

Dated [●] 2024

THE FINANCIAL INSTITUTIONS LISTED IN PART 1 OF SCHEDULE 1
as Original Super Senior Facility Lenders

THE FINANCIAL INSTITUTIONS LISTED IN PART 2 OF SCHEDULE 1
as Original Senior Secured Facility Lenders

STANDARD BANK (MAURITIUS) LIMITED
as Senior Secured Overdraft Facility Lender

THE FINANCIAL INSTITUTIONS LISTED IN PART 3 OF SCHEDULE 1
as Original Subordinated Facilities Lenders

THE ENTITIES LISTED IN PART 4 OF SCHEDULE 1
as Creditor Representatives

BAYPORT MANAGEMENT LTD
as Parent

BAYPORT INTERMEDIATE HOLDCO PLC
as Company

THE ENTITIES LISTED IN PART 4 OF SCHEDULE 1
as Original Debtors

THE ENTITIES LISTED IN PART 4 OF SCHEDULE 1
as Original Intra-Group Lenders

KROLL AGENCY SERVICES LIMITED
as Subordinated Calculation Agent

KROLL TRUSTEE SERVICES LIMITED
as Security Agent

INTERCREDITOR AGREEMENT

Cadwalader, Wickersham & Taft LLP
100 Bishopsgate
London, EC2N 4AG

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THIS AGREEMENT is dated _____ 2024 and made between:

- (1) **THE FINANCIAL INSTITUTIONS LISTED IN PART 1 OF SCHEDULE 1** (the “**Original Super Senior Facility Lenders**”);
- (2) **THE FINANCIAL INSTITUTIONS LISTED IN PART 2 OF SCHEDULE 1** (the “**Original Senior Secured Facility Lenders**”);
- (3) **STANDARD BANK (MAURITIUS) LIMITED** (as “**Original Senior Secured Overdraft Facility Lender**”);
- (4) **THE FINANCIAL INSTITUTIONS LISTED IN PART 3 OF SCHEDULE 1** (the “**Original Subordinated Facilities Lenders**”);
- (5) **THE ENTITIES LISTED IN PART 4 OF SCHEDULE 1** (as “**Creditor Representatives**”);
- (6) **THE ENTITIES LISTED IN PART 5 OF SCHEDULE 1** (as “**Original Debtors**”);
- (7) **THE ENTITIES LISTED IN PART 6 OF SCHEDULE 1** (as “**Original Intra-Group Lenders**”);
- (8) **BAYPORT MANAGEMENT LTD**, a public listed company registered by continuation under the laws of Mauritius with company number 54787/GBC and with its registered office at 3rd Floor, Ebene Skies, Rue De L’Institut, Ebene, Mauritius (as “**Parent**”);
- (9) **BAYPORT INTERMEDIATE HOLDCO PLC**, a public limited company incorporated in England and Wales with company number 16036404 and with its registered office at Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0DB (as “**Company**”);
- (10) **KROLL AGENCY SERVICES LIMITED** (as “**Subordinated Calculation Agent**”); and
- (11) **KROLL TRUSTEE SERVICES LIMITED**, as security trustee for the Secured Parties (as “**Security Agent**”)

collectively referred to as the “**Parties**” (or, individually, a “**Party**”).

SECTION 1 INTERPRETATION

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Acceleration Event” means a Super Senior Acceleration Event, a Senior Secured Debt Acceleration Event or a Subordinated Acceleration Event.

“Affiliate” means, with respect to any Person, a Subsidiary of that Person or a Holding Company of that Person or any Subsidiary of that Holding Company.

“Africa Midco” means Cashfoundry Limited, a company incorporated in England and Wales with company number 07551380 and with its registered office at 27 Winnington Road, London, England, N2 0TP.

“Available Commitment”:

- (a) in relation to a Super Senior Facility Lender, has the meaning given to the term “Available Commitment” in the Super Senior Credit Facility Agreement;
- (b) in relation to a Senior Secured Facility Lender, has the meaning given to the term “Available Commitment” in the Senior Secured Credit Facility Agreement;
- (c) in relation to a Senior Secured Overdraft Facility Lender, has the meaning given to the term “Available Commitment” in the Senior Secured Credit Facility Agreement; and
- (d) in relation to a Subordinated Facilities Lender, has the meaning given to the term “Loan” in each Subordinated Bilateral Credit Facility Agreement.

“BML-Exposed Creditor” means a Subordinated Creditor who holds a Super Senior Credit Participation or a Senior Secured Credit Participation.

“BML-Exposed Creditor Affiliate” means an Affiliate or related party of a BML-Exposed Creditor, any trust of which a BML-Exposed Creditor or any of its Affiliates or related parties is a trustee, any partnership of which a BML-Exposed Creditor or any of its Affiliates or related parties is a partner and any trust, fund or other entity which is managed by, or is under the control of, a BML-Exposed Creditor or any of its Affiliates or related parties.

“Borrowing Liabilities” means, in relation to the Parent, the Company or any other member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to a Creditor Representative) or a Debtor in respect of Liabilities arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a borrower under the Super Senior Debt Documents, liabilities and obligations as a borrower or an issuer under the Senior Secured Debt Documents and liabilities and obligations as a borrower or an issuer under the Subordinated Debt Documents).

“Business Day” means each day that is not a Saturday, Sunday or other day on which banking institutions in Johannesburg (South Africa), London (United Kingdom), Oslo (Norway), Port Louis (Mauritius) or Stockholm (Sweden), Nairobi (Kenya), New York (United States) or Gaborone (Botswana) are authorised or required by law to close

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

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

“**Common Currency**” means USD.

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

“**Common Terms Agreement**” means the common terms agreement dated on or about the date of this Agreement, between, amongst others, the Security Agent and the Company.

“**Competitive Sales Process**” means:

- (a) any auction or other competitive sales process conducted at arms’ length (and in which third party bidders selected by the Financial Adviser are invited to participate), with the advice of a Financial Adviser selected and appointed by the Security Agent but approved by the Instructing Group pursuant to Clause 14.5 (*Appointment of Financial Adviser*) and provided that the Primary Creditors shall be permitted to participate as potential buyers and/or as financiers to prospective buyers of the Group and/or as financiers to the Group (including by way of credit bidding); and
- (b) where required by applicable law, any enforcement of the Transaction Security carried out by way of an auction or other competitive sales process pursuant to the requirements of such applicable law and, to the extent permitted by such applicable law, conducted in accordance with the requirements of paragraph (a) above.

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

“**Corporate Reorganisation Completion Date**” has the meaning given to such term in the Common Terms Agreement.

“**Corresponding Obligations**” means all Secured Obligations as they may exist from time to time, other than the Parallel Debts.

“**Creditor Conflict**” means, at any time prior to the Priority Discharge Date, a conflict between:

- (a) the interests of any Priority Creditor; and
- (b) the interests of any Subordinated Creditor.

“**Credit Participation**” means a Super Senior Credit Participation, a Senior Secured Credit Participation and a Subordinated Credit Participation (as the case may be).

“**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
- (b) a Transfer Certificate or Assignment Agreement (each as defined in the Super Senior Credit Facility Agreement, the Senior Secured Credit Facility Agreement or any Subordinated Bilateral Credit Facility Agreement) *provided that* it contains an accession to this Agreement which is substantially in the form set out in Schedule 3 (*Form of Creditor/Creditor Representative Accession Undertaking*),

as the context may require, or

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

“Creditor Representative” means the entities listed in Part 4 of Schedule 1 (*Transaction Parties*) of the Common Terms Agreement.

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

“Creditors” means the Super Senior Creditors, the Senior Secured Creditors, the Subordinated Creditors, the Intra-Group Lenders and Parent Shareholders.

“CSD” means Verdipapirsentralen ASA, also known as Euronext Securities Oslo, in its capacity as securities depository in which the Notes are registered.

“Debt Disposal” means any disposal of any Liabilities or Debtors’ Intra-Group Receivables pursuant to paragraphs (d) or (e) of Clause 14.1 (*Facilitation of Distressed Disposals*).

“Debt Document” means each of this Agreement, the Super Senior Debt Documents, the Senior Secured Debt Documents, the Subordinated Debt Documents, the Security Documents, the Common Terms Agreement, any agreement evidencing the terms of the Intra-Group Loans, the Intra-Group Liabilities, the Shareholder Loans or the Parent Shareholder Liabilities and any other document designated as such by the Security Agent and the Parent.

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

“Debtor Accession Deed” means a deed substantially in the form set out in Schedule 2 (*Form of Debtor Accession Deed*).

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

“Default” means an Event of Default or any event or circumstance which would, with the expiry of any grace period, the making of any determination, the satisfaction of any condition or any combination thereof, become an Event of Default.

“Defaulting Lender” means:

- (a) a Super Senior Facility Lender which is a “Defaulting Lender” under, and as defined in, the Super Senior Credit Facility Agreement;
- (b) a Senior Secured Facility Lender which is a “Defaulting Lender” under and as defined in the Senior Secured Credit Facility Agreement; and
- (c) a Subordinated Facilities Lender:
 - (i) which has rescinded or repudiated a Debt Document; or
 - (ii) with respect to which a Lender Insolvency Event has occurred and is continuing.

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

“Distress Event” means any of:

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

“Distressed Disposal” means a disposal of any Charged Property or, for the purposes of paragraphs (a) and (b) below, any other asset of a member of the Group) which is:

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

“Enforcement” means the enforcement or disposal of any 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 14 (*Distressed Disposals*), the giving of instructions as to actions with respect to the Transaction Security and/or the Charged Property following an Insolvency Event under Clause 9.6 (*Security Agent instructions*) and the taking of any other actions consequential on (or necessary to effect) any of those actions (but excluding the delivery of an Initial Enforcement Notice).

“Enforcement Action” means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Primary Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
 - (ii) the making of any declaration that any Liabilities are payable on demand;
 - (iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent (A) that the demand is made in the ordinary course of dealings between the relevant Debtor and Intra-Group Lender and (B) that any resulting Payment would be a Permitted Intra-Group Payment);
 - (iv) the making of any demand against 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 other than in connection with an asset sale offer or a change of control offer (however defined) as set out in the Super Senior Debt Documents, the Senior Secured Debt Documents or the Subordinated 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 the exercise of any such right which is otherwise expressly permitted under the Super Senior Debt Documents, the Senior Secured Debt Documents and the Subordinated Debt Documents to the extent that the exercise of that right gives effect to a Permitted Payment; and
 - (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 Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (c) the entering into of any composition, compromise, assignment or arrangement with the Parent or any member of the Group which owes any Liabilities (other than as contemplated by Clause 14 (*Mandatory Asset Sales*) of the Common

Terms Agreement), or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 20 (*Changes to the Parties*)); or

- (d) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of the Parent or any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of the Parent's or such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of the Parent or any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(ii), (iii), (iv) and (vii) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (ii) a Primary Creditor bringing legal proceedings against any person solely for the purpose of:
- (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
 - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
 - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages; or
- (iii) bringing legal proceedings against any person in connection with any fraud, securities violation or securities or listing regulations; or
- (iv) allegations of material misstatements or omissions made in connection with the offering materials relating to any Senior Secured Notes or Subordinated Notes or in reports furnished to the Senior Secured Noteholders or the Subordinated Noteholders or any exchange on which the Senior Secured Notes or the Subordinated Notes are listed by a member of the Group or the Parent pursuant to the information and reporting requirements under the Senior Secured Debt Documents or the Subordinated Debt Documents; or

- (v) to the extent entitled by law, the taking of action against any creditor (or any agent, trustee or receiver acting on behalf of such creditor) to challenge the basis on which any sale or disposal is to take place pursuant to powers granted to such persons under any security documentation.

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

“Enforcement Objective” has the meaning given to that term in Schedule 4 (*Enforcement Principles*).

“Enforcement Principles” means the principles set out in Schedule 4 (*Enforcement Principles*).

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

“Event of Default” means any one of the events specified in clause 13 (*Events of Default*) of the Common Terms Agreement.

“Equity Instrument” has the meaning given to such term in the Common Terms Agreement.

“Exposure” has the meaning given to that term in Clause 17.1 (*Equalisation Definitions*).

“Fairness Opinion” has the meaning given to that term in Schedule 4 (*Enforcement Principles*).

“Final Discharge Date” means the later to occur of the Super Senior Discharge Date, the Senior Secured Discharge Date and the Subordinated Discharge Date.

“Financial Adviser” means any:

- (a) independent internationally recognised investment bank;
- (b) independent internationally recognised accountancy firm; or
- (c) any other independent internationally recognised professional services firm which is regularly engaged in providing valuations of businesses or financial assets or, where applicable, advising on competitive sales processes,

in each case selected and appointed by the Security Agent on the instructions of an Instructing Group.

“Group” means the Parent and its Subsidiaries.

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

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

“Initial Enforcement Notice” has the meaning given to such term in Clause 12.2 (*Instructions to enforce – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*).

“Insolvency Event” means, in relation to any person:

- (a) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of that person, a moratorium is declared in relation to any indebtedness of that person or an administrator is appointed to that person;
- (b) any composition, compromise, assignment or arrangement is made with any of its creditors;
- (c) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that person or any of its assets; or
- (d) any analogous procedure or step is taken in any jurisdiction.

“Instructing Group” means:

- (a) prior to the Priority Discharge Date:
 - (i) subject to paragraph (ii) below, the Majority Senior Secured Creditors; and
 - (ii) in relation to instructions as to Enforcement with respect to the Transaction Security, the group of Priority Creditors entitled to give instructions as to Enforcement under Clause 12.2 (*Instructions to enforce – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*); and
- (b) on or after the Priority Discharge Date but before the Subordinated Discharge Date, the Majority Subordinated Creditors.

“Intercreditor Amendment” means any amendment or waiver which is subject to Clause 26 (*Consents, Amendments and Override*).

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

“Intra-Group Lending” means the loans, credit or other financial arrangements made available by any Intra-Group Lender to another member of the Group.

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

“Intra-Group Loans” means any loan or credit (howsoever structured) lent by one member of the Group to another member of the Group.

“LatAm Midco” means Bayport Latam Midco Limited, a company incorporated in England and Wales with company number 15921713 and with its registered office at Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0DB.

“Lender” means:

- (a) in respect of the Super Senior Credit Facility Agreement, a Super Senior Facility Lender;
- (b) in respect of the Senior Secured Credit Facility Agreement, a Senior Secured Facility Lender and a Senior Secured Overdraft Facility Lender;
- (c) in respect of the Subordinated Bilateral Credit Facility Loan Facility Agreements, a Subordinated Facilities Lender; and

in each case, any bank, financial institution, trust, fund or other entity which becomes a Party as a “Lender” in accordance with the terms of the applicable Loan Instrument, this Agreement and the Common Terms Agreement.

“Lender Insolvency Event” in relation to a Lender means that the Lender:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;

- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (g) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

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

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

- (d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

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

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

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

the rights in respect of those Liabilities.

“Liabilities Sale” means a Debt Disposal pursuant to paragraph (e) of Clause 14.1 (*Facilitation of Distressed Disposals*).

“Loan Commitments” means the Super Senior Loan Commitments, the Senior Secured Loan Commitments and Subordinated Loan Commitments.

“Loan Instrument” means:

- (a) the Super Senior Credit Facility Agreement;
- (b) the Senior Secured Credit Facility Agreement;
- (c) the Senior Secured Overdraft Facility Agreement; and
- (d) each Subordinated Bilateral Credit Facility Agreement.

“Majority Priority Creditors” means, together, the Majority Senior Secured Creditors and the Majority Super Senior Creditors.

“Majority Senior Secured Creditors” means a Senior Secured Creditor or those Senior Secured Creditors (as the case may be) holding:

- (a) more than 50 per cent. of the aggregate Senior Secured Notes Exposures; and
- (b) more than 66⅔ per cent. of the aggregate Senior Secured Loan Commitments,

in each case as evidenced to and confirmed by the relevant Creditor Representatives to the Security Agent.

“Majority Subordinated Creditors” means a Subordinated Creditor or those Subordinated Creditors (as the case may be) holding:

- (a) more than 50 per cent. of the aggregate Subordinated Notes Exposures; and

(b) more than 50 per cent. of the aggregate Subordinated Loan Commitments, in each case as evidenced to and confirmed by the relevant Creditor Representatives to the Security Agent.

“Majority Super Senior Creditors” means at any time those Super Senior Creditors whose Super Senior Credit Participations at that time aggregate more than 66⅔ per cent. of the total Super Senior Credit Participations at that time.

“Mandatory Asset Sale” has the meaning given to such term in the Common Terms Agreement.

“Material Company” has the meaning given to such term in the Common Terms Agreement.

“Non-Distressed Disposal” has the meaning given to that term in Clause 13 (*Non-Distressed Disposals*).

“Note Trust Deeds” means the Senior Secured Notes Trust Deed and the Subordinated Notes Trust Deed.

“Noteholder” means a Senior Secured Noteholder or a Subordinated Noteholder.

“Notes” means the Senior Secured Notes and Subordinated Notes, as the case may be.

“Notes Trustee” means the Senior Secured Notes Trustee and the Subordinated Notes Trustee.

“Obligors” means the Parent, the Company, LatAm Midco and Africa Midco.

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

“Parent Shareholder” means each Person holding an Equity Instrument in the Parent from time to time who has acceded to this Agreement (as required under the Common Terms Agreement) in the appropriate capacity pursuant to Clause 20.8 (*Creditor/Creditor Representative Accession Undertaking*).

“Parent Shareholder Affiliate” means an Affiliate or related party of a Parent Shareholder, any trust of which a Parent Shareholder or any of its Affiliates or related parties is a trustee, any partnership of which a Parent Shareholder or any of its Affiliates or related parties is a partner and any trust, fund or other entity which is managed by, or is under the control of, a Parent Shareholder or any of its Affiliates or related parties.

“Parent Shareholder Lending” means the loans, credit or other financial arrangements made available by any Parent Shareholder to the Parent or any member of the Group.

“Parent Shareholder Liabilities” means the Liabilities owed to the Parent Shareholders under and in connection with the Parent Shareholder Loans and each other agreement evidencing Parent Shareholder Lending.

“Parent Shareholder Loans” means any loan or credit (howsoever structured) lent by a Parent Shareholder or Parent Shareholder Affiliate to the Parent.

“Party” means a party to this Agreement.

“Paying Agent” means Nordic Trustee Services AS in its capacity as paying agent and account operator.

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

“Permitted Intra-Group Payments” means the Payments permitted by Clause 7.2 (*Permitted Payments: Intra-Group Liabilities*).

“Permitted Payment” means a Permitted Intra-Group Payment, a Permitted Senior Secured Debt Payment, a Permitted Super Senior Credit Facility Payment or a Permitted Subordinated Payment.

