

**WHITE & CASE**

**Dated** 18 September **2019**

**Intercreditor Agreement**

between

**RBC Europe Limited**  
as Initial Senior Agent

**The Initial Senior Lenders**

**Jewel MidCo Limited**  
as the Parent

**The Original Debtors**

**RBC Europe Limited**  
as Security Agent

and

**Others**

White & Case LLP  
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London EC2N 1DW

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This Intercreditor Agreement is dated 18 September 2019 and made

Between:

- (1) **RBC Europe Limited** as “**Initial Senior Agent**”;
- (2) **The Financial Institutions** named on the signing pages as Initial Senior Lenders;
- (3) **Jewel MidCo Limited**, a private limited company incorporated in England and Wales (the “**Parent**”);
- (4) **The Subsidiaries** of the Parent named on the signing pages as Original Debtors (together with the Parent, the “**Original Debtors**”);
- (5) **The Subsidiaries** of the Parent named on the signing pages as Original Intra-Group Lenders (together with the Parent, the “**Original Intra-Group Lenders**”);
- (6) **Jewel TopCo Limited**, a private limited company incorporated in England and Wales (“**Holdco**”); and
- (7) **RBC Europe Limited** as security agent for the Secured Creditors (the “**Security Agent**”).

It is agreed as follows:

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Agreement:

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

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

“**Acceleration Event**” means a Credit Facility Acceleration Event, a Senior Secured Liabilities Acceleration Event, a Second Lien Liabilities Acceleration Event or an Unsecured Liabilities Acceleration Event (as the context requires).

“**Additional Second Lien Financing**” means any indebtedness incurred by the Parent or the Company under a Second Lien Facility or any Second Lien Notes which is notified to the Security Agent by the Parent as being indebtedness that is an “Additional Second Lien Financing” pursuant to Clause 25.3 (*Further Creditor Notice*) provided that:

- (a) the incurrence of such indebtedness (and, to the extent applicable, such indebtedness sharing in the Common Transaction Security on the basis that it ranks after the Senior Secured Liabilities) is not prohibited by the terms of the Secured Debt Documents;
- (b) the terms of such Second Lien Facility or Second Lien Notes comply with Clause 25.2 (*Terms of Additional Indebtedness*); and
- (c) either:
  - (i) in the case of an Additional Second Lien Financing made available as a Second Lien Facility, each of the providers of such facility have agreed to become a Party to this Agreement as a Second Lien Lender and the facility agent (or nearest equivalent person) in respect of that Second Lien Facility has agreed to become a party to this Agreement as a Creditor Representative by, in each case,

executing and delivering to the Security Agent a Creditor/Creditor Representative Accession Undertaking; or

- (ii) in the case of an Additional Second Lien Financing made available as a Second Lien Notes issuance, the agent, trustee or other relevant representative in respect of such notes has agreed to become a Party to this Agreement as a Creditor Representative on behalf of the providers of such Indebtedness by executing and delivering to the Security Agent a Creditor/Creditor Representative Accession Undertaking.

**“Additional Second Lien Financing Documents”** means:

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

**“Additional Senior Secured Financing”** means any indebtedness incurred by any member of the Group under a Credit Facility (other than the Initial Senior Facilities) or Senior Secured Notes which is notified to the Security Agent by the Parent as being indebtedness that is an “Additional Senior Secured Financing” pursuant to Clause 25.3 (*Further Creditor Notice*), *provided that*:

- (a) the incurrence of such indebtedness (and, to the extent applicable, such indebtedness sharing in the Common Transaction Security) is not prohibited by the terms of the Secured Debt Documents;
- (b) the terms of such Credit Facility or Senior Secured Notes comply with Clause 25.2 (*Terms of Additional Indebtedness*); and
- (c) either:
  - (i) in the case of an Additional Senior Secured Financing made available under a Credit Facility, each of the providers of such indebtedness have agreed to become a party to this Agreement as an Additional Senior Secured Financing Creditor and the facility agent (or nearest equivalent person) in respect of that Credit Facility has agreed to become a party to this Agreement as a Creditor Representative by, in each case, executing and delivering to the Security Agent a Creditor/Creditor Representative Accession Undertaking; or
  - (ii) in the case of an Additional Senior Secured Notes Financing, the agent, trustee or other relevant representative under that Additional Senior Secured Financing has agreed to become a party to this Agreement as a Creditor Representative on behalf of the providers of such indebtedness by executing and delivering to the Security Agent a Creditor/Creditor Representative Accession Undertaking.

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

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

**“Additional Senior Secured Financing Documents”** means:

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

**“Additional Senior Secured Financing Event of Default”** means, in relation to any Additional Senior Secured Financing, an event of default (however described) under the Additional Senior Secured Financing Agreement which entitles the Additional Senior Secured Financing Creditors to give (or to instruct the relevant Creditor Representative to give) a notice of acceleration, otherwise triggers similar consequences in respect of such Additional Senior Secured Financing to those in clause 37.18 (*Acceleration and Cancellation*) of the Initial Senior Facilities Agreement or which automatically triggers all or any part of the relevant Additional Senior Secured Financing Liabilities to be immediately due and payable.

**“Additional Senior Secured Financing Liabilities”** means:

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

**“Additional Senior Secured Financing Liabilities Discharge Date”** means the date on which all Additional Senior Secured Financing Liabilities have been fully and finally discharged and the Additional Senior Secured Financing Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the relevant Additional Senior Secured Financing Documents.

**“Additional Senior Secured Notes Financing”** means an Additional Senior Secured Financing constituted by Senior Secured Notes.

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

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

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

**“Agreed Security Principles”** has the meaning given that the term **“Agreed Security Principles”** under the Initial Senior Facilities Agreement.

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

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

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

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

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers.

“**Bail-In Legislation**” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“**Borrowing Liabilities**” means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to a Creditor Representative in its capacity as such) or a Debtor in respect of indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a borrower under any Credit Facility Documents or Second Lien Finance Documents or as an issuer under any Notes).

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London and:

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

“**Cash Proceeds**” means:

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

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

“**Close-Out Netting**” means:

- (a) in respect of a Hedging Agreement or a Hedging Ancillary Document based on a 1992 ISDA Master Agreement, any step involved in determining the amount payable in respect of an Early Termination Date (as defined in the 1992 ISDA Master Agreement) under section 6(e) (*Payments on Early Termination*) of the 1992 ISDA Master Agreement before the application of any subsequent set-off (as defined in the 1992 ISDA Master Agreement);

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

**“Common Assurance”** means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible and subject to the Agreed Security Principles, given to all the Secured Creditors 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 Secured Event of Default”** means an Event of Default under the Senior Secured Debt Documents and/or the Second Lien Finance Documents.

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

**“Common Secured Payment Default”** means a Common Secured Event of Default arising by reason of non-payment of any amount which is immediately due and payable under any Secured Debt Document, other than in respect of non-payment of any amount (a) not constituting principal, interest or fees and (b) not exceeding £100,000 (or its equivalent in other currencies).

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

**“Common Senior Secured Payment Default”** means a Common Senior Secured Event of Default arising by reason of non-payment of any amount which is immediately due and payable under any Senior Secured Debt Document, other than in respect of non-payment of any amount (a) not constituting principal or interest and (b) not exceeding £100,000 (or its equivalent in other currencies).

**“Common Transaction Security”** means any Security created or evidenced or expressed to be created or evidenced under or pursuant to the Transaction Security Documents which to the extent legally possible and subject to any Agreed Security Principles:

- (a) is created in favour of the Security Agent as trustee for the other Secured Creditors in respect of their Secured Obligations; or
- (b) in the case of any jurisdiction in which effective Security cannot be granted or perfected in favour of the Security Agent as trustee for the Secured Creditors is created in favour of:
  - (i) all the Secured Creditors in respect of their Secured Obligations; or

- (ii) the Security Agent under a parallel debt structure for the benefit of all the Secured Creditors,

and which ranks in the order of priority contemplated in Clause 2.2 (*Common Transaction Security*).

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

“**Credit Facility**” means:

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

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

“**Credit Facility Acceleration Event**” means, in relation to any Credit Facility, the relevant Creditor Representative exercising any of its rights (other than a right to place amounts on demand but including, without limitation, the making of a demand in respect of any amounts placed on demand) under any acceleration provision(s) of the relevant Credit Facility Agreement to declare all or part of the indebtedness outstanding thereunder to be immediately due and payable.

“**Credit Facility Agreement**” means:

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

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

“**Credit Facility Cash Cover**”, in relation to a Credit Facility, has the meaning given to the term “cash cover” (or equivalent) in the relevant Credit Facility Agreement.

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

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

“**Credit Facility Documents**” means:

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

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

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

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

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

**“Credit Facility Majority Lenders”** means, in relation to a Credit Facility, the Majority Lenders (under and as defined in the relevant Credit Facility Agreement).

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

**“Creditor”** means the Security Agent, each Initial Senior Lender, each other Senior Secured Creditor, each Second Lien Creditor, each Unsecured Notes Creditor, each Intra-Group Lender and each Shareholder Creditor.

**“Creditor Conflict”** means, at any time prior to the Senior Secured Liabilities Discharge Date, a conflict between the interests of the Secured Creditors.

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

**“Creditor Representative”** means:

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

to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking;

- (d) in relation to any other Second Lien Creditors, the relevant Second Lien Agent or Second Lien Notes Trustee, in each case, under that Additional Second Lien Financing that is designated by the Parent as a Creditor Representative in the applicable Further Creditor Notice and any replacement of such Creditor Representative to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking; and
- (e) in relation to any Unsecured Noteholders, the relevant Unsecured Notes Trustee that is designated by the Parent as a Creditor Representative in the applicable Further Creditor Notice and any replacement of such Creditor Representative to the extent it has acceded to this Agreement in such capacity pursuant to a Creditor/Creditor Representative Accession Undertaking.

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

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

**“Debt Disposal”** means a disposal of any Liabilities or Debtor Liabilities pursuant to paragraph (d) of Clause 16.1 (*Facilitation of Distressed Disposals*).

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

**“Debt Purchase Transaction”** means, in relation to a person, a transaction where such person:

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

any commitment or amount outstanding under any Debt Document.

**“Debtor”** means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 24 (*Changes to the Parties*).

**“Debtor Accession Deed”** means:

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

Agreement which is substantially in the form set out in Schedule 1 (*Form of Debtor Accession Deed*));

- (c) (only in the case of a member of the Group which is acceding as a borrower or guarantor under a Second Lien Facility Agreement) an accession document in the form required by the relevant Second Lien Facility Agreement (*provided that* it contains an accession to this Agreement which is substantially in the form set out in Schedule 1 (*Form of Debtor Accession Deed*)); or
- (d) such other form as the Security Agent and the Parent may agree from time to time.

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

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

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

**“Delegate”** means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

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

**“Distress Event”** means any of:

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

**“Distressed Disposal”** means a disposal of an asset of a member of the Group which is:

- (a) being effected (whether by a Debtor or otherwise) on the instructions of the relevant Instructing Group in circumstances where:
  - (i) the Common Transaction Security has become enforceable in accordance with the terms of the relevant Transaction Security Documents; or
  - (ii) an Event of Default has occurred and is continuing; or
- (b) being effected by enforcement of the Common Transaction Security in accordance with the terms of the relevant Transaction Security Documents; 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 of the Group.

**“EEA Member Country”** means any member state of the European Union, Iceland, Liechtenstein and Norway and any other country that becomes a member of the European Economic Area on or after the date of this Agreement.

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

**“Enforcement Action”** means:

- (a) in relation to any Liabilities:
  - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Primary Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents or a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on demand Liabilities to the extent that any resulting Payment would be a Permitted Intra-Group Payment);
  - (ii) the making of any declaration that any Liabilities are payable on demand;
  - (iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent that any resulting Payment would be a Permitted Intra-Group Payment);
  - (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent that any resulting Payment would be a Permitted Intra-Group Payment);
  - (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability other than in connection with an asset sale offer or a change of control offer (however defined in the Debt Documents)) but excluding any such right which arises as a result of clause 38 (*Debt Purchase Transactions*) of the Initial Senior Facilities Agreement (or any other similar or equivalent provision of any of the other Debt Documents) or open market purchases of, or any voluntary transfer offer or exchange offer for, Notes at a time at which no Default is continuing);
  - (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right:
    - (A) as Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
    - (B) as Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
    - (C) as Inter-Hedging Agreement Netting by a Hedge Counterparty;
    - (D) as Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; and
    - (E) which is otherwise not prohibited under the Debt Documents to the extent that the exercise of that right gives effect to a Payment permitted under this Agreement; and
  - (vii) the suing for, commencing or joining of any legal or arbitration proceedings (in each case, other than proceedings of the type referred to in paragraph (e) below) against any member of the Group to recover any Liabilities;

- (b) the premature termination or close-out of any transaction under any Hedging Agreement save as permitted under this Agreement;
- (c) the taking of any formal steps to enforce or require the enforcement of any Common Transaction Security (including the crystallisation of any floating charge forming part of the Common Transaction Security);
- (d) by reason of financial difficulties affecting a member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities the entering into of any composition, compromise, assignment or arrangement with such member of the Group (other than any action permitted under Clause 24 (*Changes to the Parties*) or pursuant to any debt buyback, tender offer, exchange offer, or similar or equivalent arrangement not otherwise prohibited by the Debt Documents); or
- (e) by reason of financial difficulties affecting a member of the Group which owes any Liabilities, the petitioning, applying or voting for, or the taking of any formal steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of such member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or, by reason of it being in financial difficulties, any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(ii), (iii), (iv) and (vii) above or paragraph (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods;
- (ii) a Primary Creditor bringing legal proceedings against any person solely for the purpose of:
  - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
  - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
  - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages;
- (iii) the taking of any action pursuant to a merger, consolidation, reorganisation or any other similar or equivalent transaction that is permitted under the Credit Facility Documents, any other Senior Secured Debt Documents, the Second Lien Finance Documents and the Unsecured Notes Finance Documents;
- (iv) the taking of any action pursuant to a Special Purpose Financing that is permitted under the Credit Facility Documents, any other Senior Secured Debt Documents, the Second Lien Finance Documents and the Unsecured Notes Finance Documents;

- (v) the taking of any action necessary to create, register or perfect any Common Transaction Security by any method of perfection (other than any such action taken as a result of enforcement) or the taking of any action necessary to prove, preserve or protect (but not enforce) any Common Transaction Security;
- (vi) to the extent entitled by law, the taking of any action against any Creditor (or any agent, trustee or receiver acting on behalf of that Creditor) to challenge the basis on which any sale or disposal is to take place pursuant to the powers granted to those persons under any relevant documentation;
- (vii) bringing legal proceedings against any person in connection with any securities violation, common fraud or securities or listing regulations; or
- (viii) allegations of material mis-statement or omissions made (1) in connection with the offering materials relating to any Notes or in any reports furnished to holders of any Notes or (2) to any exchange on which any Notes are listed.

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

**“EU Bail-In Legislation Schedule”** means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

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

**“Excess Cashflow”** has the meaning given to such term in the Initial Senior Facilities Agreement (or any equivalent definition under another Credit Facility Agreement).

**“Exchange Rate Hedge Excess”** means the amount by which the Total Exchange Rate Hedging Amount exceeds the Term Outstandings.

**“Exchange Rate Hedging Proportion”** means, in relation to a Hedge Counterparty and that Hedge Counterparty’s Aggregate Exchange Rate Hedging Amount, the proportion (expressed as a percentage) borne by that Hedge Counterparty’s Aggregate Exchange Rate Hedging Amount to the Total Exchange Rate Hedging Amount.

**“Excluded Disposal Proceeds”** has the meaning given to such term in the Initial Senior Facilities Agreement (or any equivalent definition under another Credit Facility Agreement).

**“Excluded Insurance Proceeds”** has the meaning given to such term in the Initial Senior Facilities Agreement (or any equivalent definition under another Credit Facility Agreement).

**“Excluded Recovery Proceeds”** has the meaning given to such term in the Initial Senior Facilities Agreement (or any equivalent definition under another Credit Facility Agreement).

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

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

**“Final Unsecured Notes Discharge Date”** means the first date on which all the Unsecured Notes Liabilities have been fully and finally discharged, including by way of defeasance

permitted in accordance with the relevant Unsecured Notes Finance Documents, whether or not as the result of an enforcement.

**“Financial Adviser”** means any:

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

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

**“Financial Year”** has the meaning given to such term in the Initial Senior Facilities Agreement (or any equivalent definition under another Credit Facility Agreement).

**“Financing Disposition”** has the meaning given to such term in the Initial Senior Facilities Agreement and the Initial Second Lien Facilities Agreement (or any equivalent definition under another Secured Debt Document).

**“Finco”** means a subsidiary of Holdco that is not a member of the Group which issues any Unsecured Notes.

**“Further Creditor Notice”** has the meaning given to that term in Clause 25.3 (*Further Creditor Notice*).

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

**“Group”** has the meaning given to that term in the Initial Senior Facilities Agreement or, after the Credit Facilities Discharge Date with respect to the Initial Senior Facilities, any equivalent definition in the first other Credit Facility Agreement entered into in respect of which the Credit Facilities Discharge Date has not occurred or, if no other Credit Facility Agreement has been entered into such equivalent definition under another Debt Document as agreed between the Parent and the relevant Instructing Group.

**“Guarantee Liabilities”** means, in relation to a member of the Group, the liabilities and obligations under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (other than a Creditor Representative) or a 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).

**“Hedge Counterparty”** means any person which becomes Party as a Hedge Counterparty pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).

**“Hedge Counterparty Guarantee”** means the guarantee and indemnity from the Debtors in favour of all or any of the Hedge Counterparties in Clause 23 (*Hedge Counterparties Guarantee and Indemnity*).

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

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

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

- (b) all the Hedge Counterparty Obligations owed by each Hedge Counterparty to the Debtors,

in accordance with Clause 24.4 (*New Hedge Counterparty or Change in Hedge Counterparty*).

“**Hedging Agreement**” means any master agreement, confirmation, schedule or other agreement entered into by a member of the Group and a Hedge Counterparty from time to time in respect of (i) hedging interest rate and cross currency risks in relation to any Credit Facility, Senior Secured Notes, Second Lien Facility or Second Lien Notes, (ii) interest rate hedging transactions in the ordinary course of business, (iii) spot and forward foreign exchange hedging transactions and (iv) other hedging transactions not otherwise prohibited by the Debt Documents and not for speculative purposes that the Parent confirms in writing to the Security Agent (on behalf of the Senior Secured Creditors and the Second Lien Creditors (as applicable)) is permitted under the terms of the Credit Facility Documents, the other Senior Secured Debt Documents, the Second Lien Finance Documents and the Unsecured Notes Finance Documents to share in the Common Transaction Security at the time such Hedging Agreement is entered into.

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

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

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

“**Hedging Force Majeure**” means:

- (a) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
- (i) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
  - (ii) an event similar in meaning and effect to a “**Force Majeure Event**” (as referred to in paragraph (b) below);
- (b) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement); or
- (c) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, any event similar in meaning and effect to an event described in paragraph (a) or (b) above.

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

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

- (a) in the case of a Hedging Agreement which is based on an ISDA Master Agreement:
- (i) that date was an Early Termination Date (as defined in the relevant ISDA Master Agreement); and

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

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

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

**“Initial Senior Facilities”** means the “Facilities” under and as defined in the Initial Senior Facilities Agreement.

**“Initial Senior Facilities Agreement”** means the senior facilities agreement made between the Parent, Jewel BidCo Limited as the company, RBC Europe Limited as agent and security agent and others dated on or about the date of this Agreement.

**“Initial Senior Facilities Finance Documents”** means the “Senior Finance Documents” under and as defined in the Initial Senior Facilities Agreement.

**“Initial Senior Lenders”** means the Initial Senior Agent, each Lender (as defined in the Initial Senior Facilities Agreement), Issuing Bank (as defined in the Initial Senior Facilities Agreement) and Ancillary Lender.

**“Insolvency Event”** means, in relation to any member of the Group:

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

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

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

- (a) subject to paragraph (b) below:
  - (i) prior to the Senior Secured Liabilities Discharge Date, the Majority Senior Secured Creditors; and

- (ii) after the Senior Secured Liabilities Discharge Date, the Majority Second Lien Creditors; and
- (b) in relation to instructions as to Enforcement with respect to the Common Transaction Security:
  - (i) subject to paragraph (c) of Clause 14.3 (*Enforcement Instructions*), prior to the Senior Secured Liabilities Discharge Date, the Majority Senior Secured Creditors; and
  - (ii) after the Senior Secured Liabilities Discharge Date, the Majority Second Lien Creditors.

**“Intercreditor Amendment”** means any amendment or waiver which is subject to Clause 31 (*Consents, Amendments and Override*).

**“Interest Rate Hedge Excess”** means the amount by which the Total Interest Rate Hedging Amount exceeds the Term Outstandings.

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

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

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

**“Intra-Group Lenders”** means each Original Intra-Group Lender and each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which becomes a Party as an Intra-Group Lender in accordance with the terms of Clause 24 (*Changes to the Parties*).

**“Intra-Group Liabilities”** means the Liabilities owed by any member of the Group to any of the Intra-Group Lenders.

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

**“Issuing Bank”** in relation to a Credit Facility (and if applicable) has the meaning given to the term “Issuing Bank” (or equivalent) in the relevant Credit Facility Documents.

**“Legal Reservations”** has the meaning given to that term in the Initial Senior Facilities Agreement or, after the Credit Facilities Discharge Date with respect to the Initial Senior Facilities, any equivalent definition in the first other Credit Facility Agreement entered into in respect of which the Credit Facilities Discharge Date has not occurred or, if no other Credit Facility Agreement has been entered into such equivalent definition under another Debt Document as agreed between the Parent and the relevant Instructing Group.

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

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

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

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

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

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

the rights and benefits in respect of those Liabilities.

“**Liabilities Sale**” means a Debt Disposal pursuant to paragraph (d)(B) of Clause 16.1 (*Facilitation of Distressed Disposals*).

“**Majority Second Lien Creditors**” means, at any time, those Second Lien Creditors whose Second Lien Credit Participations at that time aggregate more than 50.01 per cent. of the total Second Lien Credit Participations at that time.

“**Majority Senior Secured Creditors**” means, at any time, those Senior Secured Creditors whose Senior Secured Credit Participations at that time aggregate more than 50.01 per cent. of the total Senior Secured Credit Participations at that time.

“**Material Adverse Effect**” has the meaning given to that term in the Initial Senior Facilities Agreement or, after the Credit Facilities Discharge Date with respect to the Initial Senior Facilities, any equivalent definition in the first other Credit Facility Agreement entered into in respect of which the Credit Facilities Discharge Date has not occurred or, if no other Credit Facility Agreement has been entered into such equivalent definition under another Debt Document as agreed between the Parent and the relevant Instructing Group.

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

- (a) any Event of Default under the Initial Senior Facilities Agreement in respect of:
  - (i) clause 37.2 (Financial Covenant);

- (ii) clause 37.3 (*Other obligations*) insofar as it relates only to a breach of clause 25.1 (*Financial Statements*) or clause 25.2 (*Provision and contents of Compliance Certificate*) of the Initial Senior Facilities Agreement;
- (iii) clause 37.5 (*Cross default*);
- (iv) clause 37.6 (*Insolvency*);
- (v) clause 37.7 (*Insolvency proceedings*);
- (vi) clause 37.13 (*Illegality*),

or an Event of Default under the equivalent clauses in any Additional Senior Secured Financing Agreement or Senior Secured Debt Document;

- (b) any Event of Default not referred to in paragraph (a) above which has or is reasonably likely to have a Material Adverse Effect; or
- (c) any other Event of Default under any Credit Facility or any Additional Senior Secured Financing constituted by Senior Secured Notes in respect of which the relevant Creditor Representative has exercised any of its rights under any acceleration provision(s) of the relevant Credit Facility Agreement or Additional Senior Secured Financing Agreement (as applicable).

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

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

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

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

“**Non-Cash Consideration**” means consideration in a form other than cash.

“**Non-Cash Recoveries**” means:

- (a) any proceeds of a Distressed Disposal or a Debt Disposal; or
- (b) any amount distributed to the Security Agent pursuant to Clause 12.2 (*Turnover by the Creditors*),

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

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

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

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

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

“**Notes Finance Documents**” means:

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

“**Notes Indenture**” means:

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

“**Notes Trustee**” means:

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

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

“**Parent Holdco**” has the meaning give to such term in the Initial Senior Facilities Agreement or, after the Credit Facilities Discharge Date with respect to the Initial Senior Facilities, any equivalent definition in the first other Credit Facility Agreement entered into in respect of which the Credit Facilities Discharge Date has not occurred or, if no other Credit Facility Agreement has been entered into such equivalent definition under another Debt Document as agreed between the Parent and the relevant Instructing Group.

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

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

“**Payment Netting**” means:

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

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

“**Perfection Requirements**” has the meaning given to that term in the Initial Senior Facilities Agreement or, after the Credit Facilities Discharge Date with respect to the Initial Senior Facilities, any equivalent definition in the first other Credit Facility Agreement entered into in respect of which the Credit Facilities Discharge Date has not occurred or, if no other Credit Facility Agreement has been entered into such equivalent definition under another Debt Document as agreed between the Parent and the relevant Instructing Group.

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

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

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

“**Permitted Payments**” means the Payments permitted by Clause 3.1 (*Payment of Credit Facility Lender Liabilities*), Clause 4.1 (*Payment of Senior Secured Notes Liabilities*), Clause 5.3 (*Permitted Payments: Hedging Liabilities*), Clause 7.2 (*Permitted Payments: Second Lien Liabilities*), Clause 8.2 (*Permitted Payments: Unsecured Notes Liabilities*), Clause 9.2 (*Permitted Payments: Intra-Group Liabilities*) and Clause 10.2 (*Permitted Payments: Subordinated Shareholder Liabilities*).

“**Primary Creditors**” means the Senior Secured Creditors, the Second Lien Creditors and the Unsecured Notes Creditors.

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

“**Proceeds Loan**” means any loan made by a Finco to the Parent with the proceeds of any issue of Unsecured Notes.

“**Public Auction**” means a public auction or other competitive sale process in which more than one bidder participates or is invited to participate and run in accordance with the advice of a Financial Adviser with a view to obtaining the best price reasonably obtainable, taking into account all relevant circumstances, which may or may not be conducted through a court or other legal proceeding.

“**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 19.1 (*Order of Application*).

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

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

**“Relevant Liabilities”** means:

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

**“Resolution Authority”** means any body which has authority to exercise any Write-down and Conversion Powers.

**“Retained Excess Cashflow”** means Excess Cashflow arising from a previous Financial Year not required to be prepaid in mandatory prepayment under a Credit Facility.

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

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

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

**“Second Lien Creditor Representative”** means each Second Lien Agent and each Second Lien Notes Trustee.

**“Second Lien Facility”** means any credit facility which, by the terms of the Secured Debt Documents, is permitted to share in the Common Transaction Security on the basis it ranks after the Senior Secured Liabilities and *pari passu* with the Initial Second Lien Facilities as provided for in this Agreement.

**“Second Lien Facility Agreement”** means any facility agreement entered into after the date of this Agreement by the relevant member of the Group and designated by the Parent as a “Second Lien Facility Agreement” in the applicable Further Creditor Notice.

**“Second Lien Facility Creditor”** means in relation to any Second Lien Facility, the Second Lien Agent and each Second Lien Lender in respect of that Second Lien Facility.

**“Second Lien Finance Documents”** means in relation to any Additional Second Lien Financing:

- (a) in relation to any Second Lien Facility, the relevant Second Lien Facility Agreement, each other document or instrument defined as being a “Finance Document” or its equivalent and each other document or instrument designated by the relevant member of the Group and the relevant Creditor Representative as being a “Finance Document” or its equivalent under the relevant Second Lien Facility Agreement; and
- (b) in relation to any Second Lien Notes, the relevant Second Lien Notes Indenture and each other document or instrument designated by the relevant member of the Group and the relevant Creditor Representative as being a “Notes Document” or its equivalent under the relevant Second Lien Notes Indenture.

