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CHWP000

COMPANIES FORM No. 466(Scot)

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

466

Please do not
write in
this margin

Pursuant to section 410 and 466 of the Companies Act 1985

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

To the Registrar of Companies
(Address overleaf - Note 5)

For official use

Company number

6

SC499268

Name of company

* CLYDE DH LIMITED (the "Company")

* insert full name
of company

Date of creation of the charge (note 1)

15.12.2020

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

FLOATING CHARGE (the "Charge")

Names of the persons entitled to the charge

INVESTEC BANK PLC (as "Security Agent")

Short particulars of all the property charged

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

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

For official use (02/06)

Charges Section

Post room

THURSDAY



SCT *S9KKY7U0* 24/12/2020 #46
COMPANIES HOUSE

See continuation page.

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write in
this margin*

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

Date(s) of execution of the instrument of alteration

23.08.2018

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

N/A

Short particulars of any property released from the floating charge

N/A

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

N/A

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

*Please do not
write in
this margin*

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

Please refer to the instrument of alteration for full details of the ranking provisions.

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

Signed DLA Piper Scotland LLP

Date 18 December 2020

On behalf of [~~company~~] [chargee]†

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. The address of the Registrar of Companies is: Companies Registration Office, 139 Fountainbridge, Edinburgh EH3 9FF DX 235 Edinburgh

† delete as
appropriate

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

- (1) INVESTEC BANK PLC (in various capacities) of 30 Gresham Street, London EC2V 7QP
- (2) BEATTY TOPCO LIMITED (in various capacities) of 1 Park Row, Leeds LS1 5AB
- (3) CLYDE MUNRO GROUP LIMITED (in various capacities) of 163 Bath Street Glasgow G2 4SQ
- (4) SYNOVA CAPITAL FUND II LP (in various capacities) acting through its general partner, Synova Capital General Partnership II LP acting through its general partner, Synova Capital General Partner 4 Limited of 55 Wells Street, London, England W1T 3PT
- (5) Clive Charles Schmulian of 146 Terregles Avenue, Pollokshields, Glasgow G41 4RU
- (6) Stephen William Duncan of Westlands, Oakcroft Road, West Byfleet Surrey KT14 6JH
- (7) Clyde Munro Trustees Limited of 163 Bath Street Glasgow G2 4SQ
- (8) Clyde DH Limited (in various capacities) of 163 Bath Street Glasgow G2 4SQ
- (9) Clyde Dental Practice Limited (in various capacities) of 163 Bath Street Glasgow G2 4SQ



FILE COPY

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

**COMPANY NO. 499268
CHARGE CODE SC49 9268 0006**

**I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 15 DECEMBER 2020 WERE
DELIVERED PURSUANT TO SECTION 466 OF THE COMPANIES
ACT 1985
ON 24 DECEMBER 2020**

**THE INSTRUMENT RELATES TO A CHARGE CREATED ON 15
DECEMBER 2020**

BY CLYDE DH LIMITED

**IN FAVOUR OF
INVESTEC BANK PLC (AS "SECURITY TRUSTEE")**

GIVEN AT COMPANIES HOUSE, EDINBURGH 29 DECEMBER 2020



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

DATE 23.12.20

2020

CONFIRMATION DEED
relating to an Intercreditor Agreement
dated 23 August 2018

CONTENTS

1. DEFINITIONS AND INTERPRETATION 1

2. CONFIRMATION..... 2

3. MISCELLANEOUS 2

SCHEDULE: SUBORDINATED CREDITORS 4

EXECUTION PAGES 5

THIS CONFIRMATION DEED is made on

15 December

2020

BETWEEN:

- (1) **INVESTEC BANK PLC** as Agent;
- (2) **THE FINANCIAL INSTITUTIONS AND INDIVIDUALS LISTED IN THE SCHEDULE** as Subordinated Creditors;
- (3) **BEATTY TOPCO LIMITED** as Parent; and
- (4) **INVESTEC BANK PLC** as Security Agent.

BACKGROUND:

- A This Deed is supplemental to an intercreditor agreement dated 23 August 2018 and made between, among others, (1) the Agent, (2) the Senior Lenders, (3) the Arrangers, (4) the Subordinated Creditors, (5) the Parent, (6) the Company, (7) the Intra-Group Lenders, (8) the Debtors and (9) the Security Agent as the same may be amended, supplemented, novated and/or restated from time to time (the "**Intercreditor Agreement**").
- B On or around the date hereof, the Senior Facilities Agreement (as defined in the Intercreditor Agreement and as already amended and restated by way of an amendment and restatement agreement dated 13 September 2019 and as amended by way of amendment agreements dated 26 March 2020 and 13 October 2020) is to be amended and restated by way of an amendment and restatement agreement (the "**Amendment and Restatement Agreement**"). The parties to this Deed are party to the Intercreditor Agreement and are entering into this Deed for the purpose of confirming that the Intercreditor Agreement is to continue in full force and effect further to and notwithstanding such amendments.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- (a) Terms defined in, or construed for the purposes of, the Intercreditor Agreement have the same meanings when used in this Deed including the recitals to this Deed (unless otherwise defined in this Deed).
- (b) The principles of construction as set out in clause 1.2 (*Construction*) of the Intercreditor Agreement shall have effect as though they were set out in full in this Deed.
- (c) The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

1.2 Clauses

- (a) In this Deed any reference to a "**clause**" or "**schedule**" is, unless the context otherwise requires, a reference to a clause or schedule of this Deed.
- (b) Clause and schedule headings are for ease of reference only.

1.3 Continuing Obligations

Subject to the provisions of this Deed:

- (a) the Intercreditor Agreement shall remain in full force and effect;
- (b) the Intercreditor Agreement shall be read and construed as one document with this Deed; and
- (c) nothing in this Deed shall constitute a waiver or release of any right or remedy in relation to any provision of the Intercreditor Agreement other than as described in this Deed.

2. CONFIRMATION

- (a) Each Subordinated Creditor:
 - (i) confirms that the Intercreditor Agreement shall continue in full force and effect; and
 - (ii) ratifies and reaffirms all of its obligations under the Intercreditor Agreement, notwithstanding the amendments to the Senior Facilities Agreement effected by the Amendment and Restatement Agreement; and
- (b) confirms that any reference to the "Senior Facilities Agreement" (including to any term defined therein) in the Intercreditor Agreement is to be construed as a reference to the *Senior Facilities Agreement (and the relevant term therein) as amended by the Amendment and Restatement Agreement* and the terms of the Intercreditor Agreement shall be construed accordingly.

