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Agreed form

_____ 2023

INTERCREDITOR AGREEMENT

between

FRIGO NEWCO 1 LIMITED
as the Parent, the Original Shareholder Creditor and a Third Party Security Provider

FRIGO DEBTCO PLC
as Company A

GLAS TRUST COMPANY LLC
as Senior Secured Notes Trustee

GLAS TRUSTEES LIMITED
as Second Lien Notes Trustee

THE COMPANIES NAMED HEREIN
as Original Debtors

MADISON PACIFIC TRUST LIMITED
as Security Agent

and

CERTAIN OTHER ENTITIES
in the various capacities named herein

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THIS AGREEMENT is made on _____ 2023 between the following parties

- (1) **FRIGO NEWCO 1 LIMITED**, a private liability company incorporated under the laws of England and Wales under registered number 14701481 and having its registered office at c/o TMF Group 8th Floor, 20 Farringdon Street, London, United Kingdom EC4A 4AB (the “**Parent**”);
- (2) **FRIGO DEBT CO PLC**, a public limited company incorporated under the laws of England and Wales under registered number 14707701 and having its registered office at c/o TMF Group 8th Floor, 20 Farringdon Street, London, United Kingdom EC4A 4AB (“**Company A**”);
- (3) **GLAS TRUST COMPANY LLC** as trustee for the Senior Secured Notes (the “**Senior Secured Notes Trustee**”);
- (4) **GLAS TRUSTEES LIMITED** as trustee for the Second Lien Notes (the “**Second Lien Notes Trustee**”);
- (5) **THE COMPANIES** listed in Schedule 1 (*The Parties*) hereto as debtors (the “**Original Debtors**”);
- (6) **THE COMPANIES** listed in Schedule 1 (*The Parties*) hereto as intra-group lenders (the “**Original Intra-Group Lenders**”);
- (7) **THE COMPANIES** listed in Schedule 1 (*The Parties*) hereto as third party security providers (the “**Original Third Party Security Providers**”);
- (8) **THE COMPANIES** listed in Schedule 1 (*The Parties*) hereto as third party security providers (the “**Original Shareholder Creditors**”);
- (9) **MADISON PACIFIC TRUST LIMITED** as security trustee for the Secured Parties (the “**Security Agent**”); and
- (10) Upon accession, each other Creditor.

IT IS AGREED as follows

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

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

“**Acceleration Event**” means a Senior Secured Notes Acceleration Event, a Second Lien Notes Acceleration Event, a Credit Facility Acceleration Event, a Cash Management Facility Acceleration Event, a Future Pari Passu Debt Acceleration Event, a Future Second Lien Debt Acceleration Event or a Future Senior Debt Acceleration Event.

“**Additional Liabilities**” means, in relation to any Liability, any money, debt or liability due, owing or incurred under or in connection with:

- (a) any refinancing, deferral or extension of such Liability;
- (b) any further advance which may be made under any document, agreement or instrument supplemental to any original finance document under or in connection with which such Liability was incurred or created together with any related interest, fees and costs;
- (c) any claim for damages or restitution in the event of rescission of such Liability or otherwise in connection with any relevant agreement, deed, document or instrument relating to such Liability;
- (d) any claim against any Debtor or any Third Party Security Provider flowing from any recovery by a Debtor, Third Party Security Provider or any liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer of a payment or discharge in respect of such Liability on the grounds of preference or otherwise; and
- (e) any amount (such as post-insolvency interest) which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings.

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

“Agreed Security Principles” means the agreed guarantee and security principles set out in Schedule 8 (*Agreed Security Principles*).

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

“Ancillary Facility” means in relation to any Credit Facility, any ancillary facility made available by an Ancillary Lender under and in accordance with the Credit Facility Documents.

“Ancillary Lender” means in relation to any Credit Facility, each Credit Facility Lender (or Affiliate of a Credit Facility Lender) which makes an Ancillary Facility available pursuant to the terms of the Credit Facility Documents.

“Arranger” means a Cash Management Facility Arranger and any other person who becomes a party to this Agreement as an Arranger pursuant to Clause 24 (*Changes to the Parties*).

“Arranger Liabilities” means all present and future liabilities and obligations (whether actual and contingent and whether incurred solely or jointly) of any Debtor or Third Party Security Provider to any Arranger under the Debt Documents, together with any related Additional Liabilities.

“Bankruptcy Law” means Title 11, United States Bankruptcy Code of 1978, as amended, or the laws of any other jurisdiction or any political subdivision thereof relating to bankruptcy, insolvency, receivership, winding up, liquidation, reorganization or relief of debtors, or any similar foreign law (including, without limitation, the Netherlands, the U.K., Greece, Russia, Nigeria or Romania) relating to bankruptcy, insolvency, receivership, winding up, liquidation, reorganization or relief of debtors or any amendment to, succession to or change in any such law.

“Base Currency” means Euros.

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

“Borrowing Liabilities” means, in relation to the Parent or a member of the Group, the liabilities (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor or Debtor in respect of Financial Indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities as an issuer of the Senior Secured Notes or the Second Lien Notes, as a Borrower under and as defined in the relevant Credit Facility Documents or liabilities or in an equivalent capacity under the Future Pari Passu Debt Documents and/or the Future Second Lien Debt Documents and/or the Future Senior Debt Documents).

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Amsterdam, Athens, Hong Kong and, solely in connection with the execution, registration and/or perfection of any Security Documents related to Frigoglass Romania S.R.L. and/or 3P Frigoglass S.R.L., Bucharest 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; or
- (b) (in relation to any date for payment or purchase of Euro) which is a TARGET Day.

“Cash Management Facility” means any facility made available by one or more Cash Management Facility Lenders for working capital and/or general corporate purposes of the Group, including any of the following (or any combination of the following):

- (a) an overdraft, cheque clearing, automatic payment or other current account facility;
- (b) a guarantee, bonding or documentary or stand by letter of credit facility;
- (c) a short term loan facility;
- (d) a derivatives facility;
- (e) a foreign exchange facility; and
- (f) any other facility or accommodation as may be required or desirable in connection with the business of the Group and which is agreed by the Companies and each relevant Cash Management Facility Lender.

“Cash Management Facility Acceleration Event” means:

- (a) a Cash Management Facility Lender (or, as applicable, any requisite class thereof specified in the applicable Cash Management Facility Documents) exercising any rights to accelerate amounts outstanding under the relevant Cash Management Facility pursuant to any Cash Management Facility Document; or
- (b) any Cash Management Facility Liabilities becoming due and payable by operation of any automatic acceleration provisions in any Cash Management Facility Document,

in each case, for the avoidance of doubt, not including any declaration that any amount is payable on demand but including the exercise of any right to demand payment of an amount previously placed on demand.

“Cash Management Facility Agent” means the facility agent in respect of any Cash Management Facility which has acceded to this Agreement as an agent pursuant to Clause 24.13 (*Accession of Cash Management Facility Lenders under the New Cash Management Facilities*).

“Cash Management Facility Agreement” means the facility agreement in respect of any Cash Management Facility.

“Cash Management Facility Arranger” means an arranger in respect of any Cash Management Facility, which has acceded to this Agreement as an arranger pursuant to Clause 24.13 (*Accession of Cash Management Facility Lenders under the New Cash Management Facilities*).

“Cash Management Facility Cash Cover” has the meaning given to the term **“cash cover”** in the relevant Cash Management Facility Document.

“Cash Management Facility Commitment” means, in relation to a Cash Management Facility Lender and a Cash Management Facility, the maximum Base Currency Amount which that Cash Management Facility Lender has agreed (whether or not subject to satisfaction of conditions precedent) to make available from time to time under a Cash Management Facility to the extent that amount is not cancelled or reduced under the Cash Management Facility Documents relating to that Cash Management Facility.

“Cash Management Facility Credit Participations” means, in relation to a Cash Management Facility Creditor (other than a Cash Management Facility Agent), the principal amount owing to it under the Cash Management Facility Documents.

“Cash Management Facility Creditors” means the Cash Management Facility Arrangers, the Cash Management Facility Agents, any Issuing Bank in respect of any Cash Management Facility and the Cash Management Facility Lenders.

“Cash Management Facility Debt Purchase Transaction” has the meaning given to the term **“debt purchase transaction”** or any substantially equivalent term, in the relevant Cash Management Facility Document.

“Cash Management Facility Default” means a Default under one or more Cash Management Facility Documents.

“Cash Management Facility Discharge Date” means the first date on which all Cash Management Facility Liabilities have been fully and finally discharged to the satisfaction of the Cash Management Facility Lenders (including by way of defeasance in accordance with the Cash Management Facility Documents), whether or not as the result of an enforcement, and the Cash Management Facility Lenders (in that capacity) are under no further obligation to provide financial accommodation to any of the Debtors under any of the Debt Documents.

“Cash Management Facility Document” means each document relating to or evidencing the terms of a Cash Management Facility and which is designated as such by the Companies (in their discretion) in each case by written notice to each Cash Management Facility Lender who is a party to this Agreement at such time (or the relevant Cash Management Facility Agent on their behalf, if appointed) and the Creditor Representatives, and the entry into which is not prohibited by the terms of the Debt Documents at the time the relevant agreement is entered into.

“Cash Management Facility Guarantor” means, at any time, each Debtor which is a Credit Facility Guarantor provided that the Parent shall be a Cash Management Facility Guarantor only for the purposes of Schedule 6 (*Cash Management Facility Creditors’ Guarantee and Indemnity*) and for no other purposes of the Cash Management Facility Documents unless expressly stated otherwise (and, for the avoidance of doubt and without limiting the generality

of the foregoing, shall not be a Cash Management Facility Guarantor unless expressly stated otherwise).

“Cash Management Facility LC” means any letter of credit, guarantee, indemnity or other instrument in a form requested by a borrower of a Cash Management Facility and agreed by the relevant Cash Management Facility Lenders (or any Issuing Bank on their behalf).

“Cash Management Facility Lender” means each person which makes a Cash Management Facility available pursuant to the terms of, and each Issuing Bank under, a Cash Management Facility Document, which has acceded to this Agreement as a Lender pursuant to Clause 24.13 (*Accession of Cash Management Facility Lenders under the New Cash Management Facilities*).

“Cash Management Facility Liabilities” means the Liabilities owed by the Debtors and the Third Party Security Providers to the Cash Management Facility Creditors under or in connection with the Cash Management Facility Documents.

“Cash Management Services” means any customary cash management, cash pooling or netting or setting off arrangements or arrangements for the honouring of cheques, drafts or similar instruments, including automated clearing house transactions, treasury, depository, credit or debit card, purchasing card, stored value card, electronic fund transfer services, operational intra-group balances and/or cash management services, controlled disbursement services, overdraft facilities, foreign exchange facilities, deposit and other accounts and merchant services or other cash management arrangements in the ordinary course of business or consistent with past practice.

“Cash Proceeds” means:

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

“Charged Property” means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security or (where the context requires) the Senior Notes Only Security.

“Close-Out Netting” means:

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

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Common Transaction Security**” means any Transaction Security which to the extent legally possible:

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

and which ranks in the order of priority contemplated in Clause 3.1 (*Security*) and is expressed to be subject to the terms of this Agreement (in each case, for the avoidance of doubt, without prejudice to the ability of any other person to benefit from that Transaction Security to the extent not prohibited by this Agreement).

“**Company B**” means, upon its accession to this Agreement as a Debtor in accordance with Clause 24.15 (*New Debtor/New Third Party Security Provider*), Frigoinvest Finance B.V. a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its corporate seat (statutaire zetel) in Rotterdam, the Netherlands, its registered office at West Africa House, Hanger Lane, Ealing, London W5 3QP and registered with the Trade Register of the Chamber of Commerce (Kamer van Koophandel, afdeling Handelsregister) under number 57674558.

“**Company C**” means, upon its accession to this Agreement as a Debtor in accordance with Clause 24.15 (*New Debtor/New Third Party Security Provider*), Frigoinvest Holdings B.V. a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), having its official seat (statutaire zetel) in Rotterdam, the Netherlands having its registered office address at Weerdestein 97, Office 119, 1083 GG Amsterdam, the Netherlands and registered with the Dutch trade register under number 24434068.

“**Companies**” means each of Company A, Company B and Company C collectively, and each a “**Company**”.

“**Competitive Process**” means a public or private auction or other competitive sale process in which more than one bidder participates or is invited to participate (including any person invited that is a Primary Creditor at the time of such invitation), which may or may not be conducted through court or other legal proceedings, and which is conducted with the advice of a Financial Advisor.

“**Consensual Close-Out**” means a Permitted Hedge Close-Out described in paragraph (a)(v) of Clause 10.9 (*Permitted Enforcement: Hedge Counterparties*).

“**Credit Facility**” means any credit facility that meets the requirements of a “**Credit Facility**” under and as defined in the Senior Secured Notes Documents and/or Second Lien Notes Documents, and which is entitled, under the terms of the Senior Secured Notes Documents, the Second Lien Notes Documents (if applicable) the Credit Facility Documents, to share *pari passu* in the Transaction Security with the rights and obligations of Senior Secured Creditors as

provided for in this Agreement, and in respect of which the creditors, facility agent and arrangers have acceded to this Agreement in accordance with Clause 24.3 (*New Credit Facility Lenders and Creditor Representatives*) and which is permitted by the terms of the Senior Secured Notes Documents and/or Second Lien Notes Documents to rank *pari passu* with the Senior Secured Notes Liabilities with respect to the proceeds of any Enforcement of the Transaction Security.

“Credit Facility Acceleration Event” means in relation to any Credit Facility, if applicable, the exercising any acceleration rights (howsoever described) or any acceleration provisions being automatically invoked under any Credit Facility Documents in each case such that a principal amount outstanding under the Credit Facility Documents has become immediately due and payable prior to its scheduled maturity.

“Credit Facility Agent” has the meaning given to the term **“agent”** in the relevant Credit Facility Document.

“Credit Facility Arranger” means an arranger in respect of any Credit Facility, which has acceded to this Agreement as an arranger pursuant to Clause 24.3 (*New Credit Facility Lenders and Creditor Representatives*).

“Credit Facility Borrower” has the meaning given to the term **“Borrower”** in the relevant Credit Facility Documents.

“Credit Facility Cash Cover” has the meaning given to the term **“cash cover”** in the relevant Credit Facility Document.

“Credit Facility Cash Cover Document” means, in relation to any Credit Facility Cash Cover, any document which creates or evidences, or is expressed to create or evidence, the Security for the benefit of the relevant Issuing Bank or Ancillary Lender required to be provided over that Credit Facility Cash Cover under the terms of the relevant Credit Facility Documents.

“Credit Facility Commitment” has the meaning given to the term **“Commitment”** in the relevant Credit Facility Documents.

“Credit Facility Creditors” means the Credit Facility Arrangers, the Credit Facility Agents and the Credit Facility Lenders.

“Credit Facility Default” means a Credit Facility Event of Default or any event or circumstances which would (with the expiry of a grace period, the giving of notice, the making of any determination provided for in the relevant definition of such Credit Facility Event of Default or any combination of the foregoing) be a Credit Facility Event of Default provided that any such event or circumstance which requires the satisfaction of a condition as to materiality before it becomes a Credit Facility Event of Default shall not be a Credit Facility Default unless that condition is satisfied.

“Credit Facility Document” means each document or instrument entered into between a member of the Group and a Finance Party setting out the terms of, or which relates to, any loan, credit or debt facility or securities which creates or evidences any Credit Facility and which has been defined or designated as a **“finance document”** (or equivalent term) in accordance with the terms thereof (excluding the Hedging Agreements).

“Credit Facility Discharge Date” means the first date on which all Credit Facility Liabilities owed to the Credit Facility Creditors have been fully and finally discharged to the satisfaction of the relevant Creditor Representative(s), whether or not as the result of an enforcement, and the Credit Facility Lenders are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

“Credit Facility Event of Default” means an event of default under the relevant Credit Facility Document.

“Credit Facility Guarantor” means any member of the Group that provides a guarantee in favour of any Finance Party in connection with any Credit Facility.

“Credit Facility Lender Cash Collateral” means any cash collateral provided by a Credit Facility Lender to an Issuing Bank pursuant to the terms of the Credit Facility Documents.

“Credit Facility Lender Liabilities” means the Liabilities owed by the Debtors and the Third Party Security Providers to the Credit Facility Lenders under or in connection with the Credit Facility Documents, together with any related Additional Liabilities (but excluding any Hedging Liabilities).

“Credit Facility Lenders” means each Lender (under and as defined in the Credit Facility Documents), Issuing Bank and Ancillary Lender.

“Credit Facility Liabilities” means the Liabilities owed by the Debtors and the Third Party Security Providers to the Credit Facility Creditors under or in connection with the Credit Facility Documents.

“Credit Related Close-Out” means any Permitted Hedge Close-Out which is neither a Non-Credit Related Close-Out nor a Consensual Close-Out.

"Creditor Conflict" means, at any time prior to the Senior Secured Debt Discharge Date, a conflict between:

- (a) the interests of any Senior Secured Creditor; and
- (b) the interests of any Second Lien Creditor.

“Creditor/Creditor Representative Accession Undertaking” means:

- (a) an undertaking substantially in the form set out in Schedule 3 (*Form of Creditor/Creditor Representative Accession Undertaking*) or in such other form as the Security Agent and the Companies may agree from time to time; or
- (b) in the case of an acceding Debtor which is expressed to accede as an Intra-Group Lender in the relevant Debtor/Third Party Security Provider Accession Deed, that Debtor/Third Party Security Provider Accession Deed.

“Creditor Representative” means:

- (a) in relation to the Credit Facility Lenders under any other Credit Facility, the facility agent in respect of that Credit Facility;
- (b) in relation to the Cash Management Facility Lenders, the Cash Management Facility Agent;
- (c) in relation to the Senior Secured Noteholders, the Senior Secured Notes Trustee;
- (d) in relation to the Second Lien Noteholders, the Second Lien Notes Trustee;
- (e) in relation to any Future Pari Passu Creditors, the Future Pari Passu Debt Representative;

- (f) in relation to any Future Second Lien Creditors, the Future Second Lien Debt Representative;
- (g) in relation to any Future Senior Creditors, the Future Senior Debt Representative; and
- (h) in relation to any Hedge Counterparty, each Hedge Counterparty shall be its own Creditor Representative.

“Creditor Representative Liabilities” means all present and future liabilities and obligations, actual and contingent, owed by the Debtors and the Third Party Security Providers to the Creditor Representatives (other than to a Hedge Counterparty) under or in connection with the Debt Documents which benefit from any Transaction Security, together with any related Additional Liabilities (but excluding any Parallel Debt claim). For the avoidance of doubt, Creditor Representative Liabilities does not include any amount in respect of principal, interest thereunder, redemption, prepayment premium or similar amounts.

“Creditors” means the Primary Creditors, the Shareholder Creditors, the Holdco Lender and the Intra-Group Lenders.

“Debt Disposal” means any disposal of any Liabilities or Debtors’ Intra-Group Receivables pursuant to paragraphs (d) to (e) of Clause 18.3 (*Distressed Disposals*).

“Debt Documents” means each of this Agreement, the Senior Secured Notes Documents, the Second Lien Notes Documents, the Credit Facility Documents, the Cash Management Facility Documents, the Future Pari Passu Debt Documents, the Future Second Lien Debt Documents, the Future Senior Debt Documents, the Hedging Agreements, the Senior Notes Only Security Documents, the Transaction Security Documents, the Shareholder Debt Documents, the Holdco Debt Documents, the Intra-Group Debt Documents and any other document designated as such by the Security Agent and the Companies.

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

any Notes or amount outstanding under the Senior Secured Notes Documents, Second Lien Notes Documents, the Credit Facility Documents, the Cash Management Facility Documents, the Future Pari Passu Debt Documents, the Future Second Lien Debt Documents and the Future Senior Debt Documents.

“Debtor” means each:

- (a) Original Debtor; and
- (b) any person which becomes a Party as a Debtor in accordance with the terms of Clause 24 (*Changes to the Parties*).

“Debtor/Third Party Security Provider Accession Deed” means:

- (a) a deed substantially in the form set out in Schedule 2 (*Form of Debtor/Third Party Security Provider Accession Deed*);

- (b) (only in the case of a member of the Group which is acceding as a borrower or a guarantor under a Credit Facility) an Accession Deed (as defined in the relevant Credit Facility) provided that it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Debtor/Third Party Security Provider Accession Deed*); or
- (c) (only in the case of a member of the Group which is acceding as a guarantor under any other Senior Secured Debt Document or Future Senior Debt Document) an accession deed thereunder or supplemental indenture thereto (as applicable) provided that it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Debtor/Third Party Security Provider Accession Deed*).

“Debtor Liabilities” means, in relation to a member of the Group, any liabilities owed to any Debtor or Shareholder Creditor (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 4 (*Form of Debtor Resignation Request*) or in such other form as the Security Agent and the Companies 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 Debt Documents or any combination of any of the foregoing) be an Event of Default provided that any such event or circumstance which requires the satisfaction of a condition as to materiality before it becomes an Event of Default shall not be a Default unless that condition is satisfied.

“Defaulting Lender” means:

- (a) in relation to any Credit Facility, if applicable, a Credit Facility Lender which is a “Defaulting Lender” under, and as defined in, the relevant Credit Facility Documents; and
- (b) in relation to any Future Pari Passu Debt, Future Second Lien Debt, any Future Senior Debt or any Cash Management Facility, if applicable, in each case a lender in respect of such debt that is a Defaulting Lender under, and as defined in, the relevant Future Pari Passu Debt Documents, Future Second Lien Debt Documents, Future Senior Debt Documents or Cash Management Facility Documents (as the case may be).

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

“Designated Gross Amount” means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility’s maximum gross amount.

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

“Distress Event” means any of:

- (a) an Acceleration Event; or
- (b) the enforcement of any Transaction Security.

“Distressed Disposal” means a disposal of an asset of a member of the Group or of a Holding Company (including the Parent) which is:

- (a) being effected at the request of the Instructing Group in circumstances where the Transaction Security has become enforceable;
- (b) being effected by enforcement of the Transaction Security; or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor, any Holding Company (including the Parent) of a Debtor or a Third Party Security Provider to a person or persons which is not a member of the Group.

“Early Termination Date” means an Early Termination Date as defined in the relevant Hedging Agreement.

“Enforcement” means:

- (a) the enforcement of the Transaction Security, the requesting of a Distressed Disposal and/or the release or disposal of claims and/or Transaction Security on a Distressed Disposal under Clause 18.2 (*Distressed Disposals*), the giving of instructions as to actions in respect of any Transaction Security following an Insolvency Event under Clause 14.7 (*Security Agent Instructions*) and the taking of any other actions consequential on (or necessary to effect) the enforcement of the Transaction Security; and/or
- (b) as the context so requires, the enforcement of the Senior Notes Only Security, the requesting of a Senior Notes Only Distressed Disposal and/or the release or disposal of claims on a Senior Notes Only Distressed Disposal under paragraph (a) of Clause 18.4 (*Distressed Disposal – Application of Proceeds*), the giving of instructions as to actions in respect of any Senior Notes Only Security following an Insolvency Event under Clause 17.9 (*Enforcement Instructions with respect to Senior Notes Only Security*) and the taking of any other actions consequential on (or necessary to effect) the enforcement of the Senior Notes Only 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 Senior Secured Noteholder, Second Lien Noteholder, Credit Facility Lenders, Cash Management Facility Lenders, Future Pari Passu Creditor, Future Second Lien Creditor or Future Senior Creditor to perform its obligations under, or of any voluntary or mandatory prepayment or voluntary or mandatory redemption (or related offer) arising under the Debt Documents);
 - (ii) the making of any declaration that any Liabilities are payable on demand;
 - (iii) the making of a demand for payment in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent (A) that the demand is made in the ordinary course of dealings between the relevant Debtor and Intra-Group Lender and (B) that any resulting Payment would be a Permitted Intra-Group Payment);
 - (iv) the making of any demand against the Parent or any member of the Group in relation to any Guarantee Liabilities of the Parent or that member of the Group;

- (v) the exercise of any right to require the Parent or any member of the Group to acquire any Liability (including exercising any put or call option against the Parent or any member of the Group for the redemption or purchase of any Liability but excluding under any debt repurchase provisions contained in any Debt Documents) other than in connection with any mandatory offer arising as a result of an asset sale offer, a notes offer (including but not limited to any open market purchases of, or any voluntary tender offer or exchange offer for Notes) or a change of control offer (howsoever described) in the Senior Secured Debt Documents, Future Senior Debt Documents or any Future Second Lien Debt Documents;
- (vi) the exercise of any right of set-off, account combination or payment netting against the Parent or any member of the Group in respect of any Liabilities other than:
 - (A) the exercise of any such right which is permitted by law or under the Senior Secured Notes Indenture, the Second Lien Notes Indenture, the Cash Management Facility Documents, the Credit Facility Documents, any Future Pari Passu Debt Document, any Future Second Lien Debt Document, or any Future Senior Debt Document;
 - (B) Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (C) Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (D) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
 - (E) Inter-Hedging Ancillary Agreement Netting by a Hedging Ancillary Lender; or
- (vii) the suing for, commencing or joining of any legal or arbitration proceedings against the Parent or any member of the Group to recover any Liabilities;
- (b) the taking of any steps to enforce or require the enforcement of any right under any Transaction Security or (as the case may be) the Senior Notes Only Security (including the crystallisation of any floating charge forming part of the Transaction Security or (as the case may be) the Senior Notes Only Security);
- (c) in relation to any Hedging Liabilities only, the designation of an Early Termination Date under any Hedging Agreement, or the termination of, or closing out of any transaction under, any Hedging Agreement, prior to its stated maturity, or the demand for payment of any amount which would become payable on or following an Early Termination Date or any such termination or close-out;
- (d) the entering into of any composition, compromise, assignment or arrangement with any member of the Group or a Holding Company (including the Parent) of 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 (other than any action permitted under Clause 24 (*Changes to the Parties*) or pursuant to any debt buy-back, tender offer, exchange offer or similar or equivalent arrangement permitted or not otherwise prohibited by the Debt Documents); or

- (e) 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, insolvent dissolution, administration or reorganisation of any member of the Group or a Holding Company (including the Parent) of a 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 or such Holding Company's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group or such Holding Company, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute an Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(vii) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of the aforementioned 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) any discussions or consultations between, or proposals made by, any of the Secured Parties with respect to instructions to enforce any Transaction Security pursuant to Clause 17 (*Enforcement of Security*);
- (iii) a Secured Party 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 a 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 a party with no claim for damages;
- (iv) bringing legal proceedings against any person in connection with any securities violation, securities or listing regulations or common law fraud or to restrain any actual or putative breach of the Debt Documents or for specific performance with no claims for damages; or
- (v) a demand made by the Holdco Lender, a Shareholder Creditor or an Intra-Group Lender in relation to Holdco Liabilities, the Shareholder Liabilities or Intra-Group Liabilities to the extent:
 - (A) any resulting Payment would constitute a Permitted Holdco Payment, a Permitted Shareholder Creditor Payment, a Permitted Intra-Group Payment or a Permitted Transaction (as defined in the relevant Secured Debt Document); and
 - (B) any Holdco Liability, Shareholder Liability or Intra-Group Liability of a member of the Group being released or discharged in consideration for the issue of shares in that member of the Group provided that the ownership interest of the member of the Group prior to such issue is not diluted as a result and provided further that (in any such case) in

the event that the shares of such member of the Group are subject to Transaction Security prior to such issue, then the percentage of shares in such member of the Group subject to Transaction Security is not diluted;

- (vi) the taking of any action by a member of the Group not prohibited by the Debt Documents; or
- (vii) the taking of any action pursuant to a Permitted Reorganization.

“EUR” or “€” or “Euro” or “euro” means the lawful currency of the Participating Member States.

“**Event of Default**” means any event or circumstance specified as such in any of the Senior Secured Notes Indenture, the Second Lien Notes Indenture, the Credit Facility Documents, the Cash Management Facility Documents, the Future Pari Passu Debt Documents, the Future Second Lien Debt Documents or the Future Senior Debt Documents.

“**Final Discharge Date**” means the later to occur of the Senior Secured Notes Discharge Date, the Second Lien Notes Discharge Date, the Cash Management Facility Discharge Date, the Future Pari Passu Debt Discharge Date, the Future Second Lien Debt Discharge Date and the Future Senior Debt Discharge Date.

“**Finance Party**”:

- (a) in relation to any Credit Facility, if applicable, has the meaning given to the term “**Finance Party**” in the relevant Credit Facility Documents; and
- (b) in relation to any Cash Management Facility, if applicable, has the meaning given to the term “**Finance Party**” in the relevant Cash Management Facility Documents.

“**Financial Advisor**” has the meaning given to such term in Clause 18.4 (*Distressed Disposals and Debt Disposals – Application Process*).

“**Financial Indebtedness**” has the meaning given to the term “Indebtedness” in the Senior Secured Notes Indenture or Second Lien Notes Indenture or has the meaning given to any substantially equivalent term to that referred above in each Future Pari Passu Debt Document and Future Second Lien Debt Document or any other Debt Document as the context requires.

“**Future Pari Passu Creditors**” means the lenders or other creditors in respect of any Future Pari Passu Debt and the Future Pari Passu Debt Representative(s).

“**Future Pari Passu Debt**” means the Liabilities (that are not subordinated in right of payment to any Senior Secured Liabilities) owed by the Debtors in respect of any loan, credit or debt facility, notes, indenture or security which are not prohibited, under the terms of the then existing (if any) Senior Secured Notes Documents, Second Lien Notes Documents, Future Second Lien Notes Documents and Future Pari Passu Debt Documents, to share in the Transaction Security with the rights and obligations of Future Pari Passu Creditors as provided for in this Agreement, provided that the Future Pari Passu Creditors (or a trustee on their behalf) have acceded to this Agreement in accordance with Clause 24.4 (*New Future Pari Passu Creditors and Creditor Representatives*) (excluding, for the avoidance of doubt, Credit Facility Liabilities and Senior Secured Notes Liabilities), together with any related Additional Liabilities (but excluding any Hedging Liabilities).

“Future Pari Passu Debt Acceleration Event” means the Creditor Representative in relation to any Future Pari Passu Debt (or any of the other Future Pari Passu Creditors) exercising any acceleration rights (howsoever described) or any acceleration provisions being automatically invoked in each case under the Future Pari Passu Debt Documents (in each case such that a principal amount outstanding under the Future Pari Passu Debt Documents has become immediately due and payable prior to its scheduled maturity).

“Future Pari Passu Debt Default” means a Future Pari Passu Debt Event of Default or any event or circumstances which would (with the expiry of a grace period, the giving of notice, the making of any determination provided for in the relevant definition of such Future Pari Passu Debt Event of Default or any combination of the foregoing) be a Future Pari Passu Debt Event of Default provided that any such event or circumstance which requires the satisfaction of a condition as to materiality before it becomes a Future Pari Passu Debt Event of Default shall not be a Future Pari Passu Debt Default unless that condition is satisfied.

“Future Pari Passu Debt Discharge Date” means the first date on which all Future Pari Passu Debt has been fully and finally discharged to the satisfaction of the Creditor Representatives (acting reasonably) in relation to any Future Pari Passu Debt, whether or not as the result of an enforcement, and the Future Pari Passu Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

“Future Pari Passu Debt Documents” means each document or instrument entered into between the Parent or any member of the Group and a Future Pari Passu Creditor setting out the terms of any loan, credit or debt facility, notes, indenture or security which creates or evidences any Future Pari Passu Debt.

“Future Pari Passu Debt Event of Default” means an event of default (however described) under the Future Pari Passu Debt Documents.

“Future Pari Passu Debt Representative” means the creditor representative for the Future Pari Passu Creditors which has acceded to this Agreement as a Creditor Representative of those parties.

“Future Pari Passu Debt Required Holders” means in respect of any direction, approval, consent or waiver, the Future Pari Passu Creditors of the principal amount of Future Pari Passu Debt required to vote in favour of such direction, consent or waiver under the terms of the relevant Future Pari Passu Debt Documents or, if the required amount is not specified, the holders holding at least the majority of the principal amount of the then outstanding Future Pari Passu Debt, in accordance with the relevant Future Pari Passu Debt Documents. For the avoidance of doubt, in determining whether the Future Pari Passu Creditors of the required principal amount of Future Pari Passu Debt have concurred in any direction, waiver or consent, Future Pari Passu Debt owned by any Debtor, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with any Debtor, will be considered as though not outstanding.

“Future Pari Passu Liabilities” means the Liabilities owed by the Debtors and the Third Party Security Providers to the Future Pari Passu Creditors under the Future Pari Passu Debt Documents, together with any related Additional Liabilities (but excluding any Hedging Liabilities).

“Future Second Lien Creditors” means the lenders or other creditors in respect of any Future Second Lien Debt and the Future Second Lien Debt Representative(s).

“Future Second Lien Debt” means the Liabilities owed by the Debtors in respect of any loan, credit or debt facility, notes, indenture or security which are not prohibited, under the terms of

the then existing (if any) Senior Secured Notes Documents, the Second Lien Notes Documents, the Future Pari Passu Debt Documents, any Future Senior Debt Documents and any other Future Second Lien Debt Documents, to share in the Transaction Security with the rights and obligations of Future Second Lien Creditors as provided for in this Agreement, provided that the Future Second Lien Creditors (or a trustee on their behalf) have acceded to this Agreement in accordance with Clause 24.5 (*New Future Second Lien Creditors and Creditor Representatives*), together with any Additional Liabilities.

“Future Second Lien Debt Acceleration Event” means the Creditor Representative in relation to any Future Second Lien Debt (or any of the other Future Second Lien Creditors) exercising any acceleration rights (howsoever described) or any acceleration provisions being automatically invoked in each case under the Future Second Lien Debt Documents (in each case such that a principal amount outstanding under the Future Second Lien Debt Documents has become immediately due and payable prior to its scheduled maturity).

“Future Second Lien Debt Default” means a Future Second Lien Debt Event of Default or any event or circumstances which would (with the expiry of a grace period, the giving of notice, the making of any determination provided for in the relevant definition of such Future Second Lien Debt Event of Default or any combination of the foregoing) be a Future Second Lien Debt Event of Default provided that any such event or circumstance which requires the satisfaction of a condition as to materiality before it becomes a Future Second Lien Debt Event of Default shall not be a Future Second Lien Debt Default unless that condition is satisfied.

“Future Second Lien Debt Discharge Date” means the first date on which all Future Second Lien Debt has been fully and finally discharged to the satisfaction of the Creditor Representatives (acting reasonably) in relation to any Future Second Lien Debt, whether or not as the result of an enforcement, and the Future Second Lien Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

“Future Second Lien Debt Documents” means each document or instrument entered into between the Parent or any members of the Group and a Future Second Lien Creditor setting out the terms of any loan, credit or debt facility, notes, indenture or security which creates or evidences any Future Second Lien Debt.

“Future Second Lien Debt Representative” means the creditor representative for the Future Second Lien Creditors which has acceded to this Agreement as a Creditor Representative of those parties.

“Future Second Lien Debt Required Holders” means in respect of any direction, approval, consent or waiver, the Future Second Lien Creditors of the principal amount of Future Second Lien Debt required to vote in favour of such direction, consent or waiver under the terms of the relevant Future Second Lien Debt Documents or, if the required amount is not specified, the holders holding at least the majority of the principal amount of the then outstanding Future Second Lien Debt, in accordance with the relevant Future Second Lien Debt Documents. For the avoidance of doubt, in determining whether the Future Second Lien Creditors of the required principal amount of Future Second Lien Debt have concurred in any direction, waiver or consent, Future Second Lien Debt owned by any Debtor, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with any Debtor, will be considered as though not outstanding.

“Future Second Lien Liabilities” means the Liabilities owed by the Debtors and the Third Party Security Providers to the Future Second Lien Creditors under the Future Second Lien Debt Documents.

“Future Senior Credit Participation” means, in relation to a Future Senior Creditor (other than a Creditor Representative), the principal amounts owing to it under the Future Senior Debt Documents.

“Future Senior Creditors” means the lenders or other creditors in respect of any Future Senior Debt and the Future Senior Debt Representative(s).

“Future Senior Debt” means the Liabilities owed by the Debtors in respect of any loan, credit or debt facility, notes, indenture or security which are not prohibited, under the terms of the then existing (if any), the Senior Secured Notes Documents, Second Lien Notes Documents, the Future Pari Passu Debt Documents, the Future Second Lien Debt Documents, the Future Senior Debt Documents and the Credit Facility Documents, to share in the Transaction Security in accordance with the terms of this Agreement (and the Senior Notes Only Security) with the rights and obligations of Future Senior Creditors as provided for in this Agreement, provided that the Future Senior Creditors (or a trustee on their behalf) have acceded to this Agreement in accordance with Clause 24.6 (*New Future Senior Creditors and Creditor Representatives*), together with any related Additional Liabilities.

“Future Senior Debt Acceleration Event” means the Creditor Representative in relation to any Future Senior Debt (or any of the other Future Senior Creditors) exercising any acceleration rights (howsoever described) or any acceleration provisions being automatically invoked in each case under the Future Senior Debt Documents (in each case such that a principal amount outstanding under the Future Senior Debt Documents has become immediately due and payable prior to its scheduled maturity).

“Future Senior Debt Default” means a Future Senior Debt Event of Default or any event or circumstances which would (with the expiry of a grace period, the giving of notice, the making of any determination provided for in the relevant definition of such Future Senior Debt Event of Default or any combination of the foregoing) be a Future Senior Debt Event of Default provided that any such event or circumstance which requires the satisfaction of a condition as to materiality before it becomes a Future Senior Debt Event of Default shall not be a Future Senior Debt Default unless that condition is satisfied.

“Future Senior Debt Discharge Date” means the first date on which all Future Senior Debt has been fully and finally discharged to the satisfaction of the Creditor Representatives (acting reasonably) in relation to any Future Senior Debt, whether or not as the result of an enforcement, and the Future Senior Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

“Future Senior Debt Documents” means each document or instrument entered into between the Parent or any members of the Group and a Future Senior Creditor setting out the terms of any loan, credit or debt facility, notes, indenture or security which creates or evidences any Future Senior Debt.

“Future Senior Debt Enforcement Notice” has the meaning given to it in Clause 9.9 (*Permitted Future Senior Debt Enforcement*).

“Future Senior Debt Event of Default” means an event of default (however described) under the Future Senior Debt Documents.

“Future Senior Debt Payment Stop Notice” has the meaning given to it in Clause 9.4 (*Issue of Future Senior Debt Payment Stop Notice*).

“Future Senior Debt Representative” means the creditor representative for the Future Senior Creditors which has acceded to this Agreement as a Creditor Representative of those parties.

“Future Senior Debt Required Holders” means in respect of any direction, approval, consent or waiver, the Future Senior Creditors of the principal amount of Future Senior Debt required to vote in favour of such direction, consent or waiver under the terms of the relevant Future Senior Debt Documents or, if the required amount is not specified, the holders holding at least the majority of the principal amount of the then outstanding Future Senior Debt, in accordance with the relevant Future Senior Debt Documents. For the avoidance of doubt, in determining whether the Future Senior Creditors of the required principal amount of Future Senior Debt have concurred in any direction, waiver or consent, Future Senior Debt owned by any Debtor, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with any Debtor, will be considered as though not outstanding.

“Future Senior Debt Standstill Period” has the meaning given to it in Clause 9.10 (*Future Senior Debt Standstill Period and Future Senior Issuer Standstill Period*).

“Future Senior Guarantee Liabilities” means the Liabilities of each provider of a guarantee in respect of the Future Senior Liabilities (in such capacity).

“Future Senior Issuer” means:

- (a) the Parent; or
- (b) a Holding Company or any direct subsidiary of the Parent which is not a member of the Group,

in each case in its capacity as the direct issuer or borrower of any Future Senior Liabilities (in such capacity), which, in relation to paragraph (b) above, has acceded to the terms of this Agreement as a Debtor in accordance with Clause 24.15 (*New Debtor/New Third Party Security Provider*).

“Future Senior Issuer Liabilities” means the Future Senior Liabilities owed by any Future Senior Issuer to the Future Senior Creditors under the Future Senior Debt Documents, together with any related Additional Liabilities (but excluding any Hedging Liabilities).

“Future Senior Issuer Standstill Period” has the meaning given to it in Clause 9.10 (*Future Senior Debt Standstill Period and Future Senior Issuer Standstill Period*).

“Future Senior Liabilities” means the Liabilities owed by the Debtors and the Third Party Security Providers to the Future Senior Creditors under the Future Senior Debt Documents, together with any related Additional Liabilities (but excluding any Hedging Liabilities).

“Future Senior Notes” means any Future Senior Debt incurred by any Future Senior Issuer in the form of notes.

“Future Senior Notes Trustee” has the meaning give to such term in Clause 25.19 (*Future Senior Debt Representative as notes trustee*).

“Future Senior Notes Trustee Amounts” has the meaning give to such term in Clause 25.19 (*Future Senior Debt Representative as notes trustee*).

“Greek Transaction Security” means the Security created, or expressed to be created, pursuant to any Transaction Security Document governed by, or expressed to be governed by, Greek law.

“Group” means Company A and each of its subsidiaries from time to time.

“Guarantee Liabilities” means, in relation to a member of the Group or a Holding Company of a member of the Group, the liabilities under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor or Debtor as or as a result of its being a guarantor or surety or giving an indemnity as a primary debtor (including, without limitation, liabilities arising by way of guarantee, indemnity (including without limitation pursuant to Clause 28.4 (*Company’s indemnity to Primary Creditors*)), contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Senior Secured Debt Documents, the Future Second Lien Debt Documents or the Future Senior Debt Documents).

“Guarantee Limitations” means:

- (a) in respect of a Debtor and any payments it is required to make in respect of its Guarantee Liabilities under the Debt Documents; and
- (b) in respect of an Intra-Group Lender and any subordination it is subject to in accordance with the terms of this Agreement,

the limitations and restrictions under the Secured Debt Documents applicable to such entity (including as specified in (i) Section 11 (*Guarantee and Indemnity*) of the Senior Secured Notes Indenture, (ii) Section 11] (*Guarantee and Indemnity*) of the Second Lien Notes Indenture and (iii) Schedule 5 (*Hedge Counterparties’ Guarantee and Indemnity*) or Schedule 6 (*Cash Management Facility Creditors’ Guarantee and Indemnity*) of this Agreement, or any corresponding guarantee in any Senior Secured Notes Documents, Second Lien Notes Documents, Credit Facility Documents, Cash Management Facility Documents, Future Pari Passu Debt Documents, Future Second Lien Debt Documents or Future Senior Debt Documents), in each case as if references to the relevant **“Obligor”** or **“Guarantor”** under such provisions are references to the relevant **“Debtor”** or **“Intra-Group Lender”**, as applicable and any substantially equivalent provisions in any Secured Debt Document.

“Hedge Counterparty” means, in respect of that part of its Hedging Liabilities, any New Hedge Counterparty which has not ceased to be a Hedge Counterparty in accordance with this Agreement.

“Hedging Agreement” means any master agreement together with schedule and confirmation or any other derivative or hedging agreement entered into or to be entered into between a Debtor and a Hedge Counterparty which, at the time such Hedging Agreement is entered into, is permitted under the terms of the Senior Secured Debt Documents and the Second Lien Debt Documents to share in the Transaction Security.

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

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

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

“Hedging Discharge Date” means the date on which all Hedging Liabilities have been fully and finally discharged to the satisfaction of the relevant Creditor Representative(s) whether or not as a result of an enforcement, and the Hedge Counterparties are under no further obligation to provide financial accommodation to any of the Debtors under the Hedging Agreements.

“Hedging Guarantor” means, at any time, each Debtor which is a Credit Facility Guarantor provided that the Parent shall be a Hedging Guarantor only for the purposes of Schedule 5 (*Hedge Counterparties’ Guarantee and Indemnity*) and for no other purposes of the Hedging Agreement unless expressly stated otherwise (and, for the avoidance of doubt and without limiting the generality of the foregoing, shall not be a Hedging Guarantor unless expressly stated otherwise).

“Hedging Liabilities” means all present and future moneys, debts and liabilities due, owing or incurred from time to time by any Debtor or Third Party Security Provider to any Hedge Counterparty under or in connection with any Hedging Agreement, together with any related Additional Liabilities.

“Hedging Purchase Amount” means, in respect of a transaction under a Hedging Agreement, the amount that would be payable to or by the relevant Hedge Counterparty on the relevant date if:

- (a) that date was an Early Termination Date (as defined in the relevant Hedging Agreement); and
- (b) the relevant Debtor was the Defaulting Party (under and as defined in the relevant Hedging Agreement),

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

“Hedge Proportion” means, in relation to a Hedge Counterparty and that Hedge Counterparty’s aggregate Hedging Liabilities, the proportion (expressed as a percentage) borne by that Hedge Counterparty’s aggregate Hedging Liabilities to the aggregate of all Hedging Liabilities.

“Holdco Debt Documents” means all documents, agreements and instruments evidencing any Holdco Liabilities.

“Holdco Lender” means, following the incurrence of any Future Senior Debt by a Future Senior Issuer, the Parent.

“Holdco Liabilities” means the Liabilities owed by the Companies to the Holdco Lender (including for the avoidance of doubt with respect to any Proceeds Loan), together with any related Additional Liabilities.

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

“Insolvency Event” means in relation to any Debtor, any member of the Group, any Relevant Company or any Third Party Security Provider:

- (a) any resolution is passed or order made for the winding up, dissolution, administration, bankruptcy or reorganisation of that Debtor or Relevant Company or Third Party Security Provider, a moratorium is declared in relation to any indebtedness of that Debtor or Relevant Company or Third Party Security Provider or an administrator is appointed to that Debtor or Relevant Company or Third Party Security Provider;
- (b) any composition, compromise, assignment or arrangement is made with any of its creditors;

- (c) the appointment of any liquidator, receiver, administrator, administrative receiver, compulsory manager, trustee in bankruptcy or other similar officer in respect of that Debtor or Relevant Company or Third Party Security Provider or any of its respective assets; or
- (d) any analogous procedure or step is taken in any jurisdiction,

in each case, in respect of any Debtor or any Relevant Company or any Third Party Security Provider, which is an Insolvency Event of Default or which occurs whilst an Event of Default is continuing together with any other event constituting an Insolvency Event of Default.

“Insolvency Event of Default” means:

- (a) prior to the Senior Secured Notes Discharge Date, an Event of Default which is continuing under Section 6.01(9) or Section 6.01(10) of the Senior Secured Notes Indenture;
- (b) prior to the Second Lien Notes Discharge Date, an Event of Default which is continuing under Section 6.01(9) or Section 6.01(10) of the Second Lien Notes Indenture;
- (c) prior to the Cash Management Facility Discharge Date, an equivalent insolvency Event of Default to paragraph (a) above which is continuing under the Cash Management Facility Documents;
- (d) prior to the Credit Facility Discharge Date, an equivalent insolvency Event of Default to paragraph (a) above which is continuing under the Credit Facility Documents;
- (e) (if applicable) prior to the Future Pari Passu Debt Discharge Date, an equivalent insolvency Event of Default to paragraphs (a) and (b) above which is continuing under the relevant Future Pari Passu Debt Document;
- (f) (if applicable) prior to the Future Second Lien Debt Discharge Date, an equivalent insolvency Event of Default to paragraphs (a) and (b) above which is continuing under the relevant Future Second Lien Debt Document; or
- (g) (if applicable) prior to the Future Senior Debt Discharge Date, an equivalent insolvency Event of Default to paragraphs (a) and (b) above which is continuing under the Future Senior Debt Documents.

“Instructing Group” means, at any time:

- (a) prior to the Senior Secured Debt Discharge Date, the Majority Senior Secured Creditors (excluding the Hedge Counterparties) and the Majority Second Lien Creditors;
- (b) on or after the Senior Secured Debt Discharge Date but prior to the Second Lien Debt Discharge Date, the Majority Second Lien Creditors; and
- (c) on or after the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date, the Majority Future Senior Creditors,

provided that in relation to instructions with respect to any Enforcement, the term Instructing Group shall mean:

- (i) prior to the Senior Secured Debt Discharge Date, the Majority Senior Secured Creditors;

- (ii) on or after the Senior Secured Debt Discharge Date but prior to the Second Lien Debt Discharge Date, the Majority Second Lien Creditors; and
- (iii) on or after the Senior Secured Debt Discharge Date and the Future Second Lien Debt Discharge Date, the Majority Future Senior Creditors.

“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 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 Hedging Ancillary Lender against liabilities owed to a Debtor by that Hedging Ancillary Lender under a Hedging Ancillary Agreement in respect of Credit Facility Lender Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Agreement.

“Intra-Group Debt Documents” means all documents, agreements and instruments evidencing any Intra-Group Liabilities.

“Intra-Group Lenders” means:

- (a) each Original Intra-Group Lender;
- (b) upon its accession to this Agreement as an Intra-Group Lender in accordance with Clause 24.9 (*New Intra-group Lender and Shareholder Creditor*), each of Frigoglass S.A.I.C and [Greek Newco]; and
- (c) each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect (other than Cash Management Services) with another member of the Group and which is a party hereto or becomes a party as an Intra-Group Lender in accordance with the terms of Clause 24 (*Changes to the Parties*),

which in each case has not ceased to be an Intra-Group Lender in accordance with this Agreement.

“Intra-Group Liabilities” means the Liabilities owed by any member of the Group to any of the Intra-Group Lender, together with any related Additional Liabilities, but excluding any Liabilities with respect to any Cash Management Services.

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

“Issuing Bank” has the meaning given to the term **“Issuing Bank”** in:

- (a) in relation to any Credit Facility, if applicable, the relevant Credit Facility Documents; and
- (b) in relation to any Cash Management Facility, if applicable, the relevant Cash Management Facility Documents.

“Letter of Credit” has the meaning given to the term **“Letter of Credit”** in:

- (a) in relation to any Credit Facility, if applicable, the relevant Credit Facility Documents; and
- (b) in relation to any Cash Management Facility, if applicable, the relevant Cash Management Facility Documents.