**“Second Lien Financing”** means the any Additional Second Lien Financing.

**“Second Lien Lenders”** means in relation to any Second Lien Facility, each **“Lender”** (or equivalent) under and as defined in the relevant Second Lien Facility Agreement.

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

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

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

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

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

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

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

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

**“Second Lien Restructuring Costs”** means any fees, costs and expenses of:

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

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

**“Secured Creditor”** means:

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

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

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

**“Security”** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**“Security Agent’s Spot Rate of Exchange”** means, in respect of the conversion of one currency (the **“First Currency”**) into another currency (the **“Second Currency”**):

- (a) for so long as RBC Europe Limited (or one of its Affiliates) is acting as Senior Agent, the Senior Agent’s spot rate of exchange; or
- (b) if RBC Europe Limited (or one of its Affiliates) resigns or is replaced as Senior Agent, any publicly available spot rate of exchange selected by the Security Agent (acting reasonably),

for the purchase of the Second Currency with the First Currency in the European foreign exchange market at or about 11:00 am (London time) on a particular day, which shall, in either case, be notified by the Security Agent in accordance with paragraph (e) of Clause 21.4 (Duties of the Security Agent).

**“Security Property”** means:

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

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

- (a) its aggregate Credit Facility Commitments, if any, in respect of each Credit Facility or, following a Credit Facility Acceleration Event in respect of a Credit Facility, the

aggregate principal amount of the Credit Facility Lender Liabilities owed to it under such Credit Facility;

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

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

**“Senior Secured Creditor Representative”** means the Initial Senior Agent and any other representative that is a Creditor Representative of the type described in paragraph (b) or (c) of that definition.

**“Senior Secured Creditors”** means the Initial Senior Lenders, the Additional Senior Secured Financing Creditors and the Hedge Counterparties.

**“Senior Secured Debt Documents”** means the Initial Senior Facilities Finance Documents, the Hedging Agreements and the Additional Senior Secured Financing Documents.

**“Senior Secured Financing”** means each of the Initial Senior Facilities and any Additional Senior Secured Financing.

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

**“Senior Secured Liabilities Acceleration Event”** means:

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

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

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

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

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

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

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

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

**“Shareholder Creditor”** means (a) Holdco, (b) Finco and (c) any other person that has acceded to this Agreement as a Shareholder Creditor in accordance with Clause 24.2 (*Accession of Shareholder Creditor*).

**“Subordinated Shareholder Liabilities”** means the Liabilities owed to the Shareholder Creditors by a member of the Group which constitute Indebtedness (as defined in the Initial Senior Facilities Agreement or the equivalent term in any other Credit Facility Agreement (as

the context requires)) (including Liabilities owed in respect of any Proceeds Loan or Subordinated Shareholder Funding (as defined in the Initial Senior Facilities Agreement or the equivalent term in any other Credit Facility Agreement (as the context requires))).

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

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

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

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

“**Term Outstandings**” means, at any time, the aggregate of the amounts of principal (not including any capitalised or deferred interest) then outstanding under:

- (a) any term loan facility under the Initial Senior Facilities Agreement, any other Credit Facility Agreement or any Second Lien Facility Agreement; and
- (b) (i) any Additional Senior Secured Notes Financing or (ii) any Additional Second Lien Financing which is constituted by Second Lien Notes,

or, in each case, any refinancing thereof.

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

“**Total Hedged Amount**” means, at any time, the aggregate of the Total Exchange Rate Hedging Amount and the Total Interest Rate Hedging Amount.

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

“**Transaction Security Documents**” means:

- (a) the “Transaction Security Documents” under, and as defined in, the Initial Senior Facilities Agreement; and
- (b) any other document entered into by any Debtor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Debtors under the Secured Debt Documents.

“**UK Bail-In Legislation**” means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**“Unsecured Creditor”** means each Unsecured Notes Creditor, each Intra-Group Lender and each Shareholder Creditor.

**“Unsecured Liabilities Acceleration Event”** means, in relation to any Unsecured Notes Financing:

- (a) the Creditor Representative in respect of such Unsecured Notes exercising any of its rights (other than a right to place amounts on demand but including, without limitation, the making of a demand in respect of any amounts placed on demand) under the acceleration provisions of the relevant Unsecured Notes Finance Documents to declare all or part of the indebtedness outstanding thereunder to be immediately due and payable; or
- (b) all or part of such indebtedness becoming immediately due and payable automatically as a consequence of an Unsecured Notes Financing Event of Default.

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

**“Unsecured Notes”** means, in respect of any Unsecured Notes Financing, any notes issued or to be issued by a Finco under an Unsecured Notes Indenture in respect of that Unsecured Notes Financing.

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

**“Unsecured Notes Finance Documents”** means, in relation to any Unsecured Notes Financing, the Unsecured Notes Indenture and each other document or instrument designated by a Finco and the relevant Creditor Representative as being a “Notes Document” or its equivalent under the relevant Unsecured Notes Indenture.

**“Unsecured Notes Financing”** means any indebtedness incurred by a Finco (as issuer, together with the guarantees of the relevant Debtors) under Unsecured Notes which is notified to the Security Agent by the Parent in writing as being indebtedness that is an “Unsecured Notes Financing” pursuant to Clause 25.3 (*Further Creditor Notice*) provided that:

- (a) incurrence of such indebtedness is not prohibited by the terms of the Secured Debt Documents;
- (b) the terms of such Unsecured Notes comply with Clause 25.2 (*Terms of Additional Indebtedness*); and
- (c) either:
  - (i) the providers of such indebtedness have agreed to become a Party to this Agreement as an Unsecured Notes Creditor by executing and delivering to the Security Agent a Creditor/Creditor Representative Accession Undertaking; or
  - (ii) the agent, trustee or other relevant representative in respect of that Unsecured Notes Financing has agreed to become a Party to this Agreement as a Creditor Representative on behalf of the providers of such indebtedness by executing and delivering to the Security Agent a Creditor/Creditor Representative Accession Undertaking,

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

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

**“Unsecured Notes Indenture”** means the indenture or other issuing document entered into after the date of this Agreement by a Finco and designated by the Parent as an “Unsecured Notes Indenture” in the applicable Further Creditor Notice.

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

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

**“Unsecured Notes Restructuring Costs”** means any fees, costs and expenses of:

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

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

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

**“VAT”** means:

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

**“Write-down and Conversion Powers”** means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability

- or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
- (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to any UK Bail-In Legislation:
  - (i) any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers; and
  - (ii) any similar or analogous powers under that UK Bail-In Legislation.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
  - (i) any Party in a particular capacity shall be construed to be a reference to it in that capacity as such and not in any other capacity;
  - (ii) any Party or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees (including the surviving entity of any merger involving the person) and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
  - (iii) 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;
  - (v) a “**Debt Document**” or any other agreement or instrument is (other than a reference to a “**Debt Document**” or any other agreement or instrument in “**original form**”) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated (however fundamentally) as permitted by this Agreement;
  - (vi) a “**distribution**” of or out of the assets of a member of the Group, includes a distribution of cash and a distribution of Non-Cash Consideration;
  - (vii) “**enforcing**” (or any derivation) the Common Transaction Security includes the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor by the Security Agent;
  - (viii) a “**group of Creditors**” includes all the Creditors and a “**group of Primary Creditors**” includes all the Primary Creditors;
  - (ix) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (x) the “**original form**” of a “**Debt Document**” or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
  - (xi) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (xii) “**proceeds**” of a Distressed Disposal, a Debt Disposal or a Non-Distressed Disposal includes proceeds in cash and in Non-Cash Consideration;
  - (xiii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
  - (xiv) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Any Default or Event of Default arising under the Debt Documents is “**continuing**” unless it has been remedied or, in accordance with the relevant Debt Documents, waived.
- (d) A Second Lien Creditor providing “**cash cover**” for a Letter of Credit means a Second Lien Creditor paying an amount in the currency of the Letter of Credit to an interest-bearing account in the name of the Second Lien Lender and the following conditions being met:
- (i) the account is with the relevant Issuing Bank;
  - (ii) until no amount is or may be outstanding under that Letter of Credit, withdrawals from the account may only be made to pay an Issuing Bank amounts due and payable to it under the Credit Facility Documents in respect of that Letter of Credit; and
  - (iii) the Second Lien Lender has executed a security document over the account, in form and substance satisfactory to such Issuing Bank with which that account is held, creating a first ranking security interest over that account.
- (e) Contingent liabilities arising at law (such as the risk of clawback from a preference claim) where there is a no real possibility that such contingent liabilities become actual liabilities (except to the extent the relevant Creditor Representative (and if applicable the Security Agent) or Hedge Counterparty determines (in good faith)) shall be disregarded when determining whether any liabilities have been fully and finally discharged.
- (f) References to any Creditor Representative acting on behalf of any specified group of Creditors means that Creditor Representative acting on behalf of such group of Creditors or, if applicable, with the consent of the requisite number of such group of Creditors required under and in accordance with the applicable Debt Documents. Such Creditor Representative will be entitled to seek instruction from the relevant group of Creditors which it represents to the extent required by the applicable Debt Documents as to any action to be taken by it under this Agreement.
- (g) Until the relevant proceeds are released from such escrow, the provisions of this Agreement shall not apply to or create any restriction in respect of any escrow arrangement to which the proceeds of any Second Lien Notes, Unsecured Notes and/or

Senior Secured Notes are subject and this Agreement shall not govern the rights and obligations of the Second Lien Noteholders, the Unsecured Noteholders or, as the case may be, Senior Secured Noteholders concerned until such proceeds are released from such escrow arrangement in accordance with its terms.

- (h) Any reference in this Agreement to a Debtor or member of the Group being able to make any Payment or take any other action shall include a reference to that Debtor or member of the Group being permitted to make any arrangement in respect of that Payment or action or take any step or enter into any transaction to facilitate the making of that Payment or the taking of that action, provided such arrangement action or step is not otherwise prohibited by the Debt Documents.
- (i) Unless a contrary indication appears a term defined in the Initial Senior Facilities Agreement has the same meaning when used in this Agreement.

### 1.3 Third Party Rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Rights Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in paragraph (b) of Clause 21.11 (Exclusion of liability) may, subject to this Clause 1.3 and the Third Parties Rights Act, rely on any Clause of this Agreement which expressly confers rights on it.
- (d) The Third Parties Rights Act shall apply to this Agreement in respect of any Noteholder which, by holding a Note, has effectively agreed to be bound by the provisions of this Agreement and will be deemed to receive the benefits hereof, and be subject to the terms and conditions hereof, as if such person was a Party hereto. For the purposes of this paragraph (d), upon any person becoming a Noteholder, such person shall be deemed a Party to this Agreement.
- (e) Without prejudice to Clause 31 (Consents, Amendments and Override), in relation to any amendment or waiver of this Agreement, no such person that is deemed to be a party to this Agreement by virtue of this Clause 1.3 is required to consent to or execute any amendment or waiver in order for such amendment or waiver to be effective.

### 1.4 Treatment of Holdco

For the avoidance of doubt, until such time as Holdco is owed any Subordinated Shareholder Liabilities it will not have any obligations or liabilities under this Agreement.

## 2. Ranking and Priority

### 2.1 Primary Creditor Liabilities

Subject to Clause 2.3 (*Notes Liabilities*), each of the Parties agrees that the Liabilities owed by the Debtors to the Primary Creditors shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:

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

## **2.2 Common Transaction Security**

Each of the Parties agrees that the Common Transaction Security shall secure the Liabilities owing to the Secured Creditors (but only to the extent that such Common Transaction Security is expressed to secure those Liabilities) in the order provided for in Clause 19.1 (*Order of Application*).

## **2.3 Notes Liabilities**

The Parties acknowledge that the Senior Secured Notes Liabilities owed by a member of the Group and the Unsecured Notes Liabilities owed by a Finco (respectively) are senior obligations of such member of the Group or such Finco (as applicable).

## **2.4 Subordinated Shareholder and Intra-Group Liabilities**

- (a) Each of the Parties agrees that the Subordinated Shareholder Liabilities and the Intra-Group Liabilities are postponed and subordinated to the Senior Secured Liabilities, the Second Lien Liabilities and the Unsecured Notes Liabilities.
- (b) This Agreement does not purport to rank any of the Subordinated Shareholder Liabilities or the Intra-Group Liabilities as between themselves.

## **3. Credit Facility Lenders and Credit Facility Lender Liabilities**

### **3.1 Payment of Credit Facility Lender Liabilities**

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

### **3.2 Amendments and Waivers: Credit Facility Lenders**

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

### 3.3 Security: Credit Facility Lenders

Other than as set out in Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*), and subject to the Agreed Security Principles and Perfection Requirements, the Credit Facility Lenders may only take, accept or receive the benefit of:

- (a) any Security in respect of the Credit Facility Lender Liabilities in addition to the Common Transaction Security if (except for any Security permitted under Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*)) and to the extent legally possible, at the same time equivalent Security is also offered:
  - (i) to the Security Agent as trustee for the other Secured Creditors in respect of their Secured Obligations; or
  - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Creditors:
    - (A) to the other Secured Creditors in respect of their Secured Obligations; or
    - (B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Creditors,and ranks in the same order of priority as that contemplated in Clause 2.2 (*Common Transaction Security*) (either pursuant to this Agreement or otherwise); and
- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Credit Facility Lender Liabilities in addition to those in:
  - (i) the relevant Credit Facility Documents;
  - (ii) this Agreement; or
  - (iii) any Common Assurance,if (except for any guarantee, indemnity or other assurance against loss permitted under Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*)) and to the extent legally possible, at the same time it or an equivalent guarantee, indemnity or other assistance (in each case however conferred) is also offered to the other Secured Creditors in respect of their respective Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*) (either pursuant to this Agreement or otherwise).

### 3.4 Security: Ancillary Lenders and Issuing Banks

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

- (a) the Common Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
  - (i) the relevant Credit Facility Documents;
  - (ii) this Agreement; or

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

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

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

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

- (a) The Ancillary Lenders and the Issuing Banks may take Enforcement Action if:
  - (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the relevant Credit Facility Lender Liabilities (excluding the Liabilities owing to Ancillary Lenders and the Issuing Banks), in which case the Ancillary Lenders and the Issuing Banks may take the same Enforcement Action as has been taken in respect of those Credit Facility Lender Liabilities;
  - (ii) that action is contemplated by the Initial Senior Facilities Agreement (or any applicable other Credit Facility Agreement) or Clause 3.4 (Security: Ancillary Lenders and Issuing Banks);
  - (iii) that Enforcement Action is taken in respect of Credit Facility Cash Cover which has been provided in accordance with the relevant Credit Facility Documents;
  - (iv) at the same time as or prior to, that action, the consent of the relevant Credit Facility Majority Lenders and the Majority Senior Secured Creditors to that Enforcement Action is obtained; or
  - (v) an Insolvency Event has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event, each Ancillary Lender and each Issuing Bank shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group to:
    - (A) accelerate any of that member of the Group's Credit Facility Lender Liabilities or declare them prematurely due and payable on demand;

- (B) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Credit Facility Lender Liabilities;
  - (C) exercise any right of set-off or take or receive any Payment in respect of any Credit Facility Lender Liabilities of that member of the Group; or
  - (D) claim and prove in any insolvency process of that member of the Group for the Credit Facility Lender Liabilities owing to it.
- (b) Clause 3.5 (*Restriction on Enforcement: Ancillary Lenders and Issuing Banks*) shall not restrict any right of an Ancillary Lender:
- (i) to demand repayment or prepayment of any of the Liabilities owed to it prior to the expiry date of the relevant Ancillary Facility; or
  - (ii) to net or set off in relation to a Multi-account Overdraft,
- in accordance with the terms of the relevant Credit Facility Document and to the extent that the demand is required to reduce, or the netting or set-off represents a reduction from the Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings.

## **4. Senior Secured Notes Creditors and Senior Secured Notes Liabilities**

### **4.1 Payment of Senior Secured Notes Liabilities**

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

### **4.2 Amendments and Waivers: Senior Secured Notes Creditors**

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

### 4.3 Security: Senior Secured Notes Creditors

Subject to the Agreed Security Principles and Perfection Requirements, the Senior Secured Notes Creditors may only take, accept or receive the benefit of:

- (a) any Security in respect of the Senior Secured Notes Liabilities in addition to the Common Transaction Security if, and to the extent legally possible, at the same time, equivalent Security is also offered:
  - (i) to the Security Agent as trustee for the other Secured Creditors in respect of their Secured Obligations; or
  - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Creditors:
    - (A) to the other Secured Creditors in respect of their Secured Obligations; or
    - (B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Creditors,and ranks in the same order of priority as that contemplated in Clause 2.2 (*Common Transaction Security*) (either pursuant to this Agreement or otherwise); and
- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Senior Secured Notes Liabilities in addition to those in:
  - (i) the relevant Additional Senior Secured Financing Documents; or
  - (ii) this Agreement; or
  - (iii) any Common Assurance,if, and to the extent legally possible, at the same time, it or an equivalent guarantee, indemnity or other assistance (in each case however conferred) is also offered to the other Secured Creditors in respect of their respective Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*) (either pursuant to this Agreement or otherwise); and
- (c) any Security granted over the relevant cash or cash equivalents (and/or the relevant accounts and related rights) to or for the benefit of any Senior Secured Notes Creditors in respect of any defeasance, discharge or redemption of the Senior Secured Notes where such defeasance, discharge or redemption is not prohibited by the terms of any of the Debt Documents.

## 5. Hedge Counterparties and Hedging Liabilities

### 5.1 Identity of Hedge Counterparties

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

- (c) Any member of the Group may enter into interest rate hedging or foreign exchange hedging under which the relevant counterparty may share in the Common Transaction Security and in the benefit of a guarantee or indemnity under this Agreement. The two types of hedging arrangements are interest rate hedging, or foreign exchange hedging, in each case not otherwise prohibited by the Debt Documents and not for speculative purposes.

## 5.2 Restriction on Payments: Hedging Liabilities

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

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

## 5.3 Permitted Payments: Hedging Liabilities

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

- (2) a Permitted Automatic Early Termination under that Hedging Agreement which arises as a result of an event relating to a Debtor; and
- (B) no Event of Default under the Senior Secured Debt Documents is continuing at the time of that Payment or would result from that Payment;
- (v) to the extent that no Event of Default under the Senior Secured Debt Documents is continuing or would result from that Payment and the relevant Debtor's obligation to make the Payment arises as a result of a close-out or termination arising as a result of:
  - (A) section 5(a)(vii) (*Bankruptcy*) of the 1992 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 1992 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
  - (B) section 5(a)(vii) (*Bankruptcy*) of the 2002 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 2002 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
  - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraph (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement) and the equivalent event of default has occurred with respect to the relevant Hedge Counterparty; or
  - (D) the relevant Debtor terminating or closing-out the relevant Hedging Agreement as a result of a Hedging Force Majeure and the Termination Event (as defined in the relevant Hedging Agreement in the case of a Hedging Agreement based on an ISDA Master Agreement) or the equivalent termination event (in the case of a Hedging Agreement not based on an ISDA Master Agreement) has occurred with respect to the relevant Hedge Counterparty; or
- (vi) if the Majority Senior Secured Creditors give prior consent to the Payment being made.
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid unless the prior consent of the Majority Senior Secured Creditors is obtained.
- (c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to Clause 5.4 (Payment obligations continue), not result in a default (however described) in respect of that Debtor under that Hedging Agreement.

#### **5.4 Payment Obligations Continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 5.2 (*Restriction on Payments: Hedging Liabilities*) and 5.3 (*Permitted Payments*):

*Hedging Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

## **5.5 No Acquisition of Hedging Liabilities**

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

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

in respect of any of the Hedging Liabilities unless:

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

## **5.6 Security: Hedge Counterparties**

Subject to the Agreed Security Principles, 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) this Agreement;
  - (ii) any Common Assurance; or
  - (iii) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (b)(i) and (b)(ii) above;
- (c) as otherwise contemplated by Clause 3.3 (*Security: Credit Facility Lenders*) and Clause 4.3 (*Security: Senior Secured Notes Creditors*); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

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

Subject to Clause 5.8 (*Permitted Enforcement: Hedge Counterparties*) and Clause 5.9 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clauses 14.3 (*Enforcement Instructions*) and 14.4 (*Manner of Enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements.

## 5.8 Permitted Enforcement: Hedge Counterparties

- (a) To the extent it is able to do so under the relevant Hedging Agreement, a Hedge Counterparty may terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:
- (i) if, prior to a Distress Event, the Parent has certified to that Hedge Counterparty that that termination or close-out would not result in a breach of any Senior Secured Debt Document;
  - (ii) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;
  - (iii) if a Distress Event has occurred;
  - (iv) if an Event of Default has occurred under clause 37.6 (Insolvency) or clause 37.7 (Insolvency proceedings) of the Initial Senior Facilities Agreement (or any equivalent provision of a Credit Facility Agreement or Senior Secured Notes Indenture) in relation to a Debtor which is party to that Hedging Agreement;
  - (v) if the relevant Instructing Group gives prior consent to that termination or close-out;
  - (vi) on or immediately following a refinancing (or repayment) and cancellation in full of a Credit Facility, Senior Secured Notes, a Second Lien Facility or Second Lien Notes in respect of which the relevant Hedging Agreement expressly relates, to the extent that the Parent confirms or has confirmed that the relevant Hedging Agreement was entered into to hedge interest rate or cross-currency risks in respect of such Credit Facility, Senior Secured Notes, Second Lien Facility or Second Lien Notes;
  - (vii) if the only Secured Obligations are the Hedging Liabilities;
  - (viii) if the Hedging Liabilities and the other Senior Secured Liabilities cease to have *pari passu* entitlement to the proceeds of enforcement of the Common Transaction Security;
  - (ix) to the extent that that termination or close-out is necessary to comply with paragraph (b) or (c) of Clause 5.12 (*Total Hedging*); or
  - (x)
    - (A) Subject to sub-paragraphs (B) and (C) below, if a Hedge Counterparty or its Affiliate (as applicable) who is also a Credit Facility Lender has ceased to be a Credit Facility Lender, has its Senior Secured Credit Participation reduced to zero or no longer has any Senior Secured Credit Participation, in each case as a result of the exercise of any right or compliance with any obligation (as applicable) under the provisions of clause 11 (*Illegality, Voluntary Prepayment and Cancellation*), clause 50.5 (*Replacement of Lender*), or clause 12 (*Exit, Qualifying Listing or Qualifying Ratings Event and Mandatory Prepayment*) of the Initial Senior Facilities Agreement (or any equivalent provisions of a Credit Facility Document);
    - (B) in the circumstances to which paragraph (A) above relates, on or prior to the date on which such Credit Facility Lender's Senior Secured Credit Participation is reduced to zero or such Initial Senior Lender no

longer has any Senior Secured Credit Participation (the “**Relevant Date**”), the Parent may identify an Eligible Transferee willing to accept the novation of the relevant Hedge Counterparty’s rights and obligations under the relevant Hedging Agreement. Following delivery of a notice by the Parent identifying an Eligible Transferee to the relevant Hedge Counterparty:

- (1) such Hedge Counterparty will (at the cost and expense of the Parent (but, for the avoidance of doubt, excluding any purchase price or similar payment to be made by the Eligible Transferee to the relevant Hedge Counterparty)) negotiate (in good faith and acting reasonably) with the Eligible Transferee and use reasonable endeavours (taking into account any legal or regulatory impediments) with a view to agreeing and entering into the form of documentation required to effect the novation from that Hedge Counterparty to the Eligible Transferee on mutually satisfactory terms as soon as reasonably practicable following delivery of the notice by the Parent referred in sub-paragraph (B) above;
  - (2) further to (1) above, the relevant Hedge Counterparty shall only be obliged to enter into the novation documentation referred to in sub-paragraph (1) above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that novation; and
  - (3) the relevant Hedge Counterparty shall perform the checks described in sub-paragraph (B) above as soon as reasonably practicable following delivery of a notice referred to in sub-paragraph (B) above and shall notify the Eligible Transferee and the Parent when it is satisfied that it has complied with those checks; and
- (C) if no novation has been effected (on the terms set out in sub-paragraph (B) above) on or prior to the date falling five Business Days following the Relevant Date, the Hedge Counterparty may terminate the relevant hedging transactions under its Hedging Agreement.

Where used in this paragraph (x), “**Eligible Transferee**” means any transferee that has acceded or will accede (if not already party to this Agreement as a Hedge Counterparty) to this Agreement as a Hedge Counterparty.

- (b) If a Debtor has defaulted on any Payment due under a Hedging Agreement after allowing any applicable notice or grace period and the default has continued unwaived and unremedied for more than five Business Days after notice thereof has been given to the Security Agent by the relevant Hedge Counterparty pursuant to paragraph (j) of Clause 28.3 (Notification of prescribed events), the relevant Hedge Counterparty:
- (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any transaction under that Hedging Agreement; and
  - (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that an Acceleration Event has occurred, shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal

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

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

### **5.9 Required Enforcement: Hedge Counterparties**

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close-out in full any transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
  - (i) the occurrence of an Acceleration Event and delivery to it of a notice from the Security Agent that an Acceleration Event has occurred; and
  - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the relevant Instructing Group) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between any Debtor and any Primary Creditor with the purpose of bringing about that Acceleration Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under paragraph (b) of Clause 5.8 (*Permitted Enforcement: Hedge Counterparties*) (or would have been able to if that Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Security Agent (acting on the instructions of the relevant Instructing Group).