3. MISCELLANEOUS

3.1 Counterparts

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

3.2 Finance Document

The Agent and the Parent agree that this Deed is a Finance Document.

3.3 Third party rights

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

3.4 Governing law and jurisdiction of English courts

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English law. The provisions of clauses 26 (*Governing Law*) and 27 (*Enforcement*) of the Intercreditor Agreement shall apply to this Deed as if set out in full in this Deed.

IN WITNESS of which this Deed has been duly executed by the Subordinated Creditors and the Parent as a deed and duly executed by the Agent and the Security Agent and has been delivered on the first date specified on page 1 of this Deed.

SCHEDULE: SUBORDINATED CREDITORS

1. Synova Capital Fund II LP, partnership number LP015649
2. Clive Charles Schmulian, 146 Terregles Avenue, Pollokshields, Glasgow G41 4RU
3. Stuart Davidson, 9 Inverhouse Gardens, Inverkip, Greenock PA16 0GF
4. Stephen William Duncan, Westlands, Oakcroft Road, West Byfleet, Surrey KT14 6JH
5. Clyde Munro Trustees Limited (SC551311)
6. Lorna May Robson, 19 Glasclune Gardens, North Berwick, EH39 4RB

EXECUTION PAGES

Executed as a deed by)
BEATTY TOPCO LIMITED)

DocuSigned by:

01AE080B50854C8...

Signature of Director

Ron Robson

Name of Director

DocuSigned by:

5285BCD7DFA84FE...

Signature of Director

James Hall

Name of Director

Address: c/o Davidson Chalmers
Stewart, 163 Bath Street,
Glasgow G2 4SQ

Attention: the Company Secretary

THE SECURITY AGENT

INVESTEC BANK PLC

By:

DocuSigned by:

1E54ED3D6FF4403...

DocuSigned by:


4F33C8F7E9C047E...

Address: 30 Gresham Street, London, EC2V 7QP

Attention: Group Lending Operations Transaction Management Team

THE SUBORDINATED CREDITORS

Executed as a deed by)
SYNOVA CAPITAL FUND II LP acting)
by its general partner **SYNOVA CAPITAL**
GENERAL PARTNERSHIP II LP acting
by its general partner **SYNOVA CAPITAL**
GENERAL PARTNER 4 LIMITED
acting by its director in the presence of a
witness


DocuSigned by:

43B0238A3950474...

Daniel Parker

Signature of Director

Name of Director

in the presence of:

DocuSigned by:

5B214EA0BB1B475...

Majid Tufail

Signature of witness

Name of witness

144 Pinner Hill Road

Address of witness

Pinner

HA5 3SJ

Accountant

Occupation of witness

Address: 55 Wells Street, London, W1T
3PT

Attention: Chief Financial Officer

Executed as a deed by)
CLIVE CHARLES SCHMULIAN)

DocuSigned by:
[Redacted Signature]
762766007B8148B...

Signature

in the presence of:

DocuSigned by:
[Redacted Signature]
0C7C7A4D2562428...

Signature of witness

Nathan Schmulian

Name of witness

146 Terregles
Avenue

Address of witness

Pollokshields

Glasgow

Student

Occupation of witness

Address: 146 Terregles Avenue
Pollokshields,
Glasgow
G41 4RU

Executed as a deed by)
STUART DAVIDSON)

DocuSigned by:
[Redacted Signature]
A2C50C0753E7481...

Signature

in the presence of:

DocuSigned by:
[Redacted Signature]
B861E8A7BF9D433...

Signature of witness

Angela Cheshire

Name of witness

Angela Cheshire

Address of witness

Angela Cheshire

46 Bell Street

Dental Nurse

Occupation of witness

Address: 9 Inverhouse Gardens
Inverkip
Greenock, PA16 0GF

Executed as a deed by)
STEPHEN WILLIAM DUNCAN)

 Signature

in the presence of:

 Signature of witness

PAULA Duncan Name of witness

Westlands Address of witness


Oakcroft Road

West Byfleet

House wife Occupation of witness

Address: Westlands, Oakcroft Road
West Byfleet,
Surrey
KT14 6JH

Executed as a deed by)
CLYDE MUNRO TRUSTEES)
LIMITED

 Signature of Director

Ron Robson Name of Director

 Signature of Director


James Hall Name of Director

Address: c/o Davidson Chalmers
Stewart, 163 Bath Street,
Glasgow G2 4SQ

Attention: the Company Secretary

Executed as a deed by
LORNA MAY ROBSON

)
)
DocuSigned by:

 Signature
479FBCC567D447B...

in the presence of:

DocuSigned by:

 Signature of witness
A9DDBBFDEABD448...

Ron Robson

Name of witness

19 Glasclune
Gardens

Address of witness

North Berwick

EH39 4RB

Accountant

Occupation of witness

Address: 19 Glasclune Gardens
North Berwick
EH39 4RB

THE AGENT

INVESTEC BANK PLC

By:

DocuSigned by:
[Redacted Signature]
1E54ED3D8FF4403...
DocuSigned by:
[Redacted Signature]
4F33C8F7E9C047E...

Address: 30 Gresham Street, London, EC2V 7QP

Attention: Group Lending Operations Transaction Management Team

I CERTIFY THAT, SAVE FOR THE MATERIAL
REDACTED PURSUANT TO s.859G OF THE
COMPANIES ACT 2006, THIS IS A TRUE,
COMPLETE AND CORRECT COPY OF THE
ORIGINAL INSTRUMENT

DATE 23 December 2020

SIGNED

DLA Piper Scotland LLP

DLA PIPER SCOTLAND LLP
DATED

23 August 2018

(1) INVESTEC BANK PLC
as Senior Agent

(2) INVESTEC BANK PLC
as Senior Lenders

(3) INVESTEC BANK PLC
as Senior Arranger

(4) INVESTEC BANK PLC
as Hedge Counterparty

(5) THE ENTITIES LISTED IN PART 1 OF SCHEDULE 1
as Subordinated Creditors

(6) BEATTY TOPCO LIMITED
as Parent

(7) CLYDE MUNRO GROUP LIMITED
as Company

(8) SYNOVA CAPITAL FUND II LP as the Loan Note Security Trustee

(9) THE COMPANIES LISTED IN PART 2 OF SCHEDULE 1
as Intra-Group Lenders

(10) THE COMPANIES LISTED IN PART 3 OF SCHEDULE 1
as Original Debtors

- and -

(11) INVESTEC BANK PLC
as Security Agent

INTERCREDITOR AGREEMENT

DLA Piper UK LLP
Collins House
Rutland Square
Edinburgh
EH1 2AA

Tel: +44 (0) 8700 111 111
Fax: +44 (0) 131 242 5040

THIS AGREEMENT is made on

23 August 2018

BETWEEN:

