original form of Senior Facilities Agreement;

1.2.2 the instrument of alteration; or

1.2.3 any Common Assurance.

1.3 indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in clause 1.2 above;

1.4 any SFA Cash Cover permitted under the Senior Facilities Agreement relating to any Ancillary Facility;

Continued on the paper apart to this form M466

Short particulars of any property released from the floating charge

N/A

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

N/A

*Please do not  
write in  
this margin*


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

Each of the parties to the Intercreditor and Security Trust Deed agrees that the Subordinated Liabilities, the Intra-Group Liabilities and the Parent Liabilities are postponed and subordinated to the Liabilities owed by the Debtors to the Senior Creditors.

The Intercreditor and Security Trust Deed does not purport to rank any of the Subordinated Liabilities, the Intra-Group Liabilities or the Parent Liabilities as between themselves.

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

Signed  for Burness Paul LLP Date 8/7/15

On behalf of [company] ~~[chargee]~~ †

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

### Notes

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

† delete as  
appropriate

**This is the paper apart referred to in the foregoing form M466 in respect of the floating charge granted by Underwater Engineering Services Limited in favour of NBGI Private Equity (Tranche II) LP dated 28 June 2012**

#### Definitions

- "Accession Deed" means a document substantially in the form set out in Schedule 6 (*Form of Accession Deed*) of the Senior Facilities Agreement
- "Additional Borrower" means a company which becomes an Additional Borrower in accordance with clause 28 (*Changes to the Obligors*) of the Senior Facilities Agreement;
- "Additional Guarantor" means a company which becomes an Additional Guarantor in accordance with clause 28 (*Changes to the Obligors*) of the Senior Facilities Agreement;
- "Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;
- "Agent" means Wells Fargo Bank International;
- "Ancillary Document" means each document relating to or evidencing the terms of an Ancillary Facility;
- "Ancillary Facility" means any ancillary facility made available by an Ancillary Lender in accordance with clause 6 (*Ancillary Facilities*) of the Senior Facility Agreement;
- "Ancillary Lender" means each Lender (or Affiliate of a Lender) which makes available an Ancillary Facility in accordance with clause 6 (*Ancillary Facilities*) of the Senior Facilities Agreement;
- "Arranger" means Clydesdale Bank PLC and Wells Fargo Bank, N.A., London;
- "Borrower" means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with clause 28 (*Changes to the Obligors*) of the Senior Facilities Agreement;
- "Charged Property" means all of the assets of the Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security;
- "Common Assurance" means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible and subject to any Agreed Security Principles, given to all the Secured Parties in respect of their Liabilities;
- "Common Transaction Security" means any Transaction Security which to the extent legally possible and subject to any Agreed Security Principles: (a) is created in favour of the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or (b) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties is created in favour of (i) all the Secured Parties in respect of their Liabilities; or (ii) the Security Agent under a parallel debt structure for the benefit of all the Secured Parties, and which ranks in the order of priority contemplated in clause 2.2 (*Security*);
- "Compliance Certificate" means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*) of the Senior Facilities Agreement
- "Cosalt Assignations means: (a) the assignment and delegation among Cosalt Offshore Group Limited, ATR Offshore Group Limited and the NBGI Private Equity (Tranche II) LP, dated 1 November 2013, in relation to the loan note instrument constituting the £3,300,000 15% fixed rate secured loan notes 2022 of ATR Offshore Group Limited and (b) the assignment and delegation among Cosalt Offshore Group Limited, ATR Offshore Group Limited and NBGI Private Equity (Tranche II) LP, dated 1 November 2013, in relation to the loan note

instrument constituting the £360,846 15% fixed rate secured loan notes 2022 of ATR Offshore Group Limited;

- “Creditors” means the Senior Creditors, the Intra-Group Lenders, ATR Offshore Holdings Limited and the Subordinated Creditors;
- “Debt Documents” means the Intercreditor and Security Trust Deed, the Hedging Agreement, the Senior Finance Documents, the Senior Security Documents, the Subordinated Documents and any agreement evidencing the terms of the Structural Intra-Group Loans, the Parent Liabilities or the Intra-Group Liabilities and any other document designated as such by the Security Agent and ATR Offshore Holdings Limited;
- “Debtors” means ATR Offshore Group Limited, ATR Offshore Holdings Limited, ATR Holdings Limited, ATR Power Solutions Ltd, ATR Equipment Solutions Ltd, ATR Overseas Limited; the Chargor; ATR Lifting Solutions Limited; Cosalt Offshore Group Limited; STH Holdings Limited; and Safety & Technical Hydraulics Limited;
- “Delegate” means any delegate, agent, attorney or co-trustee appointed by the Security Agent;
- “Facility A” means the term loan facility made available under the Senior Facility Agreement as described in clause 2.1.1.1 (*The Facilities*);
- “Facility A Commitment” means (a) in relation to an Original Lender, the amount set opposite its name under the heading **Facility A Commitment** in Part II of Schedule 1 (*The Original Parties*) of the Senior Facilities Agreement and the amount of any other Facility A Commitment transferred to it under the Senior Facilities Agreement or assumed by it in accordance with clause 2.2 (*Increase*) of the Senior Facilities Agreement; and (b) in relation to any other Lender, the amount of any Facility A Commitment transferred to it under the Senior Facilities Agreement or assumed by it in accordance with clause 2.2 (*Increase*) of the Senior Facilities Agreement, to the extent not cancelled, reduced or transferred by it under the Senior Facilities Agreement;
- “Facility B” means the term loan facility made available under the Senior Facility Agreement as described in clause 2.1.1.2 (*The Facilities*);
- “Facility B Commitment” means (a) in relation to an Original Lender, the amount set opposite its name under the heading **Facility B Commitment** in Part II of Schedule 1 (*The Original Parties*) of the Senior Facilities Agreement and the amount of any other Facility B Commitment transferred to it under the Senior Facilities Agreement or assumed by it in accordance with clause 2.2 (*Increase*) of the Senior Facilities Agreement; and (b) in relation to any other Lender, the amount of any Facility B Commitment transferred to it under the Senior Facilities Agreement or assumed by it in accordance with clause 2.2 (*Increase*) of the Senior Facilities Agreement, to the extent not cancelled, reduced or transferred by it under the Senior Facilities Agreement;
- “Fee Letter” means: (a) any letter or letters dated 29 June 2015 between the Arranger and ATR Offshore Holdings Limited (or the Agent and ATR Offshore Holdings Limited or the Security Agent and ATR Offshore Holdings Limited) setting out any of the fees referred to in clause 14 (*Fees*); and (b) any agreement setting out fees payable to a Finance Party referred to in clause 2.2.6 (*Increase*) or clause 14.5 (*Interest, commission and fees on Ancillary Facilities*) of the Senior Facilities Agreement or under any other Finance Document;
- “Finance Documents” means the Senior Facilities Agreement, any Accession Deed, any Ancillary Document, any Compliance Certificate, any Fee Letter, any Hedging Agreement, the Intercreditor and Security Trust Deed, any Resignation Letter, any Selection Notice, any Transaction Security Document, any Utilisation Request and any other document designated as a Finance Document by the Senior Agent and ATR Offshore Holdings Limited;

- “Finance Party” means the Agent, the Arranger, the Security Agent, the Lender and sometimes a Hedge Counterparty or any Ancillary Lender;
- “Group” means the ATR Offshore Holdings Limited, Safety & Technical Hydraulics Limited and each of their respective Subsidiaries and Group company and member of the Group shall be construed accordingly;
- “Hedging Agreement” means any master agreement, confirmation, schedule or other agreement in agreed form entered into or to be entered into by an Obligor and a Hedge Counterparty for the purpose of hedging the types of liabilities and/or risks in relation to the Term Facilities which the Hedging Letter (by reference to its form at the time that agreement is entered into) either requires or had required, to be hedged;
- “Hedge Counterparty” means (a) any entity which is named on the signing pages of the Intercreditor and Security Trust Deed as a Hedge Counterparty; and (b) any entity which becomes a party as a Hedge Counterparty pursuant to clause 20.11 (*Creditor Accession Undertaking*), which, in each case, is or has become party to the Senior Facilities Agreement as a Hedge Counterparty;
- “Holding Company” means, in relation to a person, any other person in respect of which it is a Subsidiary;
- “Intercreditor and Security Trust Deed” means the intercreditor agreement between, *inter alia*, NBGI Private Equity (Tranche II) LP and ATR Holdings Limited dated 29 June 2015, and is the “instrument of alteration” referred to by this form M466;
- “Intra-Group Lenders” means each member of the Group (other than ATR Offshore Holdings Limited) which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group, and which is named on the signing pages as an Intra-Group Lender in accordance with the terms of clause 20 (*Changes to the Parties*);
- “Intra-Group Liabilities” means the Liabilities owed by any member of the Group to any of the Intra-Group Lenders (other than the Parent Liabilities);
- “Investment Agreement” means the investment agreement dated 29 February 2012 and made between, *inter alia*, the Investors, ATR Offshore Holdings Limited and the Managers.
- “Investor Loan Note Documents” means the Investor Loan Note Instruments, the Investor Loan Notes, the Investor Loan Note Resolutions and the Investor Loan Note Security Documents;
- “Investor Loan Note Instruments” means:
  - a) the instrument by ATR Offshore Group Limited dated 29 February 2012 constituting the £11,005,056 12% fixed rate secured loan notes 2022 of ATR Offshore Group Limited;
  - b) the instrument by ATR Offshore Group Limited dated 1 November 2013 constituting the £776,543 15% fixed rate secured loan notes 2022 of ATR Offshore Group Limited;
  - c) the instrument by Cosalt Offshore Group Limited dated 15 February 2013 constituting the £3,300,000 15% fixed rate secured loan notes 2022 of ATR Offshore Group Limited, as assigned and delegated to ATR Offshore Group Limited pursuant to the relevant Cosalt Assignment;
  - d) the instrument by Cosalt Offshore Group Limited dated 1 November 2013 constituting the £360,847 15% fixed rate secured loan notes 2022 of ATR Offshore Group Limited, as assigned and delegated to ATR Offshore Group Limited pursuant to the relevant Cosalt Assignment;

- e) the instrument by ATR Offshore Group Limited dated 28 June 2012 constituting the UES Investor Loan Notes; and
- f) the instrument by ATR Offshore Group Limited 29 June 2012 constituting the £2,000,000 8% fixed rate secured loan notes 2022 of ATR Offshore Group Limited;
- “Investor Loan Note Resolutions” means the special resolutions of the registered holders of the Investor Loan Notes amending the repayment dates for certain of the Investor Loan Notes;
- “Investor Loan Notes” means the loan notes constituting the loan notes referred to in the definition of “Investor Loan Note Instruments”;
- “Investor Loan Note Security Documents” means:
  - a) a bond and floating charge dated 29 February 2012 by ATR Offshore Group Limited in favour of NBGI Private Equity (Tranche II) LP;
  - b) a bond and floating charge dated 28 June 2012 by ATR Offshore Group Limited in favour of NBGI Private Equity (Tranche II) LP;
  - c) a bond and floating charge dated 29 February 2012 by ATR Holdings Limited in favour of NBGI Private Equity (Tranche II) LP;
  - d) a bond and floating charge dated 28 June 2012 by ATR Holdings Limited in favour of NBGI Private Equity (Tranche II) LP;
  - e) a bond and floating charge dated 29 February 2012 by ATR Power Solutions Ltd in favour of NBGI Private Equity (Tranche II) LP;
  - f) a bond and floating charge dated 28 June 2012 by ATR Power Solutions Ltd in favour of NBGI Private Equity (Tranche II) LP;
  - g) a bond and floating charge dated 29 February 2012 by ATR Equipment Solutions Ltd in favour of NBGI Private Equity (Tranche II) LP;
  - h) a bond and floating charge dated 28 June 2012 by ATR Equipment Solutions Ltd in favour of NBGI Private Equity (Tranche II) LP;
  - i) a bond and floating charge dated 29 February 2012 by ATR Overseas Limited in favour of NBGI Private Equity (Tranche II) LP;
  - j) a bond and floating charge dated 28 June 2012 by ATR Overseas Limited in favour of NBGI Private Equity (Tranche II) LP;
  - k) the Charge;
  - l) a bond and floating charge dated 1 November 2013 by ATR Lifting Solutions Limited in favour of NBGI Private Equity (Tranche II) LP;
  - m) a bond and floating charge dated 1 November 2013 by Cosalt Offshore Group Limited in favour of NBGI Private Equity (Tranche II) LP;
  - n) a bond and floating charge 29 June 2015 by Safety & Technical Hydraulics Limited in favour of NBGI Private Equity (Tranche II) LP;
  - o) a bond and floating charge 29 June 2015 by STH Holdings Limited in favour of NBGI Private Equity (Tranche II) LP;
  - p) a guarantee and indemnity dated 28 June 2012 granted by ATR Offshore Group Limited, ATR Holdings Limited, Chargor, ATR Equipment Solutions Ltd and ATR Overseas Limited in favour of the Investor Loan Note Security Trustee and as acceded to by Cosalt Offshore Group Limited and ATR Lifting Solutions Limited on 1 November 2013 and acceded to by Safety & Technical Hydraulics Limited and STH Holdings Limited dated 29 June 2015; and
  - q) the intercreditor and security trust deed between, *inter alia*, ATR Offshore Group Limited, the Investors, the Managers, the Vendors and NBGI Private Equity (Tranche II) LP dated 29 June 2015;



- “ISDA Master Agreement” means a 1992 ISDA Master Agreement or a 2002 ISDA Master Agreement;
- “Lender” means (a) any Original Lender; and (b) any bank, financial institution, trust, fund or other entity which has become a party to the Senior Facilities Agreement as a Lender in accordance with clause 2.2 (*Increase*) or clause 26 (*Changes to the Lenders*) of the Senior Facilities Agreement, which in each case has not ceased to be a Lender in accordance with the terms of the Senior Facilities Agreement;
- “Liabilities” means all present and future liabilities and obligations at any time of any member of the Group to any Creditor under the Debt Documents, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations: (a) any refinancing, novation, deferral or extension; (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition; (c) any claim for damages or restitution; and (d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise, and any amounts which would be included in any of the above but for the discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings;
- “Majority Senior Creditors” means, at any time, those Senior Creditors whose Senior Credit Participations at that time aggregated more than 66 2/3 per cent of the total Senior Credit Participations at that time;
- “Management Loan Note Documents” means the £110,005 12% fixed rate secured loan notes 2022 issued to the Managers (of which £84,005 remains outstanding) and the instrument by ATR Offshore Group Limited dated 29 February 2012 constituting the aforementioned loan notes;
- “Managers” means Keith Moorhouse and Euan Leask;
- “Obligor” means a Borrower or a Guarantor;
- “Original Borrower” means ATR Offshore Group Limited and ATR Holdings Limited;
- “Original Guarantor” means ATR Offshore Group Limited, ATR Offshore Holdings Limited, ATR Holdings Limited, Chargor, ATR Equipment Solutions Ltd, ATR Overseas Limited; the Chargor; ATR Lifting Solutions Limited; Cosalt Offshore Group Limited; STH Holdings Limited; and Safety & Technical Hydraulics Limited;
- “Original Lender” means Clydesdale Bank PLC and Wells Fargo Bank, N.A., London Branch;
- “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);
- “Parent Liabilities” means all Liabilities owed by ATR Offshore Group Limited to ATR Offshore Holdings Limited under any relevant Structural Intra-Group Loans;
- “Receiver” means a receiver or receiver and manager or administrative receiver or the whole or any part of the Charged Property;
- “Resignation Letter” means a letter substantially in the form set out in Schedule 7 (*Form of Resignation Letter*) of the Senior Facilities Agreement;
- “Revolving Facility Commitment” means (a) in relation to an Original Lender, the amount set opposite its name under the heading **Revolving Facility Commitment** in Part II of Schedule 1 (*The Original Parties*) of the Senior Facilities Agreement and the amount of any other

Facility A Commitment transferred to it under the Senior Facilities Agreement or assumed by it in accordance with clause 2.2 (*Increase*) of the Senior Facilities Agreement; and (b) in relation to any other Lender, the amount of any Facility A Commitment transferred to it under the Senior Facilities Agreement or assumed by it in accordance with clause 2.2 (*Increase*) of the Senior Facilities Agreement, to the extent not cancelled, reduced or transferred by it under the Senior Facilities Agreement;

- “Secured Parties” means the Security Agent, any Receiver or Delegate and each of the Senior Creditors from time to time, but, in the case of each Senior Creditor, only if it is a party or has acceded to the Intercreditor and Security Trust Deed, in the appropriate capacity, pursuant to clause 20.11 (*Creditor Accession Undertaking*);
- “Security” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;
- “Security Agent” means Wells Fargo Trust Corporation Limited;
- “Selection Notice” means a notice substantially in the form set out in Part II of Schedule 3 (*Requests and Notices*) of the Senior Facilities Agreement given in accordance with clause 12 (*Interest Periods*) in relation to a Term Facility;
- “Senior Agent” means Wells Fargo Bank International;
- “Senior Arranger” means Clydesdale Bank PLC and Wells Fargo Bank, N.A.;
- “Senior Commitments” means a Facility A Commitment, Facility B Commitment or Revolving Facility Commitment;
- “Senior Credit Participations” means, in relation to a Senior Lender or a Hedge Counterparty the aggregate of:
  - a) its aggregate Senior Commitments, if any;
  - b) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and
  - c) after the Senior Facilities Discharge Date only, in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out:
    - i. if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
    - ii. if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position

similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

- “Senior Creditors” means the Senior Facility Creditors and the Hedge Counterparties;
- “Senior Facilities Agreement” means the senior term and revolving facilities agreement made between, *inter alia*, ATR Offshore Group Limited, the Original Lenders and others dated 29 June 2015;
- “Senior Facility Creditors” means each Senior Agent, Senior Arranger and Senior Lender;
- “Senior Finance Documents” has the meaning given to the term Finance Documents in the Senior Facilities Agreement;
- “Senior Lenders” means Clydesdale Bank PLC and Wells Fargo Bank, N.A.;
- “Senior Security Documents” means (a) each of the Transaction Security Documents; (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured Obligations; and (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b);
- “SFA Cash Cover” means cash cover under the Senior Facilities Agreement;
- “Subordinated Creditors” means the Vendors, the Managers and NBGI Private Equity (Tranche II) LP;
- “Service Contract” means the service contract of each of the Managers;
- “Subordinated Documents” means the Investor Loan Note Document, the Management Loan Note Documents and the Vendor Loan Note Documents and any other document evidencing the Liabilities of any Debtor to NBGI Private Equity (Tranche II) LP, the Managers and the Vendors which may be in place from time to time excluding, for the avoidance of doubt, the Service Contracts or any other service contracts entered into between the Group and the Managers or the Vendors from time to time;
- “Subordinated Liabilities” means the Liabilities owed to the Subordinated Creditors by Debtors under the Subordinated Documents, the articles of association of ATR Offshore Group Limited, the articles of association of ATR Offshore Holdings Limited and the Investor Agreement (including, for the avoidance of doubt, any dividends or distributions);
- “Subsidiary” means a subsidiary undertaking within the meaning of s1162 of the Companies Act 2006 provided that (a) an undertaking which has granted Security over its shares, or other ownership interest, in another undertaking, by which the recipient of the Security (or its nominee) holds the legal title to those shares or that interest, shall nevertheless be treated (for the purposes only of the membership requirement contained in subsections 1162(2)(b) and (d) and 1163(3)) as a member of that other undertaking; and (b) rights attached to shares or other ownership interests which are subject to Security shall be treated as held by the grantor of Security;
- “Structural Intra-Group Loans” mean a loan by ATR Offshore Holdings to ATR Offshore Group Limited;
- “Term Facility” means Facility A or Facility B;
- “Transaction Security” means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Senior Security Documents;
- “Transaction Security Documents” means each of the documents listed as being a Transaction Security Document in paragraph 3.6 of Part I of Schedule 2 (*Conditions precedent*) of the

Senior Facilities Agreement and any document required to be delivered to the Agent under paragraph 13 of Part II of Schedule 2 (*Conditions precedent*) of the Senior Facilities Agreement together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligor under any of the Finance Documents;

- “Utilisation Request” means a letter substantially in the form set out in Part I of Schedule 3 (*Requests and Notices*) of the Senior Facilities Agreement;
- “Vendors” means Iain Andrew Ferguson, Mark Hislop and Stuart Innes Morrison;
- “Vendor Loan Note Documents” means the £1,596,500 8% secured subordinated loan notes due 2017 of ATR Offshore Group Limited, the instrument pursuant to which the aforementioned loan notes are constituted and the Vendor Loan Note Security Documents; and
- “Vendor Loan Note Security Documents” means :
  - a) a bond and floating charge by ATR Holdings Limited in favour of the Vendors dated 29 June 2015;
  - b) a bond and floating charge by ATR Offshore Group Limited in favour of the Vendors dated 29 June 2015; and
  - c) a guarantee and indemnity by ATR Holdings Limited in favour of the Vendors dated 29 June 2015.