### **5.10 Treatment of Payments Due to Debtors on Termination of Transactions under Hedging Agreements**

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

## 5.11 Terms of Hedging Agreements

- (a) The Hedge Counterparties (to the extent party to the Hedging Agreement in question) and the Debtors party to the Hedging Agreements shall ensure that, at all times:
- (i) each Hedging Agreement documents only hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of “**Hedging Agreement**” and that no other hedging arrangements are carried out under or pursuant to a Hedging Agreement;
  - (ii) each Hedging Agreement is based either:
    - (A) on an ISDA Master Agreement; or
    - (B) on another framework agreement which is similar in effect to an ISDA Master Agreement;
  - (iii) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of:
    - (A) a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement); or
    - (B) an event similar in meaning and effect to either of those described in paragraph (A) above (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),that Hedging Agreement will:
    - (1) if it is based on a 1992 ISDA Master Agreement, provide for payments under the “Second Method” and will make no material amendment to section 6(e) (Payments on Early Termination) of the ISDA Master Agreement;
    - (2) if it is based on a 2002 ISDA Master Agreement, make no material amendment to section 6(e) (Payments on Early Termination) of the ISDA Master Agreement; or
    - (3) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Agreement is in its favour;
  - (iv) each Hedging Agreement will not provide for Automatic Early Termination other than to the extent that:
    - (A) the provision of Automatic Early Termination is consistent with practice in the relevant derivatives market, taking into account the legal status and jurisdiction of incorporation of the parties to that Hedging Agreement; and
    - (B) that Automatic Early Termination is:
      - (1) as provided for in section 6(a) (Right to Terminate following Event of Default) of the 1992 ISDA Master Agreement (if the

- Hedging Agreement is based on a 1992 ISDA Master Agreement);
- (2) as provided for in section 6(a) (Right to Terminate Following Event of Default) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
  - (3) similar in effect to that described in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
- (v) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to Clause 5.9 (*Required Enforcement: Hedge Counterparties*);
  - (vi) each Hedging Agreement will permit the relevant Hedge Counterparty and each relevant Debtor to take such action as may be necessary to comply with Clause 5.12 (*Total Hedging*).
- (b) The relevant Hedge Counterparty and Debtor agree that any existing hedging agreements executed prior to the date of this Agreement which the Parent intends should become Hedging Agreements shall be deemed amended by this Agreement from the date of accession of the relevant Hedge Counterparty to this Agreement pursuant to Clause 24.4 (*New Hedge Counterparty or change in Hedge Counterparty*) to the extent necessary so as to ensure that the terms of such existing hedging agreements comply with the terms of this Agreement in all respects (and the relevant Debtors and the Hedge Counterparties party to such existing hedging agreements consent and agree to all such amendments by their execution of, or accession to, this Agreement and acknowledge that the existing hedging agreements will be construed accordingly).
  - (c) Without prejudice to paragraph (a)(vi) of Clause 5.8 (*Permitted Enforcement: Hedge Counterparties*), in the event of any refinancing, replacement, increase, supplement or other restructuring of all or any part of the Senior Secured Liabilities, the Second Lien Liabilities or the Unsecured Notes Liabilities (including by the designation of any Additional Senior Secured Financing, Additional Second Lien Financing or Unsecured Notes Financing pursuant to this Agreement) (a “**Refinancing**”) each Hedge Counterparty shall promptly provide its consent to any amendment to, request under and/or replacement of any Hedging Agreement or other Debt Document required by the Parent in order to facilitate that Refinancing (a “**Refinancing Request**”), in each case unless such Refinancing is materially prejudicial to the interests of that Hedge Counterparty (*provided that* such Refinancing shall not be considered materially prejudicial if any amended or replacement intercreditor arrangements place that Hedge Counterparty in substantially the same, or a better, position relative to the other Secured Creditors as it was in under the intercreditor arrangements existing immediately prior to such amendment or replacement).
  - (d) In the event that a Hedge Counterparty does not consent to a Refinancing Request (without prejudice to its obligations under paragraph (c) above) or does not agree to any amendment or waiver requested by a member of the Group pursuant to Clause 31 (*Consents, Amendments and Override*) (in each case within the time period specified by the relevant member of the Group) each member of the Group shall be entitled to:
    - (i) terminate any hedging arrangements with that Hedging Counterparty (the “**Non-Consenting Counterparty**”) (and the amount payable to or by the

Non-Consenting Counterparty on such early termination shall be calculated on the basis that an Additional Termination Event has occurred and that the relevant member of the Group is the Affected Party, or on such other basis as may be agreed by the Non-Consenting Counterparty and the relevant member of the Group); and/or

- (ii) require that any of those arrangements (the “**Transferred Arrangements**”) be transferred (and the Non-Consenting Counterparty will so transfer) to another person selected by the Parent (the “**Acquiring Counterparty**”) willing to assume the same (with the transfer price payable by the Acquiring Counterparty or, as the case may be, the Non-Consenting Counterparty being equal to the amount that would have been payable to or by the Non-Consenting Counterparty upon the early termination of the Transferred Arrangements under the relevant Hedging Agreements by reason of an Additional Termination Event on the proposed transfer date, and on the basis that the relevant Debtor is the Affected Party or as otherwise agreed by the Non-Consenting Counterparty and the relevant member of the Group), subject to the Non-Consenting Counterparty carrying out and being satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the Acquiring Counterparty.
- (e) The terms “**Additional Termination Event**” and “**Affected Party**” as used in paragraph (d) above shall have the meaning given to them in the relevant Hedging Agreements based on the ISDA documents or if the Hedging Agreements are not based on an ISDA Master Agreement, the equivalent terms in such Hedging Agreement.

## 5.12 Total Hedging

- (a) The Parent shall procure that, at all times:
  - (i) the Total Hedged Amount, Total Interest Rate Hedging Amount and Total Exchange Rate Hedging Amount is not in breach of any requirement of the Secured Debt Documents with respect to such hedging;
  - (ii) the Total Interest Rate Hedging Amount does not exceed the Term Outstandings; and
  - (iii) the Total Exchange Rate Hedging Amount does not exceed the Term Outstandings.
- (b) If an Interest Rate Hedge Excess occurs then as soon as reasonably practicable following the occurrence of that Interest Rate Hedge Excess, the relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, reduce each Hedge Counterparty’s Interest Rate Hedging by that Hedge Counterparty’s Interest Rate Hedging Proportion of that Interest Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary.
- (c) If an Exchange Rate Hedge Excess occurs then as soon as reasonably practicable following occurrence of that Exchange Rate Hedge Excess, the relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, reduce each Hedge Counterparty’s Exchange Rate Hedging by that Hedge Counterparty’s Exchange Rate Hedging Proportion of that Exchange 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 paragraphs (b) or (c) above.

- (e) Each Hedge Counterparty shall co-operate in any process described in paragraph (d) above and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging Agreement(s) to a Debtor as a result of any action described in paragraphs (b) or (c) above.

## 6. Option to Purchase and Hedge Transfer

### 6.1 Option to Purchase: Second Lien Creditors

- (a) Subject to paragraph (b) below, some or all of the Second Lien Creditors (the “**Purchasing Second Lien Creditors**”) may after a Distress Event by giving not less than 10 days’ notice to the Security Agent, require the transfer to them (or to a nominee or nominees), in accordance with Clause 24.3 (*Accession of Credit Facility Lenders and Creditor Representatives*) and Clause 24.5 (*Accession of Senior Secured Notes Trustee*), of all, but not part, of the rights, benefits and obligations in respect of the Senior Secured Liabilities (other than the Hedging Liabilities) if:
  - (i) that transfer is lawful and subject to sub-paragraph (ii) below, otherwise permitted by the terms of the relevant Senior Secured Debt Documents;
  - (ii) any conditions relating to such a transfer contained in the relevant Debt Documents are complied with, other than:
    - (A) any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required; and
    - (B) to the extent that the Purchasing Second Lien Creditors provide cash cover for any Letter of Credit, the consent of the relevant Issuing Bank relating to such transfer;
  - (iii) as applicable, the relevant Creditor Representatives, on behalf of each group of Senior Secured Creditors, are each paid an amount by the Purchasing Second Lien Creditors equal to the aggregate of:
    - (A) any amounts provided as cash cover by the Purchasing Second Lien Creditors for any Letter of Credit;
    - (B) all of the Senior Secured Liabilities (other than the Hedging Liabilities) at that time (whether or not due), including all amounts that would have been payable under the Debt Documents if the Senior Secured Liabilities were being prepaid by the relevant Debtors on the date of that payment; and
    - (C) all costs and expenses (including legal fees) incurred by the relevant Creditor Representatives and/or the other Senior Secured Creditors as a consequence of giving effect to that transfer;
  - (iv) as a result of that transfer the Senior Secured Creditors have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
  - (v) an indemnity is provided from each Purchasing Second Lien Creditor exercising its rights pursuant to this Clause 6.1 (or from another third party acceptable to all the Senior Secured Creditors) in a form satisfactory to each such Creditor in respect of all losses which may be sustained or incurred by

any such Creditor in consequence of any sum received or recovered by any such Creditor from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any such Creditor for any reason; and

- (vi) the transfer is made without recourse to, or representation or warranty from, the Senior Secured Creditors, except that each such Creditor shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) Subject to paragraph (b) of Clause 6.2 (*Hedge Transfer: Second Lien Creditors*) all the Purchasing Second Lien Creditors may only require a Priority Creditor Liabilities Transfer if, at the same time, they require a Hedge Transfer in accordance with Clause 6.2 (*Hedge Transfer: Second Lien Creditors*) and if, for any reason, a Hedge Transfer cannot be made in accordance with Clause 6.2 (*Hedge Transfer: Second Lien Creditors*), no Priority Creditor Liabilities Transfer may be required to be made.
- (c) Each relevant Creditor Representative in respect of the Senior Secured Liabilities shall, at the request of the Purchasing Second Lien Creditors, notify the Purchasing Second Lien Creditors of:
  - (i) the sum of the amounts described in sub-paragraphs (a)(iii)(B) and (C) above; and
  - (ii) the amount of each Letter of Credit for which cash cover is to be provided by the Purchasing Second Lien Creditors.
- (d) If more than one Purchasing Second Lien Creditor wishes to exercise the option to purchase the Senior Secured Liabilities in accordance with paragraph (a) above, each such Purchasing Second Lien Creditor shall:
  - (i) acquire the Senior Secured Liabilities *pro rata*, in the proportion that its Second Lien Credit Participation bears to the aggregate Second Lien Credit Participations of all the Purchasing Second Lien Creditors; and
  - (ii) inform each relevant Creditor Representative in accordance with the terms of the relevant Second Lien Finance Documents, who will determine (consulting with each other as required) the appropriate share of the Senior Secured Liabilities to be acquired by each such Purchasing Second Lien Creditor and shall inform each such Purchasing Second Lien Creditor accordingly,

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

## **6.2 Hedge Transfer: Second Lien Creditors**

- (a) The Purchasing Second Lien Creditors may, by giving not less than 10 days' notice to the Security Agent, require a Hedge Transfer of all, but not part of, the rights, benefits and obligations in respect of the Hedging Liabilities:
  - (i) if either:
    - (A) the Purchasing Second Lien Creditors require, at the same time, a Priority Creditor Liabilities Transfer under Clause 6.1 (*Option to Purchase: Second Lien Creditors*); or

- (B) the Purchasing Second Lien Creditors require that Hedge Transfer at any time on or after the first date on which all Credit Facility Lender Liabilities in respect of the Initial Senior Facilities and any Additional Senior Secured Financing Liabilities have been duly and finally discharged to the satisfaction of the relevant Creditor Representative(s), whether or not as the result of an enforcement and none of the Senior Secured Creditors in respect of the Initial Senior Facilities and any Additional Senior Secured Financing Liabilities are under any further obligation to provide financial accommodation to any of the Debtors under the Debt Documents; and
- (ii) if:
- (A) (x) that transfer is lawful; (y) at the time of the transfer, each relevant Debtor (“**Party B**”) and each relevant Second Lien Creditor that is becoming a party to the Hedging Agreement (such Second Lien Creditor (the “**Assignee**”)) shall have entered into a master agreement (the “**Transferee Agreement**”) in the form of an ISDA Master Agreement, and such Transferee Agreement shall include a Schedule in the form of the Schedule between the assignor and Party B with appropriate changes to the Schedule to reflect the status and identity of the Assignee and to put Party B in no worse a position than Party B would have been in if the transfer had not occurred; and (z) Party B will not, and there is not a substantial likelihood that it will, receive any payment under the Transferee Agreement from which an amount is required to be withheld or deducted for or on account of a Tax with respect to which no additional amount is required to be paid by the Assignee under Section 2(d)(i)(4) of the Transferee Agreement (other than by reason of Section 2(d)(i)(4)(A) or (B) thereof) in which case no Debtor or other member of the Group shall be entitled to withhold its consent to that transfer;
  - (B) any conditions (other than the consent of, or any consultation with, any Debtor or other member of the Group) relating to that transfer contained in the Hedging Agreements are complied with;
  - (C) each Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of (i) the Hedging Purchase Amount in respect of the hedging transactions under the relevant Hedging Agreement at that time and (ii) all costs and expenses (including legal fees) incurred as a consequence of giving effect to that transfer;
  - (D) as a result of that transfer, the Hedge Counterparties have no further actual or contingent liability to any Debtor under the relevant Hedging Agreements;
  - (E) an indemnity is provided from each Purchasing Second Lien Creditor exercising its rights pursuant to this Clause 6.2 which is receiving (or for which a nominee is receiving) that transfer (or from another third party acceptable to the relevant Hedge Counterparty) in a form satisfactory to the relevant Hedge Counterparty in respect of all losses which may be sustained or incurred by that Hedge Counterparty in consequence of any sum received or recovered by that Hedge Counterparty being required (or it being alleged that it is required) to

be paid back by or clawed back from the Hedge Counterparty for any reason;

- (F) that transfer is made without recourse to, or representation or warranty from, the relevant Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer; and
- (G) the relevant Hedge Counterparty has completed all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such transfer.

- (b) The Purchasing Second Lien Creditors and any Hedge Counterparty may agree (in respect of the relevant Hedging Agreements (or one or more of them) to which that Hedge Counterparty is a party) that a Hedge Transfer required by the Purchasing Second Lien Creditor pursuant to paragraph (a) above shall not apply to such Hedging Agreement(s) or to the Hedging Liabilities and Hedge Counterparty Obligations under such Hedging Agreement(s).

## **7. Second Lien Creditors and Second Lien Liabilities**

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

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

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

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

The members of the Group may:

- (a) prior to the Senior Secured Liabilities Discharge Date, make Payments to the Second Lien Creditors in respect of the relevant Second Lien Liabilities then due in accordance with the relevant Second Lien Finance Documents:
  - (i) if:
    - (A) the Payment is of:
      - (1) any of the principal amount of the Second Lien Liabilities:
        - (I) in accordance with any provision contained in a Second Lien Finance Documents under which a Second Lien Creditor can be prepaid comparable and no more favourable than clause 11.1 (*Illegality*) of the Initial Senior Facilities Agreement (*provided that the relevant illegality does not arise as a result of action taken, omitted to be taken, by the applicable Second Lien Creditor or any Creditor Representative on its behalf*);

- (II) in accordance with any provision contained in a Second Lien Finance Document which is similar in meaning and effect to clause 11.6 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*), of the Initial Senior Facilities Agreement;
  - (III) in an amount not exceeding the amount payable in accordance with clause 11.4 (*Voluntary Prepayment of Term Loans*), and clause 12.3 (*Disposal, Insurance, Recovery and Special Purpose Financing Proceeds*), clause 12.4 (*Listing*) or clause 12.5 (*Excess Cash Flow*) of the Initial Senior Facilities Agreement (or any equivalent provision in any other Credit Facility) but which amounts have been waived by any Credit Facility Lender;
  - (IV) in an amount not exceeding an amount equal to the aggregate of Retained Excess Cashflow, Excluded Recovery Proceeds, Excluded Disposal Proceeds, Excluded Insurance Proceeds and New Shareholder Injections *provided that*, in each case, such amount has first been offered in prepayment to the Credit Facility Lenders and which prepayments the Credit Facility Lenders have waived or declined to accept (with any such amounts waived or declined being first offered in prepayment to any Credit Facility Lender who accepted the initial prepayment offer before being paid to Second Lien Creditors), to the extent such amount is not prohibited by the Senior Secured Debt Documents to be applied for this purpose;
  - (V) (only after the discharge in full of the Senior Secured Liabilities), in accordance with any other provision contained in the Second Lien Facility Agreement for the mandatory prepayment, in whole or in part, of the Second Lien Facility on the happening of specified events;
- (2) any of the principal amount of the Second Lien Liabilities in an amount not exceeding the amount of Restricted Payments (as defined in the Initial Senior Facilities Agreement) permitted under clause 30 (*Limitation on Restricted Payments*) of the Initial Senior Facilities Agreement (and any other similar or equivalent provision of any of the other Senior Secured Debt Documents) at such time to the extent such amount is not prohibited by the Senior Secured Debt Documents to be applied for this purpose;
  - (3) consent and/or waiver fees reasonably incurred by the relevant Debtor (acting in good faith) in respect of any amendment of, or consent or waiver relating to, any provision of a Second Lien Finance Document *provided that* such payment when expressed as a percentage of the principal amount of Second Lien Liabilities, does not exceed the amount of the consent and/or waiver fees paid to the Senior Secured Creditors whose

consent was required in respect of the same matter, when expressed as a percentage of the principal amount of the Senior Secured Liabilities (or affected principal thereof);

- (4) any amounts where the amount is outstanding as a result of the accrual of cash interest payable in respect of the Second Lien Liabilities during a period when a Second Lien Payment Stop Notice was outstanding (which has since expired);
- (5) any amount of cash interest, tax gross-up or tax indemnity payments in accordance with the Second Lien Finance Documents;
- (6) the capitalisation of interest or the issuance of a non-cash pay financial instrument evidencing the same which is subordinated to the Senior Secured Liabilities pursuant to this Agreement on the same terms as the Second Lien Liabilities;
- (7) any closing payment due pursuant to any purchase agreement (or equivalent) in respect of any Second Lien Notes or arrangement or other upfront fees due in respect of any Second Lien Facility Agreement; or
- (8) following the occurrence of an Event of Default under a Second Lien Finance Document (which is continuing), all (and not part only) of the Second Lien Liabilities thereunder as a result of those Second Lien Liabilities being released or otherwise discharged solely in consideration for the issue of shares in the Parent or any Holding Company of the Parent (each a “**Debt for Equity Swap**”) *provided that*:
  - (I) no cash or cash equivalent payment is made in respect of the Second Lien Liabilities;
  - (II) any liabilities owed by a member of the Group to another member of the Group, a Shareholder Creditor or any other Holding Company of the Parent that arise as a result of any such Debt for Equity Swap are subordinated to the Senior Secured Liabilities pursuant to this Agreement (as Intra-Group Liabilities or Subordinated Shareholder Liabilities, as applicable);
  - (III) the Senior Secured Creditors are granted Common Transaction Security in respect of any liabilities described in paragraph (b) above owed by a member of the Group;
  - (IV) no member of the Group shall become liable for, or incur, any material tax liability as a result of such Debt for Equity Swap;
  - (V) no Change of Control (as such term is defined in the Initial Senior Facilities Agreement or any equivalent provision of any other Senior Secured Debt Document) would arise as a result of such Debt for Equity Swap;

- (VI) at the time that any Debt for Equity Swap becomes effective, no Distressed Disposal is due to occur at such time which is reasonably likely to be adversely impeded by the occurrence of such Debt for Equity Swap; and
  - (VII) for the avoidance of doubt, no Debt for Equity Swap shall cure any existing breach under clause 26 (*Financial Covenant*) of the Initial Senior Facilities Agreement or any equivalent provision under any other Senior Secured Debt Document; and
- (B) no Second Lien Payment Stop Notice is outstanding; and
  - (C) no Common Senior Secured Payment Default has occurred and is continuing;
- (ii) if the Majority Senior Secured Creditors give prior consent to that Payment being made;
  - (iii) if the Payment is of a Creditor Representative Amount to a Second Lien Notes Trustee or Second Lien Agent;
  - (iv) if a Second Lien Payment Stop Notice is outstanding and/or a Common Senior Secured Payment Default is continuing and such Payment is a payment of any amount referred to in paragraph (i)(A)(6), (i)(A)(7) or (i)(A)(8) above;
  - (v) of costs, commissions, taxes, expenses and, to the extent consistent with market comparables at the time committed to be paid (or otherwise reasonable), fees incurred in respect of or in relation to (or reasonably incidental to) any Second Lien Finance Documents (including in relation to any reporting or listing requirements in respect of any Second Lien Notes);
  - (vi) if the Payment is funded directly or indirectly with the proceeds of indebtedness permitted to be incurred as Second Lien Financing or Subordinated Shareholder Liabilities pursuant to the Secured Debt Documents (after giving pro forma effect to such incurrence and the application of such indebtedness) provided that, if the Senior Secured Liabilities are not being refinanced in full simultaneously (A) no Second Lien Payment Stop Notice is outstanding and (B) no Common Senior Secured Payment Default is continuing; or
  - (vii) if an Event of Default has occurred under the Second Lien Finance Documents and is continuing and the Payment is of Second Lien Restructuring Costs, the Common Currency Amount of which, when aggregated with the Common Currency Amount of any other such amounts paid pursuant to this paragraph (vi), does not exceed £1,000,000; or
- (b) on or after the Senior Secured Liabilities Discharge Date, make Payments to the Second Lien Creditors in respect of the Second Lien Liabilities in accordance with the Second Lien Finance Documents.

### 7.3 Issue of Second Lien Payment Stop Notice

- (a) A Second Lien Payment Stop Notice is “outstanding” during the period from the date on which, following the occurrence of a Material Event of Default (other than a Common Senior Secured Payment Default) (a “**Second Lien Payment Stop Event**”), the Security Agent (acting on the instructions of the relevant Instructing Group) issues

a notice (a “**Second Lien Payment Stop Notice**”) to a Second Lien Creditor Representative (with a copy to the Parent) advising that a Second Lien Payment Stop Event has occurred and is continuing and suspending Payments of the Second Lien Liabilities (other than those permitted under Clause 7.2 (*Permitted Payments: Second Lien Liabilities*) during such time) until the first to occur of:

- (i) the date which is 120 days after the date of issue of that Second Lien Payment Stop Notice;
  - (ii) if a Second Lien Standstill Period commences after the issue of a Second Lien Payment Stop Notice, the date on which that Second Lien Standstill Period expires;
  - (iii) the date on which the relevant Second Lien Payment Stop Event in respect of which that Second Lien Payment Stop Notice was issued is no longer continuing;
  - (iv) the date on which the Security Agent (acting on the instructions of the relevant Instructing Group) cancels that Second Lien Payment Stop Notice by notice to the Second Lien Creditor Representative (with a copy to the Parent); and
  - (v) the date on which the Senior Secured Liabilities Discharge Date has occurred.
- (b) Subject to paragraph (e) below, no Second Lien Payment Stop Notice may be served by the Security Agent in reliance on a particular Second Lien Payment Stop Event more than 120 days after the relevant Creditor Representative receives a notice under the relevant Debt Document advising of the occurrence of that Material Event of Default constituting that Second Lien Payment Stop Event.
- (c) Subject to paragraph (e) below, no more than one Second Lien Payment Stop Notice may be served with respect to the same event or set of circumstances.
- (d) Subject to paragraph (e) below, no more than one Second Lien Payment Stop Notice may be served in any period of 365 days.
- (e) If the Security Agent is instructed to serve (or cancel) a Second Lien Payment Stop Notice under this Clause 7.3 it shall also serve an (or, as the case may be, cancel each) equivalent Second Lien Payment Stop Notice in respect of any other Second Lien Financing.

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

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

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

#### **7.5 Payment Obligations and Capitalisation of Interest Continue**

- (a) No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Second Lien Finance Document by the operation of Clauses 7.1 (*Restriction on Payment: Second Lien Liabilities*) to 7.4 (*Effect of Second Lien Payment Stop Event or Common Senior*

*Secured Payment Default*) inclusive even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

- (b) The accrual and (if applicable) capitalisation of interest in accordance with the Second Lien Finance Documents shall continue notwithstanding the issue of a Second Lien Payment Stop Notice or the occurrence of a Common Senior Secured Payment Default.

## **7.6 Cure of Payment Stop: Second Lien Creditors**

If:

- (a) at any time following the issue of a Second Lien Payment Stop Notice or the occurrence of a Common Senior Secured Payment Default, that Second Lien Payment Stop Notice ceases to be outstanding and/or (as the case may be) the Common Senior Secured Payment Default ceases to be continuing; and
- (b) the relevant Debtor then promptly pays to the Second Lien Creditors an amount equal to any Payments which had accrued under the Second Lien Finance Documents and which would have been Permitted Payments under Clause 7.2 (*Permitted Payments: Second Lien Liabilities*) but for that Second Lien Payment Stop Notice or Common Senior Secured Payment Default,

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

## **7.7 Second Lien Debt Purchase Transactions**

- (a) Subject to paragraph (b) below, the Parent shall not, and shall procure that no other member of the Group will, enter into any Debt Purchase Transaction in respect of the Second Lien Liabilities or beneficially own all or any part of the share capital of a company that is a Second Lien Creditor or a party to a Debt Purchase Transaction in respect of the Second Lien Liabilities.
- (b) Paragraph (a) above shall not apply in respect of any action which occurs:
  - (i) prior to the Senior Secured Liabilities Discharge Date if:

the commitment or amount outstanding that is the subject of the Debt Purchase Transaction is an amount not exceeding an amount equal to the aggregate of Retained Excess Cashflow, Excluded Recovery Proceeds, Excluded Disposal Proceeds, Excluded Insurance Proceeds and New Shareholder Injections *provided that*, in each case, such amount has first been offered in prepayment to the Credit Facility Lenders and which prepayments the Credit Facility Lenders have waived or declined to accept (with any such amounts waived or declined being first offered in prepayment to any Credit Facility Lender who accepted the initial prepayment offer before being paid to Second Lien Creditors), to the extent such amount is not prohibited by the Senior Secured Debt Documents to be applied for the purpose of making Payments in respect of the Second Lien Liabilities,

*provided that* in each case:

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

#### **7.8 Amendments and Waivers: Second Lien Creditors**

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

#### **7.9 Security: Second Lien Creditors**

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

- (a) the Common Transaction Security; and
- (b) any guarantee, indemnity or other assurance against loss contained in:
  - (i) the Second Lien Finance Documents *provided that* in the case of any guarantee, indemnity or other assurance against financial loss given after the date of this

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

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

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

#### **7.10 Restriction on Enforcement: Second Lien Creditors**

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

#### **7.11 Permitted Enforcement: Second Lien Creditors**

- (a) Each Second Lien Creditor may take any Enforcement Action which would be available to it but for Clause 7.10 (*Restriction on Enforcement: Second Lien Creditors*) in respect of any of the Second Lien Liabilities if at the same time as, or prior to, that action and subject to Clause 7.12 (*Restriction on Enforcement against Debtors: Second Lien Creditors*):
  - (i) a Senior Secured Liabilities Acceleration Event has occurred in which case each Second Lien Creditor may take the same Enforcement Action (but in respect of the Second Lien Liabilities) as constitutes that Senior Secured Liabilities Acceleration Event;
  - (ii)
    - (A) the Second Lien Creditor Representative has given notice (a “**Second Lien Enforcement Notice**”) to the Security Agent specifying that an Event of Default under the relevant Second Lien Finance Documents has occurred and is continuing; and
    - (B) a period (a “**Second Lien Standstill Period**”) of not less than:
      - (1) 90 days in the case of a failure to make a payment of an amount of principal, interest and fees representing the Second Lien Liabilities; or
      - (2) 120 days in the case of any breach of any financial covenant included in any Second Lien Finance Document or failure to make a payment of any amount (other than principal, interest and fees) representing the Second Lien Liabilities; or
      - (3) 150 days in the case of any other Event of Default under the Second Lien Facility Agreement,has elapsed from the date on which that Second Lien Enforcement Notice becomes effective in accordance with Clause 29.4 (*Delivery*) or Clause 29.6 (*Electronic Communication*); and
    - (C) that Event of Default is continuing at the end of the Second Lien Standstill Period; or
  - (iii) the Majority Senior Secured Creditors have given their prior consent.

- (b) After the occurrence of an Insolvency Event in relation to any Debtor, each Second Lien Creditor may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Second Lien Creditor in accordance with Clause 11.5 (*Filing of Claims*)) exercise any right it may otherwise have against that Debtor to:
  - (i) accelerate any of that Debtor's Second Lien Liabilities or declare them prematurely due and payable or payable on demand;
  - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that Debtor member of the Group in respect of any Second Lien Liabilities;
  - (iii) exercise any right of set-off or take or receive any Payment in respect of any Second Lien Liabilities of that Debtor; or
  - (iv) claim and prove in any insolvency process of that Debtor for the Second Lien Liabilities owing to it.

#### **7.12 Restriction on Enforcement against Debtors: Second Lien Creditors**

- (a) Subject to paragraph (b) below, if the Security Agent (or any Receiver or Delegate appointed under any of the Transaction Security Documents) has given notice to the Second Lien Creditor Representative that the Common Transaction Security over shares in a Debtor or any Holding Company of a Debtor is being enforced (or that any formal steps are being taken to enforce that Common Transaction Security) by the sale or appropriation of shares which are subject to that Common Transaction Security, the Second Lien Creditors may not take Enforcement Action against that Debtor or against any property of that Debtor or any Subsidiary of that Debtor in respect of any of the Second Lien Liabilities (where such Enforcement Action may be reasonably likely to adversely affect such enforcement or the amount of proceeds to be derived therefrom) until the date on which the Security Agent (or that Receiver or Delegate) notifies the Creditor Representative of the relevant Second Lien Financing (which it shall do promptly) that such action is no longer being taken.
- (b) Paragraph (a) above shall not apply:
  - (i) to the extent that the Security Agent is taking that action on the instructions of the Majority Second Lien Creditors pursuant to Clause 14.4 (*Manner of Enforcement*); or
  - (ii) to action taken pursuant to paragraph (b) of Clause 7.11 (*Permitted Enforcement: Second Lien Creditors*).