- (1) **INVESTEC BANK PLC** as Senior Agent;
- (2) **INVESTEC BANK PLC** as Senior Lenders;
- (3) **INVESTEC BANK PLC** as Senior Arranger;
- (4) **INVESTEC BANK PLC** as Hedge Counterparty;
- (5) **THE ENTITIES** listed in part 1 of schedule 1 (*The Parties*) as the Subordinated Creditors (the "Original Subordinated Creditors");
- (6) **BEATTY TOPCO LIMITED** (Company Number 09874284) having its registered office at 1 Park Row, Leeds, LS1 5AB (the "Parent");
- (7) **CLYDE MUNRO GROUP LIMITED** (Company Number SC537109) having its registered office at 163 Bath Street, Glasgow, G2 4SQ; (the "Company");
- (8) **SYNOVA CAPITAL FUND II LP** (registered number LP015649) acting through its general partner, Synova Capital General Partnership II LP acting through its general partner, Synova Capital General Partner 4 Limited (registered number 09227597) in each case whose registered office is at 55 Wells Street, London, England, W1T 3PT as security trustee for the Noteholders (the "Loan Note Security Trustee");
- (9) **THE COMPANIES** listed in part 2 of schedule 1 (*The Parties*) as Intra-Group Lenders;
- (10) **THE COMPANIES** listed in part 3 of schedule 1 (*The Parties*) as Debtors (together with the Parent and the Company, the "Original Debtors"); and
- (11) **INVESTEC BANK PLC** as security trustee for the Secured Parties (the "Security Agent").

SECTION 1

INTERPRETATION

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement capitalised terms have the meaning given to them in the Senior Facilities Agreement unless otherwise defined in this Agreement and:

"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;

- (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);

"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, 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 Transaction Security" means any Transaction Security which to the extent legally possible:

- (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 (*Transaction Security*);

"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 Accession Undertaking" means:

- (a) an undertaking substantially in the form set out in schedule 3 (*Form of Creditor Accession Undertaking*); or
- (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 3 (*Form of Creditor Accession Undertaking*));

as the context may require, or

- (c) 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;

- (b) the enforcement of any Transaction Security;

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

- (a) being effected at the request of the Majority Senior Creditors in circumstances where the Transaction Security has become enforceable;
- (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
- (c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is, or are, not a member, or members, of the Group;

"Enforcement Action" means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Facility Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
 - (ii) the making of any declaration that any Liabilities are payable on demand;
 - (iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent (A) that the demand is made in the ordinary course of dealings between the relevant Debtor and Intra-Group Lender and (B) that any resulting Payment would be a Permitted Intra-Group Payment);
 - (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
 - (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability;
 - (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right:
 - (A) as Close-Out Netting by a Hedge Counterparty;
 - (B) as Payment Netting by a Hedge Counterparty;
 - (C) as Inter-Hedging Agreement Netting by a Hedge Counterparty; or
 - (D) 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

- (c) other independent professional services firm which is regularly engaged in providing valuations of businesses or financial assets;

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

"Guarantee Liabilities" means, in relation to a member of the Group, the liabilities and obligations (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (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);

"Hedge Counterparty" means:

- (a) any entity which is named on the signing pages as a Hedge Counterparty; and
- (b) any entity which becomes a Party as a Hedge Counterparty pursuant to clause 18.11 (*Creditor Accession Undertaking*),

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

"Hedging Agreement" means any agreement entered into by a Hedge Counterparty and defined as such in the Senior Facilities Agreement;

"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));
- (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);

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

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

- (a) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of that member of the Group, a moratorium is declared in relation to

- (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 12.1(e);

"Loan Note Security" means the Security created or evidenced or expressed to be created or evidenced in favour of the Loan Note Security Trustee under or pursuant to the Loan Note Security Documents;

"Loan Note Security Documents" has the meaning given to that term in the Senior Facilities Agreement;

"Loan Note Security Trust Deed" means the security trust deed dated 20 November 2015 and made between, amongst others, the Loan Note Security Trustee, the Noteholders and the Company;

"Majority Senior Creditors" means, at any time, those Senior Creditors whose Senior Credit Participations at that time aggregate more than sixty-six and two thirds 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 38.6 (*Excluded Commitments*);
- (b) clause 27.2(a) (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*); and
- (c) clause 38.7 (*Disenfranchisement of Defaulting Lenders*),

of the Senior Facilities Agreement;

"Permitted Hedge Close-Out" means, in relation to a hedging transaction under a Hedging Agreement, a termination or close-out of that hedging transaction which is permitted pursuant to clause 4.9 (*Permitted Enforcement: Hedge Counterparties*);

"Permitted Hedge Payments" means the Payments permitted by clause 4.3 (*Permitted Payments: Hedging Liabilities*);

"Permitted Intra-Group Payments" means the Payments permitted by clause 5.2 (*Permitted Payments: Intra-Group Liabilities*);

"Permitted Payment" means a Permitted Hedge Payment, a Permitted Intra Group Payment, a Permitted Senior Facility Payment or a Permitted Subordinated Creditor Payment;

"Permitted Senior Facility Payments" means the Payments permitted by clause 3.1 (*Payment of Senior Facility Liabilities*);

"Permitted Subordinated Creditor Payments" means the Payments permitted by clause 6.2 (*Permitted Payments: Subordinated Liabilities*);

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

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

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

"Recoveries" has the meaning given to that term in clause 16.1 (*Order of application*);

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

"Relevant Liabilities" means:

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

"Report" means any "Report" under and as defined in the Senior Facilities Agreement;

"Secured Obligations" means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each

"Senior Borrower" means a *"Borrower"* under and as defined in the Senior Facilities Agreement;