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

“Permitted Subordinated Payments” means the Payments permitted by Clause 6.2 (*Permitted Payments: Subordinated Liabilities*).

“Permitted Super Senior Credit Facility Payments” means the Payments permitted by Clause 3.1 (*Payment of Super Senior Liabilities*).

“Person” means any natural person, corporation, company, partnership, firm, voluntary association, joint venture, trust, unincorporated organisation, authority or any other entity whether acting in an individual, fiduciary or other capacity.

“Phase 1 Shared Transaction Security” means the Security created by or pursuant to the Phase 1 Shared Transaction Security Documents.

“Phase 1 Shared Transaction Security Documents” means the documents listed in part 2 of schedule 2 (*Transaction Security Documents*) of the Common Terms Agreement.

“Phase 1 Super Senior and Senior Secured Creditor Only Transaction Security” means the Security created by or pursuant to the Phase 1 Super Senior and Senior Secured Creditor Only Transaction Security Documents.

“Phase 1 Super Senior and Senior Secured Creditor Only Transaction Security Documents” means the documents listed in part 1 of schedule 2 (*Transaction Security Documents*) of the Common Terms Agreement.

“Phase 1 Transaction Security” means:

- (a) the Phase 1 Super Senior and Senior Secured Creditor Only Transaction Security; and
- (b) the Phase 1 Shared Transaction Security.

“Phase 2 Transaction Security” means:

- (a) the Phase 2 Super Senior and Senior Secured Creditor Only Transaction Security; and
- (b) the Phase 2 Shared Transaction Security.

“Phase 2 Shared Transaction Security” means the Security created by or pursuant to the Phase 2 Shared Transaction Security Documents.

“Phase 2 Shared Transaction Security Documents” means the documents listed in part 4 of schedule 2 (*Transaction Security Documents*) of the Common Terms Agreement.

“Phase 2 Super Senior and Senior Secured Creditor Only Transaction Security” means the Security created by or pursuant to the Phase 2 Super Senior and Senior Secured Creditor Only Transaction Security Documents.

“Phase 2 Super Senior and Senior Secured Creditor Only Transaction Security Documents” means the documents listed in part 3 of schedule 2 (*Transaction Security Documents*) of the Common Terms Agreement.

“Primary Creditors” means the Super Senior Creditors, the Senior Secured Creditors and the Subordinated Creditors.

“Priority Creditor Liabilities” means the Liabilities owed by the Debtors to the Priority Creditors under or in connection with the Priority Debt Documents.

“Priority Creditors” means the Super Senior Creditors and the Senior Secured Creditors.

“Priority Debt Documents” means:

- (a) the Super Senior Debt Documents; and
- (b) the Senior Secured Debt Documents.

“Priority Discharge Date” means the later to occur of the Super Senior Discharge Date and the Senior Secured Discharge Date.

“Property” of a member of the Group or of a Debtor means:

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

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

“**Recoveries**” has the meaning given to that term in Clause 16.1 (*Order of application: Shared Recoveries*).

“**Relevant Liabilities**” means:

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

“**Relevant Subordinated Debt Event of Default**” means an Event of Default which has occurred and is continuing under:

- (a) clause 13.2 (*Financial Covenants and other obligations*) arising from a breach of clause 9.16 (*Negative Pledge*), clause 9.23 (*Financial Indebtedness*), or clause 9.21 (*Dividends and share redemptions*) of the Common Terms Agreement;
- (b) clause 13.2 (*Financial Covenants and other obligations*) arising from a breach of clause 10 (*Information Undertakings*) or clause 9.31 (*Financing Arrangements*) of the Common Terms Agreement; and
- (c) clause 13.5 (*Cross Default*) or clause 13.7 (*Insolvency Proceedings*) of the Common Terms Agreement.

“**Required Senior Secured Creditors**” means:

- (a) the Creditor Representative acting on behalf of the Senior Secured Facility Lenders; and
- (b) the Creditor Representative acting on behalf of the Senior Secured Noteholders whose Senior Secured Credit Participations at that time aggregate more than 50 per cent. of the total Senior Secured Credit Participations of the Senior Secured Noteholders at that time.

“**Required Subordinated Creditors**” means, at any time:

- (c) those Subordinated Creditors whose Subordinated Credit Participations at that time aggregate more than 50 per cent. of the total Subordinated Credit Participations at that time; and

(d) the Subordinated Notes Trustee acting on behalf of the Subordinated Noteholders.

“Required Super Senior Creditors” means, at any time the Super Senior Facility Agent acting on behalf of the Super Senior Facility Lenders.

“Secured Obligations” means the Shared Secured Obligations and the Super Senior and Senior Secured Creditor Only Secured Obligations.

“Secured Parties” means the Super Senior and Senior Secured Creditor Only Secured Parties and the Shared Secured Parties.

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

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

- (a) the Security Agent’s spot rate of exchange; or
- (b) (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 a.m. (London time) on a particular day, which shall, in either case, be notified by the Security Agent in accordance with paragraph (e) of Clause 18.4 (*Duties of the Security Agent*).

“Security Documents” means the Shared Security Documents and the Super Senior and Senior Secured Creditor Only Transaction Security Documents.

“Senior Secured Credit Facility Agreement” means the senior secured credit facility agreement dated on or about the date of this Agreement between, among others, the Company and the Senior Secured Facility Agent.

“Senior Secured Credit Participation” means in relation to a Senior Secured Noteholder or a Senior Secured Facility Lender, the aggregate of:

- (a) its aggregate Senior Secured Loan Commitments, plus (but without double counting) capitalised interest, if any;
- (b) the aggregate outstanding principal amount of the Senior Secured Notes held by it plus capitalised interest, if any; and
- (c) to the extent not falling within paragraphs (a) or (b) above, the aggregate outstanding principal amount (plus capitalised interest) of any Senior Secured Creditor Liabilities in respect of which it is the creditor, if any.

“Senior Secured Creditor” means a Senior Secured Noteholder and a Senior Secured Facility Lender.

“Senior Secured Creditor Liabilities” means the Liabilities owed by the Debtors to the Senior Secured Creditors under or in connection with the Senior Secured Debt Documents.

“Senior Secured Creditors” means:

- (a) each Senior Secured Facility Lender;
- (b) each Senior Secured Note Creditor; and
- (c) each other Creditor Representative in relation to any Senior Secured Creditor Liabilities, each other Senior Secured Noteholder and each Senior Secured Facility Lender.

“Senior Secured Debt Acceleration Event” means:

- (a) the Senior Secured Notes Trustee (or the requisite Senior Secured Noteholders under the Senior Secured Notes Terms and Conditions) exercising any of its or their rights under clause 18 (*Events of Default*) of the Senior Secured Notes Terms and Conditions; or
- (b) the Senior Secured Facility Lenders exercising any of their rights under clause 20.1 (*Acceleration*) of the Senior Secured Credit Facility Agreement.

“Senior Secured Debt Documents” means:

- (a) the Common Terms Agreement;
- (b) the Senior Secured Credit Facility Agreement and each fee letter referred to therein;
- (c) the Senior Secured Overdraft Facility Agreement and each fee letter referred to therein;
- (d) the Senior Secured Notes Trust Deed (including the Senior Secured Notes Terms and Conditions) and each fee letter referred to therein;
- (e) the Shared Security Documents;
- (f) the Super Senior and Senior Secured Creditor Only Transaction Security Documents; and
- (g) this Agreement.

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

“Senior Secured Facility Agent” means Kroll Agency Services Limited.

“Senior Secured Facility Lender” means an Original Senior Secured Facility Lender, the Original Senior Secured Overdraft Facility Lender and any party who becomes a Lender under the Senior Secured Credit Facility Agreement in accordance with the terms of the Common Terms Agreement, this Agreement and the Senior Secured Credit Facility Agreement.

“Senior Secured Loan Commitment” means at any time with respect to a Senior Secured Facility Lender the aggregate "Commitment" under and as defined in the Senior Secured Credit Facility Agreement (plus capitalised interest on outstanding Loans under the Senior Secured Credit Facility Agreement or the Senior Secured Overdraft Facility Agreement).

“Senior Secured Note Creditors” means the Senior Secured Noteholders and the Senior Secured Notes Trustee.

“Senior Secured Noteholder” means the holder from time to time of Senior Secured Notes that have been credited to an account for dematerialised securities maintained by the CSD in which the Senior Secured Notes are registered, in the name of such noteholder (if such account is directly registered) or otherwise in the name of such noteholder’s nominee.

“Senior Secured Notes” means the US\$[●] senior secured floating rate social notes due June 2028 issued by the Company.

“Senior Secured Notes Terms and Conditions” means the terms and conditions of the Senior Secured Notes and which are set out in schedule 1 (*Terms and Conditions of the Notes*) to the Senior Secured Notes Trust Deed.

“Senior Secured Notes Trust Deed” means the senior secured notes trust deed dated on or about the date of this Agreement and made between the Company and the Senior Secured Notes Trustee constituting the Senior Secured Notes to which the Senior Secured Notes Terms and Conditions are appended and form part thereof.

“Senior Secured Notes Trustee” means Nordic Trustee & Agency AB (publ) or any replacement notes trustee appointed pursuant to the Senior Secured Notes Trust Deed.

“Senior Secured Overdraft Facility” means the senior secured overdraft facility referred to as a facility under the Senior Secured Credit Facility Agreement and made available by the Senior Secured Overdraft Facility Lender in accordance with the provisions of the Senior Secured Facility Agreement read together with the Senior Secured Overdraft Facility Agreement.

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

“Shared Secured Parties” means the Security Agent, any Receiver or Delegate and each of the Primary Creditors from time to time but, in the case of each Primary Creditor, only if it (or, in the case of a Senior Secured Noteholder or a Subordinated

Noteholder, its Creditor Representatives) is a Party or has acceded to this Agreement in the appropriate capacity pursuant to Clause 20.8 (*Creditor/Creditor Representative Accession Undertaking*).

“Shared Security Documents” means:

- (a) each of the Phase 1 Shared Transaction Security Documents and the Phase 2 Shared Transaction Security Documents;
- (b) any other document entered into at any time by any of the Debtors creating any Security in favour of any of the Shared Secured Parties as security for any of the Shared Secured Obligations excluding any Super Senior and Senior Secured Creditor Only Transaction Security Documents to ensure that all assets stated as being secured or to be secured in favour of the Super Senior Creditors, the Senior Secured Creditors and the Subordinated Creditors in part 2 and part 4 of schedule 2 (*Transaction Security*) or in accordance with any other provision of the Common Terms Agreement are subject to Shared Transaction Security; and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b) above excluding any Super Senior and Senior Secured Creditor Only Transaction Security Documents.

“Shared Security Property” means:

- (a) the Shared Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Shared Secured Parties and all proceeds of that Shared Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Shared Secured Parties and secured by the Shared Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as trustee for the Shared Secured Parties;
- (c) the Security Agent’s interest in any trust fund in any amounts to be applied for the benefit only of the Shared Secured Parties created pursuant Clause 10.1 (*Turnover by the Priority Creditors*); and
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Shared Secured Parties,

excluding the Super Senior and Senior Secured Creditor Only Security Property.

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

- (a) is created in favour of the Security Agent as trustee for the other Shared Secured Parties in respect of their Liabilities; or

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

and which (subject to the terms of this Agreement) ranks in the order of priority contemplated in Clause 2.2 (*Transaction Security*) excluding the Super Senior and Senior Secured Creditor Only Transaction Security.

“Shareholder Loan” has the meaning given to such term in the Common Terms Agreement.

“Subordinated Acceleration Event” means:

- (a) any Subordinated Facilities Lender exercising any of its or their rights under clause 12.1 of a Subordinated Bilateral Credit Facility Agreement;
- (b) the Subordinated Notes Trustee (or the requisite Subordinated Noteholders under the Subordinated Notes Terms and Conditions) exercising any of its or their rights under clause 18 of the Subordinated Notes Terms and Conditions.

“Subordinated Bilateral Credit Facility Agreement” means each subordinated bilateral credit facility agreements dated on or about the date of this Agreement and made between, in each case, the Parent and a Subordinated Facilities Lender.

“Subordinated Calculation Agent” means Kroll Agency Services Limited.

“Subordinated Creditors” means:

- (a) each Subordinated Facilities Lender;
- (b) each Subordinated Note Creditor; and
- (c) each other Creditor Representative in relation to any Subordinated Facilities Liabilities, each other Subordinated Noteholder and each Subordinated Facilities Lender.

“Subordinated Credit Participation” means in relation to a Subordinated Noteholder or a Subordinated Facilities Lender the aggregate of:

- (a) its aggregate Subordinated Facilities Commitments, if any; and
- (b) the aggregate outstanding principal amount of Subordinated Notes held by it, if any; and
- (c) to the extent not falling within paragraphs (a) or (b) above, the aggregate outstanding principal amount of any Subordinated Liabilities in respect of which it is the creditor, if any.

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

“Subordinated Debt Documents” means:

- (a) the Common Terms Agreement;
- (b) this Agreement;
- (c) each Subordinated Bilateral Credit Facility Agreement;
- (d) the Subordinated Notes Trust Deed (including the Subordinated Notes Terms and Conditions) and each fee letter referred to therein; and
- (e) the Shared Security Documents.

“Subordinated Debt Enforcement Notice” has the meaning given to that term in Clause 6.6 (*Permitted Enforcement: Subordinated Creditors*).

“Subordinated Debt Standstill Period” means, in relation to a Relevant Subordinated Debt Event of Default, the period beginning on the date (the **“Subordinated Debt Standstill Start Date”**) on which the Majority Subordinated Creditors serve a Subordinated Debt Enforcement Notice on the Security Agent in respect of such Relevant Subordinated Debt Event of Default and ending on the earlier to occur of:

- (a) the date falling:
 - (i) 90 days after the Subordinated Debt Standstill Start Date where such Relevant Subordinated Debt Event of Default arises under subparagraph (a) of the definition thereof; or
 - (ii) 270 days after the Subordinated Debt Standstill Start Date for any other Relevant Subordinated Debt Event of Default.
- (b) the date of an Insolvency Event (other than an Insolvency Event directly caused by any action taken by or at the request or direction of a Subordinated Creditor) in relation to a particular Debtor *provided that* if a Subordinated Debt Standstill Period ends pursuant to this paragraph (b), the Subordinated Creditors may only take Enforcement Action against that Debtor;
- (c) the expiry of any other Subordinated Debt Standstill Period outstanding at the date such first mentioned Subordinated Debt Standstill Period commenced (unless that expiry occurs as a result of a cure, waiver or other permitted remedy);
- (d) an Event of Default under a Subordinated Debt Document resulting from a failure to pay the principal amount of the Subordinated Liabilities at the final maturity of the relevant Subordinated Debt Document (*provided that* such

maturity date is no earlier than that contained in the Subordinated Debt Documents as of the first date of issuance of any Subordinated Debt Document); and

- (e) the date on which the Majority Priority Creditors give their consent to an early termination of the Subordinated Debt Standstill Period.

“Subordinated Facilities Lender” means an Original Subordinated Facilities Lender and any party who becomes a Lender under any Subordinated Bilateral Credit Facility Agreement in accordance with the terms of the Common Terms Agreement, this Agreement and the relevant Subordinated Bilateral Credit Facility Agreement.

“Subordinated Liabilities” means the Liabilities owed by the Debtors to the Subordinated Creditors under or in connection with the Subordinated Debt Documents.

“Subordinated Loan Commitment” means at any time with respect to a Subordinated Facilities Lender, the aggregate principal amount of their Loan under the Subordinated Bilateral Credit Facility Agreement to which it is a party.

“Subordinated Note Creditor” means the Subordinated Noteholders and the Subordinated Note Trustee.

“Subordinated Noteholder” means the holder from time to time of Subordinated Notes that have been credited to an account for dematerialised securities maintained by the CSD in which the Subordinated Notes are registered, in the name of such noteholder (if such account is directly registered) or otherwise in the name of such noteholder’s nominee.

“Subordinated Notes” means the US\$[●] floating rate subordinated secured social notes due December 2028 issued by the Parent.

“Subordinated Notes Terms and Conditions” means the terms and conditions of the Subordinated Notes which are set out in schedule 1 (*Terms and Conditions of the Notes*) to the Subordinated Notes Trust Deed.

“Subordinated Notes Trust Deed” means the subordinated notes trust deed dated on or about the date of this Agreement and made between the Parent and the Subordinated Notes Trustee constituting the Subordinated Notes and to which the Subordinated Notes Terms and Conditions are appended and form part thereof.

“Subordinated Notes Trustee” means Nordic Trustee & Agency AB (publ) or any replacement notes trustee appointed pursuant to the Subordinated Notes Trust Deed.

“Subsidiary” means with respect to any Person which is a subsidiary undertaking within section 1162 of the Companies Act of that Person.

“Super Senior Acceleration Event” means the Super Senior Facility Agent exercising any of its rights under clause 19.1 (*Acceleration*) of the Super Senior Credit Facility Agreement or any acceleration provisions being automatically invoked under the Super Senior Credit Facility Agreement, other than the right to declare any amount payable on demand.

“Super Senior and Senior Secured Creditor Only Charged Property” means all of the assets which from time to time are, or are expressed to be, the subject of the Super Senior and Senior Secured Creditor Only Transaction Security.

“Super Senior and Senior Secured Creditor Only Security Property” means:

- (a) the Super Senior and Senior Secured Creditor Only Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Super Senior and Senior Secured Creditor Only Secured Parties only and all proceeds of that Super Senior and Senior Secured Creditor Only Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Super Senior and Senior Secured Creditor Only Secured Parties and secured by the Super Senior and Senior Secured Creditor Only Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as trustee for the Senior Secured Creditor Only Secured Parties;
- (c) the Security Agent’s interest in any trust fund in any amounts to be applied for the benefit only of the Super Senior and Senior Secured Creditor Only Secured Parties created pursuant Clause 10.1 (*Turnover by the Senior Secured Creditors*); and
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Super Senior and Senior Secured Creditor Only Secured Parties.

“Super Senior and Senior Secured Creditor Only Secured Obligations” means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Super Senior and Senior Secured Creditor Only Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

“Super Senior and Senior Secured Creditor Only Secured Parties” means the Security Agent, any Receiver or Delegate and each of the Priority Creditors from time to time but, in the case of each Priority Creditor, only if it (or, in the case of a Senior Secured Noteholder, its Creditor Representative) is a Party or has acceded to this Agreement in the appropriate capacity pursuant to Clause 20.8 (*Creditor/Creditor Representative Accession Undertaking*).

“Super Senior and Senior Secured Creditor Only Transaction Security” means, the Phase 1 Super Senior and Senior Secured Creditor Only Transaction Security and the Phase 2 Super Senior and Senior Secured Creditor Only Transaction Security together with any other guarantee, indemnity, Security or other assurance against financial loss granted by any Debtor in favour of the Priority Creditors.