## **8. Unsecured Notes Creditors and Unsecured Notes Liabilities**

### **8.1 Restriction on Payment and Dealings: Unsecured Notes Liabilities**

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

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

## 8.2 Permitted Payments: Unsecured Notes Liabilities

The members of the Group may:

- (a) until the Common Secured Liabilities Discharge Date has occurred, directly or indirectly make any Payment directly or indirectly in respect of the relevant Unsecured Notes Liabilities then due in accordance with the relevant Unsecured Notes Finance Documents:
  - (i) if:
    - (A) the Payment is of:
      - (1) any of the principal amount (including any interest which has been capitalised to become an amount of principal) of the Unsecured Notes Liabilities which is:
        - (I) not prohibited by the Secured Debt Documents;
        - (II) paid on or after the final maturity date of the relevant Unsecured Notes Liabilities (*provided that* such final maturity date has not been amended to fall on a date which would have breached any of the Secured Debt Documents which remain in full force and effect if it had been the original final maturity date for such Unsecured Notes Liabilities); or
        - (III) in an amount not exceeding an amount equal to the aggregate of Retained Excess Cashflow, Excluded Recovery Proceeds, Excluded Disposal Proceeds, Excluded Insurance Proceeds and New Shareholder Injections *provided that*, in each case, such amount has first been offered in prepayment to the Credit Facility Lenders and the Second Lien Facility Creditors and which prepayments the Credit Facility Lenders and the Second Lien Facility Creditors (as relevant) have waived or declined to accept (with any such amounts waived or declined being first offered in prepayment to any Credit Facility Lender or Second Lien Facility Creditor who accepted the initial prepayment offer before being paid to Unsecured Notes Creditors), in each case, to the extent such amount is not prohibited by the Secured Debt Documents to be applied for this purpose; or
      - (2) consent and/or waiver fees reasonably incurred by the relevant Debtor (acting in good faith) in respect of any amendment of, or consent relating to, any provision of an Unsecured Notes Finance Document *provided that* such amount, when expressed as a percentage of the principal amount of the Unsecured Notes Liabilities, does not exceed the amount of the corresponding consent and/or waiver fee paid to the Senior Secured Creditors and/or Second Lien Creditors whose consent in respect of the same matter was required (when expressed as a principal amount of the relevant Senior Secured Liabilities and/or Second Lien Liabilities (or affected principal amount thereof));

- (3) any amounts where the amount is outstanding as a result of the accrual of cash interest payable in respect of the Unsecured Notes Liabilities during a period when an Unsecured Notes Payment Stop Notice was outstanding (which has since expired);
  - (4) any amount of cash interest, tax gross-up or tax indemnity payments in accordance with the Unsecured Notes Finance Documents;
  - (5) the capitalisation of interest or the issuance of a non-cash pay financial instrument evidencing the same which is subordinated to the Senior Secured Liabilities pursuant to this Agreement on the same terms as the Unsecured Notes Liabilities; or
  - (6) any closing payment due pursuant to any purchase agreement (or equivalent) in respect of any Unsecured Notes; and
- (B) no Unsecured Notes Payment Stop Notice is outstanding; and
  - (C) no Common Secured Payment Default has occurred and is continuing;
- (ii) if the Majority Senior Secured Creditors and the Majority Second Lien Creditors give prior consent to that Payment being made;
  - (iii) if an Unsecured Notes Payment Stop Notice is outstanding and/or a Common Secured Payment Default is continuing and such Payment is a payment of any amount referred to in paragraph (i)(A)(5) or (i)(A)(6) above;
  - (iv) if the Payment is of a Creditor Representative Amount to an Unsecured Notes Trustee;
  - (v) of costs, commissions, taxes, expenses and, to the extent consistent with market comparables at the time committed to be paid (or otherwise reasonable), fees incurred in respect of or in relation to (or reasonably incidental to) any Unsecured Notes Finance Documents (including in relation to any reporting or listing requirements under the Unsecured Notes Finance Documents);
  - (vi) if the Payment is funded directly or indirectly with the proceeds of indebtedness permitted to be incurred as Unsecured Notes Liabilities or Subordinated Shareholder Liabilities pursuant to the Secured Debt Documents (after giving pro forma effect to such incurrence and the application of such indebtedness) provided that, if the Senior Secured Liabilities and the Second Lien Liabilities are not being refinanced in full simultaneously (A) no Unsecured Notes Payment Stop Notice is outstanding and (B) no Common Secured Payment Default is continuing; or
  - (vii) if an Event of Default has occurred under the Unsecured Notes Finance Documents and is continuing and the Payment is of Unsecured Notes Restructuring Costs, the Common Currency Amount of which, when aggregated with the Common Currency Amount of any other such amounts paid pursuant to this paragraph (vi), does not exceed £1,000,000;
- (b) on or after the Common Secured Liabilities Discharge Date, make any Payment directly or indirectly in respect of the Unsecured Notes Liabilities at any time.

### 8.3 Issue of Unsecured Notes Payment Stop Notice

- (a) An Unsecured Notes Payment Stop Notice is “outstanding” during the period from the date on which, following the occurrence of a Common Secured Event of Default (other than a Common Secured Payment Default) (an “**Unsecured Notes Payment Stop Event**”), the Security Agent (acting on the instructions of the relevant Instructing Group) issues a notice (an “**Unsecured Notes Payment Stop Notice**”) to a Creditor Representative in respect of Unsecured Notes (with a copy to the Parent) advising that an Unsecured Notes Payment Stop Event has occurred and is continuing and suspending Payments of the Unsecured Notes Liabilities (other than those permitted under Clause 8.2 (*Permitted Payments: Unsecured Notes Liabilities*) during such time) until the first to occur of:
- (i) the date which is 179 days after the date of issue of that Unsecured Notes Payment Stop Notice;
  - (ii) if an Unsecured Notes Standstill Period commences after the issue of an Unsecured Notes Payment Stop Notice, the date on which that Unsecured Notes Standstill Period expires;
  - (iii) the date on which the relevant Unsecured Notes Payment Stop Event in respect of which that Unsecured Notes Payment Stop Notice was issued is no longer continuing;
  - (iv) the date on which the Security Agent (acting on the instructions of the relevant Instructing Group) cancels that Unsecured Notes Payment Stop Notice by notice to the Unsecured Notes Trustee (with a copy to the Parent); and
  - (v) the date on which the Common Secured Liabilities Discharge Date has occurred.
- (b) Subject to paragraph (e) below, no Unsecured Notes Payment Stop Notice may be served by the Security Agent in reliance on a particular Common Secured Event of Default more than 90 days after the relevant Creditor Representative receives a notice under the relevant Debt Document advising of the occurrence of that Common Secured Event of Default constituting that Unsecured Notes Payment Stop Event.
- (c) Subject to paragraph (e) below, no more than one Unsecured Notes Payment Stop Notice may be served with respect to the same event or set of circumstances.
- (d) Subject to paragraph (e) below, no more than one Unsecured Notes Payment Stop Notice may be served in any period of 365 days.
- (e) If the Security Agent is instructed to serve (or cancel) an Unsecured Notes Payment Stop Notice under this Clause 8.3 it shall also serve an (or, as the case may be, cancel each) equivalent Unsecured Notes Payment Stop Notice in respect of any other Unsecured Notes Financing.

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

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

- (a) the occurrence of an Event of Default under the relevant Unsecured Notes Finance Documents as a consequence of that failure to make a Payment in relation to the relevant Unsecured Notes Finance Document; or

- (b) the issue of an Unsecured Notes Enforcement Notice on behalf of the Unsecured Notes Creditors in accordance with the terms of this Agreement.

#### **8.5 Payment Obligations and Capitalisation of Interest Continue**

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

#### **8.6 Cure of Payment Stop: Unsecured Notes Creditors**

If:

- (a) at any time following the issue of an Unsecured Notes Payment Stop Notice or the occurrence of a Common Secured Payment Default, that Unsecured Notes Payment Stop Notice ceases to be outstanding and/or (as the case may be) the Common Secured Payment Default ceases to be continuing; and
- (b) the Finco or relevant Debtor then promptly pays to the Unsecured Notes Creditors an amount equal to any Payments which had accrued under the Unsecured Notes Finance Documents and which would have been Permitted Payments under Clause 8.2 (*Permitted Payments: Unsecured Notes Liabilities*) but for that Unsecured Notes Payment Stop Notice or Common Secured Payment Default,

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

#### **8.7 Amendments and Waivers: Unsecured Notes Creditors**

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

## 8.8 Security: Unsecured Notes Creditors

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

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

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

## 8.9 Restriction on Enforcement: Unsecured Notes Creditors

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

## 8.10 Permitted Enforcement: Unsecured Notes Creditors

- (a) Each Unsecured Notes Creditor may take any Enforcement Action which would be available to it but for Clause 8.9 (*Restriction on Enforcement: Unsecured Notes Creditors*) in respect of any of the Unsecured Notes Liabilities if at the same time as, or prior to, that action and subject to Clause 8.11 (*Restriction on Enforcement against Finco and Debtors: Unsecured Notes Creditors*):
  - (i) a Senior Secured Liabilities Acceleration Event or Second Lien Liabilities Acceleration Event has occurred, in which case each Unsecured Notes Creditor may take the same Enforcement Action (but in respect of the Unsecured Notes Liabilities) as constitutes that Acceleration Event; or
  - (ii)
    - (A) the Creditor Representative of the relevant Unsecured Notes has given notice (an “**Unsecured Notes Enforcement Notice**”) to the Security Agent specifying that an Event of Default under the relevant Unsecured Notes Indenture has occurred and is continuing;
    - (B) a period (an “**Unsecured Notes Standstill Period**”) of not less than 179 days has elapsed from the date on which that Unsecured Notes Enforcement Notice becomes effective in accordance with Clause 29.4 (*Delivery*) and Clause 29.6 (*Electronic Communication*); and
    - (C) that Event of Default is continuing at the end of the Unsecured Notes Standstill Period; or
  - (iii) the Majority Senior Secured Creditors and the Majority Second Lien Creditors have given their prior consent.
- (b) After the occurrence of an Insolvency Event in relation to any member of the Group, each Unsecured Notes Creditor may (unless otherwise directed by the Security Agent

or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Unsecured Notes Creditor in accordance with Clause 11.5 (*Filing of Claims*)) exercise any right they may otherwise have against a Finco or any Debtor to:

- (i) accelerate any of that Finco's or Debtor's Unsecured Notes Liabilities or declare them prematurely due and payable or payable on demand;
- (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that Finco or Debtor in respect of any Unsecured Notes Liabilities;
- (iii) exercise any right of set-off or take or receive any Payment in respect of any Unsecured Notes Liabilities of that Finco or Debtor; or
- (iv) claim and prove in any insolvency process of that Finco or Debtor for the Unsecured Notes Liabilities owing to it.

#### **8.11 Restriction on Enforcement against Finco and Debtors: Unsecured Notes Creditors**

- (a) Subject to paragraph (b) below, if the Security Agent (or any Receiver or Delegate appointed under any of the Transaction Security Documents) has given notice to the Unsecured Notes Trustee that the Common Transaction Security over shares in a Debtor or any Holding Company of a Debtor is being enforced (or that any formal steps are being taken to enforce that Common Transaction Security) by the sale or appropriation of shares which are subject to that Common Transaction Security, the Unsecured Notes Creditors may not take Enforcement Action against that Debtor or against any property of that Debtor or any Subsidiary of that Debtor in respect of any of the Unsecured Notes Liabilities (where such Enforcement Action might be reasonably likely to adversely affect such enforcement or the amount of proceeds to be derived therefrom) until the date on which the Security Agent (or that Receiver or Delegate) notifies the Creditor Representative of the relevant Unsecured Notes (which it shall do promptly) that such action is no longer being taken.
- (b) Paragraph (a) above shall not apply to action taken pursuant to paragraph (b) of Clause 8.10 (*Permitted Enforcement: Unsecured Notes Creditors*).

#### **8.12 Unsecured Notes Debt Purchase Transactions**

- (a) Subject to paragraph (b) below, the Parent shall not, and shall procure that no other member of the Group will, enter into any Debt Purchase Transaction in respect of the Unsecured Notes Liabilities or beneficially own all or any part of the share capital of a company that is a Unsecured Notes Creditor or a party to a Debt Purchase Transaction in respect of the Unsecured Notes Liabilities.
- (b) Paragraph (a) above shall not apply in respect of any action which occurs:
  - (i) prior to the Common Secured Liabilities Discharge Date if:
    - (A) the amount outstanding the subject of the Debt Purchase Transaction is an amount not exceeding the amount of Restricted Payments (as defined in the Initial Senior Facilities Agreement) permitted under clause 29 (*Limitation on Restricted Payments*) of the Initial Senior Facilities Agreement (and any other similar or equivalent provision of any of the Secured Debt Documents) at such time to the extent such amount is not prohibited by the Secured Debt Documents to be applied for the purpose of making Payments in respect of Unsecured Notes Liabilities; or

- (B) the amount outstanding the subject of the Debt Purchase Transaction is an amount not exceeding an amount equal to the aggregate of Retained Excess Cashflow, Excluded Recovery Proceeds, Excluded Disposal Proceeds, Excluded Insurance Proceeds and New Shareholder Injections *provided that*, in each case, such amount has first been offered in prepayment to the Credit Facility Lenders and the Second Lien Facility Creditors and which prepayments the Credit Facility Lenders and the Second Lien Facility Creditors (as applicable) have waived or declined to accept (with any such amounts waived or declined being first offered in prepayment to any Credit Facility Lender or Second Lien Facility Creditor who accepted the initial prepayment offer before being paid to Unsecured Notes Creditors), in each case, to the extent such amount is not prohibited by the Secured Debt Documents to be applied for the purpose of making Payments in respect of Unsecured Notes Liabilities;
  - (C) such action is in accordance with the relevant Unsecured Notes Indenture;
  - (D) no Unsecured Notes Stop Notice is outstanding; and
  - (E) no Common Senior Secured Payment Default has occurred and is continuing; or
- (ii) prior to the Common Secured Liabilities Discharge Date, if the Debt Purchase Transaction is funded with amounts referred to in, and subject to the requirements of, paragraph (a)(vi) of Clause 8.2 (*Permitted Payments: Unsecured Notes Liabilities*);
  - (iii) on or after the Common Secured Liabilities Discharge Date such action is in accordance with the relevant Unsecured Notes Indenture.

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

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

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

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

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

- (a) Subject to paragraph (b) below, the Debtors and any other members of the Group may make Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) from time to time when due and the Intra-Group Lenders may accept or agree to accept any such payment from time to time when due.
- (b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred unless:
  - (i) the consent of the relevant Instructing Group is obtained; or

- (ii) that Payment is made to facilitate the making of a Payment to a Primary Creditor that is permitted by this Agreement.
- (c) Nothing in this Clause 9.2 shall prevent the Intra-Group Liabilities of a Debtor being reduced in accordance with the guarantee limitation provisions included in a Debtor Accession Deed.

### **9.3 Payment Obligations Continue**

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

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

- (a) Subject to paragraphs (b) and (c) below, each Debtor may, and may permit any other member of the Group to:
  - (i) enter into any Liabilities Acquisition; or
  - (ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,in respect of any Intra-Group Liabilities at any time.
- (b) Subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities if:
  - (i) that action would result in a breach of a Debt Document; or
  - (ii) at the time of that action, an Acceleration Event has occurred and is continuing or would occur under any of the Debt Documents.
- (c) The restrictions in paragraph (b) above shall not apply if:
  - (i) the relevant Instructing Group consent to that action;
  - (ii) if, at that time, the Security Agent is obliged to give effect to instructions from the Majority Second Lien Creditors as to the manner of enforcement of the Common Transaction Security pursuant to paragraph (b) of Clause 14.4 (*Manner of Enforcement*), the Majority Second Lien Creditors consent to that Payment being made; or
  - (iii) that action is taken to facilitate the making of a Payment to a Primary Creditor that is permitted by this Agreement.

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

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

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

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

Subject to Clause 9.7 (*Permitted Enforcement: Intra-Group Lenders*), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date, other than exercising any right of set-off, account combination or payment netting which is not prohibited under the Secured Debt Documents and for so long as no Acceleration Event has occurred.

## **9.7 Permitted Enforcement: Intra-Group Lenders**

After the occurrence of an Insolvency Event in relation to any member of the Group, each Intra-Group Lender may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Intra-Group Lender in accordance with Clause 11.5 (*Filing of Claims*)), exercise any right it may otherwise have 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 any insolvency process of that member of the Group for the Intra-Group Liabilities owing to it.

## **9.8 Representations: Intra-Group Lenders**

Each Intra-Group Lender which is not a Debtor represents and warrants to the Primary Creditors and the Security Agent on the date of this Agreement (or, if it becomes a Party after such date, the date of the Creditor/Creditor Representative Accession Undertaking) that:

- (a) it is a corporation, duly incorporated or organised and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) subject to the Legal Representative and the Perfection Requirements, 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) legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof; and
- (c) the entry into and performance by it of its obligations under this Agreement (taken as a whole) does not and will not conflict:
  - (i) in any material respect with any applicable law;
  - (ii) in any material respect with its constitutional documents; or
  - (iii) any agreement, mortgage, bond or other instrument or treaty to which it is a party or which is binding upon it or any of its assets in such a manner or to such extent as to have or reasonably likely to have a Material Adverse Effect.

## **10. Subordinated Shareholder Liabilities**

### **10.1 Restriction on Payment: Subordinated Shareholder Liabilities**

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

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

### **10.2 Permitted Payments: Subordinated Shareholder Liabilities**

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

- (a) the Payment is not prohibited by the Debt Documents;
- (b) the payment is made in respect of a Proceeds Loan and (1) is permitted to be made under Clause 8.2 (*Permitted Payments: Unsecured Notes Liabilities*) and (2) two Business Days of its receipt by a Finco such amount is applied by that Finco in paying an equivalent amount in respect of the Unsecured Notes Liabilities; or
- (c) the relevant Instructing Group gives prior consent to that Payment being made.

### **10.3 Payment Obligations Continue**

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

### **10.4 No Acquisition of Subordinated Shareholder Liabilities**

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

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

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

### **10.5 Amendments and Waivers: Subordinated Shareholder Liabilities**

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

- (a) the amendment or waiver is not materially prejudicial to the Primary Creditors;
- (b) the amendment or waiver is permitted by the Debt Documents; or
- (c) the prior consent of the relevant Instructing Group is obtained.

## **10.6 Security: Subordinated Shareholder Liabilities**

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

## **10.7 Restriction on Enforcement: Shareholder Creditors**

Subject to Clause 10.8 (*Permitted Enforcement: Shareholder Creditors*), the Shareholder Creditors shall not be entitled to take any Enforcement Action in respect of any of the Subordinated Shareholder Liabilities at any time prior to the Final Discharge Date.

## **10.8 Permitted Enforcement: Shareholder Creditors**

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

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

## **10.9 Exclusions: Subordinated Shareholder Liabilities**

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

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

## **10.10 Representations: Shareholder Creditor**

Each Shareholder Creditor represents and warrants to the Secured Creditors and the Unsecured Notes Creditors on the date of this Agreement (or, if it becomes a Party after such date, the date of the Creditor/Creditor Representative Accession Undertaking) that:

- (a) it is a corporation, company or other person duly incorporated or organised and validly existing under the laws of its jurisdiction of formation;

- (b) subject to the Legal Reservations and the Perfection Requirements, the obligations expressed to be assumed by it under this Agreement are legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof; and
- (c) the entry into and exercise of its rights and performance of its obligations under this Agreement (taken as a whole) do not and will not conflict:
  - (i) in any material respect with any applicable law;
  - (ii) in any material respect with its constitutional documents; or
  - (iii) any agreement, mortgage, bond or other instrument or treaty to which it is a party or which is binding upon it or any of its assets in such manner or to such extent as to have or be reasonably likely to have a Material Adverse Effect.

## **11. Effect of Insolvency Event**

### **11.1 Credit Facility Cash Cover**

This Clause 11 is subject to Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*).

### **11.2 Payment of Distributions**

- (a) After the occurrence of an Insolvency Event in relation to any member of the Group, any Party entitled to receive a distribution out of the assets of any member of the Group in respect of Liabilities owed to that Party shall, subject to receiving payment instructions and any other relevant information from the Security Agent and to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to pay that distribution to the Security Agent until the Liabilities owing to the Secured Creditors have been paid in full.
- (b) The Security Agent shall apply distributions paid to it under paragraph (a) above in accordance with Clause 19 (*Application of Proceeds*).

### **11.3 Set-Off**

- (a) Subject to paragraph (b) below, to the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 19 (*Application of Proceeds*).
- (b) Paragraph (a) above shall not apply to:
  - (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings;
  - (ii) any Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (iii) any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty; and
  - (v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender.

#### **11.4 Non-Cash Distributions**

If the Security Agent or any other Secured Creditor 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.

#### **11.5 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 (to the extent of value received in respect of the relevant Liabilities) give receipt for any or all of that member of the Group's Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of that member of the Group's Liabilities; and
- (d) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover that member of the Group's Liabilities.

#### **11.6 Further Assurance – Insolvency Event**

Each Creditor will:

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

#### **11.7 Security Agent Instructions**

- (a) For the purposes of Clause 11.2 (*Payment of Distributions*), Clause 11.5 (*Filing of Claims*) and Clause 11.6 (*Further Assurance – Insolvency Event*) the Security Agent shall act:
  - (i) on the instructions of the relevant Instructing Group entitled, at that time, to give instructions under Clause 14.3 (*Enforcement Instructions*) or Clause 14.4 (*Manner of Enforcement*); or
  - (ii) in the absence of any such instructions, as the Security Agent sees fit in a manner consistent with the requirements of this Agreement.
- (b) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 11.7.

## 12. Turnover of Receipts

### 12.1 Credit Facility Cash Cover

This Clause 12 is subject to Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*) and Clause 22.5 (*Turnover obligations*).

### 12.2 Turnover by the Creditors

Subject to Clause 12.3 (*Exclusions*) and Clause 12.4 (*Permitted Assurance and Receipts*), if at any time prior to the Final Discharge Date, any Creditor receives or recovers from any member of the Group:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is neither:
  - (i) a Permitted Payment; nor
  - (ii) made in accordance with Clause 19 (*Application of Proceeds*);
- (b) other than where paragraph (a) of Clause 11.3 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- (c) notwithstanding paragraph (a) or (b) above, and other than where paragraph (a) of Clause 11.3 (*Set-Off*) applies, any amount:
  - (i) on account of, or in relation to, any of the Liabilities:
    - (A) after the occurrence of a Distress Event; or
    - (B) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
  - (ii) (subject to Clause 10.9 (*Exclusions: Subordinated Shareholder Liabilities*)) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,  
  
other than, in each case, any amount received or recovered in accordance with Clause 19 (*Application of Proceeds*); or
- (d) Enforcement Proceeds except in accordance with Clause 19 (*Application of Proceeds*);
- (e) other than where paragraph (a) of Clause 11.3 (*Set-Off*) applies, any distribution in cash or in kind or Payment of, or on account of or in relation to, any of the Liabilities owed by a member of the Group which is not in accordance with Clause 19 (*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 receipt or recovery to the Security Agent for application in accordance with the terms of this Agreement.

### 12.3 Exclusions

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

- (a) by way of:
  - (i) Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (ii) Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
  - (iv) Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; or
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (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); or
- (c) made in accordance with Clause 20 (*Equalisation*).

### 12.4 Permitted Assurance and Receipts

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

- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by Clause 24 (*Changes to the Parties*),

which:

- (i) is not prohibited by the Debt Documents; and
- (ii) is not in breach of Clause 5.5 (No acquisition of Hedging Liabilities), Clause 7.7 (Second Lien Debt Purchase Transaction) or Clause 10.4 (No Acquisition of Subordinated Shareholder Liabilities),

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

### 12.5 Sums Received by Debtors

If any of the Debtors receives or recovers any sum which, under the terms of any of the Debt Documents, should have been paid to the 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.

## 12.6 Saving Provision

If, for any reason, any of the trusts expressed to be created in this Clause 12 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.

## 12.7 Recoveries

If a Secured Creditor (other than the Security Agent and, in the case of a Notes Trustee, subject to Clause 22.5 (*Turnover obligations*)) receives any Enforcement Proceeds other than pursuant to Clause 19 (*Application of Proceeds*) such Secured Creditor shall hold such Enforcement Proceeds 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.

## 12.8 Turnover of Non-Cash Consideration

For the purposes of this Clause 12, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to Clause 12.2 (*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 18.2 (*Cash Value of Non-Cash Recoveries*).

## 13. Redistribution

### 13.1 Recovering Creditor's Rights

- (a) Any amount paid by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 11 (*Effect of Insolvency Event*) or Clause 12 (*Turnover of Receipts*) shall be treated as having been paid by the relevant Debtor and distributed to the Creditors (each a "**Sharing Creditor**") in accordance with the terms of this Agreement.
- (b) On a distribution by the Security Agent under paragraph (a) above of a Payment received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid to the Security Agent (the "**Shared Amount**") will be treated as not having been paid by that Debtor.

### 13.2 Reversal of Redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor and is repaid by that Recovering Creditor to that Debtor, then:
  - (i) each Sharing Creditor shall (subject to Clause 22 (*Notes Trustee Protections*) with respect to a Notes Trustee), upon request of the Security Agent, pay to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and
  - (ii) as between the relevant Debtor and each relevant Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Debtor.

- (b) The Security Agent shall not be obliged to pay any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

### **13.3 Subrogation Rights of the Creditors**

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

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

### **13.4 Deferral of Subrogation**

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

## **14. Enforcement of Common Transaction Security**

### **14.1 Credit Facility Cash Cover**

This Clause 14 is subject to Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*).

### **14.2 Consultation Period**

- (a) Subject to paragraphs (c) and (d) below, in the case of any action to enforce the Common Transaction Security or instigate or effect a Distressed Disposal by the Senior Secured Creditors, prior to commencing such Distressed Disposal or enforcement of the Common Transaction Security the Creditor Representative(s) of the Creditors represented in the Instructing Group concerned shall consult with each other Creditor Representative (other than any Creditor Representative(s) of the Unsecured Noteholders) and the Security Agent in good faith with respect to the instructions to be given by the Instructing Group for a period of up to five Business Days (or such shorter

period as each relevant Creditor Representative and the Security Agent shall agree) (the “**Consultation Period**”) and, subject to paragraph (c) below, only following the expiry of a Consultation Period (if applicable), shall the Instructing Group be entitled to give any instructions to the Security Agent to take formal steps to enforce the Common Transaction Security or to instigate or effect a Distressed Disposal.