"Senior Commitment" means a *"Commitment"* under and as defined in the Senior Facilities Agreement;

"Senior Credit Participation" 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 Default" means a Default under the Senior Facilities Agreement;

"Senior Discharge Date" 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;

"Subordinated Liabilities" means the Liabilities owed to the Subordinated Creditors by Clyde DH Limited or any other member of the Group including, without limitation, under the Subordinated Debt Documents as such term is defined in the Senior Facilities Agreement;

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

"Term Outstandings" means, at any time, the aggregate of the amounts of principal (not including any capitalised or deferred interest) then outstanding under the Senior Term Facilities;

"Total Interest Rate Hedging" means, at any time, the aggregate of each Hedge Counterparty's Interest Rate Hedging at that time;

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

"VAT" means:

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

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) any "Ancillary Lender", "Company", "Creditor", "Debtor", "Hedge Counterparty", "Intra Group Lender", "the Loan Note Security Trustee", "Party", "Security Agent", "Senior Agent", "Senior Arranger", "Senior Borrower", "Senior Creditor", "Senior Facility Creditor", "Senior Guarantor", "Senior Lender" or "Subordinated Creditor" shall be construed to be a reference to it in its capacity as such and not in any other capacity;
 - (ii) any "Ancillary Lender", "Creditor", "Debtor", "Senior Agent", "Hedge Counterparty", "the Loan Note Security Trustee", "Party", "Senior Arranger" or "Subordinated Creditor" or the "Security Agent" or the "Senior Agent" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
 - (iii) an "amount" includes an amount of cash and an amount of Non-Cash Consideration;
 - (iv) "assets" includes present and future properties, revenues and rights of every description;

- (iii) clause 25.7 (*Insolvency proceedings*);
- (iv) clause 25.8 (*Creditor's process*);
- (v) clause 25.9 (*Unlawfulness and invalidity*);
- (vi) clause 25.11 (*Cessation of business*);
- (vii) clause 25.14 (*Audit qualification*); and
- (viii) clause 25.16 (*Repudiation and rescission of agreements*).

1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in clause 17.9(b) may, subject to this clause 1.3 and the Third Parties Act, rely on any clause of this Agreement which expressly confers rights on it.

SECTION 2

RANKING AND SENIOR CREDITORS

2. RANKING AND PRIORITY

2.1 Senior Liabilities

Each of the Parties agrees that the Senior Facility Liabilities and the Hedging Liabilities rank *pari passu* and without any preference between them.

2.2 Transaction Security and Loan Note Security

- (a) Each of the Parties agrees that the Transaction Security shall rank and secure (to the extent that such Transaction Security is expressed to secure those Liabilities) the Senior Facility Liabilities and the Hedging Liabilities *pari passu* and without any preference between them.
- (b) Each of the Parties agrees that the Transaction Security shall at all times rank in priority to the Loan Note Security.

2.3 Subordinated and Intra Group Liabilities

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

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:

- (a) 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 is, at the same time, also offered to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in clause 2.2 (*Transaction Security*); and
- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Senior Facility Liabilities in addition to those in:
 - (i) the Senior Facilities Agreement;
 - (ii) this Agreement; or
 - (iii) 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, 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 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:

- (a) the Common Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
 - (i) the Senior Facilities Agreement;
 - (ii) this Agreement; or
 - (iii) any Common Assurance;
- (c) indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in clause 3.6(b);
- (d) any SFA Cash Cover permitted under the Senior Facilities Agreement relating to any Ancillary Facility;
- (e) the indemnities contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Document which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case

- (b) Clause 3.7 (*Restriction on Enforcement: Ancillary Lenders*) shall not restrict any right of an Ancillary Lender:

- (i) to demand repayment or prepayment of any of the Liabilities owed to it prior to the expiry date of the relevant Ancillary Facility; or
- (ii) to net or set off in relation to a Multi-account Overdraft,

in accordance with the terms of the 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 Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings.

4. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

4.1 Identity of Hedge Counterparties

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:

- (i) a Party as a Hedge Counterparty; and
- (ii) a party to the Senior Facilities Agreement as a Hedge Counterparty.

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:

- (a) that Payment is permitted under clause 4.3 (*Permitted Payments: Hedging Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under clause 4.9(c).

4.3 Permitted Payments: Hedging Liabilities

- (a) Subject to clause 4.3(b), the Debtors may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Agreement in accordance with the terms of that Hedging Agreement:
 - (i) if the Payment is a scheduled Payment arising under the relevant Hedging Agreement;
 - (ii) to the extent that the relevant Debtor's obligation to make the Payment arises as a result of the operation of:
 - (A) any of sections 2(d) (*Deduction or Withholding for Tax*), 2(e) (*Default Interest; Other Amounts*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*) and 11 (*Expenses*) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);

- (b) No Payment may be made to a Hedge Counterparty under clause 4.3(a) 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 consent of the Majority Senior Creditors is obtained.
- (c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of clause 4.3(b) 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.

4.5 No acquisition of Hedging Liabilities

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

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

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

4.6 Amendments and Waivers: Hedging Agreements

- (a) Subject to clause 4.6(b), the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.
- (b) A Hedge Counterparty may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if that amendment or waiver does not breach another term of this 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:

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) the Senior Facilities Agreement;
 - (ii) this Agreement;
 - (iii) any Common Assurance; or

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

4.10 Required Enforcement: Hedge Counterparties

- (a) Subject to clause 4.10(b), a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
 - (i) the occurrence of a Senior Acceleration Event and delivery to it of a notice from the Security Agent that that Senior Acceleration Event has occurred; and
 - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Majority Senior Creditors) instructing it to do so.
- (b) Clause 4.10(a) 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.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under clause 4.9(b) (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).

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;

- (d) each Hedging Agreement will not provide for Automatic Early Termination:
- (e) 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
- (f) 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

- (a) The Parent shall procure that, at all times the Total Interest Rate Hedging does not exceed the Term Outstandings;
- (b) Subject to clause 4.13(a), if the Total Interest Rate Hedging is less than the Term Outstandings, a Debtor may (but shall be under no obligation to) enter into additional hedging arrangements to increase the Total Interest Rate Hedging;
- (c) 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;
- (d) 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(c).
- (e) Each Hedge Counterparty shall co-operate in any process described in clause 4.13(d) 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(c).