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

- ATR Lifting Solutions Limited - Union Plaza (6<sup>th</sup> Floor), 1 Union Wynd, Aberdeen, AB10 1DQ;
- Cosalt Offshore Group Limited - Union Plaza (6<sup>th</sup> Floor), 1 Union Wynd, Aberdeen, AB10 1DQ;
- STH Holdings Limited - Union Plaza (6<sup>th</sup> Floor), 1 Union Wynd, Aberdeen, AB10 1DQ;
- Safety & Technical Hydraulics Limited - Union Plaza (6<sup>th</sup> Floor), 1 Union Wynd, Aberdeen, AB10 1DQ;
- Wells Fargo Trust Corporation Limited – 1 Plantation Place, 30 Fenchurch Street, London, EC3M 3BD;
- Wells Fargo Bank International – 2 Harbourmaster Place, IFSC Dublin 1, Ireland;
- Clydesdale Bank PLC – 30 St Vincent Place, Glasgow, G1 2HL;
- Wells Fargo Bank, N.A. – 420 Montgomery Street, San Francisco, California, United States, CA 94104;
- Wells Fargo Securities International Limited – 1 Plantation Place, 30 Fenchurch Street, London, EC3M 3BD
- NBGI Private Equity (Tranche II) LP – 1 Royal Plaza, Royal Avenue, St Peter Port, Guernsey (acting by its investment manager – NBGI Private Equity Limited – Old Change House, 128 Queen Victoria Street, London EC4V 4BJ);
- Keith Moorhouse – 20 Charleston Way, Cove Bay, Aberdeen, AB12 3FA;
- Euan Leask – 10 Moray Place, Aberdeen, AB15 4AF;
- Iain Andrew Ferguson – 25 Braecroft Drive, Westhill, Aberdeenshire, AB32 6FF;
- Stuart Innes Morrison – 69 Caiesdykes Crescent, Kincorth, Aberdeen, AB12 5JL; and
- Mark Hislop – 9 Bramble Way, Portlethen, Aberdeenshire, AB12 4UE.

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

- 1.5 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
- 1.6 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.



**FILE COPY**

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

COMPANY NO. 272679

CHARGE NO. 2

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 29 JUNE 2015 WERE DELIVERED  
PURSUANT TO SECTION 878 OF THE COMPANIES ACT 2006  
ON 10 JULY 2015

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 28  
JUNE 2012

BY UNDERWATER ENGINEERING SERVICES LIMITED

IN FAVOUR OF  
NBGI PRIVATE EQUITY (TRANCHE II) LP

FOR SECURING ALL SUMS DUE OR TO BECOME DUE

GIVEN AT COMPANIES HOUSE, EDINBURGH 16 JULY 2015



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**INTERCREDITOR AGREEMENT**

**between**

**Wells Fargo Bank International as Senior Agent**

**The Senior Lenders**

**The Hedge Counterparties**

**The Subordinated Creditors**

**The Original Debtors**

**Wells Fargo Trust Corporation Limited as Security Agent**

**and others**

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**Dated** 29 June **2015**

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**Certified a true copy**

Aberdeen 6 July 2015



for and on behalf of Burness Paul LLP

**B**

**BLACKWOOD PARTNERS LLP**

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29 June  
THIS AGREEMENT is dated \_\_ 2015 and made between:

**PARTIES**

- (1) **WELLS FARGO BANK INTERNATIONAL** as Senior Agent;
- (2) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Senior Lenders;
- (3) **CLYDESDALE BANK PLC** and **WELLS FARGO BANK, N.A., LONDON BRANCH** as Senior Arrangers;
- (4) **THE ENTITIES** named on the signing pages as Hedge Counterparties;
- (5) **WELLS FARGO TRUST CORPORATION LIMITED** as security trustee for the Secured Parties (the **Security Agent**);
- (6) **IAIN ANDREW FERGUSON**, residing at 25 Braecroft Drive, Westhill, Aberdeenshire, AB32 6FF, **STUART INNES MORRISON**, residing at 69 Caiesdykes Crescent, Kincorth, Aberdeen, AB12 5JL and **MARK HISLOP**, residing at 9 Bramble Way, Portlethen, Aberdeenshire, AB12 4UE as the Vendors (the **Vendors**);
- (7) **NBGI PRIVATE EQUITY (TRANCHE II) LP** registered in Guernsey with number 1511 whose registered office is at 1 Royal Plaza, Royal Avenue, St Peter Port, Guernsey as the **Investors**;
- (8) **NBGI PRIVATE EQUITY (TRANCHE II) LP** registered in Guernsey with number 1511 whose registered office is at 1 Royal Plaza, Royal Avenue, St Peter Port, Guernsey as **Security Trustee** as defined in the Investor Loan Note Security Documents as **Investor Loan Note Security Trustee** (the **Investor Loan Note Security Trustee**);
- (9) **KEITH MOORHOUSE**, residing at 20 Charleston Way, Cove Bay, Aberdeen, AB12 3FA and **EUAN LEASK**, residing at 10 Moray Place, Aberdeen, AB15 4AF as the **Senior Management** (the **Managers**);
- (10) **ATR OFFSHORE HOLDINGS LIMITED**, registered in Scotland with number SC404407 whose registered office is at Union Plaza, 6<sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ (the **Parent**);
- (11) **ATR OFFSHORE GROUP LIMITED**, registered in Scotland with number SC403892 whose registered office is at Union Plaza, 6<sup>th</sup> Floor, 1 Union Wynd, Aberdeen, AB10 1DQ (the **Company**);
- (12) **THE COMPANIES** named on the signing pages as **Intra-Group Lenders** (the **Intra-Group Lenders**; and
- (13) **THE SUBSIDIARIES** of the Parent named on the signing pages as **Debtors** (together with the Parent and the Company, the **Original Debtors**).

## **AGREED TERMS**

### **1. Definitions and Interpretation**

#### **1.1 Definitions**

Words and expressions defined in the Senior Facilities Agreement shall have, unless expressly defined in this Agreement or unless the context otherwise requires, the same meaning in this Agreement and, in addition, 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.

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

**Automatic Termination** means the termination or close-out of any hedging transaction prior to the maturity of that hedging transaction which is brought about automatically by the terms of the relevant Hedging Agreement and without any party to the relevant Hedging Agreement taking any action to terminate that hedging transaction.

**Borrowing Liabilities** means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to a Senior Arranger or the Senior Agent) or a Debtor in respect of Financial Indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a borrower under the Senior Finance Documents).

**Cash Proceeds** means:

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

Security Property which are in the form of Non-Cash Consideration.

**Charged Property**

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

**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) (*Payments on Early Termination*) 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) (*Payments on Early Termination*) of the 2002 ISDA Master Agreement; and
- (c) in respect of a Hedging Agreement or a Hedging Ancillary Document not based on an ISDA Master Agreement, any step involved on a termination of the hedging transactions under that Hedging Agreement pursuant to any provision of that Hedging Agreement which has a similar effect to either provision referenced in paragraph (a) and paragraph (b) above.

**Common Assurance**

means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible and subject to any Agreed Security Principles, given to all the Secured Parties in respect of their Liabilities.

**Common Currency**

means Sterling.

**Common Currency Amount**

means, in relation to an amount, that amount converted (to the extent not already denominated in the Common Currency) into the Common

Currency at the Security Agent's Spot Rate of Exchange on the Business Day prior to the relevant calculation.

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

- (a) is created in favour of the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
- (b) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties is created in favour of:
  - (i) all the Secured Parties in respect of their Liabilities; or
  - (ii) the Security Agent under a parallel debt structure for the benefit of all the Secured Parties,

and which ranks in the order of priority contemplated in clause 2.2 (*Security*).

**Competitive Sales Process** means

- (a) any auction or other competitive sales process; and
- (b) any enforcement of the Transaction Security carried out by way of auction or other competitive sales process pursuant to requirements of applicable law.

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

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

**Creditor Undertaking**      **Accession** means:

- (a) an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*);
- (b) a Transfer Certificate or an Assignment Agreement (each as defined in the Senior Facilities Agreement) (provided that it contains an accession to this Agreement which is substantially in the form set out in

Schedule 2 (*Form of Creditor Accession Undertaking*)); or

- (c) an Increase Confirmation (as defined in the Senior Facilities Agreement) (**provided that** it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*)),

as the context may require, or

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

**Creditors**

means the Senior Creditors, the Intra-Group Lenders, the Parent and the Subordinated Creditors.

**Debt Disposal**

means any disposal of any Liabilities or Debtors' Intra-Group Receivables pursuant to clauses 13.1.4 or 13.1.5 (*Facilitation of Distressed Disposals and Appropriation*).

**Debt Document**

means each of this Agreement, the Hedging Agreements, the Senior Finance Documents, the Senior Security Documents, the Subordinated Documents and any agreement evidencing the terms of the Structural Intra-Group Loans, the Parent Liabilities or the Intra-Group Liabilities and any other document designated as such by the Security Agent and the Parent.

**Debtor**

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

**Debtor Accession deed**

means:

- (a) a deed substantially in the form set out in Schedule 1 (*Form of Debtor Accession Deed*); or
- (b) (only in the case of a member of the Group which is acceding as a borrower or guarantor under the Senior Facilities Agreement) an accession document in the form required by the Senior Facilities Agreement (**provided that** it contains an accession to this Agreement which is substantially in the form set out in clause

Schedule 1 (*Form of Debtor Accession Deed*)).

<b>Debtor Resignation Request</b>		means a notice substantially in the form set out in Schedule 3 ( <i>Form of Debtor Resignation Request</i> ).
<b>Debtors' Receivables</b>	<b>Intra-Group</b>	means, in relation to a member of the Group, any liabilities and obligations owed to any Debtor (whether actual or contingent and whether incurred solely or jointly) by that member of the Group.
<b>Distress Event</b>		means any of: <ul style="list-style-type: none"><li>(a) a Senior Acceleration Event; or</li><li>(b) the enforcement of any Transaction Security.</li></ul>
<b>Distressed Disposal</b>		means a disposal of an asset of a member of the Group which is: <ul style="list-style-type: none"><li>(a) being effected at the request of the Majority Senior Creditors in circumstances where the Transaction Security has become enforceable;</li><li>(b) being effected by enforcement of the Transaction Security (including the disposal of any Property of a member of the Group, the shares in which have been subject to an Appropriation); or</li><li>(c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is, or are, not a member, or members, of the Group.</li></ul>
<b>Enforcement Action</b>		means: <ul style="list-style-type: none"><li>(a) in relation to any Liabilities:<ul style="list-style-type: none"><li>(i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Facility Creditor to perform its obligations under, or of any voluntary or mandatory</li></ul></li></ul>

prepayment arising under, the Debt Documents);

(ii) the making of any declaration that any Liabilities are payable on demand;

(iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent (A) that the demand is made in the ordinary course of dealings between the relevant Debtor and Intra-Group Lender and (B) that any resulting Payment would be a Permitted Intra-Group Payment);

(iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;

(v) the exercise of any right 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; or
  - (E) which is otherwise expressly permitted under the Senior Facilities Agreement to the extent that the exercise of that right gives effect to a Permitted Payment; and
- (vi) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;
- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement (other than pursuant to a Permitted Automatic Early Termination);
- (c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (d) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under clause 20 (*Changes to the Parties*)); or
- (e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of



payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(vi) or (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; and
- (ii) an Ancillary Lender or Hedge Counterparty 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.

<b>Exposure</b>	has the meaning given to that term in clause 18.1 ( <i>Equalisation Definitions</i> ).
<b>Fairness Opinion</b>	means, in respect of a Distressed Disposal or a Liabilities Sale, an opinion that the proceeds received or recovered in connection with that Distressed Disposal or Liabilities Sale are fair from a financial point of view taking into account all relevant circumstances, including, without limitation, the method of enforcement or disposal.
<b>Final Discharge Date</b>	means the first date on which all Senior Liabilities have been fully and finally discharged to the satisfaction of the Senior Agent (in the case of the Senior Facility Liabilities) and each Hedge Counterparty (in the case of its Hedging Liabilities), whether or not as the result of an enforcement, and the Senior Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.
<b>Financial Adviser</b>	means any: <ul style="list-style-type: none"><li>(a) independent investment bank;</li><li>(b) independent accountancy firm; or</li><li>(c) other independent professional services firm which is regularly engaged in providing valuations of businesses or financial assets or, where applicable, advising on competitive sales processes.</li></ul>
<b>Guarantee Liabilities</b>	means, in relation to a member of the Group, the liabilities and obligations under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (other than to a Senior Arranger or the Senior Agent) or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Senior Finance Documents).
<b>Hedge Counterparty</b>	means: <ul style="list-style-type: none"><li>(a) any entity which is named on the signing pages as a Hedge Counterparty; and</li></ul>

- (b) any entity which becomes a Party as a Hedge Counterparty pursuant to clause 20.11 (*Creditor Accession Undertaking*),

which, in each case, is or has become party to the Senior Facilities Agreement as a Hedge Counterparty.

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

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

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

**Hedging Ancillary Lender** means an Ancillary Lender to the extent that 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 paragraphs (a) or (b) above.

<b>Hedging Liabilities</b>	means the Liabilities owed by any Debtor to the Hedge Counterparties under or in connection with the Hedging Agreements.
<b>Insolvency Event</b>	means, in relation to any member of the Group: <ul style="list-style-type: none"> <li>(a) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of that member of the Group, a moratorium is declared in relation to any indebtedness of that member of the Group or an administrator is appointed to that member of the Group;</li> <li>(b) any composition, compromise, assignment or arrangement is made with any of its creditors;</li> <li>(c) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that member of the Group or any of its assets; or</li> <li>(d) any analogous procedure or step is taken in any jurisdiction.</li> </ul>
<b>Intercreditor Amendment</b>	means any amendment or waiver which is subject to clause 26 ( <i>Consents, Amendments and Override</i> ).
<b>Interest Rate Hedge Excess</b>	means the amount by which the Total Interest Rate Hedging exceeds the Term Outstandings.
<b>Interest Rate Hedging</b>	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.
<b>Interest Rate Hedging Proportion</b>	means, in relation to a Hedge Counterparty and that Hedge Counterparty's Interest Rate Hedging, the proportion (expressed as a percentage) borne by that Hedge Counterparty's Interest Rate Hedging to the Total Interest Rate Hedging.
<b>Inter-Hedging Agreement Netting</b>	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 Senior Facility Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

**Intra-Group Lenders**

means each member of the Group (other than the Parent) which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which is named on the signing pages as an Intra-Group Lender or which becomes a Party as an Intra-Group Lender in accordance with the terms of clause 20 (*Changes to the Parties*).

**Intra-Group Liabilities**

means the Liabilities owed by any member of the Group to any of the Intra-Group Lenders (other than the Parent Liabilities).

**Investor Loan Note Security**

means the Security constituted by the Investor Loan Note Security Documents.

**ISDA Master Agreement**

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

**Liabilities**

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

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting

any other liability or obligation falling within this definition;

- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**Liabilities Acquisition**

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

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

the rights in respect of those Liabilities.

**Liabilities Sale**

means a Debt Disposal pursuant to clause 13.1.5 (*Facilitation of Distressed Disposals and Appropriation*).

**Loan Note Security**

means the Security constituted by the Loan Note Security Documents.

**Majority Senior Creditors**

means, at any time, those Senior Creditors whose Senior Credit Participations at that time aggregate more than 66 2/3 per cent. of the total Senior Credit Participations at that time.

**Majority Senior Lenders**

means the Majority Lenders under and as defined in the Senior Facilities Agreement after the application of:

- (a) clause 38.9 (*Excluded Commitments*);
- (b) clause 27.2.1 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*); and

(c) clause 38.7 (*Disenfranchisement of Defaulting Lenders*)

of the Senior Facilities Agreement.

<b>Mandatory Prepayment</b>	means a mandatory prepayment of any of the Senior Facility Liabilities pursuant to clause 9.2 ( <i>Disposal, Insurance and Acquisition Proceeds and Excess Cashflow</i> ) of the Senior Facilities Agreement.
<b>Multi-account Overdraft Liabilities</b>	means the Liabilities arising under any Multi-account Overdraft.
<b>Net Outstandings</b>	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.
<b>Non-Cash Consideration</b>	means consideration in a form other than cash.
<b>Non-Cash Recoveries</b>	means: <ul style="list-style-type: none"><li>(a) any proceeds of a Distressed Disposal or a Debt Disposal; or</li><li>(b) any amount distributed to the Security Agent pursuant to clause 9.2 (<i>Turnover by the Creditors</i>),</li></ul> which are, or is, in the form of Non-Cash Consideration.
<b>Non-Credit Related Close-Out</b>	means a Permitted Hedge Close-Out described in any of clauses 4.9.1.1, 4.9.1.2 or 4.9.1.3 ( <i>Permitted Enforcement: Hedge Counterparties</i> ).
<b>Non-Distressed Disposal</b>	has the meaning given to that term in clause 12 ( <i>Non-Distressed Disposals</i> ).
<b>Other Liabilities</b>	means, in relation to a member of the Group, any trading and other liabilities and obligations (not being Borrowing Liabilities or Guarantee Liabilities) it may have to a Subordinated Creditor or Intra-Group Lender or Debtor.

<b>Parent Liabilities</b>		means all Liabilities owed by the Company to the Parent under any relevant Structural Intra-Group Loan.
<b>Party</b>		means a party to this Agreement.
<b>Payment</b>		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).
<b>Payment Netting</b>		means: <ul style="list-style-type: none"> <li>(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</li> <li>(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.</li> </ul>
<b>Permitted Automatic Early Termination</b>		means an Automatic Termination of a hedging transaction under a Hedging Agreement, the provision of which is permitted under clause 4.12 ( <i>Terms of Hedging Agreements</i> ).
<b>Permitted Hedge Close-Out</b>		means, in relation to a hedging transaction under a Hedging Agreement, a termination or close-out of that hedging transaction which is permitted pursuant to clause 4.9 ( <i>Permitted Enforcement: Hedge Counterparties</i> ).
<b>Permitted Hedge Payments</b>		means the Payments permitted by clause 4.3 ( <i>Permitted Payments: Hedging Liabilities</i> ).
<b>Permitted Payments</b>	<b>Intra-Group</b>	means the Payments permitted by clause 5.2 ( <i>Permitted Payments: Intra-Group Liabilities</i> ).
<b>Permitted Payments</b>	<b>Investor</b>	means the Payments permitted by clause 7.2.2 or clause 7.2.3 ( <i>Permitted Payments: Subordinated Liabilities</i> ).
<b>Permitted Parent Payments</b>		means the Payments permitted by clause 6.2 ( <i>Permitted Payments: Parent Liabilities</i> ).