- (b) During the Consultation Period the Security Agent shall provide the Senior Secured Creditors and the Second Lien Creditors with any material information regarding any action in relation to an Enforcement it intends or has been instructed to take and any disposal instructions it intends or has been instructed to give to a member of the Group.
- (c) Neither any Creditor Representative nor the Security Agent shall be obliged to consult in accordance with paragraph (a) above and the relevant Instructing Group shall be entitled to give any instructions to the Security Agent to enforce the Common Transaction Security or take any other action in relation to an Enforcement prior to the end of a Consultation Period if:
  - (i) an Insolvency Event has occurred in relation to a member of the Group;
  - (ii) any action or proceedings have been threatened or commenced by or on behalf of any Second Lien Creditor or any Unsecured Notes Creditor (in its capacity as such) against any Senior Secured Creditor (in its capacity as such), any Affiliate of any Senior Secured Creditor, any member of the Group or any Holding Company of any member of the Group;
  - (iii) the Creditors constituting the Instructing Group (or Creditor Representatives representing members of the Instructing Group) determine in good faith (and notify each (or each other) Creditor Representative (other than any Creditor Representative(s) of the Unsecured Noteholders) and the Security Agent) that to enter into such consultations and thereby delay the commencement of enforcement of the Common Transaction Security or any other Enforcement could reasonably be expected to have a material adverse effect on the Security Agent’s ability to enforce the Common Transaction Security or take any other action in relation to an Enforcement or the quantum of the realisation proceeds of any enforcement of the Common Transaction Security or any other Enforcement; or
  - (iv) any Second Lien Creditor:
    - (A) accelerates any of the Second Lien Liabilities or declares any of the Second Lien Liabilities to be prematurely due and payable (other than as a result of it becoming unlawful for a Second Lien Creditor to perform its obligations under or of any voluntary or mandatory repayment arising under the Second Lien Finance Documents);
    - (B) declares that any of the Second Lien Liabilities are payable on demand;
    - (C) makes a demand in relation to a Second Lien Liability that is payable on demand;
    - (D) takes any steps to enforce or require the enforcement of any Common Transaction Security (including the crystallisation of any floating charge forming part of the Common Transaction Security); or
    - (E) petitions, applies or votes for, or takes any steps (including appointing any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any borrower or notes issuer in relation to the Second Lien Liabilities;

but excluding the following actions:

- (1) the taking of any action falling within sub-paragraphs (A) to (C) and (E) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of the relevant Second Lien Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (2) a Second Lien Creditor bringing legal proceedings against any person solely for the purpose of:
  - (I) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
  - (II) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
  - (III) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages; or
- (v) any Unsecured Notes Creditors or any Creditor Representative of the Unsecured Noteholders takes any action equivalent to an action specified in paragraph (iv) above, in respect of the Unsecured Notes Liabilities.
- (d) If the Security Agent has obtained independent valuation (in accordance with the terms sets out in paragraph (b)(iii) of Clause 16.6 (*Restriction of Distressed Disposal – Second Lien Creditors*)) showing that the enterprise value of the Group is less than the Senior Secured Liabilities, the Consultation Period in paragraph (a) above shall be reduced to a period of two Business Days (or such shorter period as each relevant Creditor Representative and the Security Agent shall agree).

### **14.3 Enforcement Instructions**

- (a) The Security Agent may refrain from enforcing the Common Transaction Security or taking any other action as to Enforcement unless instructed otherwise by the relevant Instructing Group.
- (b) Subject to the Common Transaction Security having become enforceable in accordance with its terms the relevant Instructing Group may give or refrain from giving instructions to the Security Agent to take action as to Enforcement as they see fit, but in any event in a manner consistent with the terms of this Agreement.
- (c) Prior to the Senior Secured Liabilities Discharge Date:
  - (i) if the relevant Instructing Group has instructed the Security Agent to cease or not to proceed with Enforcement; or
  - (ii) in the absence of instructions as to Enforcement from the relevant Instructing Group,

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

- (d) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 14.3.

#### **14.4 Manner of Enforcement**

If the Common Transaction Security is being enforced or other action as to Enforcement is being taken pursuant to Clause 14.3 (*Enforcement Instructions*) (including by way of a Distressed Disposal), the Security Agent shall enforce the Common Transaction Security or take other action as to Enforcement in such manner (including, without limitation, the selection of any administrator of any Debtor to be appointed by the Security Agent):

- (a) as the relevant Instructing Group shall instruct; or
- (b) prior to the Senior Secured Liabilities Discharge Date, if:
  - (i) the Security Agent has, pursuant to paragraph (c) of Clause 14.3 (*Enforcement Instructions*), given effect to instructions given by the Majority Second Lien Creditors to enforce the Common Transaction Security; and
  - (ii) the relevant Instructing Group has not given instructions as to the manner of enforcement of the Common Transaction Security,as the Majority Second Lien Creditors shall instruct; or
- (c) in the absence of any such instructions, as the Security Agent sees fit,

in each case in accordance with the terms of this Agreement.

#### **14.5 Exercise of Voting Rights**

- (a) Each Creditor (other than the Senior Secured Creditors and the Second Lien Creditors) agrees with the Security Agent that, if required in writing to do so by the Security Agent, it will cast its vote in any proposal to facilitate the enforcement of the Common Transaction Security put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings (other than, prior to a Distress Event, in respect of any consolidations, mergers, reorganisations or other similar transactions actions, steps or matters not prohibited under the Senior Secured Debt Documents) relating to any member of the Group as instructed by the Security Agent.
- (b) The Security Agent shall give instructions for the purposes of paragraph (a) above as directed by the relevant Instructing Group provided such instructions have been given in accordance with Clause 14.3 (*Enforcement Instructions*).
- (c) Nothing in this Clause 14.5 entitles any party to exercise or require any other Primary Creditor to exercise such power of voting or representation to waive, reduce, discharge, extend the due date for (or change the basis for accrual of any) payment of or reschedule any of the Liabilities owed to that Primary Creditor.

## 14.6 Waiver of Rights

To the extent permitted under applicable law and subject to Clause 14.2 (*Consultation Period*), Clause 14.3 (*Enforcement Instructions*), Clause 14.4 (*Manner of Enforcement*), Clause 16.3 (*Proceeds of Disposals and Liability Sales*), Clause 16.4 (*Fair Value*), Clause 16.5 (*Other Restrictions*), Clause 16.6 (*Restriction on Distressed Disposals – Second Lien Creditors*), Clause 16.7 (*Restriction on Distressed Disposals – Unsecured Notes Creditors*), Clause 16.8 (*Appointment of Financial Advisor*) and Clause 19 (*Application of Proceeds*), each of the Secured Creditors and the Debtors waives all rights it may otherwise have to require that the Common Transaction Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any person, or by virtue of the enforcement of any of the Common Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

## 14.7 Duties Owed

Each of the Secured Creditors and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Common Transaction Security prior to the Final Discharge Date, the duties of the Security Agent and of any Receiver or Delegate owed to them in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Common Transaction Security shall, subject to Clause 16.3 (*Proceeds of Disposals and Liability Sales*), Clause 16.4 (*Fair Value*), Clause 16.5 (*Other Restrictions*), Clause 16.6 (*Restriction on Distressed Disposals – Second Lien Creditors*), Clause 16.7 (*Restriction on Distressed Disposals – Unsecured Notes Creditors*) and Clause 16.8 (*Appointment of Financial Advisor*), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors under general law.

## 15. Non-Distressed Disposals

### 15.1 Definitions

In this Clause 15:

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

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

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

to a person or persons outside the Group (save that in the case of a Financing Disposition such disposal may be to a Special Purpose Subsidiary) and for these purposes, the assets of a member of the Group designated as a Special Purpose Subsidiary (in accordance with the terms of the relevant Secured Debt Documents) which are subject to Common Transaction Security shall be deemed to be disposed of at the time such designation is made, where in each case:

- (i) the Parent certifies for the benefit of the Security Agent and each Creditor Representative that such disposal, and the release of the Common Transaction Security over the asset(s) the subject of such disposal, (1) is permitted under the Debt Documents or (2) the relevant Creditor Representatives have agreed to such disposal and such release; and
- (ii) that disposal is not a Distressed Disposal.

“**Special Purpose Security**” means Security which is to be granted pursuant to paragraph (t) of the definition of Permitted Security in the Initial Senior Facilities Agreement (or equivalent provision of any other Senior Secured Debt Document, any Second Lien Finance Document

and any Unsecured Notes Finance Document) where the Parent certifies for the benefit of the Security Agent and each Creditor Representative that such Security:

- (a) is permitted under the Senior Secured Debt Documents, the Second Lien Finance Documents and the Unsecured Notes Finance Documents; or
- (b) each Creditor Representative in respect of the Secured Creditors has consented to the release of the relevant assets from the Common Transaction Security.

## **15.2 Facilitation of Non-Distressed Disposals and Special Purpose Security**

- (a) If a disposal of an asset is a Non-Distressed Disposal or an asset is to be subject to Special Purpose Security, the Security Agent will, and is irrevocably authorised (at the cost of the relevant Debtor or Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Creditor or Debtor) but subject to paragraph (c) below:
  - (i) to give consent under or to release the Common Transaction Security or any other claim (relating to a Debt Document) over that asset;
  - (ii) where that asset consists of shares in the capital of a member of the Group, to release the Common Transaction Security or any other claim (relating to a Debt Document) over that member of the Group's assets and/or shares and/or assets of any of its Subsidiaries; and
  - (iii) to execute and deliver or enter into any consent under or release of Common Transaction Security or any claim described in paragraph (i) and (ii) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.
- (b) Each release of Common Transaction Security or any claim described in paragraph (a) above shall become automatically effective on the making of the relevant Non-Distressed Disposal or upon the grant of the Special Purpose Security. To the extent that a release is not automatically effective in a jurisdiction, the Security Agent is authorised to, and as soon as reasonably practicable shall, take all such steps in order the release such Common Transaction Security.
- (c) If that Non-Distressed Disposal is not made or the Special Purpose Security is not granted, each release of Common Transaction Security or any claim described in paragraph (a) above shall have no effect and the Common Transaction Security or claim subject to that release shall continue in such force and effect as if that release had not been effected.
- (d) If any Disposal Proceeds are required to be applied in prepayment of the Liabilities, then the Disposal Proceeds shall be applied in accordance with the Debt Documents and the consent of any other Party shall not be required for that application.

## **16. Distressed Disposals**

### **16.1 Facilitation of Distressed Disposals**

Subject to Clause 16.5 (*Other Restrictions*), Clause 16.6 (*Restriction on Distressed Disposals – Second Lien Creditors*) and Clause 16.7 (*Restriction on Distressed Disposals – Unsecured Notes Creditors*), if a Distressed Disposal is being effected the Security Agent is irrevocably

authorised (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor or a Debtor):

- (a) *release of Common Transaction Security/non-crystallisation certificates*: to release the Common Transaction Security or any other claim over the asset subject to the Distressed Disposal and execute and deliver or enter into any release of that Common Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
- (b) *release of liabilities and Common Transaction Security on a share sale (Debtor)*: if the asset which is disposed of consists of shares in the capital of a Debtor, to release:
  - (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 Common Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
  - (iii) any other claim of a Shareholder Creditor, an Intra-Group Lender or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and the Debtors;

- (c) *release of liabilities and Common Transaction Security on a share sale (Holding Company)*: if the asset which is disposed of consists of shares in the capital of any Holding Company of (or other direct or indirect shareholder of) a Debtor, to release:
  - (i) that Holding Company (or other direct or indirect shareholder) and any Subsidiary of that Holding Company (or other direct or indirect shareholder) from all or any part of:
    - (A) its Borrowing Liabilities;
    - (B) its Guarantee Liabilities; and
    - (C) its Other Liabilities;
  - (ii) any Common Transaction Security granted by that Holding Company (or other direct or indirect shareholder) and/or any Subsidiary of that Holding Company (or other direct or indirect shareholder) over any of its assets; and
  - (iii) any other claim of a Shareholder Creditor, an Intra-Group Lender or another Debtor over the assets of that Holding Company (or other direct or indirect shareholder) and/or any Subsidiary of that Holding Company (or other direct or indirect shareholder),

on behalf of the relevant Creditors and Debtors;

- (d) *disposal of liabilities on a share sale*: if the asset which is disposed of consists of shares in the capital of a Debtor or the Holding Company (or other direct or indirect

shareholder) of a Debtor and the Security Agent (acting in accordance with Clause 14.3 (*Enforcement Instructions*)) decides to dispose of all or any part of:

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

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

- (A) (if the Security Agent (acting in accordance with Clause 14.3 (*Enforcement Instructions*)) does not intend that any transferee of those Liabilities or Debtor Liabilities (the “**Transferee**”) will be treated as a Primary Creditor or a Secured Creditor for the purposes of this Agreement) to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtor Liabilities *provided that* notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Primary Creditor or a Secured Creditor for the purposes of this Agreement; and
  - (B) (if the Security Agent (acting in accordance with Clause 14.3 (*Enforcement Instructions*)) does intend that any Transferee will be treated as a Primary Creditor or a Secured Creditor for the purposes of this Agreement) to execute and deliver or enter into any agreement to dispose of:
    - (1) all (and not part only) of the Liabilities owed to the Primary Creditors; and
    - (2) all or part of any other Liabilities and the Debtor Liabilities, on behalf of, in each case, the relevant Creditors and the Debtors;
- (e) *transfer of obligations in respect of liabilities on a share sale*: if the asset which is disposed of consists of shares in the capital of a Debtor or the Holding Company (or other direct or indirect shareholder) of a Debtor (the “**Disposed Entity**”) and the 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 the Intra-Group Liabilities or the Debtor Liabilities, to execute and deliver or enter into any agreement to:
- (i) agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities on behalf of the relevant Intra-Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
  - (ii) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities are to be transferred.

## 16.2 Form of Consideration for Distressed Disposals and Debt Disposals

Subject to Clause 16.4 (*Fair Value*), Clause 16.5 (*Other Restrictions*), Clause 16.6 (*Restriction on Distressed Disposals – Second Lien Creditors*), Clause 16.7 (*Restriction on Distressed Disposals – Unsecured Notes Creditors*) and Clause 18.5 (*Security Agent Protection*), a Distressed Disposal or a Debt Disposal may be made in whole or in part for consideration in

the form of cash or, if not for cash, for Non-Cash Consideration which is acceptable to the Security Agent.

### **16.3 Proceeds of Disposals and Liability Sales**

The net proceeds of each Distressed Disposal (and the net proceeds of any Debt Disposal) shall be paid to the Security Agent for application in accordance with Clause 19 (*Application of Proceeds*) as if those proceeds were the proceeds of an enforcement of the Common Transaction Security and, to the extent that any disposal of Liabilities or Debtor Liabilities has occurred pursuant to paragraph (d)(B) of Clause 16.1 (*Facilitation of Distressed Disposals*), as if that disposal of Liabilities or Debtor Liabilities had not occurred.

### **16.4 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 the Security Agent shall have no obligation to postpone (or request the postponement of) any Distressed Disposal or Liabilities Sale in order to achieve a higher price).

### **16.5 Other Restrictions**

If, at any time prior to the occurrence of the Senior Secured Liabilities Discharge Date, a Distressed Disposal or a Liabilities Sale is being effected at a time when the Majority Second Lien Creditors are entitled to give, and have given, instructions under paragraph (c) of Clause 14.3 (*Enforcement Instructions*) and/or paragraph (b) of Clause 14.4 (*Manner of Enforcement*) on which the Security Agent is acting:

- (a) the Security Agent is not authorised to release any Debtor, Subsidiary or Holding Company from any Borrowing Liabilities or Guarantee Liabilities owed to any Senior Secured Creditor unless those Borrowing Liabilities or Guarantee Liabilities and any other Senior Secured Liabilities will be paid (or repaid) in full (or, in the case of any contingent Liability relating to a Letter of Credit or an Ancillary Facility, made the subject of cash collateral arrangements acceptable to the relevant Creditor), following that release; and
- (b) no Distressed Disposal or Debt Disposal may be made for Non-Cash Consideration unless the prior consent of the Majority Senior Secured Creditors is obtained.

### **16.6 Restriction on Distressed Disposals – Second Lien Creditors**

If at a time any Second Lien Financing is outstanding a Distressed Disposal or a Liabilities Sale is being effected such that the Second Lien Liabilities or the Common Transaction Security benefitting the Second Lien Creditors will be released pursuant to Clause 16.1 (*Facilitation of Distressed Disposals*) it is a further condition to the release that either:

- (a) each Second Lien Creditor Representative in respect of any such Second Lien Financing has approved the release; or
- (b) where assets of such member of the Group are sold:
  - (i)
    - (A) the proceeds of such sale or disposal are received in cash (or substantially in cash); or

- (B) the consideration in respect of such sale or disposal does not comprise cash (or substantially all cash) in circumstances where the Security Agent determines that the cash consideration payable under the highest of the other *bona fide* and fully committed offers made in relation to that sale or disposal is less than the outstanding Senior Secured Liabilities, in which case the non-cash consideration can, without limitation, take the form of the Senior Secured Creditors (or any of them acting alone or together) bidding by any appropriate mechanic all or part of their Senior Secured Liabilities (such that the Senior Secured Liabilities would, on completion, be discharged to the extent of an amount equal to the amount of the offer made by the relevant Senior Secured Creditors); and
- (ii) all claims of the Senior Secured Creditors (other than in relation to performance bonds or guarantees or similar instruments) against each member of the Group whose shares (other than any minority interest not owned by members of the Group) are sold or disposed of pursuant to such Enforcement Action, are unconditionally released and discharged concurrently with such sale (and are not assumed by the purchaser or one of its Affiliates) and all Common Transaction Security in respect of the assets that are sold or disposed of is simultaneously and unconditionally released and discharged concurrently with such sale, *provided that* where the Senior Secured Creditors constitute the Instructing Group, if each Creditor Representative acting on behalf of the Senior Secured Creditors:
  - (A) determines (acting reasonably and in good faith) that the Senior Secured Creditors will recover a greater amount if any such claim is sold or otherwise transferred to the purchaser or one of its Affiliates and not released and discharged; and
  - (B) serves a written notice on the Security Agent confirming the same,the Security Agent shall be entitled to sell or otherwise transfer such claim to the purchaser or one of its Affiliates; and
- (iii) such sale or disposal is made:
  - (A) pursuant to any process or proceedings approved or supervised by or on behalf of any court of law; or
  - (B) pursuant to a Public Auction (in which any Second Lien Creditor shall be entitled to participate as a bidder with equal information and access rights to other bidders); or
  - (C) where a Financial Adviser selected by the Security Agent has delivered an opinion (addressed to the Security Agent and capable of being disclosed to the Secured Creditors on a non-reliance basis) in respect of such sale or disposal that the amount received in connection therewith is fair from a financial point of view, taking into account all relevant circumstances, including the method of enforcement, *provided that* the liability of such Financial Adviser may be limited to the amount of its fees in respect of such engagement (it being acknowledged that the Security Agent shall have no obligation to select or engage any Financial Adviser unless it shall have been indemnified and/or secured and/or prefunded to its satisfaction).

## 16.7 Restriction on Distressed Disposals – Unsecured Notes Creditors

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

- (a) the Creditor Representative in respect of any such Unsecured Notes Financing has approved the release; or
- (b) where assets of such member of the Group are sold:
  - (i)
    - (A) the proceeds of such sale or disposal are received in cash (or substantially in cash); or
    - (B) the consideration in respect of such sale or disposal does not comprise cash (or substantially all cash) in circumstances where the Security Agent determines that the cash consideration payable under the highest of the other *bona fide* and fully committed offers made in relation to that sale or disposal is less than the outstanding Secured Obligations, in which case the non-cash consideration can, without limitation, take the form of (x) the Senior Secured Creditors (or any of them acting alone or together) bidding by any appropriate mechanic all or part of their Senior Secured Liabilities (such that the Senior Secured Liabilities would, on completion, be discharged to the extent of an amount equal to the amount of the offer made by the relevant Senior Secured Creditors) and/or (y) *provided that* the Senior Secured Liabilities are fully discharged, the Second Lien Creditors (or any of them acting alone or together) bidding by any appropriate mechanic all or part of their Second Lien Liabilities (such that the Second Lien Liabilities would, on completion, be discharged to the extent of an amount equal to the amount of the offer made by the relevant Second Lien Creditors); and
  - (ii) all claims of the Secured Creditors (other than in relation to performance bonds or guarantees or similar instruments) against each member of the Group whose shares (other than any minority interest not owned by members of the Group) are sold or disposed of pursuant to such Enforcement Action, are unconditionally released and discharged concurrently with such sale (and are not assumed by the purchaser or one of its Affiliates) and all Common Transaction Security in respect of the assets that are sold or disposed of is simultaneously and unconditionally released and discharged concurrently with such sale, *provided that* if each Creditor Representative acting on behalf of the Secured Creditors (acting reasonably and in good faith):
    - (A) determines that the Secured Creditors will recover a greater amount if any such claim is sold or otherwise transferred to the purchaser or one of its Affiliates and not released and discharged; and
    - (B) serves a written notice on the Security Agent confirming the same,the Security Agent shall be entitled to sell or otherwise transfer such claim to the purchaser or one of its Affiliates; and

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

## 16.8 Appointment of Financial Adviser

Without prejudice to Clause 21.8 (*Rights and Discretions*), the Security Agent may engage, or approve the engagement of, in each case on such terms as it may consider appropriate (including, without limitation, restrictions on the Financial Adviser's liability and the extent to which any advice, valuation or opinion may be relied on or disclosed) pay for and rely on the services of a Financial Adviser to provide advice, a valuation or an opinion in connection with:

- (a) a Distressed Disposal or a Debt Disposal or pursuant to Clause 16.6 (*Restriction on Distressed Disposals – Second Lien Creditors*) and/or Clause 16.7 (*Restriction on Distressed Disposals – Unsecured Notes Creditors*);
- (b) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal; or
- (c) any amount of Non-Cash Consideration which is subject to Clause 12.2 (*Turnover by the Creditors*).

## 16.9 Security Agent's Actions

For the purposes of Clause 16.1 (*Facilitation of Distressed Disposals*), Clause 16.2 (*Form of consideration for Distressed Disposals and Debt Disposals*), Clause 16.4 (*Fair Value*), Clause 16.5 (*Other Restrictions*), Clause 16.6 (*Restriction on Distressed Disposals – Second Lien Creditors*), Clause 16.7 (*Restriction on Distressed Disposals – Unsecured Notes Creditors*) and Clause 16.8 (*Appointment of Financial Adviser*), the Security Agent shall act:

- (a) if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 14.4 (*Manner of Enforcement*); and
- (b) in any other case:
  - (i) on the instructions of the Instructing Group; or
  - (ii) in the absence of any such instructions, as the Security Agent sees fit.

## **17. Creditors' and Debtors' Actions**

Each Creditor and each Debtor will:

- (a) do all things that the Security Agent reasonably requests in order to give effect to Clause 15 (*Non-Distressed Disposals*) and Clause 16 (*Distressed Disposals*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may reasonably 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 reasonably requests that any Creditor or any Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

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

## **18. Non-Cash Recoveries**

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

To the extent the Security Agent receives or recovers any Non-Cash Recoveries, it may (acting on the instructions of the Instructing Group) but without prejudice to its ability to exercise discretion under Clause 19.2 (*Prospective Liabilities*):

- (a) distribute those Non-Cash Recoveries pursuant to Clause 19 (*Application of Proceeds*) as if they were Cash Proceeds;
- (b) hold, manage, exploit, collect, realise and dispose of those Non-Cash Recoveries; and
- (c) hold, manage, exploit, collect, realise and distribute any resulting Cash Proceeds.

### **18.2 Cash Value of Non-Cash Recoveries**

- (a) The cash value of any Non-Cash Recoveries shall be determined by reference to a valuation obtained by the Security Agent from a Financial Adviser appointed by the Security Agent pursuant to Clause 16.8 (*Appointment of Financial Adviser*) taking into account any notional conversion made pursuant to Clause 19.5 (*Currency Conversion*).
- (b) If any Non-Cash Recoveries are distributed pursuant to Clause 19 (*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 paragraph (a) above.

### **18.3 Facility Agents and Non-Cash Recoveries**

- (a) Subject to paragraph (b) below, if, pursuant to Clause 19 (*Order of Application*), a Creditor Representative receives Non-Cash Recoveries for application towards the discharge of any Liabilities, that Creditor Representative shall apply those Non-Cash Recoveries in accordance with the relevant Debt Document as if they were Cash Proceeds.
- (b) A Creditor Representative 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 relevant Debt Document 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 that Creditor Representative, acting reasonably, shall think fit for later application pursuant to paragraph (a) above.

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

- (a) If any Non-Cash Recoveries are to be distributed pursuant to Clause 19 (*Application of Proceeds*), the Security Agent shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify the Primary Creditors entitled to receive those Non-Cash Recoveries pursuant to that distribution (the “**Entitled Creditors**”).
- (b) If:
  - (i) it would be unlawful for an Entitled Creditor to receive such Non-Cash Recoveries (or it would otherwise conflict with that Entitled Creditor’s constitutional documents for it to do so); and
  - (ii) that Entitled Creditor promptly so notifies the Security Agent and supplies such supporting evidence as the Security Agent may reasonably require,that Primary Creditor shall be a “**Cash Only Creditor**” and the Non-Cash Recoveries to which it is entitled shall be “**Retained Non-Cash**”.
- (c) To the extent that, in relation to any distribution of Non-Cash Recoveries, there is a Cash Only Creditor:
  - (i) the Security Agent shall not distribute any Retained Non-Cash to that Cash Only Creditor (or to a Creditor Representative on behalf of that Cash Only Creditor) but shall otherwise treat the Non-Cash Recoveries in accordance with this Agreement;
  - (ii) if that Cash Only Creditor is a Senior Secured Creditor or a Second Lien Creditor the Security Agent shall notify the relevant Creditor Representative of that Cash Only Creditor’s identity and its status as a Cash Only Creditor; and
  - (iii) to the extent notified pursuant to paragraph (ii) above, no Creditor Representative shall distribute any of those Non-Cash Recoveries to that Cash Only Creditor.
- (d) Subject to Clause 18.5 (*Security Agent Protection*), the Security Agent shall hold any Retained Non-Cash and shall, acting on the instructions of the Cash Only Creditor entitled to it, manage, exploit, collect, realise and dispose of that Retained Non-Cash for cash consideration and shall distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 19 (*Application of Proceeds*).

- (e) On any such distribution of Cash Proceeds which are attributable to a disposal of any Retained Non-Cash, the extent to which such distribution is treated as discharging the Liabilities due to the relevant Cash Only Creditor shall be determined by reference to:
  - (i) the valuation which determined the extent to which the distribution of the Non Cash Recoveries to the other Entitled Creditors discharged the Liabilities due to those Entitled Creditors; and
  - (ii) the Retained Non Cash to which those Cash Proceeds are attributable.
- (f) Each Primary Creditor shall, following a request by the Security Agent (acting in accordance with Clause 16.9 (*Security Agent's Actions*)), notify the Security Agent of the extent to which paragraph (b)(i) above would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries.

## 18.5 Security Agent Protection

- (a) No Distressed Disposal or Debt Disposal may be made in whole or part for Non-Cash Consideration if the Security Agent has reasonable grounds for believing that its receiving, distributing, holding, managing, exploiting, collecting, realising or disposing of that Non-Cash Consideration would have an adverse effect on it.
- (b) If Non-Cash Consideration is distributed to the Security Agent pursuant to Clause 12.2 (*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 19 (*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.
- (c) If the Security Agent holds Retained Non-Cash for a Cash Only Creditor (each as defined in Clause 18.4 (*Alternative to Non-Cash Consideration*)) the Security Agent may at any time, after notifying that Cash Only Creditor and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Retained Non-Cash for cash consideration (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 19 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Retained Non-Cash would have an adverse effect on it.