SECTION 3

OTHER CREDITORS

5. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES

5.1 Restriction on Payment: Intra-Group Liabilities

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

5.5 Security: Intra-Group Lenders

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

- (a) that Security, guarantee, indemnity or other assurance against loss is expressly permitted by the Senior Facilities Agreement; or
- (b) the prior 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 Senior 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 7.5 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

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

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:

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

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

6.6 Security: Subordinated Creditors

- (a) Subject to clause 6.6(b) and save for the Permitted Security, the Subordinated Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from any member of the Group in respect of any of the Subordinated Liabilities prior to the Senior Discharge Date.
- (b) The restrictions in clause 6.6(a) shall not apply to the Subordinated Creditors in respect of the Loan Note Security.

6.7 Restriction on Enforcement: Subordinated Creditors

Subject to clause 6.8 (*Permitted Enforcement: Subordinated Creditors*), no Subordinated Creditor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities (including, for the avoidance of doubt, any Enforcement Action in respect of the Loan Note Security) at any time prior to the Senior Discharge Date.

6.8 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 7.5 (*Filing of claims*)) exercise any right it may otherwise have in respect of that member of the Group to:

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

6.9 Representations: Subordinated Creditors

- (a) Each Subordinated Creditor (other than a Subordinated Creditor that is an individual) represents and warrants to the Senior Creditors and the Security Agent that:
 - (i) it is a corporation, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
 - (ii) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
 - (iii) the entry into and performance by it of this Agreement does not and will not:

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.

- (b) The Security Agent shall apply distributions made to it under clause 7.2(a) in accordance with clause 16 (*Application of Proceeds*).

7.3 Set-Off

- (a) Subject to clause 7.3(b), 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 16 (*Application of Proceeds*).
- (b) Clause 7.3(a) shall not apply to:
 - (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings;
 - (ii) any Close-Out Netting by a Hedge Counterparty;
 - (iii) any Payment Netting by a Hedge Counterparty; and
 - (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty.

7.4 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.

7.5 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 Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings) after the occurrence of an Insolvency Event in relation to any member of the Group, each Creditor irrevocably authorises the Security Agent, on its behalf, to:

- (a) take any Enforcement Action (in accordance with the terms of this Agreement) against that member of the Group;
- (b) demand, sue, prove and give receipt for any or all of that member of the Group's Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of that member of the Group's Liabilities; and

- (B) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
 - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,
- other than, in each case, any amount received or recovered in accordance with clause 16 (*Application of Proceeds*);
- (d) the proceeds of any enforcement of any Transaction Security or Loan Note Security except in accordance with clause 16 (*Application of Proceeds*); or
 - (e) other than where clause 7.3(a) 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 16 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,

that Creditor will:

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

8.3 Exclusions

Clause 8.2 (*Turnover by the Creditors*) shall not apply to any receipt or recovery by way of:

- (i) Close-Out Netting by a Hedge Counterparty;
- (ii) Payment Netting by a Hedge Counterparty;
- (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that that netting or set-off represents a reduction of the Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings);

8.4 Permitted assurance and receipts

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

- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or
 - (b) make any assignment or transfer permitted by clause 18 (*Changes to the Parties*),
- which:

- (i) is permitted by the Senior Facilities Agreement; or
- (ii) is not in breach of clause 4.5 (*No acquisition of Hedging Liabilities*),

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

8.5 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:

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

8.6 Saving provision

If, for any reason, any of the trusts expressed to be created in this clause 8 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.

8.7 Turnover of Non-Cash Consideration

For the purposes of this clause 8, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to clause 8.2 (*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with clause 13.2 (*Cash value of Non-Cash Recoveries*).

9. REDISTRIBUTION

9.1 Recovering Creditor's rights

- (a) Any amount paid or distributed by a Creditor (a "Recovering Creditor") to the Security Agent under clause 7 (*Effect of Insolvency Event*) or clause 8 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor

10. ENFORCEMENT OF TRANSACTION SECURITY

10.1 SFA Cash Cover

This clause 10 is subject to clause 16.3 (*Treatment of SFA Cash Cover*).

10.2 Enforcement Instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by the Majority Senior Creditors.
- (b) 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.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this clause 10.2.

10.3 Manner of enforcement

If the Transaction Security is being enforced pursuant to clause 10.2 (*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 or, in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate.

10.4 Exercise of voting rights

- (a) Each Subordinated Creditor and each Intra-Group Lender will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent.
- (b) The Security Agent shall give instructions for the purposes of clause 10.4(a) in accordance with any instructions given to it by the Majority Senior Creditors.

10.5 Waiver of rights

To the extent permitted under applicable law and subject to clause 10.2 (*Enforcement Instructions*), clause 10.3 (*Manner of enforcement*) and clause 16 (*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.

10.6 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

11.3 Disposal Proceeds

If any Disposal Proceeds are required to be applied in mandatory prepayment of the Senior Facility Liabilities then, subject to clause 14.4 (*Adjustment of Senior 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.

12. DISTRESSED DISPOSALS AND APPROPRIATION

12.1 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):

- (a) *release of Transaction Security and the Loan Note Security/ non-crystallisation certificates*: to release the Transaction Security, the Loan Note 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, the Loan Note 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;
- (b) *release of liabilities and Transaction Security and Loan Note Security on a share sale/Appropriation (Debtor)*: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:
 - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
 - (ii) any Transaction Security and/or Loan Note Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
 - (iii) 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;
- (c) *release of liabilities and Transaction Security on a share sale/Appropriation (Holding Company)*: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of any Holding Company of a Debtor, to release:
 - (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - (A) its Borrowing Liabilities;

- (f) **transfer of obligations in respect of liabilities on a share sale/Appropriation:** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the "**Disposed Entity**") and the Security Agent decides to transfer to another Debtor (the "**Receiving Entity**") all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of:
- (i) the Intra-Group Liabilities; or
 - (ii) the Debtors' Intra-Group Receivables,
- to execute and deliver or enter into any agreement to:
- (iii) 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
 - (iv) 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.

12.2 Form of consideration for Distressed Disposals and Debt Disposals

Subject to clause 13.4 (*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.

12.3 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 16 (*Application of Proceeds*) and, to the extent that:

- (a) any Liabilities Sale has occurred; or
- (b) any Appropriation has occurred,

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

12.4 Fair value

In the case of:

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

- (b) If any Non-Cash Recoveries are distributed pursuant to clause 16 (*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 13.2(a).