“Legal Reservations” means:

- (a) the principle that certain remedies (including equitable remedies and remedies that are analogous to equitable remedies in the applicable jurisdictions) may be granted or refused at the discretion of a court, the principles of reasonableness and fairness, the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration, examinership and other laws generally affecting the rights of creditors and secured creditors and similar principles or limitations under the laws of any applicable jurisdiction;
- (b) the time barring of claims under applicable limitation laws (including the Limitation Acts) and defences of acquiescence, set-off or counterclaim and the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim and similar principles or limitations under the laws of any applicable jurisdiction;
- (c) the principle that in certain circumstances Security granted by way of fixed charge may be recharacterised as a floating charge or that Security purported to be constituted as an assignment may be recharacterised as a charge;
- (d) the principle that additional or default interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;
- (e) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;
- (f) the principle that the creation or purported creation of Security over:
 - (i) any asset not beneficially owned by the relevant charging company at the date of the relevant security document; or
 - (ii) any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which Security has purportedly been created;
- (g) the possibility that a court may strike out a provision of a contract for rescission or oppression, undue influence or similar reason;
- (h) the principle that a court may not give effect to any parallel debt provisions, covenants to pay or other similar provisions;
- (i) the principle that certain remedies in relation to regulated entities may require further approval from government or regulatory bodies or pursuant to agreements with such bodies;
- (j) similar principles, rights and defences under the laws of any relevant jurisdiction;

- (k) the principles of private and procedural laws of the relevant jurisdiction which affect the enforcement of a foreign court judgment;
- (l) the principle that in certain circumstances pre-existing Security purporting to secure further advances following a Structural Change may be void, ineffective, invalid or unenforceable; and
- (m) any other matters which are set out as qualifications or reservations (howsoever described) as to matters of law of general application in the legal opinions including, financial assistance or capital protection concerns in relation to the Debt Documents reflected in the legal opinions.

“Liabilities” means all present and future moneys, debts, liabilities and obligations due at any time of any member of the Group, the Parent or any Third Party Security Provider to any Creditor or Security Agent under the Debt Documents, both actual and contingent and whether incurred solely or jointly with any other person or in any other capacity, together with any related Additional Liabilities.

“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.

“Majority Cash Management Facility Creditors” means, at any time, those Cash Management Facility Creditors whose Cash Management Facility Credit Participations at that time aggregate more than 50% of the total Cash Management Facility Credit Participations at that time.

“Majority Credit Facility Creditors” means, at any time, those Credit Facility Creditors whose Credit Facility Credit Participations at that time aggregate more than 50% of the total Credit Facility Credit Participations at that time.

“Majority Future Senior Creditors” means Future Senior Creditors whose aggregate Future Senior Credit Participations represent more than 50% of the aggregate Future Senior Credit Participations of all Future Senior Creditors.

“Majority Senior Secured Creditors” means Senior Secured Creditors whose aggregate Senior Secured Credit Participations represent more than 66 ²/₃ % of the aggregate Senior Secured Credit Participations of all Senior Secured Creditors.

“Majority Second Lien Creditors” means, at any time, those Second Creditors whose Second Lien Credit Participations at that time aggregate more than 50 % of the total Second Lien Credit Participations at that time.

“Multi-account Overdraft Facility” means:

- (a) in relation to an Ancillary Facility, an Ancillary Facility which is an overdraft facility comprising more than one account; and

- (b) in relation to a Cash Management Facility, a Cash Management Facility which is an overdraft facility comprising one or more account.

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

“New Hedge Counterparty” means any person which becomes Party as a New Hedge Counterparty pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*)

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

“Non-Cash Recoveries” means:

- (a) any proceeds of a Distressed Disposal; or
- (b) any amount distributed to the Security Agent pursuant to Clause 15 (*Turnover of Receipts*),

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 paragraphs (a)(ii) or (a)(iv), and (a)(vii) of Clause 10.9 (*Permitted Enforcement: Hedge Counterparties*).

“Noteholders” means the Senior Secured Noteholders, the Second Lien Noteholders any holders of any Future Pari Passu Debt in the form of notes, exchange notes or securities, any holders of any Future Second Lien Debt in the form of notes, exchange notes or securities and any holders of any Future Senior Notes.

“Notes Finance Documents” means the Senior Secured Notes Documents, Second Lien Notes Documents and any Future Senior Debt Document documenting the terms of Future Senior Notes.

“Notes Indenture” means:

- (a) in respect of the Senior Secured Notes, the Senior Secured Notes Indenture;
- (b) in respect of the Second Lien Notes, the Senior Secured Notes Indenture;
- (c) in respect of any Future Pari Passu Debt in the form of notes, exchange notes or securities, any Future Pari Passu Debt Document which is an indenture or similar instrument evidencing such debt;
- (d) in respect of any Future Second Lien Debt in the form of notes, exchange notes or securities, any Future Second Lien Debt Document which is an indenture or similar instrument evidencing such debt; and
- (e) in respect of any Future Senior Debt in the form of notes, exchange notes or securities, any Future Senior Debt Document which is an indenture or similar instrument evidencing such debt.

“Notes Trustee” means:

- (a) in respect of the Senior Secured Notes, each Senior Secured Notes Trustee;

- (b) in respect of the Second Lien Notes, each Second Lien Notes Trustee;
- (c) in respect of any Future Pari Passu Debt in the form of notes, exchange notes or securities, any Future Pari Passu Debt Representative which is a note trustee;
- (d) in respect of any Future Second Lien Debt in the form of notes, exchange notes or securities, any Future Second Lien Debt Representative which is a note trustee; and
- (e) in respect of any Future Senior Debt in the form of notes, exchange notes, or securities, any Future Senior Debt Representative which is a note trustee.

“**Notes Trustee Amounts**” has the meaning given to it in Clause 25.11 (*Payments*).

“**Other Liabilities**” means, in relation to a member of the Group, the Parent or any Third Party Security Provider, any trading and other liabilities (not being Borrowing Liabilities or Guarantee Liabilities) it may have to the Holdco Lender, any Intra-Group Lender, any Debtor, any Shareholder Creditor, any Holding Company of any Debtor or any Third Party Security Provider.

“**Parallel Debt**” has the meaning given to that term in Clause 22.27 (*Parallel Debt (Covenant to pay the Security Agent)*).

“**Participating Member State**” means any member state of the European Union that adopts or has adopted, and in each case continues to adopt, the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

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

“**Payment**” means any payment, repayment, prepayment, redemption, purchase, repurchase, defeasance or discharge of any principal, interest or other amount on or in respect of any of the Liabilities (or other liabilities or obligations).

“**Payment Netting**” means:

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

“**Perfection Requirements**” means means any and all registration, filings, endorsements, notarisations, stampings, notices, notifications and other actions and/or steps required to be made in any relevant jurisdiction and/or of the Debt Documents in order to perfect the Security created or purported to be created pursuant to any Transaction Security Document (including any such action contemplated by any legal opinion delivered under or in connection with any Debt Document and the delivery or possession of share certificates) or in order to achieve the relevant priority for such Transaction Security.

“**Permitted Cash Management Facility Lender Payments**” means the Payments permitted by Clause 6.6 (*Payment of Cash Management Facility Liabilities*).

“**Permitted Credit Facility Payments**” means the Payments permitted by Clause 6.1 (*Payment of Credit Facility Liabilities*).

“Permitted Future Pari Passu Debt Payments” means the Payments permitted by Clause 5.2 (*Payment of Future Pari Passu Debt*).

“Permitted Future Senior Debt Payments” means the Payments permitted by Clause 9.3 (*Permitted Future Senior Debt Payments*).

“Permitted Gross Amount” means, in relation to a Multi-account Overdraft Facility, any amount, not exceeding the Designated Gross Amount, which is the aggregate gross debit balance of overdrafts comprised in that Multi-account Overdraft Facility.

“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 10.9 (*Permitted Enforcement: Hedge Counterparties*).

“Permitted Hedge Payments” means the Payments permitted by Clause 10.3 (*Permitted Payments: Hedging Liabilities*).

“Permitted Holdco Payments” means the Payments permitted by Clause 11.2 (*Permitted Payments: Holdco Liabilities*).

“Permitted Intra-Group Payments” means the Payments permitted by Clause 12.2 (*Permitted Payments: Intra-Group Liabilities*).

“Permitted Payment” means a Permitted Hedge Payment, a Permitted Holdco Payment, a Permitted Intra-Group Payment, a Permitted Senior Secured Notes Payment, a Permitted Second Lien Debt Payment, a Permitted Future Pari Passu Debt Payment, a Permitted Second Lien Debt Payment, a Permitted Future Senior Debt Payment, a Permitted Shareholder Creditor Payment, a Permitted Cash Management Facility Lender Payment or a Permitted Credit Facility Payment.

“Permitted Reorganization” has the meaning given to that term in the Senior Secured Notes Indenture or the Second Lien Notes Indenture or to any substantially equivalent term in the Credit Facility Documents, the Cash Management Facility Documents, the Future Pari Passu Debt Documents, the Future Second Lien Debt Documents or the Future Senior Debt Documents as the context requires.

“Permitted Senior Secured Notes Payments” means the Payments permitted by Clause 4.1 (*Payment of Senior Secured Notes Liabilities*).

“Permitted Second Lien Debt Payments” means the Payments permitted by Clause 7.3 (*Permitted Second Lien Debt Payments*).

“Permitted Shareholder Creditor Payments” means the Payments permitted by Clause 13.2 (*Permitted Payments: Shareholder Liabilities*).

“Primary Creditors” means the Senior Secured Notes Creditors, the Second Lien Creditors, the Cash Management Facility Creditors, the Credit Facility Creditors, the Future Senior Creditors, the Future Second Lien Creditors and the Future Pari Passu Creditors.

“Proceeds Loan” means the loan whereby any proceeds of the issue of any Future Senior Debt are lent by any Future Senior Issuer to the Companies.

“Receiver” means a receiver or receiver and manager or administrative receiver or other similar officer of the whole or any part of the Charged Property.

“Recoveries” has the meaning given to that term in Clause 20.1 (*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 Cash Management Facility Creditor” means, in respect of any Cash Management Facility Cash Cover, each Cash Management Facility Lender (if any) for which that Cash Management Facility Cash Cover is provided or the relevant Cash Management Facility Agent (if any) on its behalf.

“Relevant Company” means the Parent, the Companies, any Debtor (which owes Liabilities to any Primary Creditor or the Companies) or any Third Party Security Provider.

“Relevant Issuing Bank” means:

- (a) in respect of any Credit Facility Cash Cover, the Issuing Bank (if any) for which that Credit Facility Cash Cover is provided; and
- (b) in respect of any Cash Management Facility Cash Cover, the Issuing Bank (if any) for which that Cash Management Facility Cash Cover is provided.

“Relevant Liabilities” means:

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

“Retiring Security Agent” has the meaning given to that term in Clause 23 (*Change of Security Agent and Delegation*).

“Romanian Debtor” means a Debtor incorporated, established or organised in Romania.

“Romanian Manufacturing Plant” means the refrigeration manufacturing facility, currently under reconstruction, owned and operated by Frigoglass Romania S.R.L. and located in Parța village, Timis County, Romania.

“Romanian Transaction Security” means the Security created, or expressed to be created, pursuant to any Transaction Security Document governed by, or expressed to be governed by, Romanian law.

“Russian Transaction Security” means the Security created, or expressed to be created, pursuant to any Transaction Security Document governed by, or expressed to be governed by, Russian law.

“Sanctions Authority” means the United States, the United Kingdom, Hong Kong, the United Nations Security Council, any United Nations Security Council Sanctions Committee, the European Union, any Member State of the European Union, the Kingdom of Norway and the respective governmental agencies and institutions of the foregoing including, without limitation, His Majesty’s Treasury, the Office of Foreign Assets Control of the U.S. Department of the Treasury and the U.S. Department of State.

“Sanctions Fallaway Date” means any date on which the Parent itself or, following instruction from the Security Agent (acting on the instructions of the Instructing Group), (such instruction, a **“Sanctions Fallaway Instruction”**) shall:

- (a) engage legal counsel reasonably acceptable to the Security Agent, at the cost of the Parent, to issue one or more legal opinions on or about such date that such Transaction Security is entered into by the Security Agent (such opinion(s), a **“Sanctions Opinion”**), which determines that: (1) Frigoglass Eurasia LLC or any other Group entity incorporated in Russia (and the business or operations of Frigoglass Eurasia LLC or any other relevant entity) is no longer subject to or otherwise restricted by Sanctions in its cross-border ordinary course of business operations; and (2) the Security Agent is not prohibited or restricted in any way to hold Transaction Security or Senior Notes Only Security relating to Frigoglass Eurasia LLC or any other Group entity incorporated in Russia and it and the other Finance Parties are not prohibited or restricted in any way to act in accordance with the Debt Documents as it relates to Frigoglass Eurasia LLC or any other Group entity incorporated in Russia, (a **“Sanctions Fallaway Determination”**); and
- (b) uses its reasonable endeavours to obtain specific authorisation from any relevant regulatory authority confirming that any such actions required to be taken by the Security Agent under the Debt Documents and which relate to the Sanctions Fallaway Determination is permitted.

The Companies shall be required to engage such legal counsel no later than five (5) Business Days after receipt of such Sanctions Fallaway Instruction and shall be required to obtain a Sanctions Opinion (if such legal counsel is able to make a Sanctions Fallaway Determination) by no later than ten (10) Business Days after such legal counsel is engaged by the Issuers or as soon as practicable thereafter.

“Second Lien Credit Participation” means, in relation to a Second Lien Creditor (other than a Creditor Representative), the aggregate of:

- (a) the principal amount owing to it under the Second Lien Notes; and
- (b) the principal amounts owing to it under the Future Second Lien Debt Documents.

“Second Lien Creditor” means each of:

- (a) the Second Lien Notes Creditors; and
- (b) the Future Second Lien Creditors.

“Second Lien Debt” means the Liabilities (that are subordinated in right of payment to any Senior Secured Liabilities) owed by the Debtors pursuant to the Second Lien Debt Documents with the rights and obligations of Second Lien Creditors as provided for in this Agreement.

“Second Lien Debt Default” means a Second Lien Notes Default or Future Second Lien Debt Default.

“Second Lien Debt Discharge Date” means the later of the Second Lien Notes Discharge Date and the Future Second Lien Debt Discharge Date.

“Second Lien Debt Documents” means the Second Lien Notes Documents and the Future Second Lien Debt Documents.

“Second Lien Debt Enforcement Notice” has the meaning given to it in Clause 7.9 (*Permitted Second Lien Debt Enforcement*).

“Second Lien Debt Event of Default” means an Event of Default under (and as defined in) any of (i) the Second Lien Notes Indenture or (ii) any Future Second Lien Debt Documents.

“Second Lien Debt Payment Default” means:

- (a) any Event of Default arising under Section 6.01(1) or Section 6.01(2) of the Second Lien Notes Indenture; and/or
- (b) any Future Second Lien Debt Default arising by reason of any non-payment under a Future Second Lien Debt Document.

“Second Lien Debt Representative” means the Second Lien Notes Trustee and the creditor representative for the Future Second Lien Creditors which has acceded to this Agreement as a Creditor Representative of those parties.

“Second Lien Debt Standstill Period” has the meaning given to it in Clause 7.10 (*Second Lien Debt Standstill Period*).

“Second Lien Debt Trustee Amounts” means Notes Trustee Amounts due to any Second Lien Debt Representative.

“Second Lien Liabilities” means the Second Lien Notes Liabilities and the Future Second Lien Liabilities.

“Second Lien Noteholders” means the holders, from time to time, of the Second Lien Notes, as determined in accordance with the Second Lien Notes Indenture.

“Second Lien Notes” means the euro denominated floating rate second lien notes issued or to be issued by, inter alia, the Companies pursuant to the terms of the Second Lien Notes Indenture which shall not initially exceed €150,000,000 and any additional notes issued from time to time under the Second Lien Notes Indenture, together with any related Additional Liabilities.

“Second Lien Notes Acceleration Event” means the Second Lien Notes Trustee or any of the Second Lien Noteholders exercising any acceleration rights (howsoever described) or any acceleration provisions being automatically invoked in each case pursuant to any Second Lien Notes Indenture (in each case such that a principal amount outstanding under the Second Lien Notes Indenture has become immediately due and payable prior to its scheduled maturity).

“Second Lien Notes Creditors” means each of:

- (a) the Second Lien Noteholders; and
- (b) the Second Lien Notes Trustee and any agent thereof under a Second Lien Notes Indenture,

and includes any person to whom any Second Lien Notes Liabilities may be payable or owing (whether or not matured) from time to time.

“Second Lien Notes Default” means a Second Lien Notes Event of Default or any event or circumstances which would (with the expiry of a grace period, the giving of notice, the making of any determination provided for in the relevant definition of such Second Lien Notes Event of Default or any combination of the foregoing) be a Second Lien Notes Event of Default provided that any such event or circumstance which requires the satisfaction of a condition as to materiality before it becomes a Second Lien Notes Event of Default shall not be a Second Lien Notes Default unless that condition is satisfied.

“Second Lien Notes Discharge Date” means the date on which all Second Lien Notes Liabilities have been fully and finally discharged to the satisfaction of the Second Lien Notes Trustee, whether or not as the result of an enforcement.

“Second Lien Notes Documents” means:

- (a) the Second Lien Notes Indenture;
- (b) the Second Lien Notes;
- (c) this Agreement;
- (d) any Second Lien Notes Guarantees; and
- (e) the Transaction Security Documents (to the extent securing the Second Lien Notes Liabilities).

“Second Lien Notes Event of Default” means an event of default under any Second Lien Notes Indenture.

“Second Lien Notes Guarantees” means any guarantee of the Second Lien Notes pursuant to the Senior Secured Notes Documents.

“Second Lien Notes Indenture” means the indenture or indentures pursuant to which any Second Lien Notes are issued, as amended from time to time.

“Second Lien Notes Issuers” means each of the Companies or any Debtor which is an issuer of Second Lien Notes.

“Second Lien Notes Liabilities” means all the Liabilities of the Second Lien Notes Issuers and/or any Debtor or Third Party Security Provider to any Second Lien Notes Creditor under or in connection with the Second Lien Notes Documents, together with any related Additional Liabilities.

“Second Lien Notes Required Holders” means, in respect of any direction, approval, consent or waiver, the Second Lien Noteholders of the principal amount of Second Lien Notes required to vote in favour of such direction, consent or waiver under the terms of the Second Lien Notes Indenture or, if the required amount is not specified, the holders holding the majority of the principal amount of the then outstanding Second Lien Notes, in accordance with the Second Lien

Notes Indenture. For the avoidance of doubt, in determining whether the Second Lien Noteholders of the required principal amount of Second Lien Notes have concurred in any direction, waiver or consent, Second Lien Notes owned by any Debtor, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with any Debtor, will be considered as though not outstanding, except that for the purpose of determining whether the Second Lien Notes Trustee will be protected in relying on any such direction, waiver or consent, only Second Lien Notes that the Second Lien Notes Trustee knows are so owned will be disregarded.

“Second Lien Notes Trustee Amounts” means Notes Trustee Amounts due to the Second Lien Notes Trustee.

“Secured Debt Documents” means the Senior Secured Debt Documents, the Second Lien Debt Documents and the Future Senior Debt Documents.

“Secured Liabilities” means the Senior Secured Liabilities, the Second Lien Liabilities and the Future Senior Liabilities.

“Secured Obligations” means all present and future monies, debts, liabilities and obligations due at any time of the Parent or any member of the Group to any Primary Creditor (both actual and contingent and whether incurred solely or jointly with any other person or in any other capacity (and including all Parallel Debt)), including without limitation any amounts (such as post-insolvency interest) that would be included in any thereof but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings, under:

- (a) the Hedging Agreements;
- (b) the Senior Secured Notes Documents;
- (c) the Second Lien Notes Documents;
- (d) the Future Pari Passu Debt Documents;
- (e) the Credit Facility Documents;
- (f) the Future Second Lien Debt Documents;
- (g) the Future Senior Debt Documents; and
- (h) any Additional Liabilities in respect of any of the Debt Documents referred to in paragraphs (a) to (g) above (inclusive).

“Secured Parties” means:

- (a) in relation to the Transaction Security, the Security Agent (including in its capacity as creditor of all Parallel Debt)), any Receiver or Delegate from time to time, the Senior Secured Creditors, the Second Lien Creditors, the Future Senior Creditors (insofar as the Transaction Security constitutes Shared Security), and the Arrangers; and
- (b) in relation to the Senior Notes Only Security, the Security Agent (including in its capacity as creditor of all Parallel Debt) and any Receiver or Delegate from time to time and the Future Senior Creditors,

but, in the case of a Cash Management Facility Lender, Credit Facility Lender, Hedge Counterparty, Arranger, Future Pari Passu Creditor, Future Second Lien Creditor or Future Senior Creditor only if it is a party to this Agreement or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).

“**Security**” means a mortgage, standard security, charge, pledge, assignment, assignation, transfer, lien, right of set-off, retention or extended retention of title provision, or any other security interest securing any obligation of any person or any other agreement or arrangement having the effect of giving security or preferential ranking to a creditor, 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**”) the Security Agent’s spot rate of exchange or, if the Security Agent does not have an available spot rate of exchange, any other 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 London foreign exchange market at or about 11:00 am (London time) on a particular day, which shall be notified by the Security Agent in accordance with paragraph (d) of Clause 22.7 (*Security Agent’s obligations*).

“**Security Document**” means:

- (a) each of the Transaction Security Documents;
- (b) any other document entered into at any time by any of the Debtors or Third Party Security Providers creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured Obligations; and
- (c) any Security granted under any covenant for further assurance in any of the documents set out in paragraphs (a) and (b) above,

but not any Senior Notes Only Security Document.

“**Security Property**” means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as agent or trustee for the other Secured Parties (and/or under any parallel debt, joint and several creditorship or equivalent structure as set out in Clause 22.27 (*Parallel Debt (Covenant to pay the Security Agent)*)) and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor or Third Party Security Provider to pay amounts in respect of the Liabilities to the Security Agent as agent or trustee for the Secured Parties (and/or under any parallel debt, joint and several creditorship or equivalent structure as set out in Clause 22.27 (*Parallel Debt (Covenant to pay the Security Agent)*)) and secured by the Transaction Security, together with all representations and warranties expressed to be given by a Debtor or Third Party Security Provider in favour of the Security Agent as security agent or trustee, where applicable, for the Secured Parties;
- (c) the Security Agent’s interest in any trust fund created pursuant to Clause 15 (*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 agent for, or as trustee on trust for, the Secured Parties,

but not any Senior Notes Only Security Property.

“Senior Notes Only Distressed Disposal” means a disposal of an asset subject to the Senior Notes Only Security which is:

- (a) being effected at the request of the Majority Future Senior Creditors in circumstances where the Senior Notes Only Security has become enforceable;
- (b) being effected by enforcement of the Senior Notes Only Security; or
- (c) being effected, after the occurrence of a Distress Event, by Topco or a Third Party Security Provider to a person or persons which is not a member of the Group.

“Senior Notes Only Recoveries” has the meaning given to that term in Clause 20.4 (*Treatment of Senior Notes Only Security*).

“Senior Notes Only Security” means the Security created or expressed to be created in favour of the Security Agent under or pursuant to the Senior Notes Only Security Documents.

“Senior Notes Only Security Documents” means each document entered into from time to time by any person that is not a member of the Group creating Security over shares and/or assets of a person that is not a member of the Group in favour of the Future Senior Creditors.

“Senior Notes Only Security Property” means:

- (a) the Senior Notes Only Security expressed to be granted in favour of the Security Agent as agent or trustee for the Future Senior Creditors and all proceeds of that Senior Notes Only Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Future Senior Liabilities to the Security Agent as agent or trustee for the Future Senior Creditors and secured by the Senior Notes Only Security, together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as security agent or trustee, where applicable, for the Future Senior Creditors; and
- (c) 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 agent for, or as trustee on trust for, the Future Senior Creditors.

“Senior Secured Credit Participation” means, in relation to a Senior Secured Creditor (other than a Creditor Representative), the aggregate of:

- (a) its aggregate (drawn and undrawn) Credit Facility Commitments;
- (b) its aggregate (drawn and undrawn) Cash Management Facility Commitments;
- (c) the principal amount owing to it under the Senior Secured Notes;
- (d) the principal amounts owing to it under the Future Pari Passu Debt Documents;

- (e) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and
- (f) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that 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 or the corresponding definition in any Hedging Agreement not based on an ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement or the corresponding definition in any Hedging Agreement not based on an ISDA Master Agreement), that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement.

“Senior Secured Creditor” means each of:

- (a) the Cash Management Facility Creditors;
- (b) the Credit Facility Creditors;
- (c) the Senior Secured Notes Creditors;
- (d) the Future Pari Passu Creditors;
- (e) the Hedge Counterparties.

“Senior Secured Debt Default” means a Senior Secured Notes Default, Credit Facility Default, Cash Management Facility Default or Future Pari Passu Debt Default.

“Senior Secured Debt Discharge Date” means the later of the Senior Secured Notes Discharge Date, Credit Facility Discharge Date, the Hedging Discharge Date, Cash Management Facility Discharge Date and the Future Pari Passu Debt Discharge Date.

“Senior Secured Debt Documents” means the Senior Secured Notes Documents, the Credit Facility Documents, the Cash Management Facility Documents, the Hedging Agreements and the Future Pari Passu Debt Documents.

“Senior Secured Debt Event of Default” means an Event of Default under (and as defined in) any of (i) the Senior Secured Notes Indenture, (ii) Credit Facility Agreement, (iii) Cash Management Facility Agreement or (iv) any Future Pari Passu Debt Documents.

“Senior Secured Debt Payment Default” means:

- (a) any Event of Default arising under Section 6.01 of the Senior Secured Notes Indenture;
- (b) any Cash Management Facility Default arising by reason of any non-payment under a Cash Management Facility Documents;

- (c) any Credit Facility Default arising by reason of any non-payment under a Credit Facility Documents; and/or
- (d) any Future Pari Passu Debt Default arising by reason of any non-payment under a Future Pari Passu Debt Document.

“Senior Secured Liabilities” means the Creditor Representative Liabilities, the Senior Secured Notes Liabilities, the Credit Facility Liabilities, the Cash Management Facility Liabilities, the Future Pari Passu Liabilities and the Hedging Liabilities.

“Senior Secured Noteholders” means the holders, from time to time, of the Senior Secured Notes, as determined in accordance with the Senior Secured Notes Indenture.

“Senior Secured Notes” means the euro denominated floating rate senior secured notes issued or to be issued by, inter alia, the Companies pursuant to the terms of the Senior Secured Notes Indenture which shall not initially exceed €75,000,000 and any additional notes issued from time to time under the Senior Secured Notes Indenture, together with any related Additional Liabilities.

“Senior Secured Notes Acceleration Event” means the Senior Secured Notes Trustee or any of the Senior Secured Noteholders exercising any acceleration rights (howsoever described) or any acceleration provisions being automatically invoked in each case pursuant to any Senior Secured Notes Indenture (in each case such that a principal amount outstanding under the Senior Secured Notes Indenture has become immediately due and payable prior to its scheduled maturity).

“Senior Secured Notes Creditors” means each of:

- (a) the Senior Secured Noteholders; and
- (b) the Senior Secured Notes Trustee and any agent thereof under a Senior Secured Notes Indenture,

and includes any person to whom any Senior Secured Notes Liabilities may be payable or owing (whether or not matured) from time to time.

“Senior Secured Notes Default” means a Senior Secured Notes Event of Default or any event or circumstances which would (with the expiry of a grace period, the giving of notice, the making of any determination provided for in the relevant definition of such Senior Secured Notes Event of Default or any combination of the foregoing) be a Senior Secured Notes Event of Default provided that any such event or circumstance which requires the satisfaction of a condition as to materiality before it becomes a Senior Secured Notes Event of Default shall not be a Senior Secured Notes Default unless that condition is satisfied.

“Senior Secured Notes Discharge Date” means the date on which all Senior Secured Notes Liabilities have been fully and finally discharged to the satisfaction of the Senior Secured Notes Trustee, whether or not as the result of an enforcement.

“Senior Secured Notes Documents” means:

- (a) the Senior Secured Notes Indenture;
- (b) the Senior Secured Notes;
- (c) this Agreement;

- (d) any Senior Secured Notes Guarantees; and
- (e) the Transaction Security Documents (to the extent securing the Senior Secured Notes Liabilities).

“Senior Secured Notes Event of Default” means an event of default under any Senior Secured Notes Indenture.

“Senior Secured Notes Guarantees” means any guarantee of the Senior Secured Notes pursuant to the Senior Secured Notes Documents.

“Senior Secured Notes Indenture” means the indenture or indentures pursuant to which any Senior Secured Notes are issued, as amended from time to time.

“Senior Secured Notes Issuer” means the Companies or any Debtor which is an issuer of or, borrower under, Senior Secured Notes.

“Senior Secured Notes Liabilities” means all the Liabilities of the Senior Secured Notes Issuer and/or any Debtor or Third Party Security Provider to any Senior Secured Notes Creditor under or in connection with the Senior Secured Notes Documents, together with any related Additional Liabilities (but excluding any Hedging Liabilities).

“Senior Secured Notes Required Holders” means, in respect of any direction, approval, consent or waiver, the Senior Secured Noteholders of the principal amount of Senior Secured Notes required to vote in favour of such direction, consent or waiver under the terms of the Senior Secured Notes Indenture or, if the required amount is not specified, the holders holding the majority of the principal amount of the then outstanding Senior Secured Notes, in accordance with the Senior Secured Notes Indenture. For the avoidance of doubt, in determining whether the Senior Secured Noteholders of the required principal amount of Senior Secured Notes have concurred in any direction, waiver or consent, Senior Secured Notes owned by any Debtor, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with any Debtor, will be considered as though not outstanding, except that for the purpose of determining whether the Senior Secured Notes Trustee will be protected in relying on any such direction, waiver or consent, only Senior Secured Notes that the Senior Secured Notes Trustee knows are so owned will be disregarded.

“Senior Secured Notes Trustee Amounts” means Notes Trustee Amounts due to the Senior Secured Notes Trustee.

“Shared 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 Parties in respect of their Liabilities.

“Shared Security” means, at any time, the Transaction Security created or expressed to be created in accordance with the Agreed Security Principles in each case:

- (a) granted in favour of the Security Agent as agent or trustee for the Primary Creditors in respect of their liabilities;
- (b) to the extent provided for by the Future Senior Debt Documents at any time; and
- (c) designated as Shared Security by the Companies (in their discretion) by written notice to the Security Agent and each Creditor Representative who is party to this Agreement at such time.

“Shareholder Creditors” means:

- (a) the Original Shareholder Creditors;
- (b) upon its accession to this Agreement as a Shareholder Creditor in accordance with Clause 24.9 (*New Intra-group Lender and Shareholder Creditor*), Frigoglass S.A.I.C; and
- (c) any direct or indirect shareholder of the Parent (and their respective transferees and successors) which has made a loan or financial accommodation to the Parent or a member of the Group, which is not prohibited under the terms of the Senior Secured Notes Documents, Credit Facility Documents, the Second Lien Notes Documents, the Future Pari Passu Debt Document, the Future Second Lien Debt Documents or the Future Senior Debt Documents and which is a party hereto or which accedes (or in respect of which a Debtor is under an obligation to procure the accession) to this agreement by executing a Creditor/Creditor Representative Accession Undertaking in accordance with this Agreement,

which, in each case, has not ceased to be a Shareholder Creditor in accordance with this Agreement.

“Shareholder Debt Documents” means all documents, agreements and instruments evidencing any Financial Indebtedness made available by any Shareholder Creditor to the Parent or a member of the Group.

“Shareholder Liabilities” means all Liabilities of the Parent or a member of the Group to any Shareholder Creditor under the Shareholder Debt Documents.

“Subordinated Creditors” means the Shareholder Creditors, the Holdco Lender and the Intra-Group Lenders.

“Subordinated Liabilities” means the Shareholder Liabilities, the Holdco Liabilities and the Intra-Group Liabilities.

“Subsidiary” means any person (referred to as the **“first person”**) in respect of which another person (referred to as the **“second person”**):

- (a) holds a majority of the voting rights in that first person or has the right under the constitution of the first person to direct the overall policy of the first person or alter the terms of its constitution; or
- (b) is a member of that first person and has the right to appoint or remove a majority of its board of directors or equivalent administration, management or supervisory body; or
- (c) has the right to exercise a dominant influence (which must include the right to give directions with respect to operating and financial policies of the first person which its directors are obliged to comply with whether or not for its benefit) over the first person by virtue of provisions contained in the articles (or equivalent) of the first person or by virtue of a control contract which is in writing and is authorised by the articles (or equivalent) of the first person and is permitted by the law under which such first person is established; or
- (d) is a member of that first person and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the first person or the rights

under its constitution to direct the overall policy of the first person or alter the terms of its constitution; or

- (e) has the power to exercise, or actually exercises dominant influence or control over the first person; or
- (f) together with the first person are managed on a unified basis,

and for the purposes of this definition, a person shall be treated as a member of another person if any of that person's Subsidiaries is a member of that other person or, if any shares in that other person are held by a person acting on behalf of it or any of its Subsidiaries.

"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.

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

"Taxes" 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).

"Third Party Security Provider" means the Parent and any other person that has provided Transaction Security over any or all of its assets (including Shared Security) but is not a Debtor in respect of any of the direct Borrowing Liabilities or Guarantee Liabilities of the Secured Obligations to which that Transaction Security relates, which becomes a Party as a Third Party Security Provider in accordance with the terms of Clause 24 (*Changes to the Parties*), and which has not ceased to be a Third Party Security Provider in accordance with the terms of this Agreement.

"Transaction Security" means the Security (including Shared Security) created or expressed to be created in favour of, among others, the Security Agent under or pursuant to the Transaction Security Documents.

"Transaction Security Documents" means:

- (a) any document entered into at any time by any member of the Group or any Holding Company (including the Parent) or any member of the Group or Third Party Security Provider creating any Security in favour of any of the Secured Parties as security for any of the Secured Obligations including, without limitation, the documents listed in Schedule 9 (*Transaction Security Documents*); and
- (b) any Security granted under any covenant for further assurance in any of the documents set out in paragraph (a) above,

which in each case, to the extent legally possible and subject to the Agreed Security Principles:

- (i) is created in favour of the Security Agent as agent or trustee for the relevant Secured Parties in respect of their Liabilities; or
- (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as agent or trustee for the Secured Parties is created in favour of:

- (A) all the relevant Secured Parties in respect of their Liabilities; or
- (B) the Security Agent under a parallel debt structure for the benefit of all the relevant Secured Parties.

For the avoidance of doubt, the term Transaction Security Documents shall not include any Senior Notes Only Security Document.

“**Topco**” means the direct shareholder of any Future Senior Issuer.

“**Truad Affiliate**” means Truad Verwaltungs AG, an entity registered under the laws of Switzerland with registration number CH-100. 889.739 and with its registered address at Am Schanzengraben 29, 8002 Zurich, Switzerland in its capacity as trustee of a private discretionary trust established for the primary benefit of the present and future members of the family of the late Anastasios George Leventis (the “**Permitted Holders Trust**”) (“**Truad**”), each of its Affiliates, any trust of which Truad or any of its Affiliates is a trustee, any partnership of which Truad or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, Truad or any of its Affiliates, the beneficiaries of the Permitted Holders Trust and any other immediate family member of such beneficiaries (including spouses, children and other descendants), and any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with any of them, including Boval S.A.R.L (an entity registered under the laws of Luxembourg with registration number B11041 and with its registered address at 21 boulevard de la Petrusse, 2320 Luxembourg) and its Affiliates.

“**VAT**” means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;
- (b) 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
- (c) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above or imposed elsewhere.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) Topco, the Parent, the Companies, any Arranger, Ancillary Lender, Creditor, Creditor Representative, Debtor, Future Pari Passu Creditor, Future Second Lien Creditor, Future Senior Creditor, Future Senior Creditor, Hedge Counterparty, Holdco Lender, Intra-Group Lender, Issuing Bank, Credit Facility Agent, Credit Facility Borrower, Credit Facility Guarantor, Credit Facility Lender, Cash Management Facility Agent, Cash Management Facility Lender, Second Lien Notes Issuer, Second Lien Noteholder, Second Lien Notes Trustee, Senior Secured Notes Issuer, Senior Secured Noteholder, Senior Secured Notes Trustee, Party, Security Agent, Secured Party, Shareholder Creditor, Subordinated Creditor or Third Party Security Provider, shall be construed to be a reference to it in its capacity as such and not in any other capacity;
 - (ii) any Arranger, Ancillary Lender, Creditor, Creditor Representative, Debtor, Future Pari Passu Creditor, Future Second Lien Creditor, Future Senior

Creditor, Hedge Counterparty, Holdco Lender, Issuing Bank, Intra-Group Lender, Credit Facility Agent, Credit Facility Borrower, Credit Facility Guarantor, Credit Facility Lender, Cash Management Facility Agent, Cash Management Facility Lender, Second Lien Notes Issuer, Second Lien Noteholder, Second Lien Notes Trustee, Senior Secured Notes Issuer, Senior Secured Noteholder, Senior Secured Notes Trustee, Party, Security Agent, Secured Party, Shareholder Creditor, Subordinated Creditor, Third Party Security Provider or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees 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, including, in relation to any Additional Liabilities and any person acting in a corresponding capacity;

- (iii) an “**amendment**” includes any amendment, supplement, variation, novation, modification, replacement and/or restatement (however fundamental), and “**amend**” and “**amended**” shall be construed accordingly;
- (iv) an “**amount**” includes an amount of cash and an amount of Non-Cash Consideration;
- (v) “**assets**” includes present and future properties, assets, businesses, undertakings, revenues and rights of every description (including uncalled share capital) and any interest in any of the foregoing;
- (vi) a “**consent**” includes an authorisation, permit, approval, consent, exemption, licence, order, filing, registration, recording, notarisation, permission or waiver;
- (vii) a “**disposal**” includes any sale, transfer, grant, lease, licence or other disposal, whether voluntary or involuntary, and dispose will be construed accordingly;
- (viii) a “**Debt Document**” or any other document, agreement or instrument is (other than a reference to a “**Debt Document**” or any other document, agreement or instrument in “**original form**”) a reference to that Debt Document, or other document, agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
- (ix) 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;
- (x) “**enforcing**” (or any derivation) the Transaction Security shall include the appointment of an administrator of a Debtor or a Third Party Security Provider by the Security Agent and includes the making of a demand under Clause 22.28 (*Parallel Debt*) by the Security Agent;
- (xi) a “**group of Creditors**” includes all the Creditors, a “**group of Senior Secured Creditors**” includes all the Senior Secured Creditors, a “**group of Second Lien Creditors**” includes all the Second Lien Creditors, a “**group of Senior Secured Notes Creditors**” includes all the Senior Secured Notes Creditors, a “**group of Second Lien Notes Creditors**” includes all the Second Lien Notes Creditors, a “**group of Future Pari Passu Creditors**” includes all the Future Pari Passu Creditors, a “**group of Future Second Lien Creditors**” includes all the Future Second Lien Creditors and a “**group of Future Senior Creditors**” includes all the Future Senior Creditors;

- (xii) “**including**” means “**including without limitation**” and “**includes**” and “**included**” shall be construed accordingly;
- (xiii) “**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;
- (xiv) the “**original form**” of a “**Debt Document**” or any other document, agreement or instrument is a reference to that Debt Document, document, agreement or instrument as originally entered into;
- (xv) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (xvi) “proceeds” of a Distressed Disposal or of a Debt Disposal includes proceeds in cash and in Non-Cash Consideration;
- (xvii) “**refinance**” means refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell, extend or increase (including pursuant to any defeasance or discharge mechanism) and the terms “**refinances**”, “**refinanced**” and “**refinancing**” as used for any purpose in this Agreement shall have a correlative meaning;
- (xviii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, being a regulation or the like with which the persons to whom it is addressed customarily comply in the ordinary course of their business) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (xix) “**repay**” (or any derivative form thereof) shall, subject to any contrary indication, be construed to include “**prepay**” (or, as the case may be, the corresponding derivative form thereof);
- (xx) “**set-off**” includes combining accounts and payment netting except that, in relation to any Hedging Liabilities, “**set-off**” does not include payment netting or close-out netting;
- (xxi) “**shares**” or “**share capital**” include equivalent ownership interests (and “**shareholder**” and similar expressions shall be construed accordingly);
- (xxii) a “**successor**” shall be construed so as to include a permitted assignee or successor in title of such party and any person who under the laws of its jurisdiction of incorporation or domicile has assumed the rights and obligations of such party under this Agreement or to which, under such laws, such rights and obligations have been transferred;
- (xxiii) a “**wholly-owned subsidiary**” of a company or corporation shall be construed as a reference to any company or corporation which has no other members except that other company or corporation and that other company’s or corporation’s wholly-owned Subsidiaries or persons acting on behalf of that other company or corporation or its wholly-owned Subsidiaries or to such other company or corporation deemed a wholly-owned subsidiary of the relevant company or corporation by a Credit Facility Document;

- (xxiv) the “**winding-up**”, “**dissolution**” or “**administration**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors;
 - (xxv) terms used in the singular include the plural of such terms and vice versa; and
 - (xxvi) a provision of law is a reference to that provision as amended or re-enacted from time to time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
 - (c) Terms defined in or whose interpretation or construction is provided for in the Senior Secured Notes Indenture or the Second Lien Notes Indenture shall have the same meaning when used in this Agreement unless separately defined or interpreted in this Agreement.
 - (d) A Default or an Event of Default is “**continuing**” if it has not been remedied or waived provided that:
 - (i) any Default or Event of Default arising and/or continuing under the Senior Secured Notes Documents will have the meaning ascribed to such term in the Senior Secured Notes Indenture;
 - (ii) any Default or Event of Default arising and/or continuing under the Second Lien Notes Documents will have the meaning ascribed to such term in the Second Lien Notes Indenture;
 - (iii) any Default or Event of Default arising and/or continuing under the Credit Facility Documents will have the meaning ascribed to such term in that Credit Facility Documents;
 - (iv) any Default or Event of Default arising and/or continuing under the Cash Management Facility Documents will have the meaning ascribed to such term in that Cash Management Facility Document; and
 - (v) any Default or Event of Default arising and/or continuing under any other Debt Document will have the meaning ascribed to such term in the relevant Debt Document.
 - (e) Notwithstanding anything to the contrary in this Agreement or any other Debt Document, nothing in this Agreement or any other Debt Document shall prohibit a non-cash contribution of any asset (including any participation, claim, commitment, rights, benefits and/or obligations in respect of any Liabilities and/or any other indebtedness borrowed or issued by any member of the Group from time to time) by a person that is not a member of the Group to the Companies, provided that such transaction (including any Indebtedness or claim being outstanding from the Companies as a result of the transaction), is not otherwise prohibited by the Debt Documents.
 - (f) In determining whether any Liabilities have been fully and finally discharged, the relevant Creditor Representative (and, if applicable, Security Agent) will disregard contingent liabilities (such as the risk of clawback from a preference claim) except to

the extent that it believes there is a reasonable likelihood that those contingent liabilities will become actual liabilities.

- (g) References to the Senior Secured Notes Trustee acting on behalf of the Senior Secured Noteholders means such Senior Secured Notes Trustee acting on behalf of the Senior Secured Noteholders which it represents or, if applicable, with the consent of the requisite number of Senior Secured Noteholders required under and in accordance with the applicable Senior Secured Notes Indenture. A Senior Secured Notes Trustee will be entitled to seek instructions from the Senior Secured Noteholders which it represents to the extent required by the applicable Senior Secured Notes Indenture as to any action to be taken by it under this Agreement.
- (h) References to the Second Lien Notes Trustee acting on behalf of the Second Lien Noteholders means such Second Lien Notes Trustee acting on behalf of the Second Lien Noteholders which it represents or, if applicable, with the consent of the requisite number of Second Lien Noteholders required under and in accordance with the applicable Second Lien Notes Indenture. A Second Lien Notes Trustee will be entitled to seek instructions from the Second Lien Noteholders which it represents to the extent required by the applicable Second Lien Notes Indenture as to any action to be taken by it under this Agreement.
- (i) References to the Credit Facility Agent acting on behalf of the Credit Facility Lenders means such Credit Facility Agent acting on behalf of the Credit Facility Lenders which it represents or, if applicable, with the consent of the requisite number of Credit Facility Lenders required under and in accordance with the applicable Credit Facility Document. A Credit Facility Agent will be entitled to seek instructions from the Credit Facility Lenders which it represents to the extent required by the applicable Credit Facility Documents as to any action to be taken by it under this Agreement.
- (j) References to the Cash Management Facility Agent acting on behalf of the Cash Management Facility Lenders means such Cash Management Facility Agent acting on behalf of the Cash Management Facility Lenders which it represents or, if applicable, with the consent of the requisite number of Cash Management Facility Lenders required under and in accordance with the applicable Cash Management Facility Document. A Cash Management Facility Agent will be entitled to seek instructions from the Cash Management Facility Lenders which it represents to the extent required by the applicable Cash Management Facility Documents as to any action to be taken by it under this Agreement.
- (k) Any consent to be given under this Agreement shall mean such consent is to be given in writing, which for the purposes of this Agreement will be deemed to include any instructions, waivers or consents provided through any applicable clearance system in accordance with the terms of the relevant Debt Document.
- (l) Notwithstanding any other provision of this Agreement, until the relevant proceeds are released from escrow, the provisions of this Agreement shall not apply to or create any restriction in respect of any escrow arrangement pursuant to which the proceeds of any Senior Secured Notes, Second Lien Notes, Future Pari Passu Debt, Future Second Lien Debt and/or Future Senior Debt are subject and this Agreement shall not govern the rights and obligations of the Senior Secured Noteholders, Second Lien Noteholders, Future Pari Passu Creditors, Future Second Lien Creditors or Future Senior Creditors, as the case may be, until such proceeds are released from such escrow arrangement in accordance with the terms thereof other than to redeem the Senior Secured Notes, Second Lien Notes, Future Pari Passu Debt and/or Future Senior Debt pursuant to the terms of the applicable Senior Secured Notes Indenture, Second Lien Notes Indenture,

Future Pari Passu Debt Document, Future Second Lien Debt Document or Future Senior Debt Document.

- (m) References in a Debt Document to any matter being “**permitted**” under one or more Debt Documents shall include reference to such matters not being prohibited under such Debt Documents.
- (n) For the avoidance of doubt, if the terms of any Debt Document:
 - (i) do not require the relevant Creditor Representative or Primary Creditor to provide approval (or deem approval to have been provided) for a particular matter, step or action; or
 - (ii) do not seek to regulate a particular matter, step or action for the purpose of this Agreement,that matter, step or action shall not be prohibited by the terms of that Debt Document.
- (o) The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules.
- (p) A reference in this Agreement to a member of the Group “**procuring**” or “**ensuring**” that a person performs or refrains from performing any action or complies with any stipulation shall only apply to the extent that the member of the Group has direct or indirect voting control of that other person.
- (q) Where a defined term in this Agreement (the “**ICA Term**”) is defined by or includes reference to a defined term in a Debt Document (the “**Debt Document Term**”), and that Debt Document does not in fact contain a matching definition for the relevant Debt Document Term, then the ICA Term which is defined by or includes reference to the relevant Debt Document Term shall instead be treated as being defined by or a reference to such corresponding or equivalent term as may be contained in the relevant Debt Document.
- (r) Each of the Notes Trustees shall be entitled to seek instructions from the relevant Senior Secured Noteholders or Second Lien Noteholders which the relevant Notes Trustees represent to the extent required by the applicable Notes Indenture as to any action to be taken by it under this Agreement.
- (s) Any references within the Debt Documents to the Security Agent providing approval or consent or making a request, or to an item or a person being acceptable to, satisfactory to, to the satisfaction of or approved by the Security Agent or requiring certain steps or actions to be taken, or the Security Agent exercising its discretion to permit or waive any action are to be construed (unless otherwise specified) as references to the Security Agent taking such action or refraining from such action on the instructions of the Instructing Group and any references in the Debt Documents to (i) the Security Agent acting reasonably, (ii) a matter being in the reasonable opinion or determination of the Security Agent, (iii) the Security Agent's approval or consent not being unreasonably withheld or delayed or (iv) any document, report, confirmation or evidence being required to be reasonably satisfactory to the Security Agent, are to be construed, unless otherwise specified in the Debt Documents, as the Security Agent acting on the instructions of the Instructing Group, and in the case of the Instructing Group, its acting reasonably and (if applicable) not unreasonably withholding or delaying consent and the Security Agent shall be under no obligation to determine the reasonableness of such instructions from the Instructing Group.

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 or Delegate may, subject to this Clause 1.3 (*Third Party Rights*) 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 Senior Secured Noteholder, Future Pari Passu Creditor, Future Second Lien Creditor or Future Senior Creditor which by holding a Senior Secured Note, Future Second Lien Debt, Senior Note or debt in the form of notes, exchange notes, securities, and other similar debt documents (as applicable) 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 purposes of this paragraph (d) and paragraph (b) above, upon any person becoming a Senior Secured Noteholder, Second Lien Noteholder, Future Pari Passu Creditor, Future Second Lien Creditor or Future Senior Creditor, in each case holding liabilities in such form, such person shall be deemed a Party to this Agreement.

1.4 Romanian law terms

In this Agreement, where it relates to a Romanian entity, a reference to:

- (a) “**Security**” includes *ipoteca, gaj, garantie reala mobiliara, alta garantie reala, garantie personala (inclusiv in forma de cautiune reala), drept de retentie, cesiune pentru cauza de garantie, servitute, sarcina, uz, uzufruct, privilegiu, superficie sau orice alt dezmembrament al dreptului de proprietate, drept de preferinta, drept de prim refuz and precum si orice alte drepturi sau aranjamente de natura celor enumerate sau care le simuleaza efectele in orice alt mod;*
- (b) a “**winding up**”, “**dissolution**” or “**administration**” includes *stare de insolventa, reorganizare judiciara, faliment, lichidare and dizolvare* and “**insolvency**” includes, without limitation, *insolventa prezumata, insolventa iminenta and stare de insolvabilitate*, according to Article 1.417 of the Civil Code of Romania;
- (c) a “**receiver**”, “**administrator**” or “**similar officer**” includes *judecator sindic, administrator, administrator special, administrator judiciar, mandatar ad-hoc administratorul restructurării, executor judecatoresc and lichidator;*
- (d) a “**composition**” includes *concordat preventiv and mandatul adhocacord de restructurare*, as such Romanian terms are defined in Law no. 85/2014 regarding the procedures for prevention of insolvency published in Official Gazette No. 466 of June 2014, as amended or any other law replacing it; and
- (e) “**constitutional documents**” includes *contract de societate, act constitutiv and statut,*

in each case as such non-English terms are construed under Romanian law.