“Super Senior and Senior Secured Creditor Only Transaction Security Documents” means:

- (a) each of the Phase 1 Super Senior and Senior Secured Creditor Only Transaction Security Documents and the Phase 2 Super Senior and Senior Secured Creditor Only Transaction Security Documents;
- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Priority Creditors as security for any of the Super Senior and Senior Secured Creditor Only Obligations to ensure that all assets stated as being secured or to be secured in favour of the Super Senior and Senior Secured Creditor Only Secured Parties in Schedule 2 (*Transaction Security*) or in accordance with any other provision of the Common Terms Agreement are subject to Super Senior and Senior Secured Creditor Only Transaction Security; and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b) above excluding any Shared Transaction Security Documents.

“Super Senior Creditors” means each Creditor Representative in relation to the Super Senior Credit Facility and each Super Senior Facility Lender.

“Super Senior Credit Facility” means the “Facility” under and as defined in the Super Senior Credit Facility Agreement.

“Super Senior Credit Facility Agreement” means the super senior credit facility agreement dated on or about the date of this Agreement between the Company, the Super Senior Facility Agent and the Original Super Senior Credit Facility Lenders referred to therein.

“Super Senior Credit Participation” means, in relation to a Super Senior Facility Lender the aggregate of its aggregate Loan Commitments, if any.

“Super Senior Facility Agent” means the facility agent under and as defined in the Super Senior Secured Credit Facility Agreement.

“Super Senior Debt Documents” means:

- (a) the Super Senior Credit Facility Agreement;
- (b) the Shared Security Documents;
- (c) the Common Terms Agreement; and
- (d) this Agreement.

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

“Super Senior Facility Lender” means the Original Super Senior Facility Lenders and any party who becomes a Lender under the Super Senior Credit Facility Agreement in accordance with the terms of the Common Terms Agreement, this Agreement and the Super Senior Credit Facility Agreement.

“Super Senior Facility Lender Liabilities Transfer” means a transfer of the Super Senior Liabilities described in Clause 5.1 (*Option to purchase: Senior Secured Creditors*).

“Super Senior Liabilities” means the Liabilities owed by any Debtor to the Super Senior Creditors under or in connection with the Super Senior Debt Documents.

“Super Senior Loan Commitment” means, at any time with respect to a Super Senior Facility Lender the aggregate principal amount of their Loan Commitments under the Super Senior Credit Facility Agreement.

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

“Terms and Conditions” means the Senior Secured Notes Terms and Conditions and the Subordinated Notes Terms and Conditions, as the case may be.

“Transaction Security” means the Security created by or pursuant to the Transaction Security Documents.

“Transaction Security Documents” means the Super Senior and Senior Secured Creditor Only Transaction Security Documents and the Shared Security Documents.

“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 the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraphs (a) or (b) above, or imposed elsewhere.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) any **“Creditor Representative”, “Creditor”, “Debtor”, “Intra-Group Lender”, “Lender”, “Senior Secured Facility Lender” “Senior Secured Noteholder”, “Senior Secured Notes Trustee”, “Senior Secured Note Creditor”, “Senior Secured Creditor”, “Parent”, “Company”, “Party”, “Priority Creditor”, “Security Agent”, “Super Senior Creditor”, “Super Senior Facility Lender”, “Subordinated Creditor”, “Subordinated Note Creditor”, “Subordinated Notes Trustee”, “Subordinated Noteholder”, or “Subordinated Creditor”**

shall be construed to be a reference to it in its capacity as such and not in any other capacity;

- (ii) any “**Creditor Representative**”, “**Creditor**”, “**Debtor**”, “**Intra-Group Lender**”, “**Lender**”, “**Senior Secured Facility Lender**”, “**Senior Secured Noteholder**”, “**Senior Secured Notes Trustee**”, “**Senior Secured Note Creditor**”, “**Senior Secured Creditor**”, “**Parent**”, “**Company**”, “**Party**”, “**Priority Creditor**”, “**Security Agent**”, “**Super Senior Creditor**”, “**Super Senior Facility Lender**”, “**Subordinated Creditor**”, “**Subordinated Note Creditor**”, “**Subordinated Notes Trustee**”, “**Subordinated Noteholder**”, or “**Subordinated Creditor**” or any other Party or person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with this Agreement
- (iii) “**assets**” includes present and future properties, revenues and rights of every description;
- (iv) a “**Debt Document**” or any other agreement or instrument is (other than a reference to a “**Debt Document**” or any other agreement or instrument in “**original form**”) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement or the Common Terms Agreement;
- (v) “**enforcing**” (or any derivation) the Transaction Security includes:
 - (A) the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor by the Security Agent; and
 - (B) the making of a demand under Clause 18.2 (*Parallel debt*) by the Security Agent;
- (vi) a “**group of Creditors**” includes all the Creditors, a “**group of Primary Creditors**” includes all the Primary Creditors, and a “**group of Priority Creditors**” includes all the Priority Creditors;
- (vii) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (viii) the “**original form**” of a “**Debt Document**” or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
- (ix) a “**member of the Group**” means a Person that is a Subsidiary of the Parent;

- (x) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (xi) “**proceeds**” of a Distressed Disposal or of a Debt Disposal includes proceeds in cash;
 - (xii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
 - (xiii) 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) A Default is “**continuing**” if it has not been remedied or waived.
 - (d) Any requirement that consent 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 Documents.
 - (e) References to a Creditor Representative acting on behalf of the Super Senior Creditors of which it is the Creditor Representative means such Creditor Representative acting on behalf of the Super Senior Creditors of which it is the Creditor Representative with the consent of the proportion of such Super Senior Creditors required under and in accordance with the applicable Super Senior Debt Documents (*provided that* if the relevant Super Senior Debt Documents do not specify a voting threshold for a particular matter (or do not specify a principle which applies if a voting threshold for a particular matter is not specified), the threshold will be a simple majority of the outstanding principal amount under those Super Senior Debt Documents (excluding any Super Senior Liabilities owned by the Parent, a member of the Group or a Parent Shareholder Affiliate)). A Creditor Representative will be entitled to seek instructions from the Super Senior Creditors of which it is the Creditor Representative to the extent required by the applicable Super Senior Debt Documents, as the case may be, as to any action to be taken by it under this Agreement and the other Finance Documents.
 - (f) References to a Creditor Representative acting on behalf of the Senior Secured Creditors of which it is the Creditor Representative means such Creditor Representative acting on behalf of the Senior Secured Creditors of which it is the Creditor Representative with the consent of the proportion of such Senior Secured Creditors required under and in accordance with the applicable Senior Secured Debt Documents (*provided that* if the relevant Senior Secured Debt Documents do not specify a voting threshold for a particular matter (or do not

specify a principle which applies if a voting threshold for a particular matter is not specified), the threshold will be (i) with respect to any matter relating to the Senior Secured Notes Trust Deed and applicable Terms and Conditions, a simple majority of the outstanding principal amount thereunder, and (ii) with respect to any matter relating to the Senior Secured Credit Facility Agreement, 66 $\frac{2}{3}$ of the Senior Secured Loan Facility Commitments (in each case, excluding any Senior Secured Liabilities owned by the Parent, a member of the Group or an Affiliate, any Parent Shareholder, any Parent Shareholder Affiliate, any BML-Exposed Creditor, any BML-Exposed Creditor Affiliate and further excluding any other vote which is expressly excluded under the terms of the relevant Senior Secured Debt Document)). A Creditor Representative will be entitled to seek instructions from the Senior Secured Creditors of which it is the Creditor Representative to the extent required by the applicable Senior Secured Debt Documents, as the case may be, as to any action to be taken by it under this Agreement and the other Finance Documents.

- (g) References to a Creditor Representative acting on behalf of the Subordinated Creditors of which it is the Creditor Representative means such Creditor Representative acting on behalf of the Subordinated Creditors of which it is the Creditor Representative with the consent of the proportion of such Subordinated Creditors required under and in accordance with the applicable Subordinated Debt Documents (*provided that* if the relevant Subordinated Debt Documents do not specify a voting threshold for a particular matter (or do not specify a principle which applies if a voting threshold for a particular matter is not specified), the threshold will be a simple majority of the outstanding principal amount under those Subordinated Debt Documents (excluding any Subordinated Liabilities owned by the Parent, a member of the Group or an Affiliate)). A Creditor Representative will be entitled to seek instructions from the Subordinated Creditors of which it is the Creditor Representative to the extent required by the applicable Subordinated Debt Documents, as the case may be, as to any action to be taken by it under this Agreement and the other Finance Documents.

1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in paragraph (b) of Clause 18.11 (*Exclusion of liability*), the Paying Agent or the CSD may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.
- (d) The Third Parties Act shall apply to this Agreement in respect of any Senior Secured Noteholder or Subordinated Noteholder. For the purposes of paragraph (b) above and this paragraph (d), upon any person becoming a Senior

Secured Noteholder or Subordinated Noteholder, such person shall be deemed to be a Party to this Agreement and shall be bound by the provisions of this Agreement and be deemed to receive the benefits of this Agreement, and be subject to the terms and conditions hereof, as if such person were a Party hereto.

SECTION 2 RANKING AND PRIMARY CREDITORS

2 RANKING AND PRIORITY

2.1 Primary Creditor Liabilities

Each of the Parties agrees that:

- (a) prior to the Corporate Reorganisation Completion Date, the Liabilities owed by:
 - (i) the Parent to the Primary Creditors shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:
 - (A) **first**, the Super Senior Liabilities and the Senior Secured Creditor Liabilities *pari passu* and without any preference between them; and
 - (B) **second**, the Subordinated Liabilities *pari passu* and without any preference between them; and
 - (ii) each Debtor (other than the Parent) to the Priority Creditors shall rank *pari passu* and without preference between them.
- (b) on and from the Corporate Reorganisation Completion Date, the Liabilities owed by:
 - (i) the Parent to the Subordinated Creditors in respect of the Subordinated Liabilities shall rank *pari passu* and without any preference between them; and
 - (ii) each Debtor (other than the Parent) to the Priority Creditors shall rank *pari passu* and without preference between them.

2.2 Transaction Security

Each of the Parties agrees that:

- (a) the Super Senior and Senior Secured Creditor Only Transaction Security shall rank and secure only the Super Senior Liabilities and the Senior Secured Creditor Liabilities (subject to the terms of this Agreement) *pari passu* and without any preference between them (but only to the extent that such Super Senior and Senior Secured Creditor Only Transaction Security is expressed to secure those Liabilities); and

- (b) prior to the Corporate Reorganisation Completion Date the Shared Transaction Security shall rank and secure the following Liabilities (but only to the extent such Shared Transaction Security is expressed to secure those Liabilities) in the following order:
 - (i) **first**, the Super Senior Liabilities and the Senior Secured Creditor Liabilities and without any preference between them; and
 - (ii) **second**, the Subordinated Liabilities *pari passu* and without any preference between them; and
- (c) on and from the Corporate Reorganisation Completion Date, the Shared Transaction Security shall rank and secure only the Subordinated Liabilities *pari passu* and without any preference between them.

2.3 Intra-Group Liabilities

- (a) Each of the Parties agrees that the Intra-Group Liabilities and the Parent Shareholder Liabilities are postponed and subordinated to the Liabilities owed by the Debtors to the Primary Creditors.
- (b) This Agreement does not purport to rank any of the Intra-Group Liabilities or the Parent Shareholder Liabilities as between themselves.

2.4 Creditor Representative Amounts

Subject to Clause 16 (*Application of Proceeds*) where applicable, nothing in this Agreement will prevent payment by the Parent or any Debtor of the Creditor Representative Amounts or the receipt and retention of such Creditor Representative Amounts by the relevant Creditor Representative(s).

3 SUPER SENIOR CREDITORS AND SUPER SENIOR LIABILITIES

3.1 Payment of Super Senior Liabilities

The Debtors may make Payments of the Super Senior Liabilities at any time in accordance with, and subject to the provisions of, the relevant Super Senior Debt Documents.

3.2 Security: Super Senior Creditors

The Super Senior Creditors may take, accept or receive the benefit of:

- (a) any Security in respect of the Super Senior Liabilities from any member of the Group in addition to the Super Senior and Senior Secured Creditor Only Transaction Security and the Shared Transaction Security which to the extent legally possible is, at the same time, also offered either:
 - (i) to the Security Agent as trustee for the other Priority Creditors (and, if such Transaction Security relates to the Shared Security Property, the Subordinated Creditors) 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 trustee for the Priority Creditors (and, if applicable, the Subordinated Creditors):
 - (A) to the other Priority Creditors (and, if such Transaction Security relates to the Charged Property, the Subordinated Creditors) in respect of their Liabilities; or
 - (B) to the Security Agent under a parallel debt structure for the benefit of the other Priority Creditors (and, if such Transaction Security relates to the Shared Security Property, the Subordinated Creditors),

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

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

if and to the extent legally possible, at the same time it is also offered to the other Priority Creditors (and, if such Security relates to the Shared Security Property, the Subordinated Creditors) in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

4 SENIOR SECURED CREDITORS AND SENIOR SECURED CREDITOR LIABILITIES

4.1 Payment of Senior Secured Creditor Liabilities

The Debtors may make Payments of the Senior Secured Creditor Liabilities at any time in accordance with, and subject to the provisions of, the Senior Secured Debt Documents.

4.2 Security: Senior Secured Creditors

The Senior Secured Creditors may take, accept or receive the benefit of:

- (a) any Security in respect of the Senior Secured Creditor Liabilities from any member of the Group in addition to the Super Senior and Senior Secured Creditor Only Transaction Security and the Shared Transaction Security which to the extent legally possible is, at the same time, also offered either:
 - (i) to the Security Agent as trustee for the other Priority Creditors (and, if such Transaction Security relates to the Shared Security Property, the Subordinated Creditors) 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 trustee for the Priority Creditors (and, if applicable, the Subordinated Creditors):
 - (A) to the other Priority Creditors (and, if such Transaction Security relates to the Shared Charged Property, the Subordinated Creditors) in respect of their Liabilities; or
 - (B) to the Security Agent under a parallel debt structure for the benefit of the other Priority Creditors (and, if such Transaction Security relates to the Shared Security Property, the Subordinated Creditors),

and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*); and

- (b) any guarantee, indemnity or other assurance against loss in respect of the Senior Secured Creditor Liabilities from any member of the Group in addition to those in:
 - (i) the Common Terms Agreement; or
 - (ii) this Agreement; or
 - (iii) any Common Assurance,

if and to the extent legally possible at the same time it also offered to the other Priority Creditors (and, if such Security relates to the Shared Security Property, the Subordinated Creditors) in respect of their respective Liabilities and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

5 OPTION TO PURCHASE

5.1 Option to purchase: Senior Secured Creditors

- (a) Subject to paragraph (b) below and to Clause 5.2 (*Option to purchase: Subordinated Creditors*), some or all of the Senior Secured Noteholders and Senior Secured Facility Lenders (the “**Purchasing Secured Creditors**”) may at any time after the latest scheduled termination date of the Super Senior Credit Facility after having given all Senior Secured Noteholders and Senior Secured Facility Lenders the opportunity to participate in such purchase, by giving not less than ten days’ notice to the Security Agent, require the transfer to them (or to a nominee or nominees), in accordance with Clause 20.2 (*Change of Lender under an existing Loan Instrument*), of all, but not part, of the rights, benefits and obligations in respect of the Super Senior Liabilities if:
 - (i) that transfer is lawful and subject to paragraph (ii) below, otherwise permitted by the terms of the Super Senior Credit Facility Agreement and the Common Terms Agreement;

- (ii) any conditions relating to such a transfer contained in the Super Senior Credit Facility Agreement and the Common Terms Agreement are complied with, other than:
 - (A) any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required; and
 - (B) any condition more onerous than those contained in clause 20 (*Assignments and transfers by the Lenders*) of the original form of the Super Senior Credit Facility Agreement;
 - (iii) the Super Senior Facility Agent, on behalf of the Super Senior Facility Lenders, is paid an amount by the Purchasing Secured Creditors equal to the aggregate of:
 - (A) all of the Super Senior Liabilities at that time (whether or not due), including all amounts that would have been payable under the Super Senior Debt Documents if the Super Senior Liabilities were being prepaid by the relevant Debtors on the date of that payment; and
 - (B) all costs and expenses (including legal fees) incurred by the Super Senior Facility Agent and/or the Super Senior Facility Lenders as a consequence of giving effect to that transfer;
 - (iv) as a result of that transfer the Super Senior Facility Lenders have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
 - (v) an indemnity is provided from the Purchasing Secured Creditors (or from another third party acceptable to all the Super Senior Facility Lenders) in a form satisfactory to each Super Senior Facility Lender in respect of all losses which may be sustained or incurred by any Super Senior Facility Lender in consequence of any sum received or recovered by any Super Senior Facility Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Super Senior Facility Lender for any reason; and
 - (vi) the transfer is made without recourse to, or representation or warranty from, the Super Senior Facility Lenders, except that each Super Senior Facility Lender shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) The Creditor Representatives in respect of the Super Senior Credit Facilities shall, at the request of the Purchasing Secured Creditors notify the Senior Secured Noteholders and Senior Secured Facility Lenders of the sum of the amounts described in paragraphs 5.1(a)(ii)(A) and (B) above.

- (c) If more than one Purchasing Secured Creditor wishes to exercise the option to purchase the Super Senior Liabilities in accordance with paragraph (a) above, each such Purchasing Secured Creditor shall:
- (i) acquire the Super Senior Liabilities *pro rata*, in the proportion that its Senior Credit Participation bears to the aggregate Senior Secured Credit Participations of all the Purchasing Secured Creditors; and
 - (ii) inform the Senior Secured Notes Trustee in accordance with the terms of the Senior Secured Note Trust Deed or the relevant Creditor Representative(s) in accordance with the terms of the relevant Senior Secured Debt Documents, who will determine (consulting with each other as required) the appropriate share of the Super Senior Liabilities to be acquired by each such Purchasing Secured Creditor and who shall inform each such Purchasing Secured Creditor accordingly,

and the Senior Secured Notes Trustee or the relevant Creditor Representative(s) (as applicable) shall promptly inform the Creditor Representatives of the Super Senior Facility Lenders of the Purchasing Secured Creditors intention to exercise the option to purchase the Super Senior Liabilities.