13.3 Senior Agent and Non-Cash Recoveries

- (a) Subject to clause 13.3(b), if, pursuant to clause 16.1 (*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.
- (b) The Senior Agent may:
 - (i) use any reasonably suitable method of distribution, as it may determine in its discretion, to distribute those Non-Cash Recoveries in the order of priority that would apply under the Senior Facilities Agreement if those Non-Cash Recoveries were Cash Proceeds;
 - (ii) hold any Non-Cash Recoveries through another person; and
 - (iii) hold any amount of Non-Cash Recoveries for so long as the Senior Agent shall think fit for later application pursuant to clause 13.3(a).

13.4 Security Agent protection

- (a) No Distressed Disposal or Liabilities/Receivables Disposal may be made in whole or part for Non-Cash Consideration if the Security Agent has reasonable grounds for believing that its receiving, distributing, holding, managing, exploiting, collecting, realising or disposing of that Non-Cash Consideration would have an adverse effect on it.
- (b) If Non-Cash Consideration is distributed to the Security Agent pursuant to clause 8.2 (*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 16 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.

14. ACQUISITION AND INSURANCE CLAIMS

14.1 Facilitation of claims

- (a) In this clause 14.1 "Acquisition" has the meaning given to that term in the Senior Facilities Agreement.
- (b) So long as the requirements of clause 14.2 (*Mandatory prepayment of Proceeds*) and, in the case of a claim against the provider of any Report, the requirements of clause 14.3 (*Recoveries from Report Providers*) are met, if any claim relating to the Acquisition or any insurance claim is to be made, or is made, by a Debtor prior to a

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

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

- (c) 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.
- (d) 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 14.4 (*Adjustment of Senior Mandatory Prepayments*), with the Senior Facilities Agreement.
- (e) If a Distress Event has occurred at the time of receipt of a Net Award, the recipient of that Net Award shall pay the Award Proceeds to the Security Agent and the Security Agent shall apply those Award Proceeds in accordance with clause 16 (*Application of Proceeds*).
- (f) This clause 14.3 shall apply until the Senior Discharge Date.

14.4 Adjustment of Senior Mandatory Prepayments

If the making of any Senior 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(d), the amount of that Senior Mandatory Prepayment will be reduced so that the aggregate of:

- (a) the reduced Senior Mandatory Prepayment; and
- (b) each Hedge Reduction Payment which would result from that reduced Senior Mandatory Prepayment,

is equal to the amount of the Original Mandatory Prepayment.

15. FURTHER ASSURANCE - DISPOSALS AND RELEASES

Each Creditor and Debtor will:

- (a) do all things that the Security Agent requests in order to give effect to clause 11 (*Non-Distressed Disposals*), clause 12 (*Distressed Disposals and Appropriation*) and clause 14 (*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
- (b) 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,

16.2 Prospective liabilities

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

- (a) 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
- (b) 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 16.1 (*Order of application*) in respect of:

- (i) any sum to any Security Agent, any Receiver or any Delegate; and
- (ii) 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.

16.3 Treatment of SFA Cash Cover

- (a) 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.
- (b) 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:
 - (i) to the Relevant Ancillary Lender towards the discharge of the Senior Facility Liabilities for which that SFA Cash Cover was provided; and
 - (ii) the balance, if any, in accordance with clause 16.1 (*Order of application*).
- (c) 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.

16.4 Investment of Cash Proceeds

Prior to the application of the proceeds of the Security Property in accordance with clause 16.1 (*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

- (c) The Security Agent is under no obligation to make the payments to the Senior Agent, Relevant Ancillary Lender or the Hedge Counterparties under clause 16.7(a) in the same currency as that in which the Liabilities owing to the relevant Senior Creditor are denominated pursuant to the relevant Debt Document.

16.8 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:

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

SECTION 7

THE PARTIES

17. THE SECURITY AGENT

17.1 Security Agent as trustee

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Each of the Senior Creditors authorises the Security Agent to perform the duties, obligations and responsibilities 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

17.2 Instructions

- (a) The Security Agent shall:
 - (i) subject to clauses 17.2(d) and 17.2(e), 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
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with clause 17.2(a)(i) (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in accordance with instructions given to it by that Creditor or group of Creditors).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Senior Creditors (or, if this Agreement stipulates the

the Security Agent shall have regard to the interests of all the Secured Parties.

- (g) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the provisions of clause 10 (*Enforcement of Transaction Security*) and the remainder of this clause 17.2, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

17.3 Duties of the Security Agent

- (a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:
 - (i) forward to the 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
 - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Debt Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) Without prejudice to clause 21.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Senior Creditors.
- (e) 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.
- (f) 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).

17.4 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.

17.5 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.

instructed by any Senior Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.

- (e) 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.
- (f) 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:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) 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.
- (h) 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.
- (i) 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.

17.8 Responsibility for documentation

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

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

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

- (d) 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.

17.11 Senior Creditors' indemnity to the Security Agent

- (a) 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).
- (b) For the purposes only of clause 17.11(a), 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:

- (ii) the transfer of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under clause 17.24(b) and clause 17.12(d)) but shall remain entitled to the benefit of this clause 17 and clause 20.1 (*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.
- (g) The Majority Senior Creditors may, by notice to the Security Agent, require it to resign in accordance with clause 17.12(b). In this event, the Security Agent shall resign in accordance with clause 17.12(b).

17.13 Confidentiality

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

17.14 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.

17.15 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:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (c) whether that Secured 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

17.17 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).

17.18 No responsibility to perfect Transaction Security

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

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

17.19 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Charged Property;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Debt Document,

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

- (b) Where the 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.

17.23 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.

17.24 Winding up of trust

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

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

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to clause 17.12 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

17.25 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.

17.26 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.

17.27 Intra-Group Lenders, Debtors and Subordinated Creditors: Power of Attorney

Each Intra-Group Lender, Debtor and Subordinated Creditor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Intra-Group Lender, Debtor or Subordinated Creditor 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).

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:

- (a) this Agreement, pursuant to clause 18.11 (*Creditor Accession Undertaking*); and
 - (b) the Senior Facilities Agreement,
- as a Hedge Counterparty.

18.6 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 18.11 (*Creditor Accession Undertaking*).