1.5 Dutch law terms

In this Agreement, where it relates to any person incorporated under the laws of the Netherlands, a reference to:

- (a) "The Netherlands" refers to the part of the Kingdom of the Netherlands located in Europe (and all derivative terms, including "Dutch" shall be construed accordingly);
- (b) a winding up, administration or dissolution includes such entity being *failliet verklaard* or *ontbonden*;
- (c) insolvency or a moratorium includes *surseance van betaling and voorlopige surseance van betaling* and insolvency or a moratorium is declared or occurs includes *surseance van betaling verleend* and *voorlopige surseance van betaling verleend*;
- (d) any procedure or step taken in connection with insolvency proceedings includes such entity having filed a notice under Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*) or Section 60 of the Social Insurance Financing Act of the Netherlands (*Wet Financiering Sociale Verzekeringen*) in conjunction with Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*);
- (e) a liquidator, receiver, administrative receiver, administrator, compulsory manager being appointed includes the appointment of a *curator* or a *bewindvoerder*;
- (f) an attachment includes a *beslag*;
- (g) a lien or security interest includes a *hypotheek, pandrecht, eigendomsvoorbehoud, voorrecht, recht van retentie, recht van reclame*, and, in general, any right in rem (*beperkt recht*) created for the purpose of granting security (*goederenrechtelijk zekerheidsrecht*) governed by Dutch law; and
- (h) a necessary action to authorise where applicable, includes any action required to comply with the Works Councils Act of the Netherlands (*Wet op de ondernemingsraden*).

1.6 Debtors' Agent

- (a) Each Debtor by its execution of this Agreement or an Accession Deed irrevocably appoints each of the Companies (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Debt Documents and irrevocably authorises:
 - (i) each of the Companies on its behalf to supply all information concerning itself contemplated by this Agreement to the Primary Creditors and to give all notices and instructions, to execute on its behalf any Debtor/Third Party Security Provider Accession Deed, Debtor Resignation Request (as applicable), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Debtor notwithstanding that they may affect the Debtor without further reference to or the consent of that Debtor; and
 - (ii) each Primary Creditor to give any notice, demand or other communication to that Debtor pursuant to the Debt Documents to any of the Companies,

and in each case the shall be bound as though the Debtor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Debtors', Agent or given to the Debtors' Agent under any Debt Document on behalf of another Debtor or in connection with any Debt Document (whether or not known to any other Debtor and whether occurring before or after such other Debtor became a Debtor under any Debt Document) shall be binding for all purposes on that Debtor as if that Debtor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Debtors' Agent and any other Debtor, those of the Debtors' Agent shall prevail.

2 RANKING AND PRIORITY

2.1 Unless expressly provided to the contrary in this Agreement, the Liabilities 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 Liabilities owed to the Security Agent, the Creditor Representative Liabilities,, the Senior Secured Notes Liabilities, the Hedging Liabilities, the Second Lien Liabilities, the Cash Management Facility Liabilities, the Credit Facility Liabilities, the Future Pari Passu Liabilities, the Future Second Lien Liabilities, the Senior Secured Notes Trustee Amounts, the Second Lien Trustee Amounts, and any Future Senior Notes Trustee Amounts, pari passu and without any preference between them (but without prejudice to Clause 20.1 (*Order of Application*)); and
- (b) second, the Future Senior Guarantee Liabilities and the Future Senior Liabilities pari passu and without any preference between them.

2.2 Future Senior Issuer Liabilities

- (a) The Parties acknowledge that the Future Senior Issuer Liabilities owed (if any) by a Future Senior Issuer are senior obligations of that Future Senior Issuer (as applicable).
- (b) Notwithstanding paragraph (a) above, the Future Senior Creditors agree that, until the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date, they may not take any steps to appropriate the assets of a Future Senior Issuer subject to the Transaction Security Documents in connection with any Enforcement Action, other than as expressly permitted by this Agreement. For the avoidance of doubt, nothing in this Agreement shall impair the right of the Future Senior Issuer in respect of the Future Senior Issuer Liabilities only (as applicable).

2.3 Intra-Group and Holdco Liabilities

- (a) Each of the Parties agrees that the Intra-Group Liabilities and the Holdco Liabilities are postponed and subordinated to the Liabilities owed by the Debtors and the Third Party Security Providers to the Secured Parties.
- (b) This Agreement does not purport to rank any of the Intra-Group Liabilities or the Holdco Liabilities as between themselves.

2.4 Shareholder Liabilities

- (a) Each of the Parties agrees that the Shareholder Liabilities are postponed and subordinated to the Liabilities owed by the Debtors and the Third Party Security Providers to the Secured Parties and the Shareholder Liabilities are postponed and

subordinated to the Liabilities owed by the Debtors and the Third Party Security Providers to the Intra-Group Lenders and the Holdco Lenders.

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

3 SECURITY

3.1 Security

- (a) Each of the Parties agrees that the Transaction Security created pursuant to the Transaction Security Documents shall rank and secure:
 - (i) first, the Creditor Representative Liabilities, the Senior Secured Notes Liabilities, the Hedging Liabilities, the Credit Facility Liabilities, the Cash Management Facility Liabilities, the Future Pari Passu Liabilities, the Senior Secured Notes Trustee Amounts, the Second Lien Notes Trustee Amounts and the Future Senior Notes Trustee Amounts *pari passu* and without any preference between them (but only to the extent that such Transaction Security is expressed to secure those Liabilities and without prejudice to Clause 20.1 (*Order of Application*));
 - (ii) second, the Second Lien Notes Liabilities and Future Second Lien Liabilities, *pari passu* and without any preference between them (but only to the extent that such Transaction Security is expressed to secure those Liabilities); and
 - (iii) third, the Future Senior Liabilities, *pari passu* and without any preference between them (but only to the extent that such Transaction Security is Shared Security).
- (b) Each of the Parties agrees that the Senior Notes Only Security created pursuant to the Senior Notes Only Security Documents shall rank and secure only the Future Senior Liabilities, *pari passu* and without any preference between them (but only to the extent that such Senior Notes Only Security is expressed to secure these Liabilities).

3.2 Subordinated Liabilities

The Subordinated Liabilities shall not be secured by any of the Transaction Security or the Senior Notes Only Security.

3.3 Security and guarantees: Senior Secured Creditors and Second Lien Creditors

- (a) Other than as set out in Clause 6.3 (*Security: Ancillary Lenders, Cash Management Facility Lenders and Issuing Banks*), the Senior Secured Creditors and the Second Lien Creditors may take, accept or receive the benefit of:
 - (i) any Security from any Debtor, Third Party Security Provider or any member of the Group in respect of the Senior Secured Liabilities or the Second Lien Liabilities in addition to the Transaction Security if (except for any Security permitted under Clause 6.3 (*Security: Ancillary Lenders, Cash Management Facility Lenders and Issuing Banks*)) and to the extent legally possible and subject to the Agreed Security Principles, at the same time it is also offered to either:

- (A) to the Security Agent as agent or trustee for the other Secured Parties in respect of the Senior Secured Liabilities and any Second Lien Liabilities (together, the “**Relevant Secured Parties**”);
- (B) to the Security Agent as agent for the Relevant Secured Parties under applicable law; or
- (C) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as agent or trustee for the Relevant Secured Parties:
 - (1) to the other Relevant Secured Parties; or
 - (2) to the Security Agent under a parallel debt structure, joint and several creditor structure or agency structure for the benefit of the other Relevant Secured Parties,

and ranks in the same order of priority as that contemplated in Clause 3.1 (*Security*), provided that all amounts received or recovered by any Secured Party with respect to such Security are immediately paid to the Security Agent and held and applied in accordance with Clause 20 (*Application of Proceeds*); and

- (ii) any guarantee, indemnity or other assurance against loss from the Parent or any member of the Group in respect of the Senior Secured Liabilities in addition to those in:
 - (A) the original form of the Senior Secured Notes Documents or the Second Lien Notes Documents;
 - (B) this Agreement; or
 - (C) any Shared Assurance,

if (except for any guarantee, indemnity or other assurance against loss permitted under Clause 6.3 (*Security: Ancillary Lenders, Cash Management Facility Lenders and Issuing Banks*)) the other Secured Parties already benefit from such a guarantee, indemnity or assurance or, to the extent legally possible and subject to the Agreed Security Principles, at the same time it is also offered to the other Relevant Secured Parties and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

- (b) This Clause 3.3 shall not require any security or guarantee to be granted in respect of any Future Senior Liabilities. Likewise, this Clause 3.3 shall not prevent any security to be granted in respect of any Future Senior Liabilities under the Senior Notes Only Security Documents.
- (c) The foregoing notwithstanding, no Future Pari Passu Creditor, no Future Second Lien Creditor and no Future Senior Creditor may take, accept or receive the benefit of any Security pursuant to paragraph (a)(i) above or any guarantee, indemnity or assurance against loss pursuant to paragraph (a)(ii) above unless the grant of such Security and the giving of such guarantee, indemnity or other assurance is permitted, or not prohibited, by the Senior Secured Notes Documents, the Second Lien Debt Documents and the Future Senior Debt Documents.

3.4 Security for future debt

- (a) If security is to be granted for a Credit Facility then, to the extent such Credit Facility cannot be secured on a pari passu basis with the Senior Secured Notes Liabilities without existing security first being released, the Parties agree that such Credit Facility will (to the extent permitted by applicable law) be secured pursuant to the execution of additional security documents securing the same assets subject to the relevant security on a second or lesser ranking basis and such Credit Facility will nonetheless be deemed and treated for the purposes of this Agreement to be secured by such security pari passu with the Senior Secured Notes Liabilities which would otherwise have the same ranking as contemplated in Clause 3.1 (*Security*) and any amounts to be applied towards such Credit Facility shall be applied in the same manner and order as the Senior Secured Notes Liabilities. In the event that it is not possible to permit the creation of additional security documents as referred to above, no amendments or release and retaking of security under the existing security documents shall be permitted unless permitted under the documents thereby secured (including, for the avoidance of doubt, the retaking of any such security as required by the relevant secured document), or if not so permitted under a specific document, without the consent of the required creditors under that document.
- (b) If security is to be granted for Cash Management Facility Liabilities then, to the extent such Cash Management Facility Liabilities cannot be secured on a pari passu basis with the Senior Secured Notes Liabilities without existing security first being released, the Parties agree that such Cash Management Facility Liabilities will (to the extent permitted by applicable law) be secured pursuant to the execution of additional security documents securing the same assets subject to the relevant security on a second or lesser ranking basis and such Cash Management Facility will nonetheless be deemed and treated for the purposes of this Agreement to be secured by such security pari passu with Senior Secured Notes Liabilities which would otherwise have the same ranking as contemplated in Clause 3.1 (*Security*) and any amounts to be applied towards such Cash Management Facility Liabilities shall be applied accordingly. In the event that it is not possible to permit the creation of additional security documents as referred to above, no amendments or release and retaking of security under the existing security documents shall be permitted unless permitted under the documents thereby secured (including, for the avoidance of doubt, the retaking of any such security as required by the relevant secured document), or if not so permitted under a specific document, without the consent of the required creditors under that document.
- (c) If security is to be granted for Future Pari Passu Debt then, to the extent such Future Pari Passu Debt cannot be secured on a pari passu basis with the Senior Secured Notes Liabilities without existing security first being released, the Parties agree that such Future Pari Passu Debt will (to the extent permitted by applicable law) be secured pursuant to the execution of additional security documents securing the same assets subject to the relevant security on a second or lesser ranking basis and such Future Pari Passu Debt will nonetheless be deemed and treated for the purposes of this Agreement to be secured by such security pari passu with Senior Secured Notes Liabilities which would otherwise have the same ranking as contemplated in Clause 3.1 (*Security*) and any amounts to be applied towards such Future Pari Passu Debt shall be applied accordingly. In the event that it is not possible to permit the creation of additional security documents as referred to above, no amendments or release and retaking of security under the existing security documents shall be permitted unless permitted under the documents thereby secured (including, for the avoidance of doubt, the retaking of any such security as required by the relevant secured document), or if not so permitted under a specific document, without the consent of the required creditors under that document.

- (d) If security is to be granted for Future Second Lien Debt then, to the extent such Future Second Lien Debt cannot be secured on a second ranking basis behind the Senior Secured Liabilities and/or on a pari passu basis with the Second Lien Notes Liabilities without existing security first being released, the Parties agree that such Future Second Lien Debt will (to the extent permitted by applicable law) be secured pursuant to the execution of additional security documents securing the same assets subject to the relevant security on a second or lesser ranking basis and such Future Second Lien Debt will nonetheless be deemed and treated for the purposes of this Agreement to be secured by such security as contemplated in Clause 3.1 (*Security*) and any amounts to be applied towards such Future Second Lien Debt shall be applied accordingly. In the event that it is not possible to permit the creation of additional security documents as referred to above, no amendments or release and retaking of security under the existing security documents shall be permitted unless permitted under the documents thereby secured (including, for the avoidance of doubt, the retaking of any such security as required by the relevant secured document), or if not so permitted under a specific document, without the consent of the required creditors under that document.
- (e) If security is to be granted for Future Senior Debt then, to the extent such Future Senior Debt cannot be secured on a pari passu basis with any existing Future Senior Liabilities without existing security first being released, the Parties agree that such Future Senior Debt will (to the extent permitted by applicable law) be secured pursuant to the execution of additional security documents securing the same assets subject to the relevant security on a second or lesser ranking basis and such Future Senior Debt will nonetheless be deemed and treated for the purposes of this Agreement to be secured by such security pari passu with the existing Future Senior Liabilities which would otherwise have the same ranking as contemplated in Clause 3.1 (*Security*) and any amounts to be applied towards such Future Senior Debt shall be applied accordingly. In the event that it is not possible to permit the creation of additional security documents as referred to above, no amendments or release and retaking of security under the existing security documents shall be permitted unless permitted under the documents thereby secured (including, for the avoidance of doubt, the retaking of any such security as required by the relevant secured document), or if not so permitted under a specific document, without the consent of the required creditors under that document.

3.5 Anti-layering

Notwithstanding anything to the contrary in any Debt Document, if any Second Lien Liabilities are outstanding, until the Second Lien Debt Discharge Date, no Debtor shall issue or allow to remain outstanding any Liabilities which:

- (a) are secured or are expressed to be secured by any Transaction Security on a junior basis to any of the Senior Secured Liabilities;
- (b) are expressed to rank or rank on a subordinated basis to any of the Senior Secured Liabilities;
- (c) are contractually subordinated in right of payment to any of the Senior Secured Liabilities; or
- (d) are subject to an order of priority whereby the proceeds of the Transaction Security are applied in payment of such Liabilities following the payment of amounts payable to the Senior Secured Creditors,

unless:

- (i) such Liabilities rank pari passu or junior to the Second Lien Liabilities (if any) and, to the extent such Liabilities benefit from Security (including Transaction Security) such Security, subject to the Agreed Security Principles, is also granted to secure the Second Lien Liabilities (if any) with a ranking which is pari passu or senior to such other Liabilities;
- (ii) such subordination, ranking or priority arises by operation of law; or
- (iii) the Second Lien Notes Required Holders and any Future Second Lien Debt Required Holders (to the extent that such Future Second Lien Debt is outstanding) have given their prior written consent.

4 SENIOR SECURED NOTEHOLDERS AND SENIOR SECURED NOTES LIABILITIES

4.1 Payment of Senior Secured Notes Liabilities

- (a) The Debtors and the Third Party Security Providers may make Payments of the Senior Secured Notes Liabilities at any time in accordance with the terms of the Senior Secured Notes Documents.
- (b) The Parties acknowledge that Senior Secured Notes Trustee Amounts are senior obligations of the Senior Secured Notes Issuer and Original Debtors and payments in respect of the same are not restricted by or subject to the terms of this Agreement.

4.2 Amendments and waivers: Senior Secured Notes Creditors

Subject to Clause 10.6 (*Amendments and Waivers: Hedging Agreements*), the Senior Secured Notes Creditors, the Debtors and the Third Party Security Providers may amend or waive the terms of the Senior Secured Notes Documents in accordance with their terms (and subject to any consent required under them) at any time.

5 FUTURE PARI PASSU CREDITORS AND FUTURE PARI PASSU DEBT

5.1 Entry into Future Pari Passu Debt Documents

No Debtor or Third Party Security Provider shall enter into any Future Pari Passu Debt Documents unless such Future Pari Passu Debt Documents (and the incurrence of any Financial Indebtedness thereunder) are not prohibited by the Senior Secured Notes Documents, the Second Lien Notes Documents, the Credit Facility Documents, the Cash Management Facility Documents, the Future Second Lien Debt Documents and any Future Pari Passu Debt Documents then outstanding.

5.2 Payment of Future Pari Passu Debt

The Debtors and the Third Party Security Providers may make Payments of the Future Pari Passu Debt at any time in accordance with the Future Pari Passu Debt Documents subject to any restrictions contained in the Senior Secured Notes Documents or the Second Lien Notes Documents.

5.3 Security: Future Pari Passu Creditors

The Future Pari Passu Creditors may take, accept or receive the benefit of:

- (a) any Security in respect of the Future Pari Passu Debt in addition to the Transaction Security if, to the extent legally possible and subject to the Agreed Security Principles, at the same time, it is also offered to the other Secured Parties either:
 - (i) to the Security Agent as agent or trustee for the other Secured Parties in respect of their Senior Secured Liabilities;
 - (ii) to the Security Agent as agent for the other Secured Parties under applicable law;
 - (iii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as agent or trustee for the Secured Parties:
 - (A) to the other Secured Parties in respect of their Senior Secured Liabilities; or
 - (B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties in respect of their Senior Secured Liabilities; or
 - (iv) in the case of any Security being granted after the date of this Agreement, to some of the Secured Parties provided that such Security is incremental to Transaction Security that has already been granted in favour of all other Secured Parties and any proceeds derived from the enforcement of such Security will be shared with the Secured Parties in accordance with this Agreement,

and ranks in the same order of priority as that contemplated in Clause 3 (*Security*); and

- (b) any guarantee, indemnity or other assurance against loss in respect of the Future Pari Passu Debt in addition to those in:
 - (i) the original form of the Future Pari Passu Debt Documents;
 - (ii) this Agreement; or
 - (iii) any Shared Assurance,

only if, in each case (A) the grant of such Security or the giving of such guarantee, indemnity or other assurance is permitted by the Senior Secured Notes Documents, and (B) at the same time, to the extent legally possible and subject to the Agreed Security Principles, it is also offered to the Senior Secured Noteholders and offered to the other Secured Parties in respect of their respective Senior Secured Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*) and Clause 3 (*Security*).

6 CREDIT FACILITY LENDERS AND CREDIT FACILITY LIABILITIES

6.1 Payment of Credit Facility Liabilities

The Debtors and the Third Party Security Providers may make Payments in respect of the Credit Facility Liabilities at any time in accordance with the terms of the Credit Facility Documents subject to any restrictions contained in the Senior Secured Notes Documents or the Second Lien Notes Documents.

6.2 Amendments and Waivers of Credit Facility Documents

Subject to Clause 10.6 (*Amendments and Waivers: Hedging Agreements*), the relevant Credit Facility Creditors, the Debtors and the Third Party Security Providers may amend or waive the terms of the Credit Facility Documents in accordance with their terms (and subject to any consent required under them) at any time.

6.3 Security: Ancillary Lenders, Cash Management Facility Lenders and Issuing Banks

No Ancillary Lender or Issuing Bank will, unless the prior written consent of an Instructing Group is obtained, take, accept or receive from any Debtor, Third Party Security Provider or 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 original form of Credit Facility Documents;
 - (ii) this Agreement; and
 - (iii) the Shared 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) each guarantee, indemnity or other assurance against loss contained in the Cash Management Facility Documents no greater in extent than any of those referred to in paragraph (b) above;
- (e) any Credit Facility Cash Cover permitted under the Credit Facility Documents relating to any Ancillary Facility or for any Letter of Credit issued by the Issuing Bank;
- (f) any Cash Management Facility Cash Cover permitted under the Cash Management Facility Documents relating to any Cash Management Facility or for any Cash Management Facility LC issued by a Cash Management Facility Lender;
- (g) the indemnities contained in an ISDA Master Agreement (in the case of a Hedging Ancillary 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 Ancillary Agreement which is not based on an ISDA Master Agreement);
- (h) 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; or
- (i) 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 any Cash Management Facility for the purpose of netting debit and credit balances arising under that Cash Management Facility.

6.4 Restriction on Enforcement: Ancillary Lenders, Cash Management Facility Lenders and Issuing Banks

Subject to Clause 6.5 (*Permitted Enforcement: Ancillary Lenders, Cash Management Facility Lenders and Issuing Banks*), so long as any of the Senior Secured Liabilities are or may be outstanding, none of the Ancillary Lenders, Cash Management Facility Lenders and the Issuing Banks shall be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it in such capacity.

6.5 Permitted Enforcement: Ancillary Lenders, Cash Management Facility Lenders and Issuing Banks

- (a) The Ancillary Lenders, Cash Management Facility 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 Credit Facility Lender Liabilities (excluding the Liabilities owing to Ancillary Lenders, Cash Management Facility Lenders or the Issuing Banks), in which case the Ancillary Lenders, Cash Management Facility 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 any Credit Facility Documents, or Clause 6.3 (*Security: Ancillary Lenders, Cash Management Facility 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 Credit Facility Documents or Cash Management Facility Cash Cover which has been provided in accordance with the Cash Management Facility Documents;
 - (iv) at the same time as or prior to, that action, the consent of the Majority Senior Secured Creditors to that Enforcement Action is obtained; or
 - (v) to the extent permitted under applicable laws, an Insolvency Event has occurred in relation to the Parent or any member of the Group, in which case after the occurrence of that Insolvency Event, each Ancillary Lender, Cash Management Facility 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 the Parent or that member of the Group to:
 - (A) accelerate any of the Parent or that member of the Group's Credit Facility Liabilities and/or Cash Management Facility Liabilities or declare them prematurely due and payable on demand;
 - (B) make a demand under any guarantee, indemnity or other assurance against loss given by the Parent or that member of the Group in respect of any Credit Facility Liabilities and/or Cash Management Facility Liabilities;
 - (C) exercise any right of set-off or take or receive any Payment in respect of any Credit Facility Liabilities and/or Cash Management Facility Liabilities of the Parent or that member of the Group; or
 - (D) claim and prove in any insolvency process of the Parent or that member of the Group for the Credit Facility Liabilities and/or Cash Management Facility Liabilities owing to it.

- (b) Clause 6.4 (*Restriction on Enforcement: Ancillary Lenders, Cash Management Facility Lenders and Issuing Banks*) shall not restrict any right of an Ancillary Lender or Cash Management Facility Lender to (i) net or set-off in relation to a Multi-account Overdraft Facility, in accordance with the terms of the Credit Facility Documents or the Cash Management Facility Documents (as applicable), to the extent that the netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount and (ii) take any action or exercise any right (including any Enforcement Action) as is available to an Ancillary Lender or Cash Management Facility Lender under the terms of a Credit Facility or a Cash Management Facility.

6.6 Payment of Cash Management Facility Liabilities

The Debtors and Third Party Security Providers may make Payments in respect of the Cash Management Facility Liabilities at any time in accordance with the terms of the Cash Management Facility Documents subject to any restrictions contained in the Senior Secured Notes Documents or the Second Lien Notes Documents.

6.7 Cash Management Guarantee

Each Cash Management Facility Guarantor agrees it will be bound by the obligations set out in Schedule 6 (*Cash Management Facility Creditors' Guarantee and Indemnity*) unless (i) a substantially similar guarantee is contained in the relevant Cash Management Facility Documents or (ii) otherwise elected by the Companies by notice in writing to the Security Agent and the Cash Management Facility Lenders under that Cash Management Facility (or the relevant Cash Management Facility Agent on their behalf, if appointed).

7 SECOND LIEN CREDITORS AND SECOND LIEN LIABILITIES

7.1 Issue of and Amendments and Waivers of Second Lien Debt Documents

The Second Lien Creditors, the Third Party Security Providers and any applicable Debtor(s) may amend or waive the terms of the Second Lien Debt Documents in accordance with their terms at any time, provided that such amendment or waiver would not result in such Second Lien Debt being made available on terms prohibited by the then existing (if any) Senior Secured Notes Documents and Future Pari Passu Debt Documents.

7.2 Restriction on Payment and Dealings: Second Lien Liabilities

Until the Senior Secured Debt Discharge Date, except with (to the extent prohibited under the Senior Secured Notes Documents) the prior consent of the Senior Secured Notes Trustee, (to the extent prohibited under the Credit Facility Documents) the prior consent of the Credit Facility Agent, (to the extent prohibited under the Cash Management Facility Documents) the prior consent of the Cash Management Facility Agent and (to the extent prohibited under any Future Pari Passu Debt Documents) each relevant Future Pari Passu Debt Representative(s), no Debtor or Third Party Security Provider shall (and each Debtor and each Third Party Security Providers shall ensure that no member of the Group will):

- (a) pay, repay, prepay, redeem, acquire or defease any principal, interest or other amount on or in respect of, or make any distribution in respect of, any Second Lien Liabilities in cash or in kind or apply any such money or property in or towards discharge of any Second Lien Liabilities except as permitted by Clause 7.3 (*Permitted Second Lien Debt Payments*), Clause 7.9 (*Permitted Second Lien Debt Enforcement*) or Clause 14.5 (*Filing of claims*);

- (b) exercise any set-off against any Second Lien Liabilities except as permitted by Clause 7.3 (*Permitted Second Lien Debt Payments*), Clause 7.9 (*Permitted Second Lien Debt Enforcement*) or Clause 14.5 (*Filing of claims*); or
- (c) create or permit to subsist any Security over any assets of any Debtor, Third Party Security Provider or any member of the Group or give any guarantee (and the Second Lien Creditors may not accept the benefit of any such Security or guarantee) from the Parent or any member of the Group for, or in respect of, any Second Lien Liabilities unless not prohibited by the Senior Secured Notes Documents, the Credit Facility Documents, the Cash Management Facility Documents and Future Pari Passu Debt Documents and such guarantee, security or assurance against loss (as applicable) is provided by a Debtor and is also provided to and for the benefit of the Senior Secured Creditors and ranks in the order of priority as that contemplated by Clause 2 (*Ranking and Priority*) and Clause 3 (*Security*) (as applicable) and all amounts received or recovered in respect thereof are immediately paid to the Security Agent and held or applied in accordance with Clause 20 (*Application of Proceeds*).

7.3 Permitted Second Lien Debt Payments

The Debtors and the Third Party Security Providers may:

- (a) prior to the Senior Secured Debt Discharge Date, make Payments to the Second Lien Creditors in respect of the Second Lien Liabilities in accordance with the Second Lien Documents:
 - (i) if:
 - (A) the Payment is of:
 - (1) any of the principal or interest (including capitalised interest) amount of the Second Lien Liabilities which is either (1) not prohibited from being paid by the Senior Secured Notes Documents, the Credit Facility Documents, Cash Management Facility Documents, and any Future Pari Passu Debt Document or (2) paid on or after the final maturity date of the Second Lien Liabilities; or
 - (2) any other amount in respect of the Second Lien Liabilities which is not an amount of principal or capitalised interest accrued due and payable in cash in accordance with the terms of the Second Lien Documents (such other amounts including all additional amounts payable as a result of the tax gross up provisions relating to the Second Lien Liabilities and amounts in respect of currency indemnities in the relevant Second Lien Debt Documents);
 - (B) no Second Lien Debt Payment Stop Notice is outstanding; and
 - (C) no Senior Secured Debt Payment Default has occurred and is continuing; or
 - (ii) if the Majority Senior Secured Creditors give prior consent to that Payment being made; or

- (iii) if the Payment is in respect of amounts due under the Second Lien Debt Documents to the Second Lien Debt Representative; or
- (iv) for so long as a Second Lien Debt Event of Default is continuing, if the Payment is in respect of commercially reasonable work fees and professional fees, costs and expenses for restructuring advice and valuations (including legal advice and the advice of other appropriate financial and/or restructuring advisers) incurred by the Second Lien Debt Representative not covered by paragraph (iii) above in an aggregate amount to all such Second Lien Debt Representatives under this paragraph not exceeding EUR 1,000,000 (or its equivalent in other currencies) in aggregate until the Senior Secured Debt Discharge Date; or
- (v) payments permitted pursuant to Clause 7.7(b) (*Cure of Payment Stop: Second Lien Creditors*), in the circumstances contemplated in Clause 7.7(a) (*Cure of Payment Stop: Second Lien Creditors*); or
- (vi) for so long as a Senior Secured Debt Event of Default is continuing, payments of all or part of the Second Lien Liabilities as a result of those Second Lien Liabilities being released or otherwise discharged solely in consideration for the issues of shares in any Holding Company of the Parent (each a “**Second Lien Debt for Equity Swap**”) provided that (w) no cash or cash equivalent payment is made in respect of the Second Lien Liabilities, (x) it does not result in a Change of Control under and as defined in the Senior Secured Notes Indenture, Second Lien Notes Indenture or any Senior Secured Debt Document or Second Lien Debt Document, (y) any Liabilities owed by a member of the Group to another member of the Group, the Shareholder Creditors or any other Holding Company of any member of the Group that arise as a result of any such Second Lien Debt for Equity Swap are subordinated to the Senior Secured Liabilities pursuant to this Agreement and the Senior Secured Creditors are granted Transaction Security in respect of any of those Intra-Group Liabilities, Holdco Liabilities or Shareholder Liabilities (as applicable) owed by a member of the Group and (z) at the time that such Second Lien Debt for Equity Swap completes, no Distressed Disposal is due to occur at such time which would be materially adversely impeded by the occurrence of such Second Lien Debt for Equity Swap (in the opinion of the Parent (acting reasonably)); or
- (vii) if the Payment is of costs, commissions, taxes, consent fees and expenses incurred in respect of (or reasonably incidental to) the Second Lien Debt Documents (including in relation to any reporting or listing requirements under the Second Lien Debt Documents); or
- (viii) costs, commissions, taxes, premiums and any expenses incurred in respect of (or reasonably incidental to) any refinancing of the Second Lien Debt in compliance with this Agreement and the Senior Secured Notes Documents, Credit Facility Documents, Cash Management Facility Documents and any Future Pari Passu Debt Document; or
- (ix) of any consent fee payment (and any indemnities and fees under any consent solicitation agent documentation) in connection with the amendment of Future Second Lien Debt Documents which is reasonable and customary for that type of amendment (as determined in good faith by the Companies) in compliance with this Agreement, provided that any such fees and expenses are in an amount which, when expressed as a percentage of the principal amount of the Future Second Lien Liabilities do not exceed the corresponding amounts which have been paid in respect of such fees and expenses incurred in respect of the Senior

Secured Liabilities and for the Second Lien Liabilities (when expressed as a percentage of the principal amount of such Senior Secured Liabilities and/or Second Lien Liabilities) (to the extent such fees are paid or payable); or

- (x) of amounts in connection with any purchases, repurchases or redemptions of, or similar transactions in respect of, all or a portion of Second Lien Debt permitted under the Senior Secured Notes Documents Credit Facility Documents, Cash Management Facility Documents and any Future Pari Passu Debt Document; and
- (b) on or after the Senior Secured Debt Discharge Date, make Payments to the Second Lien Creditors in respect of the Second Lien Liabilities in accordance with the Second Lien Debt Documents.

7.4 Issue of Second Lien Debt Payment Stop Notice

- (a) Until the Senior Secured Debt Discharge Date, except with the prior consent of the Majority Senior Secured Creditors, and subject to Clause 14 (*Effect of Insolvency Event*), the Companies shall procure that no member of the Group shall make, and no Second Lien Creditor may receive from any member of the Group, any Permitted Second Lien Debt Payment (other than any payment referred to under paragraph (a)(ii) or (a)(iv) of Clause 7.3 (*Permitted Second Lien Debt Payments*) above) if:
 - (i) a Senior Secured Debt Payment Default has occurred and is continuing; or
 - (ii) a Senior Secured Debt Event of Default (other than a Senior Secured Debt Payment Default) has occurred and is continuing, from the date on which the Senior Secured Notes Trustee, the Cash Facility Agent, the Cash Management Facility Agent or the Future Pari Passu Debt Representative (as the case may be) (the “**Relevant Representative**”) delivers a notice (a “**Second Lien Debt Payment Stop Notice**”) specifying the event or circumstance in relation to that Senior Secured Debt Event of Default to the Companies, the Security Agent and the Second Lien Debt Representative until the earliest of:
 - (A) the date on which there is a waiver, remedy or cure of such Senior Secured Debt Event of Default;
 - (B) the date falling 120 days after receipt by the Second Lien Debt Representative of that Second Lien Debt Payment Stop Notice;
 - (C) if a Second Lien Debt Standstill Period is in effect at any time after delivery of that Second Lien Debt Payment Stop Notice, the date on which that Second Lien Debt Standstill Period expires;
 - (D) the date on which the relevant Senior Secured Debt Event of Default is no longer continuing and, if the relevant Senior Secured Liabilities have been accelerated, such acceleration has been rescinded (and, if such acceleration consisted solely of declaring the relevant debt payable on demand, such rescission can be effected by the relevant majority creditors in respect of the relevant debt);
 - (E) the date on which the Relevant Representative which issued the Second Lien Debt Payment Stop Notice (and, if at such time a Senior Secured Debt Event of Default is continuing (other than in relation to the debt in respect of which the notice was given) the Relevant Representative

in respect of that other debt) delivers a notice to the Companies, the Security Agent and the Second Lien Debt Representative cancelling the Second Lien Debt Payment Stop Notice;

- (F) the Senior Secured Debt Discharge Date;
 - (G) the date on which the Second Lien Debt Representative or the Security Agent takes any Enforcement Action that it is permitted to take under Clause 7.9 (*Permitted Second Lien Debt Enforcement*) and Clause 7.10 (*Second Lien Debt Standstill Period*); and
 - (H) provided no Senior Secured Debt Payment Default is continuing, the original scheduled maturity date of the Second Lien Debt issued in the form of notes (provided that such maturity date is a date not earlier than the later of the original maturity date of the Senior Secured Notes and any Future Pari Passu Debt.
- (b) Unless the Second Lien Debt Representative waives this requirement:
 - (i) a new Second Lien Debt Payment Stop Notice may not be delivered unless and until 360 days have elapsed since the delivery of the immediately prior Second Lien Debt Payment Stop Notice; and
 - (ii) no Second Lien Debt Payment Stop Notice may be delivered in reliance on a Senior Secured Debt Event of Default more than 60 days after the date the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent or the Future Pari Passu Debt Representative (as applicable) received notice of that Senior Secured Debt Event of Default.
- (c) The Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent and the Future Pari Passu Debt Representative(s) (as applicable) may serve only one Second Lien Debt Payment Stop Notice with respect to the same event or set of circumstances. Subject to paragraph (b) above, this shall not affect the right of the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent or the Future Pari Passu Debt Representative(s) to issue a Second Lien Debt Payment Stop Notice in respect of any other event or set of circumstances.
- (d) No Second Lien Debt Payment Stop Notice may be served by the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent or the Future Pari Passu Debt Representative(s) in respect of a Senior Secured Debt Event of Default which had been notified to each of them at the time at which an earlier Second Lien Debt Payment Stop Notice was issued.
- (e) For the avoidance of doubt, this Clause 7.4:
 - (i) acts as a suspension of payment and not as a waiver of the right to receive payment on the date such payments are due;
 - (ii) will not prevent the accrual or capitalisation of interest (including default interest) in accordance with the Second Lien Debt Documents;
 - (iii) will not prevent the payment of any Second Lien Debt Trustee Amounts; and
 - (iv) will not prevent the payment of audit fees, directors' fees, taxes and other proper and incidental expenses required to maintain existence, and any

administrative and maintenance costs, fees, expenses in respect of any listing requirements or any reporting required by law or regulation.

7.5 Effect of Second Lien Debt Payment Stop Notice or Senior Secured Debt Payment Default

Any failure to make a Payment due under the Second Lien Debt Documents as a result of the issue of a Second Lien Debt Payment Stop Notice or the occurrence of a Senior Secured Debt 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 Debt Documents; or
- (b) the issue of a Second Lien Debt Enforcement Notice on behalf of the Second Lien Creditors.

7.6 Payment Obligations and Capitalisation of Interest Continue

- (a) No Debtor or Third Party Security Provider shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Second Lien Debt Document by the operation of Clause 7.2 (*Restriction on Payment and Dealings: Second Lien Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of that Clause.
- (b) The accrual and capitalisation of interest (if any) in accordance with the Second Lien Debt Documents shall continue notwithstanding the issue of a Second Lien Debt Payment Stop Notice.

7.7 Cure of Payment Stop: Second Lien Creditors

If:

- (a) at any time following the issue of a Second Lien Debt Payment Stop Notice or the occurrence of a Senior Secured Debt Payment Default, that Second Lien Debt Payment Stop Notice ceases to be outstanding and/or (as the case may be) the Senior Secured Debt 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 Debt Documents and which would have been Permitted Second Lien Debt Payments but for that Second Lien Debt Payment Stop Notice or Senior Secured Debt Payment Default,

then any Event of Default which may have occurred as a result of that suspension of Payments shall be waived and any Second Lien Debt Enforcement Notice which may have been issued as a result of that Event of Default shall be waived, in each case without any further action being required on the part of the Second Lien Creditors.

7.8 Restrictions on enforcement by Second Lien Creditor

Until the Senior Secured Debt Discharge Date, except with the prior consent of or as required by an Instructing Group, no Second Lien Creditor shall take or require the taking of any Enforcement Action in relation to the Second Lien Debt Documents, except as permitted under Clause 7.9 (*Permitted Second Lien Debt Enforcement*).

7.9 Permitted Second Lien Debt Enforcement

- (a) The restrictions in Clause 7.8 (*Restrictions on enforcement by Second Lien Creditor*) will not apply in respect of the Second Lien Liabilities if:
 - (i) a Second Lien Debt Event of Default (the “**Relevant Second Lien Debt Event of Default**”) is continuing;
 - (ii) the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent and the Future Pari Passu Debt Representative(s) have received a notice of the Relevant Second Lien Debt Event of Default specifying the event or circumstance in relation to the Relevant Second Lien Debt Event of Default from the Second Lien Debt Representative;
 - (iii) a Second Lien Debt Standstill Period has elapsed; and
 - (iv) the Relevant Second Lien Debt Event of Default is continuing at the end of the relevant Second Lien Debt Standstill Period.
- (b) Promptly upon becoming aware of a Second Lien Debt Event of Default, the Second Lien Debt Representative may by notice (a “**Future Second Lien Debt Enforcement Notice**”) in writing notify the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent and the Future Pari Passu Debt Representative(s) of the existence of such Second Lien Debt Event of Default.

7.10 Second Lien Debt Standstill Period

In relation to a Relevant Second Lien Debt Event of Default, a Second Lien Debt Standstill Period shall mean the period beginning on the date (the “**Second Lien Debt Standstill Start Date**”) the Second Lien Debt Representative serves a Second Lien Debt Enforcement Notice on the Senior Secured Notes Trustee and the Future Pari Passu Debt Representative(s) in respect of such Relevant Second Lien Debt Event of Default and ending on the earlier to occur of:

- (a) the date falling (i) 90 days in the case of a non-payment of interest, principal or fees representing the Second Lien Liabilities, (ii) 120 days in the case of a failure to make a payment of any other amount representing the Second Lien Liabilities, and (iii) 150 days in the case of any other Second Lien Debt Event of Default, in each case after the Second Lien Debt Standstill Start Date (the “**Second Lien Debt Standstill Period**”);
- (b) the date the Security Agent takes any Enforcement Action provided, however, that:
 - (i) if a Second Lien Debt Standstill Period ends pursuant to this paragraph (b), the Second Lien Creditors may only take the same Enforcement Action in relation to the Second Lien Liabilities (and only against the same entity) as the Enforcement Action taken by the Security Agent and may not take any other Enforcement Action against any member of the Group; and
 - (ii) Enforcement Action for the purpose of this paragraph (b) shall not include action taken to preserve or protect any Security as opposed to realise it;
- (c) the date of an Insolvency Event in relation to a particular Debtor owing Second Lien Liabilities and against whom Enforcement Action is to be taken;
- (d) the date on which a Second Lien Debt Event of Default occurs for failure to pay principal at the original scheduled maturity of the Second Lien Debt; and

- (e) the expiry of any other Second Lien Debt Standstill Period outstanding at the date such first mentioned Second Lien Debt Standstill Period commenced (unless that expiry occurs as a result of a cure, waiver or other permitted remedy).

7.11 Subsequent Second Lien Debt Defaults

The Second Lien Creditors may take Enforcement Action under Clause 7.9 (*Permitted Second Lien Debt Enforcement*) in relation to a Relevant Second Lien Debt Event of Default even if, at the end of any relevant Second Lien Debt Standstill Period or at any later time, a further Second Lien Debt Standstill Period has begun as a result of any other Second Lien Debt Event of Default.

7.12 Enforcement on behalf of Second Lien Creditors

- (a) If the Security Agent has notified the Second Lien Debt Representative that it is enforcing Security created pursuant to any Transaction Security Document, no other Second Lien Creditor may take any action referred to in Clause 7.9 (*Permitted Second Lien Debt Enforcement*) against that Debtor, Third Party Security Provider or any Subsidiary of that Debtor or that Third Party Security Provider while the Security Agent is taking steps to enforce that Transaction Security in accordance with the instructions of the Instructing Group where such action might be reasonably likely to adversely affect such enforcement or the amount of proceeds to be derived therefrom.
- (b) If the relevant Creditor Representative acting on behalf of the relevant Second Lien Creditors are permitted to give instructions to the Security Agent to require the enforcement of the Transaction Security constituted pursuant to any Transaction Security Document in accordance with the provisions of this Clause 7.12, such Enforcement Action must require the realisation of the relevant Security by way of a sale or disposal conducted in compliance with the provisions of Clause 18.3 (*Distressed Disposals*).

7.13 Option to purchase: Second Lien Creditors

- (a) After delivery of any notice by the Majority Senior Secured Creditors pursuant to Clause 17.3 (*Enforcement Instructions*) or a Distress Event, and provided that no option to purchase has been served under Clause 9.13 (*Option to purchase: Future Senior Creditors*), the Second Lien Debt Representative may, at the direction and the expense of such of the Second Lien Creditors that wish to make the purchase pursuant to this Clause 7.13, (the “**Purchasing Second Lien Creditors**”), by giving not less than ten days’ notice to the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent, the Future Pari Passu Debt Representative(s) and the Future Senior Debt Representative(s) (together, the “**Relevant Representatives**”) (provided such notice may not be given until all necessary approvals from the Purchasing Second Lien Creditors have been obtained), require the transfer to them (or to a nominee or nominees), of all, but not part, of the rights, benefits and obligations in respect of the Hedging Liabilities under the Hedging Agreements, the Senior Secured Notes Liabilities, the Credit Facility Lender Liabilities, the Cash Management Facility Lender Liabilities and the Future Pari Passu Liabilities (together, the “**Senior Secured Debt**”).
- (b) Any purchase under paragraph (a) shall be on the following terms;
 - (i) that the transfer is lawful;
 - (ii) each Relevant Representative, on behalf of the Creditors for which it is the Relevant Representative, is paid an amount in cash equal to the aggregate of:

- (A) the Liabilities to such Creditors outstanding as at the date that amount is to be paid, as determined by such Relevant Representative (acting reasonably) together with costs and expenses (including legal fees) incurred by such Relevant Representative and such Creditors as a consequence of giving effect to the transfer to such Purchasing Second Lien Creditor or to a person nominated by them; and
 - (B) payment in full of the Hedging Purchase Amount in respect of the transaction under the relevant Hedging Agreements together with costs and expenses (including legal fees) incurred by the relevant Hedge Counterparties as a consequence of giving effect to the transfer to such Purchasing Second Lien Creditor or to a person nominated by them;
- (iii) payment in full in cash of the amount which each such Creditor certifies to be necessary to compensate it for any loss on account of funds borrowed, contracted for or utilised to fund any amount included in the Liabilities to be transferred under this Clause 7.13 resulting from the receipt of that payment otherwise than on the last day of an interest period as set out in any applicable Senior Secured Debt Document, Cash Management Facility Document or Credit Facility Document;
- (iv) after the transfer, no Primary Creditor (not including any Second Lien Creditor or any Future Senior Creditor) will be under any actual or contingent liability to any Debtor, any Third Party Security Provider or any other person under this Agreement, any Senior Secured Notes Document, Cash Management Facility Document, Credit Facility Document or any Future Pari Passu Debt Document for which it is not holding cash collateral in an amount and on terms reasonably satisfactory to it;
- (v) the Purchasing Second Lien Creditors (or, if required by the Primary Creditors making the transfers under this Clause 7.13, a third party acceptable to all such Primary Creditors) indemnifies each such Primary Creditor on the date of the relevant transfer and each Hedge Counterparty under the Hedging Agreements in respect of all losses which may be sustained or incurred by it as a result of any sum received or recovered by any of such Primary Creditors or any Hedge Counterparty from any Debtor, any Third Party Security Provider, any Purchasing Second Lien Creditor or any other person being required (or it being alleged that it is required) to be paid back by or clawed back from any such Primary Creditor or any Hedge Counterparty for any reason;
- (vi) the transferring Primary Creditors and Hedge Counterparties are satisfied with the results of any “*know your client*” or other checks relating to the identity of any person that they or any Relevant Representative are required by law to carry out in relation to such a transfer; and
- (vii) the relevant transfer shall be without recourse to, or warranty from, any Primary Creditor, except that each such Primary Creditor shall be deemed to have represented and warranted on the date of that transfer that:
 - (A) in the case of a Senior Secured Creditor, it is the sole owner, free from all Security and third party interests (other than any arising under the Senior Secured Debt Documents or by operation of law), of all rights and interests under the Senior Secured Debt Documents purporting to be transferred by it by that transfer;

- (B) in the case of a Cash Management Facility Lender, it is the sole owner, free from all Security and third party interests (other than any arising under the Cash Management Facility Documents or by operation of law), of all rights and interests under the Cash Management Facility Documents purporting to be transferred by it by that transfer;
- (C) in the case of a Hedge Counterparty, it is the sole owner, free from all Security and third party interests (other than any arising under the Hedging Agreements or by operation of law) of all rights and interests under the Hedging Agreements purporting to be transferred by it by that transfer;
- (D) it has the power to enter into and make, and has taken all necessary action to authorise its entry into and making, that transfer; and
- (E) the transferring Primary Creditors and Hedge Counterparties are satisfied with the results of any “*know your client*” or other checks relating to the identity of any person that they or any Relevant Representative are required by law to carry out in relation to such a transfer.

8 FUTURE SECOND LIEN CREDITORS AND FUTURE SECOND LIEN DEBT

8.1 Entry into Future Second Lien Debt Documents

No Debtor or Third Party Security Provider shall enter into any Future Second Lien Debt Documents unless such Future Second Lien Debt Documents (and the incurrence of any Financial Indebtedness thereunder) are not prohibited by the Senior Secured Notes Documents, Second Lien Notes Documents, any Future Second Lien Debt Documents then outstanding and any Future Pari Passu Debt Documents then outstanding.

8.2 Payment of Future Second Lien Debt

The Debtors and the Third Party Security Providers may make Payments of the Future Second Lien Debt at any time in accordance with the Future Second Lien Debt Documents subject to any restrictions contained in the Senior Secured Notes Documents or the Second Lien Notes Documents.

8.3 Security: Future Second Lien Creditors

The Future Second Lien Creditors may take, accept or receive the benefit of:

- (a) any Security in respect of the Future Second Lien Debt in addition to the Transaction Security if, to the extent legally possible and subject to the Agreed Security Principles, at the same time, it is also offered to the other Secured Parties either:
 - (i) to the Security Agent as agent or trustee for the other Secured Parties in respect of their Second Lien Liabilities;
 - (ii) to the Security Agent as agent for the other Secured Parties under applicable law;
 - (iii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as agent or trustee for the Secured Parties:

- (A) to the other Secured Parties in respect of their Second Lien Liabilities;
or
- (B) to the Security Agent under a parallel debt structure for the benefit of
the other Secured Parties in respect of their Second Lien Liabilities; or
- (iv) in the case of any Security being granted after the date of this Agreement, to
some of the Secured Parties provided that such Security is incremental to
Transaction Security that has already been granted in favour of all other Secured
Parties and any proceeds derived from the enforcement of such Security will be
shared with the Secured Parties in accordance with this Agreement,

and ranks in the same order of priority as that contemplated in Clause 3 (*Security*); and

- (b) any guarantee, indemnity or other assurance against loss in respect of the Future Second
Lien Debt in addition to those in:
 - (i) the original form of the Future Second Lien Debt Documents;
 - (ii) this Agreement; or
 - (iii) any Shared Assurance,

only if, in each case (A) the grant of such Security or the giving of such guarantee, indemnity or other assurance is permitted by the Senior Secured Notes Documents and the Second Lien Notes Documents, and (B) at the same time, to the extent legally possible and subject to the Agreed Security Principles, it is also offered to the Senior Secured Noteholders and offered to the other Secured Parties in respect of their respective Secured Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*) and Clause 3 (*Security*).

9 FUTURE SENIOR CREDITORS AND FUTURE SENIOR LIABILITIES

9.1 Issue of and Amendments and Waivers of Future Senior Debt Documents

- (a) Neither a Debtor, a Third Party Security Provider nor the Parent shall enter into or designate any document as a Future Senior Debt Document, unless such Future Senior Debt Document (and the incurrence of any financial indebtedness thereunder) is not prohibited by the then existing (if any) Senior Secured Debt Documents and Second Lien Debt Documents.
- (b) The Future Senior Creditors, the Third Party Security Providers, the Debtors and the Parent may amend or waive the terms of the Future Senior Debt Documents in accordance with their terms at any time, provided that such amendment or waiver would not result in such Future Senior Debt being made available on terms prohibited by the then existing (if any) Senior Secured Debt Documents and Second Lien Debt Documents.