<b>Permitted Payment</b>	means a Permitted Hedge Payment, a Permitted Intra-Group Payment, a Permitted Parent Payment, a Permitted Senior Facility Payment, a Permitted Vendor Payment or a Permitted Investor Payment.
<b>Permitted Senior Facility Payments</b>	means the Payments permitted by clause 3.1 ( <i>Payment of Senior Facility Liabilities</i> ).
<b>Permitted Vendor Payments</b>	means the Payments permitted by clause 7.2.4 ( <i>Permitted Payments: Subordinated Liabilities</i> ).
<b>Property</b>	of a member of the Group or of a Debtor means: <ul style="list-style-type: none"> <li>(a) any asset of that member of the Group or of that Debtor;</li> <li>(b) any Subsidiary of that member of the Group or of that Debtor; and</li> <li>(c) any asset of any such Subsidiary.</li> </ul>
<b>Recoveries</b>	has the meaning given to that term in clause 17.1 ( <i>Order of Application</i> ).
<b>Relevant Ancillary Lender</b>	means, in respect of any SFA Cash Cover, the Ancillary Lender (if any) for which that SFA Cash Cover is provided.
<b>Relevant Liabilities</b>	means: <ul style="list-style-type: none"> <li>(a) in the case of a Creditor: <ul style="list-style-type: none"> <li>(i) the Liabilities owed to Creditors ranking (in accordance with the terms of this Agreement) <i>pari passu</i> with or in priority to that Creditor (as the case may be); and</li> <li>(ii) all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agent; and</li> </ul> </li> <li>(b) in the case of a Debtor, the Liabilities owed to the Creditors together with all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agent.</li> </ul>
<b>Secured Obligations</b>	means all the Liabilities and all other present and future liabilities and obligations at any time due,

owing or incurred by any member of the Group and by each Debtor to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

**Secured Parties**

means the Security Agent, any Receiver or Delegate and each of the Senior Creditors from time to time but, in the case of each Senior Creditor, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to clause 20.11 (*Creditor Accession Undertaking*).

**Security Agent's Spot Rate of Exchange**

means, in respect of the conversion of one currency (the **First Currency**) into another currency (the **Second Currency**) the Security Agent's spot rate of exchange for the purchase of the **Second Currency** with the **First Currency** in the London foreign exchange market at or about 11:00 am (London time) on a particular day, which shall be notified by the Security Agent in accordance with clause 19.3.5 (*Duties of the Security Agent*).

**Security Documents**

means the Senior Security Documents and the Loan Note Security Documents.

**Security Property**

means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as trustee for the Secured Parties;
- (c) the Security Agent's interest in any trust fund created pursuant to clause 9 (*Turnover of Receipts*);
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Secured Parties.

<b>Senior Acceleration Event</b>	means the Senior Agent exercising any of its rights under clause 25.21 ( <i>Acceleration</i> ) of the Senior Facilities Agreement.
<b>Senior Agent</b>	means the Agent under and as defined in the Senior Facilities Agreement.
<b>Senior Arranger</b>	means any Arranger under and as defined in the Senior Facilities Agreement.
<b>Senior Borrower</b>	means a Borrower under and as defined in the Senior Facilities Agreement.
<b>Senior Commitment</b>	means a Commitment under and as defined in the Senior Facilities Agreement.
<b>Senior Credit Participation</b>	<p>means, in relation to a Senior Lender or a Hedge Counterparty the aggregate of:</p> <ul style="list-style-type: none"> <li>(a) its aggregate Senior Commitments, if any;</li> <li>(b) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and</li> <li>(c) after the Senior Facilities Discharge Date only, in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out: <ul style="list-style-type: none"> <li>(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</li> </ul> </li> </ul>

respect of that hedging transaction, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or

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

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

**Senior Creditors**

means the Senior Facility Creditors and the Hedge Counterparties.

**Senior Default**

means a Default under the Senior Facilities Agreement.

<b>Senior Event of Default</b>	means an Event of Default under the Senior Facilities Agreement.
<b>Senior Facilities Agreement</b>	means the senior term and revolving facilities agreement made between, <i>inter alios</i> , the Parent, the Company, the Senior Facility Creditors and others dated on or about the date of this Agreement.
<b>Senior Facilities Discharge Date</b>	means the first date on which: <ul style="list-style-type: none"> <li>(a) all Senior Facility Liabilities have been fully and finally discharged to the satisfaction of the Senior Agent, whether or not as the result of an enforcement; and</li> <li>(b) the Senior Facility Creditors are under no further obligation to provide financial accommodation to any of the Debtors under any of the Debt Documents.</li> </ul>
<b>Senior Facility</b>	has the meaning given to the term Facility in the Senior Facilities Agreement.
<b>Senior Facility Creditors</b>	means each Senior Agent, Senior Arranger and Senior Lender.
<b>Senior Facility Liabilities</b>	means the Liabilities owed by the Debtors to the Senior Facility Creditors under the Senior Finance Documents.
<b>Senior Finance Documents</b>	has the meaning given to the term Finance Documents in the Senior Facilities Agreement.
<b>Senior Guarantor</b>	means a Guarantor under and as defined in the Senior Facilities Agreement.
<b>Senior Lender Liabilities</b>	means the Senior Facility Liabilities owed by the Debtors to the Senior Lenders.
<b>Senior Lenders</b>	means each Lender (as defined in the Senior Facilities Agreement).
<b>Senior Liabilities</b>	means the Senior Facility Liabilities and the Hedging Liabilities.
<b>Senior Security Documents</b>	means: <ul style="list-style-type: none"> <li>(a) each of the Transaction Security Documents;</li> <li>(b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other</li> </ul>

assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured Obligations; and

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

<b>Senior Term Facilities</b>	means each term loan facility made available under the Senior Facilities Agreement.
<b>SFA Cash Cover</b>	means cash cover under and as defined in the Senior Facilities Agreement.
<b>SFA Cash Cover Document</b>	means, in relation to any SFA Cash Cover, any Senior Finance Document which creates or evidences, or is expressed to create or evidence, the Security required to be provided over that SFA Cash Cover by the Senior Facilities Agreement.
<b>Structural Liabilities</b>	<b>Intra-Group</b> means Liabilities (other than Parent Liabilities) arising under or in connection with the Structural Intra-Group Loans.
<b>Subordinated Creditors</b>	means the Vendors, the Managers, the Investors and the Investor Loan Note Security Trustee.
<b>Subordinated Documents</b>	means the Investor Loan Note Documents, the Management Loan Note Documents and the Vendor Loan Note Documents and any other document evidencing the Liabilities of any Debtor to the Investors, the Managers or the Vendors which may be in place from time to time excluding, for the avoidance of doubt, the Service Contracts and any other service contracts entered into between the Group and the Managers or the Vendors from time to time.
<b>Subordinated Liabilities</b>	means the Liabilities owed to the Subordinated Creditors by Debtors under the Subordinated Documents, the articles of association of the Company, the articles of association of the Parent and the Investment Agreement (including, for the avoidance of doubt, any dividends or distributions).
<b>Term Indebtedness</b>	means any indebtedness in respect of a facility which, once repaid or discharged, is not available for reborrowing or redrawing.
<b>Term Loan</b>	means any loan made under a Senior Term Facility.

<b>Term Outstandings</b>	means, at any time, the aggregate of the amounts of principal (not including any capitalised or deferred interest) then outstanding under the Senior Term Facilities.
<b>Total Interest Rate Hedging</b>	means, at any time, the aggregate of each Hedge Counterparty's Interest Rate Hedging at that time.
<b>Transaction Security</b>	means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Senior Security Documents.
<b>VAT</b>	means: <ul style="list-style-type: none"> <li>(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</li> <li>(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.</li> </ul>
<b>Vendor Loan Note Security</b>	means the Security constituted by the Vendor Loan Note Security Documents.

## **1.2 Construction**

- 1.2.1** Unless a contrary indication appears, a reference in this Agreement to:
- 1.2.1.1** any Ancillary Lender, Company, Creditor, Debtor, Hedge Counterparty, Intra-Group Lender, Investor, Manager, Parent, Party, Security Agent, Senior Agent, Senior Arranger, Senior Borrower, Senior Creditor, Senior Facility Creditor, Senior Guarantor, Senior Lender, Investor Loan Note Security Trustee, Subordinated Creditor, or Vendor shall be construed to be a reference to it in its capacity as such and not in any other capacity;
  - 1.2.1.2** any Ancillary Lender, Senior Arranger, Creditor, Debtor, Senior Agent, Hedge Counterparty, Investor, Manager, any Party, the Security Agent or Subordinated Creditor or Vendor or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
  - 1.2.1.3** an amount includes an amount of cash and an amount of Non-Cash Consideration;

- 1.2.1.4 **assets** includes present and future properties, revenues and rights of every description;
- 1.2.1.5 a **Debt Document** or any other agreement or instrument is (other than a reference to a **Debt Document** or any other agreement or instrument in **original form**) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
- 1.2.1.6 a **distribution** of or out of the assets of a member of the Group, includes a distribution of cash and a distribution of Non-Cash Consideration;
- 1.2.1.7 **enforcing** (or any derivation) the Transaction Security includes the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor by the Security Agent;
- 1.2.1.8 a **group of Creditors** includes all the Creditors and a **group of Senior Creditors** includes all the Senior Creditors;
- 1.2.1.9 **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;
- 1.2.1.10 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;
- 1.2.1.11 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);
- 1.2.1.12 **proceeds** of a Distressed Disposal or of a Debt Disposal includes proceeds in cash and in Non-Cash Consideration;
- 1.2.1.13 a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- 1.2.1.14 a **provision of law** is a reference to that provision as amended or re-enacted.
- 1.2.2 Section, clause and Schedule headings are for ease of reference only.
- 1.2.3 A Default (other than an Event of Default) is **continuing** if it has not been remedied or waived and an Event of Default is **continuing** if it has not been remedied or waived to the satisfaction of all the Senior Creditors.



### **1.3 Third party rights**

- 1.3.1 Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Agreement.
- 1.3.2 Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- 1.3.3 Any Receiver, Delegate or any other person described in clause 19.10.2 (*Exclusion of liability*) may, subject to this clause 1.3 and the Third Parties Act, rely on any clause of this Agreement which expressly confers rights on it.

## **2. Ranking and Priority**

### **2.1 Senior Creditor Liabilities**

Each of the Parties agrees that the Senior Facility Liabilities and the Hedging Liabilities owed by the Debtors to the Senior Creditors shall rank *pari passu* and without any preference between them.

### **2.2 Security**

- 2.2.1 Each of the Parties agrees that the Transaction Security shall rank and secure the Senior Facility Liabilities and the Hedging Liabilities *pari passu* and without any preference between them.
- 2.2.2 Each of the Parties agrees that the Senior Security Documents and the Loan Note Security Documents shall rank as follows:
  - 2.2.2.1 first, the Senior Security Documents; then
  - 2.2.2.2 second, the Loan Note Security Documents.
- 2.2.3 This Agreement does not purport to rank the Loan Note Security Documents as between themselves.

### **2.3 Subordinated, Intra-Group and Parent Liabilities**

- 2.3.1 Each of the Parties agrees that the Subordinated Liabilities, the Intra-Group Liabilities and the Parent Liabilities are postponed and subordinated to the Liabilities owed by the Debtors to the Senior Creditors.
- 2.3.2 This Agreement does not purport to rank any of the Subordinated Liabilities, the Intra-Group Liabilities or the Parent Liabilities as between themselves.

**3. Senior Facility Creditors and Senior Facility Liabilities**

**3.1 Payment of Senior Facility Liabilities**

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

**3.2 Amendments and Waivers: Senior Facility Creditors**

Subject to clause 3.3 (*Restriction on amendments and waivers: SFA guarantee*), the Senior Facility Creditors may amend or waive the terms of the Senior Finance Documents in accordance with their terms (and subject to any consent required under them) at any time.

**3.3 Restriction on amendments and waivers: SFA guarantee**

Without prejudice to clause 13 (*Distressed Disposals and Appropriation*), the Senior Facility Creditors may not:

3.3.1 amend or waive the terms of the Senior Finance Documents if the amendment or waiver:

3.3.1.1 would have the effect of changing, or relates to, the nature or scope of the guarantee and indemnity granted under clause 20 (*Guarantee and Indemnity*) of the Senior Facilities Agreement unless expressly envisaged by the original form of the Senior Facilities Agreement; or

3.3.1.2 relates to the release of any guarantee and indemnity granted under clause 20 (*Guarantee and Indemnity*) of the Senior Facilities Agreement unless expressly envisaged by the original form of a Senior Finance Document or relating to a sale or disposal of an asset which is a Non-Distressed Disposal,

unless the prior written consent of the Hedge Counterparties is obtained; or

3.3.2 consent to the resignation of a member of the Group which has granted a guarantee and indemnity under clause 20 (*Guarantee and Indemnity*) of the Senior Facilities Agreement unless each Hedge Counterparty has:

3.3.2.1 notified the Security Agent that no payment is due to it from that member of the Group under that clause; or

3.3.2.2 agreed to that consent being given.

**3.4 Designation of Senior Finance Documents**

If the terms of a document effect a change which would, if that change was effected by way of amendment to, or waiver of, the terms of a Senior Finance Document, require a notification by or the consent of the Hedge Counterparties under clause 3.3 (*Restriction on amendments and waivers: SFA guarantee*), that document shall not constitute a Senior Finance Document for the purposes of this Agreement or a Finance Document for the purposes of the Senior Facilities

Agreement, without such a notification by or the prior written consent of the Hedge Counterparties, as the case may be.

**3.5 Security: Senior Facility Creditors**

Other than as set out in clause 3.6 (*Security: Ancillary Lenders*), the Senior Facility Creditors may take, accept or receive the benefit of:

3.5.1 any Security in respect of the Senior Facility Liabilities from any member of the Group in addition to the Common Transaction Security which (except for any Security permitted under clause 3.6 (*Security: Ancillary Lenders*)) to the extent legally possible and subject to any Agreed Security Principles is, at the same time, also offered either:

3.5.1.1 to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or

3.5.1.2 in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties:

(a) to the other Secured Parties in respect of their Liabilities; or

(b) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties

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

3.5.2 any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Senior Facility Liabilities in addition to those in:

3.5.2.1 the original form of Senior Facilities Agreement;

3.5.2.2 this Agreement; or

3.5.2.3 any Common Assurance,

if (except for any guarantee, indemnity or other assurance against loss permitted under clause 3.6 (*Security: Ancillary Lenders*)) and to the extent legally possible and subject to any Agreed Security Principles, at the same time it is also offered to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in clause 2 (*Ranking and Priority*).

### **3.6 Security: Ancillary Lenders**

No Ancillary Lender will, unless the prior written consent of the Majority Senior Creditors 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:

- 3.6.1 the Common Transaction Security;
- 3.6.2 each guarantee, indemnity or other assurance against loss contained in:
  - 3.6.2.1 the original form of Senior Facilities Agreement;
  - 3.6.2.2 this Agreement; or
  - 3.6.2.3 any Common Assurance;
- 3.6.3 indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in clause 3.6.2 above;
- 3.6.4 any SFA Cash Cover permitted under the Senior Facilities Agreement relating to any Ancillary Facility;
- 3.6.5 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
- 3.6.6 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.

### **3.7 Restriction on Enforcement: Ancillary Lenders**

Subject to clause 3.8 (*Permitted Enforcement: Ancillary Lenders*), so long as any of the Senior Liabilities (other than any Liabilities owed to the Ancillary Lenders) are or may be outstanding, none of the Ancillary Lenders shall be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it.

### **3.8 Permitted Enforcement: Ancillary Lenders**

- 3.8.1 Each Ancillary Lender may take Enforcement Action which would be available to it but for clause 3.7 (*Restriction on Enforcement: Ancillary Lenders*) if:
  - 3.8.1.1 at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Senior Facility Liabilities (excluding the Liabilities owing to Ancillary Lenders), in which case the Ancillary Lenders may take the same Enforcement Action as has been taken in respect of those Senior Facility Liabilities;

- 3.8.1.2 that action is contemplated by the Senior Facilities Agreement or clause 3.6 (*Security: Ancillary Lenders*);
  - 3.8.1.3 that Enforcement Action is taken in respect of SFA Cash Cover which has been provided in accordance with the Senior Facilities Agreement;
  - 3.8.1.4 at the same time as or prior to, that action, the written consent of the Majority Senior Creditors to that Enforcement Action is obtained; or
  - 3.8.1.5 an Insolvency Event has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event, each Ancillary Lender shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group to:
    - (a) accelerate any of that member of the Group's Senior Facility 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 Senior Facility Liabilities;
    - (c) exercise any right of set-off or take or receive any Payment in respect of any Senior Facility Liabilities of that member of the Group; or
    - (d) claim and prove in the liquidation of that member of the Group for the Senior Facility Liabilities owing to it.
- 3.8.2 Clause 3.7 (*Restriction on Enforcement: Ancillary Lenders*) shall not restrict any right of an Ancillary Lender:
- 3.8.2.1 to demand repayment or prepayment of any of the Liabilities owed to it prior to the expiry date of the relevant Ancillary Facility; or
  - 3.8.2.2 to net or set off in relation to a Multi-account Overdraft,
- in accordance with the terms of the Senior Facilities Agreement and to the extent that the demand is required to reduce, or the netting or set-off represents a reduction from, the Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount.

#### **4. Hedge Counterparties and Hedging Liabilities**

##### **4.1 Identity of Hedge Counterparties**

- 4.1.1 Subject to clause 4.1.2 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:

4.1.1.1 a Party as a Hedge Counterparty; and

4.1.1.2 a party to the Senior Facilities Agreement as a Hedge Counterparty.

4.1.2 Clause 4.1.1 above shall not apply to a Hedging Ancillary Lender.

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

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:

4.2.1 that Payment is permitted under clause 4.3 (*Permitted Payments: Hedging Liabilities*); or

4.2.2 the taking or receipt of that Payment is permitted under clause 4.9.3 (*Permitted Enforcement: Hedge Counterparties*).

#### **4.3 Permitted Payments: Hedging Liabilities**

4.3.1 Subject to clause 4.3.2 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:

4.3.1.1 If the Payment is a scheduled Payment arising under the relevant Hedging Agreement or is otherwise made pursuant to the terms of the relevant Hedging Agreement;

4.3.1.2 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 paragraphs (a) or (b) above (if the Hedging Agreement is not based on an ISDA Master Agreement);

4.3.1.3 to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out;

4.3.1.4 to the extent that:

- (a) the relevant Debtor's obligation to make the Payment arises from:
  - (i) a Credit Related Close-Out in relation to that Hedging Agreement; or
  - (ii) a Permitted Automatic Early Termination under that Hedging Agreement which arises as a result of an event relating to a Debtor; and
- (b) no Senior Default is continuing at the time of that Payment or would result from that Payment;

4.3.1.5 to the extent that no Senior Default 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 paragraphs (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 with respect to the relevant Hedge Counterparty; or

4.3.1.6 if the Majority Senior Creditors give prior written consent to the Payment being made.

4.3.2 No Payment may be made to a Hedge Counterparty under clause 4.3.1 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 the prior written consent of the Majority Senior Creditors is obtained.

4.3.3 Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of clause 4.3.2 above shall, without prejudice to clause 4.4 (*Payment obligations continue*), not result in a default (however described) in respect of that Debtor under that Hedging Agreement.

#### **4.4 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 4.2 (*Restriction on Payment: Hedging Liabilities*) and 4.3 (*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.

Failure by a Debtor to make a Payment under a Debt Document solely from the operation of clauses 4.2 (*Restriction on Payment: Hedging Liabilities*) or 4.3 (*Permitted Payments: Hedging Liabilities*) shall not result in a default (however described) in respect of a Debtor under that Debt Document.

#### **4.5 No acquisition of Hedging Liabilities**

The Debtors shall not, and shall procure that no other member of the Group will:

4.5.1 enter into any Liabilities Acquisition; or

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

in respect of any of the Hedging Liabilities unless the prior written consent of the Majority Senior Creditors is obtained.

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

4.6.1 Subject to clause 4.6.2 below, the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.

4.6.2 A Hedge Counterparty may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if:

4.6.2.1 that amendment or waiver does not breach another term of this Agreement; and

4.6.2.2 that amendment or waiver would not result in a breach of clause 24.37 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement.