5.2 Option to purchase: Subordinated Creditors

- (a) Subject to paragraph (b) below, some or all of the Subordinated Creditors (the “**Purchasing Subordinated Creditors**”) may at any time following the occurrence of a Distress Event in respect of any of the Priority Creditor Liabilities by giving not less than ten days’ notice to the Security Agent, require the transfer to them (or to a nominee or nominees), in accordance with Clause 20.2 (*Change of Lender under an existing Loan Instrument*) and Clause 20.3 (*Change of Senior Secured Noteholder*), of all, but not part, of the rights, benefits and obligations in respect of the Priority Creditor Liabilities if:
- (i) that transfer is lawful and subject to paragraph (ii) below, otherwise permitted by the terms of the relevant Priority Debt Documents;
 - (ii) any conditions relating to such a transfer contained in the relevant Priority Debt Documents are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required;
 - (iii) as applicable, the relevant Creditor Representatives, on behalf of each group of Priority Creditors, are each paid an amount by the Purchasing Subordinated Creditors equal to the aggregate of:
 - (A) all of the Priority Creditor Liabilities at that time (whether or not due), including all amounts that would have been payable under the Priority Debt Documents if the Priority Creditor Liabilities were being prepaid by the relevant Debtors on the date of that payment; and

- (B) all costs and expenses (including legal fees) incurred by the relevant Creditor Representatives and/or the other Priority Creditors as a consequence of giving effect to that transfer;
 - (iv) as a result of that transfer the Priority Creditors have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
 - (v) an indemnity is provided from each Purchasing Subordinated Creditor exercising its rights pursuant to this Clause 5.2 (or from another third party acceptable to all the Priority Creditors) in a form satisfactory to each Priority Creditor in respect of all losses which may be sustained or incurred by any Priority Creditor in consequence of any sum received or recovered by any Priority Creditor from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Priority Creditor for any reason; and
 - (vi) the transfer is made without recourse to, or representation or warranty from, the Priority Creditors, except that each Priority Creditor shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) Each relevant Creditor Representative in respect of the Priority Creditor Liabilities shall, at the request of the Purchasing Subordinated Creditors, notify the Purchasing Subordinated Creditors of the sum of the amounts described in paragraph 5.2(a)(iii)(A) and (B) above
- (c) If more than one Purchasing Subordinated Creditor wishes to exercise the option to purchase the Priority Creditor Liabilities in accordance with paragraph (a) above, each such Purchasing Subordinated Creditors shall:
- (i) acquire the Priority Creditor Liabilities *pro rata*, in the proportion that its Subordinated Note Credit Participation bears to the aggregate Subordinated Note Credit Participations of all the Purchasing Subordinated Creditors; and
 - (ii) inform the Subordinated Facilities Lenders and the Subordinated Notes Trustee in accordance with the terms of the Subordinated Credit Facility Agreements and the Subordinated Note Trust Deed respectively, who will determine (consulting with each other as required) the appropriate share of the Priority Creditor Liabilities to be acquired by each such Purchasing Subordinated Creditors and who shall inform each such Purchasing Subordinated Creditors accordingly,

and the Subordinated Facilities Lenders and the Subordinated Notes Trustee shall promptly inform the Creditor Representatives of the Super Senior Facility Lenders, the Senior Secured Notes Trustee and any other relevant Creditor Representative(s) of the Priority Creditor Liabilities to exercise the option to purchase the Priority Creditor Liabilities.

6 SUBORDINATED CREDITORS AND SUBORDINATED LIABILITIES

6.1 Restriction on Payment: Subordinated Liabilities

Until the Priority Discharge Date, except with the prior consent of the Majority Priority Creditors, the Debtors shall not, and shall procure that no other member of the Group will):

- (a) make any Payments in respect of any principal, interest or other amount on or in respect of, or make any distribution or Liabilities Acquisition in respect of, any Subordinated Liabilities in cash or in kind or apply any such money or property in or towards discharge of any Subordinated Liabilities except as expressly permitted by Clause 6.2 (*Permitted Payments: Subordinated Liabilities*) or Clause 6.6 (*Permitted Enforcement: Subordinated Creditors*) or Clause 9.4 (*Filing of claims*); or
- (b) exercise any set-off against any Subordinated Liabilities except as expressly permitted by Clause 6.2 (*Permitted Payments: Subordinated Liabilities*), Clause 6.6 (*Permitted Enforcement: Subordinated Creditors*) or Clause 9.4 (*Filing of claims*).

6.2 Permitted Payments: Subordinated Liabilities

The Debtors may:

- (a) prior to the Priority Discharge Date, make Payments to the Subordinated Creditors in respect of the Subordinated Liabilities in accordance with the Subordinated Debt Documents (as amended in accordance with the terms of this Agreement and the relevant Subordinated Debt Documents):
 - (i) of PIK interest that is capitalised and (i) added to the principal amount of the Subordinated Loan Commitments or (ii) applied to increase the total aggregate nominal amount of the Subordinated Notes in accordance with the procedures of the CSD, in each case in accordance with the original form of the Subordinated Debt Documents;
 - (ii) if the Majority Priority Creditors give prior consent to that Payment being made;
 - (iii) if the Payments are of costs, commissions, fees, indemnifications, taxes and expenses incurred in respect of (or reasonably incidental to) the Subordinated Debt Documents (including in relation to any reporting or listing requirements under the relevant Subordinated Debt Documents) *provided that* the maximum aggregate amount of such Payments does not exceed \$100,000 in any financial year; or
 - (iv) if the Payments are of Creditor Representative Amounts due and payable to the Subordinated Notes Trustee;
- (b) on or after the Priority Discharge Date, make Payments to the Subordinated Creditors in respect of the Subordinated Liabilities in accordance with the relevant Subordinated Debt Documents.

6.3 **Security: Subordinated Liabilities**

At any time prior to the Priority Discharge Date, except with the prior consent of the Majority Priority Creditors, the Subordinated Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from the Debtors (in respect of the Parent only to the extent that such action involves, extends to or otherwise impacts the Super Senior and Senior Secured Creditor Only Transaction Security or the Shared Transaction Security or any of the Super Senior and Senior Secured Creditor Only Charged Property or the Charged Property) or any other member of the Group other than the Shared Transaction Security or, in respect of the Subordinated Notes Trustees only, any indemnity or other assurance against loss from the Parent as provided for in the Subordinated Debt Documents.

6.4 **Amendments and Waivers: Subordinated Creditors**

- (a) Subject to paragraph (b) below, the Subordinated Creditors may amend or waive the terms of the Subordinated Debt Documents (other than this Agreement or any Security Document) in accordance with their terms at any time.
- (b) Prior to the Priority Discharge Date, the Subordinated Creditors may not amend or waive the terms of the Subordinated Debt Documents if the effect of the amendment would make the terms of the Subordinated Debt Documents more onerous for, or impose additional obligation on, any member of the Group for the benefit of the Subordinated Creditors or would in the opinion of the Priority Creditors (acting reasonably) be prejudicial to the interests of the Priority Creditors, without the prior consent of the Majority Priority Creditors.

6.5 **Restrictions on Enforcement: Subordinated Creditors**

At any time prior to the Priority Discharge Date, except as permitted by Clause 6.6 (*Permitted Enforcement: Subordinated Creditors*), no Subordinated Creditor shall be entitled to take or direct the Security Agent to take any Enforcement Action:

- (a) against any of the Debtors in respect of any of the Subordinated Liabilities; or
- (b) in respect of any of the Transaction Security,

except with the prior consent of or at the request of an Instructing Group.

6.6 **Permitted Enforcement: Subordinated Creditors**

- (a) Subject to the provisions of Clause 6.8 (*Enforcement on behalf of Subordinated Creditors*), the restrictions in Clause 6.5 (*Restrictions on Enforcement: Subordinated Creditors*) will not apply in respect of the Subordinated Liabilities or the Shared Transaction Security if:
 - (i)
 - (A) a Relevant Subordinated Debt Event of Default has occurred and is continuing;

- (B) each other Creditor Representative has received a notice of the Relevant Subordinated Debt Event of Default specifying the event or circumstance in relation to the Relevant Subordinated Debt Event of Default from the relevant Subordinated Notes Trustee and the Majority Subordinated Lenders (a “**Subordinated Debt Enforcement Notice**”);
 - (C) the applicable Subordinated Debt Standstill Period has elapsed or otherwise terminated; and
 - (D) the Relevant Subordinated Debt Event of Default is continuing at the end of the relevant Subordinated Debt Standstill Period; or
- (ii) with respect to the Parent and the Shared Transaction Security only, the Corporate Reorganisation Completion Date has occurred.
- (b) A Subordinated Creditor may take any of the actions described in subparagraph (a) of the definition of Enforcement Action where it is otherwise entitled to do so.

6.7 **Subsequent Subordinated Debt Defaults**

The Subordinated Creditors may take Enforcement Action under Clause 6.6 (*Permitted Enforcement: Subordinated Creditors*) in relation to a Relevant Subordinated Debt Event of Default to the extent entitled to under the relevant Subordinated Debt Documents even if, at the end of any relevant Subordinated Debt Standstill Period or at any later time, a further Subordinated Debt Standstill Period has begun as a result of any other Relevant Subordinated Debt Event of Default in relation to the Subordinated Debt Documents.

6.8 **Enforcement on behalf of Subordinated Creditors**

If the Security Agent has notified the Subordinated Notes Trustee and the Subordinated Facilities Lenders that it is taking or has been instructed by an Instructing Group to take any Enforcement Action in relation to any Debtor or any part of the Super Senior and Senior Secured Creditor Only Charged Property or the Shared Security Property owned by it or its Subsidiaries, no Subordinated Creditor may take any action referred to in Clause 6.6 (*Permitted Enforcement: Subordinated Creditors*) against any Debtor while the Security Agent is taking steps to enforce Security or taking Enforcement Action in relation to a Debtor, in each case in accordance with the instructions of the Instructing Group where such action might be reasonably likely to adversely affect such enforcement or Enforcement Action or the amount of proceeds to be derived therefrom.

SECTION 3 OTHER CREDITORS

7 INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES

7.1 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 7.2 (*Permitted Payments: Intra-Group Liabilities*);
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 7.7 (*Permitted Enforcement: Intra-Group Lenders*); or
- (c)
 - (i) prior to the Priority Discharge Date, with the prior consent of the Majority Priority Creditors; and
 - (ii) following the Priority Discharge Date but prior to the Final Discharge Date, with the prior consent of the Majority Subordinated Creditors.

7.2 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 to the extent that such payment is expressly permitted by the Common Terms Agreement.
- (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 Event of Default has occurred and is continuing or would occur under any of the Debt Documents unless:
 - (i) prior to the Priority Discharge Date, the Majority Priority Creditors consent to that Payment being made; and
 - (ii) following the Priority Discharge Date but prior to the Final Discharge Date, the Majority Subordinated Creditors consent to that Payment being made; or
 - (iii) that Payment is made to facilitate the making of a Permitted Super Senior Credit Facility Payment, a Permitted Senior Secured Debt Payment or the making of a Permitted Subordinated Payment.

7.3 Payment obligations continue

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of

Clauses 7.1 (*Restriction on Payment: Intra-Group Liabilities*) and 7.2 (*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.

7.4 **Acquisition of Intra-Group Liabilities**

- (a) Subject to paragraphs (b) and (c) below, each Debtor may, and may permit any other member of the Group to:
 - (i) enter into any Liabilities Acquisition; or
 - (ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,in respect of any Intra-Group Liabilities at any time.
- (b) Subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities if that action would result in a breach of the Common Terms Agreement
- (c) The restriction in paragraph (b) above shall not apply if:
 - (i)
 - (A) prior to the Priority Discharge Date, the Majority Priority Creditors consent to that action; and
 - (B) following the Priority Discharge Date but prior to the Final Discharge Date, the Majority Subordinated Creditors consent to that action; or
 - (ii) that action is taken to facilitate the making of a Permitted Super Senior Credit Facility Payment, a Permitted Senior Secured Debt Payment, or a Permitted Subordinated Payment.

7.5 **Security: Intra-Group Lenders**

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

- (a) prior to the Priority Discharge Date, the prior consent of the Majority Priority Creditors is obtained; and
- (b) following the Priority Discharge Date but prior to the Final Discharge Date, the prior consent of the Majority Subordinated Creditors is obtained.

7.6 **Restriction on enforcement: Intra-Group Lenders**

Subject to Clause 7.7 (*Permitted Enforcement: Intra-Group Lenders*), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date.

7.7 Permitted Enforcement: Intra-Group Lenders

After the occurrence of an Insolvency Event in relation to any member of the Group, each Intra-Group Lender may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Intra-Group Lender in accordance with Clause 9.4 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

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

7.8 Representations: Intra-Group Lenders

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

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

8 PARENT SHAREHOLDERS AND PARENT SHAREHOLDER LIABILITIES

8.1 Restriction on Payment: Parent Shareholder Liabilities

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

- (a) that Payment is permitted under Clause 8.2 (*Permitted Payments: Parent Shareholder Liabilities*); or

- (b) the taking of or receipt of that Payment is permitted under Clause 8.8 (*Permitted Enforcement: Parent Shareholders*).

8.2 Permitted Payments: Parent Shareholder Liabilities

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

- (a) the Payment is expressly permitted by the Common Terms Agreement; or
- (b)
 - (i) prior to the Priority Discharge Date, the prior consent of the Majority Priority Creditors is obtained; and
 - (ii) following the Priority Discharge Date, but prior to the Final Discharge Date, the prior consent of the Majority Subordinated Creditors is obtained.

8.3 Payment obligations continue

Neither the Parent nor any other Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 8.1 (*Restriction on Payment: Parent Shareholder Liabilities*) and 8.2 (*Permitted Payments: Parent Shareholder Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

8.4 No acquisition of Parent Shareholder Liabilities

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

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

in respect of any of the Parent Shareholder Liabilities, unless:

- (i) prior to the Priority Discharge Date, the prior consent of the Majority Priority Creditors is obtained; and
- (ii) following the Priority Discharge Date, but prior to the Final Discharge Date, the prior consent of the Majority Subordinated Creditors is obtained.

8.5 Amendments and Waivers: Parent Shareholders

Prior to the Final Discharge Date, the Parent Shareholders may not amend, waive or agree the terms of any of the documents or instruments pursuant to which the Parent Shareholder Liabilities are constituted unless:

- (a) that amendment, waiver or agreement is of a minor and administrative nature and is not prejudicial to the Primary Creditors; or
- (b) prior to the Priority Discharge Date, the prior consent of the Majority Priority Creditors is obtained; and
- (c) following the Priority Discharge Date, but prior to the Final Discharge Date, the prior consent of the Majority Subordinated Creditors is obtained.

8.6 Security: Parent Shareholders

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

- (a) prior to the Priority Discharge Date, the prior consent of the Majority Priority Creditors is obtained; and

following the Priority Discharge Date but prior to the Final Discharge Date, the prior consent of the Majority Subordinated Creditors is obtained.

8.7 Restriction on enforcement: Parent Shareholders

Subject to Clause 8.7 (*Permitted Enforcement: Parent Shareholders*), none of the Parent Shareholders shall be entitled to take any Enforcement Action in respect of any of the Parent Shareholder Liabilities at any time prior to the Final Discharge Date.

8.8 Permitted Enforcement: Parent Shareholders

After the occurrence of an Insolvency Event in relation to any member of the Group, each Parent Shareholder may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Parent Shareholder in accordance with Clause 9.4 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

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

8.9 Representations: Parent Shareholders

Each Parent Shareholder represents and warrants to the Primary Creditors and the Security Agent that:

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

SECTION 4 INSOLVENCY, TURNOVER AND ENFORCEMENT

9 EFFECT OF INSOLVENCY EVENT

9.1 Distributions

- (a) Without limitation to Clause 10 (*Turnover of Receipts*) and Clause 16 (*Application of Proceeds*), after the occurrence of an Insolvency Event in relation to the Parent or any member of the Group, any Party entitled to receive a Payment or distribution out of the assets of or a distribution out of the Charged Property of the Parent or any member of the Group (in the case of a receipt by a Priority Creditor of a Payment or distribution of assets of a member of the Group, only to the extent that such amount constitutes Enforcement Proceeds) in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of the Parent or that member of the Group to make that distribution to the Security Agent (or to such other person as the Security Agent shall direct) until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Security Agent shall apply distributions made to it under paragraph (a) above in accordance with Clause 16 (*Application of Proceeds*).

9.2 Set-Off

To the extent that the Parent's (to the extent relating to the Shared Transaction Security or the Shared Security Property) 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 in relation to the Parent or that member of the Group, any Creditor which benefited from that set-off shall (in the case of a Priority Creditor, only to the extent that such amount constitutes Enforcement Proceeds) pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 16 (*Application of Proceeds*).

9.3 **Non-cash distributions**

If the Security Agent or any other Secured Party receives a distribution in a form other than cash in respect of any of the Liabilities, 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.

9.4 **Filing of claims**

After the occurrence of an Insolvency Event in relation to the Parent or any member of the Group, each Creditor irrevocably authorises the Security Agent on its behalf, to:

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

9.5 **Further assurance – Insolvency Event**

Each Creditor will:

- (a) do all things that the Security Agent requests in order to give effect to this Clause 9; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 9 or if the Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action.

9.6 **Security Agent instructions**

For the purposes of Clause 9.1 (*Distributions*), Clause 9.4 (*Filing of claims*) and Clause 9.5 (*Further assurance – Insolvency Event*) the Security Agent shall act:

- (a) with respect to an Insolvency Event relating to an Obligor or a member of the Group, on the instructions of the group of Primary Creditors entitled at that time to give instructions under Clause 12.3 (*Enforcement Instructions – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*) or Clause 12.4 (*Manner of enforcement – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*); or

- (b) in the absence of any such instructions, as the Security Agent sees fit.

10 TURNOVER OF RECEIPTS

10.1 Turnover by the Priority Creditors

Subject to Clause 10.3 (*Exclusions*) and to Clause 10.4 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date any Priority Creditor receives or recovers any Enforcement Proceeds relating to the Priority Creditor Only Transaction Security or the Shared Transaction Security except in accordance with Clause 16 (*Application of Proceeds*), the relevant Priority Creditor will:

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

10.2 Turnover by Creditors other than the Priority Creditors

Subject to Clause 10.1 (*Turnover by the Priority Creditors*), Clause 10.3 (*Exclusions*) and to Clause 10.4 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Creditor other than a Priority Creditor receives or recovers from any member of the Group or the Parent:

- (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 16 (*Application of Proceeds*);
- (b) other than where Clause 9.2 (*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 paragraphs Clause 9.2 (*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 the Parent or a member of the Group (other than after the occurrence of an Insolvency Event in respect of the Parent or that member of the Group); or
- (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,
- (iii) other than, in each case, any amount received or recovered in accordance with Clause 16 (*Application of Proceeds*);
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 16 (*Application of Proceeds*); or
- (e) other than where Clause 9.2 (*Set-Off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by the Parent or a member of the Group which is not in accordance with Clause 16 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of the Parent or a member of the Group,

that Creditor will:

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

10.3 Exclusions

Clause 10.1 (*Turnover by the Priority*) and Clause 10.2 (*Turnover by Creditors other than the Senior Secured Creditors*) shall not apply to any receipt or recovery made in accordance with Clause 17 (*Equalisation*).