9.2 Restriction on Payment and Dealings: Future Senior Liabilities

Until the later of the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date, except with the prior consent of an Instructing Group, no Debtor or Third Party Security Provider shall (and each Debtor and each Third Party Security Provider shall ensure that no member of the Group will):

- (a) pay, repay, prepay, redeem, acquire or defease any principal, interest or other amount on or in respect of, or make any distribution in respect of, any Future Senior Liabilities in cash or in kind or apply any such money or property in or towards discharge of any Future Senior Liabilities except as permitted by Clause 9.3 (*Permitted Future Senior Debt Payments*), Clause 9.9 (*Permitted Future Senior Debt Enforcement*) or Clause 14.5 (*Filing of claims*);
- (b) exercise any set-off against any Future Senior Liabilities except as permitted by Clause 9.3 (*Permitted Future Senior Debt Payments*), Clause 9.9 (*Permitted Future Senior Debt Enforcement*) or Clause 14.5 (*Filing of claims*); or
- (c) other than the Shared Security and the Security granted under the Senior Notes Only Security Documents, create or permit to subsist any Security over any assets of any Debtor, Third Party Security Provider or any member of the Group or give any guarantee (and the Future Senior Creditors may not accept the benefit of any such Security or guarantee) from the Parent or any member of the Group for, or in respect of, any Future Senior Liabilities unless not prohibited by the Senior Secured Debt Documents and Second Lien Debt Documents and such guarantee, security or assurance against loss (as applicable) is provided by a Debtor and is also provided to and for the benefit of the Senior Secured Creditors and the Second Lien Creditors and ranks in the order of priority as that contemplated by Clause 2 (*Ranking and Priority*) and Clause 3 (*Security*) (as applicable) and all amounts received or recovered in respect thereof are immediately paid to the Security Agent and held or applied in accordance with Clause 20 (*Application of Proceeds*).

9.3 Permitted Future Senior Debt Payments

The Future Senior Issuer may make Payments in respect of the Future Senior Issuer Liabilities at any time in accordance with the terms of the Future Senior Debt Documents from its own assets (excluding at all times any assets subject to Transaction Security) provided that such payment is not financed by a payment to the Future Senior Issuer from a member of the Group that was prohibited by the then existing (if any) Senior Secured Debt Documents and Second Lien Debt Documents. In addition, the Debtors and the Third Party Security Providers may:

- (a) prior to the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date, make Payments to the Future Senior Creditors in respect of the Future Senior Liabilities in accordance with the Future Senior Debt Documents:
 - (i) if:
 - (A) the Payment is of:
 - (1) any of the principal or interest (including capitalised interest) amount of the Future Senior Liabilities which is either (1) not prohibited from being paid by the Senior Secured Debt Documents and the Second Lien Debt Documents or (2) paid on or after the final maturity date of the Future Senior Liabilities (provided that such maturity date is no earlier than that contained in the relevant Future Senior Debt Documents); or
 - (2) any other amount in respect of the Future Senior Liabilities which is not an amount of principal or capitalised interest accrued, due and payable in cash in accordance with the terms of the Future Senior Debt Documents or a corresponding

amount under any Holdco Debt Document (such other amounts including all additional amounts payable as a result of the tax gross up provisions relating to the Future Senior Liabilities and amounts in respect of currency indemnities in the relevant Future Senior Debt Documents or Holdco Debt Documents);

- (B) no Future Senior Debt Payment Stop Notice is outstanding; and
- (C) no Senior Secured Debt Payment Default or Second Lien Debt Payment Default has occurred and is continuing; or
- (ii) if the Majority Senior Secured Creditors and the Majority Second Lien Creditors give prior consent to that Payment being made; or
- (iii) if the Payment is of Notes Trustee Amounts due to a Future Senior Debt Representative; or
- (iv) payments permitted pursuant to Clause 9.7(b) (*Cure of Payment Stop: Future Senior Creditors*), in the circumstances contemplated in Clause 9.7(a) (*Cure of Payment Stop: Future Senior Creditors*); or
- (v) costs, commissions, taxes, consent fees and expenses incurred in respect of (or reasonably incidental to) the Future Senior Debt Documents (including in relation to any reporting or listing requirements under the Future Senior Debt Documents); or
- (vi) for so long as a Senior Secured Debt Event of Default or a Second Lien Event of Default is continuing, payments of all or part of the Future Senior Liabilities as a result of those Future Senior Liabilities being released or otherwise discharged solely in consideration for the issues of shares in any Holding Company of the Parent (each a “**Future Senior Notes Debt for Equity Swap**”) provided that (w) no cash or cash equivalent payment is made in respect of the Future Senior Liabilities, (x) it does not result in a Change of Control under and as defined in the Senior Secured Notes Indenture, Second Lien Notes Indenture or any Senior Secured Debt Document or Second Lien Debt Document, (y) any Liabilities owed by a member of the Group to another member of the Group, the Shareholder Creditors or any other Holding Company of any member of the Group that arise as a result of any such Future Senior Notes Debt for Equity Swap are subordinated to the Senior Secured Liabilities and Second Lien Liabilities pursuant to this Agreement and the Senior Secured Creditors and Second Lien Creditors are granted Transaction Security in respect of any of those Intra-Group Liabilities, Holdco Liabilities or Shareholder Liabilities (as applicable) owed by a member of the Group and (z) at the time that such Future Senior Notes Debt for Equity Swap completes, no Distressed Disposal is due to occur at such time which would be materially adversely impeded by the occurrence of such Future Senior Notes Debt for Equity Swap (in the opinion of the Parent (acting reasonably)); or
- (vii) of non-cash interest made by way of the capitalisation of interest or by the issuance of a non-cash pay financial instrument evidencing the same which is subordinated to the Senior Secured Liabilities on the same terms as the Future Senior Liabilities; or

- (viii) if the Payment is funded directly or indirectly with the proceeds of Future Senior Liabilities incurred under or pursuant to any Future Senior Debt Documents; or
 - (ix) costs, commissions, taxes, premiums and any expenses incurred in respect of (or reasonably incidental to) any refinancing of the Future Senior Debt in compliance with this Agreement and Senior Secured Debt Documents, and any Second Lien Debt Documents; or
 - (x) of any consent fee payment (and any indemnities and fees under any consent solicitation agent documentation) in connection with the amendment of Future Senior Debt Documents which is reasonable and customary for that type of amendment (as determined in good faith by the Companies) in compliance with this Agreement, provided that any such fees and expenses are in an amount which, when expressed as a percentage of the principal amount of the Future Senior Liabilities do not exceed the corresponding amounts which have been paid in respect of such fees and expenses incurred in respect of the Senior Secured Liabilities and the Second Lien Liabilities (when expressed as a percentage of the principal amount of such Senior Secured Liabilities and/or Second Lien Liabilities) (to the extent such fees are paid or payable); or
 - (xi) of amounts in connection with any purchases, repurchases or redemptions of, or similar transactions in respect of, all or a portion of Future Senior Debt permitted under the, Senior Secured Debt Documents and the Second Lien Debt Documents; and
- (b) on or after the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date, make Payments to the Future Senior Creditors in respect of the Future Senior Liabilities in accordance with the Future Senior Debt Documents.

9.4 Issue of Future Senior Debt Payment Stop Notice

- (a) Until the later of the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date, except with the prior consent of the Majority Senior Secured Creditors and, if following a Distress Event or when a Second Lien Debt Event of Default is continuing, the Majority Second Lien Creditors, and subject to Clause 14 (*Effect of Insolvency Event*), the Parent (unless it is the Future Senior Issuer) shall not and shall procure that no member of the Group shall make, and no Future Senior Creditor may receive, from the Parent (unless it is the Future Senior Issuer) or any member of the Group, any Permitted Future Senior Debt Payment (other than any payment referred to under paragraph (a)(ii) and (a)(vii) of Clause 9.3 (*Permitted Future Senior Debt Payments*) above) if:
- (i) a Senior Secured Debt Payment Default has occurred and is continuing; or
 - (ii) a Second Lien Debt Payment Default has occurred and is continuing; or
 - (iii) either (x) a Senior Secured Debt Event of Default (other than a Senior Secured Debt Payment Default) has occurred and is continuing, from the date on which the Senior Secured Notes Trustee or the Future Pari Passu Debt Representative delivers a notice or (y) a Second Lien Debt Event of Default (other than a Second Lien Debt Payment Default) is continuing, from the date on which the Second Lien Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent or Second Lien Debt Representative delivers a notice (any such notice under (x) and (y) being a “**Future Senior Debt Payment Stop Notice**”)

specifying the event or circumstance in relation to that Senior Secured Debt Event of Default or Second Lien Debt Event of Default to the Companies, the Security Agent and the Future Senior Debt Representative until the earliest of:

- (A) the date on which there is a waiver, remedy or cure of such Senior Secured Debt Event of Default or Second Lien Debt Event of Default;
- (B) the date falling 179 days after receipt by the Future Senior Debt Representative of that Future Senior Debt Payment Stop Notice;
- (C) if a Future Senior Debt Standstill Period is in effect at any time after delivery of that Future Senior Debt Payment Stop Notice, the date on which that Future Senior Debt Standstill Period expires;
- (D) the date on which the relevant Senior Secured Debt Event of Default or Second Lien Debt Event of Default (as applicable) is no longer continuing and, if the relevant Senior Secured Liabilities or Second Lien Liabilities (as applicable) have been accelerated, such acceleration has been rescinded (and, if such acceleration consisted solely of declaring the relevant debt payable on demand, such rescission can be effected by the relevant majority creditors in respect of the relevant debt);
- (E) the date on which the Relevant Representative which issued the Future Senior Debt Payment Stop Notice (and, if at such time a Senior Secured Debt Event of Default is continuing or Second Lien Debt Event of Default (as applicable) (other than in relation to the debt in respect of which the notice was given) the Relevant Representative in respect of that other debt) delivers a notice to the Companies, the Security Agent and the Future Senior Debt Representative cancelling the Future Senior Debt Payment Stop Notice;
- (F) the later of the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date; and
- (G) the date on which the Future Senior Debt Representative or the Security Agent takes any Enforcement Action that it is permitted to take under paragraph (a)(i) of Clause 9.9 (*Permitted Future Senior Debt Enforcement*) and paragraph (a)(i) of Clause 9.10 (*Future Senior Debt Standstill Period and Future Senior Issuer Standstill Period*),

provided that nothing in this Clause 9.4 shall prevent the Future Senior Issuer making Payments of the Future Senior Issuer Liabilities in accordance with the Future Senior Debt Documents.

- (b) Unless the Future Senior Debt Representative waives this requirement:
 - (i) a new Future Senior Debt Payment Stop Notice may not be delivered unless and until 360 days have elapsed since the delivery of the immediately prior Future Senior Debt Payment Stop Notice;
 - (ii) no Future Senior Debt Payment Stop Notice may be delivered in reliance on a Senior Secured Debt Event of Default more than 60 days after the date the the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management

Facility Agent or the Future Pari Passu Debt Representative (as applicable) received notice of that Senior Secured Debt Event of Default; and

- (iii) no Future Senior Debt Payment Stop Notice may be delivered in reliance on a Second Lien Debt Event of Default more than 60 days after the date the Second Lien Debt Representative received notice of that Second Lien Debt Event of Default.
- (c) The Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent the Future Pari Passu Debt Representative(s), Second Lien Notes Trustee and the Future Second Lien Debt Representative(s) may serve only one Future Senior Debt Payment Stop Notice with respect to the same event or set of circumstances. Subject to paragraph (b) above, this shall not affect the right of the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent the Future Pari Passu Debt Representative(s) or the Second Lien Debt Representative(s) to issue a Future Senior Debt Payment Stop Notice in respect of any other event or set of circumstances.
- (d) No Future Senior Debt Payment Stop Notice may be served by the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent, the Second Lien Notes Trustee, the Future Pari Passu Debt Representative(s) or the Future Second Lien Debt Representative(s) in respect of a Senior Secured Debt Event of Default or a Second Lien Debt Event of Default which had been notified to each of them at the time at which an earlier Future Senior Debt Payment Stop Notice was issued.
- (e) For the avoidance of doubt, this Clause 9.4:
 - (i) acts as a suspension of payment and not as a waiver of the right to receive payment on the date such payments are due;
 - (ii) will not prevent the accrual or capitalisation of interest (including default interest) in accordance with the Future Senior Debt Documents;
 - (iii) will not prevent the payment by any Future Senior Issuer (as applicable) or any Debtor or Third Party Security Provider of fees, costs and expenses (including legal fees and together with any applicable VAT) of any Future Senior Debt Representative (including any amount payable to such Future Senior Debt Representative by way of indemnity, remuneration or reimbursement for expenses incurred) payable to such Future Senior Debt Representative for its own account pursuant to the relevant Future Senior Debt Documents or any engagement letter between such Future Senior Debt Representative and the relevant issuer of, as the case may be, Future Senior Debt, and the costs of any actual or attempted Enforcement Action which is permitted by this Agreement which are recoverable pursuant to the terms of the relevant Future Senior Debt Documents; and
 - (iv) will not prevent the payment of audit fees, directors' fees, taxes and other proper and incidental expenses required to maintain existence, and any administrative and maintenance costs, fees, expenses in respect of any listing requirements or any reporting required by law or regulation.

9.5 Effect of Senior Note Payment Stop Notice or Senior Secured Debt Payment Default

Any failure to make a Payment due under the Future Senior Debt Documents as a result of the issue of a Future Senior Debt Payment Stop Notice or the occurrence of a Senior Secured Debt Payment Default or a Second Lien Debt 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 Future Senior Debt Documents; or
- (b) the issue of a Future Senior Debt Enforcement Notice on behalf of the Future Senior Creditors.

9.6 Payment Obligations and Capitalisation of Interest Continue

- (a) No Debtor or Third Party Security Provider shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Future Senior Debt Document by the operation of Clause 9.2 (*Restriction on Payment and Dealings: Future Senior Liabilities*) 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 capitalisation of interest (if any) in accordance with the Future Senior Debt Documents shall continue notwithstanding the issue of a Future Senior Debt Payment Stop Notice.

9.7 Cure of Payment Stop: Future Senior Creditors

If:

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

then any Event of Default which may have occurred as a result of that suspension of Payments shall be waived and any Future Senior Debt Enforcement Notice which may have been issued as a result of that Event of Default shall be waived, in each case without any further action being required on the part of the Future Senior Creditors.

9.8 Restrictions on enforcement by Future Senior Creditor

Until the later of the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date, except with the prior consent of or as required by an Instructing Group, no Future Senior Creditor shall take or require the taking of any Enforcement Action (including, for the avoidance of doubt, a Senior Notes Only Distressed Disposal), except as permitted under Clause 9.9 (*Permitted Future Senior Debt Enforcement*).

9.9 Permitted Future Senior Debt Enforcement

- (a) The restrictions in Clause 9.8 (*Restrictions on enforcement by Future Senior Creditor*) will not apply:

- (i) in respect of the Future Senior Guarantee Liabilities and Shared Security, if:
 - (A) a Future Senior Debt Event of Default (the “**Relevant Future Senior Debt Event of Default**”) is continuing;
 - (B) the Senior Secured Notes Trustee, Second Lien Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent, the Future Pari Passu Debt Representative(s) and the Future Second Lien Debt Representative(s) have received a notice of the Relevant Future Senior Debt Event of Default specifying the event or circumstance in relation to the Relevant Future Senior Debt Event of Default from the Future Senior Debt Representative;
 - (C) a Future Senior Debt Standstill Period has elapsed; and
 - (D) the Relevant Future Senior Debt Event of Default is continuing at the end of the relevant Future Senior Debt Standstill Period; and
- (ii) in respect of the Future Senior Issuer Liabilities and Senior Notes Only Security, if:
 - (A) a Relevant Future Senior Debt Event of Default is continuing;
 - (B) the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent, the Future Pari Passu Debt Representative(s), the Second Lien Notes Trustee and the Future Second Lien Debt Representative(s) have received a notice of the Relevant Future Senior Debt Event of Default specifying the event or circumstance in relation to the Relevant Future Senior Debt Event of Default from the Future Senior Debt Representative;
 - (C) a Future Senior Issuer Standstill Period has elapsed; and
 - (D) the Relevant Future Senior Debt Event of Default is continuing at the end of the relevant Future Senior Debt Standstill Period.
- (b) Promptly upon becoming aware of a Future Senior Debt Event of Default, the Future Senior Debt Representative may by notice (a “**Future Senior Debt Enforcement Notice**”) in writing notify the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent, the Future Pari Passu Debt Representative(s), the Second Lien Notes Trustee and the Second Lien Debt Representative(s) of the existence of such Future Senior Debt Event of Default.

9.10 Future Senior Debt Standstill Period and Future Senior Issuer Standstill Period

- (a) For the purposes of paragraph (a)(i) of Clause 9.9 (*Permitted Future Senior Debt Enforcement*) above, in relation to a Relevant Future Senior Debt Event of Default, a Future Senior Debt Standstill Period shall mean the period beginning on the date (the “**Future Senior Debt Standstill Start Date**”) the Future Senior Debt Representative serves a Future Senior Debt Enforcement Notice on the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent, the Future Pari Passu Debt Representative(s), the Second Lien Notes Trustee and the Future Second Lien Debt Representative(s) in respect of such Relevant Future Senior Debt Event of Default and ending on the earlier to occur of:

- (i) the date falling 179 days after the Future Senior Debt Standstill Start Date (the “**Future Senior Debt Standstill Period**”);
 - (ii) the date the Security Agent takes any Enforcement Action provided, however, that:
 - (A) if a Future Senior Debt Standstill Period ends pursuant to this paragraph (ii), the Future Senior Creditors may only take the same Enforcement Action in relation to the Future Senior Guarantee Liabilities (and only against the same entity) as the Enforcement Action in relation to the Future Senior Guarantee Liabilities taken by the Security Agent and may not take any of other Enforcement Action against any member of the Group; and
 - (B) Enforcement Action for the purpose of this paragraph (ii) shall not include action taken to preserve or protect any Security as opposed to realise it;
 - (iii) the date of an Insolvency Event in relation to the Future Senior Issuer and/or a particular Debtor owing Future Senior Guarantee Liabilities and in each case against whom Enforcement Action is to be taken; and
 - (iv) the expiry of any other Future Senior Debt Standstill Period outstanding at the date such first mentioned Future Senior Debt Standstill Period commenced (unless that expiry occurs as a result of a cure, waiver or other permitted remedy).
- (b) For the purposes of paragraph (a)(ii) of Clause 9.9 (*Permitted Future Senior Debt Enforcement*) above, in relation to a Relevant Future Senior Debt Event of Default, a Future Senior Issuer Standstill Period shall mean the period beginning on the date (“**Future Senior Issuer Standstill Start Date**”) the Future Senior Debt Representative serves a Future Senior Notes Enforcement Notice on the Senior Secured Notes Trustee, the Future Pari Passu Debt Representative(s), the Second Lien Notes Trustee and the Future Second Lien Debt Representative(s) in respect of such Relevant Future Senior Debt Event of Default and ending on the earlier to occur of:
- (i) the date falling:
 - (A) 90 days after the Future Senior Issuer Standstill Start Date in respect of any Future Senior Debt Event of Default arising by reason of non-payment under a Future Senior Debt Document; and
 - (B) 150 days after the Future Senior Issuer Standstill Start Date in respect of any other Future Senior Debt Event of Default,
 (the “**Future Senior Issuer Standstill Period**”);
 - (ii) the date the Security Agent takes any Enforcement Action, provided, however, that:
 - (A) if a Future Senior Notes Issuer Standstill Period ends pursuant to this paragraph (ii), the Future Senior Creditors may only take the same Enforcement Action in relation to the Future Senior Issuer Liabilities as the Enforcement Action taken by the Security Agent provided that

the Future Senior Creditors may also take Enforcement Action in respect of the Senior Notes Only Security; and

- (B) Enforcement Action for the purpose of this paragraph (ii) shall not include action taken to preserve or protect any Security as opposed to realise it;
- (iii) the date of an Insolvency Event in relation to the Future Senior Issuer, if Enforcement Action against it is to be taken; and
- (iv) the expiry of any other Future Senior Issuer Standstill Period outstanding at the date such first mentioned Future Senior Issuer Standstill Period commenced (unless as a result of a cure, waiver or other permitted remedy).

9.11 Enforcement on behalf of Future Senior Creditors

- (a) If the Security Agent has notified the Future Senior Debt Representative that it is enforcing Security created pursuant to any Transaction Security Document, no other Future Senior Creditor may take any action referred to in Clause 9.9 (*Permitted Future Senior Debt Enforcement*) against that Debtor, Third Party Security Provider or any Subsidiary of that Debtor or that Third Party Security Provider while the Security Agent is taking steps to enforce that Transaction Security in accordance with the instructions of the Instructing Group where such action might be reasonably likely to adversely affect such enforcement or the amount of proceeds to be derived therefrom.
- (b) If the relevant Creditor Representative acting on behalf of the relevant Future Senior Creditors are permitted to give instructions to the Security Agent to require the enforcement of the Transaction Security constituted pursuant to any Transaction Security Document in accordance with the provisions of this Clause 9.11, such Enforcement Action must require the realisation of the relevant Security by way of a sale or disposal conducted in compliance with the provisions of Clause 18.3 (*Distressed Disposals*).

9.12 Subsequent Future Senior Debt Defaults

- (a) The Future Senior Creditors may take Enforcement Action in respect of the Future Senior Guarantee Liabilities and Shared Security in accordance with paragraph (a)(i) of Clause 9.9 (*Permitted Future Senior Debt Enforcement*) in relation to a Relevant Future Senior Debt Event of Default even if, at the end of any relevant Future Senior Debt Standstill Period or at any later time, a further Future Senior Debt Standstill Period has begun as a result of any other Future Senior Debt Event of Default.
- (b) The Future Senior Creditors may take Enforcement Action in respect of the Future Senior Issuer Liabilities and Senior Notes Only Security in accordance with paragraph (a)(ii) of Clause 9.9 (*Permitted Future Senior Debt Enforcement*) in relation to a Relevant Future Senior Debt Event of Default even if, at the end of any relevant Future Senior Issuer Standstill Period or at any later time, a further Future Senior Issuer Standstill Period has begun as a result of any other Future Senior Debt Event of Default.

9.13 Option to purchase: Future Senior Creditors

- (a) After delivery of any notice by the Majority Senior Secured Creditors or the Majority Second Lien Creditors pursuant to Clause 17.3 (*Enforcement Instructions*) or a Distress Event, the Future Senior Debt Representative may, at the direction and the expense of such of the Future Senior Creditors that wish to make the purchase pursuant to this

Clause 9.13, (the “**Purchasing Future Senior Creditors**”), by giving not less than ten days’ notice to the Hedge Counterparties, the Senior Secured Notes Trustee, the Credit Facility Agent, the Cash Management Facility Agent, the Future Pari Passu Debt Representative(s), the Second Lien Notes Trustee and the Second Lien Debt Representative(s) (together, the “**Relevant Representatives**”) (provided such notice may not be given until all necessary approvals from the Purchasing Future Senior Creditors have been obtained), require the transfer to them (or to a nominee or nominees), of all, but not part, of the rights, benefits and obligations in respect of the Senior Secured Liabilities, the Hedging Liabilities under the Hedging Agreements and the Second Lien Liabilities (together, the “**Senior Secured Debt**”).

- (b) Any purchase under paragraph (a) shall be on the following terms;
- (i) that the transfer is lawful;
 - (ii) each Relevant Representative, on behalf of the Creditors for which it is the Relevant Representative, is paid an amount in cash equal to the aggregate of:
 - (A) the Liabilities to such Creditors outstanding as at the date that amount is to be paid, as determined by such Relevant Representative (acting reasonably) together with costs and expenses (including legal fees) incurred by such Relevant Representative and such Creditors as a consequence of giving effect to the transfer to such Purchasing Future Senior Creditor or to a person nominated by them; and
 - (B) payment in full of the Hedging Purchase Amount in respect of the transaction under the relevant Hedging Agreements together with costs and expenses (including legal fees) incurred by the relevant Hedge Counterparties as a consequence of giving effect to the transfer to such Purchasing Future Senior Creditor or to a person nominated by them;
 - (iii) payment in full in cash of the amount which each such Creditor certifies to be necessary to compensate it for any loss on account of funds borrowed, contracted for or utilised to fund any amount included in the Liabilities to be transferred under this Clause 9.13 resulting from the receipt of that payment otherwise than on the last day of an interest period as set out in the relevant Debt Document;
 - (iv) after the transfer, no Primary Creditor (not including any Future Senior Creditor) will be under any actual or contingent liability to any Debtor, any Third Party Security Provider or any other person under this Agreement, any Senior Secured Debt Document, any Hedging Agreement or Second Lien Debt Document for which it is not holding cash collateral in an amount and on terms reasonably satisfactory to it;
 - (v) the Purchasing Future Senior Creditors, other than the relevant Future Senior Debt Representative, (or, if required by the Primary Creditors making the transfers under this Clause 9.13, a third party acceptable to all such Primary Creditors) indemnifies each such Primary Creditor on the date of the relevant transfer and each Hedge Counterparty under the Hedging Agreements in respect of all losses which may be sustained or incurred by it as a result of any sum received or recovered by any of such Primary Creditors or any Hedge Counterparty from any Debtor, any Third Party Security Provider, any Purchasing Future Senior Creditor or any other person being required (or it

being alleged that it is required) to be paid back by or clawed back from any such Primary Creditor or any Hedge Counterparty for any reason;

- (vi) the transferring Primary Creditors and Hedge Counterparties are satisfied with the results of any “**know your client**” or other checks relating to the identity of any person that they or any Relevant Representative are required by law to carry out in relation to such a transfer; and
- (vii) the relevant transfer shall be without recourse to, or warranty from, any Primary Creditor, except that each such Primary Creditor shall be deemed to have represented and warranted on the date of that transfer that:
 - (A) in the case of a Senior Secured Creditor, it is the sole owner, free from all Security and third party interests (other than any arising under the Senior Secured Debt Documents or by operation of law), of all rights and interests under the Senior Secured Debt Documents purporting to be transferred by it by that transfer;
 - (B) in the case of a Hedge Counterparty, it is the sole owner, free from all Security and third party interests (other than any arising under the Hedging Agreements or by operation of law) of all rights and interests under the Hedging Agreements purporting to be transferred by it by that transfer;
 - (C) in the case of a Second Lien Creditor, it is the sole owner, free from all Security and third party interests (other than any arising under the Second Lien Debt Documents or by operation of law), of all rights and interests under the Second Lien Debt Documents purporting to be transferred by it by that transfer;
 - (D) it has the power to enter into and make, and has taken all necessary action to authorise its entry into and making, that transfer; and
 - (E) the transferring Primary Creditors and Hedge Counterparties are satisfied with the results of any “**know your client**” or other checks relating to the identity of any person that they or any Relevant Representative are required by law to carry out in relation to such a transfer.

10 HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

10.1 Identity of New Hedge Counterparties

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

10.2 Restriction on Payment: Hedging Liabilities

Prior to the later of (i) the Senior Secured Notes Discharge Date, (ii) the Future Pari Passu Debt Discharge Date, (iii) Second Lien Notes Discharge Date and (iv) the Future Second Lien Debt

Discharge Date, neither the Debtors nor the Third Party Security Providers shall, and shall each 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 10.3 (*Permitted Payments: Hedging Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 10.9 (*Permitted Enforcement: Hedge Counterparties*).

10.3 Permitted Payments: Hedging Liabilities

The Debtors may make Payments of the Hedging Liabilities at any time in accordance with the relevant Hedging Agreement provided that, following the occurrence of an Acceleration Event or an Insolvency Event, no Debtor may make Payments of the Hedging Liabilities except from Recoveries distributed in accordance with Clause 20 (*Application of Proceeds*).

10.4 Payment obligations continue

No Debtor or Third Party Security Provider shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under the terms of any Debt Document by the operation of Clauses 10.2 (*Restriction on Payment: Hedging Liabilities*) and 10.3 (*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.

10.5 No acquisition of Hedging Liabilities

Prior to the later of the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date, neither the Debtors nor the Third Party Security Providers shall, and shall procure that no other member of the Group will:

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

in respect of any of the Hedging Liabilities unless the prior written consent of the Majority Senior Secured Creditors (excluding the Hedge Counterparties) and the Majority Second Lien Creditors are obtained or the relevant Liabilities Acquisition relates to Hedging Liabilities in respect of which a Payment could be made under Clause 10.3 (*Permitted Payments: Hedging Liabilities*).

10.6 Amendments and Waivers: Hedging Agreements

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

10.7 Security: Hedge Counterparties

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

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) Schedule 5 (*Hedge Counterparties' Guarantee and Indemnity*);
 - (ii) any Credit Facility Agreement or any Cash Management Facility Agreement;
 - (iii) this Agreement;
 - (iv) any Shared Assurance; or
 - (v) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (i) to (iv) above;
- (c) as otherwise contemplated by Clause 3.3 (*Security and guarantees: Senior Secured Creditors and Second Lien Creditors*); and
- (d) the indemnities and rights of set-off and netting contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities and rights of set-off and netting 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),

provided that, no Security, guarantee, indemnity or other assurance against loss shall be granted in respect of Excluded Swap Obligations.

10.8 Restriction on Enforcement: Hedge Counterparties

Subject to Clause 10.9 (*Permitted Enforcement: Hedge Counterparties*) and Clause 10.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clauses 17.3 (*Enforcement Instructions*) and 17.4 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

10.9 Permitted Enforcement: Hedge Counterparties

- (a) To the extent it is able to do so under the relevant Hedging Agreement, a Hedge Counterparty may terminate, reduce or close-out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:
 - (i) if a Distress Event has occurred;
 - (ii) if:
 - (A) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
 - (1) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
 - (2) an event similar in meaning and effect to a "Force Majeure Event" (as defined in paragraph (B) below),

has occurred in respect of that Hedging Agreement;

- (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) has occurred in respect of that Hedging Agreement; or
 - (C) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, any event similar in meaning and effect to an event described in paragraphs (A) or (B) above has occurred under and in respect of that Hedging Agreement;
 - (iii) if an Insolvency Event of Default has occurred and is continuing in relation to a Debtor which is party to that Hedging Agreement;
 - (iv) if the Majority Senior Secured Creditors (excluding the Hedge Counterparties) and the Majority Second Lien Creditors give prior written consent to that termination or close-out being made;
 - (v) if the Hedge Counterparty and the relevant Debtor consensually agree to close out a transaction under a Hedging Agreement and no Event of Default is continuing under any Senior Secured Debt Document or Second Lien Debt Document;
 - (vi) on or as soon as reasonably practicable following a refinancing (or repayment) and cancellation (or redemption) in full of any specific Financial Indebtedness or other specific exposure, in either case, in respect of which the hedging transaction under the relevant Hedging Agreement has been entered into; or
 - (vii) if the Hedge Counterparties cease to be secured under the Transaction Security Documents without their consent.
- (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 or unremedied for more than 20 days (or such longer notice or grace period as the relevant Hedging Agreement allows) after notice of that default has been given to the relevant Debtor under that Hedging Agreement, with a copy to the Security Agent pursuant to paragraph (k) of Clause 29.3 (*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 hedging transaction under that Hedging Agreement; and
 - (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement (excluding, for the avoidance of doubt, any enforcement of the Transaction Security).
- (c) To the extent permitted under applicable law, after the occurrence of an Insolvency Event in relation to the Parent or any member of the Group, each Hedge Counterparty

shall be entitled to exercise any right it may otherwise have in respect of the Parent or that member of the Group to:

- (i) prematurely close-out or terminate any Hedging Liabilities under any Hedging Agreement with the Parent or that member of the Group owing to it 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 the Parent or that member of the Group in respect of any Hedging Liabilities owing to it;
- (iii) exercise any right of set-off as between any Hedging Liabilities or take or receive any Payment in respect of any Hedging Liabilities of the Parent or that member of the Group owing to it; or
- (iv) claim and prove in any insolvency process of the Parent or that member of the Group for the Hedging Liabilities owing to it.

10.10 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 (acting on the instructions of an Instructing Group) that an Acceleration Event has occurred; and
 - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of an 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 or, as the case may be, Third Party Security Provider 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 transaction under paragraph (b) of Clause 10.9 (*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 transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such transaction following a request to do so by the Security Agent (acting on the instructions of an Instructing Group).

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

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

- (b) The payment of that amount by the Hedge Counterparty to the Security Agent in accordance with paragraph (a) above shall discharge the Hedge Counterparty's obligation to pay that amount to that Debtor.

10.12 Terms of Hedging Agreements

- (a) The Hedge Counterparties (to the extent a Hedge Counterparty is a 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; and
 - (iii) in the event of a termination of a 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 the provisions of 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 the provisions of 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; and
- (iv) 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 10.10 (*Required Enforcement: Hedge Counterparties*).

10.13 Hedge Counterparties' Guarantee and Indemnity

Each Hedging Guarantor agrees that it will be bound by the obligations set out in Schedule 5 (*Hedge Counterparties' Guarantee and Indemnity*).

11 HOLDCO LENDER AND HOLDCO LIABILITIES

11.1 Restriction on Payment: Holdco 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 Holdco Liabilities at any time unless:

- (a) that Payment is permitted under Clause 11.2 (*Permitted Payments: Holdco Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 11.8 (*Permitted Enforcement: Holdco Lenders*).

11.2 Permitted Payments: Holdco Liabilities

The Companies may make Payments in respect of the Holdco Liabilities (whether of principal, interest or otherwise) from time to time when due and the Holdco Lender may accept or agree to accept any such payment at any time if:

- (a)
 - (i) prior to the later of the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date, the Payment is not prohibited from being paid by the Senior Secured Debt Documents and Second Lien Debt Documents and at such time no Future Senior Debt Payment Stop Notice is outstanding; or
 - (ii) prior to the Senior Secured Debt Discharge Date, the Instructing Group consent to that Payment being made; or
 - (iii) after the Senior Secured Debt Discharge Date but prior to the Second Lien Debt Discharge Date, the Majority Second Lien Creditors consent to that Payment being made; or
- (b) the Payment is equal to:
 - (i) the amount of a payment in respect of Future Senior Issuer Liabilities which is then due by the Future Senior Issuer which is a payment referred to in Clause 9.3 (*Permitted Future Senior Debt Payments*) and which is permitted by such Clause to be made at the time (and for the avoidance of doubt this condition will not be satisfied if a Future Senior Debt Payment Stop Notice is in effect) and, if the Future Senior Issuer is not the Holdco Lender, the Holdco Lender makes such Payment available to the Future Senior Issuer to pay such Future Senior Issuer Liabilities; and/or
 - (ii) the amount of a payment in respect of Shareholder Liabilities which is then due by the Parent which is a payment referred to in Clause 13.2 (*Permitted*

Payments: Shareholder Liabilities) and which is permitted by such Clause to be made at the time.

11.3 Payment obligations continue

No member of the Group shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 11.1 (*Restriction on Payment: Holdco Liabilities*) and 11.2 (*Permitted Payments: Holdco Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

11.4 Acquisition of Holdco Liabilities

Prior to the Final Discharge Date, no Debtor shall:

- (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 Holdco Liabilities, unless the relevant Liabilities Acquisition relates to Holdco Liabilities in respect of which a Payment could be made under Clause 11.2 (*Permitted Payments: Holdco Liabilities*) or:

- (i) prior to the Senior Secured Debt Discharge Date, an Instructing Group; or
- (ii) on or after the Senior Secured Debt Discharge Date but prior to the Second Lien Debt Discharge Date, the Majority Second Lien Creditors;
- (iii) after the Second Lien Debt Discharge Date but prior to the Future Senior Debt Discharge Date, the Majority Future Senior Creditors,

consent to that action.

11.5 Amendments and Waivers: Holdco Liabilities

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

- (a) the amendment or waiver is of a minor, technical or administrative nature, is to correct a manifest error or is not materially prejudicial to the Primary Creditors; or
- (b) the amendment or waiver is not prohibited by the, the Senior Secured Debt Documents or the Second Lien Debt Documents; or
- (c) the amendment is to the Holdco Debt Documents evidencing any Proceeds Loan and is to ensure that the payment flows under such document align with those under the Future Senior Debt Documents pursuant to which any Future Senior Debt remains outstanding (as applicable) or otherwise is to ensure that any Payment permitted under this Agreement can be made; or
- (d) prior to the Senior Secured Debt Discharge Date, an Instructing Group consents to that action; or

- (e) on or after the Senior Secured Debt Discharge Date but prior to the Second Lien Debt Discharge Date, the Majority Second Lien Creditors give written consent to that action; or
- (f) after the Second Lien Debt Discharge Date but prior to the Future Senior Debt Discharge Date, the Majority Future Senior Creditors give written consent to that action.

11.6 Security: Holdco Lenders

Prior to the Final Discharge Date, no Holdco Lender may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Holdco Liabilities unless:

- (a) that Security, guarantee, indemnity or other assurance against loss is not prohibited by the Debt Documents;
- (b) prior to the Senior Secured Debt Discharge Date, an Instructing Group consents to that action;
- (c) on or after the Senior Secured Debt Discharge Date but prior to the Second Lien Debt Discharge Date, the Majority Second Lien Creditors give written consent to that action; or
- (d) after the Second Lien Debt Discharge Date but prior to the Future Senior Debt Discharge Date, the Majority Future Senior Creditors give written consent to that action.

11.7 Restriction on enforcement: Holdco Lenders

Subject to Clause 11.8 (*Permitted Enforcement: Holdco Lenders*), the Holdco Lender shall not be entitled to take any Enforcement Action (other than rights of set-off to enable Permitted Holdco Payments) in respect of any of the Holdco Liabilities at any time prior to the Final Discharge Date.

11.8 Permitted Enforcement: Holdco Lender

Prior to the Final Discharge Date and after the occurrence of an Insolvency Event in relation to any member of the Group, the Holdco Lender may only (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 Holdco Lender in accordance with Clause 14.5 (*Filing of claims*)) and if so directed by the Security Agent, exercise any right it may otherwise have against that member of the Group to:

- (a) accelerate any of that member of the Group's Holdco 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 Holdco Liabilities;
- (c) exercise any right of set-off or take or receive any Payment in respect of any Holdco Liabilities of that member of the Group; or
- (d) claim and prove in any insolvency process of that member of the Group for the Holdco Liabilities owing to it,

but shall not take any other Enforcement Action.

12 INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES

12.1 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 12.2 (*Permitted Payments: Intra-Group Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 12.7 (*Permitted Enforcement: Intra-Group Lenders*).

12.2 Permitted Payments: Intra-Group Liabilities

- (a) Subject to paragraph (b) below, the Debtors 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 at any time.
- (b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred and is continuing under any of the Debt Documents unless:
 - (i) prior to the Senior Secured Debt Discharge Date, an Instructing Group consents to that Payment being made; or
 - (ii) after the Senior Secured Debt Discharge Date but prior to the Second Lien Debt Discharge Date, the Majority Second Lien Creditors consent to that Payment being made; or
 - (iii) after the Future Second Lien Debt Discharge Date but prior to the Future Senior Debt Discharge Date, the Majority Senior Creditors consent to that Payment being made; or
 - (iv) that Payment is made to facilitate Payment of the Senior Secured Liabilities or Liabilities owed to the Security Agent; or
 - (v) that Payment is made to facilitate Payment of the Second Lien Liabilities or the Future Senior Liabilities, in each case that are permitted to be paid under the terms of this Agreement at such time; or
 - (vi) if and to the extent that Payment is required to be made by the relevant Debtor in order for the relevant Debtor to comply with any duties of the directors, managing directors or equivalent officers of the relevant Debtor under applicable laws in order to avoid any personal or criminal liability of any director, managing director or equivalent officer of the relevant Debtor (the Debtor having completed all alternative procedures required in the reasonable judgment of its directors and officers to protect such persons from any such personal or criminal liability).
- (c) At any time prior to an Acceleration Event, each Debtor may convert its Intra-Group Liabilities into equity, provided that, to the extent the existing shares of the relevant Debtor are the subject of Transaction Security:

- (i) any new shares issued as a result of such conversion automatically fall within the scope of the existing Transaction Security; or
- (ii) to the extent legally possible and subject to the Agreed Security Principles, equivalent Transaction Security is granted (or offered) to the relevant Secured Parties over any such new shares.

12.3 Payment obligations continue

No member of the Group shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 12.1 (*Restriction on Payment: Intra-Group Liabilities*) and 12.2 (*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.

12.4 Acquisition of Intra-Group Liabilities

- (a) Subject to paragraph (b) 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) (prior to the Senior Secured Notes Discharge Date) the Senior Secured Debt Documents (pursuant to which any Senior Secured Notes remain outstanding);
 - (B) (prior to the Second Lien Notes Discharge Date) the Second Lien Debt Documents (pursuant to which any Second Lien Notes remain outstanding); or
 - (ii) at the time of that action, an Acceleration Event has occurred.
- (c) The restrictions in paragraph (b) above shall not apply if:
 - (i) prior to the Senior Secured Debt Discharge Date, an Instructing Group consents to that action;
 - (ii) on or after the Senior Secured Debt Discharge Date but prior to the Second Lien Debt Discharge Date, the Majority Second Lien Creditors give written consent to that action;
 - (iii) on or after the Second Lien Debt Discharge Date but prior to the Future Senior Debt Discharge Date, the Majority Future Senior Creditors give written consent to that action;

- (iv) that action is taken to facilitate Payment of the Senior Secured Liabilities; or
- (v) that action is taken to facilitate Payment of the Second Lien Liabilities or the Future Senior Liabilities, in each case that are permitted to be paid under the terms of this Agreement at such time.

12.5 Security: Intra-Group Lenders

Prior to the Final Discharge Date, no Intra-Group Lender may 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 permitted under the terms of the Senior Secured Debt Documents, the Second Lien Debt Documents and the Future Senior Debt Documents;
- (b) prior to the Senior Secured Debt Discharge Date, an Instructing Group consents to that action;
- (c) on or after the Senior Secured Debt Discharge Date but prior to the Second Lien Debt Discharge Date, the Majority Second Lien Creditors give written consent to that action; or
- (d) on or after the Second Lien Debt Discharge Date but prior to the Future Senior Debt Discharge Date, the Majority Future Senior Creditors give written consent to that action.

12.6 Restriction on enforcement: Intra-Group Lenders

Subject to Clause 12.7 (*Permitted Enforcement: Intra-Group Lenders*), no Intra-Group Lender 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.

12.7 Permitted Enforcement: Intra-Group Lenders

Prior to the Final Discharge Date and after the occurrence of an Insolvency Event in relation to any member of the Group or grantor of Transaction Security, each Intra-Group Lender may only (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 14.5 (*Filing of claims*)) and shall, if so directed by the Security Agent, 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 of that member of the Group for the Intra-Group Liabilities owing to it,

but shall not take any other Enforcement Action.

12.8 Representations: Intra-Group Lenders

On the date of this Agreement (or, if later, the date of accession by such person), each Intra-Group Lender which is not a Debtor represents and warrants to the Primary Creditors, the Security Agent and the Creditor Representatives that:

- (a) it is incorporated (or, as the case may be, organised or established) and validly existing under the law of its jurisdiction of incorporation (or, as the case may be, organisation or establishment);
- (b) subject to the Legal Reservations and the Perfection Requirements, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of this Agreement does not and will not:
 - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
 - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

12.9 Intra-Group Lenders' Agent

- (a) Each Intra-Group Lender (other than the Companies) irrevocably (to the extent legally permissible) appoints the Companies to act on its behalf as its agents in relation to this Agreement and irrevocably authorises:
 - (i) the Companies on its behalf to supply all information concerning itself contemplated by this Agreement to the other Parties and to give and receive all notices, consents and instructions, to agree, accept and execute on its behalf all documents in connection with this Agreement (including amendments and variations of, and consents under, this Agreement) and to take such other action as may be necessary or desirable under, or in connection with, this Agreement and releases the Companies from any restrictions on representing several persons and self-dealing under any applicable law; and
 - (ii) each other Party to give any notice, demand or other communication to that Intra-Group Lender pursuant to this Agreement to the Companies.
- (b) Each Intra-Group Lender (other than the Companies) confirms that:
 - (i) it will be bound by any action taken by the Companies under, or in connection with, this Agreement; and
 - (ii) each other Party may rely on any action purported to be taken by the Companies on behalf of that Intra-Group Lender.

Each Intra-Group Lender (other than the Companies) hereby releases the Companies from any restrictions on self-dealing and multiple representation under any applicable law.

13 SHAREHOLDER CREDITORS AND SHAREHOLDER LIABILITIES

13.1 Restriction on Payment: Shareholder 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 Shareholder Liabilities at any time unless:

- (a) that Payment is permitted under Clause 13.2 (*Permitted Payments: Shareholder Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 13.8 (*Permitted Enforcement: Shareholder Creditors*).

13.2 Permitted Payments: Shareholder Liabilities

- (a) The Debtors or any other member of the Group (including any Third Party Security Provider) may only make Payments in respect of the Shareholder Liabilities (whether of principal, interest or otherwise) from time to time when due if:
 - (i)
 - (A) the Payment is not prohibited by the Senior Secured Debt Documents, the Second Lien Debt Documents or the Future Senior Debt Documents;
 - (B) prior to the Senior Secured Debt Discharge Date, an Instructing Group gives written consent to the Payment being made;
 - (C) after the Senior Secured Debt Discharge Date but prior to the Second Lien Debt Discharge Date, the Majority Second Lien Creditors give written consent to that Payment being made; or
 - (D) after the Second Lien Debt Discharge Date but prior to the Future Senior Debt Discharge Date, the Majority Future Senior Creditors give written consent to that Payment being made; or
 - (ii) the Payment is equal to the amount of a payment in respect of Future Senior Issuer Liabilities which is then due by the Future Senior Issuer which is a payment referred to in Clause 9.3 (*Permitted Future Senior Debt Payments*) and which is permitted by such Clause to be made at the time (and for the avoidance of doubt this condition will not be satisfied if a Future Senior Debt Payment Stop Notice is in effect).

13.3 Payment obligations continue

No Debtor or other member of the Group (including any Third Party Security Provider) 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 13.1 (*Restriction on Payment: Shareholder Liabilities*) and 13.2 (*Permitted Payments: Shareholder Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

13.4 Acquisition of Shareholder Liabilities

Prior to the Final Discharge Date, no Debtor may, and may not permit any other member of the Group (including any Third Party Security Provider) to:

- (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 Shareholder Liabilities at any time unless:

- (i) the relevant Liabilities Acquisition relates to Shareholder Liabilities in respect of which an equivalent Payment could be made under Clause 12.2 (*Permitted Payments: Shareholder Liabilities*);
- (ii) not prohibited by the Senior Secured Debt Documents, the Second Lien Debt Documents or the Future Senior Debt Documents;
- (iii) prior to the Senior Secured Debt Discharge Date, an Instructing Group has consented to that action;
- (iv) on or after the Senior Secured Debt Discharge Date but prior to the Second Lien Debt Discharge Date, the Majority Second Lien Creditors have consented to that action; or
- (v) after the Second Lien Debt Discharge Date but prior to the Future Senior Debt Discharge Date, the Majority Future Senior Creditors have consented to that action.

13.5 Amendments and Waivers: 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 Shareholder Liabilities unless:

- (a) the amendment or waiver is of a minor, technical or administrative nature, is to correct a manifest error or is not materially prejudicial to the interests of the Primary Creditors;
- (b) prior to the Senior Secured Debt Discharge Date, the prior written consent of an Instructing Group is obtained;
- (c) on or after the Senior Secured Debt Discharge Date but prior to the Second Lien Debt Discharge Date, the prior written consent of the Majority Second Lien Creditors is obtained; or
- (d) after the Second Lien Debt Discharge Date but prior to the Future Senior Debt Discharge Date, the prior written consent of the Majority Future Senior Creditors is obtained.

13.6 Security: Shareholder Creditors

Prior to the Final Discharge Date, the Shareholder Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Shareholder Liabilities other than as not prohibited by the Senior Secured Debt Documents, the Second Lien Debt Documents and the Future Senior Debt Documents.

13.7 Restriction on enforcement: Shareholder Creditors

Subject to Clause 13.8 (*Permitted Enforcement: Shareholder Creditors*), none of the Shareholder Creditors shall be entitled to take any Enforcement Action in respect of any of the Shareholder Liabilities at any time prior to the Final Discharge Date.

13.8 Permitted Enforcement: Shareholder Creditors

Prior to the Final Discharge Date and after the occurrence of an Insolvency Event in relation to the Parent or any member of the Group or grantor of Transaction Security, each Shareholder Creditor may only (unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Shareholder Creditor in accordance with Clause 14.5 (*Filing of claims*)), exercise any right it may otherwise have against the Parent or that member of the Group to:

- (a) accelerate any of the Parent or that member of the Group's 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 the Parent or that member of the Group in respect of any Shareholder Liabilities;
- (c) exercise any right of set-off or take or receive any Payment in respect of any Shareholder Liabilities of the Parent or that member of the Group; or
- (d) claim and prove in any insolvency process of the Parent or that member of the Group for the Shareholder Liabilities owing to it,

but shall not take any other Enforcement Action.

13.9 Representations: Shareholder Creditor

On the date of this Agreement (or, if later, the date of accession by such person), each Shareholder Creditor which is not a Debtor represents and warrants to the Primary Creditors, the Security Agent and the Creditor Representatives that:

- (a) it is incorporated (or, as the case may be, organised or established) and validly existing under the law of its jurisdiction of incorporation (or, as the case may be, organisation or establishment);
- (b) subject to the Legal Reservations and the Perfection Requirements, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of this Agreement does not and will not:
 - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
 - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

14 EFFECT OF INSOLVENCY EVENT

14.1 Credit Facility Cash Cover

This Clause 14.1 is subject to Clause 20.3 (*Treatment of Credit Facility Cash Cover, Cash Management Facility Cash Cover and Credit Facility Lender Cash Collateral*) and, in the case of a Notes Trustee, to Clause 25.5 (*Turnover obligations*).

14.2 Payment of distributions

- (a) Without limitation to Clause 15 (*Turnover of Receipts*) and Clause 20 (*Application of Proceeds*), after the occurrence of an Insolvency Event, any party entitled to receive a

distribution out of the assets of the Parent or the relevant member of the Group in respect of Liabilities owed to that Party, shall, to the extent it is able to do so, including pursuant to applicable law and regulation (and without causing any personal and/or criminal liability of any managing director of any Debtor, the Parent or any member of the Group), direct the person responsible for the distribution of the assets of the Parent or the relevant member of the Group to pay that distribution to the Security Agent until the Liabilities owing to the Secured Parties have been paid in full.

- (b) The Security Agent shall apply distributions paid to it under paragraph (a) above in accordance with Clause 20 (*Application of Proceeds*).

14.3 Set-Off

- (a) Subject to paragraph (b) below, to the extent that the Parent or any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event 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 20 (*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 from a Permitted Gross Amount of a Multi-account Overdraft Facility to or towards its Designated Net Amount;
 - (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 Agreement Netting by a Hedging Ancillary Lender.

14.4 Non-cash distributions

If the Security Agent or any other Secured Party receives a distribution in a 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.