## 19. Application of Proceeds

### 19.1 Order of Application

Subject to Clause 19.2 (*Prospective Liabilities*) and Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*), all amounts from time to time paid to the Security Agent under any of Clauses 11.2 (*Payment of Distributions*), 11.3 (*Set-Off*), 12 (*Turnover of Receipts*), 13 (*Redistribution*), 16 (*Distressed Disposals*), 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*) or 21.2 (*Parallel Debt Covenant to Pay the Security Agent*) of this Agreement or received or recovered by the Security Agent in connection with the realisation or enforcement of all or any part of the Common Transaction Security (for the purposes of this Clause 19, the “**Recoveries**”) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its

discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 19), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (other than, for the avoidance of doubt, under Clause 21.2 (*Parallel Debt (Covenant to Pay the Security Agent)*), any Receiver or any Delegate;
- (b) in payment of Creditor Representative Amounts to each Creditor Representative on its own behalf (in accordance with the relevant Debt Documents);
- (c) in payment of all costs and expenses incurred by any Creditor Representative or Secured Creditor in connection with any realisation or enforcement of the Common Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clauses 11.6 (*Further assurance – Insolvency Event*) and 17 (*Creditors' and Debtors' Actions*);
- (d) in payment to:
  - (i) in respect of each Senior Secured Financing, the relevant Creditor Representative on its own behalf and on behalf of the relevant Senior Secured Creditors; and
  - (ii) the Hedge Counterparties,for application towards the discharge of:
  - (A) in the case of (i) above, the Senior Secured Liabilities owed to the relevant Senior Secured Creditors (in accordance with the terms of the relevant Senior Secured Debt Documents on a *pro rata* basis between the relevant Senior Secured Financings); and
  - (B) in the case of (ii) above, the Hedging Liabilities on a *pro rata* basis between the Hedging Liabilities of each Hedge Counterparty,on a *pro rata* basis as between paragraphs (A) and (B) above;
- (e) in respect of each Second Lien Financing, in payment to the relevant Second Lien Creditor Representative on its own behalf and on behalf of the relevant Second Lien Creditors for application towards the discharge of the Second Lien Liabilities in accordance with the terms of the Second Lien Finance Documents on a *pro rata* basis between the relevant Second Lien Financings;
- (f) in respect of each Unsecured Notes Financing, in payment to the relevant Unsecured Notes Trustee on its own behalf and on behalf of the relevant Unsecured Notes Creditors for application towards the discharge of the Unsecured Notes Liabilities in accordance with the terms of the Unsecured Notes Finance Documents on a *pro rata* basis between the relevant Unsecured Notes Financings;
- (g) if none of the Debtors is under any further actual or contingent liability under any Hedging Agreement, Hedge Counterparty Guarantee, Senior Secured Debt Document, Second Lien Finance Document or Unsecured Notes Finance Document, in payment to any person to whom the Security Agent is obliged to pay in priority to any Debtor; and
- (h) the balance, if any, in payment to the relevant Debtor.

## 19.2 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 an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and:
- (b) hold, manage, exploit, collect and realise any amount of the Recoveries which is in the form of Non-Cash Consideration,

for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under Clause 19.1 (*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.

## 19.3 Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral

- (a) Nothing in this Agreement shall prevent any Issuing Bank or Ancillary Lender taking any Enforcement Action in respect of any Credit Facility Cash Cover which has been provided for it in accordance with the Credit Facility Documents.
- (b) To the extent that any Credit Facility Cash Cover is not held with the Relevant Issuing Bank or Relevant Ancillary Lender, all amounts from time to time received or recovered in connection with the realisation or enforcement of that Credit Facility Cash Cover shall be paid to the Security Agent and shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:
  - (i) to the Relevant Issuing Bank or Relevant Ancillary Lender towards the discharge of the Credit Facility Lender Liabilities for which that Credit Facility Cash Cover was provided; and
  - (ii) the balance, if any, in accordance with Clause 19.1 (*Order of Application*).
- (c) To the extent that any Credit Facility Cash Cover is held with the Relevant Issuing Bank and Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Issuing Bank or Relevant Ancillary Lender receiving and retaining any amount in respect of that Credit Facility Cash Cover.
- (d) Nothing in this Agreement shall prevent any Issuing Bank receiving and retaining any amount in respect of any Credit Facility Lender Cash Collateral provided for it in accordance with the terms of the Credit Facility Documents.

## 19.4 Investment of Proceeds

Prior to the application of the proceeds of the Security Property in accordance with Clause 19.1 (*Order of Application*) the Security Agent may, in its discretion, hold all or part of any Cash Proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit unless otherwise directed by the relevant Instructing Group (the interest being

credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this Clause 19.

### **19.5 Currency Conversion**

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may:
  - (i) convert any moneys received or recovered by the Security Agent (including, without limitation, any Cash Proceeds) from one currency to another, at the Security Agent's Spot Rate of Exchange; and
  - (ii) notionally convert the valuation provided in any opinion or valuation from one currency to another at the Security Agent's Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

### **19.6 Permitted Deductions**

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

### **19.7 Good Discharge**

- (a) Any payment to be made in respect of the Secured Obligations by the Security Agent:
  - (i) may be made to the relevant Creditor Representatives on behalf of its Creditors;
  - (ii) may be made to the Relevant Issuing Bank or Relevant Ancillary Lender in accordance with paragraph (b)(i) of Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*); or
  - (iii) shall be made directly to the Hedge Counterparties.
- (b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Security Agent:
  - (i) in the case of a payment made in cash, to the extent of that payment; and
  - (ii) in the case of a distribution of Non-Cash Recoveries, as determined by Clause 18.2 (*Cash Value of Non-Cash Recoveries*).
- (c) The Security Agent is under no obligation to make the payments to the Creditor Representatives or the Hedge Counterparties under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Creditor(s) are denominated under the relevant Debt Documents to the extent not received in that currency.

## 19.8 Calculation of Amounts

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

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

## 19.9 Application and Consideration

In consideration for the covenants given to the Security Agent by each Debtor in Clause 21.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent agrees with each Debtor to apply all moneys from time to time paid by such Debtor to the Security Agent in accordance with the provisions of Clause 19.1 (*Order of Application*).

## 20. Equalisation

### 20.1 Equalisation Definitions

For the purposes of this Clause 20:

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

**"Exposure"** means any Senior Exposure, Second Lien Exposure or Unsecured Notes Exposure as the context requires.

**"Second Lien Exposure"** means:

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

**“Senior Exposure”** means:

- (a) in relation to a Senior Secured Creditor (other than a Senior Secured Notes Creditor or Hedge Counterparty), the aggregate amount of its outstanding participation (if any, and without double counting) under any Credit Facility Agreement at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims in respect of amounts outstanding under the Revolving Facility and each Ancillary Facility in accordance with clause 9.6 (*Adjustment for Ancillary Facilities upon acceleration*) of the Initial Senior Facilities Agreement (or any substantially equivalent provision in another Credit Facility Agreement (as the context requires)) which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Initial Senior Facilities Agreement or any other Credit Facility Agreement (as the context requires) and amounts owed to it by a Debtor in respect of any Ancillary Facility but excluding:
  - (i) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent that that amount would not be outstanding but for a breach by that Senior Secured Creditor of any provision of clause 9 (Ancillary Facilities) of the Initial Senior Facilities Agreement (or any substantially equivalent provision in any other Credit Facility Agreement (as the context requires));
  - (ii) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that Credit Facility Cash Cover has been provided by a Debtor in respect of that amount and is available to that Senior Secured Creditor pursuant to the relevant Credit Facility Documents; and
  - (iii) any amount outstanding in respect of a Letter of Credit to the extent (and in the amount) that Credit Facility Cash Cover has been provided by a Debtor in respect of that amount and is available to the relevant Senior Secured Creditor pursuant to the relevant Credit Facility Documents,and, in each case, all other Senior Secured Liabilities owed by the Debtors to that Senior Secured Creditor to the extent not already taken into account in the foregoing provisions of this paragraph (a);
- (b) in relation to a Senior Secured Notes Creditor, the Senior Secured Notes Liabilities owed by the Debtors to that Senior Secured Notes Creditor; and
- (c) in relation to a Hedge Counterparty:
  - (i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement in accordance with the terms of this Agreement on or prior to the Enforcement Date, the amount, if any, payable to it under that Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and
  - (ii) if that Hedge Counterparty has not terminated or closed out any hedging transaction under any Hedging Agreement on or prior to the Enforcement Date:
    - (A) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that

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

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

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

“**Unsecured Notes Exposure**” means in relation to an Unsecured Notes Creditor, the Unsecured Notes Liabilities owed by the Debtors to that Unsecured Notes Creditor.

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

## **20.2 Implementation of Equalisation**

The provisions of this Clause 20 shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate. Without prejudice to the generality of the preceding sentence, if the provisions of this Clause 20 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Senior Exposures, Second Lien Exposures or Unsecured Notes Exposures (as applicable) and the Senior Secured Creditors, Second Lien Creditors or Unsecured Notes Creditors (as applicable) shall make appropriate adjustment payments amongst themselves.

## **20.3 Equalisation**

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

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

#### **20.4 Turnover of Enforcement Proceeds**

If:

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

then the Receiving Creditors shall make such payments to the Senior Secured Creditors, the Second Lien Creditors or the Unsecured Notes Creditors (as the case may be) as the Security Agent shall require to place the Senior Secured Creditors, the Second Lien Creditors or the Unsecured Notes Creditors (as the case may be) in the position they would have been in had such amounts been available for application against the Senior Secured Liabilities, the Second Lien Liabilities or the Unsecured Notes Liabilities (as the case may be) in accordance with Clause 19.1 (*Order of Application*).

#### **20.5 Notification of Exposure**

- (a) Before each occasion on which it intends to implement the provisions of this Clause 20, the Security Agent shall send a notice to each Senior Secured Creditor Representative requesting that it notify the Security Agent of, respectively, its Senior Exposure and the Senior Exposure of each relevant Senior Secured Creditor.
- (b) Before each occasion on which it intends to implement the provisions of this Clause 20, the Security Agent shall send a notice to each Second Lien Creditor Representative requesting that it notify the Security Agent of, respectively, its Second Lien Exposure and the Second Lien Exposure of each relevant Second Lien Creditor.
- (c) Before each occasion on which it intends to implement the provisions of this Clause 20, the Security Agent shall send a notice to each Unsecured Notes Trustee that it notify the Security Agent of, respectively, its Unsecured Notes Exposure and the Unsecured Notes Exposure of each relevant Senior Secured Creditor.

#### **20.6 Default in Payment**

If a Creditor fails to make a payment due from it under this Clause 20, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Secured Creditors, Second Lien Creditors or Unsecured Notes Creditors to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Senior Secured Creditors, Second Lien

Creditors or Unsecured Creditors (as the case may be) in respect of costs) but shall have no liability or obligation towards such Senior Secured Creditors, Second Lien Creditors or Unsecured Creditors (as the case may be), any other Senior Secured Creditor, Second Lien Creditor, Unsecured Notes Creditor or Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

## **21. The Security Agent**

### **21.1 Security Agent as Trustee**

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Creditors on the terms contained in this Agreement.
- (b) Each of the Secured Creditors authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions.
- (c) Subject to Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*), the Secured Creditors shall not have any independent power to enforce, or have recourse to, any of the Common Transaction Security or to exercise any rights or powers arising under the Transaction Security Documents except through the Security Agent.

### **21.2 Parallel Debt (Covenant to Pay the Security Agent)**

- (a) Notwithstanding any other provision of this Agreement, each Debtor hereby irrevocably and unconditionally undertakes to the extent legally possible to pay to the Security Agent, as creditor in its own right and not as representative of the other Secured Creditors, sums equal to and in the currency of each amount payable by such Debtor to each of the Secured Creditors under each of the Debt Documents as and when that amount falls due for payment under the relevant Debt Document or would have fallen due but for any discharge resulting from failure of another Secured Creditor to take appropriate steps, in insolvency proceedings affecting that Debtor, to preserve its entitlement to be paid that amount.
- (b) The Security Agent shall have its own independent right to demand payment of the amounts payable by each Debtor under this Clause 21.2, irrespective of any discharge of such Debtor's obligation to pay those amounts to the other Secured Creditors resulting from failure by them to take appropriate steps, in insolvency proceedings affecting that Debtor, to preserve their entitlement to be paid those amounts.
- (c) Any amount due and payable by a Debtor to the Security Agent under this Clause 21.2 shall be decreased to the extent that the other Secured Creditors have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Debt Documents and any amount due and payable by a Debtor to the other Secured Creditors under those provisions shall be decreased to the extent that the Security Agent has received (and is able to retain) payment in full of the corresponding amount under this Clause 21.2.
- (d) The rights of the Secured Creditors (other than the Security Agent) to receive payment of amounts payable by each Debtor under the Debt Documents are several and are separate and independent from, and without prejudice to, the rights of the Security Agent to receive payment under this Clause 21.2.

### 21.3 Instructions

- (a) The Security Agent shall:
  - (i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the relevant Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in accordance with instructions given to it by that Creditor or group of Creditors).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the relevant Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the relevant Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) shall override any conflicting instructions given by any other Parties and will be binding on all Secured Creditors.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Creditors including, without limitation, Clauses 21.6 (*No Duty to Account*) to 21.11 (*Exclusion of Liability*) inclusive, Clauses 21.14 (*Confidentiality*) to 21.21 (*Custodians and Nominees*) inclusive and Clauses 21.24 (*Acceptance of Title*) to 21.27 (*Disapplication of Trustee Acts*) inclusive;
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 15 (*Non-Distressed Disposals*);
    - (B) Clause 19.1 (*Order of Application*);
    - (C) Clause 19.2 (*Prospective Liabilities*);
    - (D) Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*); and
    - (E) Clause 19.6 (*Permitted Deductions*).

- (e) If giving effect to instructions given by the relevant Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) would (in the Security Agent's reasonable opinion) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.
- (f) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:
  - (i) it has not received any instructions from the relevant Instructing Group (or if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,
 the Security Agent shall:
  - (A) other than where paragraph (B) below applies, do so having regard to the interests of all the relevant Secured Creditors; and
  - (B) if (in its opinion) there is a Creditor Conflict in relation to the matter in respect of which the discretion is to be exercised, do so having regard only to the interests of all the Senior Secured Creditors.
- (g) 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 (acting reasonably) require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the provisions of Clause 14 (*Enforcement of Common Transaction Security*) and the remainder of this Clause 21.3, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

#### **21.4 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 each Creditor Representative and to each Hedge Counterparty a copy of any document (excluding ongoing administrative information delivered under Security Documents and any documents delivered in relation to the perfection of the security interest under the Security Document) received by 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) 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 28.3 (*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 Primary 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 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).

## **21.5 No Fiduciary Duties to Debtors or Shareholder Creditors**

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

## **21.6 No Duty to Account**

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

## **21.7 Business with the Parent and the Group**

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

## **21.8 Rights and Discretions**

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

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the relevant Secured Creditors) that:
  - (i) no Default has occurred;
  - (ii) any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and
  - (iii) any notice made by the Parent is made on behalf of and with the consent and knowledge of all the Debtors.
- (c) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Primary 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) Subject to the confidentiality obligations set out in the Secured Debt Documents, 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.

## **21.9 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
- (c) any determination as to whether any information provided or to be provided to any Secured Creditor is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

## **21.10 No Duty to Monitor**

The Security Agent shall not be bound to enquire:

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

## **21.11 Exclusion of Liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document or the Security Property unless doing so constitutes gross negligence or wilful misconduct;
  - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of paragraphs (i) to (iii) inclusive above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the 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 Secured Creditor,

on behalf of any Secured Creditor and each Secured 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.

#### **21.12 Secured Creditors’ Indemnity to the Security Agent**

- (a) Each Secured Creditor (other than any Creditor Representative) shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Secured Creditors (other than any Creditor Representative) for the time being (or, if the Liabilities due to the Secured Creditors (other than any Creditor Representative) 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 Security Agent’s, Receiver’s or Delegate’s (as applicable) 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 Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).

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

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

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

### **21.13 Resignation of the Security Agent**

- (a) The Security Agent may (after consultation with the Parent) resign and appoint one of its Affiliates as successor by giving notice to the Secured Creditors and the Parent.
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the Secured Creditors and the Parent, in which case the Majority Senior Secured Creditors or, following the Senior Secured Liabilities Discharge Date, the Majority Second Lien Creditors may, with the consent of the Parent, appoint a successor Security Agent (such consent not to be unreasonably withheld or delayed, *provided that*, for the avoidance of doubt, it shall not be unreasonable to withhold or delay consent where the Parent has made reasonable requests for information about the proposed successor Security Agent and that information has not been provided).
- (c) If the Majority Senior Secured Creditors or, following the Senior Secured Liabilities Discharge Date, the Majority Second Lien Creditors have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the relevant retiring Security Agent (after consultation with the relevant Creditor Representatives, the Hedge Counterparties and the Parent) may, with the consent of the Parent, appoint a successor Security Agent (such consent not to be unreasonably withheld or delayed, *provided that*, for the avoidance of doubt, it shall not be unreasonable to withhold or delay consent where the Parent has made reasonable

requests for information about the proposed successor Security Agent and that information has not been provided).

- (d) The retiring Security Agent shall make available to the successor Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the transfer of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (ii) of Clause 21.25 (*Winding Up of Trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 21 and Clause 27.1 (*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 Secured Creditors or, following the Senior Secured Liabilities Discharge Date, the Majority Second Lien Creditors may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above.

#### **21.14 Confidentiality**

- (a) In acting as trustee for the Secured Creditors, 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.

#### **21.15 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.

#### **21.16 Credit Appraisal by the Secured Creditors**

Without affecting the responsibility of any Debtor for information supplied by it or on its behalf in connection with any Debt Document, each Secured Creditor confirms to 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 Creditor has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Security Property, the transactions contemplated by the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Common Transaction Security or the existence of any Security affecting the Charged Property.

#### **21.17 Security Agent's Management Time and Additional Remuneration**

- (a) Any amount payable to the Security Agent under Clause 21.12 (*Secured Creditors' Indemnity to the Security Agent*), Clause 26 (*Costs and Expenses*) or Clause 27.1 (*Indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Parent and the Primary Creditors, and is in addition to any other fee paid or payable to the Security Agent.
- (b) In the event of:
  - (i) a Default;
  - (ii) the Security Agent being requested by a Debtor or the relevant Instructing Group to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Debt Documents;
  - (iii) the proposed accession of any Secured Creditors pursuant to Clause 24 (*Changes to the Parties*); or
  - (iv) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

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

- (c) If the Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by

an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the Parties.

#### **21.18 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).

#### **21.19 No Responsibility to Perfect Common 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 Common Transaction Security;
- (c) register, file or record or otherwise protect any of the Common Transaction Security (or the priority of any of the Common Transaction Security) under any law or regulation or to give notice to any person of the execution of any Debt Document or of the Common 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 Common Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Transaction Security Document.

#### **21.20 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 relevant Instructing Group requests it to do so in writing and the Security Agent fails to do so within 14 days after receipt of that request.

### **21.21 Custodians and Nominees**

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

### **21.22 Delegation by the Security Agent**

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Creditors.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

### **21.23 Additional Security Agent**

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

### **21.24 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.

## 21.25 Winding Up of Trust

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

- (a) all of the Secured Obligations and all other obligations secured by the Transaction Security Documents have been fully and finally discharged; and
- (b) no Secured Creditor is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor pursuant to the Debt Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Common Transaction Security and the rights of the Security Agent under each of the Transaction Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 21.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Transaction Security Document.

## 21.26 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.

## 21.27 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.

## 21.28 Intra-Group Lenders and Debtors: Power of Attorney

Each Intra-Group Lender and Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Intra-Group Lender or Debtor has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do within 10 Business Days of the relevant Intra-Group Lender or Debtor being notified of that failure (and the Security Agent may delegate that power on such terms as it sees fit (acting reasonably)).

## 21.29 Financial Services and Markets Act 2000

- (a) Notwithstanding anything in any Debt Document to the contrary, the Security Agent shall not do, or be authorised or required to do, anything which might constitute a regulated activity for the purpose of the Financial Services and Markets Act 2000 (“FSMA”), unless it is authorised under FSMA to do so.

- (b) The Security Agent shall have the discretion at any time:
  - (i) to delegate any of the functions which fall to be performed by an authorised person under FSMA to any other agent or person which also has the necessary authorisations and licences; and
  - (ii) to apply for authorisation under FSMA and perform any or all such functions itself if, in its absolute discretion, it considers it necessary, desirable or appropriate to do so.

### **21.30 Security Agent's Actions**

The Security Agent may carry out what in its discretion it considers to be administrative acts, or acts which are incidental to any instruction, without any instructions (though not contrary to any such instruction), but so that no such instruction shall have any effect in relation to any administrative or incidental act performed prior to actual receipt of such instruction by the Security Agent.

## **22. Notes Trustee Protections**

### **22.1 Limitation of Notes Trustee Liability**

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

### **22.2 Notes Trustee not Fiduciary for other Creditors**

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

### **22.3 Reliance on Certificates**

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

### **22.4 Notes Trustee**

In acting under and in accordance with this Agreement a Notes Trustee shall act in accordance with the relevant Notes Indenture and shall seek any necessary instruction from the relevant Noteholders, to the extent provided for, and in accordance with, the relevant Notes Indenture, and where it so acts on the instructions of the relevant Noteholders, a Notes Trustee shall not incur any liability to any person for so acting other than in accordance with the relevant Notes Indenture. Furthermore, prior to taking any action under this Agreement or the relevant Debt Documents as the case may be the relevant Notes Trustee may reasonably request and rely upon an opinion of counsel or opinion of another qualified expert, at the Parent's expense, as applicable; *provided, however, that* any such opinions shall be at the expense of the relevant Noteholders, if such actions are on the instructions of the relevant Noteholders.

### **22.5 Creditors and the Notes Trustees**

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

### **22.6 Notes Trustee; Reliance and Information**

- (a) A Notes Trustee may rely and shall be fully protected in acting or refraining from acting upon any notice or other document reasonably believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person.
- (b) Without affecting the responsibility of any Debtor for information supplied by it or on its behalf in connection with any Debt Document, each Primary Creditor (other than the Noteholders for which it is the Creditor Representative) confirms that it has not relied exclusively on any information provided to it by a Notes Trustee in connection with any Debt Document. A Notes Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another party.
- (c) A Notes Trustee is entitled to assume that:
  - (i) any payment or other distribution made in respect of the Liabilities owed to itself and the Noteholders for which it is the Creditor Representative has been made in accordance with the provisions of this Agreement;
  - (ii) any Security granted in respect of such Liabilities is in accordance with this Agreement;
  - (iii) no Default has occurred; and
  - (iv) the Senior Secured Liabilities Discharge Date or the Unsecured Discharge Date (as applicable) has not occurred,

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

### **22.7 No Action**

A Notes Trustee shall not have any obligation to take any action under this Agreement unless it is indemnified or secured to its satisfaction (whether by way of payment in advance or

otherwise) by the Debtors or the Noteholders for which it is the Creditor Representative, as applicable, in accordance with the terms of the relevant Notes Indenture. A Notes Trustee is not required to indemnify any other person, whether or not a Party in respect of the transactions contemplated by this Agreement.

## **22.8 Departmentalisation**

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

## **22.9 Other Parties not Affected**

This Clause 22 is intended to afford protection to each Notes Trustee only and no provision of this Clause 22 shall alter or change the rights and obligations as between the other parties in respect of each other.

## **22.10 Security Agent and the Notes Trustees**

- (a) A Notes Trustee is not responsible for the appointment or for monitoring the performance of the Security Agent.
- (b) A Notes Trustee shall be under no obligation to instruct or direct the Security Agent to take any Security enforcement action unless it shall have been instructed to do so by the Noteholders for which it is the Creditor Representative and indemnified and/or secured to its satisfaction.
- (c) The Security Agent acknowledges and agrees that it has no claims for any fees, costs or expenses from, or indemnification against, a Notes Trustee.

## **22.11 Provision of Information**

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

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

## **22.12 Disclosure of Information**

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

## **22.13 Illegality**

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

#### **22.14 Resignation of Notes Trustee**

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

#### **22.15 Agents**

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

#### **22.16 No Requirement for Bond or Security**

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

#### **22.17 Provisions Survive Termination**

The provisions of this Clause 22 shall survive any termination or discharge of this Agreement.

### **23. Hedge Counterparties Guarantee and Indemnity**

Each Debtor guarantees to, and undertakes and agrees with each Hedge Counterparty as set out in Schedule 5 (*Hedge Counterparties' Guarantee and Indemnity*).

### **24. Changes to the Parties**

#### **24.1 Assignments and Transfers**

No Party may:

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

in respect of any Debt Documents or the Liabilities except as permitted by this Clause 24.

#### **24.2 Accession of Shareholder Creditor**

- (a) Subject to Clause 10.4 (*No Acquisition of Subordinated Shareholder Liabilities*), a Shareholder Creditor may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Subordinated Shareholder Liabilities owed to it if any assignee or transferee has (if not already a Party to this Agreement as a Shareholder Creditor) acceded to this Agreement as a Shareholder Creditor pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) If any other person makes available to the Parent or to any other member of the Group any indebtedness which, if made available by Holdco, would constitute Subordinated Shareholder Liabilities, that person shall accede to this Agreement as a Shareholder Creditor pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).

### 24.3 Accession of Credit Facility Lenders and Creditor Representatives

- (a) In order for any credit facility (other than the Initial Senior Facilities) to be a “Credit Facility” for the purposes of this Agreement:
  - (i) each creditor in respect of that credit facility shall accede to this Agreement as a Credit Facility Lender; and
  - (ii) the facility agent in respect of that credit facility shall accede to this Agreement as the Creditor Representative in relation to that credit facility pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) A Credit Facility Lender under an existing Credit Facility may:
  - (i) assign any of its rights; or
  - (ii) transfer by novation any of its rights and obligations,in respect of any Debt Documents or the Liabilities if:
  - (A) that assignment or transfer is in accordance with the terms of the Credit Facility Documents to which it is a party; and
  - (B) subject to paragraph (c) below, any assignee or transferee has (if not already a Party as a Credit Facility Lender) acceded to this Agreement, as a Credit Facility Lender, pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).
- (c) Paragraph (b)(ii)(B) above shall not apply in respect of:
  - (i) any Debt Purchase Transaction (as defined in the Initial Senior Facilities Agreement) permitted by clause 38.1 (*Permitted Debt Purchase Transactions*) of the Initial Senior Facilities Agreement or any equivalent provision of any other Credit Facility Document; and
  - (ii) any Liabilities Acquisition of the Credit Facility Lender Liabilities by a member of the Group permitted under the relevant Credit Facility Document and pursuant to which the relevant Liabilities are discharged,effected in accordance with the terms of the Debt Documents.
- (d) No creditor under a Credit Facility shall be entitled to share in any of the Common Transaction Security or in the benefit of any provisions of this Agreement unless such creditor is already a party as a Credit Facility Lender or has acceded to this Agreement as a Credit Facility Lender in accordance with paragraph (a) or (b) above.

### 24.4 New Hedge Counterparty or Change in Hedge Counterparty

- (a) No person shall be entitled to share in any of the Common Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to any Hedging Agreement unless it has acceded to this Agreement as a Hedge Counterparty.
- (b) A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights and benefits or obligations in respect of the Hedging Agreements to which it is a party and (if required) the Hedge Counterparty Guarantee if any transferee has (if not already party to this Agreement as a Hedge Counterparty) acceded to this Agreement as a Hedge Counterparty pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).

#### 24.5 Accession of Senior Secured Notes Trustee

- (a) At any time, if any person makes available any indebtedness to any member of the Group to the extent contemplated by the definition of “**Additional Senior Secured Notes Financing**”, the relevant Senior Secured Notes Trustee shall accede to this Agreement on behalf of the providers of such indebtedness as the Creditor Representative in relation to that Additional Senior Secured Financing pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) A Senior Secured Notes Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if that assignment or transfer is in accordance with the terms of the relevant Additional Senior Secured Financing Documents.
- (c) No creditor, who would otherwise be a Senior Secured Notes Creditor shall be entitled to share in any of the Common Transaction Security or in the benefit of any provisions of this Agreement unless the relevant Senior Secured Notes Trustee in respect of that Additional Senior Secured Notes Financing has acceded to this Agreement as a Creditor Representative on its behalf in accordance with paragraph (a) above.