10.4 Permitted assurance and receipts

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

- (a) arrange with any person which is not the Parent or 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 20 (*Changes to the Parties*),

which:

- (i) is expressly permitted by:
 - (A) the Common Terms Agreement;
 - (B) the Super Senior Credit Facility Agreement;
 - (C) the Senior Secured Facility Agreement(s);
 - (D) the Senior Note Trust Deed;
 - (E) the Subordinated Note Trust Deed;
 - (F) the Subordinated Credit Facility Agreements; and

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

10.5 **Amounts received by Debtors**

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

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

10.6 **Saving provision**

If, for any reason, any of the trusts expressed to be created in this Clause 10 should fail or be unenforceable, the affected Creditor or Debtor will promptly pay or distribute an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

11 REDISTRIBUTION

11.1 Recovering Creditor's rights

- (a) Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 9 (*Effect of Insolvency Event*) or Clause 10 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and shall be applied by the Security Agent in accordance with Clause 16 (*Application of Proceeds*).
- (b) On an application by the Security Agent pursuant to Clause 16 (*Application of Proceeds*) of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent by the Recovering Creditor (the "**Shared Amount**") will be treated as not having been paid or distributed by that Debtor.

11.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returned by that Recovering Creditor to that Debtor, then:
 - (i) each Party that received any part of that Shared Amount pursuant to an application by the Security Agent of that Shared Amount under Clause 11.1 (*Recovering Creditor's rights*) (a "**Sharing Party**") shall (subject to Clause 19 (*Notes Trustee Protections*)), upon request of the Security Agent, pay or distribute to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and
 - (ii) as between the relevant Debtor and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor.
- (b) The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under paragraph 11.2(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 Party.

11.3 Deferral of subrogation

- (a) Subject to paragraph (c) below, if any Priority Creditor Liabilities are wholly or partly paid out of any proceeds received in respect of or on account of the Subordinated Liabilities owing to one or more Subordinated Creditors, those Subordinated Creditors will to that extent be subrogated to the Priority Creditor

Liabilities so paid (and all securities and guarantees for those Priority Creditor Liabilities).

- (b) Subject to paragraph (c) below, to the extent that a Subordinated Creditor (a “**Subrogated Creditor**”) is entitled to exercise rights of subrogation, each other Creditor (subject in each case to it being indemnified to its reasonable satisfaction against any resulting costs, expenses and liabilities) will give such assistance to enable such rights so to be exercised as such Subrogated Creditor may reasonably request.
- (c) No Creditor or Debtor will exercise any rights which it may have by reason of the performance by it of its obligations under the Debt Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor which ranks ahead of it in accordance with the priorities set out in Clause 2 (*Ranking and Priority*) or the order of application in Clause 16 (*Application of Proceeds*) until such time as all of the Liabilities owing to each prior ranking Creditor (or, in the case of any Debtor, owing to each Creditor) have been irrevocably discharged in full.
- (d) No Subordinated Creditor will exercise any rights which it may have to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor until such time as all of the Liabilities owing to each Creditor (other than a Subordinated Creditor) have been irrevocably discharged in full.

12 ENFORCEMENT OF TRANSACTION SECURITY

12.1 Shared Security Consultation

- (a) Subject to Clause 12.1(b) below, and unless the Priority Discharge Date has occurred, before giving any instructions to the Security Agent to enforce the Shared Transaction Security under this Clause 12, the Instructing Group shall consult with the Subordinated Notes Trustee and the Majority Subordinated Lenders in good faith for 10 Business Days.
- (b) None of the Super Senior Facility Agent, the Senior Secured Facilities Agent or the Senior Secured Notes Trustee shall be obliged to comply with Clause 12.1(a) above if:
 - (i) the relevant Shared Security has become enforceable as a result of Insolvency Proceedings (as defined in the Common Terms Agreement) relating to such Debtor against whom such Enforcement Action has been taken or such debt accelerated; or
 - (ii) the Security Agent (acting on the instructions of an Instructing Group) determines in good faith that to enter into such consultations and thereby delay the commencement of enforcement of the Shared Security would reasonably be expected to have an adverse effect on the expected realisation proceeds of any Enforcement.

12.2 Instructions to enforce – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security

- (a) If either the Majority Super Senior Creditors or the Majority Senior Secured Creditors wish to issue Enforcement Instructions, the Creditor Representatives representing the Priority Creditors comprising the Majority Super Senior Creditors or Majority Senior Secured Creditors (as the case may be) shall deliver a copy of those proposed Enforcement Instructions (an “**Initial Enforcement Notice**”) to the Security Agent and the Security Agent shall promptly forward such Initial Enforcement Notice to each Creditor Representative which did not deliver such Initial Enforcement Notice.
- (b) Subject to paragraphs (c), (d), (e) and (f) below, the Security Agent will act in accordance with Enforcement Instructions received from the Majority Senior Secured Creditors.
- (c) If:
- (i) the Majority Senior Secured Creditors have not either:
 - (A) made a determination as to the method of Enforcement they wish to instruct the Security Agent to pursue (and notified the Security Agent of that determination in writing); or
 - (B) approved the appointment of a Financial Adviser to assist them in making such a determination,within three months of the date of the Initial Enforcement Notice; or
 - (ii) the Super Senior Discharge Date has not occurred within six months of the date of the Initial Enforcement Notice,
- then the Security Agent will act in accordance with Enforcement Instructions received from the Majority Super Senior Creditors until the Super Senior Discharge Date has occurred.
- (d) If an Insolvency Event (other than an Insolvency Event directly caused by any Enforcement Action taken by or at the request or direction of a Senior Secured Creditor or Super Senior Creditor) is continuing with respect to a Debtor then the Security Agent will, to the extent the Majority Super Senior Creditors elect to provide such Enforcement Instructions, act in accordance with Enforcement Instructions received from the Majority Super Senior Creditors until the Super Senior Discharge Date has occurred.
- (e) If the Majority Senior Secured Creditors have not either:
- (i) made a determination as to the method of Enforcement they wish to instruct the Security Agent to pursue (and notified the Security Agent of that determination in writing); or
 - (ii) approved the appointment of a Financial Adviser to assist them in making such a determination,

and the Majority Super Senior Creditors:

- (A) determine in good faith (and notify the other Creditor Representatives and the Security Agent) that a delay in issuing Enforcement Instructions could reasonably be expected to have a material adverse effect on the ability to effect a Distressed Disposal or on the expected realisation proceeds of any Enforcement; and
- (B) deliver Enforcement Instructions which they reasonably believe to be consistent with the Enforcement Principles and necessary or advisable to enhance the prospects of achieving the Enforcement Objective before the Security Agent has received any Enforcement Instructions from the Majority Senior Secured Creditors,

then the Security Agent will act in accordance with the Enforcement Instructions received from the Majority Super Senior Creditors until the Super Senior Discharge Date has occurred.

- (f) Following the earlier to occur of (i) the Corporate Reorganisation Completion Date, and (ii) the Priority Discharge Date, Enforcement Instructions with respect to the Shared Transaction Security may only be given by the Creditor Representatives for the Majority Subordinated Creditors (acting on the instructions of the Majority Subordinated Creditors).

12.3 Enforcement Instructions – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security

- (a) Subject to paragraph (c), the Security Agent may refrain from enforcing the Super Senior and Senior Secured Creditor Only Transaction Security or the Shared Transaction Security or taking any other action as to Enforcement unless instructed otherwise by:
 - (i) the Instructing Group in accordance with Clause 12.2 (*Instructions to enforce – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*); or
 - (ii) if required under paragraph (c) below, the Majority Subordinated Creditors.
- (b) Subject to the Shared Transaction Security having become enforceable in accordance with its terms:
 - (i) the Instructing Group may give or refrain from giving instructions to the Security Agent to take action as to Enforcement in accordance with Clause 12.2 (*Instructions to enforce – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*); or

- (ii) if required under paragraph (c) below, the Majority Subordinated Creditors may give or refrain from giving instructions to the Security Agent to enforce the Shared Transaction Security.
- (c) Prior to the Priority Discharge Date:
- (i) if the Instructing Group has instructed the Security Agent to cease or not to proceed with Enforcement; or
 - (ii) in the absence of instructions as to Enforcement from the Instructing Group,

the Security Agent shall give effect to any instructions to enforce the Shared Transaction Security which the Majority Subordinated Creditors are then entitled to give to the Security Agent under Clause 6.6 (*Permitted Enforcement: Subordinated Creditors*).

- (d) Notwithstanding the preceding paragraphs (b)(ii) and (c), if at any time the Majority Subordinated Creditors are then entitled to give the Security Agent instructions as to enforcement of the Shared Transaction Security pursuant to the preceding paragraph (c) and the Creditor Representative(s) give such instruction, then the Majority Super Senior Creditors or the Majority Senior Secured Creditors may give instructions to the Security Agent as to Enforcement in lieu of any instructions to enforce given by the Majority Subordinated Creditors under Clause 6.6 (*Permitted Enforcement: Subordinated Creditors*) and the Security Agent shall act on the first such instructions received.
- (e) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 12.3.

12.4 Manner of enforcement – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security

If the Super Senior and Senior Secured Creditor Only Transaction Security or the Shared Transaction Security is being enforced or other action as to Enforcement is being taken pursuant to Clause 12.3 (*Enforcement Instructions – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*), the Security Agent shall enforce the Super Senior and Senior Secured Creditor Only Transaction Security and/or Shared Transaction Security (as applicable) or take other action as to Enforcement in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Security Agent) as:

- (a) the Instructing Group shall instruct; or
- (b) if, prior to the Priority Discharge Date:
 - (i) the Security Agent has, pursuant to paragraph (c) of Clause 12.3 (*Enforcement Instructions – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*), received

instructions given by the Majority Subordinated Creditors to enforce the Shared Transaction Security; and

- (ii) the Instructing Group (or any other group of Priority Creditors pursuant to paragraph (d) of Clause 12.3 (*Enforcement Instructions – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*)) has not given instructions as to Enforcement,

the Majority Subordinated Creditors shall instruct,

provided that (in the case of paragraph (a) above and prior to the Priority Discharge Date only) such instructions are consistent with the Enforcement Principles or, in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate and consistent with the Enforcement Principles and, *provided further that*, if the Corporate Reorganisation Completion Date has occurred, the Security Agent shall enforce the Shared Transaction Security in accordance with the instructions of the Majority Subordinated Creditors.

12.5 Exercise of voting rights

- (a) Subject to paragraphs (b) and (d) below, each Creditor (other than each Creditor Representative) 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 the Parent or any member of the Group as instructed by the Security Agent.
- (b) With effect on and from the Corporate Reorganisation Completion Date, each Creditor (other than a Primary Creditor) 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 the Parent as instructed by the Majority Subordinated Creditors.
- (c) Subject to paragraph (d) below, the Security Agent shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by the Instructing Group *provided that* any such instructions have been given in accordance with Clause 12.3 (*Enforcement Instructions – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*).
- (d) Nothing in this Clause 12.5 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.

12.6 Waiver of rights

To the extent permitted under applicable law and subject to Clause 12.3 (*Enforcement Instructions – Super Senior and Senior Secured Creditor Only Transaction Security*)

and Shared Transaction Security), Clause 12.4 (*Manner of enforcement – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*), Clause 14.2 (*Proceeds of Distressed Disposals and Debt Proposals*) and Clause 16 (*Application of Proceeds*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

12.7 **Duties owed**

Each of the Secured Parties and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce any part of the Transaction Security, the duties of the Security Agent and of any Receiver or Delegate owed to them in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to Clause 14.2 (*Proceeds of Distressed Disposals and Debt Proposals*) (where applicable), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors under general law.

12.8 **Enforcement through Security Agent only**

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

12.9 **Alternative Enforcement Actions**

After the Security Agent has commenced Enforcement, it shall not accept any subsequent instructions as to Enforcement (save for (1) instructions as to Enforcement where paragraphs (c) or (d) of Clause 12.2 (*Instructions to enforce – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*) apply, (2) instructions as to Enforcement that the Subordinated Creditors are entitled to give under 6.6 (*Permitted Enforcement: Subordinated Creditors*) or (3) instructions as to Enforcement from the Majority Super Senior Creditors or the Majority Senior Secured Creditors that they are entitled to give pursuant to paragraph (d) of Clause 12.3 (*Enforcement Instructions – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*) from anyone other than the Instructing Group that instructed it to commence such enforcement of the Transaction Security, regarding any other enforcement of the Transaction Security over or relating to shares or assets directly or indirectly the subject of the enforcement of the Transaction Security which has been commenced (and, for the avoidance of doubt, during any enforcement of the Transaction Security only paragraph (a)(ii) of the definition of Instructing Group shall be applicable in relation to any instructions given to the Security Agent by the Instructing Group under this Agreement).

SECTION 5
NON-DISTRESSED DISPOSALS, DISTRESSED DISPOSALS AND CLAIMS

13 NON-DISTRESSED DISPOSALS

13.1 Definitions

In this Clause 13:

- (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 Super Senior and Senior Secured Creditor Only Transaction Security or the Shared Transaction Security,

to a person or persons outside the Group where:

- (A) such disposal is not made in connection with the Corporate Reorganisation;
- (B) the Creditor Representatives in respect of the Super Senior Credit Facility, the Senior Secured Credit Facility and the Senior Secured Notes notifies the Security Agent that that disposal is not prohibited under its Debt Documents;
- (C) two directors of the Parent certify for the benefit of the Security Agent that the disposal and, if the disposal is of Super Senior and Senior Secured Creditor Only Charged Property or Charged Property, the release of Transaction Security:
 - (1) in respect of the Super Senior and Senior Secured Creditor Only Transaction Security, is not prohibited under the Senior Secured Debt Documents or the Required Senior Secured Creditors authorise the release; and
 - (2) in respect of the Shared Transaction Security:
 - a. on or prior to the Corporate Reorganisation Completion Date, and such release is not prohibited under the Senior Secured Debt Documents or the Required Senior Secured Creditors authorise the release and not prohibited under the Subordinated Debt Documents or the Required Subordinated Creditors authorises the release; or
 - b. after the Corporate Reorganisation Completion Date, it is not prohibited under the Subordinated

Debt Documents or the Required Subordinated Creditors authorises the release,

(provided that such certificate has been provided to the relevant Creditor Representative(s) and the relevant Creditor Representative(s) have not objected to such certificate within 5 Business Days of receipt of such certificate); and

(D) that disposal is not a Distressed Disposal.

13.2 Facilitation of Non-Distressed Disposals

- (a) If a disposal of an asset is a Non-Distressed Disposal, the Security Agent is irrevocably authorised (at the cost of the Company and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) but subject to paragraph (b) below, in the case of a Non-Distressed Disposal:
- (i) to release the Super Senior and Senior Secured Creditor Only Transaction Security and/or the Shared Transaction Security (as applicable) or any other claim (relating to a Debt Document) over that asset *provided that* in relation to the release of any Super Senior and Senior Secured Creditor Only Transaction Security, which is required to remain part of the Phase 2 Super Senior and Senior Secured Creditor Only Transaction Security, the Security Agent and the Majority Senior Secured Creditors are satisfied that immediately upon such release, the applicable Super Senior and Senior Secured Creditor Only Secured Property become secured pursuant to the required replacement Phase 2 Super Senior and Senior Secured Creditor Only Transaction Security Document, on the basis that such replacement Security shall be Security over the released Charged Property which is at least equivalent to the released Security over such Charged Property (the “**Replacement Security Requirement**”);
 - (ii) where that asset consists of shares in the capital of a member of the Group, subject to the Replacement Security Requirement, to release the Super Senior and Senior Secured Creditor Only Transaction Security and/or the Shared Transaction Security (as applicable) or any other claim (relating to a Debt Document) over that member of the Group’s Property; and
 - (iii) subject to the Replacement Security Requirement, to execute and deliver or enter into any release of the Super Senior and Senior Secured Creditor Only Transaction Security and/or the Shared Transaction Security (as applicable) or any claim described in paragraphs (i) and (ii) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.
- (b) Each release of Super Senior and Senior Secured Creditor Only Transaction Security or Shared Transaction Security or any claim described in paragraph (a)

above shall become effective only on the making of the relevant Non-Distressed Disposal.

13.3 Disposal Proceeds

If any Disposal Proceeds are required to be applied in mandatory prepayment of the Super Senior Liabilities, the Senior Secured Creditor Liabilities or the Subordinated Liabilities then those Disposal Proceeds shall, subject to any restrictions on the making of Payments set out in this Agreement, be applied in accordance with the Common Terms Agreement and the consent of any other Party shall not be required for that application.

14 DISTRESSED DISPOSALS

14.1 Facilitation of Distressed Disposals

Subject to Clause 14.3 (*Restriction on enforcement – Priority Creditors*) and Clause 14.4 (*Restriction on Distressed Disposals – Subordinated Creditors*), if a Distressed Disposal is being effected, the Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor):

- (a) ***release of Transaction Security/non-crystallisation certificates***: to release the Super Senior and Senior Secured Creditor Only Transaction Security and/or the Shared Transaction Security (as applicable) or any other claim over the asset subject to the Distressed Disposal and execute and deliver or enter into any release of that Super Senior and Senior Secured Creditor Only Transaction Security and/or Shared Transaction Security (as applicable) 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 subject to the Distressed Disposal consists of shares in the capital of a Debtor, to release:
 - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
 - (ii) any Super Senior and Senior Secured Creditor Only Transaction Security and/or Shared Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
 - (iii) any other claim of an Intra-Group Lender, or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

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

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

(A) its Borrowing Liabilities;

(B) its Guarantee Liabilities; and

(C) its Other Liabilities;

(ii) any Super Senior and Senior Secured Creditor Only Transaction Security and/or Shared Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and

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

on behalf of the relevant Creditors and Debtors;

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

(i) the Liabilities (other than Liabilities due to any Creditor Representative); or

(ii) the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or the Debtors' Intra-Group Receivables (the "**Transferee**") will not 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 or part of those Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Creditors and Debtors *provided that* notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement;

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

(i) the Liabilities (other than Liabilities due to any Creditor Representative); or

(ii) the Debtors' Intra-Group Receivables,

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

- (A) all (and not part only) of the Liabilities owed to the Primary Creditors (other than to any Creditor Representative); and
- (B) all or part of any other Liabilities (other than Liabilities owed to any Creditor Representative) and the Debtors' Intra-Group Receivables,

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

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

- (i) the Intra-Group Liabilities; or
- (ii) the Debtors' Intra-Group Receivables,

to execute and deliver or enter into any agreement to:

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

14.2 Proceeds of Distressed Disposals and Debt Disposals

The net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Security Agent for application in accordance with Clause 16 (*Application of Proceeds*) and, to the extent that any Liabilities Sale has occurred as if that Liabilities Sale had not occurred.