18.7 Change of Loan Note Security Trustee

No person shall become the Loan Note Security Trustee unless, at the same time, it accedes to this Agreement as Loan Note Security Trustee pursuant to clause 18.11 (*Creditor Accession Undertaking*).

18.8 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:

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

in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already a Party as an Intra-Group Lender) acceded to this Agreement, as an Intra-Group Lender, pursuant to clause 18.11 (*Creditor Accession Undertaking*).

18.9 New Intra-Group Lender

If any Intra-Group Lender or any member of the Group makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Intra-Group Lender) accedes to this Agreement, as an Intra-Group Lender, pursuant to clause 18.11 (*Creditor Accession Undertaking*).

18.10 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 18.11 (*Creditor Accession Undertaking*) and, to the extent required by the Senior Facilities Agreement, to the Senior Facilities Agreement as an Ancillary Lender.

- (b) 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:
 - (i) the Security Agent shall, as soon as practicable after signing and accepting that Creditor Accession Undertaking in accordance with clause 18.13(a), deliver that Creditor Accession Undertaking to the Senior Agent; and
 - (ii) 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.

18.14 Resignation of a Debtor

- (a) No Senior Guarantor may cease to be party to the Senior Facilities Agreement as a Senior Guarantor unless each Hedge Counterparty has notified the Security Agent:
 - (i) that no payment is due from that Senior Guarantor to that Hedge Counterparty under the Senior Facilities Agreement; or
 - (ii) that it otherwise consents to that Senior Guarantor ceasing to be a Senior Guarantor under the Senior Facilities Agreement.

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

- (b) The Parent may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (c) The Security Agent shall accept a Debtor Resignation Request and notify the Parent and each other Party of its acceptance if:
 - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Debtor Resignation Request;
 - (ii) 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;
 - (iii) 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
 - (iv) the Parent confirms that that Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities.
- (d) 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.

20. OTHER INDEMNITIES

20.1 Indemnity to the Security Agent

- (a) 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:
 - (i) any failure by the Parent to comply with its obligations under clause 19 (*Costs and expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) 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;
 - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
 - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
 - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this clause 20.1 will not be prejudiced by any release or disposal under clause 12 (*Distressed Disposals and Appropriation*) taking into account the operation of that clause 12 (*Distressed Disposals and Appropriation*).
- (c) 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 20.1 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.

20.2 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 12 (*Distressed Disposals and Appropriation*).

- (g) If a Senior Mandatory Prepayment is waived the Senior Agent shall notify the Security Agent of the amount of the Senior Mandatory Prepayment waived and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty.
- (h) 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:
 - (i) the date and amount of that proposed reduction; and
 - (ii) any Interest Rate Hedge Excess that would result from that proposed reduction and that Hedge Counterparty's Interest Rate Hedging Proportion (if any) of that Interest Rate Hedge Excess.

22. NOTICES

22.1 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 letter.

22.2 Security Agent's communications with Senior Creditors

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

- (a) 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
- (b) with each Hedge Counterparty directly with that Hedge Counterparty.

22.3 Addresses

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

- (a) in the case of each original Party to this Agreement, that identified with its name below; and
- (b) in the case of each other Party, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,

or any substitute address 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.

22.4 Delivery

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

- (b) All other documents provided under or in connection with this Agreement must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

23. PRESERVATION

23.1 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.

23.2 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.

23.3 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.

23.4 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 23.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

shall not be made without the 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.

24.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to clause 24.2(b) and to clause 24.4 (*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.
- (b) Subject to clause 24.4(c), any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:
 - (i) the nature or scope of the Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
 - (iii) the release of any Transaction Security,

shall not be made without the prior 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.

24.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this clause 24 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 24.
- (b) Without prejudice to the generality of clause 17.7 (*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.

24.4 Exceptions

- (a) Subject to clauses 24.4(c) and 24.4(d), if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:
 - (i) 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

- (b) Each Sponsor Affiliate that is a Senior Lender agrees that:
 - (i) 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
 - (ii) 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.

24.6 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment:
 - (i) in ascertaining:
 - (A) the Majority Senior Creditors; or
 - (B) whether:
 - (1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations; or
 - (2) 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 Senior Commitments will be reduced by the amount of its Available Commitments and, to the extent that that reduction results in that Defaulting Lender's Senior Commitments being zero, that Defaulting Lender shall be deemed not to be a Senior Lender.
- (b) For the purposes of this clause 24.6, the Security Agent may assume that the following Senior Creditors are Defaulting Lenders:
 - (i) any Senior Lender which has notified the Security Agent that it has become a Defaulting Lender;
 - (ii) any Senior Lender to the extent that the Senior Agent has notified the Security Agent that that Senior Lender is a Defaulting Lender; and
 - (iii) 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.

27. ENFORCEMENT

27.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 27.1 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.

27.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law:
 - (i) each Debtor (unless incorporated in England and Wales):
 - (A) irrevocably appoints the Parent] as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and the Parent, by its execution of this Agreement, accepts that appointment; and
 - (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned;
 - (ii) each Subordinated Creditor (unless incorporated in England and Wales):
 - (A) irrevocably appoints _____ as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
 - (B) agrees that failure by a process agent to notify the relevant Subordinated Creditor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (in the case of an agent for service of process for a Debtor) or the relevant Subordinated Creditor must immediately (and in any event within five Business Days of such event taking place) appoint another agent on terms acceptable to the Senior Agent. Failing this, the Senior Agent may appoint another agent for this purpose.
- (c) Each Debtor and each Subordinated Creditor expressly agrees and consents to the provisions of this clause 27 and clause 26 (*Governing Law*).

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

SCHEDULE 1: THE PARTIES

Part 1: Subordinated Creditors

1. Synova Capital Fund II LP, partnership number LP015649
2. Clive Charles Schmulian, 146 Terregles Avenue, Pollokshields, Glasgow G41 4RU
3. Stuart Davidson, 9 Inverhouse Gardens, Inverkip, Greenock PA16 0GF
4. Stephen William Duncan, Westlands, Oakcroft Road, West Byfleet, Surrey KT14 6JH
5. Clyde Munro Trustees Limited (SC551311)

Part 2: Intra-Group Lenders

1. The Parent
2. The Company
3. Clyde DH Limited (Company No SC499268)
4. Clyde Dental Practice Limited (Company No SC372122)

Part 3: Debtors

1. The Parent
2. The Company
3. Clyde DH Limited (Company No SC499268)
4. Clyde Dental Practice Limited (Company No SC372122)

be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].