#### 4.7 Security: Hedge Counterparties

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

- 4.7.1 the Common Transaction Security;
- 4.7.2 any guarantee, indemnity or other assurance against loss contained in:
  - 4.7.2.1 the original form of Senior Facilities Agreement;
  - 4.7.2.2 this Agreement;
  - 4.7.2.3 any Common Assurance; or
  - 4.7.2.4 the relevant Hedging Agreement no greater in extent than any of those referred to in clauses 4.7.2.1 to 4.7.2.3 above;
- 4.7.3 as otherwise contemplated by clause 3.5 (*Security: Senior Facility Creditors*); and
- 4.7.4 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).

#### 4.8 Restriction on Enforcement: Hedge Counterparties

Subject to clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) and clause 4.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under clauses 11.2 (*Enforcement Instructions*) and 11.3 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

#### 4.9 Permitted Enforcement: Hedge Counterparties

- 4.9.1 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:

##### ***Non-Credit Related Close-Outs***

- 4.9.1.1 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 clause 24.37 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement;
- 4.9.1.2 if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;

- 4.9.1.3 to the extent necessary to comply with clause 4.13 (*Total Interest Rate Hedging*);

***Credit Related Close-Outs***

- 4.9.1.4 if a Distress Event has occurred;
  - 4.9.1.5 if a Senior Event of Default has occurred under clause 25.6 (*Insolvency*) or clause 25.7 (*Insolvency proceedings*) of the Senior Facilities Agreement, in relation to a Debtor which is party to that Hedging Agreement;
  - 4.9.1.6 if the Majority Senior Creditors give prior written consent to that termination or close-out being made; and
  - 4.9.1.7 on or immediately following a refinancing (or repayment) and cancellation in full of the Senior Facility Liabilities.
- 4.9.2 If a Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than 14 days after notice of that default has been given to the Security Agent pursuant to clause 23.3.5 (*Notification of prescribed events*), the relevant Hedge Counterparty:
- 4.9.2.1 may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and
  - 4.9.2.2 until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), 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.
- 4.9.3 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 in respect of that member of the Group to:
- 4.9.3.1 prematurely close-out or terminate any Hedging Liabilities of that member of the Group;
  - 4.9.3.2 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;
  - 4.9.3.3 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
  - 4.9.3.4 claim and prove in the liquidation of that member of the Group for the Hedging Liabilities owing to it.

**4.10 Required Enforcement: Hedge Counterparties**

4.10.1 Subject to clause 4.10.2 below, a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:

4.10.1.1 the occurrence of a Senior Acceleration Event and delivery to it of a notice from the Security Agent that that Senior Acceleration Event has occurred; and

4.10.1.2 delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Senior Creditors) instructing it to do so.

4.10.2 Clause 4.10.1 above shall not apply to the extent that that Senior Acceleration Event occurred as a result of an arrangement made between any Debtor and any Senior Creditor with the purpose of bringing about that Senior Acceleration Event.

4.10.3 If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under clause 4.9.2 (*Permitted Enforcement: Hedge Counterparties*) (or would have been able to if that Hedge Counterparty had given the notice referred to in that clause) 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 Majority Senior Creditors).

**4.11 Treatment of Payments due to Debtors on termination of hedging transactions**

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

4.11.2 The payment of that amount by the Hedge Counterparty to the Security Agent in accordance with clause 4.11.1 above shall discharge the Hedge Counterparty's obligation to pay that amount to that Debtor.

**4.12 Terms of Hedging Agreements**

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:

4.12.1 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;

4.12.2 each Hedging Agreement is based either:

4.12.2.1 on an ISDA Master Agreement; or

4.12.2.2 on another framework agreement which is similar in effect to an ISDA Master Agreement;

4.12.3 in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of:

4.12.3.1 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

4.12.3.2 an event similar in meaning and effect to either of those described in clause 4.12.3.1 above (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),

that Hedging Agreement will:

(a) 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;

(b) 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

(c) 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;

4.12.4 each Hedging Agreement will not provide for Automatic Termination other than to the extent that:

4.12.4.1 the provision of Automatic 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

4.12.4.2 that Automatic Termination is:

(a) 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);

- (b) 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
  - (c) similar in effect to that described in paragraphs (a) or (b) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
- 4.12.5 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 4.10 (*Required Enforcement: Hedge Counterparties*); and
- 4.12.6 each Hedging Agreement will permit the relevant Hedge Counterparty and each relevant Debtor to take such action as may be necessary to comply with clause 4.13 (*Total Interest Rate Hedging*).
- 4.13 **Total Interest Rate Hedging**
  - 4.13.1 The Parent shall procure that, at all times the Total Interest Rate Hedging does not exceed the Term Outstandings.
  - 4.13.2 Subject to clause 4.13.1 above, if the Total Interest Rate Hedging is less than the Term Outstandings, a Debtor may (but, subject to clause 24.37 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement, shall be under no obligation to) enter into additional hedging arrangements to increase the Total Interest Rate Hedging.
  - 4.13.3 If any reduction in the Term Outstandings results in an Interest Rate Hedge Excess then, on the same day as that reduction becomes effective in accordance with the terms of the Senior Facilities Agreement, 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.
  - 4.13.4 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 clause 4.13.3 above.
  - 4.13.5 Each Hedge Counterparty shall co-operate in any process described in clause 4.13.4 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 clause 4.13.3 above.

## **5. Intra-Group Lenders and Intra-Group Liabilities**

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

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

- 5.1.1 that Payment is permitted under clause 5.2 (*Permitted Payments: Intra-Group Liabilities*); or
- 5.1.2 the taking or receipt of that Payment is permitted under clause 5.7.3 (*Permitted Enforcement: Intra-Group Lenders*).

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

- 5.2.1 Subject to clauses 5.2.2 and 5.2.3, the Debtors or 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 when due.
- 5.2.2 Payments in respect of the Intra-Group Liabilities (excluding, for the purposes of this clause 5.2.2, Structural Intra-Group Liabilities) may not be made pursuant to clause 5.2.1 above if, at the time of the Payment, a Senior Acceleration Event has occurred unless:
  - 5.2.2.1 the Majority Senior Creditors consent in writing to that Payment being made; or
  - 5.2.2.2 that Payment is made to facilitate Payment of the Senior Liabilities.
- 5.2.3 Payments in respect of the Structural Intra-Group Liabilities may not be made pursuant to clause 5.2.1 above unless that Payment is a Permitted Payment.

### **5.3 Payment obligations continue**

No Debtor or other 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 Debt Document by the operation of clauses 5.1 (*Restriction on Payment: Intra-Group Liabilities*) and 5.2 (*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.

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

- 5.4.1 Subject to clauses 5.4.2 and 5.4.4 below, each Debtor may, and may permit any other member of the Group to:
  - 5.4.1.1 enter into any Liabilities Acquisition; or

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

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

5.4.2 Subject to clause 5.4.3 below, no action described in clause 5.4.1 above may take place in respect of any Intra-Group Liabilities if:

5.4.2.1 that action would result in a breach of the Senior Facilities Agreement; or

5.4.2.2 at the time of that action, a Senior Acceleration Event has occurred.

5.4.3 The restrictions in clause 5.4.2 above shall not apply if:

5.4.3.1 the Majority Senior Creditors written consent to that action; or

5.4.3.2 that action is taken to facilitate Payment of the Senior Liabilities.

5.4.4 No action described in clause 5.4.1 above may take place in respect of any of the Structural Intra-Group Liabilities unless that action is expressly permitted by the Senior Facilities Agreement.

#### **5.5 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:

5.5.1 that Security, guarantee, indemnity or other assurance against loss is expressly permitted by the Senior Facilities Agreement; or

5.5.2 the prior written consent of the Majority Senior Creditors is obtained.

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

Subject to clause 5.7 (*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.

#### **5.7 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 8.5 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

5.7.1 accelerate any of that member of the Group's Intra-Group Liabilities or declare them prematurely due and payable or payable on demand;

- 5.7.2 make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Intra-Group Liabilities;
- 5.7.3 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
- 5.7.4 claim and prove in the liquidation of that member of the Group for the Intra-Group Liabilities owing to it.

**5.8 Representations: Intra-Group Lenders**

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

- 5.8.1 it is a corporation, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- 5.8.2 the obligations expressed to be assumed by it in this Agreement are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations; and
- 5.8.3 the entry into and performance by it of this Agreement does not and will not:
  - 5.8.3.1 conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
  - 5.8.3.2 constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets unless such default or termination event could not reasonably be expected to have a Material Adverse Effect.

**6. Parent and Parent Liabilities**

**6.1 Restriction on Payment: Parent Liabilities**

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

- 6.1.1 that Payment is permitted under clause 6.2 (*Permitted Payments: Parent Liabilities*); or
- 6.1.2 the taking or receipt of that Payment is permitted under clause 6.8 (*Permitted Enforcement: Parent*).

**6.2 Permitted Payments: Parent Liabilities**

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

- 6.2.1 the Payment is expressly permitted by the Senior Facilities Agreement; or



6.2.2 the Majority Senior Creditors, written consent to that Payment being made.

**6.3 Payment obligations continue**

Neither the Company nor any other Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of clauses 6.1 (*Restriction on Payment: Parent Liabilities*) and 6.2 (*Permitted Payments: Parent Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those clauses.

**6.4 No acquisition of Parent Liabilities**

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

6.4.1 enter into any Liabilities Acquisition; or

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

in respect of any of the Parent Liabilities, unless the prior written consent of the Majority Senior Creditors is obtained.

**6.5 Amendments and Waivers: Parent Liabilities**

Prior to the Final Discharge Date, the Parent may not amend or waive the terms of any agreement evidencing the terms of the Parent Liabilities unless:

6.5.1 the amendment or waiver is of a minor and administrative nature and is not prejudicial to the Senior Creditors; or

6.5.2 the prior written consent of the Majority Senior Creditors is obtained.

**6.6 Security: Parent Liabilities**

The Parent may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Parent Liabilities other than as expressly permitted by the Senior Finance Documents.

**6.7 Restriction on Enforcement: Parent**

Subject to clause 6.8 (*Permitted Enforcement: Parent*) the Parent shall not be entitled to take any Enforcement Action in respect of any of the Parent Liabilities at any time prior to the Final Discharge Date.

**6.8 Permitted Enforcement: Parent**

After the occurrence of an Insolvency Event in relation to any member of the Group, the Parent 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 Parent in accordance with clause 8.5 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

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

## **7. Subordinated Creditors and Subordinated Liabilities**

### **7.1 Restriction on Payment: Subordinated Liabilities**

Prior to the Final Discharge Date, neither the Parent nor any other Debtor shall, and the Parent shall procure that no other member of the Group will, make any Payment of the Subordinated Liabilities (including, for the avoidance of doubt any dividends or distributions by the Parent or the Company) at any time unless:

- 7.1.1 that Payment is due on the Closing Date and approved by the Senior Creditors; or
- 7.1.2 that Payment is permitted under clause 7.2 (*Permitted Payments: Subordinated Liabilities*); or
- 7.1.3 the taking or receipt of that Payment is permitted under clause 7.8 (*Permitted Enforcement: Subordinated Creditors*).

### **7.2 Permitted Payments: Subordinated Liabilities**

- 7.2.1 The Company may make Payments in respect of the Subordinated Liabilities then due if:
  - 7.2.1.1 the Payment is expressly permitted by the Senior Facilities Agreement; or
  - 7.2.1.2 the Majority Senior Creditors consent in writing to that Payment being made.
- 7.2.2 The Parent may make Payments in respect of expenses which are due and payable to the Investors pursuant to the Investment Agreement up to a maximum aggregate amount of £20,000 in any Financial Year.
- 7.2.3 The Debtors may make Payments in respect of any monitoring fee which is due and payable to the Investors pursuant to the Investment Agreement up to a maximum aggregate amount of £54,000 in any Financial Year **provided that** no Default is continuing or would occur as a result of the payment being made.

- 7.2.4 The Company may make a scheduled Payment of principal and/or capitalised interest payable under the Vendor Loan Note Documents provided that the following conditions are satisfied:
- 7.2.4.1 the Company has delivered to the Senior Agent the Monthly Financial Statements most recently due pursuant to the Senior Facilities Agreement;
  - 7.2.4.2 the most recent Compliance Certificate delivered to the Senior Agent pursuant to Clause 22 (*Information Undertakings*) of the Senior Facilities Agreement evidences compliance with the terms of Clause 23.2 (*Financial condition*) of the Senior Facilities Agreement in respect of the most recent Relevant Period;
  - 7.2.4.3 Cashflow Cover for the immediately preceding Quarter Date calculated on the basis that the Payment was made on or prior to that Quarter Date would have been at least 1:1;
  - 7.2.4.4 the Company has delivered to the Senior Agent a Compliance Certificate at least 10 Business Days prior to the date of the proposed payment which contains projections for the Group for the period of 12 months following the relevant proposed payment date and demonstrates that to the best of the Company's information, knowledge and belief based on the information available to it as at the date of the Compliance Certificate, it will be in compliance with the terms of Clause 23.2 (*Financial condition*) of the Senior Facilities Agreement for the forthcoming 12 months (on the basis that the relevant Payment is assumed to have been paid on the relevant date and all necessary adjustments are made to the relevant accounts to reflect this assumption); and
  - 7.2.4.5 no Senior Event of Default is continuing or would occur as a result of the Payment being made.

### **7.3 Payment obligations continue**

- 7.3.1 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 7.1 (*Restriction on Payment: Subordinated Liabilities*) and 7.2 (*Permitted Payments: Subordinated Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those clauses.
- 7.3.2 The accrual and annual compounding of interest in accordance with the Loan Note Documents will continue notwithstanding the restriction on the ability to make any Payment under clause 7.1 or clause 7.2.
- 7.3.3 Any failure to make a Payment due in respect of the Subordinated Liabilities as a result of the operation of clause 7.1 or clause 7.2 will not prevent the occurrence of an Event of Default (as defined in either the Investor Loan Note Instruments or the Vendor Loan Note Instruments) as a consequence of that failure to make that Payment.

**7.3.4** If any Payment (a **Stopped Payment**) that would otherwise be permitted under clause 7.1 and clause 7.2 is not made because any of the conditions set out in clause 7.2 are not met and the circumstances prohibiting such Payment in the case of a Payment of the Subordinated Liabilities under the Vendor Loan Note Documents, do not apply at the next Quarter Date and assuming that no other such circumstances apply under clause 7.2 that would prevent such Stopped Payment being made, the Debtors may pay and the relevant Subordinated Creditor may receive the Stopped Payment on such subsequent Quarter Date.

**7.4 No acquisition of Subordinated Liabilities**

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

**7.4.1** enter into any Liabilities Acquisition; or

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

in respect of any of the Subordinated Liabilities, unless the prior written consent of the Majority Senior Creditors is obtained.

**7.5 Amendments and Waivers: Subordinated Creditors**

Prior to the Final Discharge Date, the Subordinated Creditors may not amend, waive or agree the terms of any of the Subordinated Documents unless:

**7.5.1** the prior written consent of the Majority Senior Creditors is obtained; or

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

**7.6 Security: Subordinated Creditors**

The Subordinated Creditors may not take, accept or receive the benefit of any Security (other than the Loan Note Security), guarantee, indemnity or other assurance against loss from any member of the Group in respect of any of the Subordinated Liabilities prior to the Final Discharge Date.

**7.7 Restriction on Enforcement: Subordinated Creditors**

Subject to clause 7.8 (*Permitted Enforcement: Subordinated Creditors*), no Subordinated Creditor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Final Discharge Date.

**7.8 Permitted Enforcement: Subordinated Creditors**

After the occurrence of an Insolvency Event in relation to any member of the Group, each Subordinated Creditor may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Subordinated Creditor in accordance with clause 8.5 (*Filing of claims*)) exercise any right it may otherwise have in respect of that member of the Group to:

- 7.8.1 accelerate any of that member of the Group's Subordinated Liabilities or declare them prematurely due and payable or payable on demand;
- 7.8.2 make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Subordinated Liabilities;
- 7.8.3 take any steps to enforce any Loan Note Security Documents;
- 7.8.4 exercise any right of set-off or take or receive any Payment in respect of any Subordinated Liabilities of that member of the Group; or
- 7.8.5 claim and prove in the liquidation of that member of the Group for the Subordinated Liabilities owing to it.

#### **7.9 Representations: Subordinated Creditors**

Each Subordinated Creditor (other than the Vendors and the Managers in respect of paragraph 7.9.1 only) represents and warrants to the Senior Creditors and the Security Agent that:

- 7.9.1 it is a corporation, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- 7.9.2 the obligations expressed to be assumed by it in this Agreement are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations; and
- 7.9.3 the entry into and performance by it of this Agreement does not and will not:
  - 7.9.3.1 conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
  - 7.9.3.2 constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

#### **8. Effect of Insolvency Event**

##### **8.1 SFA Cash Cover**

This clause 8 is subject to clause 17.3 (*Treatment of SFA Cash Cover*).

##### **8.2 Distributions**

- 8.2.1 After the occurrence of an Insolvency Event in relation to any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to make that distribution to the Security Agent (or to such other person as the Security

Agent shall direct) until the Liabilities owing to the Secured Parties have been paid in full.

- 8.2.2 The Security Agent shall apply distributions made to it under clause 8.2.1 above in accordance with clause 17 (*Application of Proceeds*).

### **8.3 Set-Off**

- 8.3.1 Subject to clause 8.3.2 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 Security Agent for application in accordance with clause 17 (*Application of Proceeds*).

- 8.3.2 Clause 8.3.1 above shall not apply to:

- 8.3.2.1 any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Permitted Gross Outstandings of a Multi-account Overdraft to or towards its Designated Net Amount;
- 8.3.2.2 any Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
- 8.3.2.3 any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
- 8.3.2.4 any Inter-Hedging Agreement Netting by a Hedge Counterparty; and
- 8.3.2.5 any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender.

### **8.4 Non-cash distributions**

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

### **8.5 Filing of claims**

Without prejudice to any Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that the netting or set-off represents a reduction of the Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount), after the occurrence of an Insolvency Event in relation to any member of the Group, each Creditor irrevocably authorises the Security Agent, on its behalf, to:

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

- 8.5.2 demand, sue, prove and give receipt for any or all of that member of the Group's Liabilities;
- 8.5.3 collect and receive all distributions on, or on account of, any or all of that member of the Group's Liabilities; and
- 8.5.4 file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover that member of the Group's Liabilities.

#### **8.6 Further assurance – Insolvency Event**

Each Creditor will:

- 8.6.1 do all things that the Security Agent requests in order to give effect to this clause 8; and
- 8.6.2 if the Security Agent is not entitled to take any of the actions contemplated by this clause 8 or if the Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action.

#### **8.7 Security Agent instructions**

For the purposes of clause 8.2 (*Distributions*), clause 8.5 (*Filing of claims*) and clause 8.6 (*Further assurance – Insolvency Event*) the Security Agent shall act on the instructions of the group of Senior Creditors entitled, at that time, to give instructions under clause 11.2 (*Enforcement Instructions*) or clause 11.3 (*Manner of enforcement*).

### **9. Turnover of Receipts**

#### **9.1 SFA Cash Cover**

This clause 9 is subject to clause 17.3 (*Treatment of SFA Cash Cover*).

#### **9.2 Turnover by the Creditors**

Subject to clause 9.3 (*Exclusions*) and to clause 9.4 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Creditor receives or recovers:

- 9.2.1 any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not either:
  - 9.2.1.1 a Permitted Payment; or
  - 9.2.1.2 made in accordance with clause 17 (*Application of Proceeds*);
- 9.2.2 other than where clause 8.3.1 (*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;

9.2.3 notwithstanding clauses 9.2.1 and 9.2.2 above, and other than where clause 8.3.1 (*Set-Off*) applies, any amount:

9.2.3.1 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

9.2.3.2 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 17 (*Application of Proceeds*);

9.2.4 the proceeds of any enforcement of any Transaction Security except in accordance with clause 17 (*Application of Proceeds*); or

9.2.5 other than where clause 8.3.1 (*Set-Off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with clause 17 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,

that Creditor will:

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



### **9.3 Exclusions**

Clause 9.2 (*Turnover by the Creditors*) shall not apply to any receipt or recovery:

#### **9.3.1 by way of:**

9.3.1.1 Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;

9.3.1.2 Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;

9.3.1.3 Inter-Hedging Agreement Netting by a Hedge Counterparty; or

9.3.1.4 Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; or

9.3.2 by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that that netting or set-off represents a reduction of the Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount); or

9.3.3 made in accordance with clause 18 (*Equalisation*).