14.3 Restriction on enforcement – Priority Creditors

If a Distressed Disposal or a Debt Disposal is being effected:

- (a) the Security Agent is not authorised to release any Debtor, Subsidiary or Holding Company from any Borrowing Liabilities or Guarantee Liabilities owed to any Priority Creditor except in accordance with this Clause 14 (*Distressed Disposals*);
- (b) no Distressed Disposal or Debt Disposal may be made for consideration in a form other than cash except to the extent contemplated by Schedule 4 (*Enforcement Principles*); and
- (c) if a Distressed Disposal is being effected at a time when the Majority Subordinated Creditors are entitled to give, and have given, instructions under Clause 12.3 (*Enforcement Instructions – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*) or Clause 12.4 (*Manner of enforcement – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*), the Security Agent is not authorised to release any Debtor, Subsidiary or Holding Company from any Borrowing Liabilities or Guarantee Liabilities or Other Liabilities owed to any Super Senior Creditor or Senior Secured Creditor unless those Borrowing Liabilities or Guarantee Liabilities or Other Liabilities and any other Priority Creditor Liabilities will be paid (or repaid) in full upon that release.

14.4 **Restriction on Distressed Disposals – Subordinated Creditors**

If before the Subordinated Discharge Date, a Distressed Disposal is being effected such that the Subordinated Liabilities or Shared Transaction Security will be released under Clause 14.1 (*Facilitation of Distressed Disposals*), it is a condition to the release that either:

- (a) the Required Subordinated Creditors have approved the release; or
- (b) each of the following conditions are satisfied:
 - (i) the proceeds of such sale or disposal are in cash (or substantially in cash); and
 - (ii) the proceeds of such sale or disposal are applied in accordance with Clause 16.1 (*Order of application: Shared Recoveries*); and
 - (iii) such sale or disposal is made:
 - (A) by way of Competitive Sales Process; or
 - (B) in circumstances where, in the opinion of a Financial Adviser appointed by the Security Agent:
 - (1) it is not practicable to conduct a Competitive Sales Process; or
 - (2) any Competitive Sales Process would not maximise value,

the Financial Adviser has delivered an opinion that the proceeds received or recovered in connection with that sale or disposal are fair from a financial point of view taking into account all relevant circumstances; or

- (C) by or at the direction of an administrator, administrative receiver, liquidator, voluntary administrator, compulsory manager or similar officer (or any analogous officer in any other jurisdiction) appointed in respect of the Shared Security; and
- (iv) the relevant Priority Creditors shall simultaneously effect the unconditional release (or unconditional transfer to the purchaser of the relevant member of the Group) of all Borrowing Liabilities, Guarantee Liabilities and Other Liabilities owing to the Priority Creditors by the relevant Debtor and each of its direct and indirect Subsidiaries.

14.5 Appointment of Financial Adviser

Without prejudice to Clause 18.8 (*Rights and discretions*), the Security Agent may with the approval of the Instructing Group, engage, pay for and rely on the services of a Financial Adviser in accordance with Schedule 4 (*Enforcement Principles*) and/or Clause 14.4 (*Restriction on Distressed Disposals – Subordinated Creditors*).

14.6 Security Agent's actions

For the purposes of Clause 14.1 (*Facilitation of Distressed Disposals*) the Security Agent shall act:

- (a) on the instructions of the group of Primary Creditors entitled at that time to give instructions under Clause 12.3 (*Enforcement Instructions – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*) or Clause 12.4 (*Manner of enforcement – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*); or
- (b) in the absence of any such instructions, as the Security Agent sees fit.

15 FURTHER ASSURANCE – DISPOSALS AND RELEASES

Each Creditor and Debtor will:

- (a) do all things that the Security Agent requests in order to give effect to Clause 13 (*Non-Distressed Disposals*) and Clause 14 (*Distressed 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 those Clauses); and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

provided that the proceeds of those disposals are applied in accordance with Clause 13 (*Non-Distressed Disposals*) or Clause 14 (*Distressed Disposals*) as the case may be.

SECTION 6 PROCEEDS

16 APPLICATION OF PROCEEDS

16.1 Order of application: Shared Recoveries

Subject to Clause 16.2 below, all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Super Senior and Senior Secured Creditor Only Transaction Security and/or the Shared Transaction Security (for the purposes of this Clause 16, the “**Shared 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 16), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (other than pursuant to Clause 18.2 (*Parallel Debt*)), any Receiver or any Delegate;
- (b) in discharging:
 - (i) any sums owing to the Paying Agent, the CSD, the Subordinated Calculation Agent and in payment to the Creditor Representatives of the relevant Creditor Representative Amounts; and
 - (ii) all costs and expenses incurred by any Primary Creditor in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 9.5 (*Further assurance – Insolvency Event*),
on a *pro rata* basis between paragraph (i) and paragraph (ii) above;
- (c) in payment or distribution to each Creditor Representative in respect of the Super Senior Credit Facility on its own behalf and on behalf of the Super Senior Creditors for which it is the Creditor Representative for application towards the discharge of the Super Senior Liabilities (in accordance with the terms of the Super Senior Debt Documents) on a *pro rata* basis;
- (d) in payment or distribution to the Creditor Representatives in respect of any Senior Secured Creditor Liabilities on its own behalf and on behalf of the Senior Secured Creditors for which it is the Creditor Representative for application towards the discharge of:
 - (i) the Senior Secured Creditor Liabilities (in accordance with the terms of the relevant Senior Secured Debt Documents) on a *pro rata* basis between Senior Secured Creditor Liabilities under the Senior Secured

Facility Agreement and the Senior Secured Overdraft Facility Agreement; and

- (ii) the Senior Secured Creditor Liabilities (in accordance with the terms of the relevant Senior Secured Debt Documents) on a *pro rata* basis between Senior Secured Creditor Liabilities of each Senior Secured Noteholder,

on a *pro rata* basis between paragraph (i) and paragraph (ii) above;

- (e) other than in the case of Recoveries from the proceeds of enforcement of the Super Senior and Senior Secured Creditor Only Transaction Security, in payment or distribution to:

- (i) the Subordinated Notes Trustee in respect of the Subordinated Liabilities on its own behalf and on behalf of the Subordinated Noteholders; and

- (ii) the Subordinated Facilities Lenders,

on a *pro rata* basis between paragraph (i) and paragraph (ii) above;

- (f) if none of the Debtors is under any further actual or contingent liability under any Super Senior Debt Document, Senior Secured Debt Document or Subordinated Debt Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and
- (g) the balance, if any, in payment or distribution to the relevant Debtor.

16.2 Shared Transaction Security Post-Corporate Reorganisation Completion Date

On and from the Corporate Reorganisation Completion Date, 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 Shared Transaction Security 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 16), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (other than pursuant to Clause 18.2 (*Parallel Debt*)), any Receiver or any Delegate and in payment to the Creditor Representatives of the relevant Creditor Representative Amounts;
- (b) other than in the case of recoveries pursuant to Clause 9 (*Effect of Insolvency Event*) or Clause 10 (*Turnover of Receipts*) from a Subordinated Creditor, in payment or distribution to:
 - (i) the Subordinated Notes Trustee in respect of the Subordinated Liabilities on its own behalf and on behalf of the Subordinated Noteholders; and
 - (ii) the Subordinated Facilities Lenders,

for application towards the discharge of:

- (A) the Subordinated Liabilities (in accordance with the terms of the relevant Subordinated Debt Documents) on a *pro rata* basis between Subordinated Liabilities under each Subordinated Bilateral Credit Facility Agreement;
- (B) the Subordinated Liabilities (in accordance with the terms of the relevant Subordinated Debt Documents) on a *pro rata* basis between Subordinated Liabilities under the Subordinated Notes Trust Deed,

on a *pro rata* basis between paragraph (A) and paragraph (B) above; and

- (c) the balance, if any, in payment or distribution to the relevant Debtor.

16.3 **Prospective liabilities**

Following a Distress Event the Security Agent may, in its discretion hold any amount of the Recoveries in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) as the Security Agent shall think fit (the interest being credited to the relevant account), for so long as the Security Agent shall think fit for later application under Clause 16.1 (*Order of application: Shared Recoveries*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Liabilities,

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

16.4 **Investment of cash proceeds**

Prior to the application of the proceeds of the Security Property in accordance with Clause 16.1 (*Order of application: Shared Recoveries*) the Security Agent may, in its discretion, hold all or part of any cash proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this Clause 16.

16.5 **Currency conversion**

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may:
 - (i) convert any moneys received or recovered by the Security Agent (including, without limitation, any cash proceeds) from one currency to another, at the Security Agent's Spot Rate of Exchange; and

- (ii) notionally convert the valuation provided in any opinion or valuation from one currency to another, at the Security Agent's Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied:
 - (i) in the case of paragraph 16.5(a)(i) above, to the extent of the amount of the due currency purchased after deducting the costs of conversion; and
 - (ii) in the case of paragraph 16.5(a)(ii) above, to the extent of the amount of the due currency which results from the notional conversion referred to in that paragraph.

16.6 Permitted Deductions

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

16.7 Good Discharge

- (a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent may be made to the relevant Creditor Representative on behalf of its Primary Creditors.
- (b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Security Agent.
- (c) The Security Agent is under no obligation to make the payments to the Creditor Representatives under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Primary Creditor are denominated pursuant to the relevant Debt Document.

16.8 Calculation of Amounts

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

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

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

17 EQUALISATION

17.1 Equalisation Definitions

For the purposes of this Clause 17:

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

“Exposure” means:

- (a) in relation to a Super Senior Facility Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations outstanding under the Super Senior Credit Facility Agreement at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims between Super Senior Facility Lenders pursuant to any loss-sharing arrangement in the Super Senior Credit Facility Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Super Senior Credit Facility Agreement;
- (b) in relation to a Senior Secured Creditor:
 - (i) the aggregate amount of its participation (if any, and without double counting) in all Utilisations outstanding under the Senior Secured Credit Facility Agreement and the Senior Secured Overdraft 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 Senior Secured Facility Lenders pursuant to any loss-sharing arrangement in the Senior Secured Credit Facility Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Senior Secured Credit Facility Agreement and the Senior Secured Overdraft Facility Agreement; and/or

- (ii) the aggregate outstanding principal amount of Senior Secured Notes held by it at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims between Senior Secured Noteholders pursuant to any loss-sharing arrangement in the Senior Secured Note Terms and Conditions which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Senior Secured Notes Terms and Conditions;

“**Utilisation**” means a “Utilisation” under and as defined in the Super Senior Credit Facility Agreement or the relevant Super Senior Debt Document.

17.2 Implementation of equalisation

- (a) The provisions of this Clause 17 shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate.
- (b) Without prejudice to the generality of paragraph (a) above, if the provisions of this Clause 17 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the relevant Creditors shall make appropriate adjustment payments amongst themselves.

17.3 Equalisation

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

17.4 Turnover of enforcement proceeds

If:

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

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

17.5 Notification of Exposure

Before each occasion on which it intends to implement the provisions of this Clause 17, the Security Agent shall send notice to the relevant Creditor Representative (on behalf of the Super Senior Facility Lenders) requesting that it notify it of, respectively, its Exposure and that of each Super Senior Facility Lender (if any).

17.6 Default in payment

If a Creditor fails to make a payment due from it under this Clause 17, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Creditor(s) in respect of costs) but shall have no liability or obligation towards such Creditor(s), or any other Primary Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

SECTION 7 THE PARTIES

18 THE SECURITY AGENT

18.1 Security Agent as trustee

- (a) The Security Agent declares that it holds the Super Senior and Senior Secured Creditor Only Transaction Security Property on trust for the Super Senior and Senior Secured Creditor Only Secured Parties on the terms contained in this Agreement.
- (b) The Security Agent declares that it holds the Shared Security Property on trust for the Shared Secured Parties on the terms contained in this Agreement.

- (c) Each of the Primary Creditors authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions.

18.2 Parallel debt

- (a) Each Debtor which agrees to provide security pursuant to a Security Document governed by the laws of the Republic of South Africa (a “**South African Collateral Party**”) hereby irrevocably and unconditionally undertakes to pay (each such payment undertaking by a South African Collateral Party, a “**Parallel Debt**”) to the Security Agent amounts equal to the amounts due by that South African Collateral Party in respect of its Corresponding Obligations as they may exist from time to time.
- (b) The Parallel Debt of each South African Collateral Party will be payable in the currency or currencies of the Corresponding Obligations and will become due and payable as and when and to the extent the relevant Corresponding Obligations become due and payable.
- (c) Each of the parties to this Agreement hereby acknowledges that:
 - (i) each Parallel Debt constitutes an undertaking, obligation and liability to the Security Agent which is separate and independent from, and without prejudice to, the Corresponding Obligations of the relevant South African Collateral Party; and
 - (ii) each Parallel Debt represents the Security Agent's own separate and independent claim to receive payment of the Parallel Debt from the relevant South African Collateral Party, it being understood, in each case, that pursuant to this paragraph (b)(ii), the amount which may become payable by each South African Collateral Party by way of Parallel Debts shall not exceed at any time the total of the amounts which are payable under or in connection with the Corresponding Obligations of that South African Collateral Party at such time.
- (d) An amount paid by a Debtor to the Security Agent in respect of the Parallel Debt will discharge the liability of the Obligors under the Corresponding Obligations in an equal amount.
- (e) For the purpose of this Clause, the Security Agent acts in its own name and for itself and not as agent, trustee or representative of any other Secured Party.

18.3 Instructions

- (a) The Security Agent shall:
 - (i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the

Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors); and

- (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in accordance with instructions given to it by that Creditor or group of Creditors).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.
- (d) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clause 18.6 (*No duty to account*) to Clause 18.11 (*Exclusion of liability*), Clause 18.14 (*Confidentiality*) to Clause 18.21 (*Custodians and nominees*) and Clause 18.24 (*Acceptance of title*) to Clause 18.27 (*Disapplication of 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 13 (*Non-Distressed Disposals*);
 - (B) Clause 16.1 (*Order of application: Shared Recoveries*);
 - (C) Clause 16.2 (*Prospective liabilities*); and
 - (D) Clause 16.6 (*Permitted Deductions*).

- (e) If giving effect to instructions given by the Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) would (in the Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.
- (f) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:
 - (i) it has not received any instructions as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to paragraph 18.3(d)(iv) above, the Security Agent shall:
 - (A) other than where paragraph (B) below applies, do so having regard to the interests of all the relevant Secured 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 regard only to the interests of all the Priority Creditors.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the provisions of Clause 12 (*Enforcement of Transaction Security*) and the remainder of this Clause 18.3, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

18.4 Duties of the Security Agent

- (a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:
 - (i) forward to each Creditor Representative and each Subordinated Facilities Lender a copy of any document received by the Security Agent from any Debtor under any Debt Document; and
 - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.

- (c) Except where a Debt Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) Without prejudice to Clause 23.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Primary Creditors.
- (e) To the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, the Security Agent shall upon a request by that Party, promptly notify that Party of the Security Agent's Spot Rate of Exchange.
- (f) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied).

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

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

18.6 **No duty to account**

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

18.7 **Business with the Parent and the Group**

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

18.8 **Rights and discretions**

- (a) The Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Instructing Group, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Debt Documents for so acting have been satisfied; and

- (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

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

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

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

- (g) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- (h) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

18.9 Responsibility for documentation

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

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

18.10 No duty to monitor

The Security Agent shall not be bound to enquire:

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

18.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the

Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
- (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document or the Security Property;
- (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
- (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

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

- (b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this paragraph (b) subject to Clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
 - (i) any “know your customer” or other checks in relation to any person; or

- (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any 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.

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

18.12 Primary Creditors' indemnity to the Security Agent

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

18.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Primary Creditors and the Parent.
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the Primary Creditors, the Parent and the Company, in which case the Required Super Senior Creditors and the Required Senior Secured Creditors or, following the Priority Discharge Date, the Required Subordinated Creditors may appoint a successor Security Agent.
- (c) If the Required Super Senior Creditors and the Required Senior Secured Creditors or, following the Priority Discharge Date, the Required Subordinated Creditors has not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the relevant retiring Security Agent (after consultation with the Creditor Representatives and the Subordinated Facilities Lenders) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents. The Parent and the Company shall, jointly and severally, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 18.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 18.13 and Clause 22.1 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Required Super Senior Creditors and the Required Senior Secured Creditors or, following the Priority Discharge Date, the Required Subordinated Creditors may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Parent and the Company.

18.14 Confidentiality

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

18.15 Information from the Creditors

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

18.16 Credit appraisal by the Secured Parties

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

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

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

18.17 Security Agent's management time and additional remuneration

- (a) Any amount payable to the Security Agent under Clause 18.12 (*Primary Creditors' indemnity to the Security Agent*), Clause 21 (*Costs and Expenses*) or Clause 22.1 (*Indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Parent, the Company and the Primary Creditors, and is in addition to any other fee paid or payable to the Security Agent.
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default;
 - (ii) the Security Agent being requested by a Debtor or the Instructing Group to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Debt Documents; or
 - (iii) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances;

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

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

18.18 Reliance and engagement letters

The Security Agent may obtain and rely on any certificate or report from any Debtor's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report on such terms as it may consider appropriate (including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

18.19 No responsibility to perfect Transaction Security

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

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

18.20 **Insurance by Security Agent**

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

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

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

18.21 **Custodians and nominees**

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

18.22 Delegation by the Security Agent

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

18.23 Additional Security Agent

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

18.24 Acceptance of title

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

18.25 **Winding up of trust**

If the Security Agent, with the approval of each Creditor Representative and the Majority Subordinated Creditors, determines that:

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

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 18.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

18.26 **Powers supplemental to Trustee Acts**

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

18.27 **Disapplication of Trustee Acts**

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

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

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

19 NOTES TRUSTEE PROTECTIONS

19.1 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 their respective capacities as a Notes Trustees in the exercise of the powers and authority conferred and vested in them under the relevant Senior Secured Debt Documents or Subordinated Debt Documents (as applicable). It is further understood by the Parties that in no case shall a Notes Trustee be (i) responsible or accountable in damages or otherwise to any other Party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by it in good faith in accordance with this Agreement and in a manner that the relevant Notes Trustee believed to be within the scope of the authority conferred on that Notes Trustee by this Agreement and the relevant Debt Documents or by law, or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party, *provided however, that* a Notes Trustee shall be personally liable under this Agreement for its own gross negligence or wilful misconduct having regard to the provisions of the relevant Note Trust Deed and applicable Terms and Conditions conferring on the Notes Trustee any trusts, powers, authorities and discretions. It is also acknowledged that a Notes Trustee shall not have any responsibility for the actions of any individual Noteholder.