#### 24.6 Accession of Second Lien Lenders and their Creditor Representatives

- (a) At any time, if any person makes available any indebtedness to any member of the Group to the extent contemplated by the definition of “**Second Lien Facility**”, each such person shall accede to this Agreement as a Second Lien Lender and the relevant facility agent shall accede to this Agreement as a Second Lien Agent and the Creditor Representative in relation to that Second Lien Facility pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) A Second Lien Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if:
  - (i) that assignment or transfer is in accordance with the terms of the relevant Second Lien Finance Documents; and
  - (ii) any assignee or transferee has (if not already party to this Agreement as a Second Lien Lender) acceded to this Agreement as a Second Lien Lender pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).
- (c) Paragraph (b)(ii) above shall not apply in respect of:
  - (i) any Debt Purchase Transaction (as defined in the Initial Second Lien Facilities Agreement) permitted by clause 34.1 (*Permitted Debt Purchase Transactions*) of the Initial Second Lien Facilities Agreement or any equivalent provision of any other Second Lien Facility Agreement; and
  - (ii) any Liabilities Acquisition of the Second Lien Lender Liabilities by a member of the Group permitted under the relevant Second Lien Finance Document and pursuant to which the relevant Liabilities are discharged,  
effected in accordance with the terms of the Debt Documents.
- (d) No creditor, who would otherwise be a Second Lien Lender shall be entitled to share in any of the Common Transaction Security or in the benefit of any provisions of this Agreement unless such creditor has acceded to this Agreement in accordance with paragraph (a) or (b) above.

#### **24.7 Accession of a Second Lien Notes Trustee**

- (a) At any time, if any person makes available any indebtedness to any member of the Group to the extent contemplated by the definition of “Second Lien Notes” the relevant Second Lien Notes Trustee shall accede to this Agreement as the Creditor Representative in relation to such Second Lien Notes pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) A Second Lien Notes Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if that assignment or transfer is in accordance with the terms of the relevant Second Lien Finance Documents.
- (c) No creditor, who would otherwise be a Second Lien Notes Creditor shall be entitled to share the benefit of any provisions of this Agreement unless the relevant Second Lien Notes Trustee has acceded to this Agreement in accordance with paragraph (a) above.

#### **24.8 Accession of an Unsecured Notes Trustee**

- (a) At any time, if any person makes available any indebtedness to any member of the Group to the extent contemplated by the definition of “Unsecured Notes Financing” the relevant Unsecured Notes Trustee shall accede to this Agreement as the Creditor Representative in relation to that Unsecured Notes Financing pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) An Unsecured Notes Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if that assignment or transfer is in accordance with the terms of the relevant Unsecured Notes Finance Documents.
- (c) No creditor, who would otherwise be an Unsecured Notes Creditor shall be entitled to share the benefit of any provisions of this Agreement unless the relevant Unsecured Notes Trustee has acceded to this Agreement in accordance with paragraph (a) above.

#### **24.9 Change of Creditor Representative**

A Creditor Representative may resign or be re-appointed in accordance with the relevant Debt Documents governing its appointment. No person replacing such Creditor Representative shall become a Creditor Representative unless at the same time, it accedes to this Agreement as a Creditor Representative pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).

#### **24.10 New Ancillary Lender**

If any Affiliate of a Credit Facility Lender becomes an Ancillary Lender in accordance with the relevant Credit Facility Agreement, it shall not be entitled to share in any of the Common Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already party to this Agreement as a Credit Facility Lender) acceded to this Agreement as a Credit Facility Lender pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).

#### **24.11 Creditor/Creditor Representative Accession Undertaking**

With effect from the date of acceptance by the Security Agent and, in the case of an Affiliate of a Credit Facility Lender, the Creditor Representative in relation to the relevant Credit Facility, of a Creditor/Creditor Representative Accession Undertaking duly executed and

delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor/Creditor Representative Accession Undertaking:

- (a) any Party ceasing entirely to be a Creditor, Shareholder Creditor or Creditor Representative shall be discharged from further obligations towards the Security Agent and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and
- (b) as from that date, the replacement or new Creditor, Shareholder Creditor or Creditor Representative shall assume the same obligations, and become entitled to the same rights, as if it had been an original Party to this Agreement in that capacity.

#### **24.12 New Debtor**

- (a) If any member of the Group:
  - (i) incurs any Liabilities which in the case of any Intra-Group Liabilities owed by such member of the Group, aggregate £3,000,000 (or its equivalent in other currencies) or more; or
  - (ii) gives any security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities which in the case of any Intra-Group Liabilities owed by such member of the Group, aggregate £3,000,000 (or its equivalent in other currencies) or more,

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

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

#### **24.13 New Intra-Group Lender**

If any member of the Group (other than an Original Intra-Group Lender) makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount in relation to a particular Debtor in excess of £3,000,000 (or its equivalent in other currencies) or more, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Intra-Group Lender) accedes to this Agreement as an Intra-Group Lender, pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).

#### **24.14 Change of Intra-Group Lender**

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

- (a) assign any of its rights; or

- (b) transfer any of its rights and obligations,

in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already a Party as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 24.11 (*Creditor/Creditor Representative Accession Undertaking*).

#### **24.15 Additional Parties**

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor/Creditor Representative Accession Undertaking delivered to the Security Agent and the Security Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Debt Document.
- (b) In the case of a Creditor/Creditor Representative Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Credit Facility Lender):
  - (i) the Security Agent shall, as soon as practicable after signing and accepting that Creditor/Creditor Representative Accession Undertaking in accordance with paragraph (a) above, deliver that Creditor/Creditor Representative Accession Undertaking to the relevant Creditor Representative; and
  - (ii) the relevant Creditor Representative shall, as soon as practicable after receipt by it, sign and accept that Creditor/Creditor Representative Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.
- (c) The relevant Creditor Representative shall be obliged to sign and accept a Debtor Accession Deed or Creditor/Creditor Representative Accession Undertaking received by it promptly after receipt by it *provided that* it is satisfied that it has complied with all necessary “**know your customer**” or similar other checks under all applicable laws and regulations in relation to the accession by the prospective party to this Agreement.
- (d) Each Party shall promptly upon the request of the Security Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Security Agent (for itself) from time to time in order for the Security Agent to carry out and be satisfied with the results of all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Debt Documents.
- (e) The Parent shall provide the Security Agent with copies (certified by a director of the Parent to be true and complete) of each Debt Document to which a member of the Group is party as soon as reasonably practicable upon execution (unless the Security Agent is also a party to that document).

#### **24.16 Resignation of a Debtor**

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

- (b) The Security Agent shall accept a Debtor Resignation Request and notify the Parent and each other Party of its acceptance if:
  - (i) the Parent has confirmed that no Event of Default is continuing or would result from the acceptance of the Debtor Resignation Request;
  - (ii) each Hedge Counterparty notifies the Security Agent that that Debtor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities;
  - (iii) to the extent that the Senior Secured Liabilities Discharge Date has not occurred, the relevant Creditor Representative notifies the Security Agent that that Debtor is not, or has ceased to be a Credit Facility Borrower, Credit Facility Guarantor, issuer or a guarantor of Senior Secured Notes (as applicable) and, if applicable, the relevant Creditor Representative notifies the Security Agent that the Debtor has no liabilities either as principal or guarantor under any of the Additional Senior Secured Financing Documents in respect of any Additional Senior Secured Notes Financing;
  - (iv) to the extent that the Final Second Lien Discharge Date has not occurred the relevant Creditor Representatives notifies the Security Agent that the Debtor is not, or has ceased to be, a borrower, issuer and guarantor (as applicable) under any Second Lien Financing;
  - (v) to the extent that the Final Unsecured Notes Discharge Date has not occurred the relevant Creditor Representatives notifies the Security Agent that the Debtor is not, or has ceased to be, a borrower, issuer and guarantor (as applicable) under any Unsecured Notes Financing; and
  - (vi) the Parent confirms that the Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities that would require it to become a Party under Clause 24.13 (*New Intra-Group Lender*).
- (c) 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.
- (d) The Security Agent shall, promptly upon receipt of a Debtor Resignation Request, request the notifications required in paragraph (b) above and each party required to give a notification under paragraph (b) above shall, promptly following receipt of the request (and provided the relevant conditions in paragraph (b) above have been met) give such notification.

## 25. Additional Indebtedness

### 25.1 Incurrence of Additional Indebtedness

If the Parent gives written notice to the Security Agent, the Creditor Representatives and the Hedge Counterparties that a Debtor intends to incur any Additional Senior Secured Financing Liabilities, any Liabilities in relation to any Additional Second Lien Financing, any Unsecured Notes Liabilities or other Indebtedness permitted by the Debt Documents (the “**Additional Liabilities**”) which comply with the other provisions of this Agreement and where the incurrence of the Additional Liabilities and such Additional Liabilities having the applicable ranking and benefit of the Common Transaction Security is not prohibited by the terms of the Debt Documents, then the Parties will (at the cost of the Parent) enter into such documentation as may, in the opinion of the Parent (acting reasonably), be necessary to ensure that any obligations and liabilities incurred by the Debtors in respect of such Additional Liabilities will

have the applicable ranking and the benefit of the Common Transaction Security and that each Creditor under such Additional Liabilities will have the rights and obligations permitted to be conferred upon it in accordance with the Debt Documents (including, without limitation, the entry into a new intercreditor agreement on then current market terms) and the Security Agent is authorised to execute, and will execute if requested by the Parent, without the need for any further authority from the Secured Creditors (unless required by applicable law), any such documentation on behalf of the Secured Creditors *provided that* (unless otherwise in accordance with, or permitted or contemplated by, the terms of the relevant Debt Documents) none of the parties shall be obliged to enter into any such documentation that purports to release or release and retake any of the Common Transaction Security if doing so would require consent under the applicable Debt Documents (as applicable) and that consent has not been obtained. For the avoidance of doubt, this Clause is without prejudice to any obligations of any of the Parties under any of the other Debt Documents to enter into any documents or take any other action in connection with indebtedness permitted to be incurred by the Group and permitted to be secured by the Common Transaction Security and the proviso above will not override any agreement between the relevant Creditors and Debtors in the respective Debt Documents.

## 25.2 Terms of Additional Indebtedness

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

## 25.3 Further Creditor Notice

- (a) Without prejudice to Clause 25.1 (*Incurrence of Additional Indebtedness*) if:
  - (i) a Debtor is to incur Additional Senior Secured Financing Liabilities;
  - (ii) a Debtor is to incur Liabilities in relation to any Additional Second Lien Financing; or
  - (iii) a Finco and/or Debtor is to incur Liabilities in relation to any Unsecured Notes Financing,

the Parent shall serve on the Security Agent a duly completed notice (a “**Further Creditor Notice**”) substantially in the form set out in Schedule 4 (*Form of Further Creditor Notice*) (or any other form agreed between the Parent and the Security Agent, each acting reasonably).

- (b) It is acknowledged and agreed that on receipt by the Security Agent of a duly completed Further Creditor Notice to the extent permitted by the terms of the relevant Transaction Security Documents and all relevant law, any indebtedness under the Additional Senior Secured Financing Liabilities or Liabilities in relation to any Additional Second Lien Financing referred to in the Further Creditor Notice shall be secured by the Common Transaction Security.

## **25.4 Authorisation of Creditor Representatives**

- (a) A Notes Trustee is authorised to and shall enter into the documentation described in Clause 25.1 (*Incurrence of Additional Indebtedness*) on behalf of itself and the Noteholders it represents and the same shall be binding for all purposes on such Noteholders.
- (b) If any Primary Creditor (other than a Noteholder) fails to enter into the documentation described in Clause 25.1 (*Incurrence of Additional Indebtedness*) within 10 Business Days of being requested to do so by the Security Agent or a Debtor, that Primary Creditor's Creditor Representative is authorised to and shall (*provided that* the relevant Creditor has not notified the relevant Creditor Representative prior to such date that the entry into such documentation would be illegal for or contrary to any regulation with which the relevant Primary Creditor is required to comply or customarily complies) enter into such documentation on such Primary Creditor's behalf and the same shall be binding for all purposes on such Primary Creditor.
- (c) For the avoidance of doubt, no consent or approval from a Primary Creditor is required to enable a Creditor Representative to act pursuant to this Clause 25.4.

## **26. Costs and Expenses**

### **26.1 Transaction Expenses**

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

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

*provided that* the Parent shall not be obliged to pay (or cause to be paid) any such costs and expenses for any fees of counsel, accountants, surveyors or other experts or advisors whose engagement has not been approved by the Parent if such engagement occurred following an Event of Default.

### **26.2 Amendment Costs**

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

### **26.3 Enforcement and Preservation Costs**

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

## 26.4 Stamp Taxes

The Parent shall pay (or procure payment of) and, within three Business Days of demand, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to any stamp duty, registration or other similar Taxes payable in respect of any Debt Document (other than a Debt Document pursuant to which any rights under a Debt Document are assigned or transferred by a Creditor) *provided that* the Parent shall not be obliged to pay or indemnify any Creditor to the extent that any such stamp duty, registration or other similar Taxes become payable upon registration, submission or filing of any Debt Document which is or was made on a purely voluntary basis (which shall mean that such registration, submission or filing is (i) not required by law and (ii) not required to maintain, defend or preserve the rights of such Creditor under any Debt Document).

## 26.5 Interest on Demand

Without duplication of any default interest payable under any Debt Document, if any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall (to the extent such accrual does not result in any double counting under the provisions of this Agreement and the provisions of the other Debt Documents) accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is one per cent. per annum over the rate at which the Security Agent would be able to obtain by placing on deposit with a leading bank an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select *provided that* if any such rate is below zero, that rate will be deemed to be zero.

## 27. Other Indemnities

### 27.1 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 (other than to the extent incurred as a result of its own gross negligence or wilful misconduct) (together with any applicable VAT) reasonably incurred by any of them as a result of:
- (i) any failure by the Parent to comply with its obligations under Clause 26 (*Costs and Expenses*);
  - (ii) acting or relying on any notice, request or instruction received pursuant to and in accordance with the terms of any Debt Document which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Common Transaction Security;
  - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent (or, if applicable, the relevant Secured Creditor), each Receiver and each Delegate by the Debt Documents or by law;
  - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
  - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
  - (vii) acting as the Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property.

- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 27.1 will not be prejudiced by any release or disposal under Clause 16 (*Distressed Disposals*) taking into account the operation of that Clause 16 (*Distressed Disposals*).
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Creditors, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 27.1 and shall have a lien on the Common Transaction Security and the proceeds of the enforcement of the Common Transaction Security for all moneys payable to it.
- (d) For the avoidance of doubt, the provisions of this Clause 27.1 will not be construed as an obligation of the Parent to indemnify an Arranger, a Senior Finance Party, a Secured Creditor or an Indemnified Person (as each term is defined in the Initial Senior Facilities Agreement) in respect of (i) Taxes (for the avoidance of doubt, including FATCA (as defined in the Initial Senior Facilities Agreement)), which obligations shall be governed solely by Clause 18 (*Tax Gross Up and Indemnities*) of the Initial Senior Facilities Agreement or any equivalent provision of the Initial Second Lien Facilities Agreement or (ii) Increased Costs (as defined in the Initial Senior Facilities Agreement), which obligations shall be governed solely by Clause 19 (*Increased Costs*) of the Initial Senior Facilities Agreement or any equivalent provision of the Initial Second Lien Facilities Agreement.

## **27.2 Parent's Indemnity to Primary Creditors**

The Parent shall promptly and as principal obligor indemnify each Primary Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable incurred by any of them in relation to or arising out of the operation of Clause 16 (*Distressed Disposals*).

## **27.3 Jersey Droit Waiver**

Each Debtor abandons and waives any right it may have at any time under the laws of Jersey whether existing or future (whether by virtue of the droit de discussion or division or otherwise) to require that:

- (a) a Primary Creditor, before enforcing any Debt Document takes any action, exercises any recourse or seeks a declaration of bankruptcy against any other Debtor or any other person, makes any claim in a bankruptcy, liquidation, administration or insolvency of any other Debtor or any other person or enforces or seeks to enforce any other right, claim, remedy or recourse against any other Debtor or any other person;
- (b) a Primary Creditor, in order to preserve any of its rights against that Debtor, joins that Debtor as a party to any proceedings against any other Debtor or any other person or any other Debtor or any other person as a party to any proceedings against that Debtor or takes any other procedural steps or observes any other formalities; or
- (c) a Primary Creditor divides or apportions the liability of that Debtor under a Debt Document with any other person.

## **27.4 Indemnity as Continuing Obligation**

Each indemnity given by a Party under or in connection with a Debt Document is a continuing obligation, independent of the Party's other obligations under or in connection with that or any other Debt Document and survives after that Debt Document is terminated in respect of any actions, omissions or other circumstances existing on or prior to the date of such termination. It is not necessary for a Creditor to pay any amount or incur any expense before enforcing an indemnity under or in connection with a Debt Document.

## **28. Information**

### **28.1 Information and Dealing**

- (a) The Primary Creditors and the Shareholder Creditors shall provide to the Security Agent from time to time (through their respective Creditor Representative where applicable) any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as trustee.
- (b) Subject to clause 45.5 (*Communication when Agent is Impaired Agent*) of the Initial Senior Facilities Agreement (or, any equivalent provision of any facility agreement in relation to a Credit Facility or in any other Debt Document) each Credit Facility Lender, Second Lien Lender or Noteholder shall deal with the Security Agent exclusively through its Creditor Representative and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through any agent.
- (c) No Creditor Representative shall be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.

### **28.2 Disclosure**

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

### **28.3 Notification of Prescribed Events**

- (a) If an Event of Default either occurs or ceases to be continuing under any of the Debt Documents the relevant Creditor Representative shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Creditor Representative and each Hedge Counterparty.
- (b) If any Acceleration Event occurs the relevant Creditor Representative shall notify the Security Agent in writing and the Security Agent shall, upon receiving that notification, notify each other Creditor Representative and each Hedge Counterparty.
- (c) If a Second Lien Payment Stop Notice or an Unsecured Notes Payment Stop Notice is served or ceases to be continuing the Security Agent shall notify each Creditor Representative, each Hedge Counterparty and the Parent.
- (d) If the Security Agent receives a Second Lien Enforcement Notice or an Unsecured Notes Enforcement Notice it shall, upon receiving that notice, notify, and send a copy of that notice to, each Creditor Representative and each Hedge Counterparty.
- (e) If a Common Senior Secured Payment Default either occurs or ceases to be continuing, the relevant Creditor Representative shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative in respect of a Second Lien Financing or an Unsecured Notes Financing and the Parent.
- (f) If a Common Secured Payment Default either occurs or ceases to be continuing, the relevant Creditor Representatives shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative in respect of an Unsecured Notes Financing and the Parent.

- (g) If any Liabilities are accelerated by virtue of an Acceleration Event, the relevant Creditor Representative shall, upon so accelerating, notify each other Party.
- (h) If the Security Agent enforces, or takes formal steps to enforce, any of the Common Transaction Security it shall notify each Party of that action.
- (i) If any Secured Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Common Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.
- (j) If a Debtor defaults on any Payment due under a Hedging Agreement or any Hedge Counterparty Guarantee, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.
- (k) If a Hedge Counterparty terminates or closes-out, in whole or in part, any transaction under any Hedging Agreement under Clause 5.8 (*Permitted Enforcement: Hedge Counterparties*) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.
- (l) If any of the Term Outstandings are to be reduced other than by way of a scheduled repayment set out in any Credit Facility Agreement or Second Lien Facility Agreement, (whether by way of repayment, prepayment, cancellation or otherwise) the Parent shall notify each Hedge Counterparty of:
  - (i) the date and amount of that proposed reduction;
  - (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; and
  - (iii) any Exchange Rate Hedge Excess that would result from that proposed reduction and that Hedge Counterparty's Exchange Rate Hedging Proportion (if any) of that Exchange Rate Hedge Excess.
- (m) If the Security Agent receives a notice under paragraph (a) of Clause 6.1 (*Option to Purchase: Second Lien Creditors*) it shall upon receiving that notice, notify, and send a copy of that notice to, each Creditor Representative and the Hedge Counterparties.
- (n) If the Security Agent receives a notice under paragraph (a) of Clause 6.2 (*Hedge Transfer: Second Lien Creditors*) it shall upon receiving that notice, notify, and send a copy of that notice to, each Hedge Counterparty.
- (o) Each relevant Hedge Counterparty shall provide to the Parent or the Security Agent (as applicable) the aggregate mark to market value and notional amount of all of its transactions under Hedging Agreements as at the close of business on any trading date requested by the Parent or the Security Agent from time to time. Each relevant Hedge Counterparty shall provide such information to the Parent or the Security Agent (as applicable) no later than one Business Day after receiving a written request therefore from the Parent or the Security Agent.

## **29. Notices**

### **29.1 Communications in Writing**

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

### **29.2 Security Agent's Communications with Primary Creditors**

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

- (a) with the Primary Creditors (other than Creditor Representatives) through their respective Creditor Representatives and may give to the Creditor Representatives, as applicable, any notice or other communication required to be given by the Security Agent to the Primary Creditors that it represents; and
- (b) with each Hedge Counterparty directly with that Hedge Counterparty.

### **29.3 Addresses**

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

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

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

### **29.4 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 29.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Parent in accordance with this Clause 29.4 will be deemed to have been made or delivered to each of the Debtors.

- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) inclusive above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following Business Day.

## **29.5 Notification of Address and Fax Number**

Promptly upon receipt of notification of an address, email address and fax number or change of address or fax number pursuant to Clause 29.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

## **29.6 Electronic Communication**

- (a) Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between a Shareholder Creditor or a Debtor and the Security Agent or a Primary Creditor may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above to be made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following Business Day.
- (e) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 29.6 unless expressly stated otherwise.

## **29.7 English Language**

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

## **29.8 Hedging Agreements**

For the avoidance of doubt, this Clause 29 shall not apply to any communication between a Hedge Counterparty and a Debtor under or in connection with a Hedging Agreement.

## **30. Preservation**

### **30.1 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.

### **30.2 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.

### **30.3 Remedies and Waivers**

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

### **30.4 Waiver of Defences**

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 30.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor or other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or security;

- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;
- (g) any intermediate Payment of any of the Liabilities owing to the Primary Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

### **30.5 Priorities not Affected**

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

- (a) not be affected by any reduction or increase in the principal amount secured by the Common Transaction Security in respect of the Liabilities owing to the Secured Creditors or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;
- (b) apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and
- (c) secure the Liabilities owing to the Secured Creditors in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

## **31. Consents, Amendments and Override**

### **31.1 Required Consents**

- (a) Subject to paragraph (b) below and Clause 25 (*Additional Indebtedness*), this Agreement may be amended or waived only with the written consent of:
  - (i) each Creditor Representative *provided that* the consent of a Creditor Representative shall only be required if and to the extent such amendment or waiver could reasonably be expected to materially prejudice the interests of those Creditors represented by such Creditor Representative;
  - (ii) if a Hedge Counterparty is providing hedging to a Debtor, that Hedge Counterparty in each case only to the extent that the amendment or waiver would materially prejudice the continuing rights and obligations of that Hedge Counterparty under this Agreement or is an amendment or waiver expressed to require the consent of that Hedge Counterparty under the applicable Hedging Agreement, as notified by the Parent to the Security Agent that the time of the relevant Proposed Amendment (other than any amendment specifically provided for under this Agreement and any amendment or waiver affecting the Senior Secured Creditors);
  - (iii) the Shareholder Creditors (to the extent that the amendment or waiver (A) directly relates to and adversely affects the rights or obligations of the Shareholder Creditors under Clause 10 (*Subordinated Shareholder Liabilities*) or (B) would materially prejudice the rights and obligations of that Shareholder Creditor under this Agreement (other than any amendment specifically provided for under this Agreement); and
  - (iv) the Parent,

except for amendments and waivers to (A) cure defects, typographical errors or resolve ambiguities, (B) reflect changes of a technical or administrative nature, or (C) for the purposes of addressing technical issues arising under local law and in connection with the Common Transaction Security, which in each case may be effected by the Security Agent and the Parent without the consent of any other Party.

- (b) An amendment or waiver that has the effect of changing or which relates to:
- (i) Clause 13 (*Redistribution*), Clause 19 (*Application of Proceeds*), Clause 34 (*Governing Law*) or this Clause 31;
  - (ii) paragraphs (d)(iii), (e) and (f) of Clause 21.3 (*Instructions*); or
  - (iii) the order of priority or subordination under this Agreement,

shall not be made without the consent of:

- (A) the Creditor Representatives;
- (B) the Credit Facility Lenders under a Credit Facility in the requisite percentage required by the Credit Facility Agreement in respect of that Credit Facility;
- (C) the Senior Secured Notes Trustee on behalf of the Senior Secured Noteholders;
- (D) the Second Lien Lenders in the requisite percentage required by the Second Lien Facility Agreement in respect of that Second Lien Facility (as certified by the relevant Creditor Representative);
- (E) the Second Lien Notes Trustee on behalf of the Second Lien Noteholders;
- (F) the Unsecured Notes Trustee on behalf of the Unsecured Notes Trustee;
- (G) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty);
- (H) the Security Agent; and
- (I) the Parent,

*provided that* an amendment or waiver that has the effect of changing or which relates to Clause 13 (*Redistribution*) or Clause 19 (*Application of Proceeds*) or which is described in paragraph (i) or (iii) above shall only require the consent of the Parent, those Senior Secured Creditors, Second Lien Creditors and Unsecured Notes Creditors which will be materially prejudiced by the proposed amendment or waiver and the Security Agent to the extent that it will be materially prejudiced by the proposed amendment or waiver.

- (c) An amendment, waiver or consent which relates to the rights or obligations of a Creditor Representative, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the consent of that Creditor Representative or, as the case may be, the Security Agent or that Hedge Counterparty.

### **31.2 Amendments and Waivers: Transaction Security Documents**

Unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by each Senior Secured Creditor Representative and each Second Lien Creditor Representative (who, in each case, shall so authorise if in accordance with or otherwise permitted or contemplated by the terms of the relevant Debt Documents), and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.

### **31.3 Effectiveness**

Any amendment, waiver or consent given, made or effected in accordance with any of the provisions of this Clause 31, or in accordance with any other term of this Agreement, will be binding on all Parties and the Security Agent may effect, on behalf of any Creditor Representative or Primary Creditor, any amendment, waiver or consent permitted by this Clause 31. Each Creditor Representative and Primary Creditor irrevocably and unconditionally authorises and instructs the Security Agent (for the benefit of the Security Agent and the Parent) to execute any documentation relating to a proposed amendment or waiver as soon as the requisite consent is received (or on such later date as may be agreed by the Security Agent and Parent).

### **31.4 Calculation Amounts**

For the purpose of ascertaining whether any relevant percentage of Senior Secured Credit Participations and/or Second Lien Credit Participations has been obtained under this Agreement, the Security Agent may notionally convert amounts into their Common Currency Amounts and may rely on any confirmation of compliance with the requirements of the amendment provisions of the relevant Debt Documents given by any Creditor Representative.

### **31.5 Second Lien and Unsecured Notes Administrative Consents**

If the Creditor Representatives in respect of a Senior Secured Financing, or any Senior Secured Creditor Representative or the requisite Senior Secured Creditors at any time in respect of any Senior Secured Debt Documents give any Consent of a minor technical or administrative nature which does not adversely affect the interests of the Second Lien Creditors or the Unsecured Notes Creditors or change the commercial terms contained in the Second Lien Finance Documents or the Unsecured Notes Finance Documents then, if that action was permitted by the terms of this Agreement, the Second Lien Creditors and the Unsecured Notes Creditors will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each Second Lien Finance Document or Unsecured Notes Finance Document to which they are a party; and
- (b) do anything (including executing any document) that the relevant Senior Secured Creditors may reasonably require to give effect to this Clause 31.5.

### **31.6 Deemed consent**

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

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

- (b) do anything (including executing any document) that the Secured Creditors and the Unsecured Noteholders may reasonably require to give effect to paragraph (a) above.

### **31.7 Excluded Consents**

Clause 31.6 (*Deemed Consent*) does not apply to any Consent which has the effect of:

- (a) increasing or decreasing the Liabilities;
- (b) changing the basis upon which any Permitted Payments are calculated (including the timing, currency or amount of such Payments); or
- (c) changing the terms of this Agreement or of any Security Document.

### **31.8 No Liability**

None of the Primary Creditors will be liable to any other Primary Creditor, any Shareholder Creditor, any other Creditor Representative or any member of the Group for any Consent given or deemed to be given under this Clause 31.8.