14.5 Filing of claims

Without prejudice to any Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that the netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount), after the occurrence of an Insolvency Event each Creditor irrevocably authorises the Security Agent (acting in accordance with Clause 14.7 (*Security Agent instructions*)), on its behalf, to:

- (a) take any Enforcement Action (in accordance with the terms of this Agreement) against the Parent or the relevant member of the Group;

- (b) demand, sue, prove and give receipt for any or all of the Parent or the relevant member of the Group's Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of the Parent or the relevant 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 the Parent or the relevant member of the Group's Liabilities.

14.6 Creditors' actions

Each Creditor will:

- (a) do all things that the Security Agent (acting in accordance with Clause 14.7 (*Security Agent Instructions*)) requests in order to give effect to this Clause 14.6; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 14.6 or if the Security Agent (acting in accordance with Clause 14.7 (*Security Agent Instructions*)) 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 14.7 (*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 14.7 (*Security Agent Instructions*)) may reasonably require) to enable the Security Agent to take such action.

14.7 Security Agent instructions

For the purposes of Clause 14.2 (*Payment of Distributions*), Clause 14.5 (*Filing of claims*) and Clause 14.6 (*Creditors' actions*) the Security Agent shall act:

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

14.8 Limitation by Applicable Laws

Each of the provisions of this Clause 14.8 shall apply only to the extent permitted by applicable laws.

15 TURNOVER OF RECEIPTS

15.1 Credit Facility Cash Cover

This Clause 15 is subject to Clause 20.3 (*Treatment of Credit Facility Cash Cover, Cash Management Facility Cash Cover and Credit Facility Lender Cash Collateral*) and, in the case of a Notes Trustee, to Clause 25.5 (*Turnover obligations*).

15.2 Turnover by the Creditors

Subject to Clause 15.3 (*Exclusions*), Clause 15.4 (*Permitted assurance and receipts*) and, in the case of a Notes Trustee, to Clause 25.5 (*Turnover obligations*), if at any time prior to the Final Discharge Date any Creditor receives or recovers:

- (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 20 (*Application of Proceeds*);
- (b) other than where Clause 14.3 (*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 paragraphs (a) and (b) above, and other than where Clause 14.3 (*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 Debtor or member of the Group (including any Third Party Security Provider) (other than after the occurrence of an Insolvency Event in respect of that Debtor or member of the Group (including any Third Party Security Provider)); or
 - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,

other than, in each case, any amount received or recovered in accordance with Clause 20 (*Application of Proceeds*);

- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 20 (*Application of Proceeds*);
 - (e) other than where paragraph (a) of Clause 14.3 (*Set-Off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any Debtor, any Third Party Security Provider or member of the Group which is not in accordance with Clause 20 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that Debtor, any Third Party Security Provider or member of the Group,
- that Creditor will,
- (f) in relation to receipts and recoveries not received or recovered by way of set-off:
 - (i) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and separate from other assets, property or funds and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement; and
 - (ii) 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; and

- (g) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement,

provided that nothing in this Clause 15.2 shall require any Future Senior Creditor to turnover to the Security Agent any amount received by it in respect of Future Senior Issuer Liabilities, as applicable, or any proceeds from the Enforcement of the Senior Notes Only Security in accordance with Clause 20.4.

15.3 Exclusions

Clause 15.2 (*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 Agreement 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 Facility (to the extent that that netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount).

15.4 Permitted assurance and receipts

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

- (a) arrange with any person which is not a member of the Group or a Holding Company of 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 is not prohibited by the relevant, Senior Secured Debt Documents, Second Lien Debt Documents and Future Senior Debt Documents and is not in breach of Clause 10.5 (*No Acquisition of Hedging Liabilities*) or Clause 11.4 (*Acquisition of Holdco Liabilities*) or Clause 12.4 (*Acquisition of Intra-Group Liabilities*) or Clause 13.4 (*Acquisition of Shareholder Liabilities*) and that Creditor shall not be obliged to account to any other Party for any sum received by it as a result of that action.

15.5 Sums received by Debtors and Third Party Security Providers

- (a) If any of the Debtors or the Third Party Security Providers 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 or, as the case may be, Third Party Security Provider will:
 - (i) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay that amount to the Security Agent (in respect of any Debtor

incorporated, established or organised in Russia, to the extent permitted by applicable law) for application in accordance with the terms of this Agreement; and

- (ii) 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.
- (b) It is hereby agreed that in relation to any jurisdiction the courts of which would not recognize or give effect to the trust expressed to be created by this Clause 15.5, the relationship of the Security Agent to the Debtor and/or Third Party Security Provider shall be construed as one of principal and agent.

15.6 Saving provision

If, for any reason, any of the trusts expressed to be created in this Clause 15 should fail or be unenforceable, the affected Creditor, Subordinated Creditor, Debtor or Third Party Security Provider will promptly pay an amount equal to that receipt or recovery to the Security Agent (in respect of any Debtor incorporated, established or organised in Russia, to the extent permitted by applicable law) to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

15.7 Non-creation of charge

Nothing in this Clause 15 or any other provision of this Agreement is intended to or shall create a charge or other security.

15.8 Turnover of Non-Cash Consideration

For the purposes of this Clause 15, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to Clause 15.2 (*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 19.2 (*Cash value of Non-Cash Recoveries*).

16 REDISTRIBUTION

16.1 Recovering Creditor's rights

- (a) Any amount paid by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 14 (*Effect of Insolvency Event*) or Clause 15 (*Turnover of Receipts*) shall be treated as having been paid by the relevant Debtor or, as the case may be, Third Party Security Provider and distributed to the Security Agent, the Creditor Representatives, the Arrangers and the Primary 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 or Third Party Security Provider, as between the relevant Debtor or, as the case may be, Third Party Security Provider 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 to the extent permitted by law (and excluding, for the avoidance of doubt, where any such treatment, increase and/or indemnity would result in a breach of any applicable financial assistance rules or corporate benefit principles) as not having been paid by that Debtor and the liability of the relevant Debtor or, as the case may be, Third Party Security Provider to the Recovering Creditor shall be increased (or shall be treated as

not having been reduced) by an amount equal to the Shared Amount made by such Recovering Creditor to the Security Agent pursuant to paragraph (a) above and the relevant Debtor or, as the case may be, Third Party Security Provider shall indemnify the relevant Recovering Creditor against any loss it may suffer as a result of paying such Shared Amount to the Security Agent.

16.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor or, as the case may be, Third Party Security Provider and is repaid by that Recovering Creditor to that Debtor or, as the case may be, Third Party Security Provider, then:
 - (i) each Sharing Creditor and, in the case of any Notes Trustee, subject to Clause 25.5 (*Turnover obligations*) shall, 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 received by it (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 or Third Party Security Provider and each relevant Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Debtor or Third Party Security Provider.
- (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.

16.3 Deferral of Subrogation

- (a) No Creditor, Debtor or Third Party Security Provider 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 any Debtor or Third Party Security Provider, owing to each Creditor) have been irrevocably paid in full.
- (b) No Subordinated Creditor will exercise any rights which it may have to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor until such time as all of the Liabilities owing to each Creditor have been irrevocably paid in full.

17 ENFORCEMENT OF SECURITY

17.1 Credit Facility Cash Cover

This Clause 17 is subject to Clause 20.3 (*Treatment of Credit Facility Cash Cover, Cash Management Facility Cash Cover and Credit Facility Lender Cash Collateral*).

17.2 Enforcement

The Secured Parties shall not give instructions to the Security Agent as to the Enforcement of the Transaction Security other than in accordance with this Agreement.

17.3 Enforcement Instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security or taking any other Enforcement Action unless instructed otherwise by:

 - (i) the Instructing Group;
 - (ii) if required by paragraph (d) below, the Majority Second Lien Creditors; or
 - (iii) if required by paragraph (e) below, the Majority Future Senior Creditors.
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms:

 - (i) the Instructing Group;
 - (ii) to the extent permitted to enforce or to require the enforcement of Transaction Security prior to the Senior Secured Debt Discharge Date under Clause 7.9 (*Permitted Second Lien Debt Enforcement*), the Majority Second Lien Creditors; or
 - (iii) to the extent permitted to enforce or to require the enforcement of Shared Security prior to the later of the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date under Clause 9.9 (*Permitted Future Senior Debt Enforcement*) (as applicable), the Majority Future Senior Creditors,

may give or refrain from giving instructions to the Security Agent as to the Enforcement of the Transaction Security.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 17.3 (*Enforcement Instructions*).
- (d) Prior to the Senior Secured Debt Discharge Date:

 - (i) if an Instructing Group has instructed the Security Agent not to enforce or to cease enforcing the Transaction Security; or
 - (ii) in the absence of instructions from an Instructing Group ,

and, in each case, an Instructing Group has not required any Debtor or Third Party Security Provider to make a Distressed Disposal, the Security Agent shall give effect to any instructions to enforce the Transaction Security which the Majority Second Lien Creditors are then entitled to give to the Security Agent under Clause 7.9 (*Permitted Second Lien Debt Enforcement*) provided that if the Security Agent has commenced Enforcement Action on the instructions of the Instructing Group, the Majority Second Lien Creditors shall not be entitled to instruct the Security Agent to cease such Enforcement Action, save that the Majority Second Lien Creditors may take control of any such enforcement process where they are permitted to do so in accordance with Clause 7.9 (*Permitted Second Lien Debt Enforcement*) following which they can give instructions to the Security Agent to take Enforcement Action which is not prejudicial nor inconsistent with nor would jeopardise any Enforcement Action commenced by the

Majority Senior Secured Creditors or which is in relation to the Transaction Security which is not being enforced by the Majority Senior Secured Creditors.

- (e) Prior to the later of the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date:
 - (i) if an Instructing Group has instructed the Security Agent not to enforce or to cease enforcing the Shared Security; or
 - (ii) in the absence of instructions from an Instructing Group,

and, in each case, an Instructing Group has not required any Debtor or Third Party Security Provider to make a Distressed Disposal, the Security Agent shall give effect to any instructions to enforce the Shared Security which the Majority Future Senior Creditors are then entitled to give to the Security Agent under Clause 9.9 (*Permitted Future Senior Debt Enforcement*) (as applicable) provided that if the Security Agent has commenced Enforcement Action on the instructions of the Instructing Group, the Majority Future Senior Creditors shall not be entitled to instruct the Security Agent to cease such Enforcement Action, save that the Majority Future Senior Creditors may take control of any such enforcement process where they are permitted to do so in accordance with Clause 9.9 (*Permitted Future Senior Debt Enforcement*), following which they can give instructions to the Security Agent to take Enforcement Action which is not prejudicial nor inconsistent with nor would jeopardise any Enforcement Action commenced by the Majority Senior Secured Creditors or Majority Second Lien Creditors or which is in relation to the Transaction Security which is not being enforced by the Majority Senior Secured Creditors or the Majority Second Lien Creditors.

- (f) Notwithstanding paragraph (d) above, if at any time any Second Lien Creditor or its Creditor Representative is then entitled to give the Security Agent instructions to enforce the Transaction Security pursuant to paragraph (d) and the Majority Second Lien Creditors do not give such instruction and do not indicate any intention to give such instruction, then the Instructing Group may give instructions to the Security Agent to enforce the Transaction Security as the Instructing Group sees fit in lieu of any instructions to enforce given by the Second Lien Creditors or its Creditor Representative under this Agreement and the Security Agent shall act on such instructions received from the Instructing Group.
- (g) Notwithstanding paragraph (e) above, if at any time any Future Senior Creditor or its Creditor Representative is then entitled to give the Security Agent instructions to enforce the Shared Security pursuant to paragraph (e) and the Majority Future Senior Creditors do not give such instruction and do not indicate any intention to give such instruction, then the Instructing Group may give instructions to the Security Agent to enforce the Shared Security as the Instructing Group sees fit in lieu of any instructions to enforce given by the Senior Creditors or its Creditor Representative under this Agreement and the Security Agent shall act on such instructions received from the Instructing Group.

17.4 Manner of enforcement

If the Transaction Security is being enforced or other action as to Enforcement is being taken pursuant to Clause 17.3 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security or take other action as to Enforcement in such manner (including, without limitation, the selection of any administrator of any Debtor or Third Party Security Provider to be appointed by the Security Agent):

- (a) as the Instructing Group shall instruct;

- (b) prior to the Senior Secured Debt Discharge Date, if:
 - (i) the Security Agent has, pursuant to paragraph (d) of Clause 17.3 (*Enforcement Instructions*), received instructions given by the Majority Second Lien Creditors to enforce the Transaction Security; and
 - (ii) the Instructing Group has not given instructions as to the manner of enforcement of the Transaction Security,
 as the Majority Second Lien Creditors shall instruct; or
- (c) prior to the later of the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date, if:
 - (i) the Security Agent has, pursuant to paragraph (e) of Clause 17.3 (*Enforcement Instructions*), received instructions given by the Majority Future Senior Creditors to enforce the Shared Security; and
 - (ii) the Instructing Group has not given instructions as to the manner of enforcement of the Shared Security,
 as the Majority Future Senior Creditors shall instruct. .

17.5 Exercise of voting rights

- (a) Subject to paragraph (c) below, each Creditor and each Subordinated Creditor agrees (to the fullest extent permitted by law at the relevant time) with the Security Agent that it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings 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) of this Clause 17.5 (*Exercise of voting rights*) as directed by an Instructing Group provided such instructions have been given in accordance with Clause 17.3 (*Enforcement Instructions*).
- (c) Nothing in this Clause 17.5 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.

17.6 Duties owed

Each of the Secured Parties, the Debtors and the Third Party Security Providers acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security prior to the Final Discharge Date, the duties of the Security Agent and of any Receiver or Delegate owed to the Senior Secured Creditors, the Second Lien Creditors, the Credit Facility Lenders, the Credit Facility Agent, the Cash Management Facility Lenders, the Cash Management Facility Agent, the Hedge Counterparties, the Senior Secured Notes Trustee, the Senior Secured Noteholders, the Second Lien Noteholders, Second Lien Notes Trustee, the Future Pari Passu Creditors, any Future Pari Passu Debt Representative, any Future Second Lien Creditors, any Future Second Lien Debt Representative, the Future Senior Creditors and the Future Senior Debt Representative in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall,

subject to paragraph (c) of Clause 18.3 (*Distressed Disposals*), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors or Third Party Security Providers under general law.

17.7 Waiver of rights

To the extent permitted under applicable law and subject to Clause 17.3 (*Enforcement Instructions*), Clause 17.4 (*Manner of enforcement*), paragraph (c) of Clause 18.3 (*Distressed Disposals*) and Clause 20 (*Application of Proceeds*), each of the Secured Parties, the Debtors and the Third Party Security Providers waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Liabilities which benefit from Transaction Security is so applied.

17.8 Enforcement of Senior Notes Only Security

The Future Senior Creditors shall not give instructions to the Security Agent as to the Enforcement of the Senior Notes Only Security other than in accordance with and subject to the provisions of this Agreement.

17.9 Enforcement Instructions with respect to Senior Notes Only Security

Subject to the terms of paragraph (a)(ii) of Clause 9.9 (*Permitted Future Senior Debt Enforcement*):

- (a) the Security Agent may refrain from enforcing the Senior Notes Only Security or taking any other Enforcement Action in respect of the Future Senior Liabilities unless instructed otherwise by the Majority Future Senior Creditors;
- (b) subject to the Senior Notes Only Security having become enforceable in accordance with its terms, the Majority Future Senior Creditors may give instructions to the Security Agent as to the Enforcement of the Senior Notes Only Security as they see fit; and
- (c) the Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 17.9 (*Enforcement Instructions with respect to Senior Notes Only Security*).

17.10 Manner of enforcement with respect to Senior Notes Only Security

Subject to the terms of paragraph (a)(ii) of Clause 9.9 (*Permitted Future Senior Debt Enforcement*), if the Senior Notes Only Security is being enforced or other action as to Enforcement with respect thereto is being taken pursuant to Clause 17.9 (*Enforcement Instructions with respect to Senior Notes Only Security*), the Security Agent shall enforce the Senior Notes Only Security or take other action as to Enforcement thereof in such manner (including, without limitation, the selection of any administrator of Topco to be appointed by the Security Agent) as the Majority Future Senior Creditors shall instruct.

17.11 Exercise of voting rights with respect to Topco

- (a) Each Subordinated Creditor agrees with the Security Agent that it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to Topco as instructed by the Security Agent.

- (b) The Security Agent shall give instructions for the purposes of paragraph (a) of this Clause 17.11 (*Exercise of voting rights with respect to Topco*) as directed by the Majority Future Senior Creditors provided such instructions have been given in accordance with Clause 17.9 (*Enforcement Instructions with respect to Senior Notes Only Security*).

17.12 Duties owed with respect to Senior Notes Only Security

Each of the Future Senior Creditors, the Debtors and the Third Party Security Providers acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Senior Notes Only Security prior to the Final Discharge Date (in accordance with and subject to the terms of this Agreement), the duties of the Security Agent and of any Receiver or Delegate owed to the Future Senior Creditors and the Future Senior Debt Representative in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Senior Notes Only Security shall be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors and the Third Party Security Providers under general law.

17.13 Waiver of rights

To the extent permitted under applicable law and subject to Clause 17.9 (*Enforcement Instructions with respect to Senior Notes Only Security*), Clause 17.10 (*Manner of enforcement with respect to Senior Notes Only Security*) and Clause 20 (*Application of Proceeds*), each of the Future Senior Creditors, the Debtors and the Third Party Security Providers waives all rights it may otherwise have to require that the Senior Notes Only 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 Senior Notes Only Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Future Senior Liabilities which benefit from Senior Notes Only Security is so applied.

17.14 Alternative Enforcement Actions with respect to Senior Notes Only Security

- (a) After the Security Agent has commenced an Enforcement of the Senior Notes Only Security it shall not accept any subsequent instructions as to Enforcement thereof from anyone other than the Majority Future Senior Creditors that instructed it in respect of such Enforcement regarding any other Enforcement over or relating to the Senior Notes Only Security directly or indirectly the subject of the Enforcement which has been commenced (in the context of an Enforcement relating to the shares in a company, for example, this paragraph would restrict the giving of any instructions as to Enforcement of the Senior Notes Only Security over those shares or to the assets of that company or the shares in or assets of any direct or indirect Subsidiary of that company).
- (b) This Clause 17.14 shall not restrict the right of any other Majority Future Senior Creditors to instruct the Security Agent as to Enforcement of the Senior Notes Only Security that includes any shares or assets which are not directly or indirectly the subject of a prior instruction as to Enforcement.

17.15 Topco Insolvency Event

- (a) After the occurrence of an Insolvency Event of Topco, any Future Senior Creditor entitled to receive a distribution out of the assets of Topco in respect of Future Senior Guarantee Liabilities, shall, to the extent it is able to do so, including pursuant to applicable law and regulation (and without causing any personal and/or criminal liability of any managing director of Topco), direct the person responsible for the distribution of

the assets of Topco to pay that distribution to the Security Agent until the Future Senior Liabilities have been paid in full.

- (b) The Security Agent shall apply distributions paid to it under paragraph (a) above in accordance with Clause 20.4 (*Treatment of Senior Notes Only Security*).

18 PROCEEDS OF DISPOSALS

18.1 In this Clause 18:

- (a) **“Disposal Proceeds”** means the proceeds of a Non-Distressed Disposal; and
- (b) **“Non-Distressed Disposal”** means a disposal of:
 - (i) an asset of a member of the Group; or
 - (ii) an asset which is subject to the Transaction Security or the Senior Notes Only Security,

to a person or persons where:
 - (A) (prior to the Final Discharge Date) two directors of the Companies certify for the benefit of the Security Agent that that disposal and, if applicable, the release of the relevant Transaction Security, are each not prohibited under the Debt Documents; and
 - (B) that disposal is not a Distressed Disposal,

provided that, to the extent such disposal is to another member of the Group and the terms of the Debt Documents require the relevant transferee to grant Transaction Security over the relevant asset following completion of such disposal, such transferee shall remain obliged to grant (and shall grant) such Transaction Security in accordance with the terms of the Debt Documents.

18.2 Non-Distressed Disposals

- (a) If a disposal of an asset is a Non-Distressed Disposal, the Security Agent is irrevocably authorised and instructed (at the cost of the relevant Debtor or Third Party Security Provider and without any consent, sanction, authority or further confirmation from any Creditor, Debtor or Third Party Security Provider) but subject to paragraph (c) below:
 - (i) to release the relevant Transaction Security, the Senior Notes Only Security or any other relevant claim (including relating to a Debt Document) over any relevant assets;
 - (ii) where any relevant asset consists of shares in the capital of a Debtor, to release the Transaction Security, the Senior Notes Only Security or any other claim (relating to a Debt Document) over that Debtor or its assets and the shares in and assets of any of its Subsidiaries;
 - (iii) to execute and deliver or enter into any release of the Transaction Security, the Senior Notes Only Security or any claim described in paragraphs (i) and (ii) above and/or issue any certificates of non-crystallisation of any floating charge or any consent to dealing, or return any physical collateral or other documents, in each case as reasonably requested by the Companies; and

- (iv) to take any other action on behalf of the relevant Secured Party in connection with such transaction that is not prohibited under the relevant Debt Documents,

provided that, in the case of a disposal which is a Non-Distressed Disposal made to the Parent or within the Group, to the extent that replacement Transaction Security or Senior Notes Only Security is required from the transferee under the terms of the Debt Documents, such Transaction Security or Senior Notes Only Security shall, to the extent reasonably practicable and subject to the Agreed Security Principles (subject to any requirements relating to the release retaking, amendment or extension of the Transaction Security or Senior Notes Only Security under the Debt Documents) be granted at substantially the same time as (or before) the relevant disposal is effected.

- (b) For the avoidance of doubt, the Security Agent may rely on a certification from the Companies that the disposal is as described in paragraphs (a)(i) to (a)(iv) above.
- (c) If that Non-Distressed Disposal is not made, each release of Transaction Security, Senior Notes Only Security or any claim described in paragraph (a) above shall have no effect and the Transaction Security, the Senior Notes Only 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 proceeds from a transaction under paragraph (a) above are required to be applied in mandatory prepayment of any of the Senior Secured Liabilities or to be offered to Secured Parties pursuant to the terms of the relevant Senior Secured Debt Documents then such proceeds shall be applied in or towards Payment of such Senior Secured Liabilities or shall be offered to the relevant Secured Parties in accordance with the terms of the relevant Senior Secured Debt Documents and the consent of any other Party shall not be required for that application.

18.3 Distressed Disposals

If a Distressed Disposal is being effected, the Security Agent is irrevocably authorised and instructed (at the cost of the relevant Debtor or Third Party Security Provider) and without any consent, sanction, authority or further confirmation from any Creditor, Subordinated Creditor, Debtor or Third Party Security Provider:

- (a) Release of Transaction Security /non-crystallisation certificates: to release the Transaction Security, or any other claim over that asset and execute and deliver or enter into any release of that Transaction Security, or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
- (b) Release of liabilities and Transaction Security on a share sale (Debtor): if the asset which is disposed of consists of shares in the capital of a Debtor, to release (or instruct to release):
 - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
 - (ii) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and

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

on behalf of the relevant Creditors, Debtors and Third Party Security Providers;

- (c) Release of liabilities and 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 a Debtor, to release (or instruct to release):

- (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:

- (A) its Borrowing Liabilities;

- (B) its Guarantee Liabilities; and

- (C) its Other Liabilities;

- (ii) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and

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

on behalf of the relevant Creditors and Debtors;

- (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 of a Debtor and the Security Agent (acting in accordance with Clause 18.4(f) (*Distressed Disposal – Application of Proceeds*)) 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 any Subsidiary of that Debtor or Holding Company on the basis that:

- (A) (if the Security Agent (acting in accordance with Clause 18.4(f) (*Distressed Disposal – Application of Proceeds*) below) does not intend that any transferee of those Liabilities or Debtor Liabilities (the “**Transferee**”) will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all (and not part only) of those Liabilities owed to the Primary Creditors 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 Party for the purposes of this Agreement;

- (B) (if the Security Agent (acting in accordance with Clause 18.4(f) (*Distressed Disposal – Application of Proceeds*) below) does intend that any Transferee will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of:

- (I) all (and not part only) of the Liabilities owed to the Primary Creditors; and
- (II) all or part of any other Liabilities and the Debtor Liabilities,

on behalf of, in each case, the relevant Creditors, Debtors and Third Party Security Providers; and

- (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 of a Debtor (the “**Disposed Entity**”) and the Security Agent (acting in accordance with Clause 18.4(f) (*Distressed Disposal – Application of Proceeds*)) decides to transfer to another Debtor or Holding Company of a Debtor (the “**Receiving Entity**”) all or any part of the Disposed Entity’s obligations or any obligations of any Subsidiary of that Disposed Entity in respect of:

- (i) the Intra-Group Liabilities; or
- (ii) the Holdco Liabilities; or
- (iii) the Debtor Liabilities,

to execute and deliver or enter into any agreement to:

- (A) agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities, Holdco Liabilities or Debtor Liabilities on behalf of the relevant Intra-Group Lenders, the Holdco Lender and the relevant Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
- (B) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities, Holdco Liabilities or Debtor Liabilities on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities, Holdco Liabilities or Debtor Liabilities are to be transferred.

18.4 Distressed Disposals and Debt Disposals – Application of Proceeds

- (a) The net proceeds of each Distressed Disposal (and the net proceeds of any disposal of Liabilities or Debtor Liabilities pursuant to paragraph (d) of Clause 18.3 (*Distressed Disposals*) above) shall be paid to the Security Agent for application in accordance with Clause 20 (*Application of Proceeds*) as if those proceeds were the proceeds of an enforcement of the Transaction Security and, to the extent that any disposal of Liabilities or Debtor Liabilities has occurred pursuant to paragraph (d)(ii)(B) of Clause 18.3 (*Distressed Disposals*) above, as if that disposal of Liabilities or Debtor Liabilities had not occurred.
- (b) In the case of a Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (d)(ii)(B) of Clause 18.3 (*Distressed Disposals*) above) effected by or at the request of the Security Agent (acting in accordance with paragraph (f) below), 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 such Distressed Disposal or disposal of Liabilities in order to achieve a higher price).

- (c) If the Instructing Group is constituted by the Majority Second Lien Creditors (or if the Distressed Disposal is conducted pursuant to instructions from the Majority Second Lien Creditors), Clause 18.3 (*Distressed Disposals*) above shall not apply to a release or disposal of Senior Secured Liabilities unless sufficient cash proceeds are received from the relevant Distressed Disposal and applied towards the irrevocable discharge in full of all the Senior Secured Liabilities.
- (d) If before the Second Lien Debt Discharge Date, provided that the Companies and/or any Second Lien Guarantors have outstanding Second Lien Liabilities, a Distressed Disposal is being effected such that the Second Lien Liabilities owed by the Second Lien Guarantors and Transaction Security over shares in the Companies or assets of a Second Lien Guarantor or the Companies will be released under Clause 18.3(*Distressed Disposals*), it is a further condition to the release that either:
 - (i) the Second Lien Debt Representative has approved the release on the instructions of the Majority Second Lien Creditors; or
 - (ii) each of the following conditions are satisfied:
 - (A) the proceeds of such sale or disposal are in cash (or substantially in cash);
 - (B) all present and future obligations owed to the Senior Secured Creditors under the Senior Secured Debt Documents by a member of the Group, all of whose shares are pledged in favour of the Senior Secured Creditors are sold or disposed of pursuant to such Enforcement Action, are unconditionally released and discharged or sold or disposed of concurrently with such sale (and such obligations are not assumed by the purchaser or one of its Affiliates), and all Security under the Security Documents in respect of the assets that are sold or disposed of is simultaneously and unconditionally released and discharged concurrently with such sale; and
 - (C) such sale or disposal is made:
 - (1) pursuant to a Competitive Process in which the Second Lien Creditors (or a representative acting on their behalf) shall be entitled to participate as bidder or financier to the potential purchaser and shall be provided equal information rights as any other bidder, subject to applicable securities law (and for the avoidance of doubt in which the Senior Secured Creditors or a representative acting on their behalf are also entitled to participate);
 - (2) pursuant to any process or proceedings approved or supervised by or on behalf of any court of law which has jurisdiction and where there is a determination of value by or on behalf of such court; or
 - (3) where reputable internationally-recognised investment bank or international accounting firm or other reputable, third party professional firm which is regularly engaged in providing valuations of businesses or assets similar or comparable (a “**Financial Advisor**”) has delivered an opinion 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 and the circumstances giving rise to such sale, provided that the liability of such Financial Advisor may be limited to the amount of its fees in respect of such engagement.

- (e) Before the Future Senior Notes Discharge Date, it is a further condition to any Distressed Disposal or release of any of the Future Senior Liabilities under Clause 18.3 (*Distressed Disposals*) that either:
 - (i) the Future Senior Debt Representative has approved the release on the instructions of the Future Senior Debt Required Holders; or
 - (ii) each of the following conditions are satisfied:
 - (A) the proceeds of such sale or disposal are in cash (or substantially in cash);
 - (B) all present and future obligations owed to the Secured Parties under the Senior Secured Debt Documents and the Second Lien Debt Documents by the Future Senior Issuer or a member of the Group, all of whose shares are pledged in favour of the Secured Parties are sold or disposed of pursuant to such Enforcement Action, are unconditionally released and discharged or sold or disposed of concurrently with such sale (and such obligations are not assumed by the purchaser or one of its Affiliates), and all Security under the Security Documents in respect of the assets that are sold or disposed of is simultaneously and unconditionally released and discharged concurrently with such sale; and
 - (C) such sale or disposal is made:
 - (1) pursuant to a Competitive Process in which the Future Senior Creditors (or a representative acting on their behalf) shall be entitled to participate as bidder or financier to the potential purchaser and shall be provided equal information rights as any other bidder, subject to applicable securities law (and for the avoidance of doubt in which the Senior Secured Creditors, the Second Lien Creditors or, in each case, a representative acting on their behalf are also entitled to participate);
 - (2) pursuant to any process or proceedings approved or supervised by or on behalf of any court of law which has jurisdiction and where there is a determination of value by or on behalf of such court; or
 - (3) where a Financial Advisor has delivered an opinion 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 and the circumstances giving rise to such sale, provided that the liability of such Financial Advisor may be limited to the amount of its fees in respect of such engagement.

- (f) If prior to the Senior Secured Debt Discharge Date, a Distressed Disposal is being effected at a time when the Majority Second Lien Creditors are entitled to give, and have given, instructions under Clause 17.3 (*Enforcement Instructions*) the Security Agent is not authorised to release any Debtor, Subsidiary or Holding Company that is a member of the Group from any Borrowing Liabilities or Guarantee Liabilities or Other Liabilities owed to any Senior Secured Creditor unless those Borrowing Liabilities or Guarantee Liabilities or Other 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, Cash Management Facility LC, a Cash Management Facility or an Ancillary Facility, made the subject of cash collateral arrangements acceptable to the relevant Future Senior Creditor), following that release.
- (g) If prior to the later of the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date, a Distressed Disposal is being effected at a time when the Majority Future Senior Creditors are entitled to give, and have given, instructions under Clause 17.3 (*Enforcement Instructions*) the Security Agent is not authorised to release any Debtor, Subsidiary or Holding Company that is a member of the Group from any Borrowing Liabilities or Guarantee Liabilities or Other Liabilities owed to any Senior Secured Creditor or Second Lien Creditor unless those Borrowing Liabilities or Guarantee Liabilities or Other Liabilities and any other Senior Secured Liabilities or Second Lien Liabilities will be paid (or repaid) in full (or, in the case of any contingent Liability relating to a Letter of Credit, Cash Management Facility LC, a Cash Management Facility or an Ancillary Facility, made the subject of cash collateral arrangements acceptable to the relevant Future Senior Creditor), following that release.
- (h) Where Borrowing Liabilities, Guarantee Liabilities and/or Other Liabilities would otherwise be released pursuant to Clause 18.3 (*Distressed Disposals*) or this Clause 18.4, the Creditor concerned may (acting in good faith) elect to have those Borrowing Liabilities, Guarantee Liabilities and/or Other Liabilities transferred to a Holding Company of the Parent, in which case the Security Agent is irrevocably authorised (at the cost of the relevant Debtor or the Companies and without any consent, sanction, authority or further confirmation from any Creditor or Debtor) to execute such documents as are required to so transfer those Borrowing Liabilities, Guarantee Liabilities and/or Other Liabilities.
- (i) Where Borrowing Liabilities, Guarantee Liabilities and/or Other Liabilities in relation to the Second Lien Debt, Future Senior Debt or Subordinated Liabilities would otherwise be released pursuant to Clause 18.3 (*Distressed Disposals*) or this Clause 18.4:
 - (i) in the case of a Distressed Disposal, the Instructing Group may; or
 - (ii) in the case of a Senior Notes Only Distressed Disposal, the Majority Future Senior Creditors may,

by notice to the Security Agent, the Second Lien Debt Representative and the Future Senior Debt Representative, elect to have those Liabilities transferred to another Debtor, in which case the Security Agent is irrevocably authorised (to the extent legally possible and at the cost of the relevant Debtor and without any consent, sanction, authority or further confirmation from any Creditor or Debtor) to execute such documents as are required to so transfer those Liabilities in relation to the Second Lien Debt and/or Future Senior Debt (as applicable).

- (j) Other than in connection with a Senior Notes Only Distressed Disposal, for the purposes of paragraphs (b), (c), (d) and (e) of Clause 18.3 (*Distressed Disposals*) and paragraphs (b), (d) and (e) of this Clause 18.4, the Security Agent shall act:
 - (i) if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 17.4 (*Manner of enforcement*); and
 - (ii) in any other case:
 - (A) on the instructions of the Instructing Group; or
 - (B) in the absence of any such instructions, as the Security Agent sees fit (which may include taking no action).
- (k) For the purposes of this Clause 18.4, “entitled to participate” means:
 - (i) any offer, or indication of a potential offer, that a Second Lien Creditor or Future Senior Creditor (or a representative acting on behalf of each respective party) (as applicable) makes shall be considered by the Financial Advisor against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder; and
 - (ii) each Second Lien Creditors or Future Senior Creditor (as applicable) that is considering making an offer in any Competitive Process is provided with the same information (including any due diligence reports and access to management that is being provided to any other bidder at the same stage of the process),

provided that, notwithstanding the foregoing, the Second Lien Creditors and Future Senior Creditors shall not have access to any due diligence report commissioned by the Senior Secured Creditors or any agent or adviser on their behalf, whether or not any such due diligence report is addressed to, or capable of being relied upon by, any member of the Group or any Holding Company of the Companies, which relates to the possible implementation of any Enforcement Action, debt restructuring and/or sales process which may or will involve the release and/or compromise of any of the Second Lien Liabilities and/or Future Senior Liabilities, any guarantees given for the Second Lien Liabilities and/or Future Senior Liabilities or any Transaction Security (the “**Senior Secured Enforcement Advice**”). Where any due diligence report that has been shared with any potential third-party purchaser under a public auction includes any Senior Secured Enforcement Advice, the Second Lien Creditors and Future Senior Creditors shall have access to the relevant report with the Senior Secured Enforcement Advice redacted. Senior Secured Creditors shall have access to reports commissioned by the Second Lien Creditors and Future Senior Creditors on the same basis only.
- (l) Subject to the operation of paragraph (m) of this Clause 18.4 (*Distressed Disposal-Application of Proceeds*) below:
 - (i) if a Senior Notes Only Distressed Disposal is being effected, the Security Agent is irrevocably authorised and instructed (at the cost of the relevant Debtor, Topco or Third Party Security Provider) and without any consent, sanction, authority or further confirmation from any Creditor, Subordinated Creditor, Debtor or Third Party Security Provider to take all such actions as contemplated by Clause 18.3 (*Distressed Disposal*) as if a reference to Distressed Disposal

was a reference to “Senior Notes Only Distressed Disposal”, but also including the release of any Senior Notes Only Security;

- (ii) the net proceeds of each Senior Notes Only Distressed Disposal (and the net proceeds of any disposal of Liabilities or Debtor Liabilities pursuant to paragraph (d) of Clause 18.3 (*Distressed Disposals*) above in connection with such Senior Notes Only Distressed Disposal) shall be paid to the Security Agent for application in accordance with paragraph (b) of Clause 20.4 (*Treatment of Senior Notes Only Security*) as if those proceeds were the proceeds of an enforcement of the Senior Notes Only Security and, to the extent that any disposal of Liabilities or Debtor Liabilities has occurred pursuant to paragraph (d)(ii)(B) of Clause 18.3 (*Distressed Disposals*) pursuant to sub-paragraph (ii) above, as if that disposal of Liabilities or Debtor Liabilities had not occurred; and
- (iii) in the case of a Senior Notes Only Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (d)(ii)(B) of Clause 18.3 (*Distressed Disposals*) pursuant to sub-paragraph (ii) above, in connection with any Senior Notes Only Distressed Disposal) effected by or at the request of the Security Agent (acting in accordance with paragraph (e) of Clause 18.4 (*Distressed Disposal- Application of Proceeds*)), 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 such Senior Notes Only Distressed Disposal or disposal of Liabilities in order to achieve a higher price).
- (m) If prior to the later of the Senior Secured Debt Discharge Date and the Second Lien Debt Discharge Date, a Senior Notes Only Distressed Disposal is being effected the Security Agent is not authorised to release any Debtor, Subsidiary or Holding Company that is a member of the Group from any Borrowing Liabilities or Guarantee Liabilities or Other Liabilities owed to any Senior Secured Creditor or Second Lien Creditor unless those Borrowing Liabilities or Guarantee Liabilities or Other Liabilities and any other Senior Secured Liabilities or Second Lien Liabilities will be paid (or repaid) in full (or, in the case of any contingent Liability relating to a Letter of Credit, Cash Management Facility LC, a Cash Management Facility or an Ancillary Facility, made the subject of cash collateral arrangements acceptable to the relevant Future Senior Creditor), following that release.
- (n) For the purposes of paragraphs (i) and (m) above, the Security Agent shall act on the instructions of the Majority Future Senior Creditors, subject to the provisions of Clause 9.8 (*Restrictions on enforcement by Future Senior Creditor*).

18.5 Creditors’, Subordinated Creditors’, Debtors’ and Third Party Security Providers’ actions

- (a) Each Creditor and, until the Final Discharge Date, each Debtor and Third Party Security Provider will:
 - (i) do all things (or direct its Creditor Representative to do all things) that the Security Agent requests in order to give effect to this Clause 18 (*Proceeds of Disposals*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by this Clause 18 (*Proceeds of Disposals*)); and

- (ii) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 18 (*Proceeds of Disposals*) or if the Security Agent requests that any Creditor (or Creditor Representative if so directed by its Creditors), Debtor or Third Party Security Provider 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 18.2 (*Non-Distressed Disposals*) or in the case of a Distressed Disposal in accordance with paragraph (a) of Clause 18.4 (*Distressed Disposal – Application of Proceeds*) as the case may be.

- (b) Until the Final Discharge Date, each Debtor, each Intra-Group Lender and each Third Party Security Provider irrevocably authorises and instructs the Security Agent (without any consent, sanction, authority or further confirmation from any Debtor, Intra-Group Lender or Third Party Security Provider) to be its agent to do anything which that Debtor, Intra-Group Lender or Third Party Security Provider has authorised the Security Agent to do under this Agreement or is itself required to do under this Agreement but has failed to do (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases and disposals contemplated by Clause 18.3 (*Distressed Disposals*), Clause 18.4 (*Distressed Disposal – Application of Proceeds*) or this Clause 18.5).
- (c) Each Creditor (other than any Intra-Group Lender) irrevocably authorises and instructs the Security Agent (without any consent, sanction, authority or further confirmation from any Creditor (other than any Intra-Group Lender)) to be its agent to do anything which that Creditor (other than any Intra-Group Lender) has authorised the Security Agent to do or is itself required to do to give effect to the releases, transfers, assignments and disposals contemplated by Clause 18.3 (*Distressed Disposals*), Clause 18.4 (*Distressed Disposal – Application of Proceeds*) or this Clause 18.5.

18.6 Appointment of Financial Adviser

- (a) Without prejudice to Clause 22.6 (*Security Agent's discretions*), the Security Agent may engage, or approve the engagement of, (in each case on such terms as it may consider appropriate (including, without limitation, restrictions on that Financial Adviser's liability and the extent to which any advice, valuation or opinion may be relied on or disclosed)), pay for and rely on the services of a Financial Advisor to provide advice, a valuation or an opinion in connection with:
 - (i) a Distressed Disposal or a Debt Disposal;
 - (ii) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal; or
 - (iii) any amount of Non-Cash Consideration which is subject to Clause 15.2 (*Turnover by the Creditors*).
- (b) For the purposes of appointing a Financial Adviser pursuant to paragraph (a) above, the Security Agent shall act:
 - (i) on the instructions of the Instructing Group if the Financial Adviser is providing a valuation for the purposes of Clause 19.2 (*Cash value of Non-Cash Recoveries*); or

- (ii) otherwise in accordance with Clause 22.5 (*Security Agent's actions*).

19 NON-CASH RECOVERIES

19.1 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 20.2 (*Prospective liabilities*):

- (a) distribute those Non-Cash Recoveries pursuant to Clause 20 (*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.

19.2 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 Advisor appointed by the Security Agent taking into account any notional conversion made pursuant to Clause 20.6 (*Currency conversion*).
- (b) If any Non-Cash Recoveries are distributed pursuant to Clause 20 (*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.

19.3 Security Agent and Non-Cash Recoveries

- (a) Subject to paragraph (b) below and to Clause 19.4 (*Alternative to Non-Cash Consideration*), if, pursuant to Clause 20.1 (*Order of application*), the Security Agent receives Non-Cash Recoveries for application towards the discharge of any Liabilities, the Security Agent shall apply those Non-Cash Recoveries in accordance with the relevant Debt Documents as if they were Cash Proceeds.
- (b) The Security Agent may:
 - (i) use any reasonably suitable method of distribution, as it may determine in its discretion, to distribute those Non-Cash Recoveries in the order of priority that would apply under the relevant Debt Documents 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 it shall think fit for later application pursuant to paragraph (a) above.

19.4 Alternative to Non-Cash Consideration

- (a) If any Non-Cash Recoveries are to be distributed pursuant to Clause 20 (*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 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 Entitled 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 any Facility Agent or Notes Trustee 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 Credit Facility Agent or Notes Trustee or Creditor of its identity and its status as a Cash Only Creditor; and
 - (iii) to the extent notified pursuant to paragraph (ii) above, the Security Agent shall not distribute any of those Non-Cash Recoveries to that Cash Only Creditor.
- (d) Subject to Clause 19.5 (*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 20 (*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 Creditor shall, following a request by the Security Agent (acting in accordance with Clause 22.5 (*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.

19.5 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 15 (*Turnover of Receipts*) 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 20 (*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 19.4 (*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 20 (*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.

20 APPLICATION OF PROCEEDS

20.1 Order of application

Subject to Clause 20.2 (*Prospective liabilities*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document (including without limitation, pursuant to Clause 22.27 (*Parallel Debt*)) or in connection with the realisation or Enforcement of all or any part of the Transaction Security (and, in relation to the Future Senior Creditors, Shared Security) or otherwise paid to the Security Agent for application pursuant to this Clause 20 (for the purposes of this Clause 20, 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 20 (*Application of Proceeds*)), in the following order of priority (in each case, to the extent that Security has been given in favour of such obligations):

- (a) first, in payment of any sums owing to the Security Agent, any Receiver or any Delegate, as the case may be;
- (b) second, in discharging *pari passu* and *pro rata*, any sums owing to (i) any Notes Trustee Amounts payable to a Notes Trustee and then (ii) each Creditor Representative (to the extent not included in (i) above and excluding any Hedge Counterparty as its own Creditor Representative) for the costs and expenses of each such Creditor Representative and any receiver, attorney or agent appointed by such Creditor Representative under any Transaction Security Document or this Agreement;
- (c) third, *pari passu* and *pro rata*, in or towards payment of all costs and expenses incurred by the Senior Secured Creditors, the Second Lien Creditors and, in relation to any Shared Security, the Future Senior Creditors in connection with the realisation or enforcement of Transaction Security taken in accordance with the terms of this Agreement;

- (d) fourth, pari passu and pro rata in or towards payment to the Cash Management Facility Agent on its own behalf or on behalf of the Cash Management Facility Creditors, Credit Facility Agent on its own behalf or on behalf of the Credit Facility Creditors, the Senior Secured Notes Trustee on its own behalf or on behalf of the Senior Secured Noteholders, the Hedge Counterparties and to the relevant Creditor Representative on its own behalf or on behalf of the Future Pari Passu Creditors for application towards any unpaid costs and expenses incurred by or on behalf of any Cash Management Facility Creditors, Credit Facility Lenders, Hedging Counterparties, Senior Secured Noteholders and Future Pari Passu Creditors in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of the Transaction Security Documents and this Agreement;
- (e) fifth, pari passu and pro rata to the Cash Management Facility Agent on behalf of the Cash Management Facility Creditors for application towards the discharge of the Cash Management Facility Liabilities, to the Credit Facility Agent on behalf of the Cash Facility Creditors for application towards the discharge of the Credit Facility Liabilities (in accordance with the Credit Facility Documents), to the Senior Secured Notes Trustee on behalf of the Senior Secured Noteholders for application towards the discharge of the Senior Secured Notes Liabilities (in accordance with the relevant Senior Secured Notes Document), to the relevant Creditor Representative on behalf of the Future Pari Passu Creditors for application towards the discharge of the Future Pari Passu Debt (in accordance with the Future Pari Passu Debt Documents) and to the Hedge Counterparties for application towards the discharge of the Hedging Liabilities (in proportion to each Hedge Counterparty's Hedge Proportion), on a pro rata basis as between such liabilities;
- (f) sixth, and only to the extent that the Second Lien Creditors are entitled to the relevant Recoveries, pari passu and pro rata in or towards payment to each Second Lien Debt Representative on behalf of the Second Lien Creditors it represents for application towards any unpaid costs and expenses incurred by or on behalf of any Second Lien Creditors in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of the Transaction Security Documents and this Agreement;
- (g) seventh, pari passu and pro rata, in or towards payment to:
 - (i) the Second Lien Notes Trustee (on its own behalf and on behalf of the Second Lien Notes Creditors); and
 - (ii) each Second Lien Creditor Representative(s) (on its own behalf and on behalf of the Future Second Lien Creditors);
 for application towards the discharge of:
 - (A) the Second Lien Notes Liabilities in accordance with the terms of the Second Lien Notes Documents; and
 - (B) the Future Second Lien Liabilities owed to the Second Lien Creditor Representatives and the Future Second Lien Creditors in accordance with the terms of the Future Second Lien Debt Documents;
 on a pro rata basis as between paragraphs (A) and (B) above;
- (h) eighth, and only to the extent that the Future Senior Creditors are entitled to the relevant Recoveries, pari passu and pro rata in or towards payment to the relevant Creditor

Representative on behalf of the Future Senior Creditors for application towards any unpaid costs and expenses incurred by or on behalf of any Future Senior Creditors in connection with any realisation or enforcement of the Shared Security taken in accordance with the terms of the Transaction Security Documents and this Agreement ;

- (i) ninth, and only to the extent that the Future Senior Creditors are entitled to the relevant Recoveries, pari passu and pro rata to the relevant Creditor Representative on behalf of the Future Senior Creditors for application towards the discharge of the Future Senior Debt (in accordance with the Future Senior Debt Documents); and
- (j) tenth, after the Final Discharge Date, in payment of the surplus (if any) to the relevant Debtor or other person entitled to it.

20.2 Prospective liabilities

Following a Distress Event or any enforcement of the Senior Notes Only Security, the Security Agent may, in its discretion, hold any amount of the Recoveries (or, as applicable, any Senior Notes Only Recoveries) in a suspense or impersonal account(s) in the name of the Security Agent with one of the Credit Facility Lenders or the Credit Facility Agent and for so long as the Security Agent (in its sole discretion) deems appropriate until otherwise directed by the Instructing Group in the case of Recoveries (or the Majority Future Senior Creditors in the case of Senior Notes Only Recoveries) (the interest being credited to the relevant account) for later application under Clause 20.1 (*Order of Application*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Liabilities, the Arranger Liabilities or the Creditor Representative Liabilities (in each case only to the extent entitled to share in such Recoveries or Senior Notes Only Recoveries),

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

20.3 Treatment of Credit Facility Cash Cover, Cash Management Facility Cash Cover and Credit Facility Lender Cash Collateral

- (a) Nothing in this Agreement shall prevent:
 - (i) 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; or
 - (ii) any Cash Management Facility Lender (or any Cash Management Facility Agent on its behalf) taking any Enforcement Action in respect of any Cash Management Facility Cash Cover which has been provided for it in accordance with the relevant Cash Management 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) first, in payment of any sums owing to the Security Agent, any Receiver or any Delegate, as the case may be;
 - (ii) to the Relevant Issuing Bank and Relevant Ancillary Lender towards the discharge of the Credit Facility Liabilities for which that Credit Facility Cash Cover was provided; and
 - (iii) the balance, if any, in accordance with Clause 20.1 (*Order of Application*).
- (c) To the extent that any Cash Management 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 Cash Management 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) first, in payment of any sums owing to the Security Agent, any Receiver or any Delegate, as the case may be;
 - (ii) to the Relevant Issuing Bank and Relevant Ancillary Lender towards the discharge of the Cash Management Facility Liabilities for which that Cash Management Facility Cash Cover was provided; and
 - (iii) the balance, if any, in accordance with Clause 20.1 (*Order of Application*).
- (d) To the extent that any Credit Facility Cash Cover is held with the Relevant Issuing Bank or 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.
- (e) To the extent that any Cash Management Facility Cash Cover is held with the Relevant Issuing Bank or 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 Cash Management Facility Cash Cover.
- (f) 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.