19.2 Notes Trustee not fiduciary for other Creditors

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

19.3 Reliance on certificates

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

19.4 **Notes Trustee**

In acting under and in accordance with this Agreement a Notes Trustee shall act in accordance with the relevant Note Trust Deed and applicable Terms and Conditions and when acting hereunder shall have the benefit of the rights, powers, protections, authorities, limitations of liability and indemnities conferred on it under the relevant Note Trust Deed and applicable Terms and Conditions. A Notes Trustee shall seek any necessary instruction from the relevant Noteholders, to the extent provided for, and in accordance with, the relevant Note Trust Deed and applicable Terms and Conditions, 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 Note Trust Deed and applicable Terms and Conditions. Furthermore, prior to taking any action under this Agreement or the relevant Debt Documents as the case may be the relevant Notes Trustee may reasonably request and rely upon an opinion of counsel or opinion of another qualified expert, at the Parent's expense, as applicable; *provided, however, that* any such opinions shall be at the expense of the relevant Noteholders, if such actions are on the instructions of the relevant Noteholders.

19.5 **Turnover obligations**

Notwithstanding any provision in this Agreement to the contrary, a Notes Trustee shall only have an obligation to turn over or repay amounts received or recovered under this Agreement by it (i) if it had actual knowledge that the receipt or recovery is an amount received in breach of a provision of this Agreement (a "**Turnover Receipt**") and (ii) to the extent that, prior to receiving that knowledge, it has not distributed the amount of the Turnover Receipt to the Noteholders for which it is the Creditor Representative in accordance with the provisions of the relevant Note Trust Deed. For the purpose of this Clause 19.5, (i) "actual knowledge" of the Notes Trustee shall be construed to mean the Notes Trustee shall not be charged with knowledge (actual or otherwise) of the existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless a responsible officer of such Notes Trustee has received, not less than two Business Days' prior to the date of such payment, a written notice that such payments are required or prohibited by this Agreement; and (ii) "responsible officer" when used in relation to the Notes Trustee means any person who is an officer within the corporate trust and agency department of the relevant Notes Trustee, including any director, associate director, vice president, assistance vice president, senior associate, assistant treasurer, trust officer, or any other officer of the relevant Notes Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement.

19.6 **Creditors and the Notes Trustees**

In acting pursuant to this Agreement, the relevant Note Trust Deed and applicable Terms and Conditions, a Notes Trustee is not required to have any regard to the interests of the Creditors (other than the Noteholders for which it is the Creditor Representative) or any Parent Shareholder.

19.7 Notes Trustee; reliance and information

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

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

19.8 No action

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

19.9 Departmentalisation

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

19.10 Other parties not affected

This Clause 19 is intended to afford protection to each Notes Trustee only and no provision of this Clause 19 shall alter or change the rights and obligations as between the other parties in respect of each other. This Clause 19 is without prejudice to the rights, powers, protections, authorities, limitations of liability and indemnities conferred on the Notes Trustees under the relevant Note Trust Deed and applicable Terms and Conditions.

19.11 Security Agent and the Notes Trustees

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

19.12 Provision of information

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

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

19.13 Disclosure of information

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

19.14 Illegality

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

19.15 Resignation of Notes Trustee

A Notes Trustee may resign or be removed in accordance with the terms of the relevant Note Trust Deed and applicable Terms and Conditions, *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.

19.16 Agents

Whenever it considers it expedient in the interests of the Senior Secured Noteholders or the Subordinated Noteholders (as applicable), a Notes Trustee may, in the conduct of its trust business, instead of acting personally, act through an agent selected by it, whether or not a lawyer or other professional person, to transact or conduct, or concur in transacting or conducting, any business and to do or concur in doing all acts required to be done in connection with the relevant Note Trust Deed and shall not have any obligation to supervise the proceedings or acts of any such agent or be responsible for any Liability incurred by reason of the agent's the misconduct or negligence of any agent appointed with due care by it hereunder or thereunder.

19.17 No Requirement for Bond or Security

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

19.18 Provisions Survive Termination

The provisions of this Clause 19 shall survive any termination or discharge of this Agreement and the termination or resignation of the appointment of a Notes Trustee.

20 CHANGES TO THE PARTIES

20.1 Assignments and transfers

No Party may:

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

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

20.2 Change of Lender under an existing Loan Instrument

- (a) A Lender under an existing Loan Instrument may:
 - (i) assign any of its rights; or
 - (ii) transfer by novation any of its rights and obligations,in respect of any Loan Instrument or the Liabilities if:

- (A) that assignment or transfer is in accordance with the terms of that Loan Instrument and the Common Terms Agreement; and
 - (B) subject to paragraph (b) below, any assignee or transferee has (if not already a Party as a Lender) acceded to this Agreement, as a Lender, pursuant to Clause 20.8 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) Paragraph (a)(B) above shall not apply in respect of any Liabilities Acquisition involving the acquisition of Loan Instrument Liabilities permitted under the relevant Loan Instrument and pursuant to which the relevant Liabilities are discharged in accordance with the terms of the Debt Documents.

20.3 Change of Senior Secured Noteholder

Any Senior Secured 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 / Creditor Representative Accession Undertaking.

20.4 Change of Subordinated Noteholder

Any Subordinated 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 / Creditor Representative Accession Undertaking.

20.5 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 20.8 (*Creditor/Creditor Representative Accession Undertaking*).

20.6 Change of Intra-Group Lender

Subject to Clause 7.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may:

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

in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already a Party as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 20.8 (*Creditor/Creditor Representative Accession Undertaking*).

20.7 New Intra-Group Lender

If any Intra-Group Lender or any member of the Group makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount of \$10,000 or more, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Intra-Group Lender) accedes to this Agreement as an Intra-

Group Lender, pursuant to Clause 20.8 (*Creditor/Creditor Representative Accession Undertaking*).

20.8 **Creditor/Creditor Representative Accession Undertaking**

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

20.9 **New Debtor**

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

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

- (b) With effect from the date of acceptance by the Security Agent of a Debtor Accession Deed duly executed and delivered to the Security Agent by the new Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Debtor.

20.10 **Additional parties**

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

SECTION 8
ADDITIONAL PAYMENT OBLIGATIONS

21 COSTS AND EXPENSES

21.1 Transaction expenses

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

- (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.

21.2 Amendment costs

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

21.3 Enforcement and preservation costs

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

21.4 Stamp taxes

The Parent shall pay and, within three Business Days of demand, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document.

21.5 Interest on demand

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is 2 per cent. per annum over the rate at which the Security Agent would be able to obtain by placing on deposit with a leading bank an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security

Agent may from time to time select *provided that* if any such rate is below zero, that rate will be deemed to be zero.

21.6 No double recovery

No Primary Creditor shall be entitled to recover more than once for any costs or expenses indemnified under this Clause 21.

22 OTHER INDEMNITIES

22.1 Indemnity to the Security Agent

- (a) Each Debtor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them as a result of:
- (i) any failure by the Parent to comply with its obligations under Clause 21 (*Costs and Expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;
 - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
 - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
 - (vii) acting as 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 Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 22.1 will not be prejudiced by any release or disposal under Clause 14 (*Distressed Disposals*) taking into account the operation of that Clause 14.
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Super Senior and Senior Secured Creditor Only Charged Property or the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 22.1 and shall have a lien on the Super Senior and Senior Secured

Creditor Only Transaction Security and the Shared Transaction Security and the proceeds of the enforcement of the Super Senior and Senior Secured Creditor Only Transaction Security and the Shared Transaction Security for all moneys payable to it.

22.2 Parent's indemnity to Primary Creditors

The Parent and the Company shall promptly on a joint and several basis and as principal obligor indemnify each Primary Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 14 (*Distressed Disposals*).

SECTION 9 ADMINISTRATION

23 INFORMATION

23.1 Dealings with Security Agent and Creditor Representatives

Each Super Senior Facility Lender, Senior Secured Noteholder, Senior Secured Facility Lender and Subordinated Noteholder shall deal with the Security Agent exclusively through its Creditor Representative.

23.2 Disclosure between Primary Creditors and Security Agent

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

23.3 Notification of prescribed events

- (a) If an Event of Default or Default under a Super Senior Debt Document or a Senior Secured Debt Document either occurs or ceases to be continuing the relevant Creditor Representative shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Primary Creditor.
- (b) If a Super Senior Acceleration Event occurs the relevant Super Senior Facility Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (c) If a Senior Secured Acceleration Event occurs the relevant Creditor Representative(s) shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (d) If an Event of Default under a Subordinated Debt Document either occurs or ceases to be continuing the Subordinated Notes Trustee or any Subordinated

Facilities Lender shall, upon becoming aware of that occurrence or cessation, notify each other Creditor Representative.

- (e) If a Subordinated Acceleration Event occurs the Subordinated Notes Trustee or the Subordinated Facilities Lenders shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (f) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.
- (g) 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.
- (h) If the Security Agent receives a notice under paragraph (a) of Clause 5.1 (*Option to purchase: Senior Secured Creditors*) it shall upon receiving that notice, notify, and send a copy of that notice to, each Super Senior Facility Agent.

24 NOTICES

24.1 Communications in writing

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

24.2 Security Agent' communications with Primary Creditors

The Security Agent shall be entitled to carry out all dealings with the Super Senior Facility Lenders, Senior Secured Noteholders, Senior Secured Facility Lenders and the Subordinated Noteholders through their respective Creditor Representatives and may give to the Creditor Representatives, as applicable, any notice, document or other communication required to be given by the Security Agent to a Super Senior Facility Lender, Senior Secured Noteholder, Senior Lender or Subordinated Creditor.

24.3 Addresses

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

or any substitute address, email 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.

24.4 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 email, when received in readable form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,and, if a particular department or officer is specified as part of its address details provided under Clause 24.3 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Parent in accordance with this Clause 24.4 will be deemed to have been made or delivered to each of the Debtors.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

24.5 Notification of address and email address

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

24.6 Electronic communication

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with this Agreement may be made or delivered by email or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their email address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between a Debtor or an Intra-Group Lender and the Security

Agent or a Primary Creditor may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.

- (c) Any such electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in this Agreement to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 24.6.

24.7 English language

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

25 PRESERVATION

25.1 Partial invalidity

If, at any time, any provision of a Debt Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.

25.2 No impairment

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

the enforceability of that provision or any other provision of that Debt Document will be impaired as against the other party(ies) to that Debt Document.

25.3 Remedies and waivers

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

25.4 Waiver of defences

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

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

25.5 Priorities not affected

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

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

26 CONSENTS, AMENDMENTS AND OVERRIDE

26.1 Required consents

- (a) Subject to paragraph (b) below, to Clause 26.4 (*Exceptions*), to Clause 26.5 (*Excluded Credit Participations*) and to Clause 26.6 (*Disenfranchisement of Parent Shareholder Affiliates*):
 - (i) Clause 17.1 (*Equalisation Definitions*) to Clause 17.3 (*Equalisation*) may be amended or waived with the consent of the Security Agent and each Affected Party and shall not require the consent of any other Party which is not an Affected Party (for purposes of this paragraph (a), the term “**Affected Party**” shall include each Creditor Representative in respect of any Super Senior Credit Facilities, the Super Senior Creditors, the Senior Secured Creditors, the Subordinated Creditors and the Creditor Representatives in respect of any Senior Secured Liabilities or the Subordinated Liabilities to the extent that that amendment or waiver affects such Party);
 - (ii) Clause 12.2 (*Instructions to enforce – Super Senior and Senior Secured Creditor Only Transaction Security and Shared Transaction Security*) (other than paragraph (f)) and Schedule 4 (*Enforcement Principles*) may be amended or waived with the consent of the Required Super Senior Creditors and the Required Senior Secured Creditors and the Security Agent and without the consent of:
 - (A) any Subordinated Creditor to the extent that amendment or waiver does not impose obligations on that Subordinated Creditor or adversely affect the rights of any Subordinated Creditor; or

- (B) the Parent, any Debtor, any Intra-Group Lender or any Subordinated Creditor to the extent that that amendment or waiver does not impose obligations on the Parent, any Debtor, any Intra-Group Lender or any Subordinated Creditor; and
 - (iii) subject to paragraphs (i) to (iii) above, this Agreement may be amended or waived only with the consent of the Creditor Representatives, the Required Super Senior Creditors, the Required Senior Secured Creditors, the Required Subordinated Creditors and the Security Agent.
- (b) An amendment or waiver that has the effect of changing or which relates to:
- (i) Clause 11 (*Redistribution*), Clause 12 (*Enforcement of Transaction Security*), Clause 16 (*Application of Proceeds*) or this Clause 26 (*Consents, Amendments and Override*);
 - (ii) paragraphs (d)(iii), (e) and (f) of Clause 18.3 (*Instructions*); or
 - (iii) the order of priority or subordination under this Agreement.

shall not be made without the consent of:

- (A) the Creditor Representatives;
- (B) the Super Senior Facility Lenders;
- (C) the Senior Secured Notes Trustee on behalf of the Senior Secured Noteholders in respect of which it is the Creditor Representative;
- (D) each of the Senior Secured Facility Lenders;
- (E) the Subordinated Notes Trustee on behalf of the Subordinated Noteholders in respect of which it is the Creditor Representative;
- (F) each Subordinated Facilities Lender; and
- (G) the Security Agent.

26.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to paragraphs (b) and (c) below and to Clause 26.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, (1) the Security Agent may, if authorised by the Required Super Senior Creditors and the Required Senior Secured Creditors, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Super Senior and Senior Secured Creditor Only Transaction Security Documents which shall be binding on each Party; and (2) the Security Agent may, if authorised by the Required Super Senior Creditors, the Required Senior Secured Creditors and the Required Subordinated Creditors, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents

under, any of the Shared Transaction Security Documents which shall be binding on each Party.

- (b) Subject to paragraph (c) of Clause 26.4 (*Exceptions*), any amendment or waiver of, or consent under, any Super Senior and Senior Secured Creditor Only Transaction Security Document which adversely affects the rights of the Priority Creditors that benefit from such Super Senior and Senior Secured Creditor Only Transaction Security Document or which has the effect of changing or which relates to:
- (i) the nature or scope of the Super Senior and Senior Secured Creditor Only Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Super Senior and Senior Secured Creditor Only Transaction Security are distributed; or
 - (iii) the release of any Super Senior and Senior Secured Creditor Only Transaction Security,

shall not be made without the prior consent of each of the Super Senior Facility Lenders, the Senior Secured Notes Trustee on behalf of the Senior Secured Noteholders in respect of which it is the Creditor Representative and each of the Senior Secured Facility Lenders.

- (c) Subject to paragraph (c) of Clause 26.4 (*Exceptions*), any amendment or waiver of, or consent under, any Shared Security Document which adversely affects the rights of the Primary Creditors that benefit from such Shared Security Document or which has the effect of changing or which relates to:
- (i) the nature or scope of the Shared Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Shared Transaction Security are distributed; or
 - (iii) the release of any Shared Transaction Security,

shall not be made without the prior consent of each of the Super Senior Facility Lenders, the Senior Secured Notes Trustee on behalf of the Senior Secured Noteholders in respect of which it is the Creditor Representative, each of the Senior Secured Facility Lenders, each of the Subordinated Facilities Lenders and the Subordinated Notes Trustee on behalf of the Subordinated Noteholders in respect of which it is the Creditor Representative.

26.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this Clause 26 will be binding on all Parties and the Security Agent may effect, on behalf of any Primary Creditor, any amendment, waiver or consent permitted by this Clause 26.

- (b) Without prejudice to the generality of Clause 18.8 (*Rights and discretions*) the Security Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

26.4 Exceptions

- (a) Subject to paragraph (c) 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 (other than any Creditor Representative), in a way which affects or would affect Primary Creditors of that Party's class generally; or
 - (ii) in the case of a Debtor, to the extent consented to by the Parent under paragraph (a) of Clause 26.2 (*Amendments and Waivers: Transaction Security Documents*),

the consent of that Party is required.

- (b) Subject to paragraph (c) below, an amendment, waiver or consent which relates to the rights or obligations of a Creditor Representative, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) may not be effected without the consent of that Creditor Representative or, as the case may be, the Security Agent.
- (c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 26.2 (*Amendments and Waivers: Transaction Security Documents*) shall apply:
 - (i) to any release of Transaction Security, claim or Liabilities; or
 - (ii) to any consent,

which, in each case, the Security Agent gives in accordance with Clause 13 (*Non-Distressed Disposals*) or Clause 14 (*Distressed Disposals*).

26.5 Excluded Credit Participations

- (a) Subject to paragraph (b) below, if in relation to:
 - (i) a request for a Consent in relation to any of the terms of this Agreement;
 - (ii) a request to participate in any other vote of Super Senior Creditors, Senior Secured Facility Lenders or Subordinated Facilities Lenders (as applicable) under the terms of this Agreement;
 - (iii) a request to approve any other action under this Agreement;
 - (iv) a request to provide any confirmation or notification under this Agreement; or

- (v) a request to provide details of an Exposure,
- any Super Senior Creditor, Senior Secured Lender or Subordinated Facilities Lender (as applicable):
- (A) fails to respond to that request within 20 Business Days of that request being made or, if later, the last day on which the Senior Secured Noteholders' decision is required to be made in accordance with clause 20 (*Decision by Holders*) of the Senior Secured Notes Terms and Conditions; or
 - (B) (in the case of paragraphs (i) to (iii) above), fails to provide details of its Super Senior Credit Participation, Senior Secured Credit Participation or Subordinated Credit Participation (as applicable) to the Security Agent within the timescale specified by the Security Agent, which shall be no earlier than the time period referred to in paragraph (A) above;
- (vi) in the case of sub- paragraphs (i) to (iii) above, the Credit Participation applicable to that Super Senior Creditor, Senior Secured Lender or Subordinated Facilities Lender (as the case may be) shall be deemed to be zero for the purpose of calculating the Super Senior Credit Participations, Senior Secured Credit Participations or Subordinated Credit Participations (as applicable) when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations, Senior Secured Credit Participations or Subordinated Credit Participations (as applicable) has been obtained to give that Consent, carry that vote or approve that action;
 - (vii) in the case of sub-paragraphs (i) to (iii) above, that relevant Creditor's status as a Super Senior Creditor, Senior Secured Creditor or Subordinated Creditor (as applicable) shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of Super Senior Creditors, Senior Secured Creditors or Subordinated Creditors has been obtained to give that Consent, carry that vote or approve that action;
 - (viii) in the case of paragraph (iv) above, that confirmation or notification shall be deemed to have been given; and
 - (ix) in the case of paragraph (v) above, that Creditor's Exposure shall be deemed to be zero.
- (b) In relation to an amendment, waiver or request for consent under this Agreement relating to:
 - (i) an Obligor's payment obligations under any Finance Documents (other than in relation to a mandatory prepayment referred to in clause 5 (*Mandatory prepayments*) of the Common Terms Agreement);

- (ii) the quantum of any amount payable under any Finance Documents; or
- (iii) the rate of interest under any Finance Documents,

the period in paragraph (a)(v)(A) above shall be the later of 40 Business Days and the last day on which the Senior Secured Noteholders' decision is required to be made in accordance with clause 20 (*Decision by Holders*) of the Senior Secured Notes Terms and Conditions.