### **9.4 Permitted assurance and receipts**

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

9.4.1 arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or

9.4.2 make any assignment or transfer permitted by clause 20 (*Changes to the Parties*),

which:

9.4.2.1 is permitted by the Senior Facilities Agreement; and

9.4.2.2 is not in breach of:

(a) clause 4.5 (*No acquisition of Hedging Liabilities*); or

(b) clause 7.4 (*No acquisition of Subordinated Liabilities*),

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

## **9.5 Amounts received by Debtors**

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

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

## **9.6 Saving provision**

If, for any reason, any of the trusts expressed to be created in this clause 9 should fail or be unenforceable, the affected Creditor or Debtor will promptly pay or distribute an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

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

For the purposes of this clause 9, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to clause 9.2 (*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with clause 14.2 (*Cash value of Non-Cash Recoveries*).

# **10. Redistribution**

## **10.1 Recovering Creditor's rights**

- 10.1.1 Any amount paid or distributed by a Creditor (a **Recovering Creditor**) to the Security Agent under clause 8 (*Effect of Insolvency Event*) or clause 9 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and distributed to the Security Agent and Senior Creditors (each a **Sharing Creditor**) in accordance with the terms of this Agreement.
- 10.1.2 On a distribution by the Security Agent under clause 10.1.1 above of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent (the **Shared Amount**) will be treated as not having been paid or distributed by that Debtor.

## **10.2 Reversal of redistribution**

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

10.2.1.1 each Sharing Creditor shall, upon request of the Security Agent, pay or distribute to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the Redistributed Amount); and

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

10.2.2 The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under clause 10.2.1.1 above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

### **10.3 Deferral of subrogation**

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

10.3.2 No Subordinated Creditor will exercise any rights which it may have to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor until such time as all of the Liabilities owing to each Creditor (other than a Subordinated Creditor) have been irrevocably discharged in full.

## **11. Enforcement of Transaction Security**

### **11.1 SFA Cash Cover**

This clause 11 is subject to clause 17.3 (*Treatment of SFA Cash Cover*).

### **11.2 Enforcement Instructions**

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

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

11.2.3 The Security Agent is entitled to rely on and comply with instructions given in accordance with this clause 11.2.

**11.3 Manner of enforcement**

If the Transaction Security is being enforced pursuant to clause 11.2 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Security Agent) as the Majority Senior Creditors shall instruct.

**11.4 Exercise of voting rights**

11.4.1 Each Creditor (other than the Senior Agent and each Senior Arranger) will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent.

11.4.2 The Security Agent shall give instructions for the purposes of clause 11.4.1 above in accordance with any instructions given to it by the Majority Senior Creditors.

**11.5 Waiver of rights**

To the extent permitted under applicable law and subject to clause 11.2 (*Enforcement Instructions*), clause 11.3 (*Manner of enforcement*), clause 13.4 (*Fair value*) and clause 17 (*Application of Proceeds*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

**11.6 Duties owed**

Each of the Secured Parties and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security prior to the Final Discharge Date, the duties of the Security Agent and of any Receiver or Delegate shall, subject to clause 13.4 (*Fair value*), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors under general law.

**11.7 Enforcement through Security Agent only**

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

## **12. Non-Distressed Disposals**

### **12.1 Definitions**

In this clause 12:

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

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

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

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

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

**12.2.1** If a disposal of an asset is a Non-Distressed Disposal, the Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) but subject to clause 12.2.2 below:

**12.2.1.1** to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;

**12.2.1.2** where that asset consists of shares in the capital of a member of the Group, to release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group's Property; and

**12.2.1.3** to execute and deliver or enter into any release of the Transaction Security or any claim described in clauses 12.2.1.1 and 12.2.1.2 above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.

**12.2.2** Each release of Transaction Security or any claim described in clause 12.2.1 above shall become effective only on the making of the relevant Non-Distressed Disposal.

### **12.3 Disposal Proceeds**

If any Disposal Proceeds are required to be applied in mandatory prepayment of the Senior Facility Liabilities then, subject to clause 15.4 (*Adjustment of Mandatory Prepayments*), those Disposal Proceeds shall be applied in or towards Payment of the Senior Facility Liabilities in accordance with the terms of the Senior Facilities

Agreement and the consent of any other Party shall not be required for that application.

### 13. Distressed Disposals and Appropriation

#### 13.1 Facilitation of Distressed Disposals and Appropriation

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

13.1.1 ***release of Transaction Security/non-crystallisation certificates:*** to release the Transaction Security or any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;

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

13.1.2.1 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;

13.1.2.2 any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and

13.1.2.3 any other claim of a Subordinated Creditor, an Intra-Group Lender, or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

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

13.1.3.1 that Holding Company and any Subsidiary of that Holding Company from all or any part of:

- (a) its Borrowing Liabilities;
- (b) its Guarantee Liabilities; and

(c) its Other Liabilities;

13.1.3.2 any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and

13.1.3.3 any other claim of a Subordinated Creditor, an Intra-Group Lender or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtors;

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

13.1.4.1 the Liabilities (other than Liabilities due to the Senior Agent or Senior Arranger); or

13.1.4.2 the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables (the Transferee) will not be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Creditors and Debtors provided that notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement;

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

13.1.5.1 the Liabilities (other than Liabilities due to the Senior Agent or Senior Arranger); or

13.1.5.2 the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables will be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of:

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

- (b) all or part of any other Liabilities (other than Liabilities owed to the Senior Agent or any Senior Arranger) and the Debtors' Intra-Group Receivables,

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

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

**13.1.6.1** the Intra-Group Liabilities; or

**13.1.6.2** the Debtors' Intra-Group Receivables,

to execute and deliver or enter into any agreement to:

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

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

Subject to clause 14.5 (*Security Agent protection*), a Distressed Disposal or a Debt Disposal may be made in whole or in part for consideration in the form of cash or, if not for cash, for Non-Cash Consideration which is acceptable to the Security Agent.

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

The net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Security Agent for application in accordance with clause 17 (*Application of Proceeds*) and, to the extent that:

**13.3.1** any Liabilities Sale has occurred; or

**13.3.2** any Appropriation has occurred,

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



**13.4 Fair value**

**13.4.1 In the case of:**

**13.4.1.1 a Distressed Disposal or;**

**13.4.1.2 a Liabilities Sale,**

effected by, or at the request of, the Security Agent, the Security Agent shall take reasonable care to obtain a fair market price having regard to the prevailing market conditions (though the 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).

**13.4.2 The requirement in clause 13.4.1 above shall be satisfied (and as between the Creditors and the Debtors shall be conclusively presumed to be satisfied) and the Security Agent will be taken to have discharged all its obligations in this respect under this Agreement, the other Debt Documents and generally at law if:**

**13.4.2.1 that Distressed Disposal or Liabilities Sale is made pursuant to any process or proceedings approved or supervised by or on behalf of any court of law;**

**13.4.2.2 that Distressed Disposal or Liabilities Sale is made by, at the direction of or under the control of, a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer (or any analogous officer in any jurisdiction) appointed in respect of a member of the Group or the assets of a member of the Group;**

**13.4.2.3 that Distressed Disposal or Liabilities Sale is made pursuant to a Competitive Sales Process; or**

**13.4.2.4 a Financial Adviser appointed by the Security Agent pursuant to clause 13.5 (*Appointment of Financial Adviser*) has delivered a Fairness Opinion to the Security Agent in respect of that Distressed Disposal or Liabilities Sale.**

**13.5 Appointment of Financial Adviser**

**13.5.1 Without prejudice to clause 19.7 (*Rights and discretions*), the Security Agent may engage, or approve the engagement of, (in each case on such terms as it may consider appropriate (including, without limitation, restrictions on that Financial Adviser's liability and the extent to which any advice, valuation or opinion may be relied on or disclosed)), pay for and rely on the services of a Financial Adviser to provide advice, a valuation or an opinion in connection with:**

**13.5.1.1 a Distressed Disposal or a Debt Disposal;**

**13.5.1.2 the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal; or**

13.5.1.3 any amount of Non-Cash Consideration which is subject to clause 9.2 (*Turnover by the Creditors*).

13.5.2 For the purposes of clause 13.5.1 above, the Security Agent shall act:

13.5.2.1 on the instructions of the Majority Senior Creditors if the Financial Adviser is providing a valuation for the purposes of clause 14.2 (*Cash value of Non-Cash Recoveries*); or

13.5.2.2 otherwise in accordance with clause 13.6 (*Security Agent's actions*).

#### **13.6 Security Agent's actions**

For the purposes of clause 13.1 (*Facilitation of Distressed Disposals and Appropriation*), clause 13.2 (*Form of consideration for Distressed Disposals and Debt Disposals*) and clause 13.4 (*Fair Value*) the Security Agent shall act:

13.6.1 in the case of an Appropriation or if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with clause 11.3 (*Manner of enforcement*); and

13.6.2 in any other case on the instructions of the Majority Senior Creditors.

### **14. Non-Cash Recoveries**

#### **14.1 Security Agent and Non-Cash Recoveries**

To the extent the Security Agent receives or recovers any Non-Cash Recoveries, it may (acting on the instructions of the Majority Senior Creditors) but without prejudice to its ability to exercise discretion under clause 17.2 (*Prospective liabilities*):

14.1.1 distribute those Non-Cash Recoveries pursuant to clause 17 (*Application of proceeds*) as if they were Cash Proceeds;

14.1.2 hold, manage, exploit, collect, realise and dispose of those Non-Cash Recoveries; and

14.1.3 hold, manage, exploit, collect, realise and distribute any resulting Cash Proceeds.

#### **14.2 Cash value of Non-Cash Recoveries**

14.2.1 The cash value of any Non-Cash Recoveries shall be determined by reference to a valuation obtained by the Security Agent from a Financial Adviser appointed by the Security Agent pursuant to clause 13.5 (*Appointment of Financial Adviser*) taking into account any notional conversion made pursuant to clause 17.5 (*Currency conversion*).

14.2.2 If any Non-Cash Recoveries are distributed pursuant to clause 17 (*Application of proceeds*), the extent to which such distribution is treated as discharging the Liabilities shall be determined by reference to the cash

value of those Non-Cash Recoveries determined pursuant to clause 14.2.1 above.

**14.3 Senior Agent and Non-Cash Recoveries**

14.3.1 Subject to clause 14.3.2 below and to clause 14.4 (*Alternative to Non-Cash Consideration*), if, pursuant to clause 17.1 (*Order of application*), the Senior Agent receives Non-Cash Recoveries for application towards the discharge of any Liabilities, the Senior Agent shall apply those Non-Cash Recoveries in accordance with the Senior Facilities Agreement as if they were Cash Proceeds.

14.3.2 The Senior Agent may:

14.3.2.1 use any reasonably suitable method of distribution, as it may determine in its discretion, to distribute those Non-Cash Recoveries in the order of priority that would apply under the Senior Facilities Agreement if those Non-Cash Recoveries were Cash Proceeds;

14.3.2.2 hold any Non-Cash Recoveries through another person; and

14.3.2.3 hold any amount of Non-Cash Recoveries for so long as the Senior Agent shall think fit for later application pursuant to clause 14.3.1 above.

**14.4 Alternative to Non-Cash Consideration**

14.4.1 If any Non-Cash Recoveries are to be distributed pursuant to clause 17 (*Application of proceeds*), the Security Agent shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify the Senior Creditors entitled to receive those Non-Cash Recoveries pursuant to that distribution (the **Entitled Creditors**).

14.4.2 If:

14.4.2.1 it would be unlawful for an Entitled Creditor to receive such Non-Cash Recoveries (or it would otherwise conflict with that Entitled Creditor's constitutional documents for it to do so); and

14.4.2.2 that Entitled Creditor promptly so notifies the Security Agent and supplies such supporting evidence as the Security Agent may reasonably require,

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

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

14.4.3.1 the Security Agent shall not distribute any Retained Non-Cash to that Cash Only Creditor (or to the Senior Agent on behalf of

that Cash Only Creditor) but shall otherwise treat the Non-Cash Recoveries in accordance with this Agreement;

14.4.3.2 if that Cash Only Creditor is a Senior Facility Creditor the Security Agent shall notify the Senior Agent of that Cash Only Creditor's identity and its status as a Cash Only Creditor; and

14.4.3.3 to the extent notified pursuant to clause 14.4.3.2 above, the Senior Agent shall not distribute any of those Non-Cash Recoveries to that Cash Only Creditor.

14.4.4 Subject to clause 14.5 (*Security Agent protection*), the Security Agent shall hold any Retained Non-Cash and shall, acting on the instructions of the Cash Only Creditor entitled to it, manage, exploit, collect, realise and dispose of that Retained Non-Cash for cash consideration and shall distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with clause 17 (*Application of proceeds*).

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

14.4.5.1 the valuation which determined the extent to which the distribution of the Non-Cash Recoveries to the other Entitled Creditors discharged the Liabilities due to those Entitled Creditors; and

14.4.5.2 the Retained Non-Cash to which those Cash Proceeds are attributable.

14.4.6 Each Senior Creditor shall, following a request by the Security Agent (acting in accordance with clause 13.6 (*Security Agent's actions*)), notify the Security Agent of the extent to which clause 14.4.2.1 above would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries.

#### **14.5 Security Agent protection**

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

14.5.2 If Non-Cash Consideration is distributed to the Security Agent pursuant to clause 9.2 (*Turnover by the Creditors*) the Security Agent may, at any time after notifying the Creditors entitled to that Non-Cash Consideration and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Non-Cash Consideration for cash consideration (and distribute any Cash Proceeds of that Non-Cash Consideration to the relevant Creditors in accordance with clause 17 (*Application of Proceeds*))

if the Security Agent (acting on the instructions of the Majority Senior Creditors) has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.

- 14.5.3 If the Security Agent holds Retained Non-Cash for a Cash Only Creditor (each as defined in clause 14.4 (*Alternative to Non-Cash Consideration*)) the Security Agent may at any time, after notifying that Cash Only Creditor and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Retained Non-Cash for cash consideration (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with clause 17 (*Application of proceeds*)) if the Security Agent (acting on the instructions of the Majority Senior Creditors) has reasonable grounds for believing that holding, managing, exploiting or collecting that Retained Non-Cash would have an adverse effect on it.

## **15. Acquisition and Insurance Claims**

### **15.1 Facilitation of claims**

- 15.1.1 In this clause 15.1, **Acquisition** has the meaning given to that term in the Senior Facilities Agreement.

- 15.1.2 So long as the requirements of clause 15.2 (*Mandatory prepayment of Proceeds*) and, in the case of a claim against the provider of any Report, the requirements of clause 15.3 (*Recoveries from Report Providers*) are met, if any claim relating to the Acquisition or insurance claim is to be made, or is made, by a Debtor prior to a Distress Event and that claim or that insurance claim (or any proceeds of that claim or insurance claim (the **Proceeds**)) is or are expressed to be subject to the Transaction Security, the 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, other Secured Party or Debtor) to:

- 15.1.2.1 give a consent under or release the Transaction Security, or any other claim, over the relevant document or insurance policy solely to the extent necessary to allow that Debtor to make that claim or that insurance claim and to comply with that Debtor's obligations in respect of that claim or that insurance claim and any Proceeds under the Senior Facilities Agreement; and

- 15.1.2.2 execute and deliver or enter into any such consent under or release of that Transaction Security, or claim, that may, in the discretion of the Security Agent, be considered necessary or desirable.

### **15.2 Mandatory prepayment of Proceeds**

If any Proceeds are required to be applied in mandatory prepayment of the Senior Facility Liabilities then, subject to clause 15.4 (*Adjustment of Mandatory Prepayments*), those Proceeds shall be applied in or towards Payment of the Senior

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

**15.3 Recoveries from Report Providers**

**15.3.1 In this clause 15.3:**

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

**Net Award** means any amount received or recovered by any Party in relation to any Proceedings less reasonable legal costs and expenses incurred by that Party in pursuing such Proceedings and any tax payable by that Party directly as a result of that receipt or recovery;

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

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

**15.3.2 If any Party decides to commence Proceedings in relation to, or resulting from, any of the transactions contemplated by the Debt Documents, it will:**

**15.3.2.1** give the other Parties reasonable prior notice (through the Security Agent) of its intention to do so;

**15.3.2.2** give each other Party and any insolvency representative appointed under, or pursuant to the terms of, any Senior Finance Document or Hedging Agreement a reasonable opportunity to be joined into such Proceedings or initiate similar proceedings; and

**15.3.2.3** co-operate with any such persons who are joined in as regards the efficient and effective conduct of such Proceedings,

and, in any event, no Party shall at any time waive any right or claim against any Report Provider without the prior written consent of the Security Agent.

**15.3.3 Notwithstanding any other provision in the Debt Documents, no Debtor or Subordinated Creditor may initiate Proceedings unless and until the Security Agent has given its prior written consent.**

**15.3.4 If no Distress Event has occurred at the time of receipt of a Net Award, and the Senior Facilities Agreement requires Award Proceeds obtained by the Parent to be applied in mandatory prepayment of the Senior Facility Liabilities, the recipient of that Net Award (if not the Parent) shall pay the Award Proceeds to the Parent for application in accordance, subject to clause 15.4 (*Adjustment of Mandatory Prepayments*), with the Senior Facilities Agreement.**

15.3.5 If a Distress Event has occurred at the time of receipt of a Net Award, the recipient of that Net Award shall pay the Award Proceeds to the Security Agent and the Security Agent shall apply those Award Proceeds in accordance with clause 17 (*Application of Proceeds*).

15.3.6 This clause 15.3 shall apply until the Final Discharge Date.

**15.4 Adjustment of Mandatory Prepayments**

If the making of any Mandatory Prepayment (an *Original Mandatory Prepayment*) would result in a payment (a *Hedge Reduction Payment*) becoming due to any Hedge Counterparty pursuant to clause 4.13.4 (*Total Interest Rate Hedging*), the amount of that Mandatory Prepayment will be reduced so that the aggregate of:

15.4.1 the reduced Mandatory Prepayment; and

15.4.2 each Hedge Reduction Payment which would result from that reduced Mandatory Payment

is equal to the amount of the Original Mandatory Prepayment.

**16. Further Assurance – Disposals and Releases**

Each Creditor and Debtor will:

16.1 do all things that the Security Agent requests in order to give effect to clause 12 (*Non-Distressed Disposals*), clause 13 (*Distressed Disposals and Appropriation*) and clause 15 (*Acquisition and insurance claims*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by those clauses); and

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

provided that the proceeds of those disposals are applied in accordance with clause 12 (*Non-Distressed Disposals*) or clause 13 (*Distressed Disposals and Appropriation*) as the case may be.

**17. Application of Proceeds**

**17.1 Order of application**

Subject to clause 17.2 (*Prospective liabilities*) and clause 17.3 (*Treatment of SFA Cash Cover*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this clause 17, the *Recoveries*) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this clause 17), in the following order of priority:

- 17.1.1 in discharging any sums owing to the Security Agent, any Receiver or any Delegate;
- 17.1.2 in discharging all costs and expenses incurred by any Senior Creditor in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under clause 8.6 (*Further assurance – Insolvency Event*);
- 17.1.3 in payment or distribution to:
  - 17.1.3.1 the Senior Agent on its own behalf and on behalf of the other Senior Facility Creditors; and
  - 17.1.3.2 the Hedge Counterparties
 for application towards the discharge of:
  - (a) the Senior Facility Liabilities (in accordance with the terms of the Senior Finance Documents); and
  - (b) the Hedging Liabilities (on a *pro rata* basis between the Hedging Liabilities of each Hedge Counterparty);
 on a *pro rata* basis between paragraph (a) above and paragraph (b) above;
- 17.1.4 if none of the Debtors is under any further actual or contingent liability under any Senior Finance Document or Hedging Agreement in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and
- 17.1.5 the balance, if any, in payment or distribution to the relevant Debtor.