20.4 Treatment of Senior Notes Only Security

- (a) Subject to Clause 9.8 (*Restrictions on enforcement by Future Senior Creditors*) and paragraph (a)(ii) of Clause 9.9 (*Permitted Future Senior Debt Enforcement*), the Majority Future Senior Creditors shall not be prevented by the terms of any Debt Documents from taking any Enforcement Action in respect of any Future Senior Issuer Liabilities and/or Senior Notes Only Security which is taken in accordance with the terms set out in this Agreement.
- (b) Subject to Clause 20.2 (*Prospective liabilities*), all amounts from time to time received or recovered by the Security Agent in connection with the realisation or Enforcement of all or any part of the Senior Notes Only Security (for the purposes of this Clause 20, the “**Senior Notes Only 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 20 (*Application of*

Proceeds)), in the following order of priority (in each case, to the extent that Security has been given in favour of such obligations):

- (i) first, in payment of the following amounts in the following order: (i) in payment of any sums owing to the Security Agent, any Receiver or any Delegate. as the case may be; (ii) *pari passu* and *pro rata* any sums owing to any Notes Trustee Amounts payable to any Future Senior Notes Trustee, as the case may be; and then (iii) *pari passu* and *pro rata* to each Creditor Representative of the Future Senior Creditors of the costs and expenses of each such Creditor Representative and any receiver, attorney or agent appointed by such Creditor Representative under any Senior Notes Only Security Document or this Agreement;
- (ii) second, *pari passu* and *pro rata* in or towards payment to the relevant Creditor Representative on behalf of the Future Senior Creditors for application towards any unpaid costs and expenses incurred by or on behalf of any Future Senior Creditors in connection with any realisation or enforcement of the Senior Notes Only Security taken in accordance with the terms of the Senior Notes Only Security Documents and this Agreement or;
- (iii) third, *pari passu* and *pro rata* to the relevant Creditor Representative on behalf of the Future Senior Creditors for application towards the discharge of the Future Senior Debt (in accordance with the Future Senior Debt Documents); and
- (iv) fourth, after the Future Senior Debt Discharge Date, in payment of the surplus (if any) to the relevant Debtor or other person entitled to it.

20.5 Investment of proceeds

- (a) Prior to the application of the proceeds of the Security Property in accordance with Clause 20.1 (*Order of Application*) the Security Agent may, in its discretion, hold all or part of those proceeds in a 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 until otherwise directed by the Instructing Group (the interest being credited, or debited from, 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 20.
- (b) Prior to the application of the proceeds of the Senior Notes Only Security Property in accordance with paragraph (b) of Clause 20.4 (*Treatment of Senior Notes Only Security*) the Security Agent may, in its discretion, hold all or part of those proceeds in a 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 until otherwise directed by the Majority Future Senior Creditors (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 20.

20.6 Currency Conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at the Security Agent's Spot Rate of Exchange.

- (b) The obligations of any Debtor or Third Party Security Provider 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.

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

20.8 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, Relevant Ancillary Lender or Relevant Cash Management Facility Creditor in accordance with paragraph (b)(i) or (c)(i) of Clause 20.3 (*Treatment of Credit Facility Cash Cover, Cash Management Facility Cash Cover and Credit Facility Lender Cash Collateral*); or
 - (iii) shall be made directly to the Hedge Counterparties,and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Creditor Representatives or the Hedge Counterparties under paragraph (a) of this Clause 20.8 in the same currency as that in which the Liabilities owing to the relevant Creditor are denominated.

20.9 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 a common base currency (decided in its discretion by the Security Agent), that notional conversion to be made at the spot rate at which the Security Agent is able to purchase the notional base currency with the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made; and
- (b) assume that all moneys received or recovered as a result of the enforcement or realisation of the Security Property and the Senior Notes Only Security Property are applied in discharge of the Liabilities in accordance with the terms of the Debt Documents under which those Liabilities have arisen.

21 EQUALISATION

21.1 Equalisation Definitions

For the purposes of this Clause 21:

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

“Exposure” means a Senior Exposure, a Second Lien Exposure and/or a Future Senior Exposure.

“Senior Exposure” means:

- (a) in relation to a Senior Secured Creditor, the Senior Secured Liabilities owed by the Debtors to that Senior Secured Creditor;
- (b) in relation to a Credit Facility Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations outstanding under the Credit Facility at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims between Credit Facility Lenders pursuant to any loss-sharing arrangement in the Credit Facility Document 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 Credit Facility Document 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 (and in the amount) that Credit Facility Cash Cover has been provided in respect of that amount and is available to that Credit Facility Lender pursuant to the relevant Credit Facility Cash Cover Document; and
 - (ii) 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 in respect of that amount and is available to the party it has been provided for pursuant to the relevant Credit Facility Cash Cover Document;
- (c) in relation to a Cash Management Facility Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations (as defined below) outstanding under the Cash Management 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 between Cash Management Facility Lender pursuant to any loss sharing arrangement in the Cash Management Facility Documents 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 Cash Management Facility Agreement 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 Lender of any provision of an Ancillary Document;
 - (ii) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that Cash Management Facility Cash Cover has been provided by a Debtor in respect of that amount and is available to that Cash Management Facility Lender pursuant to the relevant Cash Management Facility Document; and
 - (iii) any amount outstanding in respect of a Letter of Credit to the extent (and in the amount) that Cash Management Facility Cash Cover has been provided by a Debtor in respect of that amount and is available to the relevant Cash Management Facility Lender pursuant to the relevant Cash Management Facility Document; and
- (d) in relation to a Hedge Counterparty:
- (i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement giving rise to Hedging Liabilities 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 giving rise to Hedging Liabilities 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 Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement.

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

“**Future Senior Exposure**” means in relation to a Future Senior Creditor, the Future Senior Liabilities owed by the Debtors to that Future Senior Creditor.

“**Utilisation**” means a “**Utilisation**” under and as defined in the Credit Facility Document.

21.2 Implementation of equalisation

The provisions of this Clause 21 (*Equalisation*) 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 21 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 (i) revised Exposures and the relevant Senior Secured Creditors shall make appropriate adjustment payments amongst themselves respectively, (ii) revised Second Lien Exposures and the relevant Second Lien Creditors shall make appropriate adjustment payments amongst themselves and (iii) revised Future Senior Exposures and the relevant Future Senior Creditors shall make appropriate adjustment payments amongst themselves.

21.3 Equalisation

- (a) If, for any reason, any Senior Secured Liabilities remain unpaid after the Enforcement Date and after the application of Recoveries, as defined in, and in accordance with Clause 20.1 (*Order of application*) and the resulting losses are not borne by the Senior Secured Creditors in the proportions which their respective Exposures at the Enforcement Date bore to each other, the Senior Secured Creditors will make such payments, from such Recoveries (as defined in Clause 20.1 (*Order of application*)) actually applied, 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 Lien Liabilities remain unpaid after the Enforcement Date and after the application of Recoveries, as defined in, and in accordance with Clause 20.1 (*Order of application*) and the resulting losses are not borne by the Second Lien Creditors in the proportions which their respective Exposures at the Enforcement Date bore to each other, the Second Lien Creditors will make such payments, from such Recoveries (as defined in Clause 20.1 (*Order of application*)) actually applied, 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 Future Senior Liabilities remain unpaid after the Enforcement Date and after the application of Recoveries, as defined in, and in accordance with Clause 20.1 (*Order of application*) and the resulting losses are not borne by the Future Senior Creditors in the proportions which their respective Senior Exposures at the Enforcement Date bore to each other, the Future Senior Creditors will make such payments, from such Recoveries (as defined in Clause 20.1 (*Order of application*)) actually applied, amongst themselves as the Security Agent shall require to put the Future Senior Creditors in such a position that (after taking into account such payments) those losses are borne in those proportions.

21.4 Turnover of enforcement proceeds

- (a) If:
- (i) the Security Agent, the Senior Secured Notes Trustee or any relevant Creditor Representative relating to any Senior Secured Creditor is not entitled, for reasons of applicable law, to pay amounts received pursuant to enforcement of the Transaction Security to the Senior Secured Creditors but is entitled to distribute those amounts to Creditors (such Creditors, the “**Receiving Creditors**”) who, in accordance with Clause 20.1 (*Order of application*) of this Agreement, are subordinated in right and priority of payment to the Senior Secured Creditors; and
 - (ii) the Senior Secured Debt Discharge Date has not yet occurred (nor would occur after taking into account such payments),

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

- (b) If:
- (i) the Security Agent, the Second Lien Notes Trustee or any relevant Creditor Representative relating to any Second Lien Creditor is not entitled, for reasons of applicable law, to pay amounts received pursuant to enforcement of the Transaction Security to the Second Lien Creditors but is entitled to distribute those amounts to Creditors (such Creditors, the “**Receiving Subordinated Non-Senior Secured Creditors**”) who, in accordance with Clause 20.1 (*Order of application*) of this Agreement, are subordinated in right and priority of payment to the Second Lien Creditors; and
 - (ii) the Second Lien Debt Discharge Date has not yet occurred (nor would occur after taking into account such payments),

then the Receiving Subordinated Non-Senior Secured Creditors shall make such payments to the Second Lien Creditors as the Security Agent shall require to place the Senior Secured Creditors in the position they would have been in had such amounts been available for application against the remaining Second Lien Liabilities.

- (c) If:
- (i) the Security Agent, any Future Senior Debt Representative or any relevant Creditor Representative relating to any Future Senior Creditor is not entitled, for reasons of applicable law, to pay amounts received pursuant to enforcement of the Transaction Security to the Future Senior Creditors but is entitled to distribute those amounts to Creditors (such Creditors, the “**Receiving Subordinated Non-Senior Creditors**”) who, in accordance with Clause 20.1 (*Order of application*) of this Agreement, are subordinated in right and priority of payment to the Future Senior Creditors; and
 - (ii) the Future Senior Debt Discharge Date has not yet occurred (nor would occur after taking into account such payments),

then the Receiving Subordinated Non-Senior Creditors shall make such payments to the Future Senior Creditors as the Security Agent shall require to place the Future Senior

Creditors in the position they would have been in had such amounts been available for application against the Future Senior Liabilities.

21.5 Notification of Exposure

Before each occasion on which it intends to implement the provisions of this Clause 21 (*Equalisation*), the Security Agent shall send notice to:

- (a) in respect of the Exposure only, the Senior Secured Notes Trustee (on behalf of the Senior Secured Noteholders), the relevant Creditor Representative (on behalf of any other Senior Secured Creditor), the Second Lien Notes Trustee (on behalf of the Second Lien Noteholders), the relevant Creditor Representative (on behalf of any other Second Lien Creditor) and each Hedge Counterparty requesting that it notify it of, respectively, its Exposure and that of each Senior Secured Creditor and Second Lien Creditor respectively (if any); and
- (b) in respect of the Senior Exposure only, the relevant Creditor Representative (on behalf of any other Future Senior Creditors) requesting that it notify it of its Senior Exposure and that of each Future Senior Creditor (if any).

21.6 Default in payment

If a Creditor fails to make a payment due from it under this Clause 21 (*Equalisation*), the Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Secured Creditors, Second Lien Creditors or Future Senior Creditors to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by the applicable Creditor(s) in respect of costs) but shall have no liability or obligation towards such Senior Secured Creditor, any other Senior Secured Creditor, any Second Lien Creditor, any Future Senior Creditors or Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

22 THE SECURITY AGENT

22.1 Appointment by Secured Parties

- (a) Each Secured Party other than the Security Agent irrevocably appoints the Security Agent in accordance with the following provisions of this Clause 22 to act as its agent and trustee, joint and several creditor and/or beneficiary of a parallel debt (as the case may be) (including the parallel debt under Clause 22.27 (*Parallel Debt (Covenant to pay the Security Agent)*)) under this Agreement and with respect to the Security Documents and (if applicable) the Senior Notes Only Security Documents, and irrevocably authorises the Security Agent (whether acting as trustee or agent, as applicable) on its behalf (with express faculty of self-contracting, granting sub-power of attorney, sub-empowering or multiple representation) to:
 - (i) execute each Security Document and (if applicable) the Senior Notes Only Security Documents expressed to be executed by the Security Agent on its behalf; and
 - (ii) perform such duties, obligations and responsibilities and exercise such rights, powers, authorities and discretions under this Agreement and the Security Documents and (if applicable) the Senior Notes Only Security Documents as are specifically delegated to the Security Agent by the terms thereof, together with such rights, powers and discretions as are incidental thereto, including, without limitation, enforcing the Transaction Security in accordance with the

terms of this Agreement and the relevant Transaction Security Documents or Senior Notes Only Security Document.

- (b) Each of the Secured Parties (other than the Security Agent) hereby confirms that:

 - (i) the Security Agent has authority to accept on its behalf the terms of any reliance letter or engagement letter relating to any reports or letters provided in connection with the Senior Secured Debt Documents, the Second Lien Debt Documents or the Future Senior Debt Documents or the transactions contemplated by those Debt Documents, to bind it in respect of those reports or letters and to sign that reliance letter or engagement letter on its behalf and to the extent that reliance letter or engagement letter has already been entered into ratifies those actions; and
 - (ii) it accepts the terms and qualifications set out in that reliance letter or engagement letter
- (c) The Security Agent shall be and is hereby authorised by each other Secured Party (and to the extent it may have any interest therein, every other Party) to execute on behalf of itself and each Secured Party and other Party (where relevant) following the occurrence of the Senior Secured Debt Discharge Date, the Second Lien Debt Discharge Date and the Future Senior Debt Discharge Date, releases of all Security granted under the Transaction Security Documents.
- (d) Each other Secured Party acknowledges and agrees that the Security Agent may enter in its name and on its behalf as direct representative into contractual arrangements pursuant to or in connection with the Security Documents and (if applicable) the Senior Notes Only Security Documents to which the Security Agent is also a party (in its capacity as agent, trustee or otherwise) and expressly authorises the Security Agent.
- (e) The Security Agent is released from any applicable restrictions on entering into any transaction as a representative of:

 - (i) two or more principals contracting with each other; and
 - (ii) one or more principals with whom it is contracting in its own name.

22.2 Trust

- (a) Subject to paragraph (b) below, other than in respect of any Security Documents and (if applicable) the Senior Notes Only Security Documents where the relevant Security Property cannot be granted to the Security Agent by way of trust, the Security Agent declares that it shall (to the extent possible under applicable law) hold the Security Property and the Senior Notes Only Security Property on trust for the relevant Secured Parties on the terms set out in this Agreement.
- (b) In respect of any Security Property created or expressed to be created under or pursuant to any Security Documents and (if applicable) the Senior Notes Only Security Documents where the relevant Security Property cannot be granted to the Security Agent by way of trust, the Security Agent declares that, in respect of such Security Document and (if applicable) Senior Notes Only Security Document, it shall (to the extent possible under applicable law) hold such Security Property as agent for the relevant Secured Parties on the terms contained in this Agreement.

- (c) Each other Secured Party agrees that the Security Agent shall have only those duties, obligations and responsibilities which are expressly specified in this Agreement and/or the Security Documents and/or the Senior Notes Only Security Documents to which the Security Agent is a Party (and no others shall be implied). The Security Agent's duties under this Agreement and/or the Security Documents and/or the Senior Notes Only Security Documents to which the Security Agent is a Party are solely of a mechanical and administrative nature.

22.3 No independent power

- (a) Subject to Clause 20.3 (*Treatment of Credit Facility Cash Cover, Cash Management Facility Cash Cover and Credit Facility Lender Cash Collateral*) the Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Security Documents (other than the facility agreement in relation to any other Credit Facility or any Cash Management Facility Agreement, the Senior Secured Notes, the Senior Secured Notes Guarantees, the Senior Secured Notes Indenture (pursuant to which any Senior Secured Notes remain outstanding), the indenture or facility agreement in relation to any Future Pari Passu Debt, the Second Lien Notes, the Second Lien Notes Guarantees, the Second Lien Notes Indenture (pursuant to which any Second Lien Notes remain outstanding), any Future Second Lien Debt and the indenture or facility agreement in relation to any Future Senior Debt) or make or receive any declarations in relation thereto except through the Security Agent.
- (b) The relevant Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Senior Notes Only Security or to exercise any rights or powers arising under the Senior Notes Only Security Documents (other than the indenture or facility agreement in relation to any Future Senior Debt) or make or receive any declarations in relation thereto except through the Security Agent.

22.4 Instructions to Security Agent and exercise of discretion

- (a) Subject to paragraph (e) below, the Security Agent shall act in accordance with any instructions given to it by the Instructing Group or, if so instructed by the Instructing Group, refrain from exercising any right, power, authority or discretion vested in it as Security Agent and shall be entitled to assume that (i) any instructions received by it from the Creditor Representatives, the Creditors or a group of Creditors are duly given in accordance with the terms of the Debt Documents and (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.
- (b) The Security Agent shall not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (a) above (or, if this Agreement stipulates the matter is a decision for any Creditor Representative, other Creditors or group of Creditors, in accordance with the instructions given to it by that Creditor Representative, Creditor or group of Creditors).
- (c) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Instructing Group (or, if this Agreement stipulates the matter is a decision for any Creditor Representative, other Creditors or group of Creditors, in accordance with the instructions given to it by that Creditor Representative, Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities or discretions and the Security Agent (acting in its sole discretion) may refrain from acting unless and until those instructions or clarification are received by it to its satisfaction.

- (d) Save as provided in Clause 17 (*Enforcement of Security*), any instructions given to the Security Agent by the Instructing Group shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.
- (e) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in this Agreement (including, for the avoidance of doubt, (x) with respect to the Senior Notes Only Security Documents where instructions shall be obtained solely from the Majority Future Senior Creditors and (y) pursuant to paragraphs (b) or (c) of Clause 17.4 (*Manner of enforcement*));
 - (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 Parties including, without limitation, the provisions set out in Clauses 22.6 (*Security Agent's discretions*) to Clause 22.23 (*Disapplication of the Trustee Acts*);
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 18.2 (*Non-Distressed Disposals*);
 - (B) Clause 20.1 (*Order of application*);
 - (C) Clause 20.2 (*Prospective liabilities*);
 - (D) Clause 20.3 (*Treatment of Credit Facility Cash Cover, Cash Management Facility Cash Cover and Credit Facility Lender Cash Collateral*);
 - (E) Clause 20.4 (*Treatment of Senior Notes Only Security*); and
 - (F) Clause 20.7 (*Permitted Deductions*).
- (f) In exercising any discretion to exercise a right, power or authority under the Debt Documents to which it is party where either:
 - (i) it has not received any instructions from the Instructing Group (or where required the Majority Second Lien Creditor or Majority Future Senior Creditors) as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to paragraph (e)(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 Parties; 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 primary regard to the interests of all the Senior Secured Creditors.

- (g) For the avoidance of doubt, any reference to the Security Agent acting (or refraining from acting) on the instructions of the Instructing Group shall refer to (in respect of each group of Creditors):
 - (i) in the case of the Senior Secured Notes Document, such instructions being delivered to the Security Agent by the Senior Secured Notes Trustee; and
 - (ii) in the case of the Second Lien Notes Documents such instructions being delivered to the Security Agent by the Second Lien Notes Trustee.
- (h) If giving effect to instructions given by the Instructing Group would (in the Security Agent's opinion) have an effect equivalent to an amendment of this Agreement, 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 the amendment of this Agreement.

22.5 Security Agent's Actions

Without prejudice to the provisions of Clause 17 (*Enforcement of Security*) and Clause 22.4 (*Instructions to Security Agent and exercise of discretion*), the Security Agent may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Debt Documents as it considers in its discretion to be appropriate. The Security Agent shall have all the rights, privileges and immunities which gratuitous trustees have or may have in England, even though it is entitled to remuneration.

22.6 Security Agent's discretions

- (a) The Security Agent may:
 - (i) assume (unless it has received actual notice to the contrary from a Hedge Counterparty, one of the Creditor Representatives or the Companies) that:
 - (A) no Default has occurred and no Debtor or Third Party Security Provider is in breach of or default under its obligations under any of the Debt Documents;
 - (B) any right, power, authority or discretion vested by any Debt Document in any person has not been exercised; and
 - (C) any notice made by the Companies is made on behalf of and with the consent and knowledge of all the Debtors;
 - (ii) if it receives any instructions or directions from the Instructing Group, any Creditors or any group of Creditors assume that:
 - (A) the instructions or directions are duly given in accordance with the terms of the Debt Documents;
 - (B) unless it has received notice of revocation, that those instructions or directions have not been revoked; and

- (C) if it receives any instructions or directions to act in relation to the Transaction Security, all applicable conditions under the Debt Documents for taking that action have been satisfied;
- (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 or 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.
- (iv) engage and pay for the advice or services of any legal advisers, accountants, tax advisers, surveyors or other experts (whether obtained by the Security Agent or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable;
- (v) without prejudice to the generality of paragraph (iv) above or paragraph (vi) below, at any time engage and pay for the services of any legal advisers to act as independent counsel to the Security Agent if the Security Agent in its reasonable opinion deems this to be desirable;
- (vi) rely on the advice or services of any legal advisers, 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;
- (vii) rely upon any representation, communication, notice or document believed by it to be genuine and appropriately authorised;
- (viii) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Debt Documents) until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents), whether by way of payment in advance or otherwise and such indemnification or security in the case of the Senior Secured Notes Creditors, being granted by the ultimate beneficial owners of the Senior Secured Notes and not by (x) the Senior Secured Notes Trustee or (y) prior to definitisation of the Senior Secured Notes, the registered owner of the Senior Secured Notes for all costs, losses and liabilities which it may incur in so acting;
- (ix) act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:
 - (A) be liable for any error of judgment made by any such person; or
 - (B) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Security Agent's gross negligence or wilful misconduct; and

- (x) notwithstanding any other provision of any Debt Document to the contrary, not 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.
- (b) 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.

22.7 Security Agent's obligations

The Security Agent shall promptly:

- (a) forward to (i) each Creditor Representative and (ii) each Hedge Counterparty the contents of any notice or document received by it from any Debtor or Third Party Security Provider under any Debt Document;
- (b) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party provided that the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party;
- (c) inform (i) each Creditor Representative and (ii) each Hedge Counterparty of the occurrence of any Default or any default by a Debtor or Third Party Security Provider in the due performance of or compliance with its obligations under any Debt Document of which the Security Agent has received notice from any other party to this Agreement; and
- (d) to the extent that a Party (other than the Security Agent) is required to calculate a Base Currency Amount, and upon a request by that Party, notify that Party of the relevant Security Agent's Spot Rate of Exchange.

22.8 Excluded obligations

Notwithstanding anything to the contrary expressed or implied in the Debt Documents, the Security Agent shall not:

- (a) be bound to enquire as to (i) whether or not any Default has occurred, (ii) the performance, default or any breach by a Debtor or Third Party Security Provider of its obligations under any of the Debt Documents or (iii) whether any other event specified in any Debt Document has occurred;
- (b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of fiduciary duty or duty of confidentiality;

- (d) have any duty to ensure:
 - (i) that any payment or other financial benefit in respect of any of the Security Property, the Senior Notes Only Security Property or any Liabilities are duly and punctually paid, received or collected; or
 - (ii) the taking up of any (or any offer of any) stocks, shares, rights, moneys or other property accruing or offered at any time by way of interest, dividend, redemption, bonus, rights, preference, option, warrant or otherwise in respect of any of the Security Property, the Senior Notes Only Security Property or any Liabilities; or
- (e) have or be deemed to have any relationship of trust or agency with, any Debtor, Third Party Security Provider or Subordinated Creditor.

22.9 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.

22.10 Exclusion of liability

- (a) None of the Security Agent, any Receiver or any Delegate shall accept responsibility or be liable for:
 - (i) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent 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;
 - (ii) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property, the Senior Notes Only 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 the Senior Notes Only Security Property;
 - (iii) any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of taking or refraining from taking any action in relation to any of the Debt Documents, the Security Property, the Senior Notes Only Security Property or otherwise, whether in accordance with an instruction from the Instructing Group, the Majority Future Senior Creditors, any Creditor Representative, or Hedge Counterparty or otherwise unless directly caused by its gross negligence or wilful misconduct;
 - (iv) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulation

or prohibited by applicable law or regulation relating to insider dealing or otherwise;

- (v) the exercise of, or the failure to exercise, any right, authority, discretion or power given to it by or in connection with any of the Debt Documents, the Security Property, the Senior Notes Only Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Debt Documents or the Security Property or the Senior Notes Only Security Property;
- (vi) any shortfall which arises on the enforcement or realisation of the Security Property or the Senior Notes Only Security Property; or
- (vii) without prejudice to the generality of paragraphs (iii) to (iv) 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) 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 Primary Creditor,

on behalf of any Primary Creditor and each Primary 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.

- (c) 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.

- (d) Notwithstanding paragraph (b), if:
 - (i) the introduction of, or any change in, (or interpretation, administration or application of) any law or regulation made after the date of this Agreement; or
 - (ii) any change in the status of any Debtor or the composition of the shareholders of any Debtor after the date of this Agreement,

obliges the Security Agent to comply with “**know you customer**” or similar identification procedures in circumstances where the necessary information is not already available to it, the Companies shall promptly upon request of the Security Agent supply, or procure the supply of, such documentation and other evidence not previously supplied to the Security Agent as is reasonably requested by the Security Agent in order for the Security Agent to carry out and be satisfied that it has complied with all necessary “**know your customer**” or similar checks under all applicable laws and regulations.

22.11 No proceedings

No Party (other than the Security Agent, that Receiver or that Delegate) 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 or Senior Notes Only Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause 22.11 (*No proceedings*), subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Rights Act.

22.12 Credit appraisal by the Secured Parties

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

- (a) the financial condition, status and nature of the Parent and each member of the Group;
- (b) the legality, validity, effectiveness, adequacy and enforceability of any Debt Document, the Security Property, the Senior Notes Only 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 or the Senior Notes Only Security Property;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Security Property, the Senior Notes Only 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 or the Senior Notes Only Security Property;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Security Agent or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any other agreement,

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

- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the Senior Notes Only Security or the existence of any Security affecting the Charged Property,

and each Secured Party warrants to the Security Agent that it has not relied on and will not at any time rely on the Security Agent in respect of any of these matters.

22.13 No responsibility to perfect Transaction Security

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

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Debtor or Third Party Security Provider 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 of the Debt Documents or the Transaction Security or the Senior Notes Only Security;
- (c) register, file or record or otherwise protect any of the Transaction Security or the Senior Notes Only Security (or the priority of any of the Transaction Security or the Senior Notes Only Security) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Debt Documents or of the Transaction Security or the Senior Notes Only Security;
- (d) take, or to require any of the Debtors or Third Party Security Providers to take, any steps to perfect its title to any of the Charged Property or to render the Transaction Security or the Senior Notes Only Security effective or to secure the creation of any ancillary Security under the laws of any jurisdiction; or
- (e) require any further assurances in relation to any of the Security Documents or the Senior Notes Only Security Documents.

22.14 Insurance by Security Agent

- (a) The Security Agent shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Debt Documents. The Security Agent shall not be liable for any damages, costs or losses which may be suffered by 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 which may be suffered by reason of, directly or indirectly, 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 a Creditor Representative or a Hedge Counterparty shall have requested it to do so in writing and the Security Agent shall have failed to do so within fourteen days after receipt of that request.

22.15 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 assets held by the Security Agent as trustee or agent of the Secured Parties (as applicable) or any assets over which Security is created pursuant to the Security Documents as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and, provided it has appointed the custodian or nominee with due care, 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.

22.16 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 of the Debtors and the Third Party Security Providers may have to any of the Charged Property and shall not be liable for or bound to require any Debtor or Third Party Security Provider to remedy any defect in its right or title.

22.17 Refrain from illegality

Notwithstanding anything to the contrary expressed or implied in the Debt Documents, the Security Agent may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive, sanction or regulation of any jurisdiction and the Security Agent may do anything which is, in its opinion, necessary to comply with any such law, directive, sanction or regulation.

22.18 Business with the Debtors and Third Party Security Providers

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with any of the Debtors and the Third Party Security Providers whether or not it may or does lead to a conflict with the interests of any of the Secured Parties. Similarly the Security Agent may undertake business with or for others even though it may lead to a conflict with the interests of any of the Secured Parties.

22.19 Winding up of trust

- (a) If the Security Agent, with the written approval of each Creditor Representative and each Hedge Counterparty, determines that (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged and (b) none of the Secured Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor or Third Party Security Provider pursuant to the Debt Documents:

 - (i) the trusts set out in this Agreement in relation to the Transaction Security shall be wound up and terminated and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
 - (ii) any Retiring Security Agent shall release, without recourse or warranty, all of its rights under each of the Security Documents.
- (b) If the Security Agent, with the written approval of each Creditor Representative for each Future Senior Creditor, determines that (a) all of the Future Senior Liabilities and all other obligations secured by the Senior Notes Only Security Documents have been fully and finally discharged and (b) none of the relevant Secured Parties 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:

- (i) the trusts set out in this Agreement in relation to the Senior Notes Only Security shall be wound up and terminated and the Security Agent shall release, without recourse or warranty, all of the Senior Notes Only Security and the rights of the Security Agent under each of the Senior Notes Only Security Documents; and
- (ii) any Retiring Security Agent shall release, without recourse or warranty, all of its rights under each of the Senior Notes Only Security Documents.

22.20 Powers supplemental

The rights, powers, authorities and discretions conferred upon the Security Agent by 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 general law or regulation or otherwise.

22.21 Confidentiality

- (a) In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its agency department which shall be treated as a separate entity from any of its other 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.

22.22 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 function as Security Agent.

22.23 Disapplication of the 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 save to the extent required by law. 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 allowed by law, 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.

22.24 Subordinated Creditors, Debtors and Third Party Security Providers: Power of Attorney

- (a) Each Subordinated Creditor, Debtor and Third Party Security Provider by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Subordinated Creditor, Debtor or Third Party Security Provider has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed

to do (and the Security Agent may delegate that power on such terms as it sees fit). If the Security Agent is not entitled to take any relevant action notwithstanding such appointment, the relevant Subordinated Creditor, Debtor or Third Party Security Provider undertakes to grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action.

- (b) For the purpose of this Clause 22.24, each Subordinated Creditor, Debtor and Third Party Security Provider exempts the Security Agent from any restrictions on representing several persons and self-dealing and any other similar restrictions (if any) under any applicable law.

22.25 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).

22.26 No fiduciary duties

Nothing in this Agreement constitutes the Security Agent as a trustee or fiduciary of any other person.

22.27 Parallel Debt (Covenant to pay the Security Agent)

(a) *Russian Parallel Debt*

- (i) Notwithstanding any other provision of this Agreement, solely for the purpose of taking, maintaining, protecting and/or enforcing the Russian Transaction Security, each Debtor hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Secured Parties, sums equal to and in the currency of each amount payable by such Debtor to each of the Secured Parties 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 Party to take appropriate steps, in insolvency proceedings affecting that Debtor, to preserve its entitlement to be paid that amount.
- (ii) The Security Agent shall have its own independent right to demand payment of the amounts payable by each Debtor under this paragraph (a), irrespective of any discharge of such Debtor's obligation to pay those amounts to the other Secured Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting that Debtor, to preserve their entitlement to be paid those amounts.
- (iii) Any amount due and payable by a Debtor to the Security Agent under this paragraph (a) shall be decreased to the extent that the other Secured Parties 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 Parties 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 paragraph (a).

(b) *Dutch Parallel Debt*

- (i) In this paragraph (b):
 - (A) “**Corresponding Liabilities**” means the Secured Obligations but excluding each Debtor’s Parallel Debt.
 - (B) “**Parallel Debt**” means each Debtor’s undertaking pursuant to this paragraph (b).
- (ii) Each Debtor irrevocably and unconditionally undertakes to pay the Security Agent an amount equal to the aggregate amount of its Corresponding Liabilities (as these may exist from time to time).
- (iii) The Parties agree that:
 - (A) a Debtor’s Parallel Debt is due and payable at the same time as, for the same amount of and in the same currency as its Corresponding Liabilities;
 - (B) a Debtor’s Parallel Debt is decreased to the extent that its Corresponding Liabilities have been irrevocably paid or discharged and its Corresponding Liabilities are decreased to the extent that its Parallel Debt has been irrevocably paid or discharged and the amount payable under the Parallel Debt of each Debtor shall at no time exceed the amount payable under its Corresponding Liabilities;
 - (C) a Debtor’s Parallel Debt is independent and separate from, and without prejudice to, its Corresponding Liabilities, and constitutes a single obligation of that Debtor to the Security Agent (even though that Debtor may owe more than one Corresponding Liability to the Primary Creditors under the Debt Documents) and an independent and separate claim of the Security Agent to receive payment of that Parallel Debt (in its capacity as the independent and separate creditor of the Parallel Debt and not as a co-creditor in respect of the Corresponding Liabilities);
 - (D) for purposes of this paragraph (b), the Security Agent acts in its own name and not as agent, representative or trustee of the Creditors and accordingly holds neither its claim resulting from a Parallel Debt nor any Transaction Security securing a Parallel Debt on trust; and
 - (E) any amount received or recovered by the Security Agent in respect of a Parallel Debt (including, but not limited to, enforcement proceeds) shall be applied in accordance with the terms of this Agreement subject to limitations (if any) expressly provided for in any Transaction Security Document.

(c) *Romanian Parallel Debt*

- (i) Notwithstanding any other provision of this Agreement, solely for the purpose of taking, maintaining, protecting and/or enforcing the Romanian Transaction Security, each Debtor hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Secured Parties, sums equal to and in the currency of each amount

payable by such Debtor to each of the Secured Parties 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 (i) any discharge resulting from failure of another Secured Party to take appropriate steps, in insolvency proceedings affecting that Debtor, to preserve its entitlement to be paid that amount, or (ii) any modification of obligations of any Debtor to the Secured Parties under the Debt Documents resulting from an arrangement (if any) reached in insolvency proceedings affecting that Debtor

(ii) The Security Agent shall have its own independent right to demand payment of the amounts payable by each Debtor under this paragraph (c), irrespective of any (i) discharge of such Debtor's obligation to pay those amounts to the other Secured Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting that Debtor, to preserve their entitlement to be paid those amounts, or (ii) any modification of obligations of any Debtor to the Secured Parties under the Debt Documents resulting from an arrangement (if any) reached in insolvency proceedings affecting that Debtor.

(iii) Any amount due and payable by a Debtor to the Security Agent under this paragraph (c) shall be decreased to the extent that the other Secured Parties 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 Parties 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 paragraph (c).

(d) *Greek Parallel Debt*

(i) Notwithstanding any other provision of this Agreement, solely for the purpose of taking, maintaining, protecting and/or enforcing the Greek Transaction Security, each Debtor hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Secured Parties, sums equal to and in the currency of each amount payable by such Debtor to each of the Secured Parties 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 (i) any discharge resulting from failure of another Secured Party to take appropriate steps, in insolvency proceedings affecting that Debtor, to preserve its entitlement to be paid that amount, or (ii) any modification of obligations of any Debtor to the Secured Parties under the Debt Documents resulting from an arrangement (if any) reached in insolvency proceedings affecting that Debtor.

(ii) The Security Agent shall have its own independent right to demand payment of the amounts payable by each Debtor under this paragraph (d)(c), irrespective of any (i) discharge of such Debtor's obligation to pay those amounts to the other Secured Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting that Debtor, to preserve their entitlement to be paid those amounts, or (ii) any modification of obligations of any Debtor to the Secured Parties under the Debt Documents resulting from an arrangement (if any) reached in insolvency proceedings affecting that Debtor.

(e) Any amount due and payable by a Debtor to the Security Agent under this paragraph (d) shall be decreased to the extent that the other Secured Parties 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 Parties 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 paragraph (d).

23 CHANGE OF SECURITY AGENT AND DELEGATION

23.1 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its affiliates as successor by giving notice to the Companies, the Senior Secured Notes Trustee, the Second Lien Notes Trustee, the Future Pari Passu Debt Representative, the Future Second Lien Debt Representative and the Future Senior Debt Representative.
- (b) Alternatively, the Security Agent may resign by giving 30 days' notice to the other Parties in which case the Instructing Group may appoint a successor Security Agent.
- (c) If the Instructing Group have not appointed a successor Security Agent in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Agent (after consultation with the Companies, the Creditor Representatives and the Hedge Counterparties) may appoint a successor Security Agent.
- (d) The retiring Security Agent (the "**Retiring Security Agent**") shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents. The obligations of the Retiring Security Agent shall cease in relation to any such request received more than 15 days after the appointment of the successor Security Agent.
- (e) The Security Agent's resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer of all of the Security Property and the Senior Notes Only Security Property to that successor. Each Creditor, Debtor and Third Party Security Provider will do all things that the Security Agent requests in order to give effect to such transfer of Security Property and Senior Notes Only Security Property (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the transfer).
- (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 paragraphs (a)(ii) and (b)(ii) of Clause 22.19 (*Winding up of trust*) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Agent, remain entitled to the benefit of Clauses 22 (*The Security Agent*) and 28.1 (*Debtors' indemnity*). Its 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 Instructing Group may, having consulted with the Companies, 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 (or in accordance with such shorter notice as determined by the Instructing Group).

23.2 Resignation of appointment with respect to Senior Notes Only Security

- (a) In the event of an actual or (in the opinion of the Security Agent, acting in its sole discretion) potential conflict of interest between the Future Senior Creditors and the

other Secured Parties, the Security Agent may resign its appointment only with respect to the Senior Notes Only Security (in such capacity, the “**Senior Notes Security Agent**”) by giving 5 days’ notice to the other Parties in which case the Majority Future Senior Creditors may appoint a successor Security Agent.

- (b) If the Majority Future Senior Creditors have not appointed a successor Senior Notes Security Agent in accordance with paragraph (a) above within 5 days after the notice of resignation was given, the Security Agent (after consultation with the Companies and the Creditor Representatives of the Future Senior Creditors) may appoint a successor Senior Notes Security Agent.
- (c) The retiring Senior Notes Security Agent (the “**Retiring Senior Notes Security Agent**”) shall make available to the successor Senior Notes Security Agent such documents and records and provide such assistance as the successor Senior Notes Security Agent may reasonably request for the purposes of performing its functions as Senior Notes Security Agent under the Debt Documents. The obligations of the Retiring Senior Notes Security Agent shall cease in relation to any such request received more than 15 days after the appointment of the successor Senior Notes Security Agent.
- (d) The Senior Notes Security Agent’s resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer of all of the Senior Notes Only Security Property to that successor. Each Creditor, Debtor and Third Party Security Provider will do all things that the Senior Notes Security Agent requests in order to give effect to such transfer of Senior Notes Security Property (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Senior Notes Security Agent may consider to be necessary to give effect to the transfer).
- (e) Upon the appointment of a successor, the Retiring Senior Notes Security Agent shall be discharged from any further obligation in respect of the Debt Documents with respect to the Senior Notes Only Security and the Senior Notes Only Security Documents (other than its obligations under paragraph (ii) of Clause 22.19 (*Winding up of trust*) and under paragraph (c) above) but shall, in respect of any act or omission by it whilst it was the Senior Notes Security Agent, remain entitled to the benefit of Clauses 22 (*The Security Agent*), 28.1 (*Debtors’ indemnity*) and 28.3 (*Companies’ indemnity to Primary Creditors*). Its 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.

23.3 Delegation

- (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 of the rights, powers or discretions vested in it by any of the Debt Documents.
- (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 Parties, provided such delegation has been made with due care, and it shall not 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 unless such loss was directly caused by the relevant Security Agent’s, Receiver’s or Delegate’s gross negligence or wilful misconduct.

23.4 Additional Security Agents

- (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 Parties or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent 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 Companies, each of the Creditor Representatives and each of the Hedge Counterparties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those conferred on the Security Agent under or in connection with the Debt Documents) and the duties and obligations that are conferred 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 and irrecoverable 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.
- (d) In the event that the Security Agent determines that Security is of a type or in a jurisdiction which the Security Agent determines does not meet or comply with its internal regulations or policies or with any law or regulation, or which might impose liabilities on the Security Agent, then the Companies shall procure that such Security is granted to a security agent (which shall be a reputable institution that customarily performs security agency roles in financing transactions) nominated by it and approved by the Instructing Group (in consultation with the Companies) (the “**Additional Security Agent**”). The Additional Security Agent shall be appointed on the same terms, and have the same rights, protections, duties and obligations, as the Security Agent, and references to the Security Agent shall include the Additional Security Agent. In the event that the Additional Security Agent enforces, and received proceeds of enforcement of, any security held by it, it shall forthwith pay such proceeds over to the Security Agent for application in accordance with Clause 20 (*Application of Proceeds*).

24 CHANGES TO THE PARTIES

24.1 Assignments and transfers

No Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities except as permitted by this Clause 24.

24.2 Change of Noteholder

Any Noteholder may assign, transfer or novate any of its rights and obligations to any person without the need for such person to execute and deliver to the Security Agent a Creditor Accession Undertaking.

24.3 New Credit Facility Lenders and Creditor Representatives

- (a) In order for any credit facility to be a “**Credit Facility**” for the purposes of this Agreement:
 - (i) each creditor in respect of that new credit facility shall accede to this Agreement as a Credit Facility Lender;

- (ii) each arranger in respect of that credit facility shall accede to this Agreement as an Arranger; and
 - (iii) 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 24.14 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) A Credit Facility Lender may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of the Credit Facility Documents or the Liabilities if:
 - (i) that assignment or transfer is in accordance with the terms of the relevant Debt Documents; and
 - (ii) any assignee or transferee has (if not already party to this Agreement as a Credit Facility Lender) acceded to this Agreement as a Credit Facility Lender (as applicable) pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).
- (c) No creditor shall be entitled to share in any of the Transaction Security, the Senior Notes Only Security or in the benefit of any provisions of this Agreement as a Credit Facility Lender or Cash Management Facility Lender unless such creditor has acceded to this Agreement in such capacity in accordance with paragraphs (a) or (b) above.

24.4 New Future Pari Passu Creditors and Creditor Representatives

- (a) In order for indebtedness in respect of any issuance of debt securities to constitute “**Future Pari Passu Debt**” for the purposes of this Agreement, the trustee in respect of those debt securities shall accede to this Agreement as the Creditor Representative in relation to that Future Pari Passu Debt pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) In order for indebtedness under any other loan or credit or debt facility to constitute “**Future Pari Passu Debt**” for the purposes of this Agreement:
 - (i) each creditor in respect of that loan or credit or debt facility shall accede to this Agreement as a Future Pari Passu Creditor; and
 - (ii) the facility agent in respect of that loan or credit or debt facility shall accede to this Agreement as the Creditor Representative in relation to that loan or credit or debt facility pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).
- (c) A Future Pari Passu 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 Future Pari Passu Debt Documents; and
 - (ii) any assignee or transferee has (if not already party to this Agreement as a Future Pari Passu Creditor and unless the relevant Creditor Representative has acceded on its behalf) acceded to this Agreement as a Future Pari Passu Creditor pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).

- (d) No creditor shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of this Agreement as a Future Pari Passu Creditor unless such creditor (or, as the case may be, the trustee in relation to the debt securities held by such creditor) has acceded to this Agreement in accordance with paragraphs (b) or (c) above.

24.5 New Future Second Lien Creditors and Creditor Representatives

- (a) In order for indebtedness in respect of any issuance of debt securities to constitute “**Future Second Lien Debt**” for the purposes of this Agreement, the trustee in respect of those debt securities shall accede to this Agreement as the Creditor Representative in relation to that Future Pari Passu Debt pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) In order for indebtedness under any other loan or credit or debt facility to constitute “**Future Second Lien Debt**” for the purposes of this Agreement:
 - (i) each creditor in respect of that loan or credit or debt facility shall accede to this Agreement as a Future Second Lien Creditor; and
 - (ii) the facility agent in respect of that loan or credit or debt facility shall accede to this Agreement as the Creditor Representative in relation to that loan or credit or debt facility pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).
- (c) A Future 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 Future Second Lien Debt Documents; and
 - (ii) any assignee or transferee has (if not already party to this Agreement as a Future Second Lien Creditor and unless the relevant Creditor Representative has acceded on its behalf) acceded to this Agreement as a Future Second Lien Creditor pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).
- (d) No creditor shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of this Agreement as a Future Second Lien Creditor unless such creditor (or, as the case may be, the trustee in relation to the debt securities held by such creditor) has acceded to this Agreement in accordance with paragraphs (b) or (c) above.

24.6 New Future Senior Creditors and Creditor Representatives

- (a) In order for indebtedness in respect of any issuance of debt securities to constitute “**Future Senior Debt**” for the purposes of this Agreement, the trustee in respect of those debt securities shall accede to this Agreement as the Creditor Representative in relation to that Future Senior Debt pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) In order for indebtedness under any other loan or credit or debt facility to constitute “**Future Senior Debt**” for the purposes of this Agreement:
 - (i) each creditor in respect of that loan or credit or debt facility shall accede to this Agreement as a Future Senior Creditor; and

- (ii) the facility agent in respect of that loan or credit or debt facility shall accede to this Agreement as the Creditor Representative in relation to that loan or credit or debt facility pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).
- (c) A Future Senior 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 Future Senior Debt Documents; and
 - (ii) any assignee or transferee has (if not already party to this Agreement as a Future Senior Creditor and unless the relevant Creditor Representative has acceded on its behalf) acceded to this Agreement as a Future Senior Creditor pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).
- (d) No creditor shall be entitled to share in any of the Transaction Security, the Senior Notes Only Security or in the benefit of any provisions of this Agreement as a Future Senior Creditor unless such creditor (or, as the case may be, the trustee in relation to the debt securities held by such creditor) has acceded to this Agreement in accordance with paragraphs (a) or (b) above.

24.7 Change of Hedge Counterparty

A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights and benefits or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already party to this Agreement as a Hedge Counterparty) acceded to this Agreement as a New Hedge Counterparty pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).

24.8 Change of Creditor Representative

No person shall become a Creditor Representative unless at the same time it accedes to this Agreement as a Creditor Representative pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).

24.9 New Intra-Group Lender and Shareholder Creditor

If any member of the Group, Intra-Group Lender or Shareholder Creditor (other than Frigoglass S.A.I.C. and [Greek Newco] who, for the avoidance of doubt, shall be party to this Agreement as an Intra-Group Lender and/or a Shareholder Creditor (as applicable) at all times following the date upon which they accede to this Agreement in such capacities) makes a loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount of EUR 500,000 or more and which is (or will be) outstanding for more than 20 Business Days, the Companies will procure that, subject to the Agreed Security Principles, the person giving that loan, granting that credit or making that other financial arrangement (if not already party to this Agreement as an Intra-Group Lender) accedes to this Agreement, as an Intra-Group Lender pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*). If any Intra-Group Lender or Shareholder Creditor no longer meets the requirements of this Clause 24.9 to accede to this Agreement, it shall be entitled to resign with immediate effect by notice to the Security Agent and the Security Agent shall acknowledge such notice. Upon notification by the Security Agent to the resigning Intra-Group Lender or Shareholder Creditor of its acceptance of the resignation of an Intra-Group Lender or a

Shareholder Creditor, that member of the Group shall cease to be an Intra-Group Lender or a Shareholder Creditor (as applicable) and shall have no further rights or obligations under this Agreement as an Intra-Group Lender or Shareholder Creditor (as applicable).

24.10 Change of Intra-Group Lender

Subject to Clause 12.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may assign any of its rights and benefits or transfer any of its rights, benefits 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 party to this Agreement as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*) (provided that such member of the Group will not be required to accede to this Agreement as an Intra-Group Lender under this Clause 24.10 if it would otherwise not have been required to do so under the terms of Clause 24.9 (*New Intra-Group Lender and Shareholder Creditor*) if it had been the original creditor of such Intra-Group Liabilities).

24.11 Change of Shareholder Creditor

Subject to Clause 13.4 (*Acquisition of Shareholder Liabilities*) and to the terms of the other Debt Documents, any Shareholder Creditor may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Shareholder Liabilities if the assignee or transferee has (if not already party to this Agreement as a Shareholder Creditor) acceded to this Agreement as a Shareholder Creditor, pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).

24.12 New Ancillary Lender

If any Affiliate of a Credit Facility Lender becomes an Ancillary Lender in accordance with the Credit Facility Documents, it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already party to this Agreement as a Credit Facility Lender) acceded to this Agreement as a Credit Facility Lender and to the facility agreement relating to the relevant Credit Facility as an Ancillary Lender pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).

24.13 Accession of Cash Management Facility Lenders under New Cash Management Facilities

- (a) In order for indebtedness to constitute a “**Cash Management Facility**” for the purposes of this Agreement and for such indebtedness to be entitled to share in any of the Transaction Security, each creditor in respect of that indebtedness shall accede to this Agreement as a Cash Management Facility Lender, Cash Management Facility Arranger or Cash Management Facility Agent (as applicable) by executing a Creditor/Agent Accession Undertaking.
- (b) A Cash Management Facility Lender may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of the Cash Management Facility Documents or the Liabilities if:
 - (i) that assignment or transfer is in accordance with the terms of the relevant Cash Management Facility Documents to which it is a party; and
 - (ii) subject to paragraph (c) below, any assignee or transferee has (if not already party to this Agreement as a Cash Management Facility Lender) acceded to this

Agreement as a Cash Management Facility Lender (as applicable) pursuant to Clause 24.14 (*Creditor/Creditor Representative Accession Undertaking*).

- (c) Paragraph (b)(ii) above shall not apply in respect of any Cash Management Facility Debt Purchase Transaction permitted by the relevant Cash Management Facility Documents entered into by a borrower of the relevant Cash Management Facility and effected in accordance with the terms of the relevant Cash Management Facility Documents to which it is a party.

24.14 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 or a 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);
- (b) as from that date, the replacement or new Creditor, Subordinated 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; and
- (c) any new Ancillary Lender (which is an Affiliate of a Credit Facility Lender) shall also become party to the facility agreement relating to the relevant Credit Facility as an Ancillary Lender and shall assume the same obligations and become entitled to the same rights as if it had been an original party to the facility agreement relating to the relevant Credit Facility as an Ancillary Lender.

24.15 New Debtor/New Third Party Security Provider

- (a) If any member of the Group or a Third Party Security Provider:
 - (i) incurs any Liabilities under the Senior Secured Debt Documents, Second Lien Debt Documents or the Future Senior Debt Documents; or
 - (ii) gives any security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities under the Senior Secured Debt Documents, Second Lien Debt Documents or the Future Senior Debt Documents,

the Debtors will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor or, as the case may be, a Third Party Security Provider, in accordance with paragraph (b) below, as soon as reasonably practicable following the incurrence of those Liabilities.

- (b) With effect from the date of acceptance by the Security Agent of a Debtor/Third Party Security Provider Accession Deed duly executed and delivered to the Security Agent by the new Debtor or Third Party Security Provider or, if later, the date specified in the Debtor/Third Party Security Provider Accession Deed, the new Debtor or, as applicable, Third Party Security Provider 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 or, as applicable, as a Third Party Security Provider.