26.6 Disenfranchisement of Parent Shareholders and Parent Shareholder Affiliates

- (a) For so long as a Parent Shareholder or Parent Shareholder Affiliate (i) beneficially owns a Super Senior Credit Participation, Senior Secured Credit Participation or a Subordinated Credit Participation, or (ii) has entered into a sub-participation agreement relating to a Super Senior Credit Participation, Senior Secured Credit Participation or Subordinated 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 Super Senior Creditors;
 - (B) the Majority Senior Secured Creditors;
 - (C) the Majority Subordinated Creditors; or
 - (D) whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participation, Senior Secured Credit Participation or Subordinated Credit Participation, 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 Super Senior Credit Participation, Senior Secured Credit Participation or Subordinated Credit Participation shall be deemed to be zero and that Parent Shareholder or Parent Shareholder Affiliate (as applicable) (or the person with whom it has entered into that sub-participation, other agreement or arrangement) shall be deemed not to be a Super Senior Facility Lender, Senior Secured Creditor or Subordinated Creditor.
- (b) Each Parent Shareholder and each Parent Shareholder Affiliate that is a Super Senior Facility Lender, Senior Secured Creditor or Subordinated Creditor agrees that:
 - (i) in relation to any meeting or conference call to which all the Super Senior Creditors, all the Senior Secured Creditors, all the Subordinated Creditors, all the Primary 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, 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.

26.7 **Disenfranchisement of BML-Exposed Creditors and BML-Exposed Creditor Affiliates**

- (a) For so long as a BML-Exposed Creditor or BML-Exposed Creditor Affiliate (i) beneficially owns a Super Senior Credit Participation or Senior Secured Credit Participation, or (ii) has entered into a sub-participation agreement relating to a Super Senior Credit Participation or Senior Secured 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 Super Senior Creditors; or

- (B) the Majority Senior Secured Creditors;

- (C) whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participation or Senior Secured Credit Participation, 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 Super Senior Credit Participation or Senior Secured Credit Participation shall be deemed to be zero and that BML-Exposed Creditor or BML-Exposed Creditor Affiliate (as applicable) (or the person with whom it has entered into that sub-participation, other agreement or arrangement) shall be deemed not to be a Super Senior Facility Lender or Senior Secured Creditor.

- (b) Each BML-Exposed Creditor and BML-Exposed Creditor Affiliate that is a Super Senior Facility Lender or Senior Secured Creditor agrees that:

- (i) in relation to any meeting or conference call to which the Super Senior Creditors and/or the Senior Secured Creditors only are invited to attend or participate, it shall not attend or participate in the same if so requested by the Security Agent or, unless the Security Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and

- (ii) it shall not, unless the Security Agent otherwise agrees, be entitled to receive any report or other document prepared at the behest of, or on the

instructions of, the Security Agent or one or more of the Priority Creditors.

26.8 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment:
 - (i) in ascertaining:
 - (A) the Required Super Senior Creditors, Required Senior Secured Creditors or Required Subordinated Creditors; or
 - (B) whether:
 - (1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations, Senior Secured Credit Participations or Subordinated Credit Participations; or
 - (2) 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 Loan Commitment will be reduced by the amount of its Available Commitments and, to the extent that that reduction results in that Defaulting Lender's Loan Commitments being zero, that Defaulting Lender shall be deemed not to be a Super Senior Facility Lender, Senior Secured Facility Lender or Subordinated Facilities Lender.

- (b) For the purposes of this Clause 26.8, the Security Agent may assume that the following Primary Creditors are Defaulting Lenders:
 - (i) any Super Senior Facility Lender, Senior Secured Facility Lender or Subordinated Facilities Lenders which has notified the Security Agent that it has become a Defaulting Lender;
 - (ii) any Super Senior Facility Lender, Senior Secured Facility Lender or Subordinated Facilities Lenders to the extent that the relevant Creditor Representative has notified the Security Agent that that Super Senior Facility Lender, Senior Secured Facility Lender or Subordinated Facilities Lenders is a Defaulting Lender; and
 - (iii) any Super Senior Facility Lender, Senior Secured Facility Lender or Subordinated Facilities Lenders in relation to which it is aware that any of the events or circumstances (1) in relation to a Super Senior Facility Lender, referred to in (A) the definition of "**Defaulting Lender**" in the Super Senior Credit Facility Agreement or (2) in relation to a Senior Secured Facility Lender, referred to in paragraph (b) of the definition of Defaulting Lender set out in this Agreement and (3) in relation to a Subordinated Facilities Lender, referred to in (B) paragraph (c) of the

definition of Defaulting Lender set out in this Agreement, in each case as applicable, has occurred,

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

26.9 Calculation of Super Senior Credit Participations, Senior Secured Credit Participations and Subordinated Credit Participations

For the purpose of ascertaining whether any relevant percentage of Super Senior Credit Participations or Senior Secured Credit Participations or Subordinated Note Credit Participations has been obtained under this Agreement, the Security Agent may notionally convert the Super Senior Credit Participations and/or Senior Secured Creditor Participations and/or Subordinated Note Credit Participations into their Common Currency Amounts.

26.10 Deemed Consent

If, at any time:

- (a) prior to the Super Senior Discharge Date, the Super Senior Facility Lenders; or
- (b) after the Super Senior Discharge Date but prior to the Senior Secured Discharge Date, the Senior Secured Notes Trustee (to the extent required under the Senior Secured Note Documents) and the Senior Secured Creditors (to the extent required under the Senior Secured Debt Documents); or
- (c) after the Senior Secured Discharge Date but prior to the Subordinated Discharge Date, the Subordinated Notes Trustee and Required Subordinated Creditors (to the extent required under the Subordinated Debt Documents),

give a Consent in respect of their respective Debt Documents then, if that action was permitted by the terms of this Agreement, the Intra-Group Lenders, the Parent, the Company, the Parent Shareholders and the Subordinated Creditors will (or will be deemed to):

- (i) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
- (ii) do anything (including executing any document) that the relevant group of Priority Creditors may reasonably require to give effect to this Clause 26.10.

26.11 Excluded consents

Clause 26.10 (*Deemed consent*) does not apply to any Consent which has the effect of:

- (a) increasing or decreasing the Liabilities;

- (b) changing the basis upon which any Permitted Payments are calculated (including the timing, currency or amount of such Payments); or
- (c) changing the terms of this Agreement or of any Security Document.

26.12 **No liability**

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

26.13 **Agreement to override**

- (a) Subject to paragraph (b) below, unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents and the Common Terms Agreement (other than in relation to clause 14 (*Mandatory Asset Sales*) of the Common Terms Agreement) to the contrary.
- (b) Notwithstanding anything to the contrary in this Agreement, paragraph (a) above will not cure, postpone, waive or negate in any manner any default or event of default (however described) under any Debt Document as between any Creditor and any Debtor that are party to that Debt Document.

27 **COUNTERPARTS**

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

SECTION 10 GOVERNING LAW AND ENFORCEMENT

28 **GOVERNING LAW**

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

29 **ENFORCEMENT**

29.1 **Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraphs (a) and (b) above, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with

jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

29.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law:
 - (i) each Debtor (unless incorporated in England and Wales):
 - (A) irrevocably appoints the Company as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and the Company, by its execution of this Agreement, accepts that appointment; and
 - (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned,
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (in the case of an agent for service of process for a Debtor), must immediately (and in any event within three days of such event taking place) appoint another agent on terms acceptable to each Creditor Representative. Failing this, the relevant Creditor Representative (as the case may be) may appoint another agent for this purpose.

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

**SCHEDULE 1
THE PARTIES**

Part 1 - Original Super Senior Facility Lenders

Name
The Standard Bank of South Africa Limited, Isle of Man Branch
Absa Bank Limited (acting through its Corporate and Investment Banking division)
The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division)

Part 2 - Original Senior Facility Lenders

Name
Absa Bank Limited (acting through its Corporate and Investment Banking division)
Standard Bank (Mauritius) Limited
Bank One Limited
Bank of Gaborone Limited
Norsad Capital Limited
Afrasia Bank Limited
Symbiotics SICAV II (acting with respect to its ABN AMRO Impact Fund)
Symbiotics SICAV II (acting with respect to its Impact Local Currencies Debt Fund)

Part 3 - Original Subordinated Facilities Lenders

Name
EMF Microfinance Fund, AGmVK
Swedfund International AB
Global Access Fund LP
PG IMPACT BOTNAR MANDATE L.P.

PG IMPACT INVESTMENTS I, L.P.
PG IMPACT INVESTMENTS II (USD) SCA SICAV-RAIF
BLUEEARTH SF GLOBAL IMPACT FUND, S.C.A., SICAV-RAIF
BlueOrchard Microfinance Fund, acting on behalf of its sub-fund, BlueOrchard Microfinance Fund
Regional Education Finance Fund for Africa (REFFA)

Part 4 - Creditor Representatives

Name
Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division) (as the “ Super Senior Facility Agent ”)
Kroll Agency Services Limited (as “ Senior Secured Facility Agent ”)
Nordic Trustee & Agency AB (publ) (as “ Senior Secured Notes Trustee ”)
Nordic Trustee & Agency AB (publ) (as “ Subordinated Notes Trustee ”)

Part 5 – Original Debtors

Name	Registration number (or equivalent, if any) and Jurisdiction
Bayport Management Ltd	Mauritius, 54787/GBC
Bayport Intermediate Holdco PLC	England and Wales, 16036404
Cashfoundry Limited	England and Wales, 07551380
Bayport Latam Midco Limited	England and Wales, 15921713
Bayport Financial Services 2010 Proprietary Limited	South Africa, 2009/018403/07
Actvest Proprietary Limited	South Africa, 2002/010515/07
Bayport International Headquarter Company Proprietary Limited	South Africa, 2014/225741/07

Bayport Latin American Holdings Limited	Mauritius, C10096353
Actvest Limited	Mauritius, 087479C1/GBL
Bayport Financial Services Uganda Limited	Uganda, 80010002664924
Bayport Financial Services (T) Limited	Tanzania, 55322
Bayport Savings and Loans PLC	Ghana, PL000022016
Bayport Financial Services Moçambique (MCB), S.A	Mozambique, 100312530
Actvest México, S.A.P.I. de C.V	Mexico, 497333
Financiera Fortaleza, S.A. de C.V.SOFOM, E.N.R	Mexico, 384819
Money Quest Investments Proprietary Limited	Botswana, BW00000592381
Bayport Financial Services Limited	Zambia, 120020049035
Bayport Colombia S.A.	Colombia, NIT 900.189.642-5
Bayport Africa Midco Limited	England and Wales, 15921729
Bayport Intermediate Holdco 2 Limited	England and Wales, 15921530
GuardRisk International Limited PCC	Mauritius, 199965/3817

Part 6 – Original Intra-Group Lenders

Name	Registration number (or equivalent, if any) and Jurisdiction
Bayport Management Ltd	Mauritius, 54787/GBC
Bayport Intermediate Holdco PLC	England and Wales, 16036404
Cashfoundry Limited	England and Wales, 07551380
Bayport Latam Midco Limited	England and Wales, 15921713
Actvest Proprietary Limited	South Africa, 2002/010515/07
Bayport International Headquarter Company Proprietary Limited	South Africa, 2014/225741/07

Golden Road Insurance Company Limited	Bermuda, 54255
Money Quest Investments Proprietary Limited	Botswana, BW00000592381
Bayport Financial Services Limited	Zambia, 120020049035
Bayport Savings and Loans PLC	Ghana, PL000022016
Bayport Colombia S.A.	Colombia, NIT 900.189.642-5
Bayport Financial Services 2010 Proprietary Limited	South Africa, 2009/018403/07
Actvest México, S.A.P.I. de C.V	Mexico, 497333
Actvest Limited	Mauritius, 087479C1/GBL
Bayport Financial Services USA Inc	State of Delaware, United States, 5984741

SCHEDULE 2
FORM OF DEBTOR ACCESSION DEED

THIS AGREEMENT is made on [] and made between:

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

This agreement is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the “**Intercreditor Agreement**”) dated [] between, amongst others, [] as Parent, [] as Company, [] as Security Agent, [] as Senior Secured Notes Trustee, [] as Subordinated Notes Trustee, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

The Acceding Debtor intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

[Insert details (date, parties and description) of relevant documents]

the “**Relevant Documents**”.

IT IS AGREED as follows:

- 1 Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
- 2 The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
 - (a) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
 - (b) all proceeds of that Security; and]*
 - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,

on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

- 3 The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the

* Include to the extent that the Security created in the Relevant Documents is expressed to be granted to the Security Agent as trustee for the Secured Parties.

provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.

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

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

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

The Acceding Debtor

[EXECUTED AS A DEED)

By: [*Full Name of Acceding Debtor*])

Director

Director/Secretary

OR

[EXECUTED AS A DEED

By: [*Full name of Acceding Debtor*]

Signature of Director

Name of Director

in the presence of

Signature of witness

Name of witness

Address of witness

** Include this paragraph in the relevant Debtor Accession Deed if the Acceding Debtor is also to accede as an Intra-Group Lender to the Intercreditor Agreement.

Occupation of witness]

Address for notices:

Address:

Email address:

The Security Agent

[Full Name of Security Agent]

By:

Date:

SCHEDULE 3
FORM OF CREDITOR/CREDITOR REPRESENTATIVE ACCESSION
UNDERTAKING

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

From: [Acceding Creditor]

THIS UNDERTAKING is made on [date] by [insert full name of new Super Senior Facility Lender/Senior Secured Creditor/Subordinated Creditor//Creditor Representative/Intra-Group Lender] (the “**Acceding Super Senior Facility Lender/Senior Secured Creditor/Subordinated Creditor//Creditor Representative/ Intra-Group Lender/Parent Shareholder**”) in relation to the intercreditor agreement (the “**Intercreditor Agreement**”) dated [] 2024 between, among others, Bayport Management Ltd as Parent, Intermediate Holdco 2 Limited as Company, [Kroll Trustee Services Limited] as Security Agent and the Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding [Super Senior Facility Lender/Senior Secured Creditor/Subordinated Creditor/Creditor Representative/ Intra-Group Lender/Parent Shareholder] being accepted as a [Super Senior Facility Lender/Senior Secured Creditor/Subordinated Creditor//Creditor Representative/ Intra-Group Lender/ Parent Shareholder] for the purposes of the Intercreditor Agreement, the Acceding [Super Senior Facility Lender/Senior Secured Creditor/Subordinated Creditor//Creditor Representative/ Intra-Group Lender/ Parent Shareholder] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Super Senior Facility Lender/Senior Secured Creditor/Subordinated Creditor//Creditor Representative/ Intra-Group Lender/Parent Shareholder] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Super Senior Facility Lender/Senior Secured Creditor/Subordinated Creditor/Creditor Representative/Intra-Group Lender/Parent Shareholder] 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.

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

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

Acceding [Creditor]

[EXECUTED as a DEED]

[insert full name of Acceding Creditor]

By:

Address:

Email address:

Accepted by the Security Agent

[Accepted by the relevant Super Senior Facility Agent]

for and on behalf of

for and on behalf of

[Insert full name of Security Agent]

[Insert full name of relevant Super Senior Facility Agent]

Date:

Date:]****

[**** Include only in the case of an Ancillary Lender which is an Affiliate of a Credit Facility Lender which is using this undertaking to accede to the relevant Credit Facility Agreement.]

SCHEDULE 4 ENFORCEMENT PRINCIPLES

1 In this Schedule 4:

“**Enforcement Objective**” means maximising, to the extent consistent with a prompt and expeditious realisation of value, the value realised from Enforcement.

“**Fairness Opinion**” means, in respect of any Enforcement, an opinion from a Financial Adviser that the proceeds received or recovered in connection with that Enforcement are fair from a financial point of view taking into account all relevant circumstances.

2 It shall be the primary and over-riding aim of any Enforcement to achieve the Enforcement Objective.

3 The Transaction Security will be enforced and other action as to Enforcement will be taken such that either:

(a) to the extent the Instructing Group is the Majority Super Senior Creditors, all proceeds of Enforcement are received by the Security Agent in cash for distribution in accordance with Clause 16 (*Application of Proceeds*); or

(b) to the extent the Instructing Group is the Majority Senior Secured Creditors, either:

(i) all proceeds of enforcement are received by the Security Agent in cash for distribution in accordance with Clause 16 (*Application of Proceeds*); or

(ii) sufficient proceeds from Enforcement will be received by the Security Agent in cash to ensure that, when the proceeds are applied in accordance with Clause 16 (*Application of Proceeds*), the Super Senior Discharge Date will occur (unless the Majority Super Senior Creditors agree otherwise).

4 On:

(a) a proposed Enforcement in relation to assets comprising Charged Property other than shares in a member of the Group over which Transaction Security exists, where the aggregate book value of such assets exceeds [TBC] (or its equivalent in any other currency or currencies); or

(b) a proposed Enforcement in relation to Charged Property comprising some or all of the shares in a member of the Group over which Transaction Security exists,

the Security Agent shall, if requested by the Majority Senior Secured Creditors, appoint a Financial Adviser to provide a Fairness Opinion in relation to that Enforcement, *provided that* the Security Agent shall not be required to appoint a Financial Adviser nor obtain a Fairness Opinion if a proposed Enforcement:

- (i) would result in the receipt of sufficient Enforcement Proceeds in cash by the Security Agent to ensure that, after application in accordance with Clause 16 (*Application of Proceeds*):
 - (A) in the case of an Enforcement requested by the Majority Super Senior Creditors, the Senior Secured Discharge Date would occur; or
 - (B) in the case of an Enforcement requested by the Majority Senior Secured Creditors, the Super Senior Discharge Date would occur.
 - (ii) is in accordance with any applicable law; and
 - (iii) complies with Clause 16 (*Distressed Disposals*).
- 5 The Security Agent shall be under no obligation to appoint a Financial Adviser or to seek the advice of a Financial Adviser unless expressly required to do so by this Schedule or any other provision of this Agreement.
- 6 The Fairness Opinion, or any other method or process set out in Clause 14.4(b)(iii) will be conclusive evidence that the Enforcement Objective has been met.
- 7 This Schedule 4 is for the benefit of the Super Senior Creditors, the Senior Secured Creditors, the Subordinated Creditors and the Security Agent only.

SIGNATURES

[TO BE INSERTED]