## **17.2 Prospective liabilities**

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

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

in each case for so long as the Security Agent shall think fit for later application under clause 17.1 (*Order of application*) in respect of:

- 17.2.2.1 any sum to any Security Agent, any Receiver or any Delegate; and



17.2.2.2 any part of the Liabilities,

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

### **17.3 Treatment of SFA Cash Cover**

17.3.1 Nothing in this Agreement shall prevent any Ancillary Lender taking any Enforcement Action in respect of any SFA Cash Cover which has been provided for it in accordance with the Senior Facilities Agreement.

17.3.2 To the extent that any SFA Cash Cover is not held with the Relevant Ancillary Lender, all amounts from time to time received or recovered in connection with the realisation or enforcement of that SFA Cash Cover shall be paid to the Security Agent and shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:

17.3.2.1 to the Relevant Ancillary Lender towards the discharge of the Senior Facility Liabilities for which that SFA Cash Cover was provided; and

17.3.2.2 the balance, if any, in accordance with clause 17.1 (*Order of application*).

17.3.3 To the extent that any SFA Cash Cover is held with the Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Ancillary Lender receiving and retaining any amount in respect of that SFA Cash Cover.

### **17.4 Investment of Cash Proceeds**

Prior to the application of the proceeds of the Security Property in accordance with clause 17.1 (*Order of Application*) the Security Agent may, in its discretion, hold all or part of any Cash Proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this clause 17.

### **17.5 Currency conversion**

17.5.1 For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may:

17.5.1.1 convert any moneys received or recovered by the Security Agent (including, without limitation, any Cash Proceeds) from one currency to another, at the Security Agent's Spot Rate of Exchange; and

17.5.1.2 notionally convert the valuation provided in any opinion or valuation from one currency to another, at the Security Agent's Spot Rate of Exchange.

17.5.2 The obligations of any Debtor to pay in the due currency shall only be satisfied:

17.5.2.1 in the case of clause 17.5.1.1 above, to the extent of the amount of the due currency purchased after deducting the costs of conversion; and

17.5.2.2 in the case of clause 17.5.1.2 above, to the extent of the amount of the due currency which results from the notional conversion referred to in that clause.

#### **17.6 Permitted Deductions**

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

#### **17.7 Good Discharge**

17.7.1 Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent:

17.7.1.1 may be made to the relevant Senior Agent on behalf of its Senior Creditors;

17.7.1.2 may be made to the Relevant Ancillary Lender in accordance with 17.3.2.1 (*Treatment of SFA Cash Cover*); or

17.7.1.3 shall be made directly to the Hedge Counterparties.

17.7.2 Any distribution or payment made as described in clause 17.7.1 above shall be a good discharge, to the extent of that payment or distribution, by the Security Agent:

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

17.7.2.2 in the case of a distribution of Non-Cash Recoveries, as determined by clause 14.2 (*Cash value of Non-Cash Recoveries*).

17.7.3 The Security Agent is under no obligation to make the payments to the Senior Agent or the Hedge Counterparties under clause 17.7.1 above in the same currency as that in which the Liabilities owing to the relevant

Senior Creditor are denominated pursuant to the relevant Debt Document.

#### **17.8 Calculation of Amounts**

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

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

17.8.2 assume that all amounts received or recovered as a result of the enforcement or realisation of the Security Property are applied in discharge of the Liabilities in accordance with the terms of the Debt Documents under which those Liabilities have arisen.

### **18. Equalisation**

#### **18.1 Equalisation Definitions**

For the purposes of this clause 18:

**Enforcement Date** means the first date (if any) on which a Senior 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.

**Exposure** means:

(a) in relation to a Senior Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations outstanding under the Senior Facilities 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 between Senior Lenders pursuant to any loss-sharing arrangement in the Senior Facilities Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Senior Facilities Agreement and amounts owed to it by a Debtor in respect of any Ancillary Facility but excluding any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that SFA Cash Cover has been provided by a Debtor in respect of that amount and is available to that Senior Lender pursuant to the relevant SFA Cash Cover Document; and

(b) 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 Hedging 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.

## **18.2 Implementation of equalisation**

- 18.2.1 The provisions of this clause 18 shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate.
- 18.2.2 Without prejudice to the generality of clause 18.2.1 above, if the provisions of this clause 18 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the Senior Creditors shall make appropriate adjustment payments amongst themselves.

### **18.3 Equalisation**

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

### **18.4 Turnover of enforcement proceeds**

If:

18.4.1 the Security Agent or the Senior Agent 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 Creditors but is entitled to pay or distribute those amounts to Senior Creditors (such Senior Creditors, the Receiving Creditors) who, in accordance with the terms of this Agreement, are subordinated in right and priority of payment to the Senior Creditors; and

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

then the Receiving Creditors shall make such payments or distributions to the Senior Creditors as the Security Agent shall require to place the Senior Creditors in the position they would have been in had such amounts been available for application against the Senior Liabilities.

### **18.5 Notification of Exposure**

Before each occasion on which it intends to implement the provisions of this clause 18, the Security Agent shall send notice to each Hedge Counterparty and the Senior Agent (on behalf of the Senior Lenders) requesting that it notify it of, respectively, its Exposure and that of each Senior Lender (if any).

### **18.6 Default in payment**

If a Senior Creditor fails to make a payment due from it under this clause 18, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Senior Creditor(s) in respect of costs) but shall have no liability or obligation towards such Senior Creditor(s), any other Senior Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

**19. The Security Agent**

**19.1 Security Agent as trustee**

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

**19.2 Instructions**

**19.2.1 The Security Agent shall:**

- 19.2.1.1 subject to clauses 19.2.4 and 19.2.5 below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Majority Senior Creditors; and
- 19.2.1.2 not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with clause 19.2.1.1 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).

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

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

**19.2.4 Clause 19.2.1 above shall not apply:**

- 19.2.4.1 where this Agreement requires the Security Agent to act in a specified manner or to take a specified action; or
- 19.2.4.2 in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, clauses 19.5 (*No duty to account*) to clause 19.10 (*Exclusion of liability*), clause 19.13 (*Confidentiality*) to clause

19.20 (*Custodians and nominees*) and clause 19.23 (*Acceptance of title*) to clause 19.26 (*Disapplication of Trustee Acts*).

- 19.2.5 If giving effect to instructions given by the Majority Senior Creditors would (in the Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless written consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.
- 19.2.6 The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security and/or prefunding that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- 19.2.7 Without prejudice to the remainder of this clause 19.2, in the absence of instructions, the Security Agent shall have no liability for any failure to take action.

### **19.3 Duties of the Security Agent**

- 19.3.1 The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- 19.3.2 The Security Agent shall promptly:
  - 19.3.2.1 forward to each Senior Agent and to each Hedge Counterparty a copy of any document received by the Security Agent from any Debtor under any Debt Document; and
  - 19.3.2.2 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.
- 19.3.3 Except where a Debt Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 19.3.4 Without prejudice to clause 23.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Senior Default and stating that the circumstance described is a Senior Default, it shall promptly notify the Senior Creditors.
- 19.3.5 To the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, the Security Agent shall upon a request by that Party, promptly notify that Party of the relevant Security Agent's Spot Rate of Exchange.
- 19.3.6 The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied).

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

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

**19.5 No duty to account**

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

**19.6 Business with the Group**

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

**19.7 Rights and discretions**

**19.7.1 The Security Agent may:**

19.7.1.1 rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

19.7.1.2 assume that:

- (a) any instructions received by it from the Majority Senior Creditors, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents;
- (b) unless it has received notice of revocation, that those instructions have not been revoked; and
- (c) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Debt Documents for so acting have been satisfied; and

19.7.1.3 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.

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



- 19.7.2.1 no Senior Default has occurred;
- 19.7.2.2 any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and
- 19.7.2.3 any notice made by the Parent is made on behalf of and with the consent and knowledge of all the Debtors.
- 19.7.3 The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- 19.7.4 Without prejudice to the generality of clause 19.7.3 above or clause 19.7.5 below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Senior Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.
- 19.7.5 The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- 19.7.6 The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:
  - 19.7.6.1 be liable for any error of judgment made by any such person; or
  - 19.7.6.2 be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- 19.7.7 Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- 19.7.8 Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- 19.7.9 Notwithstanding any provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of

such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

**19.8 Responsibility for documentation**

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

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

**19.9 No duty to monitor**

The Security Agent shall not be bound to enquire:

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

**19.10 Exclusion of liability**

19.10.1 Without limiting clause 19.10.2 below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:

19.10.1.1 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;

19.10.1.2 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;

19.10.1.3 any shortfall which arises on the enforcement or realisation of the Security Property; or

19.10.1.4 without prejudice to the generality of clauses 19.10.1.1 to 19.10.1.3 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.

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

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

19.10.3.1 any know your customer or other checks in relation to any person; or

19.10.3.2 any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Senior Creditor,

on behalf of any Senior Creditor and each Senior Creditor confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.

19.10.4 Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Debt Document or the Security Property shall be

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

#### **19.11 Senior Creditors' Indemnity to the Security Agent**

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

19.11.2 For the purposes only of clause 19.11.1 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:

19.11.2.1 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

19.11.2.2 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.

- 19.11.3 Subject to clause 19.11.4 below, the Parent shall immediately on demand reimburse any Senior Creditor for any payment that Senior Creditor makes to the Security Agent pursuant to clause 19.11.1.
- 19.11.4 Clause 19.11.3 above shall not apply to the extent that the indemnity payment in respect of which the Senior Creditor claims reimbursement relates to a liability of the Security Agent to a Debtor.

**19.12 Resignation of the Security Agent**

- 19.12.1 The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Senior Creditors and the Parent.
- 19.12.2 Alternatively the Security Agent may resign by giving 30 days' notice to the Senior Creditors and the Parent, in which case the Majority Senior Creditors may appoint a successor Security Agent.
- 19.12.3 If the Majority Senior Creditors have not appointed a successor Security Agent in accordance with clause 19.12.2 above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Senior Agent and the Hedge Counterparties) may appoint a successor Security Agent.
- 19.12.4 The retiring Security Agent shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- 19.12.5 The Security Agent's resignation notice shall only take effect upon:
  - 19.12.5.1 the appointment of a successor; and
  - 19.12.5.2 the transfer of all the Security Property to that successor.
- 19.12.6 Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under clause 19.24.2 (*Winding up of trust*) and clause 19.12.4 above) but shall remain entitled to the benefit of this clause 19 and clause 22.1 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- 19.12.7 The Majority Senior Creditors may, by notice to the Security Agent, require it to resign in accordance with clause 19.12.2 above. In this event,

the Security Agent shall resign in accordance with clause 19.12.2 above but the cost referred to in clause 19.12.4 above shall be for the account of the Parent.

**19.13 Confidentiality**

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

**19.14 Information from the Creditors**

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

**19.15 Credit appraisal by the Secured Parties**

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

- 19.15.1 the financial condition, status and nature of each member of the Group;
- 19.15.2 the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- 19.15.3 whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Security Property, the transactions contemplated by the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- 19.15.4 the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Debt Document, the transactions contemplated by

any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and

- 19.15.5 the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

**19.16 Security Agent's management time and additional remuneration**

- 19.16.1 Any amount payable to the Security Agent under clause 19.11 (*Senior Creditors' indemnity to the Security Agent*), clause 21 (*Costs and expenses*) or clause 22.1 (*Indemnity to the Security Agent*) shall, while a Senior Event of Default is continuing, include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Parent and the Senior Creditors, and is in addition to any other fee paid or payable to the Security Agent.

- 19.16.2 Without prejudice to clause 19.16.1 above, in the event of:

19.16.2.1 a Senior Event of Default; or

19.16.2.2 the Security Agent being requested by a Debtor or the Majority Senior Creditors to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Debt Documents; or

19.16.2.3 the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to clause 19.16.3 below.

- 19.16.3 If the Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in clause 19.16.2 above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the Parties.

**19.17 Reliance and engagement letters**

The Security Agent may obtain and rely on any certificate or report from any Debtor's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report on such terms as it may consider appropriate

(including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

**19.18 No responsibility to perfect Transaction Security**

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

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

**19.19 Insurance by Security Agent**

19.19.1 The Security Agent shall not be obliged:

19.19.1.1 to insure any of the Charged Property;

19.19.1.2 to require any other person to maintain any insurance; or

19.19.1.3 to verify any obligation to arrange or maintain insurance contained in any Debt Document,

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

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



**19.20 Custodians and nominees**

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

**19.21 Delegation by the Security Agent**

19.21.1 Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.

19.21.2 That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.

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

**19.22 Additional Security Agents**

19.22.1 The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:

19.22.1.1 if it considers that appointment to be in the interests of the Secured Parties;

19.22.1.2 for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or

19.22.1.3 for obtaining or enforcing any judgment in any jurisdiction,

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

19.22.2 Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Debt Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.

19.22.3 The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment

shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

**19.23 Acceptance of title**

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

**19.24 Winding up of trust**

If the Security Agent, with the approval of the Senior Agent and each Hedge Counterparty, determines that:

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

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

then:

19.24.2.1 the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Senior Security Documents; and

19.24.2.2 any Security Agent which has resigned pursuant to clause 19.12 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Senior Security Document.

**19.25 Powers supplemental to Trustee Acts**

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

**19.26 Disapplication of Trustee Acts**

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

**19.27 Intra-Group Lenders and Debtors: Power of Attorney**

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

**20. Changes to the Parties**

**20.1 Assignments and transfers**

No Party may:

20.1.1 assign any of its rights; or

20.1.2 transfer any of its rights and obligations,

in respect of any Debt Documents or the Liabilities except as permitted by this clause 20.

**20.2 No change of Parent**

The Parent may not:

20.2.1 assign any of its rights; or

20.2.2 transfer any of its rights and obligations,

in respect of the Parent Liabilities until after the Final Discharge Date other than as envisaged by clause 6.4 (*No acquisition of Parent Liabilities*).

**20.3 No change of Vendors**

Subject to clause 7.4 (*No acquisition of Subordinated Liabilities*), a Vendor may:

20.3.1 assign any of its rights; or

20.3.2 transfer any of its rights and obligations,

in respect of the Subordinated Liabilities owed to it if any assignee or transferee has (if not already party to this Agreement as a Vendor) acceded to this Agreement, as a Vendor, pursuant to clause 20.11 (*Creditor Accession Undertaking*).

**20.4 Change of Investor or Senior Management**

Subject to clause 7.4 (*No acquisition of Subordinated Liabilities*), an Investor or a Manager may:

20.4.1 assign any of its rights; or

20.4.2 transfer any of its rights and obligations,

in respect of the Subordinated Liabilities owed to it if any assignee or transferee has (if not already party to this Agreement as an Investor or a Manager, as the case may be) acceded to this Agreement, as an Investor or a Manager (whichever is relevant), pursuant to clause 20.11 (*Creditor Accession Undertaking*).

**20.5 Change of Senior Lender**

A Senior Lender may:

20.5.1 assign any of its rights; or

20.5.2 transfer by novation any of its rights and obligations,

in respect of any Debt Documents or the Liabilities if:

20.5.2.1 that assignment or transfer is in accordance with the terms of the Senior Facilities Agreement to which it is a party; and

20.5.2.2 any assignee or transferee has (if not already a Party as a Senior Lender) acceded to this Agreement, as a Senior Lender (as the case may be), pursuant to clause 20.11 (*Creditor Accession Undertaking*).

**20.6 Change of Hedge Counterparty**

A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already a Party as a Hedge Counterparty and a party to the Senior Facilities Agreement as a Hedge Counterparty) acceded to:

20.6.1 this Agreement, pursuant to clause 20.11 (*Creditor Accession Undertaking*); and

20.6.2 the Senior Facilities Agreement,  
as a Hedge Counterparty.

**20.7 Change of Senior Agent**

No person shall become a Senior Agent unless at the same time, it accedes to this Agreement as a Senior Agent, pursuant to clause 20.11 (*Creditor Accession Undertaking*).

**20.8 Change of Intra-Group Lender**

Subject to clause 5.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may:

20.8.1 assign any of its rights; or

20.8.2 transfer any of its rights and obligations,

in respect of the Intra-Group Liabilities (excluding Structural 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 20.11 (*Creditor Accession Undertaking*).

**20.9 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, 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 20.11 (*Creditor Accession Undertaking*).

**20.10 New Ancillary Lender**

If any Affiliate of a Senior Facility Creditor becomes an Ancillary Lender in accordance with the Senior Facilities 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 a Party as a Senior Facility Creditor) acceded to this Agreement as a Senior Facility Creditor pursuant to clause 20.11 (*Creditor Accession Undertaking*) and, to the extent required by the Senior Facilities Agreement, to the Senior Facilities Agreement as an Ancillary Lender.

**20.11 Creditor Accession Undertaking**

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

- 20.11.1 any Party ceasing entirely to be a Creditor shall be discharged from further obligations towards the Security Agent and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date);
- 20.11.2 as from that date, the replacement or new Creditor shall assume the same obligations and become entitled to the same rights, as if it had been an original Party in the capacity specified in the Creditor Accession Undertaking; and
- 20.11.3 to the extent envisaged by the Senior Facilities Agreement, any new Ancillary Lender (which is an Affiliate of a Senior Facility Creditor) or any party acceding to this Agreement as a Hedge Counterparty shall also become party to the Senior Facilities Agreement as an Ancillary Lender or Hedge Counterparty (as the case may be) and shall assume the same obligations and become entitled to the same rights as if it had been an original party to the Senior Facilities Agreement as an Ancillary Lender or Hedge Counterparty (as the case may be).

**20.12 New Debtor**

**20.12.1 If any member of the Group:**

20.12.1.1 incurs any Liabilities; or

20.12.1.2 gives any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities

the Debtors will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor, in accordance with clause 20.12.3 below, no later than contemporaneously with the incurrance of those Liabilities or the giving of that assurance.

**20.12.2** If any Affiliate of a Senior Borrower becomes a borrower of an Ancillary Facility in accordance with the Senior Facilities Agreement, the relevant Senior 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.

**20.12.3** With effect from the date of acceptance by the Security Agent of a Debtor Accession Deed duly executed and delivered to the 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 as a Debtor.

**20.13 Additional parties**

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

**20.13.2** In the case of a Creditor Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Senior Facility Creditor) or any party acceding to this Agreement as a Hedge Counterparty:

20.13.2.1 the Security Agent shall, as soon as practicable after signing and accepting that Creditor Accession Undertaking in accordance with clause 20.13.1 above, deliver that Creditor Accession Undertaking to the Senior Agent; and

20.13.2.2 the Senior Agent shall, as soon as practicable after receipt by it, sign and accept that Creditor Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.

## **20.14 Resignation of a Debtor**

20.14.1 No Senior Guarantor may cease to be party to the Senior Facilities Agreement as a Senior Guarantor in accordance with that agreement unless each Hedge Counterparty has notified the Security Agent:

20.14.1.1 that no payment is due from that Senior Guarantor to that Hedge Counterparty under those agreements; or

20.14.1.2 that it otherwise consents to that Senior Guarantor ceasing to be a Senior Guarantor under those agreements.

The Security Agent shall, upon receiving that notification, notify the Senior Agent.

20.14.2 The Parent may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.

20.14.3 The Security Agent shall accept a Debtor Resignation Request and notify the Parent and each other Party of its acceptance if:

20.14.3.1 the Parent has confirmed that no Senior Default is continuing or would result from the acceptance of the Debtor Resignation Request;

20.14.3.2 to the extent that the Senior Facilities Discharge Date has not occurred, the Senior Agent notifies the Security Agent that that Debtor is not, or has ceased to be, a Senior Borrower or a Senior Guarantor;

20.14.3.3 each Hedge Counterparty notifies the Security Agent that that Debtor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities; and

20.14.3.4 the Parent confirms that that Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities and the Parent Liabilities.