5. 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: [◆]

Attention: [◆]

SCHEDULE 3: 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 [♦] 20[♦] by insert full name of new Senior Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Subordinated Creditor (the "Acceding [Senior Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Subordinated Creditor]") in relation to the intercreditor agreement (the "Intercreditor Agreement") dated [♦] 2018 between, among others, Beatty Topco Limited as parent, Clyde Munro Group Limited as company, Investec Bank plc as security agent, Investec Bank plc 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/Intra-Group Lender/Subordinated Creditor] being accepted as a [Senior Lender/Hedge Counterparty/Intra-Group Lender/Senior Agent/Subordinated Creditor] for the purposes of the Intercreditor Agreement, the Acceding [Senior Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Subordinated Creditor] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Senior Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Subordinated Creditor] 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/Subordinated Creditor] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[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 [♦] 20[♦], 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 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 *[name of the Borrower]*. 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 [♦] 20[♦], 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.

SCHEDULE 4: FORM OF DEBTOR RESIGNATION REQUEST

To: [◆] as Security Agent

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

Dated: [◆] 20[◆]

Dear Sirs

BEATTY TOPCO LIMITED - INTERCREDITOR AGREEMENT DATED
[◆] 20[◆] (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 [18.14] (*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 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] [is][are] governed by English law.

[*Parent*]

[*resigning Debtor*]

By: _____

By: _____

THE COMPANY

EXECUTED AS A DEED)

By: CLYDE MUNRO GROUP)
LIMITED



Signature of Director

JAMES HALL

Name of Director

in the presence of:



Signature of witness

ASHLEY NIMMO

Name of witness

Pinsent Masons LLP
141 Bothwell Street
Glasgow G2 7EQ
Tel No: 0141 567 8400

Address of witness

SOLICITOR

Occupation of witness

Address: c/o Kergan Stewart, 163 Bath
Street, Glasgow G2 4SQ

Attention: the Company Secretary

THE SECURITY AGENT

INVESTEC BANK PLC

By:

Address: 30 Gresham Street, London, EC2V 7QP

Attention: Stephen White

THE SENIOR AGENT

INVESTEC BANK PLC

By:

[Redacted Signature]

Stephen White
Authorised Signatory

[Redacted Signature]

Angela Jackson
Authorised Signatory

Address: 30 Gresham Street, London, EC2V 7QP

Attention: Stephen White

THE SENIOR LENDERS

INVESTEC BANK PLC

By:

[Redacted Signature]

Stephen White
Authorised Signatory

[Redacted Signature]

Angela Jackson
Authorised Signatory

Address: 30 Gresham Street, London, EC2V 7QP

Attention: Stephen White

THE SENIOR ARRANGER

INVESTEC BANK PLC

By:

[Redacted Signature]

Stephen White
Authorised Signatory

[Redacted Signature]

Angela Jackson
Authorised Signatory

Address: 30 Gresham Street, London, EC2V 7QP

Attention: Stephen White

THE HEDGE COUNTERPARTY

INVESTEC BANK PLC

By:

[Redacted Signature]

Stephen White
Authorised Signatory

[Redacted Signature]

Angela Jackson
Authorised Signatory

Address: 30 Gresham Street, London, EC2V 7QP

Attention: Stephen White

EXECUTED AS A DEED)
By **CLIVE CHARLES SCHMULIAN**)

 Signature

in the presence of:

 Signature of witness

Name of witness

STEPHEN THOMAS SMITH Address of witness

Solicitor

Kernan Stewart LLP

163 Bath Street, Glasgow G2 4SQ

Occupation of witness

Address: 146 Terregles Avenue
Pollokshields, Glasgow
G41 4RU

EXECUTED AS A DEED)
By **STUART DAVIDSON**)

Signature

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 9 Inverhouse Gardens
Inverkip
Greenock, PA16 0GF

EXECUTED AS A DEED)
By STEPHEN WILLIAM DUNCAN)

[REDACTED] Signature

in the presence of:

[REDACTED] Signature of witness

AMANDA WHITALL Name of witness

34 ROWTON Address of witness

ADDLESTONE

SURREY KT15 1HQ

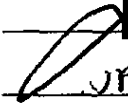
RETIRED Occupation of witness

Address: Westlands, Oakcroft Road
West Byfleet, Surrey
KT14 6JH

EXECUTED AS A DEED
By: SYNOVA CAPITAL FUND II LP
 acting by its general partner **SYNOVA**
CAPITAL GENERAL PARTNERSHIP
 II LP acting by its general partner
SYNOVA CAPITAL GENERAL
PARTNER 4 LIMITED acting by its
 director in the presence of a witness

Name of Director **TIM ASHLIN**

EXECUTED AS A DEED)
By: **CLYDE MUNRO GROUP**)
LIMITED 

 JAMES HALL
Signature of Director
Name of Director

in the presence of:

 
Signature of witness

ASHLEY NIMMO
Name of witness

Pincent Masons LLP
141 Bothwell Street
Glasgow G2 7EQ
Tel No: 0141 567 8400
Address of witness

SOLICITOR
Occupation of witness


Address: c/o Kergan Stewart, 163 Bath
Street, Glasgow G2 4SQ

Attention: the Company Secretary

THE DEBTORS

EXECUTED AS A DEED

By: BEATTY TOPCO LIMITED



JAMES HALL

)
)

Signature of Director

Name of Director

in the presence of:



ASHLEY MIMO

Signature of witness

Name of witness

Address of witness

Pinson Masons LLP
141 Bothwell Street
Glasgow G2 7EQ
Tel No: 0141 567 8400

SOLICITOR

Occupation of witness

Address: c/o Kergan Stewart, 163 Bath Street, Glasgow
G2 4SQ

Attention: the Company Secretary

EXECUTED AS A DEED
By: CLYDE DH LIMITED

)
)



Signature of Director

JAMES HALL

Name of Director

in the presence of:



Signature of witness

ASHLEY NIMMO

Name of witness

Pinson Masons LLP
41 Bothwell Street
Glasgow G2 7EQ
Tel No: 0141 567 8400

Address of witness

SOLICITOR

Occupation of witness

Address: c/o Kergan Stewart, 163 Bath
Street, Glasgow G2 4SQ

Attention: the Company Secretary