24.16 Additional parties

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor/Third Party Security Provider Accession Deed and Creditor/Creditor Representative Accession Undertaking delivered to the Security Agent and the Security Agent shall, subject to paragraph (c) below, promptly 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/Third Party Security Provider 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 Companies shall provide the Security Agent with copies (certified by a director of each Company to be true and complete) of each Debt Document as soon as reasonably practicable upon execution.

24.17 Resignation of a Debtor

- (a) The Companies 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 Companies and each other Party of its acceptance if:
 - (i) the Companies have confirmed that no Event of Default is continuing or would result from the acceptance of the Debtor Resignation Request;

- (ii) to the extent that the Senior Secured Notes Discharge Date has not occurred, the Senior Secured Notes Trustee notifies the Security Agent that the Debtor is not, or has ceased to be, a Senior Secured Notes Issuer or a guarantor of the Senior Secured Notes Liabilities;
 - (iii) to the extent that the Future Pari Passu Debt Discharge Date has not occurred, the Creditor Representative in relation to any Future Pari Passu Debt notifies the Security Agent that the Debtor is not, or has ceased to be, a borrower, issuer and/or guarantor of the Future Pari Passu Debt;
 - (iv) to the extent that the Second Lien Notes Debt Discharge Date has not occurred, the Creditor Representative in relation to any Second Lien Notes notifies the Security Agent that the Debtor is not, or has ceased to be, a borrower, issuer and/or guarantor of the Second Lien Notes;
 - (v) to the extent that the Future Second Lien Debt Discharge Date has not occurred, the Creditor Representative in relation to any Future Second Lien Debt notifies the Security Agent that the Debtor is not, or has ceased to be, a borrower, issuer and/or guarantor of the Future Second Lien Debt;
 - (vi) to the extent that the Future Senior Debt Discharge Date has not occurred, the Future Senior Debt Representative notifies the Security Agent that the Debtor is not, or has ceased to be, a borrower, issuer or guarantor in respect of the Future Senior Debt; and
 - (vii) the Company confirm that that Debtor is under no actual or contingent obligations in respect of the Subordinated Liabilities.
- (c) Each Party will give the confirmations or, as the case may be, notifications in paragraph (b) above promptly upon request of the Security Agent or the Companies (or will identify the reasons why such confirmations or, as the case may be, notifications cannot be given).
 - (d) Upon notification by the Security Agent to the Companies 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.
 - (e) 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.

24.18 Cessation of a Third Party Security Provider

Following the release of all Transaction Security granted by a Third Party Security Provider (in accordance with the terms of the Debt Documents and this Agreement), such Third Party Security Provider shall cease to be a Third Party Security Provider and shall have no further rights or obligations under this Agreement as a Third Party Security Provider.

24.19 Notification by Security Agent

The Security Agent shall notify the other Parties promptly of the receipt and execution by it on their behalf of any Debtor/Third Party Security Provider Accession Deed.

24.20 Other limitations

Notwithstanding anything to the contrary in this Agreement, no member of the Group shall be required to accede as a Debtor if such accession would result in the breach of any applicable law, the Agreed Security Principles or otherwise give rise to a risk of civil or criminal liability on the part of any director or authorised officer of such member of the Group.

25 NOTES TRUSTEE PROTECTIONS

25.1 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 the Senior Secured Notes Trustee, Second Lien Notes Trustee or Future Senior Notes Trustee (as the case may be) in the exercise of the powers and authority conferred and vested in it under the relevant Notes Finance Documents for and on behalf of those Noteholders for which each Notes Trustee acts as trustee. It is further understood and agreed 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 such Notes Trustee in good faith in accordance with this Agreement or any of the Notes Finance Documents in a manner that the Notes Trustee believed to be within the scope of the authority conferred on such Notes Trustee by this Agreement and the applicable Notes Finance 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 (or any such successor noteholder 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 holder of the Senior Secured Notes (in the case of the Senior Secured Notes Trustee), the Second Lien Notes (in the case of the Second Lien Notes Trustee) or any Future Senior Debt in the form of notes (in the case of any Future Senior Notes Trustee).

25.2 Notes Trustee not fiduciary for other Creditors

- (a) No Notes Trustee shall be deemed to owe any fiduciary duty to any of the Creditors (other than the relevant Noteholders for whom it acts as trustee), any of the Subordinated Creditors or any member of the Group and shall not be liable to any Creditor any Subordinated Creditor or any member of the Group if such Notes Trustee shall in good faith mistakenly pay over or distribute to the relevant Noteholders or to any other Creditor or person cash, property or securities to which any Creditor (other than the relevant Noteholder for whom it acts as trustee) shall be entitled by virtue of this Agreement or otherwise. With respect to the Creditors (other than the relevant Noteholders for whom it acts as trustee) and any Subordinated Creditor, such Notes Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in the relevant Notes Finance Documents pursuant to which it acts as trustee and this Agreement and no implied covenants or obligations with respect to Creditors (other than the relevant Noteholders for whom it acts as trustee) or any Subordinated Creditor shall be read into this Agreement against a Notes Trustee.
- (b) In acting pursuant to this Agreement and the relevant Senior Secured Notes Indenture, the Senior Secured Notes Trustee is not required to have any regard to the interests of any Creditor other than the Senior Secured Noteholders for which it is the Senior Secured Notes Trustee.

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

25.3 Reliance on certificates

Each Notes Trustee shall at all times be entitled to and may rely without enquiry on any notice, consent or certificate of the Security Agent, any other Creditor Representative or any Party as to the matters certified therein.

25.4 Notes Trustee

In acting under and in accordance with this Agreement each 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, a Notes Trustee may request and rely upon an opinion of counsel or opinion of another qualified expert, at the, as the case may be, Senior Secured Notes Issuer's, Second Lien Notes Issuers' or any Future Senior Issuer'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 such Noteholders.

25.5 Turnover obligations

Notwithstanding any provision in this Agreement to the contrary, a Notes Trustee shall only have an obligation to turn over, pay, hold on trust or repay amounts received or recovered under this Agreement by it (i) if it had actual knowledge that the receipt or recovery is an amount received in breach of a provision of this Agreement (a "**Turnover Receipt**") and (ii) to the extent that, prior to receiving that knowledge, it has not distributed the amount of the Turnover Receipt to the relevant Noteholders in accordance with the provisions of the relevant Notes Indenture. For the purpose of this Clause 25.5, (i) "**actual knowledge**" of a Notes Trustee shall be construed to mean such Notes Trustee shall not be charged with knowledge (actual or otherwise) of the existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless a responsible officer of such Notes Trustee has received, not less than two Business Days' prior to the date of such payment, a written notice satisfactory to it that such payments are required or prohibited by this Agreement; and (ii) "**responsible officer**" when used in relation to a Notes Trustee means any person who is an officer within the corporate trust and securities services department (however described) of such Notes Trustee, including any director, associate director, vice president, assistant vice president, senior associate, assistant treasurer, trust officer, or any other officer of such Notes Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement and any Notes Indenture to which that Notes Trustee is a party.

25.6 Creditors and the Notes Trustee

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 relevant Noteholders for whom it acts as trustee) or any Subordinated Creditor.

25.7 Notes Trustee; reliance and information

- (a) A Notes Trustee may rely and shall be fully protected in acting or refraining from acting upon:
 - (i) any notice, certificate 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; and
 - (ii) any statement made by any person regarding any matters which may be assumed to be within its knowledge or within its powers to verify
- (b) A Notes Trustee may engage, at the cost of the Companies or another Debtor, pay for and rely on professional advisers selected by it (including those representing a person other than the Notes Trustee)
- (c) 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 relevant Notes Trustee) confirms that it:
 - (i) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Debt Documents (including the financial condition and affairs of each Debtor or their related entities and the nature and extent of any recourse against any Party or its assets); and
 - (ii) 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.
- (d) A Notes Trustee is entitled to assume that:
 - (i) any payment or other distribution made in respect of the Liabilities, respectively, has been made in accordance with the provisions of this Agreement;
 - (ii) no Default or Event of Default has occurred;
 - (iii) any Security, collateral, guarantee or indemnity granted in respect of the Liabilities is in accordance with this Agreement;
 - (iv) neither an Acceleration Event nor an equivalent event (howsoever defined) with respect to Hedging Liabilities has occurred; and
 - (v) none of the Senior Secured Debt Discharge Date or the Second Lien Debt Discharge Date has occurred,

unless a responsible officer of such Notes Trustee has actual notice to the contrary. A Notes Trustee is not obliged to monitor or enquire whether any such default or Event of Default has occurred.

25.8 No action

- (a) A Notes Trustee shall not have any obligation to take any action under this Agreement unless it is indemnified and/or secured to its satisfaction (whether by way of payment in advance or otherwise) by the Debtors or the relevant Noteholders, as applicable in accordance with the terms of the relevant Notes Indenture. A Notes Trustee is not

required to indemnify any other person (out of its personal assets or otherwise), whether or not a Party in respect of the transactions contemplated by this Agreement.

- (b) In no event shall the permissive rights of a Notes Trustee to take action under this Agreement be construed as an obligation to do so.
- (c) Notwithstanding any other provisions of this Agreement or any other Notes Finance Document to which a Notes Trustee is a party to, in no event shall any Notes Trustee be liable for special, indirect, punitive or consequential loss or damages of any kind whatsoever (including but not limited to loss of business, goodwill, reputation, opportunity or profits) whether or not foreseeable even if such Notes Trustee has been advised of the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence, for breach of contract or otherwise.

25.9 Departmentalisation

In acting as a Notes Trustee, the Senior Secured Notes Trustee, the Second Lien Notes Trustee and any Future Senior Notes Trustee (as applicable) 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 such Notes Trustee which, in its opinion, is received or acquired by some other division or department or otherwise than in its capacity as such Notes Trustee may be treated as confidential by such Notes Trustee and will not be treated as information possessed by such Notes Trustee in its capacity as such.

25.10 Other parties not affected

This Clause 25 is intended to afford protection to the Notes Trustees only and no provision of this Clause 25 shall alter or change the rights and obligations as between the other Parties in respect of each other.

25.11 Payments

Subject, where Clause 20 (*Application of Proceeds*) is applicable, to Clause 20 (*Application of Proceeds*), nothing in this Agreement shall prevent (i) payment, as and when due, by the Senior Secured Notes Issuer, any Second Lien Notes Issuer, any Future Senior Issuer (as applicable) or any Debtor of fees, costs and expenses (including legal fees and together with any applicable VAT) of the relevant Notes Trustee (including any amount payable to such Notes Trustee by way of indemnity, remuneration or reimbursement for expenses incurred) payable to such Notes Trustee for its own account pursuant to the relevant Debt Documents or any engagement letter between such Notes Trustee and the relevant issuer of, as the case may be, the Senior Secured Notes, Second Lien Notes or any Future Senior Debt, and the costs of any actual or attempted Enforcement Action which is permitted by this Agreement which are recoverable pursuant to the terms of the relevant Notes Finance Documents (collectively, “**Notes Trustee Amounts**”); or (ii) the receipt and retention of such Notes Trustee Amounts by the relevant Notes Trustee.

25.12 Security Agent and the Notes Trustee

- (a) No Notes Trustee is responsible for the appointment or for monitoring the performance of the Security Agent.
- (b) The Security Agent agrees and acknowledges that it shall have no claim against a Notes Trustee in respect of any fees, costs, expenses and liabilities due and payable to, or incurred by, the Security Agent.

- (c) No Notes Trustee shall be under any 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 relevant Noteholders and indemnified and/or secured (including by way of prefunding) to its satisfaction.

25.13 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 Senior Secured Noteholder, Second Lien Noteholder, Future Pari Passu Creditor, Future Second Lien Creditor or Future Senior Creditor with any credit or other information concerning the risks arising under or in connection with any Debt Documents (including any information relating to the financial condition or affairs of any Debtor, the Senior Secured Notes Issuer, any Second Lien Notes Issuer, any Future Senior Issuer 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 Debtor, the Senior Secured Notes Issuer, any Second Lien Notes Issuer or any Future Senior Issuer.

25.14 Disclosure of information

Each Debtor, the Senior Secured Notes Issuer, each Second Lien Notes Issuer and any Future Senior Issuer irrevocably authorises the relevant Notes Trustee to disclose to any other Primary Creditor any information that is received by such Notes Trustee in its capacity as such Notes Trustee.

25.15 Illegality

- (a) 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.
- (b) Furthermore, each Notes Trustee may also refrain from taking such action if it would otherwise render it liable to any person in that jurisdiction or if, in its opinion based upon such legal advice, it would not have the power to do the relevant thing in that jurisdiction by virtue of any applicable law in that jurisdiction or if it is determined by any court or other competent authority in that jurisdiction that it does not have such power

25.16 Resignation of a 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.

25.17 Future Pari Passu Debt Representative as notes trustee

In the event that any Future Pari Passu Debt is issued in the form of notes, the Future Pari Passu Debt Representative who acts as notes trustee in respect of such issuance shall have the same rights, powers, discretions, protections, exonerations and exculpations, together with all the

duties and obligations that are conferred or imposed by this Clause 25 (including, without limitation and for the avoidance of doubt, Clause 25.11 (*Payments*) and the definition of “**Senior Secured Notes Trustee Amounts**” and in each and all cases, mutatis mutandis) in respect of the Senior Secured Notes Trustee, or such rights, powers, discretions, exonerations and exculpations (not exceeding those conferred on the Senior Secured Notes Trustee in this Agreement) together with all the duties and obligations that are conferred or imposed on it by the instrument of its appointment in respect of such Future Pari Passu Debt.

25.18 Future Second Lien Debt Representative as notes trustee

In the event that any Future Second Lien Debt is issued in the form of notes, the Future Second Lien Debt Representative who acts as notes trustee in respect of such issuance shall have the same rights, powers, discretions, protections, exonerations and exculpations, together with all the duties and obligations that are conferred or imposed by this Clause 25 (including, without limitation and for the avoidance of doubt, Clause 25.11 (*Payments*) and the definition of “**Senior Secured Notes Trustee Amounts**” and in each and all cases, mutatis mutandis) in respect of the Senior Secured Notes Trustee, or such rights, powers, discretions, exonerations and exculpations (not exceeding those conferred on the Senior Secured Notes Trustee in this Agreement) together with all the duties and obligations that are conferred or imposed on it by the instrument of its appointment in respect of such Future Second Lien Debt.

25.19 Future Senior Debt Representative as notes trustee

In the event that any Future Senior Debt is issued in the form of notes, the Future Senior Debt Representative who acts as notes trustee (the “**Future Senior Notes Trustee**”) in respect of such issuance shall have the same rights, powers, discretions, protections, exonerations and exculpations, together with all the duties and obligations that are conferred or imposed by this Clause 25 (including, without limitation and for the avoidance of doubt, Clause 25.11 (*Payments*) and the definition of “**Future Senior Notes Trustee Amounts**” and in each and all cases, mutatis mutandis) in respect of the Senior Notes Trustee, or such rights, powers, discretions, exonerations and exculpations together with all the duties and obligations that are conferred or imposed on it by the instrument of its appointment in respect of such Future Senior Debt.

25.20 Notes Trustee Assumptions

A Notes Trustee is entitled to assume:

- (a) the proceeds of enforcement of any Security conferred by the Transaction Security Documents or the Senior Notes Only Security Documents (as applicable) have been applied in the order set out in Clause 20 (*Application of Proceeds*);
- (b) any Security, collateral, guarantee or indemnity or other assurance granted to it has been done so in compliance with Clause 3.3 (*Security and guarantees: Senior Secured Creditors and Second Lien Creditors*);
- (c) compliance by the Debtors with the terms of this Agreement. Neither Notes Trustee shall be obliged to monitor performance by the Debtors, the Security Agent or any other Party to this Agreement or the Noteholders of their respective obligations under this Agreement and any Future Senior Notes Trustee shall be entitled to conclusively assume without further investigation that any amendment or waiver of the terms of the Future Senior Debt Documents complies with Clause 9.1 (*Issue of and Amendments and Waivers of Future Senior Debt Documents*) of this Agreement.

25.21 Agents

Each 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 due care by it hereunder.

25.22 Requirement for Bond or Surety

No Notes Trustee shall 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.

25.23 Provisions Survive Termination

The provisions of this Clause 25 shall survive any termination or discharge of this Agreement and the resignation, or termination of the appointment of, a Notes Trustee.

25.24 Instructions

In acting under this Agreement, each Notes Trustee is acting on behalf of the relevant Noteholders for which it acts as trustee and is entitled to seek instructions from the relevant Noteholders for which it acts as trustee at any time and, where it acts on the instructions of such Noteholders, that Notes Trustee shall not incur any liability to any person for so acting. No Notes Trustee is liable to any person for any loss suffered as a result of any delay caused as a result of it seeking instructions from the relevant Noteholders for which it acts as trustee.

25.25 Responsibility of Notes Trustee

No Notes Trustee shall be responsible to any Party or Creditor for the legality, validity, effectiveness, enforceability, adequacy, accuracy, completeness or performance of:

- (a) any Debt Document or any other document;
- (b) any statement or information (whether written or oral) made in or supplied in connection with any Debt Document or any other document; or
- (c) any observance by any Debtor of its obligations under any Debt Document or any other document.

26 ADDITIONAL INDEBTEDNESS

26.1 Incurrence of Additional Indebtedness

- (a) Notwithstanding anything to the contrary in this Agreement or a Security Document, if a Debtor gives written notice to the Security Agent, the Creditor Representatives and the Hedge Counterparties that it intends to enter into one or more loans and/or credit or debt facilities and/or issue any debt securities under which it will incur additional indebtedness (“**Additional Indebtedness**”) which is, under the terms of the Senior Secured Notes Documents, Second Lien Notes Documents, Cash Management Facility Documents, Credit Facility Documents, Future Pari Passu Debt Documents, any Future Second Lien Debt Documents, and the Future Senior Debt Documents, permitted to be incurred and to share in the Transaction Security, then the Parties will (at the cost of the Companies) enter into such documentation as may be required by the Companies to ensure that any obligations and liabilities incurred by the Debtors in respect of such Additional Indebtedness will share in the relevant Transaction Security and have the ranking (and that the creditors under such Additional Indebtedness will have the rights and obligations) permitted to be conferred upon it in accordance with the Senior Secured Notes Documents, Second Lien Notes Documents, Cash Management Facility Documents, Credit Facility Documents, Future Pari Passu Debt Documents, any Future

Second Lien Debt Documents and the Future Senior Debt Documents (including, without limitation, executing any amendment to this Agreement, the entry into a new or replacement intercreditor agreement and such other Debt Documents and/or amendments to existing Debt Documents required by the Companies to reflect, enable and/or facilitate any such Additional Indebtedness to be incurred and any changes to, the taking of, or the release coupled with the retaking of, any guarantee or Security to the extent the incurrence of such Additional Indebtedness and/or the release coupled with the retaking of and/or sharing in the Security (as applicable) is permitted (including following the taking of any relevant action by any Party under the applicable Debt Documents (to the extent required), or otherwise not prohibited by the Debt Documents to which the Primary Creditors are party).

- (b) Each of the Primary Creditors and the Security Agent confirm and undertake that, if and to the extent a financing, refinancing or replacement referred to in paragraph (a) above and such ranking and such Security is not prohibited by the terms of the Debt Documents at such time, they will (at the cost of the Debtors) co-operate with the Companies and the Debtors with a view to enabling and facilitating such financing, refinancing or replacement and such sharing in the Security to take place in a timely manner. In particular, but without limitation, the Security Agent shall, and each of the Primary Creditors hereby authorise and direct the Security Agent and each of their respective Creditor Representatives to, execute any amendment to this Agreement, enter into any additional or replacement intercreditor agreements and such other Debt Documents required by the Companies to reflect, enable and/or facilitate any such arrangements and any changes to, the taking of, or the release coupled with the retaking of, any guarantee or Security to the extent such financing, refinancing, release coupled with the retaking of, replacement and/or sharing in, the Security, is not prohibited by the Debt Documents to which they are party.

26.2 Authorisation of Creditor Representatives

- (a) Each of the Senior Secured Notes Trustee, Second Lien Notes Trustee and any Future Senior Notes Trustee is authorised to and shall enter into the documentation described in Clause 26.1 (*Incurrence of Additional Indebtedness*) on behalf of itself and the relevant Noteholders and the same shall be binding for all purposes on the relevant Noteholders.
- (b) The Creditor Representative in relation to any Future Pari Passu Debt, Future Second Lien Debt or Future Senior Debt that constitutes an issuance of debt securities is authorised to and shall enter into the documentation described in Clause 26.1 (*Incurrence of Additional Indebtedness*) above on behalf of itself and the relevant Future Pari Passu Creditors, Future Second Lien Creditors or, as the case may be, Future Senior Creditors and the same shall be binding for all purposes on those Future Pari Passu Creditors, Future Second Lien Creditors or, as the case may be, Future Senior Creditors.
- (c) If any Credit Facility Lender or Cash Management Facility Lender fails to enter into the documentation described in Clause 26.1 (*Incurrence of Additional Indebtedness*) above within 10 Business Days of being requested to do so by the Security Agent or a Debtor, that Cash Management Facility Lender's Creditor Representative is authorised to and shall (provided that the relevant Credit Facility Lender or Cash Management Facility Lender 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 Credit Facility Lender or Cash Management Facility Lender is required to comply or customarily complies) enter into such documentation on such Credit Facility Lender's or Cash Management Facility Lender's behalf and the same

shall be binding for all purposes on such Credit Facility Lender or Cash Management Facility Lender.

- (d) For the avoidance of doubt, no consent or approval from a Creditor is required to enable a Creditor Representative to act pursuant to this Clause 26.2.

27 COSTS AND EXPENSES

27.1 Security Agent's ongoing costs

- (a) Any amount payable to the Security Agent under Clause 28.3 (*Creditors' indemnity to the Security Agent*), Clause 27 (*Costs and Expenses*) or Clause 28.1 (*Debtors' Indemnity*) 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) an Event of Default which is continuing;
 - (ii) the Security Agent being requested by a Debtor, a Third Party Security Provider or the Instructing Group to undertake duties which the Security Agent and the Companies agree to be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under the Debt Documents,

the Companies shall (or shall procure that another Debtor shall) pay to the Security Agent any additional remuneration that may be agreed between them.

- (c) If the Security Agent and the Companies fail to agree upon the nature of those duties or upon any additional remuneration, that 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 Companies 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 Companies) and the determination of any investment bank shall be final and binding upon the parties to this Agreement, provided that such investment bank shall not be an Affiliate of the Security Agent.

27.2 Transaction expenses

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

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

27.3 Amendment Costs

If a Debtor requests an amendment, waiver or consent, the Parent shall, within three Business Days of demand, reimburse the Security Agent for the amount of all costs and expenses

(including legal fees) (together with any applicable and irrecoverable VAT) properly incurred by the Security Agent (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

27.4 Enforcement and preservations costs

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

27.5 Stamp taxes

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

27.6 Interest on demand

If any Creditor, Debtor or Third Party Security Provider fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it (to the extent permitted under any applicable law) 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 under any other Debt Document) at the rate which is one (1) per cent. per annum over the rate at which the Security Agent was being offered, by leading banks in the London interbank market (or if such rate is not available, any other publicly available rate selected by the Security Agent (acting reasonably)), deposits in an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select.

28 INDEMNITIES

28.1 Debtors' indemnity

The Companies and, to the extent permitted by law, each Debtor shall jointly and severally, promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable and irrecoverable VAT) incurred by any of them:

- (a)** in relation to or as a result of:
 - (i)** any failure by the Companies to comply with its obligations under Clause 27 (*Costs and Expenses*);
 - (ii)** acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised (including, without limitation, where such notice, request or instruction are received by way of electronic communications or are signed electronically);
 - (iii)** the taking, holding, protection or enforcement of the Transaction Security granted by it;
 - (iv)** the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt

Documents to which it is a party (other than (in the case of any Debtor other than the Companies, only) this Agreement) or by law;

- (v) any default by such Debtor or Third Party Security Provider in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
 - (vi) instructing lawyers, accountants, tax advisors, surveyors, a Financial Advisor 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 (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) which otherwise relates to any of the Security Property or the Senior Notes Security Property or the performance of the terms of this Agreement (otherwise than as a result of its gross negligence or wilful misconduct).

Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 28.1 will not be prejudiced by any release or disposal under Clause 18.3 (*Distressed Disposals*) taking into account the operation of that Clause 18.3 (*Distressed Disposals*).

28.2 Priority of indemnity

The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties but subject to Clause 20 (*Application of Proceeds*), indemnify itself (except in the case of its own gross negligence or wilful misconduct) out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in Clause 28.1 (*Debtors' indemnity*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

28.3 Creditors' indemnity to the Security Agent

- (a) Each Creditor shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Creditors for the time being (or, if the Liabilities due to the Creditors are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).
- (b) Subject to paragraph (c) below, the Parent shall immediately on demand reimburse any Creditor for any payment that Creditor makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Creditor claims reimbursement relates to a liability of the Security Agent to a Debtor.

28.4 Companies' indemnity to Primary Creditors

The Companies shall promptly and as principal Debtor indemnify each Primary Creditor against any cost, loss or liability (together with any applicable and irrecoverable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 18.3 (*Distressed Disposals*).

28.5 Provisions Survive Termination

28.6 The provisions of Clause 22 (*The Security Agent*), Clause 27 (*Costs and Expenses*) and this Clause 28 (*Indemnities*) shall survive any termination or discharge of this Agreement and the resignation or termination of the appointment of the Security Agent.

29 INFORMATION

29.1 Information and dealing

- (a) The Creditors shall provide to the Security Agent from time to time (through the relevant Creditor Representative as 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 Security Agent or agent or trustee.
- (b) 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.
- (c) Each Senior Secured Noteholder shall deal with the Security Agent exclusively through the Senior Secured Notes Trustee.
- (d) Each Second Lien Noteholder shall deal with the Security Agent exclusively through the Second Lien Notes Trustee.
- (e) Each Credit Facility Lender shall deal with the Security Agent exclusively through the relevant Credit Facility Agent (if appointed) or directly (if no relevant Credit Facility Agent is appointed).
- (f) Each Cash Management Facility Lender shall deal with the Security Agent exclusively through the relevant Cash Management Facility Agent (if appointed) or directly (if no relevant Cash Management Facility Agent is appointed).
- (g) Each Future Senior Secured Creditor shall deal with the Security Agent exclusively through the Future Senior Creditor Representative.
- (h) Each Future Second Lien Creditor shall deal with the Security Agent exclusively through the Future Senior Creditor Representative.
- (i) Each Future Senior Creditor shall deal with the Security Agent exclusively through the Future Senior Creditor Representative.

29.2 Disclosure

Notwithstanding any agreement to the contrary, each of the Debtors and Third Party Security Providers consents, until the Final Discharge Date, to the disclosure by any of the Primary Creditors, the Creditor Representatives, the Arrangers and the Security Agent to each other (whether or not through the Creditor Representatives or the Security Agent) of such information

concerning the Debtors and the Third Party Security Providers as any Primary Creditor, any Arranger, any Creditor Representative or the Security Agent shall see fit, including details of its outstanding Liabilities.

29.3 Notification of prescribed events

- (a) If an Event of Default or a Default under the Senior Secured Notes Indenture (pursuant to which any Senior Secured Notes remain outstanding) either occurs or ceases to be continuing the Senior Secured Notes Trustee 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 Representatives and each Hedge Counterparty.
- (b) If an Event of Default or a Default under the Second Lien Notes Indenture (pursuant to which any Second Lien Notes remain outstanding) either occurs or ceases to be continuing the Second Lien Notes Trustee 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 Representatives and each Hedge Counterparty.
- (c) If an Event of Default or a Default under the Credit Facility Documents either occurs or ceases to be continuing the 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.
- (d) If an Event of Default or a Default under the Cash Management Facility Documents either occurs or ceases to be continuing each Cash Management Facility Lender who is a party to this Agreement at such time (or the relevant Cash Management Facility Agent on their behalf, if appointed) 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.
- (e) If an Event of Default or a Default under the Future Pari Passu Debt Documents either occurs or ceases to be continuing the Creditor Representative under such documents 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 Representatives and each Hedge Counterparty.
- (f) If an Event of Default or a Default under the Future Second Lien Debt Documents either occurs or ceases to be continuing the Creditor Representative under such documents 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 Representatives and each Hedge Counterparty.
- (g) If an Event of Default or a Default under the Future Senior Debt Documents either occurs or ceases to be continuing the Creditor Representative under such documents 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 Representatives and each Hedge Counterparty.
- (h) If an Acceleration Event occurs, the relevant Creditor Representative shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.

- (i) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.
- (j) If any Primary Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.
- (k) If a Debtor defaults on any Payment due under a Hedging Agreement (prior to the expiry of any applicable notice or grace periods under that Hedging Agreement), the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.
- (l) If a Hedge Counterparty terminates or closes-out, in whole or in part, any transaction under any Hedging Agreement under Clause 10.9 (*Permitted Enforcement: Hedge Counterparty*) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.
- (m) Each of the Creditor Representatives and each Hedge Counterparty shall promptly notify the Security Agent of the occurrence of the Final Discharge Date.

29.4 Hedge Counterparty

- (a) Each Hedge Counterparty shall on request from any Creditor Representative or the Security Agent from time to time notify each Creditor Representative and the Security Agent of the Notional Amount (as defined in the relevant Hedging Agreement) of each Hedging Agreement to which it is a party and the residual maturity of each such Hedging Agreement.
- (b) If any Hedge Counterparty does not promptly on request notify each of the Creditor Representatives and the Security Agent of any matter pursuant to paragraph (a) above, the Creditor Representatives and the Security Agent may assume that the Notional Amount (as defined in the relevant Hedging Agreement) of each relevant Hedging Agreement is that set out in that Hedging Agreement and may calculate the residual maturity of each relevant Hedging Agreement by reference to that Hedging Agreement.

30 NOTICES

30.1 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 electronic mail or letter.

30.2 Security Agent's communications with Primary Creditors

The Security Agent shall be entitled to carry out all dealings with the Primary Creditors (other than the Hedge Counterparties) and the Arrangers through the relevant Creditor Representative and may give to the relevant Creditor Representative any notice or other communication required to be given by the Security Agent to a Primary Creditor and with each Hedge Counterparty directly with that Hedge Counterparty.

30.3 Addresses

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

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

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

30.4 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 electronic mail, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or seven 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 30.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent or a Notes Trustee will be effective only when actually received by the Security Agent or the relevant Notes Trustee and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's (or the relevant Notes Trustee's) signature below (or any substitute department or officer as the Security Agent or such Notes Trustee shall specify for this purpose).
- (c) Any communication or document made or delivered to the Companies, the Senior Secured Notes Issuer or any Future Senior Issuer in accordance with this Clause 30.4 will be deemed to have been made or delivered to each of the Debtors and the Third Party Security Providers.
- (d) Any communication or document, which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following Business Day in the place of receipt.

30.5 Notification of address and electronic mail address

Promptly upon receipt of notification of an address or electronic mail address or change of address or electronic mail address pursuant to Clause 30.3 (*Addresses*) or changing its own address or electronic mail address, the Security Agent shall notify the other Parties.

30.6 Electronic communication

- (a) Any communication to be made between the Security Agent and the Creditor Representatives, the Arrangers or the Primary Creditors under or in connection with this

Agreement may be made by electronic mail or other electronic means, if the Security Agent, the relevant Creditor Representative, Arranger and Primary Creditor:

- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Security Agent and a Creditor Representative, Arranger, Hedge Counterparty or Primary Creditor will be effective only when actually received in readable form and in the case of any electronic communication made by a Creditor Representative, Arranger, Hedge Counterparty or Primary Creditor to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) 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 in the place of receipt and provided always that any communication to a Notes Trustee or Security Agent shall only be treated as having been received upon written confirmation of receipt by such Notes Trustee or Security Agent (as applicable) and, with respect to any electronic communication, an automatically generated “**read**” or “**received**” receipt shall not constitute such confirmation).

30.7 English language

- (a) Any notice or communication 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 (apart from any constitutional documents of the Parent or a member of the Group); or
 - (ii) if not in English, and if so required by the Security Agent (acting reasonably), 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.

30.8 Hedging Agreements

For the avoidance of doubt, this Clause 30 (*Notices*) shall not apply to any communication between a Hedge Counterparty and a Debtor under or in connection with a Hedging Agreement.

31 PRESERVATION

31.1 Partial invalidity

If, at any time, any provision of this Agreement 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.

31.2 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.

31.3 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy 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.

31.4 Waiver of defences

Subject to the Guarantee Limitations and to the greatest extent permitted under applicable law, the provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 31.4, 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 the Parent or 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 including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Debt 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;

- (h) any insolvency or similar proceedings; or
- (i) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of any person under any Debt Document resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order.

31.5 Priorities not affected

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

- (a) not be affected by any reduction or increase in the principal amount secured by the Transaction Security or the Senior Notes Only Security in respect of the Liabilities owing to the relevant Secured Parties 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 Parties 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.

32 CONSENTS, AMENDMENTS AND OVERRIDE

32.1 Required consents

- (a) Subject to each of paragraphs (b) and (c) below, Clause 26 (*Additional Indebtedness*), Clause 32.2 (*Amendments and Waivers: Transaction Security Documents*), Clause 32.4 (*Exceptions*), Clause 32.5 (*Disenfranchisement of the Affiliates of the Parent and Truad*), Clause 32.6 (*Disenfranchisement of Defaulting Lenders*) and Clause 32.11 (*Shooze/Lose*), this Agreement may be amended or waived or any consent may be given under it with the written agreement of:
 - (i) the Senior Secured Notes Required Holders (if prior to the Senior Secured Notes Discharge Date);
 - (ii) the Second Lien Notes Required Holders (if prior to the Second Lien Notes Discharge Date);
 - (iii) the Majority Credit Facility Lenders;
 - (iv) the Majority Cash Management Facility Lenders;
 - (v) the Future Pari Passu Debt Required Holders;
 - (vi) the Future Second Lien Debt Required Holders;
 - (vii) the Future Senior Debt Required Holders;
 - (viii) the Future Senior Debt Required Holders;
 - (ix) the Security Agent; and

(x) the Companies,

(except for amendments of a minor, technical or administrative nature which may be effected by the Security Agent and the Companies) provided that to the extent an amendment, waiver or consent only affects one class of Secured Party, and such amendment, waiver or consent could not reasonably be expected to materially and adversely affect the interests of the other classes of Secured Party, only written agreement from the Creditor Representative for that affected class (if applicable, acting on the instructions of the requisite class of Creditors under the relevant Debt Document) shall be required.

(b) Subject to each of paragraph (c) below, Clause 26 (*Additional Indebtedness*), Clause 32.2 (*Amendments and Waivers: Transaction Security Documents*), Clause 32.4 (*Exceptions*) and Clause 32.11 (*Snooze/Lose*), an amendment or waiver that has the effect of changing or which relates to:

- (i) the definition of “**Instructing Group**”, Clause 2 (*Ranking and Priority*), Clause 15 (*Turnover of Receipts*), Clause 16 (*Redistribution*), Clause 17 (*Enforcement of Security*), Clause 18 (*Proceeds of Disposals*), Clause 20 (*Application of Proceeds*), or this Clause 32 (*Consents, amendments and override*), Clause 34 (*Governing Law*) and Clause 35.1 (*Jurisdiction*);
- (ii) paragraphs (e)(iii), (f) and (g) of Clause 22.4 (*Instructions to Security Agent and exercise of discretion*); or
- (iii) the order of priority or subordination under this Agreement,

shall not be made without the written consent of:

- (A) the Senior Secured Notes Trustee (acting in accordance with the Senior Secured Notes Indenture (pursuant to which any Senior Secured Notes remain outstanding));
- (B) the Second Lien Notes Trustee (acting in accordance with the Second Lien Notes Indenture (pursuant to which any Senior Secured Notes remain outstanding));
- (C) the Credit Facility Lenders;
- (D) the Cash Management Facility Lenders (to the extent that the amendment or waiver would materially adversely affect the rights and obligations of the Cash Management Facility Lenders under this Agreement in their capacity as such);
- (E) the Creditor Representative for the Future Pari Passu Creditors;
- (F) the Creditor Representative for the Future Second Lien Creditors;
- (G) the Creditor Representative for the Future Senior Creditors;
- (H) each Hedge Counterparty (to the extent that the amendment or waiver would materially adversely affect the rights and obligations Hedge Counterparties under this Agreement in their capacity as such);
- (I) the Companies; and

(J) the Security Agent,

provided that to the extent an amendment, waiver or consent only affects one class of Creditors, and such amendment, waiver or consent could not reasonably be expected to materially adversely affect the interests of the other classes of Creditors, only written agreement from the Creditor Representative for that affected class (if applicable, acting on the instructions of the requisite class of Creditors under the relevant Debt Document) shall be required.

- (c) Notwithstanding anything to the contrary, any amendment or waiver of any Secured Debt Document made or effected in accordance with Clause 26 (*Additional Indebtedness*) or any other provision of this Agreement or any other provision of any Debt Document (provided that such amendment or waiver is not expressly prohibited by the terms of any other Debt Document), shall be binding on all Parties.

Subject to Clause 32.4 (*Exceptions*) and Clause 32.11 (*Snooze/Lose*), any amendment or waiver or consent given in accordance with this Clause 32 (*Consents, Amendments and Override*) will be binding on all Parties.

32.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to each of Clause 18.1 (*Non-Distressed Disposals*), Clause 17 (*Distressed Disposals*), Clause 26 (*Additional Indebtedness*), paragraph (b) below, Clause 32.4 (*Exceptions*) and Clause 32.11 (*Snooze/Lose*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may:

- (i) if authorised by the Instructing Group, and if the Companies consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents; and
- (ii) if authorised by the Majority Future Senior Creditors, and if the Companies consents, amend the terms of, waive any of the requirements of or grant consents under, any of the replacement Senior Notes Only Security Documents,

which, in each case, shall be binding on each Party.

- (b) Subject to paragraphs (b) and (c) of Clause 32.4 (*Exceptions*) and Clause 32.11 (*Snooze/Lose*), the prior consent of the (to the extent prohibited under the Senior Secured Notes Documents) the Senior Secured Notes Required Holders, (to the extent prohibited under the Second Lien Notes Documents) the Second Lien Notes Required Holders, (to the extent prohibited under the Credit Facility Documents) Credit Facility Agent, (to the extent prohibited under the Cash Management Facility Documents) Cash Management Facility Agents, (to the extent prohibited under the relevant Hedging Agreement) each Hedge Counterparty, (to the extent prohibited under the Future Pari Passu Debt Documents) the Future Pari Passu Debt Required Holders, (to the extent prohibited under the Future Second Lien Debt Documents) the Future Second Lien Debt Required Holders, (to the extent prohibited under the Future Senior Debt Documents), the Future Senior Debt Required Holders and the Security Agent is required to authorise any amendment or waiver of, or consent under, or release of, any Transaction Security Document or any Senior Notes Only Security Document which would affect the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security or the Senior Notes Only Security (as applicable) are distributed.

32.3 Effectiveness

Any amendment, waiver or consent given in accordance with this Clause 32 (*Consents, Amendments and Override*) will be binding on all Parties and the Security Agent may effect, on behalf of any Creditor Representative, Arranger or Creditor, any amendment, waiver or consent permitted by this Clause 32 (*Consents, Amendments and Override*).

32.4 Exceptions

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

- (i) in the case of a Primary Creditor, in a way which affects or would affect Primary Creditors of that Party's class generally; or
- (ii) in the case of a Debtor or Third Party Security Provider, to the extent consented to by the Companies under paragraph (a) of Clause 32.2 (*Amendments and Waivers: Transaction Security Documents*),

the consent of that Party (or (A) in the case of the Senior Secured Noteholders or the Second Lien Notesholders, the consent of the relevant Notes Trustee; and (B) in the case of any Future Pari Passu Creditor, Future Second Lien Creditor or Future Senior Creditor in respect of an issue of debt securities comprising Future Pari Passu Debt, Future Second Lien Debt or, as the case may be, Future Senior Debt, the Creditor Representative in relation to such Future Pari Passu Debt, Future Second Lien Debt or, as the case may be, the Future Senior Debt) is required.

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

(c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 32.2 (*Amendments and Waivers: Transaction Security Documents*) shall apply:

- (i) to the release of any Transaction Security, Senior Notes Only Security, claim or Liabilities; or
- (ii) to any consent,

which, in each case, the Security Agent gives in accordance with Clause 18 (*Proceeds of Disposals*).

(d) Paragraphs (a) and (b) above shall apply to an Arranger only to the extent that Arranger Liabilities are then owed to that Arranger.

(e) This Agreement may be amended by the Creditor Representatives, the Security Agent and the Companies without the consent of any other Party to:

- (i) cure defects, typographical errors, resolve ambiguities or reflect changes in each case of a minor technical or administrative nature; or
- (ii) enable the Security Agent, in respect of a given jurisdiction for which jurisdiction-specific appointment provisions have not yet been provided for in

Clause 22 (*The Security Agent*) (each, an “**Additional Local Jurisdiction**”), to hold any Transaction Security on behalf of the Secured Parties and to exercise (to the extent permitted by applicable law in such Additional Local Jurisdiction) the same rights, powers, authorities, and discretions in such Additional Local Jurisdiction, and to benefit from the same protections, exonerations and exculpations in such Additional Local Jurisdiction, as the Security Agent is able to exercise or, as the case may be, benefit from, under this Agreement in respect of its rights, powers, authorities, discretions, protections, exonerations and exculpations under English law, and each Creditor Representative, the Security Agent and the Companies agree to enter into any amendment or supplemental documentation necessary to confirm such appointment on such terms.

- (f) In the event that the Security Agent resigns its appointment only with respect to the Senior Notes Only Security in accordance with Clause 23.2 (*Resignation of appointment with respect to Senior Notes Only Security*), this Agreement may be amended by the Creditor Representatives, the Security Agent and the Companies without the consent of any other Party to make all required amendments of a technical or administrative nature in order to reflect the appointment of the successor Senior Notes Security Agent and the division of the role, responsibilities and rights of the Security Agent into two separate entities.

32.5 Disenfranchisement of the Affiliates of the Parent and Truad

- (a) For so long as an Affiliate of the Parent (i) beneficially owns a Senior Secured Credit Participation or Second Lien Credit Participation or (ii) has entered into a sub-participation agreement relating to a Senior Secured Credit Participation or Second Lien Credit Participation or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:
 - (i) in ascertaining:
 - (A) the Majority Senior Secured Creditors;
 - (B) the Majority Second Lien Creditors;
 - (C) the Majority Future Senior Creditors; or
 - (D) whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Secured Senior Credit Participation, Second Lien Credit Participation, Future Senior Credit Participations (as applicable) or the agreement of any specified group of Primary Creditors,

has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,
 - (ii) that Senior Secured Credit Participation or Second Lien Credit Participation shall be deemed to be zero and, subject to paragraph (ii), that Affiliate of the Parent (or the person with whom it has entered into that sub-participation, other agreement or arrangement) shall be deemed not to be a Senior Secured Creditor or Second Lien Creditor.
- (b) Each Affiliate of the Parent that is a Senior Secured Creditor or Second Lien Creditor agrees that:

- (i) in relation to any meeting or conference call to which all the Senior Secured Creditors or all the Second Lien Creditors, or any combination of those groups of Primary Creditors are invited to attend or participate, it shall not attend or participate in the same if so requested by the Security Agent or, unless the Security Agent otherwise agrees or be entitled to receive the agenda or any minutes of the same; and
 - (ii) it shall not, unless the Security Agent otherwise agrees, be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Security Agent or one or more of the Primary Creditors.
- (c) For so long as a Truad Affiliate:
- (i) beneficially owns any Senior Secured Credit Participation or Second Lien Credit Participation; or
 - (ii) has entered into a transfer agreement or sub-participation relating to a Senior Secured Credit Participation or Second Lien Credit Participation or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining, whether:

- (A) the Majority Senior Secured Creditors;
- (B) the Majority Second Lien Creditors; or
- (C) whether any given percentage (including, for the avoidance of doubt, unanimity) of the Senior Secured Credit Participation or Second Lien Credit Participation or the agreement of any specified group of Primary Creditors,

has been obtained to approve any request for a consent, waiver, amendment or other vote under this Agreement, such Senior Secured Credit Participation or Second Lien Credit Participation shall be deemed to be zero and such Truad Affiliate or the person with whom it has entered into such transfer agreement, sub-participation, other agreement or arrangement shall be deemed not to be a Senior Secured Creditor or Second Lien Creditor for the purposes of clauses (A) and (B) above (unless in the case of a person not being a Truad Affiliate it is a Senior Secured Creditor or Second Lien Creditor by virtue otherwise than by beneficially owning the relevant Senior Secured Credit Participation or Second Lien Credit Participation).

- (d) Each Creditor shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Truad Affiliate (a "**Notifiable Debt Purchase Transaction**"), such notification to be substantially in the form set out in Part 1 (*Form of Notice on Entering into Notifiable Debt Purchase Transaction*) of Schedule 7 (*Forms of Notifiable Debt Purchase Transaction Notice*).
- (e) A Creditor shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:
 - (i) is terminated; or
 - (ii) ceases to be with a Truad Affiliate,

such notification to be substantially in the form set out in Part 2 (*Form of Notice on Termination of Notifiable Debt Purchase Transaction/Notifiable Debt Purchase Transaction Ceasing to Be with Sponsor Affiliate*) of Schedule 7 (*Forms of Notifiable Debt Purchase Transaction*).

- (f) Each Truad Affiliate that is a Creditor agrees that:
 - (i) in relation to any meeting or conference call to which all the Creditors are invited to attend or participate, it shall not attend or participate in the same or, unless the relevant Creditor Representative otherwise agree, be entitled to receive the agenda or any minutes of the same;
 - (ii) subject to compliance with securities laws, in its capacity as a Creditor, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the relevant Creditor Representative or one or more of the Creditors; and
 - (iii) it will only cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings, or with respect to any proceedings commenced under or in respect of Bankruptcy Law relating to any member of the Group (including, without limitation, any scheme of arrangement or restructuring plan under Parts 26 and 26A of the Companies Act 2006 (UK) or any private composition to avoid bankruptcy (*de Wet homologatie onderhands akkoord ter voorkoming van faillissement*)) in accordance with instructions given by the Security Agent (acting pursuant to instructions from the Instructing Group) and, in the absence of such instructions, it shall abstain from voting on such matters.
- (g) Notwithstanding paragraph (a) above, no consent, waiver, amendment or other vote or action with respect to any of the terms of any Debt Document or any departure by any Creditor therefrom may affect any Truad Affiliate in a manner that is disproportionate to the effect on any Creditor of the same class or that would deprive such Truad Affiliate of its pro rata share of any payments to which it is entitled.

32.6 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment (as defined in the relevant Credit Facility Document or other Debt Document), in ascertaining:
 - (i) the Majority Senior Secured Creditors;
 - (ii) the Majority Second Lien Creditors;
 - (iii) the Majority Future Second Lien Creditors;
 - (iv) the Majority Future Senior Creditors; or
 - (v) whether:
 - (A) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Secured Credit Participations or Second Lien Credit Participations or Future Senior Credit Participations; or
 - (B) the agreement of any specified group of Primary Creditors,

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

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

- (b) For the purposes of this Clause 32.6, the Security Agent may assume that the following Creditors are Defaulting Lenders:
 - (i) any Senior Secured Creditor, Second Lien Creditor or Future Senior Creditor which has notified the Security Agent that it has become a Defaulting Lender; and
 - (ii) any Senior Secured Creditor, Second Lien Creditor or Future Senior Creditor to the extent that the relevant Creditor Representative has notified the Security Agent that that Senior Secured Creditor, Second Lien Creditor, Future Second Lien Creditor or Future Senior Creditor (as applicable) is a Defaulting Lender; and
 - (iii) any Senior Secured Creditor, Second Lien Creditor, Future Pari Passu Creditor, Future Second Lien Creditor or Future Senior Creditor in relation to which it is aware that any of the events or circumstances referred to in the definition of "defaulting lender" the equivalent provisions of any other Future Pari Passu Debt Document, Future Second Lien Debt Document or Future Senior Debt Document (as applicable)) has occurred, unless it has received notice to the contrary from the Senior Secured Creditor, Second Lien Creditor, or Future Senior Creditor (as applicable) concerned (together with any supporting evidence) or the Security Agent is otherwise aware that the Senior Secured Creditor, Second Lien Creditor, or Future Senior Creditor (as applicable) has ceased to be a Defaulting Lender.

32.7 Calculation of Senior Secured Credit Participations, Second Lien Credit Participations and Future Senior Credit Participations

For the purpose of ascertaining whether any relevant percentage of Senior Secured Credit Participations, Second Lien Credit Participations and/or Future Senior Credit Participations has been obtained under this Agreement, the Security Agent shall be entitled to notionally convert the Senior Secured Credit Participations, Second Lien Credit Participations and/or Future Senior Credit Participations into their Base Currency Amounts.

32.8 Deemed consent

If, at any time prior to the Final Discharge Date, the required Primary Creditors give a consent, approval, release or waiver or agreement to any amendment (a "**Consent**") in respect of the Senior Secured Debt Documents, the Second Lien Debt Documents or the Future Senior Debt Documents then, if that action was permitted by the terms of this Agreement, the Subordinated Creditors and the Companies 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 Primary Creditors may reasonably require to give effect to paragraph (a) of this Clause 32.8.

32.9 Excluded consents

Clause 32.8 (*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, any Transaction Security Document or any Senior Notes Only Security Document.

32.10 No liability

None of the Primary Creditors or Creditor Representatives will be liable to any other Creditor, Debtor or Third Party Security Provider for any Consent given or deemed to be given under this Clause 32.

32.11 Snooze/Lose

If in relation to:

- (a) a request for a Consent in relation to any of the terms of an Applicable Agreement (as defined below);
- (b) a request to participate in any other vote of Senior Secured Creditors, Senior Secured Notes Creditors, Second Lien Notes Creditors, Second Lien Creditors or Future Senior Creditors under the terms of an Applicable Agreement;
- (c) a request to approve any other action under an Applicable Agreement; or
- (d) a request to provide any confirmation or notification under an Applicable Agreement,

then, in each case, any Creditor:

- (i) fails to respond to that request within ten (10) Business Days (or any other period of time notified by the Companies, with the prior agreement of the Security Agent if the period for this provision to operate is less than ten (10) Business Days) of that request being made; or
- (ii) fails to provide details of its Senior Secured Credit Participation, Second Lien Credit Participation or Future Senior Credit Participation to the Security Agent within the timescale specified by the Security Agent:
 - (A) in the case of paragraphs (a) to (c) above, that Creditor's Senior Secured Credit Participation, Second Lien Credit Participation or Future Senior Credit Participation (as the case may be) shall be deemed to be zero for the purpose of calculating the Senior Secured Credit Participation, Second Lien Credit Participation or Future Senior Credit Participation when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Secured Credit Participations, Second Lien Credit Participation or Future Senior Credit Participation has been obtained to give that Consent, carry that vote or approve that action;

- (B) in the case of paragraphs (a) to (c) above, that Creditor's status as a Senior Secured Creditor, Second Lien Creditor or Future Senior Creditor shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of Senior Secured Creditors, Second Lien Creditor or Future Senior Creditors has been obtained to give that Consent, carry that vote or approve that action; and
- (C) in the case of paragraph (d) above, that confirmation or notification shall be deemed to have been given,

provided that, notwithstanding the foregoing, this Clause 32.11 shall not apply to any Noteholder in respect of any request where such Noteholder is not given the option to respond to such request in the negative but shall otherwise apply to all Noteholders.