20.14.4 Upon notification by the 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.

## **21. Costs and Expenses**

### **21.1 Transaction expenses**

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

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

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

**21.2 Amendment costs**

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

**21.3 Enforcement and preservation costs**

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

**21.4 Stamp taxes**

The Parent shall pay and, within three 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.

**21.5 Interest on demand**

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is seven per cent. per annum over the rate at which the Security Agent was being offered, by leading banks in the London interbank market, deposits in an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the 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.

**21.6 Security Agent's Exceptional Management Time Expenses**

Notwithstanding any provisions to the contrary in this Agreement or any other Finance Document, the Parent shall, while a Senior Event of Default is continuing or before the occurrence of a Senior Event of Default in connection with any exceptional duties undertaken by the Security Agent (including, without limitation, investigating and taking other actions where the Security Agent has reasonable grounds to suspect a Senior Default has occurred) pay to the Security Agent on demand, and the Parent shall indemnify the Security Agent for the cost of utilising the Security Agent's management time or other resources (which will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may



notify to the Parent and the Senior Creditors, and is in addition to any other fee paid or payable to the Security Agent).

## **22. Other Indemnities**

### **22.1 Indemnity to the Security Agent**

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

**22.1.1.1** any failure by the Parent to comply with its obligations under clause 21 (*Costs and expenses*) and clause 19 (*Costs and expenses*) of the Senior Facilities Agreement ;

**22.1.1.2** acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;

**22.1.1.3** the taking, holding, protection or enforcement of the Transaction Security;

**22.1.1.4** the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;

**22.1.1.5** any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;

**22.1.1.6** instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or

**22.1.1.7** acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).

**22.1.2** Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this clause 22.1 will not be prejudiced by any release or disposal under clause 13 (*Distressed Disposals and Appropriation*) taking into account the operation of that clause 13.

**22.1.3** The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause 22.1 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.

**22.2 Parent's indemnity to Senior Creditors**

The Parent shall promptly and as principal obligor indemnify each Senior Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of clause 13 (*Distressed Disposals and Appropriation*).

**23. Information**

**23.1 Dealings with Security Agent and Senior Agent**

23.1.1 Subject to clause 34.5 (*Communication when Agent is Impaired Agent*) of the Senior Facilities Agreement, each Senior Facility Creditor shall deal with the Security Agent exclusively through the Senior Agent and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through the Senior Agent.

23.1.2 The Senior Agent shall not be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.

**23.2 Disclosure between Senior Creditors and Security Agent**

Notwithstanding any agreement to the contrary, each of the Debtors and the Subordinated Creditors consents, until the Final Discharge Date, to the disclosure by any Senior Creditor and the Security Agent to each other (whether or not through the Senior Agent or the Security Agent) of such information concerning the Debtors and the Subordinated Creditors as any Senior Creditor or the Security Agent shall see fit.

**23.3 Notification of prescribed events**

23.3.1 If a Senior Event of Default or Senior Default either occurs or ceases to be continuing the Senior Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty.

23.3.2 If a Senior Acceleration Event occurs the Senior Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.

23.3.3 If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.

23.3.4 If any Senior Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.

23.3.5 If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Senior Agent and each other Hedge Counterparty.

- 23.3.6 If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Senior Agent and each other Hedge Counterparty.
- 23.3.7 If a Mandatory Prepayment is waived the Senior Agent shall notify the Security Agent of the amount of the Mandatory Prepayment waived and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty.
- 23.3.8 If any of the Term Outstandings are to be reduced (whether by way of repayment, prepayment, cancellation or otherwise) the Parent shall notify each Hedge Counterparty of:
  - 23.3.8.1 the date and amount of that proposed reduction; and
  - 23.3.8.2 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.

## **24. Notices**

### **24.1 Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **24.2 Security Agent's communications with Senior Creditors**

The Security Agent shall be entitled to carry out all dealings:

- 24.2.1 with the Senior Facility Creditors through the Senior Agent and may give to the Senior Agent any notice or other communication required to be given by the Security Agent to a Senior Facility Creditor; and
- 24.2.2 with each Hedge Counterparty directly with that Hedge Counterparty.

### **24.3 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

- 24.3.1 in the case of the Parent or the Company, that identified with its name below;
- 24.3.2 in the case of the Security Agent, that identified with its name below; and
- 24.3.3 in the case of each other Party, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,

or any substitute address, fax number or department or officer which that Party may notify to the Security Agent (or the Security Agent may notify to the other Parties, if a change is made by the Security Agent) by not less than five Business Days' notice.

**24.4 Delivery**

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

24.4.1.1 if by way of fax, when received in legible form; or

24.4.1.2 if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under clause 24.3 (*Addresses*), if addressed to that department or officer.

24.4.2 Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

24.4.3 Any communication or document made or delivered to the Parent in accordance with this clause 24.4 will be deemed to have been made or delivered to each of the Debtors.

24.4.4 Any communication or document which becomes effective, in accordance with clauses 24.1 to 24.3 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

**24.5 Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to clause 24.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

**24.6 Electronic communication**

24.6.1 Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:

24.6.1.1 notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

24.6.1.2 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.

24.6.2 Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

24.6.3 Any electronic communication which becomes effective, in accordance with clause 24.6.2 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

**24.7 English language**

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

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

24.7.2.1 in English; or

24.7.2.2 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.

**25. Preservation**

**25.1 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.

**25.2 No impairment**

If, at any time after its date, any provision of a Debt Document (including this Agreement) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that Debt Document, neither the binding nature nor the enforceability of that provision or any other provision of that Debt Document will be impaired as against the other party(ies) to that Debt Document.

**25.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Debt Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Debt Document. No election to affirm any Debt Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent

any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Debt Document are cumulative and not exclusive of any rights or remedies provided by law.

#### **25.4 Waiver of defences**

The provisions of this Agreement or any Transaction Security will not be affected by an act, omission, matter or thing which, but for this clause 25.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- 25.4.1 any time, waiver or consent granted to, or composition with, any Debtor or other person;
- 25.4.2 the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- 25.4.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 25.4.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor or other person;
- 25.4.5 any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or security;
- 25.4.6 any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;
- 25.4.7 any intermediate Payment of any of the Liabilities owing to the Senior Creditors in whole or in part; or
- 25.4.8 any Insolvency or similar proceedings.

#### **25.5 Priorities not affected**

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

- 25.5.1 not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities owing to the Senior Creditors or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;

- 25.5.2 apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and
- 25.5.3 secure the Liabilities owing to the Senior Creditors in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

**26. Consents, Amendments and Override**

**26.1 Required consents**

- 26.1.1 Subject to clause 26.1.2 below, to clause 26.4 (*Exceptions*) and to clause 26.5 (*Disenfranchisement of Sponsor Affiliates*):

- 26.1.1.1 clause 18.1 (*Equalisation Definitions*) to clause 18.3 (*Equalisation*) may be amended or waived with the written consent of the Senior Agent, the Majority Senior Lenders and the Security Agent; and

- 26.1.1.2 subject to clause 26.1.1.1 above, this Agreement may be amended or waived only with the written consent of the Senior Agent, the Majority Senior Lenders and the Security Agent.

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

- 26.1.2.1 clause 10 (*Redistribution*), clause 17 (*Application of Proceeds*) or this clause 26 (*Consents, Amendments and Override*);

- 26.1.2.2 clauses 19.2.4.2, 19.2.5 and 19.2.6 (*Instructions*);

- 26.1.2.3 the order of priority or subordination under this Agreement,

shall not be made without the written consent of:

- (a) the Senior Agent;
    - (b) the Senior Lenders;
    - (c) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty); and
    - (d) the Security Agent.

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

- 26.2.1 Subject to clause 26.2.2 below and to clause 26.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Majority Senior Creditors, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.

26.2.2 Subject to clause 26.4.3 (*Exceptions*), any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:

26.2.2.1 the nature or scope of the Charged Property;

26.2.2.2 the manner in which the proceeds of enforcement of the Transaction Security are distributed; or

26.2.2.3 the release of any Transaction Security,

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

### **26.3 Effectiveness**

26.3.1 Any amendment, waiver or consent given in accordance with this clause 26 will be binding on all Parties and the Security Agent may effect, on behalf of any Senior Creditor, any amendment, waiver or consent permitted by this clause 26.

26.3.2 Without prejudice to the generality of clause 19.7 (*Rights and discretions*) the Security Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

### **26.4 Exceptions**

26.4.1 Subject to clauses 26.4.3 and 26.4.4 below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:

26.4.1.1 in the case of a Senior Creditor (other than the Senior Agent or any Senior Arranger), in a way which affects or would affect Senior Creditors of that Party's class generally; or

26.4.1.2 in the case of a Debtor, to the extent consented to by the Parent under clause 26.2.1 (*Amendments and Waivers: Transaction Security Documents*),

the consent of that Party is required.

26.4.2 Subject to clauses 26.4.3 and 26.4.4 below, an amendment, waiver or consent which relates to the rights or obligations of the Senior Agent, a Senior Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the written consent of the Senior Agent or, as the case may be, that Senior Arranger, the Security Agent or that Hedge Counterparty.

26.4.3 Neither clause 26.4.1 nor 26.4.2 above, nor clause 26.2.2 (*Amendments and Waivers: Transaction Security Documents*) shall apply:



26.4.3.1 to any release of Transaction Security, claim or Liabilities; or

26.4.3.2 to any consent

which, in each case, the Security Agent gives in accordance with clause 12 (*Non-Distressed Disposals*) or clause 13 (*Distressed Disposals and Appropriation*), clause 15 (*Acquisition and Insurance Claims*).

26.4.4 Clauses 26.4.1 and 26.4.2 above shall apply to a Senior Arranger only to the extent that Liabilities are then owed to that Senior Arranger.

## **26.5 Disenfranchisement of Sponsor Affiliates**

26.5.1 For so long as a Sponsor Affiliate (i) beneficially owns a Commitment or (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:

26.5.1.1 in ascertaining:

(a) the Majority Senior Creditors; or

(b) whether:

(i) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations; or

(ii) the agreement of any specified group of Senior Creditors,

has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

that Senior Commitment shall be deemed to be zero and, subject to clause 26.5.1.2 below, that Sponsor Affiliate (or the person with whom it has entered into that sub-participation, other agreement or arrangement (a Counterparty)) shall be deemed not to be a Senior Lender.

26.5.1.2 Clause 26.5.1.1 above shall not apply to the extent that a Counterparty is a Senior Lender by virtue otherwise than by beneficially owning the relevant Senior Commitment.

26.5.2 Each Sponsor Affiliate that is a Senior Lender agrees that:

26.5.2.1 in relation to any meeting or conference call to which all the Senior Creditors are invited to attend or participate, it shall not attend or participate in the same if so requested by the Security Agent or, unless the Security Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and

26.5.2.2 it shall not, unless the Security Agent otherwise agrees, be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Security Agent or one or more of the Senior Creditors.

**26.6 Disenfranchisement of Defaulting Lenders**

26.6.1 For so long as a Defaulting Lender has any Available Commitment:

26.6.1.1 in ascertaining:

- (a) the Majority Senior Creditors; or
- (b) whether:
  - (i) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations; or
  - (ii) the agreement of any specified group of Senior Creditors,

has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

that Defaulting Lender's Commitments will be reduced by the amount of its Available Commitments and, to the extent that that reduction results in that Defaulting Lender's Commitments being zero, that Defaulting Lender shall be deemed not to be a Senior Lender.

26.6.2 For the purposes of this clause 26.6, the Security Agent may assume that the following Senior Creditors are Defaulting Lenders:

26.6.2.1 any Senior Lender which has notified the Security Agent that it has become a Defaulting Lender;

26.6.2.2 any Senior Lender to the extent that the Senior has notified the Security Agent that that Senior Lender is a Defaulting Lender; and

26.6.2.3 any Senior Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of Defaulting Lender in the Senior Facilities Agreement has occurred,

unless it has received notice to the contrary from the Senior Lender concerned (together with any supporting evidence reasonably requested by the Security Agent) or the Security Agent is otherwise aware that the Senior Lender has ceased to be a Defaulting Lender.

**26.7 Calculation of Senior Credit Participations**

For the purpose of ascertaining whether any relevant percentage of Senior Credit Participations has been obtained under this Agreement, the Security Agent may notionally convert the Senior Credit Participations into their Common Currency Amounts.

**26.8 Deemed consent**

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

26.8.1 give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and

26.8.2 do anything (including executing any document) that the Senior Facility Creditors may reasonably require to give effect to this clause 26.8.

**26.9 Excluded consents**

Clause 26.8 (*Deemed consent*) does not apply to any Consent which has the effect of:

26.9.1 increasing or decreasing the Liabilities;

26.9.2 changing the basis upon which any Permitted Payments are calculated (including the timing, currency or amount of such Payments); or

26.9.3 changing the terms of this Agreement or of any Senior Security Document.

**26.10 No liability**

None of the Senior Facility Creditors will be liable to any other Creditor, or Debtor for any Consent given or deemed to be given under this clause 26.

**26.11 Agreement to override**

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

**27. 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.

**28. Instrument of Alteration**

28.1 The Parties acknowledge and agree that this Agreement is an instrument of alteration in terms of Section 466 of the Companies Act 1985.

- 28.2 The Investor Loan Note Security Trustee and the Vendors confirm and undertake to the Senior Creditors that they will within 21 days of the date of this Agreement register the required details of this Agreement with the Registrar of Companies in Edinburgh in order for this Agreement to constitute a valid instrument of alteration in respect of any floating charges granted by companies incorporated in Scotland forming part of the Loan Note Security Documents.

**29. Governing Law**

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

**30. Enforcement**

**30.1 Jurisdiction**

- 30.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a Dispute).
- 30.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 30.1.3 This clause 30.1 is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

**30.2 Service of process**

In the event that, after the date of this Agreement, any Party is acceding to this Agreement as Debtor, Intra-Group Lender or Subordinated Creditor (each an **Acceding Party**) and is not incorporated, registered or domiciled (as the case may be) in the United Kingdom, the Senior Agent may (on the instructions of the Majority Lenders) require the Acceding Party to appoint an agent for service of process in relation to any proceedings before the English Courts and provide evidence of the acceptance of such appointment in a form and substance acceptable to the Agent (acting on the instructions of the Majority Lenders). Failing this, the Senior Agent may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Intra-Group Lenders, the Debtors, the Vendor, the Managers and the Investors and is intended to be and is delivered by them as a deed on the date specified above.

#### SCHEDULE 1 - FORM OF DEBTOR ACCESSION DEED

**THIS AGREEMENT** is made on [ ] and made between:

- (1) [Insert Full Name of New Debtor] (the **Acceding Debtor**); and
- (2) [Insert Full Name of Current Security Agent] (the **Security Agent**), for itself and each of the other parties to the intercreditor agreement referred to below.

This agreement is made on [date] by the **Acceding Debtor** in relation to an intercreditor agreement (the **Intercreditor Agreement**) dated [ ] between, amongst others, [ ] as parent, [ ] as company, [ ] as security agent, [ ] as senior 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 Agreement, bear the same meaning when used in this Agreement.
2. The **Acceding Debtor** and the **Security Agent** agree that the **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 **Security Agent** as trustee for the **Secured Parties** (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 **Security Agent** as trustee for the **Secured Parties**,

on trust for the **Secured Parties** 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 a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the **Intercreditor Agreement** and agrees that it shall be bound by all the provisions of the **Intercreditor Agreement** as if it had been an original party to the **Intercreditor Agreement**.

4. In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[4]/[5] This Agreement and any non-contractual obligations arising out of or in connection with it are governed by, English law.

THIS AGREEMENT has been signed on behalf of the Security Agent and executed as a deed by the Acceding Debtor and is delivered on the date stated above.

**The Acceding Debtor**

[EXECUTED AS A DEED

By: *[Full Name of Acceding Debtor]*

)

)

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

**OR**

[EXECUTED AS A DEED

By: *[Full name of Acceding Debtor]*

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness]

**Address for notices:**

**Address:**

**Fax:**

**The Security Agent**

***{Full Name of Current Security Agent}***

**By:**

**Date:**

**SCHEDULE 2 - FORM OF CREDITOR ACCESSION UNDERTAKING**

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

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

From: **[Acceding Creditor]**

THIS UNDERTAKING is made on [date] by [insert full name of new Senior Lender/Hedge Counterparty/Senior Agent/Senior Arranger/Intra-Group Lender/(Investor/Manager)] (the Acceding [Senior Lender/Hedge Counterparty/Senior Agent/Senior Arranger/Intra-Group Lender/(Investor/Manager)]) in relation to the intercreditor agreement (the Intercreditor Agreement) dated [ ] between, among others, [INSERT NAME OF PARENT] as parent, [INSERT NAME OF COMPANY] as company, [INSERT NAME OF SECURITY AGENT] as security agent, [INSERT NAME OF SENIOR AGENT] as senior agent the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

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

[The Acceding Lender is an Affiliate of a Senior Facility Creditor and has become a provider of an Ancillary Facility. In consideration of the Acceding Lender being accepted as an Ancillary Lender for the purposes of the Senior Facilities Agreement, the Acceding Lender confirms, for the benefit of the parties to the Senior Facilities Agreement, that, as from [date], it intends to be party to the Senior Facilities Agreement as an Ancillary Lender, and undertakes to perform all the obligations expressed in the Senior Facilities Agreement to be assumed by a Finance Party (as defined in the Senior Facilities

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\* Include only in the case of (i) a Hedge Counterparty or (ii) an Ancillary Lender which is an Affiliate of a Senior Lender which is using this undertaking to accede to the Senior Facilities Agreement in accordance with paragraph (c) of Clause 20.11 (Creditor Accession Undertaking).



Agreement) and agrees that it shall be bound by all the provisions of the Senior Facilities Agreement, as if it had been an original party to the Senior Facilities Agreement as an Ancillary Lender.]''

[The Acceding Hedge Counterparty has become a provider of hedging arrangements to the [Company]. In consideration of the Acceding Hedge Counterparty being accepted as a Hedge Counterparty for the purposes of the Senior Facilities Agreement, the Acceding Hedge Counterparty confirms, for the benefit of the parties to the Senior Facilities Agreement, that, as from [date], it intends to be party to the Senior Facilities Agreement as a Hedge Counterparty, and undertakes to perform all the obligations expressed in the Senior Facilities Agreement to be assumed by a Hedge Counterparty and agrees that it shall be bound by all the provisions of the Senior Facilities Agreement, as if it had been an original party to the Senior Facilities Agreement as a Hedge Counterparty.]'''

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

**THIS UNDERTAKING** has been entered into on the date stated above [and is executed as a deed by the Acceding Creditor, if it is acceding as an Intra-Group Lender [or an Investor][or a Manager] and is delivered on the date stated above].

Acceding [Creditor]

**[EXECUTED as a DEED]**

[insert full name of Acceding  
Creditor]

By:

Address:

Fax:

---

'' Include only in the case of an Ancillary Lender which is an Affiliate of a Senior Lender which is using this undertaking to accede to the Senior Facilities Agreement in accordance with paragraph (c) of Clause 20.11 (*Creditor Accession Undertaking*).

''' Include only in the case of a Hedge Counterparty which is using this undertaking to accede to the Senior Facilities Agreement in accordance with paragraph (c) of Clause 20.11 (*Creditor Accession Undertaking*).

Accepted by the Security Agent

[Accepted by the Senior Agent]

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

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

*[Insert full name of current Security Agent]*

*[Insert full name of Senior Agent]*

Date:

Date:]\*\*\*\*

\_\_\_\_\_  
\*\*\*\* Include only in the case of (i) a Hedge Counterparty or (ii) an Ancillary Lender which is an Affiliate of a Senior Lender which is using this undertaking to accede to the Senior Facilities Agreement.