### **31.9 Agreement to Override**

- (a) Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents to the contrary, *provided that* nothing in this Agreement shall override any consent rights of any member of the Group arising under the Initial Senior Facilities Documents, any Additional Senior Secured Financing Document, any Second Lien Finance Document or any Unsecured Notes Finance Document.
- (b) Notwithstanding anything to the contrary in this Agreement, the preceding paragraph (a) as between any Primary Creditor and any member of the Group will not cure, postpone, waive or negate in any manner any default or event of default (however described) under any Debt Document as provided in the relevant Debt Document.

## **32. Money Held as Banker**

The Initial Senior Agent and the Initial Second Lien Agent shall be entitled to deal with money paid to it by any person for the purposes of this Agreement in the same manner as other money paid to a banker by its customers except that it shall not be liable to account to any person for any interest (save in respect of the Mandatory Prepayment Accounts (as defined in each of the Initial Senior Facilities Agreement and the Initial Second Lien Facilities Agreement) or other amounts in respect of the money.

## **33. Counterparts**

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

## **34. Governing Law**

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

## 35. Enforcement

### 35.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual or other obligations arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 35.1 is for the benefit of the Primary Creditors, the Security Agent and any Receiver or Delegate only. As a result, no Primary Creditor nor the Security Agent nor any Receiver or Delegate shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Primary Creditors, the Security Agent or any Receiver or Delegate may take concurrent proceedings in any number of jurisdictions.

### 35.2 Service of Process

- (a) Without prejudice to any other mode of service allowed under any relevant law:
  - (i) each Debtor (unless incorporated in England and Wales):
    - (A) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and the Parent, by its execution of this Agreement, accepts that appointment; and
    - (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned;
  - (ii) each Shareholder Creditor (unless incorporated in England and Wales):
    - (A) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
    - (B) agrees that failure by a process agent to notify the relevant Shareholder Creditor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (in the case of an agent for service of process for a Debtor) or the relevant Shareholder Creditor must immediately (and in any event within 10 Business Days of such event taking place) appoint another agent on terms reasonably acceptable to each Creditor Representative and each Hedge Counterparty. Failing this, the relevant Creditor Representative or Hedge Counterparty (as the case may be) may appoint another agent for this purpose.
- (c) The Parent expressly agrees and consents to the provisions of this Clause 35 and Clause 34 (*Governing Law*).

## 36. Contractual Recognition of Bail-In

Notwithstanding any other term of any Debt Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability

of any Party to any other Party under or in connection with the Debt Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Debt Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

**This Agreement has been executed as a deed by the Intra-Group Lenders, Debtors and the Shareholder Creditor.**

## Schedule 1

### Form of Debtor Accession Deed

**This Deed** is made on [●] and made

**Between:**

- (1) [Insert Full Name of New Debtor] (registration number [●]) (the “**Acceding Debtor**”); and
- (2) [Insert Full Name of Current Security Agent] (the “**Security Agent**”), for itself and each of the other parties to the Intercreditor Agreement referred to below.

This deed is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] 2019 between, amongst others, [●] as Parent, [●] as Holdco, [●] as security agent, [●] as initial senior agent, [●] as initial second lien agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

The Acceding Debtor intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

[Insert details (date, parties and description) of relevant documents]

the “**Relevant Documents**”.

**It is agreed** as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Deed, bear the same meaning when used in this Deed.
2. The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
  - (a) any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
  - (b) all proceeds of that Security; and
  - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Creditors (in the Relevant Documents or otherwise) and secured by the Common Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Creditors,

on trust for the Secured Creditors on the terms and conditions contained in the Intercreditor Agreement.

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

Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].\*\*

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

**This Deed** has been signed on behalf of the 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

[Executed as a Deed

By: *[Full Name of Acceding Debtor]*



.....  
Signature of Director

.....  
Name of Director

OR

in the presence of

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

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

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

**Occupation of witness]**

---

Address for notices:

Address:

Fax:

**The Security Agent**

*[Full Name of Current Security Agent]*

---

By:

Date:

## Schedule 2

### Form of Creditor/Creditor Representative 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 Creditor Representative in relation to relevant Credit Facility] as [●].]\*

From: [Acceding Creditor/Creditor Representative]

**THIS UNDERTAKING** is made on [●] by [insert full name of new Creditor/Creditor Representative (the “**Acceding [Creditor/Creditor Representative]**”) in relation to the intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] 2019 between, among others, [●] as Parent, [●] as Holdco, [●] as Security Agent, [●] as Initial Senior Agent, [●] as Initial Second Lien Agent and the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding [Creditor/Creditor Representative] being accepted as a [Initial Senior Lender]/[Initial Senior Agent]/[Hedge Counterparty]/[Senior Secured Notes Trustee]/[Senior Secured Creditor Representative]/[Second Lien Lender]/[Second Lien Agent]/[Second Lien Notes Trustee]/[Unsecured Notes Trustee]/[Additional Senior Secured Financing Creditor]/[Shareholder Creditor]/[Intra-Group Lender] for the purposes of the Intercreditor Agreement, the Acceding [Creditor/Creditor Representative] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Initial Senior Lender]/[Initial Senior Agent]/[Hedge Counterparty]/[Senior Secured Notes Trustee]/[Senior Secured Creditor Representative]/[Second Lien Lender]/[Second Lien Agent]/[Second Lien Notes Trustee]/[Unsecured Notes Trustee]/[Additional Senior Secured Financing Creditor]/ [Shareholder Creditor]/[Intra-Group Lender] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Initial Senior Lender]/[Initial Senior Agent]/[Hedge Counterparty]/[Senior Secured Notes Trustee]/[Senior Secured Creditor Representative]/[Second Lien Lender]/[Second Lien Agent]/[Second Lien Notes Trustee]/[Unsecured Notes Trustee]/[Additional Senior Secured Financing Creditor]/[Shareholder Creditor]/[Intra-Group Lender] and agrees that it shall be bound by and entitled under all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[[The Acceding Creditor is an Affiliate of a [Initial Senior Lender]/a Credit Facility Lender] and has become a provider of an Ancillary Facility. In consideration of the Acceding Creditor being accepted as an Ancillary Lender for the purposes of the [relevant facility agreement], the Acceding Creditor confirms, for the benefit of the parties to the [relevant facility agreement], that, as from [date], it intends to be party to the [relevant facility agreement] as an Ancillary Lender, and undertakes to perform all the obligations expressed in the [relevant facility agreement] to be assumed by an Ancillary Lender and agrees that it shall be bound by all the provisions of the [relevant facility agreement], as if it had been an original party to it as an Ancillary Lender.]]

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

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

---

\* Include only in the case of an Ancillary Lender which is an Affiliate of an RCF Lender.

Acceding [Creditor/Creditor Representative]

**[Executed as a Deed]**

[insert full name of Acceding  
Creditor/Creditor Representative]

\_\_\_\_\_  
By:  
Address:  
Fax:

Accepted by the Security Agent  
for and on behalf of  
[Insert full name of current Security Agent]

[Accepted by the [relevant Creditor  
Representative]]  
for and on behalf of  
[Insert full name of relevant Creditor  
Representative]

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:]\*\*

\*\* Include Creditor Representative Signature block only in the case of an Ancillary Lender which is an Affiliate of an RCF Lender.

## Schedule 3

### Form of Debtor Resignation Request

To: [●] as Security Agent

From: [resigning Debtor] and [Parent]

Dated:

Dear Sirs

**Jewel MidCo Limited - Intercreditor Agreement  
dated [●] 2019 (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 24.16 (*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 Subordinated Shareholder Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

**[Parent]**

\_\_\_\_\_  
By:

**[Resigning Debtor]**

\_\_\_\_\_  
By:

## Schedule 4

### Form of Further Creditor Notice

To: [●] as Security Agent

From: The Parent

Dated:

Dear Sirs

**Jewel MidCo Limited - Intercreditor Agreement  
dated [●] 2019 (the “Intercreditor Agreement”)**

1. We refer to the Intercreditor Agreement. This is a Further Creditor Notice. Terms defined in this Notice have the meaning given to those terms in the Intercreditor Agreement.
2. Pursuant to Clause 25.3 (*Further Creditor Notice*) we notify you [of the financing details which are listed below which liabilities are to be classified as [Additional Senior Secured Financing Liabilities / Second Lien Liabilities / Unsecured Notes Liabilities].

Debtor: [●]

Guarantors: [●]

Description of financing: [●]

[Credit Facility Agreement/Second Lien Facility Agreement/Second Lien Notes Indenture/Senior Secured Notes Indenture/Unsecured Notes Indenture]: [●]

Creditor Representative: [●]

Interest Rate: [●]

Final Maturity Date: [●]

This Notice and any other contractual obligations arising out of or in connection with it are governed by English law.

**[Parent]**

---

By:

## Schedule 5

### Hedge Counterparties' Guarantee and Indemnity

#### 1. Guarantee and Indemnity

Subject to the terms of this Schedule 5, each Debtor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Hedge Counterparty punctual performance by each other Obligor of all that Debtor's obligations under the Hedging Agreements;
- (b) undertakes with each Hedge Counterparty that whenever another Obligor does not pay any amount when due under or in connection with any Hedging Agreements, that Debtor shall immediately on demand pay that amount as if it was the principal debtor; and
- (c) agrees with each Hedge Counterparty that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Hedge Counterparty immediately on demand against any cost, loss or liability it incurs as a result of a Debtor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Hedging Agreement on the date when it would have been due. The amount payable by a Debtor under this indemnity will not exceed the amount it would have had to pay under this Schedule 5 if the amount claimed had been recoverable on the basis of a guarantee.

#### 2. Continuing Guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Debtor under the Hedging Agreements, regardless of any intermediate payment or discharge in whole or in part.

#### 3. Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Debtor or any security for those obligations or otherwise) is made by a Hedge Counterparty in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Debtor under this Schedule 5 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### 4. Waiver of Defences

The obligations of each Debtor under this Schedule 5 will not be affected by an act, omission, matter or thing which, but for this Schedule 5, would reduce, release or prejudice any of its obligations under this Schedule 5 (without limitation and whether or not known to it or any Hedge Counterparty) including:

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any other Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor

or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Debtor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Hedging Agreement or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any hedging arrangements or the addition of any new hedging arrangements under any Hedging Agreement or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Hedging Agreement or any other document or security; or
- (g) any insolvency or similar proceedings.

## **5. Debtor Intent**

Without prejudice to the generality of paragraph 4 (*Waiver of Defences*) above, each Debtor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Hedging Agreements and/or any hedging made available under any of the Hedging Agreements for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

## **6. Immediate Recourse**

Each Debtor waives any right it may have of first requiring any Hedge Counterparty (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Debtor under this Schedule 5. This waiver applies irrespective of any law or any provision of a Hedging Agreement to the contrary.

## **7. Appropriations**

Until all amounts which may be or become payable by the Debtors under or in connection with the Hedging Agreements have been irrevocably paid in full, each Hedge Counterparty (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Hedge Counterparty (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Debtor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Debtor or on account of any Debtor's liability under this Schedule 5.

## **8. Deferral of Debtors' Rights**

Until all amounts which may be or become payable by the Debtors under or in connection with the Hedging Agreements have been irrevocably paid in full, no Debtor will exercise any rights which it may have by reason of performance by it of its obligations under the Hedging

Agreements or by reason of any amount being payable, or liability arising, under this Schedule 5:

- (a) to be indemnified by a Debtor;
- (b) to claim any contribution from any other guarantor of any Debtor's obligations under the Hedging Agreements;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Hedge Counterparties under the Hedging Agreements or of any other guarantee or security taken pursuant to, or in connection with, the Hedging Agreements by any Hedge Counterparty;
- (d) to bring legal or other proceedings for an order requiring any Debtor to make any payment, or perform any obligation, in respect of which any Debtor has given a guarantee, undertaking or indemnity under paragraph 1 (*Guarantee and Indemnity*) of this Schedule 5;
- (e) to exercise any right of set-off against any Debtor; and/or
- (f) to claim or prove as a creditor of any Debtor in competition with any Hedge Counterparty.

If a Debtor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Hedge Counterparties by the Debtors under or in connection with the Hedging Agreements to be repaid in full on trust for the Hedge Counterparties and shall promptly pay or transfer the same to the relevant Hedge Counterparty.

#### **9. Release of Debtors' Right of Contribution**

If any Debtor (a "**Retiring Debtor**") ceases to be a Debtor in accordance with the terms of the Hedging Agreements then on the date such Retiring Debtor ceases to be a Debtor:

- (a) that Retiring Debtor is released by each other Debtor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Debtor arising by reason of the performance by any other Debtor of its obligations under the Hedging Agreements; and
- (b) each other Debtor waives any rights it may have by reason of the performance of its obligations under the Hedging Agreements to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Hedge Counterparties under any Hedging Agreement or of any other security taken pursuant to, or in connection with, any Hedging Agreement where such rights or security are granted by or in relation to the assets of the Retiring Debtor.

#### **10. Additional Security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Hedge Counterparty.

#### **11. Guarantee Limitations**

- (a) In relation to a Debtor organised in England and Wales, its obligations under this Schedule 5 shall not apply to the extent that it would result in such obligations constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 and are subject to any further limitations set out in the Accession Deed applicable to such Additional Debtor.

- (b) In respect of a Debtor incorporated or established in a jurisdiction other than England and Wales, the guarantee and indemnity in this Schedule 5 shall be subject to any limitations set out in the Accession Deed under which the relevant company acceded to this Agreement as a Debtor.

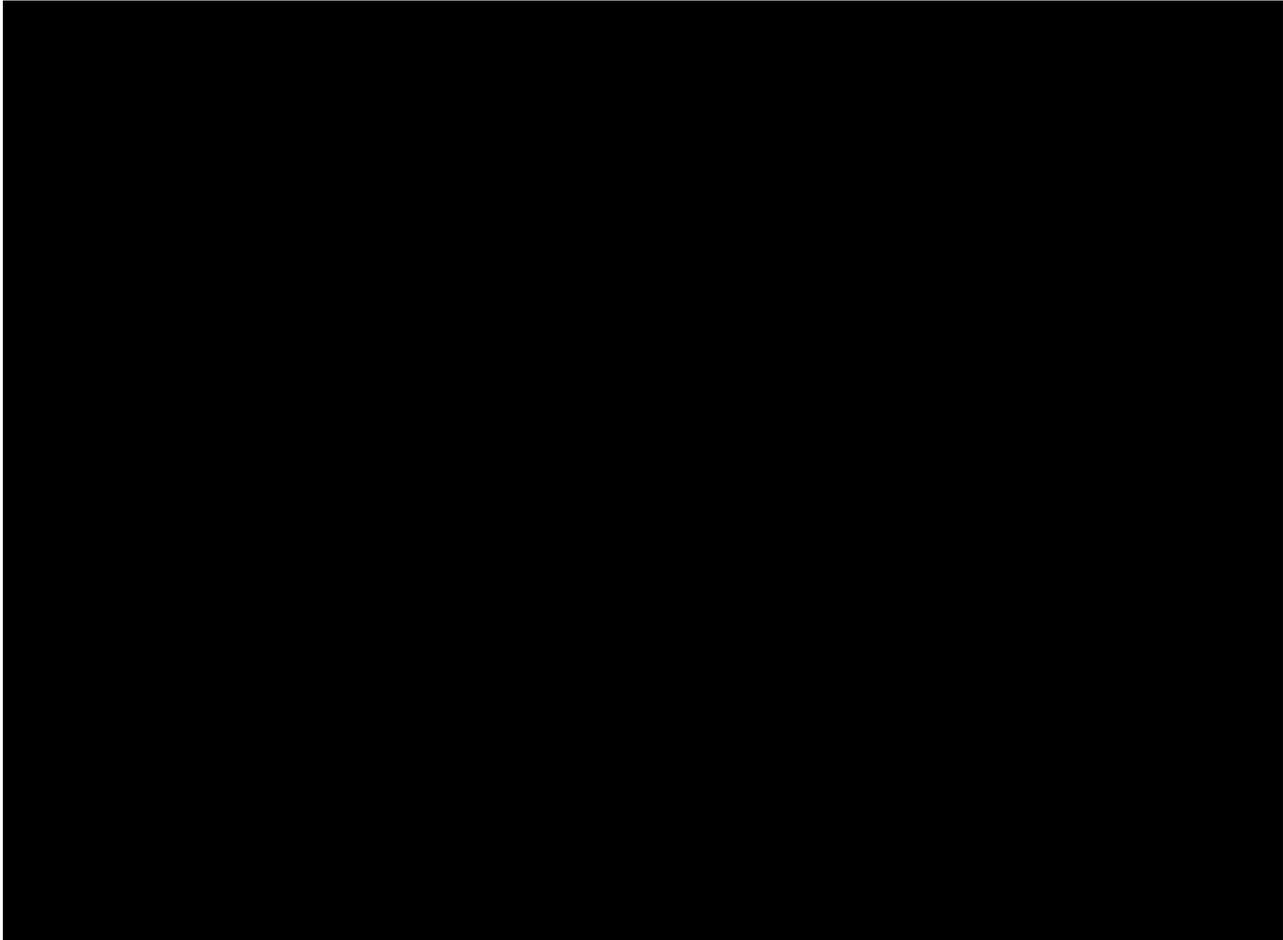
**12. Additional Debtor Limitations**

The guarantee of any Additional Debtor is subject to any limitations relating to that Additional Debtor set out in any relevant Debtor Accession Deed.

**The Parent**

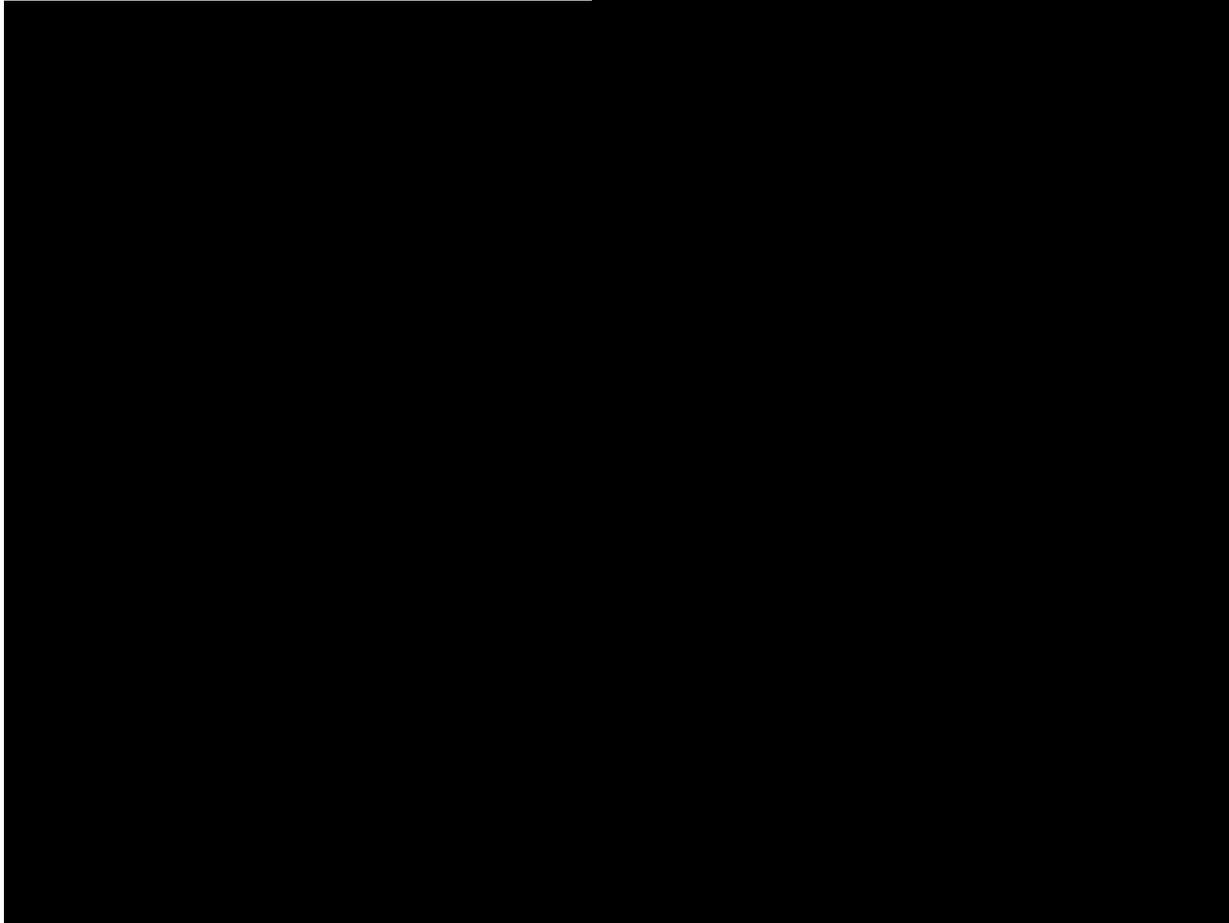
**Executed as a Deed by  
Jewel MidCo Limited  
as the Parent  
acting by a Director**

}



**The Original Debtors**

**Executed as a Deed by  
Jewel MidCo Limited  
as Original Debtor  
acting by a Director**



**Executed as a Deed by  
Jewel BidCo Limited**  
as Original Debtor  
acting by a Director

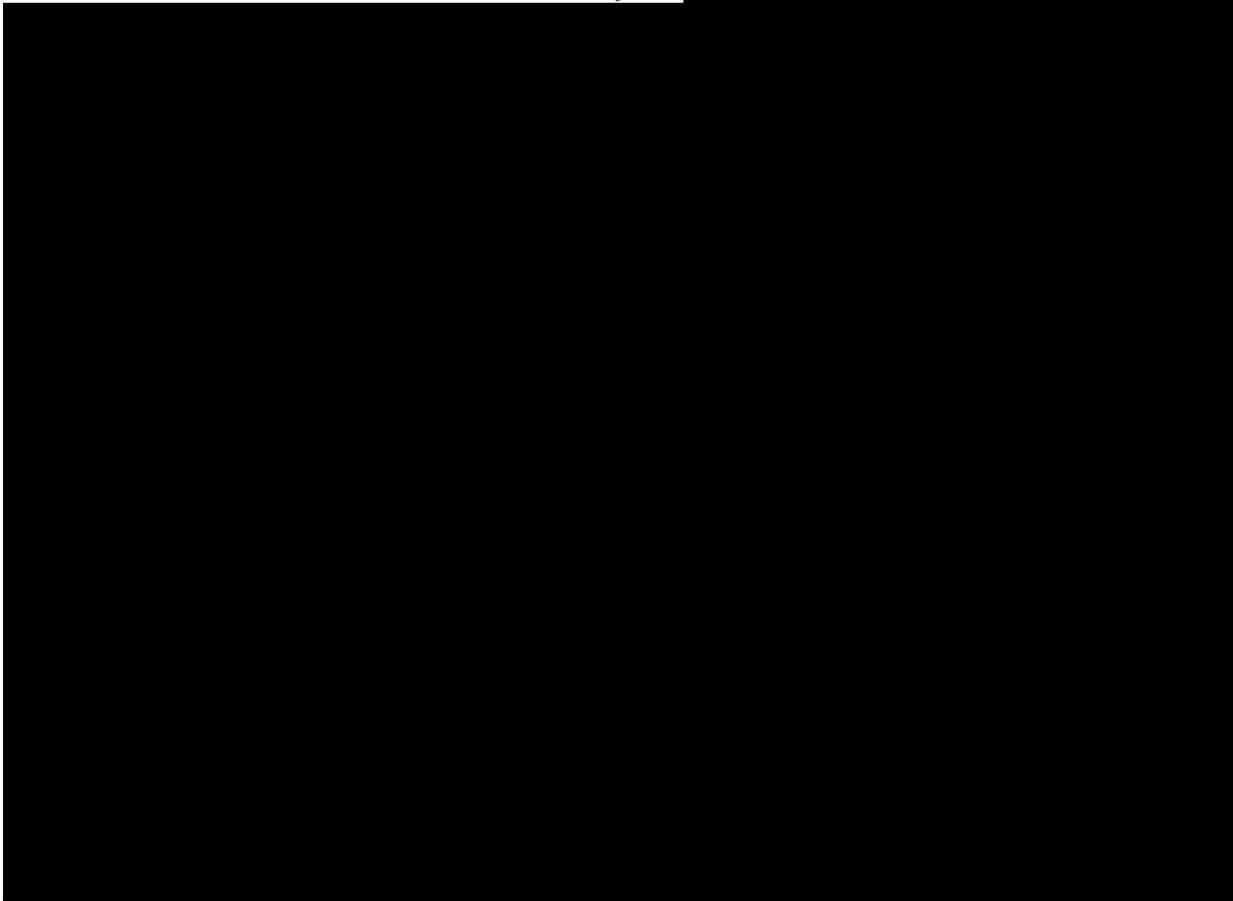
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**The Original Intra-Group Lenders**

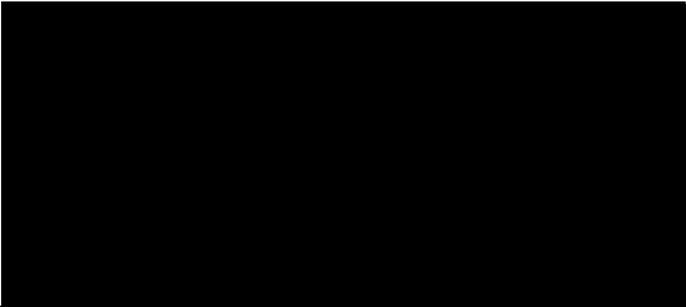
**Executed as a Deed by  
Jewel MidCo Limited  
as Original Intra-Group Lender  
acting by a Director**

}



**Executed as a Deed by  
Jewel BidCo Limited**  
as Original Intra-Group Lender  
acting by a Director

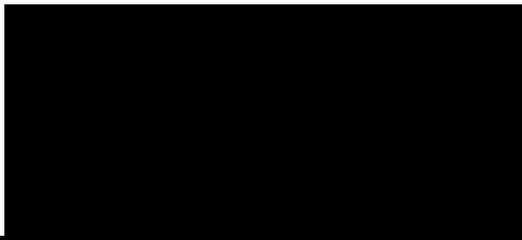
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**The Holdco**

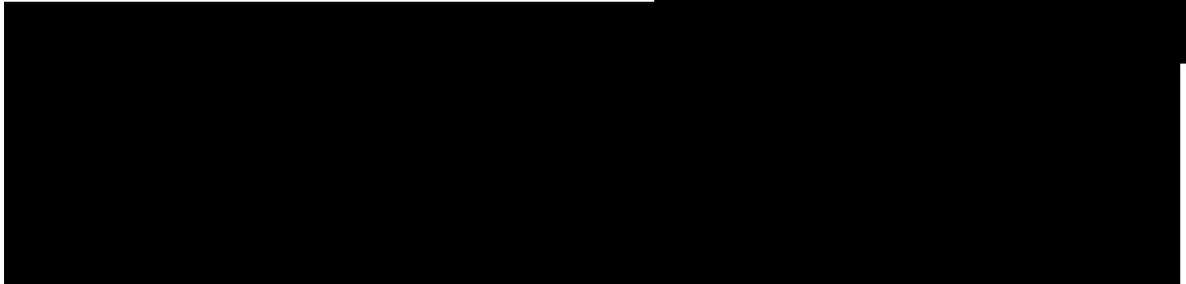
**Executed as a Deed by  
Jewel TopCo Limited  
as Holdco  
acting by a Director**

}



**The Initial Senior Lender**

For and on behalf of  
**Royal Bank of Canada**  
as Initial Senior Lender



**The Initial Senior Agent**

For and on behalf of  
**RBC Europe Limited**  
as Initial Senior Agent



**The Security Agent**

For and on behalf of  
**RBC Europe Limited**  
as Security Agent