For the purpose of this Clause 32.11, an "**Applicable Agreement**" shall mean this Agreement and any other Debt Document (other than the Future Senior Debt Documents) which does not contain a snooze/lose provision substantially equivalent to this Clause 32.11.

32.12 Agreement to override

- (a) The other Debt Documents are subject to this Agreement. Unless expressly stated otherwise in this Agreement, in the event of a conflict between the terms of a Debt Document and this Agreement the terms of this Agreement shall prevail.
- (b) Notwithstanding anything to the contrary in this Agreement, the preceding paragraph (a) as between any Creditor and any Debtor, Third Party Security Provider or any member of the Group will not cure, postpone, waive or negate in any manner any default or event of default (howsoever described) under any Debt Document as provided in the relevant Debt Document.

33 GUARANTEE LIMITATIONS

The obligations of each Debtor and Intra-Group Lender under this Agreement and the other Debt Documents shall be limited to the extent necessary to avoid breaching the applicable Guarantee Limitations.

34 GOVERNING LAW

This Agreement and any non-contractual obligation arising out of or in connection with this Agreement is governed by, and shall be construed in accordance with, English law.

35 ENFORCEMENT

35.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to decide 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 obligation arising out of or in connection with this Agreement (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to decide Disputes and accordingly no Party will argue to the contrary.

35.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law each Debtor and Third Party Security Provider (unless incorporated in England and Wales):
 - (i) irrevocably appoints Company B as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
 - (ii) agrees that failure by a process agent to notify the relevant Debtor or Third Party Security Provider 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 Companies (on behalf of all the Debtors and Third Party Security Providers) must immediately (and in any event within 10 Business Days of such event taking place) notify the Creditor Representatives and appoint another agent on terms acceptable to the Senior Secured Notes Trustee and the Future Pari Passu Debt Representative(s). Failing this, the Senior Secured Notes Trustee and the Future Pari Passu Debt Representative(s) or any Future Senior Notes Trustee (as the case may be) may appoint another agent for this purpose.
- (c) The Parent and each Debtor and Third Party Security Provider may irrevocably appoint another person as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement, subject to notifying the Security Agent accordingly. In the case of any replacement of an existing agent for service of process, following the new process agent's appointment and notification to the Security Agent of such new appointment, the then existing process agent will be deemed to have automatically resigned without the need for any further notice.
- (d) Each Debtor and Third Party Security Provider expressly agrees and consents to the provisions of this Clause 35 and Clause 34 (*Governing Law*).

35.3 Romanian Confirmations

- (a) Each Romanian Debtor represents that:
 - (i) it enters into this Agreement in its own name and on its own behalf, not as a proxy, agent, asset manager or fiduciary of another person;
 - (ii) it has independently decided to enter into the Agreement, on the basis of its own assessment or, where it has considered necessary, based on the legal, financial or technical expertise of external independent consultants selected by it. When making the decision to enter into this Agreement it relies on no written or oral communication from any Creditor;
 - (iii) it is capable of understanding (by itself or assisted by any consultants that it has considered necessary) and understands and accepts the contents of all the (internal and external) clauses and all the rights and obligations it undertakes through the Agreement; and
 - (iv) it has negotiated each clause of this Agreement (for the purpose of this Clause "*negotiation*" meaning both the exchange of proposals between Parties which has resulted in a final agreement in relation to certain clauses, and the unconditional acceptance by a Party of the clauses proposed by the other Party). In particular, the Romanian Debtors explicitly represent that they understand and accept each and all unusual standard clauses (as defined by Article 1.203

of the Romanian Civil Code) in the Agreement, as further detailed below, and for the purposes of Article 1.175 of the Romanian Civil Code acknowledge and agree that this Agreement is not a contract of adhesion (*contract de adeziune*), being the result of the negotiation between the parties.

- (b) This Agreement is the outcome of the negotiation among the Parties and represents the full agreement of the Parties with respect to absolutely all the essential and secondary aspects of this Agreement.
- (c) For the purpose of Article 1.202 and Article 1.203 of the Romanian Civil Code, each Romanian Debtor expressly accepts and acknowledges each and all Clauses of this Agreement which stipulate: (i) in favour of the Creditors limitation of liability, the right to unilaterally terminate the Agreement, or the right to suspend the enforcement of the Creditor's obligations; or (ii) to the detriment of that Romanian Debtor: forfeiture of rights and benefits, forfeiture of the benefit of time, limitation of the right to raise exceptions, tacit renewal of the Agreement or applicable law and jurisdiction clauses, including, but not limited to Clause 2 (*Ranking and Priority*), Clause 3 (*Security*), Clause 14 (*Effect of an Insolvency Event*), Clause 17 (*Enforcement of Security*), Clause 22 (*Security Agent*), Clause 34 (*Governing Law*), Clause 35 (*Enforcement*) and Clause 36 (*Contractual Recognition of Bail-in*).
- (d) Each Romanian Debtor, in full awareness of the contents and nature of the transactions contemplated by this Agreement, hereby assumes the risk of change of the circumstances under which this Agreement is entered into, in accordance with Article 1271 paragraph 3 letter (c) of the Romanian Civil Code, and hereby waives any right to raise defences based on hardship (*impreviziune*).

36 CONTRACTUAL RECOGNITION OF BAIL-IN

- (a) 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:
 - (i) any Bail-In Action in relation to any such liability, including (without limitation):
 - (A) 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;
 - (B) 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
 - (C) a cancellation of any such liability; and
 - (ii) 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.
- (b) For the purposes of this Clause 36:

“**Article 55 BRRD**” means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

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

“Bail-In Legislation” means:

- (i) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (ii) in relation to any state other than such an EEA Member Country and the UK, 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; and
- (iii) in relation to the UK, the UK Bail-In Legislation.

“EEA Member Country” means any member state of the EU, Iceland, Liechtenstein and Norway.

“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.

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

“UK Bail-In Legislation” means Part I of the UK Banking Act 2009 and any other law or regulation applicable in the UK 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).

“Write-down and Conversion Powers” means:

- (i) 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;
- (ii) in relation to any other applicable Bail-In Legislation other than the UK Bail-In Legislation:
 - (A) 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
 - (B) any similar or analogous powers under that Bail-In Legislation; and
- (iii) in relation to the UK Bail-In Legislation, 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.

This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Original Shareholder Creditor, the Holdco Lender, each Original Intra-Group Lender and each Original Debtor and is intended to be and is delivered by them as a deed on the date specified above and shall take effect as a deed notwithstanding the fact that the other parties hereto have executed this Agreement under hand.

SCHEDULE 1
THE PARTIES

THE ORIGINAL DEBTORS

Name	Jurisdiction of incorporation	Registered number or equivalent
Frigo Debtco PLC	England and Wales	14707701

THE ORIGINAL INTRA-GROUP LENDERS

Name	Jurisdiction of incorporation	Registered number or equivalent
Frigo Debtco PLC	England and Wales	14707701

THE ORIGINAL THIRD PARTY SECURITY PROVIDERS

Name	Jurisdiction of incorporation	Registered number or equivalent
Frigo Newco 1 Limited	England and Wales	14701481

THE ORIGINAL SHAREHOLDER CREDITORS

Name	Jurisdiction of incorporation	Registered number or equivalent
Frigo Newco 1 Limited	England and Wales	14701481

SCHEDULE 2
FORM OF DEBTOR/THIRD PARTY SECURITY PROVIDER ACCESSION DEED

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

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

This agreement is made on [date] by the Acceding [Debtor]/[Third Party Security Provider] in relation to an intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] between, amongst others, [●] as Security Agent, the Creditors and the Debtors (each as defined in the Intercreditor Agreement).

The Acceding [Debtor]/[Third Party Security Provider] 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]/[provide third party security in respect of Liabilities under the following documents]:

[Insert details (date, parties and description) of relevant documents]

the “**Relevant Documents**”.

IT IS AGREED as follows:

- 1 Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
- 2 The Acceding [Debtor]/[Third Party Security Provider] and the Security Agent agree, to the extent legally possible and save as otherwise provided in the relevant Transaction Security Document, that the Security Agent without prejudice to the appointment of the Security Agent by the Secured Parties pursuant to Clause 22 (*The Security Agent*) of the Intercreditor Agreement 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 (other than as otherwise provided in any Relevant Document); and]¹
 - (c) all obligations expressed to be undertaken by the Acceding [Debtor]/[Third Party Security Provider] [to pay amounts in respect of the Liabilities to the Security Agent as agent or trustee for the Secured Parties (in the Relevant Documents or otherwise) and] secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as agent or trustee for the Secured Parties,

¹ Include to the extent that the Security created in the Relevant Documents is expressed to be granted to the Security Agent as trustee or agent for the Secured Parties.

on trust (other than as otherwise provided in any Relevant Document) for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

3 The Acceding [Debtor]/[Third Party Security Provider] confirms that it intends to be party to the Intercreditor Agreement as a [Debtor]/[Third Party Security Provider], undertakes to perform all the obligations expressed to be assumed by a [Debtor]/[Third Party Security Provider] under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.

4 [In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].²

5 [[*Romanian Debtor confirmations*]

The Romanian Debtor expressly confirms, acknowledges and reaffirms the confirmations and representations contained in Clause 35.3 (Romanian confirmations), as being fully applicable to the present Accession Deed and on the date of entering into the present Accession Deed.]

[4/5/6]. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

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

The Acceding [Debtor]/[Third Party Security Provider])

EXECUTED AS A DEED)

By: [Full Name of Acceding [Debtor]/[Third Party Security Provider]])

Address for notices:

Address:

Fax:

The Security Agent

[Full Name of Security Agent]

² Include this paragraph in the relevant Debtor/Third Party Security Provider Accession Deed if the Acceding Debtor is also to accede as an Intra-Group Lender to the Intercreditor Agreement.

By:

Date:

SCHEDULE 3

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.

From: [Acceding Party]

THIS UNDERTAKING is made on [date] by [insert full name of new Senior Secured Creditor/Second Lien Creditor/Credit Facility Lender/Cash Management Facility Lender/Future Pari Passu Creditor/Future Second Lien Creditor/Future Senior Creditor/New Hedge Counterparty/Creditor Representative/Intra-Group Lender/Shareholder Creditor] (the “**Acceding Party**”) in relation to the intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] between, among others, [insert name of Security Agent] as Security Agent, [insert name of Agents], the Creditors and the 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 Party being accepted as a party to the Intercreditor Agreement in such capacity for the purposes of the Intercreditor Agreement, the Acceding Party confirms that, as from [date], it intends to be party to the Intercreditor Agreement as, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by, a [Senior Secured Creditor/Second Lien Creditor / Credit Facility Lender / Cash Management Facility Lender / Future Pari Passu Creditor / Future Second Lien Creditor / Future Senior Creditor / New Hedge Counterparty/Creditor Representative/Intra-Group Lender/Shareholder Creditor] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[The Acceding Party is an Affiliate of a Credit Facility Lender and has become a provider of an Ancillary Facility. In consideration of the Acceding Party being accepted as an Ancillary Lender for the purposes of the [Credit Facility Document], the Acceding Lender confirms, for the benefit of the parties to the [Credit Facility Document], that, as from [date], it intends to be party to the [Credit Facility Document] as an Ancillary Lender, and undertakes to perform all the obligations expressed in the [Credit Facility Document] to be assumed by a Finance Party (as defined in the [Credit Facility Document]) and agrees that it shall be bound by all the provisions of the [Credit Facility Document], as if it had been an original party to the [Credit Facility Document] as an Ancillary Lender.]³

[The Acceding Party has become a provider of hedging arrangements to the [Company]. In consideration of the Acceding Party being accepted as a Hedge Counterparty for the purposes of the [Credit Facility Document], the Acceding Party confirms, for the benefit of the parties to the [Credit Facility Document], that, as from [date], it intends to be party to the [Credit Facility Document] as a Hedge Counterparty, and undertakes to perform all the obligations expressed in the [Credit Facility Document] to be assumed by a Hedge Counterparty and agrees that it shall be bound by all the provisions of the [Credit Facility Document], as if it had been an original party to the [Credit Facility Document] as a Hedge Counterparty.]⁴

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

³ Include only in the case of an Ancillary Lender which is an Affiliate of a Credit Facility Lender and which is using this undertaking to accede to the relevant Credit Facility Documents in accordance with paragraph (c) of Clause 24.14(Creditor/Creditor Representative Accession Undertaking).

⁴ Include only in the case of a Hedge Counterparty which is using this undertaking to accede to the relevant Credit Facility Documents in accordance with paragraph (c) of Clause 24.14(Creditor/Creditor Representative Accession Undertaking).

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

Acceding [Creditor/Creditor Representative]

[EXECUTED as a DEED]

[insert full name of Acceding Creditor/Agent]

By:

Address:

Fax:

Accepted by the Security Agent

for and on behalf of
[Insert full name of current Security Agent]

Date:

[Accepted by [other relevant Creditor Representatives]]

For and on behalf of
*[insert name of relevant Creditor Representative]*⁵

⁵ Include if relevant.

SCHEDULE 4
FORM OF DEBTOR RESIGNATION REQUEST

To: [●] as Security Agent

From: [resigning Debtor] and [Company]

Dated:

Dear Sirs

[●] Intercreditor Agreement dated [●] 2023 (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 24.17 (*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 Event of 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 Subordinated Liabilities.]
- 4** This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Company] [resigning Debtor]

By: By:

SCHEDULE 5
HEDGE COUNTERPARTIES' GUARANTEE AND INDEMNITY

1 Guarantee and indemnity

- (a) Each Hedging Guarantor irrevocably and unconditionally jointly and severally and at all times subject to the Guarantee Limitations:
- (i) guarantees to each Hedge Counterparty punctual performance by each other Hedging Guarantor of all that Hedging Guarantor's obligations under the Hedging Agreement to which that Hedge Counterparty is party;
 - (ii) undertakes with each Hedge Counterparty that whenever another Hedging Guarantor does not pay any amount when due (allowing for any applicable grace period) under or in connection with the Hedging Agreement to which that Hedge Counterparty is party, that Hedging Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
 - (iii) 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 Hedging Guarantor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Hedging Agreement to which that Hedge Counterparty is a party on the date when it would have been due.
- (b) The amount payable by a Hedging Guarantor 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 Hedging Guarantor under the applicable Hedging Agreement, 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 Hedging Guarantor 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 Hedging Guarantor under this Schedule 5 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

4 Waiver of defences

Subject to the Guarantee Limitations, the obligations of each Hedging Guarantor 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 Hedging Guarantor or other person;
- (b) the release of any other Hedging Guarantor 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 Hedging Guarantor 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 Hedging Guarantor 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 Agreement or the addition of any new Hedging Liabilities under any Hedging Agreement or other document or security); or
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Hedging Agreement or any other document or security.

5 Hedging Guarantor Intent

Without prejudice to the generality of paragraph 4 (*Waiver of defences*) but subject to Guarantee Limitations, each Hedging Guarantor 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 Agreement and/or any facility or amount made available under any of the Hedging Agreements including 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 Hedging Liabilities; refinancing any indebtedness; making Hedging Liabilities available to new Hedging Guarantors; any other variation or extension of the purposes for which any such Hedging Liabilities 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 Hedging Guarantor 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 Hedging Guarantor under this Schedule 5. This waiver applies irrespective of any law or any provision of a Hedging Agreement (to which that Hedge Counterparty is a party) to the contrary.

7 Appropriations

Until all amounts which may be or become payable by the Hedging Guarantors under or in connection with the Hedging Agreements to which it is party have been irrevocably paid in full, each Hedge Counterparty under such Hedging Agreement (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 in respect of claims made under this Schedule 5, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Hedging Guarantor shall be entitled to the benefit of the same; and

- (b) in respect of any amounts received or recovered by any Hedge Counterparty after a claim pursuant to this Schedule 5 in respect of any sum due and payable by any Hedging Guarantor under this Schedule 5, place such amounts in an interest-bearing suspense account (bearing interest at a market rate usual for accounts of that type) unless and until such moneys are sufficient in aggregate to discharge in full all amounts then due and payable under the Hedging Agreements.

8 Deferral of Hedging Guarantors' rights

- (a) Until all amounts which may be or become payable by the Hedging Guarantors under or in connection with the Hedging Agreements to which it is party have been irrevocably paid in full and unless the relevant Hedge Counterparty otherwise directs, no Hedging Guarantor will, to the greatest extent permitted under applicable law, exercise any rights which it may have by reason of performance by it of its obligations under the such Hedging Agreement or by reason of any amount being payable, or liability arising, under this Schedule 5:

- (i) to be indemnified by a Hedging Guarantor;
- (ii) to claim any contribution from any other guarantor of any Hedging Guarantor's obligations under the applicable Hedging Agreement;
- (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Hedge Counterparty under the applicable Hedging Agreement or of any other guarantee or security taken pursuant to, or in connection with, such Hedging Agreement by any Hedge Counterparty thereof;
- (iv) other than where the Hedge Counterparty has acted fraudulently or with wilful misconduct, to bring legal or other proceedings for an order requiring any Hedging Guarantor to make any payment, or perform any obligation, in respect of which any Hedging Guarantor has given a guarantee, undertaking or indemnity under paragraph 1 (*Guarantee and indemnity*);
- (v) to exercise any right of set-off against any Hedging Guarantor; and/or
- (vi) to claim or prove as a creditor of any Hedging Guarantor in competition with the relevant Hedge Counterparty,

unless the exercise of any such right is necessary or advisable to avoid any risk of personal or criminal liability for any current or former managing director of that Hedging Guarantor.

- (b) If a Hedging Guarantor receives any benefit, payment or distribution in relation to such rights, it shall, other than to the extent such Hedging Guarantor is permitted to retain such benefit, payment or distribution in accordance with this Agreement, 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 Hedging Guarantors under or in connection with the Hedging Agreement to which it is party to be repaid in full on trust for the Hedge Counterparties and shall promptly pay or transfer the same, but

subject to the Guarantee Limitations, to the Security Agent or as the Security Agent may direct for application in accordance with Clause 20 (*Application of Proceeds*).

9 Release of Hedging Guarantors' right of contribution

If any Hedging Guarantor (a "**Retiring Hedging Guarantor**") ceases to be a Debtor in accordance with the terms of this Agreement then on the date such Retiring Hedging Guarantor ceases to be a Debtor:

- (a) that Retiring Hedging Guarantor is released by each other Hedging Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Hedging Guarantor arising by reason of the performance by any other Hedging Guarantor of its obligations under the Hedging Agreements; and
- (b) each other Hedging Guarantor 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 Counterparty under any Hedging Agreement to which it is party 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 Hedging Guarantor.

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: General

- (a) Without limiting any specific exemptions set out below:
 - (i) no Hedging Guarantor's obligations and liabilities under Schedule 5 and under any other guarantee or indemnity provision in a Hedging Agreement (the "**Hedging Guarantee Obligations**") will extend to include any obligation or liability; and
 - (ii) no Transaction Security granted by a Hedging Guarantor will secure any Hedging Guarantee Obligation,

if to the extent doing so would be unlawful financial assistance (notwithstanding any applicable exemptions and/or undertaking of any applicable prescribed whitewash or similar financial assistance procedures) in respect of the acquisition of shares in itself or its Holding Company or a member of the Group under the laws of its jurisdiction of incorporation.

- (b) If, notwithstanding paragraph (a) above, the giving of the guarantee in respect of the Hedging Guarantee Obligations or Transaction Security would be unlawful financial assistance, then, to the extent necessary to give effect to paragraph (a) above, the obligations under the Hedging Agreements will be deemed to have been split into two tranches; "**Tranche 1**" comprising those obligations which can be secured by the Hedging Guarantee Obligations or Transaction Security without breaching or contravening relevant financial assistance laws and "**Tranche 2**" comprising the remainder of the obligations under the Hedging Agreements. The Tranche 2 obligations will be excluded from the relevant Hedging Guarantee Obligations.

- (c) The obligations of each Hedging Guarantor under this at any time shall be limited to the maximum amount as will result in such Hedging Guarantee Obligations not constituting a fraudulent conveyance or fraudulent transfer under any bankruptcy or insolvency law.

12 Additional Guarantee Limitations

The guarantee of any acceding Debtor which is a Hedging Guarantor (an “**Acceding Hedging Guarantor**”) is subject to any limitations relating to that Acceding Hedging Guarantor on the amount guaranteed or to the extent of the recourse of the beneficiaries of the guarantee which is set out in the Debtor/Third Party Security Provider Accession Deed applicable to such Acceding Hedging Guarantor (which may include any amendment to the terms of any limitations set out in this Schedule 5) and agreed in accordance with the Agreed Security Principles).

SCHEDULE 6

CASH MANAGEMENT FACILITY CREDITORS' GUARANTEE AND INDEMNITY

1 Guarantee and indemnity

- (a) Each Cash Management Facility Guarantor irrevocably and unconditionally jointly and severally and at all times subject to the Guarantee Limitations:

 - (i) guarantees to each Cash Management Facility Creditor punctual performance by each other Cash Management Facility Guarantor of all that Cash Management Facility Guarantor's obligations under the Cash Management Facility Documents to which that Cash Management Facility Creditor is party;
 - (ii) undertakes with each Cash Management Facility Creditor that whenever another Cash Management Facility Guarantor does not pay any amount when due (allowing for any applicable grace period) under or in connection with the Cash Management Facility Documents to which that Cash Management Facility Creditor is party, that Cash Management Facility Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
 - (iii) agrees with each Cash Management Facility Creditor that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Cash Management Facility Creditor immediately on demand against any cost, loss or liability it incurs as a result of a Cash Management Facility Guarantor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Cash Management Facility Documents to which that Cash Management Facility Creditor is a party on the date when it would have been due.
- (b) The amount payable by a Cash Management Facility Guarantor under this indemnity will not exceed the amount it would have had to pay under this Schedule 6 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 Cash Management Facility Guarantor under the applicable Cash Management Facility Document, 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 Cash Management Facility Guarantor or any security for those obligations or otherwise) is made by a Cash Management Facility Creditor 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 Cash Management Facility Guarantor under this Schedule 6 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

4 Waiver of defences

Subject to the Guarantee Limitations, the obligations of each Cash Management Facility Guarantor under this Schedule 6 will not be affected by an act, omission, matter or thing which,

but for this Schedule 6, would reduce, release or prejudice any of its obligations under this Schedule 6 (without limitation and whether or not known to it or any Cash Management Facility Creditor) including:

- (a) any time, waiver or consent granted to, or composition with, any Cash Management Facility Guarantor or other person;
- (b) the release of any other Cash Management Facility Guarantor 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 Cash Management Facility Guarantor 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 Cash Management Facility Guarantor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Cash Management Facility Document or any other document or security (including, without limitation, any change in the purpose of, any extension of or increase in any Cash Management Facility Liabilities or the addition of any new Cash Management Facility Liabilities under any Cash Management Facility Document or other document or security); or
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Cash Management Facility Document or any other document or security.

5 Cash Management Facility Guarantor Intent

Without prejudice to the generality of paragraph 4 (*Waiver of defences*) but subject to the Guarantee Limitations, each Cash Management Facility Guarantor 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 Cash Management Facility Documents and/or any facility or amount made available under any of the Cash Management Facility Documents, including 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 Cash Management Facility Liabilities; refinancing any indebtedness; making Cash Management Facility Liabilities available to new Cash Management Facility Guarantors; any other variation or extension of the purposes for which any such Cash Management Facility Liabilities 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 Cash Management Facility Guarantor waives any right it may have of first requiring any Cash Management Facility Creditor (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 Cash Management Facility Guarantor under this Schedule 6. This waiver applies irrespective of any law or any provision of a Cash Management Facility Document (to which that Cash Management Facility Creditor is a party) to the contrary.

7 Appropriations

Until all amounts which may be or become payable by the Cash Management Facility Guarantors under or in connection with the Cash Management Facility Documents to which it is party have been irrevocably paid in full, each Cash Management Facility Creditor under such Cash Management Facility Document (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 Cash Management Facility Creditor (or any trustee or agent on its behalf) in respect of those amounts in respect of claims made under this Schedule 6, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Cash Management Facility Guarantor shall be entitled to the benefit of the same; and
- (b) in respect of any amounts received or recovered by any Cash Management Facility Creditor after a claim pursuant to this Schedule 6 in respect of any sum due and payable by any Cash Management Facility Guarantor under this Schedule 6, place such amounts in an interest-bearing suspense account (bearing interest at a market rate usual for accounts of that type) unless and until such moneys are sufficient in aggregate to discharge in full all amounts then due and payable under the Cash Management Facility Documents.

8 Deferral of Cash Management Facility Guarantors' rights

- (a) Until all amounts which may be or become payable by the Cash Management Facility Guarantors under or in connection with the Cash Management Facility Documents to which it is party have been irrevocably paid in full and unless the relevant Cash Management Facility Creditors otherwise directs, no Cash Management Facility Guarantor will, to the greatest extent permitted under applicable law, exercise any rights which it may have by reason of performance by it of its obligations under the such Cash Management Facility Document or by reason of any amount being payable, or liability arising, under this Schedule 6:
 - (i) to be indemnified by a Cash Management Facility Guarantor;
 - (ii) to claim any contribution from any other guarantor of any Cash Management Facility Guarantor's obligations under the applicable Cash Management Facility Document;
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Cash Management Facility Creditor under the applicable Cash Management Facility Documents or of any other guarantee or security taken pursuant to, or in connection with, such Cash Management Facility Documents by any Cash Management Facility Creditor thereof;
 - (iv) other than were the Cash Management Facility Creditor has acted fraudulently or with wilful misconduct, to bring legal or other proceedings for an order requiring any Cash Management Facility Guarantor to make any payment, or perform any obligation, in respect of which any Cash Management Facility Guarantor has given a guarantee, undertaking or indemnity under paragraph 1 (*Guarantee and indemnity*);
 - (v) to exercise any right of set-off against any Cash Management Facility Guarantor; and/or

- (vi) to claim or prove as a creditor of any Cash Management Facility Guarantor in competition with the relevant Cash Management Facility Creditor,

unless the exercise of any such right is necessary or advisable to avoid any risk of personal or criminal liability for any current or former managing director of that Cash Management Facility Guarantor.

- (b) If a Cash Management Facility Guarantor receives any benefit, payment or distribution in relation to such rights, it shall, other than to the extent such Cash Management Facility Guarantor is permitted to retain such benefit, payment or distribution in accordance with this Agreement hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Cash Management Facility Creditors by the Cash Management Facility Guarantors under or in connection with the Cash Management Facility Documents to which it is party to be repaid in full on trust for the Cash Management Facility Creditors and shall promptly pay or transfer the same, but subject to the Guarantee Limitations, to the Security Agent or as the Security Agent may direct for application in accordance with Clause 20 (*Application of Proceeds*).

9 Release of Cash Management Facility Guarantors' right of contribution

If any Cash Management Facility Guarantor (a "**Retiring Cash Management Facility Guarantor**") ceases to be a Debtor in accordance with the terms of this Agreement then on the date such Retiring Cash Management Facility Guarantor ceases to be a Debtor:

- (a) that Retiring Cash Management Facility Guarantor is released by each other Cash Management Facility Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Cash Management Facility Guarantor arising by reason of the performance by any other Cash Management Facility Guarantor of its obligations under the Cash Management Facility Documents; and
- (b) each other Cash Management Facility Guarantor waives any rights it may have by reason of the performance of its obligations under the Cash Management Facility Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Cash Management Facility Creditors under any Cash Management Facility Documents to which it is party or of any other security taken pursuant to, or in connection with, any Cash Management Facility Documents where such rights or security are granted by or in relation to the assets of the Retiring Cash Management Facility Guarantor.

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 Cash Management Facility Creditor.

11 Guarantee Limitations: General

- (a) Without limiting any specific exemptions set out below:
 - (i) no Cash Management Facility Guarantor's obligations and liabilities under Schedule 6 and under any other guarantee or indemnity provision in a Cash Management Facility Document (the "**Cash Management Facility Guarantee Obligations**") will extend to include any obligation or liability; and

- (ii) no Transaction Security granted by a Cash Management Facility Guarantor will secure any Cash Management Facility Guarantee Obligation,

if to the extent doing so would be unlawful financial assistance (notwithstanding any applicable exemptions and/or undertaking of any applicable prescribed whitewash or similar financial assistance procedures) in respect of the acquisition of shares in itself or its Holding Company or a member of the Group under the laws of its jurisdiction of incorporation.

- (b) If, notwithstanding paragraph (a) above, the giving of the guarantee in respect of the Cash Management Facility Guarantee Obligations or Transaction Security would be unlawful financial assistance, then, to the extent necessary to give effect to paragraph (a) above, the obligations under the Cash Management Facility Documents will be deemed to have been split into two tranches; “**Tranche 1**” comprising those obligations which can be secured by the Cash Management Facility Guarantee Obligations or Transaction Security without breaching or contravening relevant financial assistance laws and “**Tranche 2**” comprising the remainder of the obligations under the Cash Management Facility Documents. The Tranche 2 obligations will be excluded from the relevant Cash Management Facility Guarantee Obligations.
- (c) The obligations of each Cash Management Facility Guarantor under this Schedule 6 at any time shall be limited to the maximum amount as will result in such Cash Management Facility Guarantee Obligations not constituting a fraudulent conveyance or fraudulent transfer under any bankruptcy or insolvency law

12 Additional Guarantee Limitations

The guarantee of any acceding Debtor which is a Cash Management Facility Guarantor (an “**Acceding Cash Management Facility Guarantor**”) is subject to any limitations relating to that Acceding Cash Management Facility Guarantor on the amount guaranteed or to the extent of the recourse of the beneficiaries of the guarantee which is set out in the Debtor/Third Party Security Provider Accession Deed applicable to such Acceding Cash Management Facility Guarantor (which may include any amendment to the terms of any limitations set out in this Schedule 6) and agreed in accordance with the Agreed Security Principles).

SCHEDULE 7
FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION

PART 1
Form of Notice on Entering into Notifiable Debt Purchase Transaction

To: [●] as Security Agent

From: [The Creditor]

Dated:

[Parent] - [●] Intercreditor Agreement dated [●] (the “Intercreditor Agreement”)

- 1** We refer to paragraph (d) of Clause 32.5 (*Disenfranchisement of the Affiliates of the Parent and Truad*) of the Intercreditor Agreement. Terms defined in the Intercreditor Agreement have the same meaning in this notice unless given a different meaning in this notice.
- 2** We have entered into a Notifiable Debt Purchase Transaction.
- 3** The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our commitment(s) as set out below.

Available Commitment

**Amount of our Available Commitment
to which Notifiable Debt Purchase
Transaction relates (Base Currency)**

[Senior Secured Credit Participation]*⁶

[insert amount (of that Senior Secured Credit Participation) to which the relevant Debt Purchase Transaction applies]

[Second Lien Credit Participation]*

[insert amount (of that Second Lien Credit Participation) to which the relevant Debt Purchase Transaction applies]

[Creditor]

By:

⁶ Delete as applicable.

PART 2
**Form of Notice on Termination of Notifiable Debt Purchase Transaction/Notifiable Debt
Purchase Transaction Ceasing To Be With Sponsor Affiliate**

To: [●] as Security Agent

From: [The Creditor]

Dated:

[Parent] - [●] Intercreditor Agreement dated [●] (the “Intercreditor Agreement”)

- 1** We refer to paragraph (e) of Clause 32.5 (*Disenfranchisement of the Affiliates of the Parent and Truad*) of the Intercreditor Agreement. Terms defined in the Intercreditor Agreement have the same meaning in this notice unless given a different meaning in this notice.
- 2** A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [] has [terminated]/[ceased to be with a Truad Affiliate].^{7*}
- 3** The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our commitment(s) as set out below.

Commitment

**Amount of our Commitment to which
Notifiable Debt Purchase Transaction
relates (Base Currency)**

[Senior Secured Credit Participation]*⁸

[insert amount (of that Senior Secured
Credit Participation) to which the
relevant Debt Purchase Transaction
applies]

[Second Lien Credit Participation]*

[insert amount (of that Second Lien
Credit Participation) to which the
relevant Debt Purchase Transaction
applies]

[Creditor]

By:

⁷ Delete as applicable.

⁸ Delete as applicable.

SCHEDULE 8

AGREED SECURITY PRINCIPLES

General

- 1 The future guarantees and security to be provided in support of the Secured Obligations will be given in accordance with, and subject to, the security principles set out in this section (such principles, the “**Agreed Security Principles**”) which embody recognition by all parties that there may be certain legal and practical difficulties in obtaining security or guarantees from Group. In particular:
- (a) general legal and statutory limitations, financial assistance, corporate benefit, fraudulent preference, “transfer pricing”, “thin capitalisation” rules, capital maintenance, retention of title claims, employee consultation or approval requirements, exchange control restrictions and similar principles may limit the ability of a member of the Group to provide a guarantee or security or may require that the guarantee or security be limited by an amount or otherwise; the relevant member of the Group will use all reasonable endeavours (but without incurring material cost and without material adverse impact on relationships with third parties) to assist in overcoming any such restriction;
 - (b) a factor in determining whether or not security shall be taken is the economic cost to the Group of providing security (including, for the avoidance of doubt, adverse effects on interest deductibility and stamp duty, notarisation, perfection and registration fees) and the proportionate benefit accruing to the Secured Parties having regard to the extent of the obligations which can be secured by that security and the priority that will be offered by taking or perfecting the security and the maximum guaranteed or secured amount may be limited to minimise stamp duty, notarisation, perfection, registration or other applicable fees, taxes and duties where the benefit to the Secured Parties of increasing the guaranteed or secured amount is disproportionate to the level of such fee, taxes and duties;
 - (c) guarantees should not be granted and security shall not be created or perfected to the extent that it would result in a risk to the directors or officers of the relevant grantor of such guarantee and security in contravention of any statutory duty in such capacity or their fiduciary duties and/or which could reasonably be expected to result in personal, civil or criminal liability on the part of any such director or officer;
 - (d) the giving of a guarantee, the granting of security or the perfection of the security granted will not be required if: (i) it would have a material adverse effect on the ability of the relevant member of the Group to conduct its operations and business in the ordinary course as otherwise permitted by the Secured Debt Documents; or (ii) it would have a material adverse effect on the tax arrangements of the relevant member of the Group or any other member of the Group; provided that, in each case, the relevant member of the Group shall use reasonable endeavours to overcome such obstacle. The secured and guaranteed obligations will be limited where necessary to prevent any material additional tax liability of the relevant member of the Group;
 - (e) where a class of assets to be secured includes material and immaterial assets, if the cost of granting security over the immaterial assets is disproportionate to the benefit of such security, security will be granted over the material assets only;
 - (f) no security shall be granted by any member of the Group incorporated in Greece or with respect to assets that are located in Greece if there is a material risk that such security may attract a 2.4% stamp duty charge or a 3.6% stamp duty charge, as applicable;
 - (g) any assets subject to third party arrangements which are not prohibited by the terms of the Secured Debt Documents and which prevent or prohibit those assets from being subject to

legal, valid, binding and enforceable security will be excluded from the security granted in any relevant Security Document provided that the relevant member of the Group will, if the asset is material, use all reasonable endeavours (but without incurring material costs and without material adverse impact on relationships with third parties or any commercial negotiations of any member of the Group in each case as determined in good faith by the board of directors of the Company) to assist in overcoming any such restriction;

- (h) the perfection of security over contractual rights will not be required prior to the Creditors (or any creditor representative appointed by them) exercising any rights to accelerate amounts outstanding under the Debt Documents (a “**Declared Default**”) if it has or is reasonably likely to have a material adverse effect on the commercial reputation of the relevant member of the Group on its ability to conduct its operations and business in the ordinary course;
 - (i) all security (unless indicated otherwise in these Agreed Security Principles) shall be governed by the law of and secure assets located in the jurisdiction of incorporation of a Debtor and no perfection action will be required in jurisdictions where such entities are not located;
 - (j) no title investigations or other diligence on assets will be required and no title insurance, landlord waivers, asset lists or collateral access agreements will be required, provided that assets lists will be provided if, and only to the extent, required by local law to be provided to perfect, register or enforce the security provided further that such asset lists shall not be provided more frequently than once per annum or, following a Declared Default that has not been withdrawn, on the Security Agent's request; and
 - (k) no guarantee or security shall guarantee or secure any “Excluded Swap Obligations” defined in accordance with the LSTA Market Advisory Update dated February 15, 2013 entitled “Swap Regulations' Implications for Loan Documentation”, and any update thereto by the LSTA.
- 2 Before incurring material legal fees, registration costs, taxes, notary fees and other costs and expenses relating to the granting of security, the Secured Parties (or any creditor representative appointed by them) will consult with the Parent.
- 3 The Debtor will not be required to pay the cost of any re-execution, notarisation, re-registration, amendment or other Perfection Requirement for any security on any assignment or transfer by a Secured Party which shall be borne by the relevant Secured Party (other than a creditor representative appointed by them or the Security Agent).

Terms of Transaction Security Documents

- 4 The following principles will be reflected in the terms of the Security Documents:
- (a) the security will not be enforceable (and no set-off rights will be exercisable) until the occurrence of a Declared Default (and, with respect to security governed by the laws of the Netherlands, constitutes a default in the performance of the Secured Obligations);
 - (b) representations and undertakings shall be included in a Security Document to the extent necessary under local law to confirm any registration or perfection of, or ensure the validity of, the Security and shall not be repeated and undertakings (such as in respect of insurance, maintenance of assets, information or the payment of costs) shall be strictly limited to those necessary for the creation or perfection of the security will not be unduly burdensome or unreasonably interfere with the normal running of the business and shall not be included to the extent the subject matter thereof is the same as a corresponding undertaking in the Debt Documents provided that any Security Document may contain a negative pledge or

disposals restriction subject to any security or disposal not prohibited under the Debt Documents;

- (c) control agreements (or perfection by control or similar arrangements) shall not be required with respect to any assets;
- (d) the Secured Parties (or any representative appointed by them) shall only be able to exercise a power of attorney following the occurrence of a Declared Default or if the relevant Debtor has failed to comply with a further assurance or perfection obligation within 10 Business Days of being notified; and
- (e) the Security Documents shall not operate to prevent transactions that are otherwise permitted under the Debt Documents or require additional consents or authorisations or to impose commercial obligations.

Bank accounts

- 5 If a Debtor grants security over its bank accounts it shall (other than any blocked account) be free to deal with those accounts in the course of its business until a Declared Default. Notice of the security is only required for blocked accounts prior to the occurrence of a Declared Default, unless otherwise required under local law or the general terms and conditions of the relevant account bank to create valid disclosed security over the relevant bank account. Following service of any notice, the relevant Debtor shall use its reasonable endeavours to obtain an acknowledgement within 20 Business Days of service (at which point its obligation shall cease).
- 6 Any security over bank accounts shall be subject to any prior security interests in favour of the account bank which are created either by law or in the standard terms and conditions of the account bank. The notice of security may request these are waived or subordinated by the account bank but the relevant Debtor shall not be required to change its banking arrangements if these security interests are not waived or subordinated or only partially waived or subordinated.

Fixed assets

If security is granted over fixed assets, the relevant Debtor shall be free to deal with such assets in the ordinary course until the occurrence of a Declared Default in accordance with the terms of the Secured Debt Documents.

Receivables and Loans

- 7 If a Debtor grants security over its material trade or intercompany receivables and loans it shall be free to deal with those receivables and loans prior to the occurrence of a Declared Default, and no notice of security shall be served until the occurrence of a Declared Default, provided that any Security Document pledging loans and receivables owed to a pledgor shall purport to pledge all loans and receivables owed to such pledgor irrespective of the governing law of such loans and receivables.
- 8 With respect to any Security Document governed by Dutch law pledging material intercompany receivables (*vorderingen op naam*) owed to certain members of the Group within the meaning of section 2:24(b) of the Dutch Civil Code from time to time, notice of security shall be served within 5 Business Days of security being granted.

Shares

- 9 The relevant Security Document will be governed by the laws of the jurisdiction of incorporation of the company whose shares are subject to security. Until the occurrence of a Declared Default: (i) legal title shall remain with the relevant pledgor; (ii) the relevant pledgor will be permitted to retain (and the relevant company will be entitled to pay) dividends and other payments to which it

is entitled in its capacity as shareholder, quotaholder, or partner, as applicable; and (iii) the pledgor may exercise voting rights in a manner which does not adversely affect the validity or enforceability of the security or cause an Event of Default.

- 10 To the extent possible under local law, security will be created so as to extend also over future shares acquired in any way by the relevant pledgor, so that the shares subject to security represent at all times 100% of the share capital of the respective company (or the percentage owned by the relevant pledgor, as applicable).
- 11 If applicable under local law, the share certificate (or other documents evidencing or representing title to the relevant shares) and a stock transfer form executed in blank (or local law equivalent) shall promptly be provided to the Security Agent (and in any case within 5 Business Days of the security being granted), unless such documents are required under local law for the creation of security in which case they shall be provided upon granting such security.
- 12 To the extent possible under local law, the constitutional documents of the company whose shares are subject to security, if 100% directly or indirectly owned by the Parent, will be amended to remove any restriction on the transfer or the registration of the transfer of the shares on the taking or enforcement of the security granted over them. For companies less than 100% directly or indirectly owned by the Parent and subject to share security, reasonable efforts will be taken to amend the constitutional documents of such company so as to remove any such restriction which, for the avoidance of doubt, will not require the Parent or applicable member of the Group to take any action which would have a materially adverse impact on commercial relationships with third parties or otherwise force the Parent or relevant member of the Group to incur any material cost that would be disproportionate to the benefit obtained by the Secured Parties.
- 13 With respect to any security granted over the participatory interest (shares) of a limited liability company incorporated in Russia, an original extract from the Unified State Register of Legal Entities evidencing that a pledge is created or existing over the participatory interests in the charter capital of the company which is subject to such pledge of participatory interest agreement in favour of the Security Agent, shall promptly be provided to the Security Agent (and in any case within 10 Business Days of the security being granted or amended).
- 14 Security shall be provided over the shares held in the Romanian Debtors, Frigoglas Romania SRL and 3P Frigoglas SRL, representing 100% of the capital of the respective companies, as soon as reasonably possible and in event by no later than five Business Days from the date Company C and Frigoglas Romania SRL accede to this Agreement as Debtors. With respect to any security granted over the shares of a company incorporated in Romania, evidence of registration of the share pledge with the shareholders' registry and with the National Register for Movable Property shall promptly be provided to the Security Agent (and in any case no later than 5 Business Days of the security being granted). No other registration formalities or proof of registration in Romania will be required.
- 15 As soon as reasonably practicable following the Sanctions Fallaway Date and subject to receiving all necessary governmental approvals, the Russian law governed pledge agreements executed by each of Frigoinvest Holdings B.V. and Frigoglass Cyprus Limited in relation to the pledge over the participatory interest (shares) in the charter capital of Frigoglass Eurasia LLC shall be delivered to the Security Agent.
- 16 With respect to any share pledge(s) over the shares of a company incorporated in Cyprus, a certified copy of such Cyprus' company's register of members showing a memorandum of pledge in respect of the pledged shares shall be provided to the Security Agent concurrently with the execution of the relevant share pledge together with the pledged share certificate(s) and relevant ancillary documents as referred to in each such share pledge agreement.
- 17 With respect to any share pledge(s) over the shares of a company incorporated in Greece, such share pledge will need to be registered in the book of shareholders (in Greek "βιβλίο μετόχων") of the

Greek company and a certified copy of such Greek company's book of shareholders including the registration of the share pledge shall be provided to the Security Agent concurrently with the execution of the relevant share pledge agreement together with the pledged share certificate(s) (if the pledged shares are incorporated into share certificates) duly annotated to reflect the registration of the pledge.

Real estate

- 18 No fixed security shall be granted over real estate comprising (i) leasehold property or (ii) real estate which does not have a book value or market value in excess of EUR 1,000,000 (or its equivalent in other currencies). There will be no obligation to investigate title, provide surveys or other insurance or environmental due diligence.
- 19 Frigoglass Romania S.R.L. shall provide, as soon as reasonably possible and in event by no later than five Business Days from the date it accedes to this Agreement as a Debtor, a first-ranking security with respect to the real estate land and future building representing the Timisoara plant being currently under construction located in Parta Village, Timis County, Romania and registered with the Parta Land Book under No. 406225, cadastral No. 406225, (hereinafter referred to as the "**Romanian Property**"), to be concluded in authenticated form in front of a public notary, in form and substance satisfactory to the Security Agent, together with evidence of due filing for its registration with the relevant publicity register (i.e. Land Book). Frigoglass Romania shall ensure due and proper registration of the first ranking security with the the relevant publicity register (i.e. Land Book) and in any case no later than ten Business Days of the security being granted.

Insurance Policies

- 20 If a Debtor grants security over its material insurance policies, these shall exclude any policies related to third-party liability and any policy that does not permit security to be granted.
- 21 Subject to paragraph 24 below, notice of the security will only be required to be served on an insurance provider by the relevant Debtor following a Declared Default. Following service of any notice, the relevant Debtor (as applicable) shall use its reasonable endeavours to obtain an acknowledgement of that notice within 20 Business Days of service. If the relevant Debtor has used its reasonable endeavours but has not been able to obtain acknowledgement its obligation to obtain acknowledgement shall cease on the expiry of that 20 Business Day period.
- 22 No loss payee or other endorsement shall be made on any insurance policy and no Creditor (or creditor representative appointed by them) shall be named as co-insured.

Intellectual Property

- 23 If a Debtor grants security over its material intellectual property it shall be free to deal with those assets in the ordinary course of its business until the occurrence of a Declared Default (including, without limitation, allowing its intellectual property to lapse if permitted by the Secured Debt Documents) in accordance with the terms of the Secured Debt Documents.
- 24 No security shall be granted over any intellectual property which (i) cannot be secured under the terms of the relevant licensing agreement and (ii) is not material or necessary for the business of the relevant Debtor. No notice shall be prepared or served to any third party from whom intellectual property is licensed prior to a Declared Default.
- 25 If required under local law to grant security, security over intellectual property will be registered by the relevant pledgor under the law of that Security Document at a relevant supra-national registry (such as the EU) or otherwise at the national registry, but not in both and subject to the general principles set out in these Agreed Security Principles.

SCHEDULE 9
TRANSACTION SECURITY DOCUMENTS

No.	Jurisdiction	Grantor(s)	Description of security
1.	England	Parent	Pledge of shares held in Company A dated on or around the date hereof.
2.	England	Company A	Pledge of shares, bank accounts, receivables, and a floating charge over the assets of Company A under a debenture dated on or around the date hereof.
3.	Netherlands	Company A	Pledge of shares held in Frigoinvest Holdings B.V. dated on or around the date Company C accedes as a Debtor.
4.	England	Frigoglass S.A.I.C.	Pledge of shares held in Company A dated on or around the date Frigoglass SAIC accedes as a Third Party Security Provider and Subordinated Shareholder.
5.	Netherlands	Frigoinvest Holdings B.V.	Pledge of shares held in Frigoglass Finance B.V. dated on or around the date Company C accedes as a Debtor.
6.	Netherlands	Frigoinvest Holdings B.V.	Pledge of shares held in [Dutch Newco] dated on or around the date Company C accedes as a Debtor.
7.	Netherlands	Frigoinvest Holdings B.V. and Frigoglass Finance B.V.	Pledge of intercompany receivables dated on or around the date Company B and Company C accede as Debtors.
8.	Netherlands	Frigoinvest Holdings B.V. and Frigoglass Finance B.V.	Pledge of bank accounts receivables dated on or around the date Company B and Company C accede as Debtors.
9.	Romania	Frigoinvest Holdings B.V. and Frigoglass Cyprus Limited	Pledge of shares in Frigoglass Romania S.R.L. dated within 5 Business Days of the date Company C and Frigoglass Cyprus Limited accede as Debtors.
10.	Romania	Frigoglass Finance B.V.	Pledge of shares in 3P Frigoglass S.R.L. dated within 5 Business Days of the date Company C accedes as a Debtor.
11.	Romania	Frigoglass Romania S.R.L.	First ranking immovable mortgage over the real estate located in Parta Village, Timis County, Romania and

			registered with the Parța Land Book under No. 406225, cadastral No. 406225, land and present and future buildings representing the Romanian Manufacturing Plant, to be concluded in authenticated form in front of a public notary, in form and substance satisfactory to the Security Agent dated within 5 Business Days of the date Frioglass Romania S.R.L. accedes as a Debtor.
12.	Romania	Frioglass Romania S.R.L.	First lien floating charge over all movable assets of Frioglass Romania S.R.L. dated within 5 Business Days of the date Frioglass Romania S.R.L. accedes as a Debtor.
13.	Russia	Frioginvest Holdings B.V. and Frioglass Cyprus Limited	Pledges of participatory interest (shares) in the charter capital of Frioglass Eurasia LLC dated as soon as reasonably practicable following the Sanctions Fallaway Date and subject to receiving all necessary governmental approvals.
14.	Cyprus	Frioginvest Holdings B.V.	Pledge of shares in Frioglass Global Limited dated within 5 Business Days of the date Company C accedes as a Debtor.
15.	Cyprus	Frioginvest Holdings B.V.	Pledge of shares in Frioglass Cyprus Limited dated within 5 Business Days of the date Company C accedes as a Debtor.
16.	England	Frioglass Finance B.V. and Frioginvest Holdings B.V.	Pledge of bank accounts held in England and Wales by Frioglass Finance B.V. and Frioginvest Holdings B.V. and floating charge over the assets of Frioglass Finance B.V. dated on or around the date Company B and Company C accede as Debtors.

SIGNATURES

[Signature pages to be appended]

[Frost - Signature page to the ICA]