CLY/001/017

EXECUTION COPY - Intercreditor Agreement

**SCHEDULE 3 - FORM OF DEBTOR RESIGNATION REQUEST**

To: [ ] as Security Agent

From: *[resigning Debtor]* and *[Parent]*

Dated:

Dear Sirs

**[Parent] - [ ] Intercreditor Agreement  
dated [ ] (the Intercreditor Agreement)**

- (1) We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
- (2) Pursuant to clause [20.14] (*Resignation of a Debtor*) of the Intercreditor Agreement we request that *[resigning Debtor]* be released from its obligations as a Debtor under the Intercreditor Agreement.
- (3) We confirm that:
  - (a) no Senior 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:

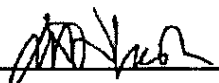
**SIGNATURES**

**The Debtors**

**The Parent**

**EXECUTED AS A DEED**

**By: ATR OFFSHORE HOLDINGS LIMITED**

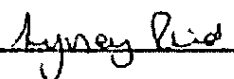


Signature of Director

EVAN LEASK

Name of Director

in the presence of



Signature of witness

LYNNE REID

Name of witness

UNION PLAZA (6th FLOOR),

Address of witness

LONDON W1ND

ABERDEEN

TRAINEE SOLICITOR

Occupation of witness

**Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW**

**Fax: 01224 708 573**

**Attention: The Finance Director**

**The Company**

**EXECUTED AS A DEED**

**By: ATR OFFSHORE GROUP LIMITED**

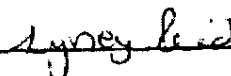


Signature of Director

EVAN LEASK

Name of Director

in the presence of



Signature of witness

LYNSEY REID

Name of witness

AS ABOVE

Address of witness

TRAINEE SOLICITOR

Occupation of witness

**Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW**


**Fax: 01224 708 573**

**Attention: The Finance Director**

**Other Original Debtors**

**EXECUTED AS A DEED**

**By: ATR HOLDINGS LIMITED**

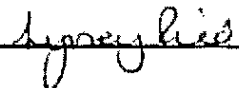


Signature of Director

EDWIN LEAK

Name of Director

in the presence of



Signature of witness

LYNSEY REID

Name of witness

AS ABOVE

Address of witness

TRAFFIC SOLICITOR

Occupation of witness

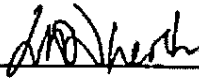
**Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW**

**Fax: 01224 708 573**

**Attention: The Finance Director**

EXECUTED AS A DEED

By: ATR EQUIPMENT SOLUTIONS LTD

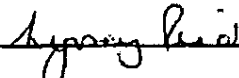


Signature of Director

EUAN LEASK

Name of Director

in the presence of



Signature of witness

LYNDEN REID

Name of witness

AS ABOVE

Address of witness

TRAINING SOLICITOR

Occupation of witness

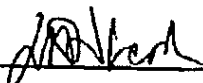
Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

By: **ATR POWER SOLUTIONS LTD**

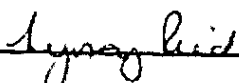


Signature of Director

EVAN LEASK

Name of Director

In the presence of



Signature of witness

LYNSEY REID

Name of witness

ABERDEEN

Address of witness

\_\_\_\_\_

\_\_\_\_\_

TRAINEE DIRECTOR

Occupation of witness

Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

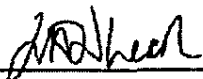
Fax: 01224 708 573

Attention: The Finance Director



EXECUTED AS A DEED

By: **ATR OVERSEAS LIMITED**

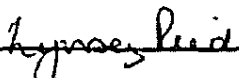


Signature of Director

EVAN LEACH

Name of Director

In the presence of



Signature of witness

LYNSEY REID

Name of witness

15 ABCE

Address of witness

TRAINEE SOLICITOR

Occupation of witness

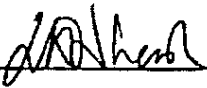
Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

By: **UNDERWATER ENGINEERING SERVICES LIMITED**

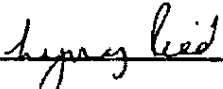


Signature of Director

EVAN LEASK

Name of Director

in the presence of



Signature of witness

LYNNE REID

Name of witness

AS ABOVE

Address of witness

\_\_\_\_\_

\_\_\_\_\_

TRAINEE SOLICITOR

Occupation of witness

Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

By: **ATR LIFTING SOLUTIONS LIMITED**

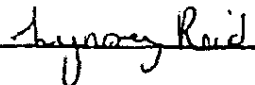


Signature of Director

EUAN LEAS

Name of Director

in the presence of



Signature of witness

LYNSEY REID

Name of witness

AS ABOVE

Address of witness

\_\_\_\_\_

TRAINING SOLICITOR

Occupation of witness

Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

By: COSALT OFFSHORE GROUP LIMITED

[Signature]

Signature of Director

IUAN LEASE

Name of Director

in the presence of

[Signature]

Signature of witness

LYNN RED

Name of witness

AS ABOVE

Address of witness

\_\_\_\_\_

\_\_\_\_\_

TRAINEE SOLICITOR

Occupation of witness

Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

By: **STH HOLDINGS LIMITED**

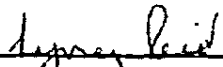
  
\_\_\_\_\_

Signature of Director

EUAN LEACH  
\_\_\_\_\_

Name of Director

in the presence of

  
\_\_\_\_\_

Signature of witness

LYNSEY REID  
\_\_\_\_\_

Name of witness

AS ABOVE  
\_\_\_\_\_

Address of witness

\_\_\_\_\_

\_\_\_\_\_

TRAINEE SOLICITOR  
\_\_\_\_\_

Occupation of witness


Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

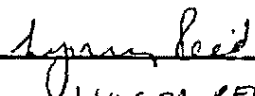
By: SAFETY & TECHNICAL HYDRAULICS LIMITED

  
\_\_\_\_\_  
EVAN LEASK

Signature of Director

Name of Director

in the presence of

  
\_\_\_\_\_  
LYNSEY REID

Signature of witness

Name of witness

  
\_\_\_\_\_  
A. A. REID

Address of witness

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
TRAINEE SOLICITOR

Occupation of witness

Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW


Fax: 01224 708 573

Attention: The Finance Director

The Security Agent

WELLS FARGO TRUST CORPORATION LIMITED

By:  Alex Blewer  
Vice President

 Conor Treacy  
Attorney

Address: Wells Fargo Trust Corporation Limited, One Plantation Place, 30 Fenchurch Street, London, EC3M 3BD

Fax: +44 (0) 207 149 7220

Email: cts.spglondon2@wellsfargo.com

Attention: Raphael Pariser

**The Senior Agent**

**WELLS FARGO BANK INTERNATIONAL**

By:

Address:

Wells Fargo Bank, N.A., 9062 Old Annapolis, 1<sup>st</sup> Floor, Columbia, MD21045-1951, USA

Fax:

+1 866 359 7131

Email:

cts.lcs@wellsfargo.com

Attention:

Katherine Millward

with a copy to:

Address:

Wells Fargo Bank International, 2 Harbourmaster Place, I.F.S.C. Dublin 1, Ireland

Fax:

+353 1 436 5798

Email

cts.spglondon2@wellsfargo.com

Attention:

Kieran O'Brien

**The Senior Lenders**

**CLYDESDALE BANK PLC**

By:

Address:

Clydesdale Bank PLC, 1 Queen's Cross, Aberdeen, AB15 4XU

Fax:

0844 736 0159

Attention:

Mike Scott Brown

**WELLS FARGO BANK N.A., LONDON BRANCH**

By:

Address:

Wells Fargo Bank, N.A., One Plantation Place, 30 Fenchurch Street, London, EC3M 3BD

Fax:

+44(0) 20 7929 4645

Attention:

European Loans Support

CLY/001/017

EXECUTION COPY - Intercreditor Agreement

**The Senior Agent**

**WELLS FARGO BANK INTERNATIONAL**

By:

Address: Wells Fargo Bank, N.A., 9062 Old Annapolis, 1<sup>st</sup> Floor, Columbia, MD21045-1951, USA

Fax: +1 866 359 7131

Email: cts.ics@wellsfargo.com

Attention: Katherine Millward

with a copy to:

Address: Wells Fargo Bank International, 2 Harbourmaster Place, I.F.S.C. Dublin 1, Ireland

Fax: +353 1 436 5798

Email: cts.spglondon2@wellsfargo.com

Attention: Kieran O'Brien

**The Senior Lenders**

**CLYDESDALE BANK PLC**

By:



Address: Clydesdale Bank PLC, 1 Queen's Cross, Aberdeen, AB15 4XU

Fax: 0844 736 0159

Attention: Mike Scott Brown

**WELLS FARGO BANK N.A., LONDON BRANCH**

By:



Address: Wells Fargo Bank, N.A., One Plantation Place, 30 Fenchurch Street, London, EC3M 3BD

Fax: +44(0) 20 7929 4645

Attention: European Loans Support



**The Senior Arrangers**

**WELLS FARGO BANK N.A., LONDON BRANCH**

By:

Address: Wells Fargo Bank, N.A., One Plantation Place, 30 Fenchurch Street, London,  
EC3M 3BD

Fax: +44(0) 20 7929 4645

Attention: European Loans Support

**CLYDESDALE BANK PLC**

By:

Address: Clydesdale Bank PLC, 1 Queen's Cross, Aberdeen, AB15 4XU

Fax: 0844 736 0159

Attention: Mike Scott Brown

**The Hedge Counterparties**

**CLYDESDALE BANK PLC**


By:

Address: Clydesdale Bank PLC, 1 Queen's Cross, Aberdeen, AB15 4XU

Fax: 0844 736 0159

Attention: Mike Scott Brown

**WELLS FARGO SECURITIES INTERNATIONAL LIMITED**

By: 

Address: 30 Fenchurch Street, 1 Plantation Place, 8<sup>th</sup> Floor, London, EC3M 3BD

Fax: +1 (877) 564-8524

Attention: General Counsel

CLY/001/017

EXECUTION COPY - Intercreditor Agreement

**The Senior Arrangers**

**WELLS FARGO BANK N.A., LONDON BRANCH**

By:



Address: Wells Fargo Bank, N.A., One Plantation Place, 30 Fenchurch Street, London, EC3M 3BD

Fax: +44(0) 20 7929 4645

Attention: European Loans Support

**CLYDESDALE BANK PLC**

By:



Address: Clydesdale Bank PLC, 1 Queen's Cross, Aberdeen, AB15 4XU

Fax: 0844 736 0159

Attention: Mike Scott Brown

**The Hedge Counterparties**

**CLYDESDALE BANK PLC**

By:



Address: Clydesdale Bank PLC, 1 Queen's Cross, Aberdeen, AB15 4XU

Fax: 0844 736 0159

Attention: Mike Scott Brown

**WELLS FARGO SECURITIES INTERNATIONAL LIMITED**

By:

Address: 30 Fenchurch Street, 1 Plantation Place, 8<sup>th</sup> Floor, London, EC3M 3BD

Fax: +1 (877) 564-8524

Attention: General Counsel

**The Intra-Group Lenders**

**EXECUTED AS A DEED**

**By: ATR OFFSHORE HOLDINGS LIMITED**

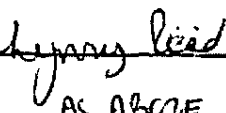


Signature of Director

EVAN LEASK

Name of Director

in the presence of

 LYNSEY REID

Signature of witness

AS ABOVE

Name of witness

\_\_\_\_\_

Address of witness

\_\_\_\_\_

\_\_\_\_\_

TRAINER SOLICITOR

Occupation of witness


**Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW**

**Fax: 01224 708 573**

**Attention: The Finance Director**

EXECUTED AS A DEED

By: **ATR OFFSHORE GROUP LIMITED**

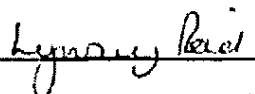


Signature of Director

EVAN LEASK

Name of Director

in the presence of



Signature of witness

LYNSEY REID

Name of witness

AS ABOVE

Address of witness

\_\_\_\_\_

TRAINING SOLICITOR

Occupation of witness

Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

By: **ATR HOLDINGS LIMITED**



Signature of Director

EVAN LEACH

Name of Director

in the presence of



Signature of witness

LYNNE REID

Name of witness

14 ABERC

Address of witness

TRAINING SCHEDULE

Occupation of witness

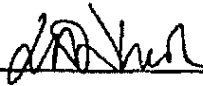
Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

By: **ATR EQUIPMENT SOLUTIONS LTD**

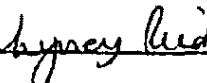


Signature of Director

CUMMINGS

Name of Director

in the presence of



Signature of witness

LYNSEY BEID

Name of witness

AS ABOVE

Address of witness

\_\_\_\_\_

\_\_\_\_\_

TECHNICAL SECRETARY

Occupation of witness

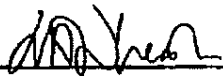
Address: **c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW**

Fax: **01224 708 573**

Attention: **The Finance Director**

EXECUTED AS A DEED

By: **ATR POWER SOLUTIONS LTD**



Signature of Director

EVAN LEUNG

Name of Director

in the presence of



Signature of witness

LINSEY REID

Name of witness

AS ABOVE

Address of witness

\_\_\_\_\_

\_\_\_\_\_

TRAINING SELLER

Occupation of witness

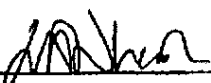
Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

By: **ATR OVERSEAS LIMITED**

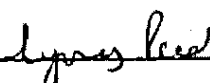


Signature of Director

EVAN LEASK

Name of Director

in the presence of



Signature of witness

LYNSEY REID

Name of witness

AS ABOVE

Address of witness

\_\_\_\_\_

\_\_\_\_\_

TRAINEE SELECTOR

Occupation of witness

Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director



EXECUTED AS A DEED

By: UNDERWATER ENGINEERING SERVICES LIMITED




Signature of Director

EUAN LEASK

Name of Director

in the presence of



Signature of witness

LYNSEY ROD

Name of witness

AS ABOVE

Address of witness

\_\_\_\_\_

\_\_\_\_\_

- RA/NEE SOLICITOR

Occupation of witness

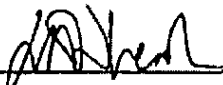
Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

By: COSALT OFFSHORE GROUP LIMITED

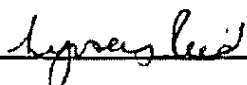


Signature of Director

EUAN LOCK

Name of Director

in the presence of



Signature of witness

LYNSEY REID

Name of witness

AS AB23 8JW

Address of witness

TRAINING SECRETARY

Occupation of witness

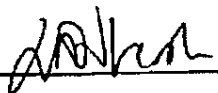
Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

By: **ATR LIFTING SOLUTIONS LIMITED**

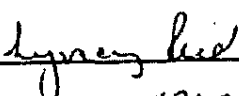


Signature of Director

EVAN LUSK

Name of Director

in the presence of



Signature of witness

LYNSEY REID

Name of witness

AB ABCE

Address of witness

TRAINWEE SOLICITOR

Occupation of witness


Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

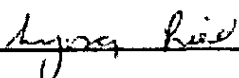
By: **STH HOLDINGS LIMITED**

  
EVAN LEASK

Signature of Director

Name of Director

In the presence of

  
LYSE RIE

Signature of witness

Name of witness

AS ABOVE

Address of witness

\_\_\_\_\_

TONY SCULCHER

Occupation of witness

Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

EXECUTED AS A DEED

By: SAFETY & TECHNICAL HYDRAULICS LIMITED

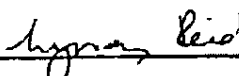


Signature of Director

EUAN LOCK

Name of Director

in the presence of



Signature of witness

LYNSEY REID

Name of witness

AS ABOVE

Address of witness

\_\_\_\_\_

TRAINEE SOLICITOR

Occupation of witness

Address: c/o ATR Group, Denmore Road, Bridge of Don, Aberdeen, AB23 8JW

Fax: 01224 708 573

Attention: The Finance Director

The Vendors

IAIN ANDREW FERGUSON

EXECUTED AS A DEED

By: IAIN ANDREW FERGUSON

Iain Ferguson

Signature of Vendor

in the presence of

James & George Collicott

Signature of witness

IANES RICHARD MURPHY

Name of witness

JAMES & GEORGE COLLICOTT LLP

Address of witness

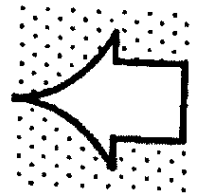
1 EAST CRAIBSTONE

STREET, ABERDEEN,

AB11 6YP

SOLICITOR

Occupation of witness



STUART INNES MORRISON

EXECUTED AS A DEED

By: STUART INNES MORRISON

Stuart Morrison

Signature of Vendor

in the presence of

Andrew

Signature of witness

INNES RICHARD MILLER

Name of witness

AS ABOVE

Address of witness

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SOLICITOR

Occupation of witness

MARK HISLOP

EXECUTED AS A DEED

By: MARK HISLOP

Mark Hislop

Signature of Vendor

in the presence of

Iones Richard Miller

Signature of witness

IONES RICHARD MILLER

Name of witness

AS ABOVE

Address of witness

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SOLICITOR

Occupation of witness



The Investors

NBGI PRIVATE EQUITY (TRANCHE II) LP

EXECUTED AS A DEED

By: NBGI PRIVATE EQUITY  
(TRANCHE II) LP acting through its manager  
NBGI PRIVATE EQUITY LIMITED acting by its  
duly authorised attorney

Rupert Brown  
.....  
RUPERT BROWN  
.....

Signature of Attorney

Name of Attorney

Antoine Radux  
Antoine RADUX

in the presence of

H. Ross  
HELEN ROSS  
18 REDVERS GREEN  
BISHOPS STORTFORD  
CM23 2DZ

Signature of witness

Name of witness

Address of witness

Charlotte Röber  
Charlotte Röber  
1A Postrevor Road  
SW6 SAX London

ACCOUNT MANAGER

Occupation of witness

Engineer.

The Investor Loan Note Security Trustee

NBGI PRIVATE EQUITY (TRANCHE II) LP

EXECUTED AS A DEED

By: NBGI PRIVATE EQUITY  
(TRANCHE II) LP acting through its manager  
NBGI PRIVATE EQUITY LIMITED acting by its  
duly authorised attorney

Rupert Brown

RUPERT BROWN

Signature of Attorney

Name of Attorney

Antoine RAOUX

in the presence of

H. Ross  
HELEN ROSS  
18 REDVERS GREEN  
BISHOPS STORTFORD  
CM23 2DE

Signature of witness

Name of witness

Address of witness

Charlotte Röben  
Charlotte Röben  
1A Postrevor Road  
SW6 5AX London

ACCOUNT MANAGER

Occupation of witness


Engineer

The Senior Management

KEITH MOORHOUSE

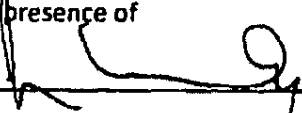
EXECUTED AS A DEED

By: KEITH MOORHOUSE

  
\_\_\_\_\_

Signature of Keith Moorhouse

in the presence of

  
\_\_\_\_\_

Signature of witness

JOHN KENNEDY  
\_\_\_\_\_

Name of witness

UNION PLAZA  
\_\_\_\_\_

Address of witness

UNION HILL  
\_\_\_\_\_

ARLDEEN  
\_\_\_\_\_

\_\_\_\_\_

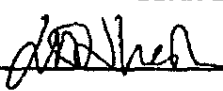
SLIGHTER  
\_\_\_\_\_

Occupation of witness

EUAN LEASK

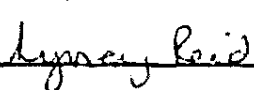
EXECUTED AS A DEED

By: EUAN LEASK

  
\_\_\_\_\_

Signature of Euan Leask

in the presence of

  
\_\_\_\_\_

Signature of witness

LUNSLIP RD  
\_\_\_\_\_

Name of witness

AS ABOVE  
\_\_\_\_\_

Address of witness

\_\_\_\_\_

\_\_\_\_\_

TRAINING SELLER  
\_\_\_\_\_

Occupation of witness

