

**INTERCREDITOR AGREEMENT**

**DATED 26 OCTOBER 2010**

**Between**

**[REDACTED]**  
**as Original Credit Facilities Agent**

**[REDACTED]**  
**as Note Trustee**

**The Original Credit Facilities Lenders**

**BAA (DSH) LIMITED**  
**as the Parent**

**BAA (SH) PLC**  
**as the Borrower**

**[REDACTED]**  
**acting as Security Agent**

**and others**

**ALLEN & OVERY**

Allen & Overy LLP

## CONTENTS

Clause	Page
1. Definitions and Interpretation .....	1
2. Ranking and Priority .....	21
3. Primary Creditors and Primary Creditor Liabilities.....	22
4. Hedge Counterparties and Hedging Liabilities.....	23
5. Parent and Parent Liabilities .....	28
6. Effect of Insolvency Event .....	30
7. Turnover of Receipts .....	31
8. Redistribution .....	33
9. Enforcement of Transaction Security .....	34
10. Proceeds of Disposals .....	35
11. Application of Proceeds.....	39
12. The Security Agent.....	41
13. The Pari Passu Bond Trustees .....	47
14. Change of Security Agent and Delegation.....	50
15. Changes to the Parties.....	52
16. Additional Indebtedness .....	54
17. Costs and Expenses.....	54
18. Indemnities .....	55
19. Information .....	57
20. Notices .....	59
21. Preservation .....	60
22. Consents, Amendments and Override.....	63
23. Counterparts.....	66
24. Governing Law .....	66
25. Enforcement.....	66

### Schedule

1. Form of Creditor/Creditor Representative Accession Undertaking.....	68
2.	

Signatories .....	70
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**THIS AGREEMENT** is dated 26 October 2010 and made

**BETWEEN:**

- (1) [REDACTED] as **Original Credit Facilities Agent**;
- (2) **THE FINANCIAL INSTITUTIONS** named on the signing pages as **Original Credit Facilities Lenders**;
- (3) [REDACTED]  
[REDACTED] as **Original Credit Facilities Arrangers**;
- (4) [REDACTED] as **Note Trustee**;
- (5) **BAA (DSH) LIMITED** (the Parent);
- (6) **BAA (SH) PLC** (the Borrower); and
- (7) [REDACTED] as security trustee for the Secured Parties (the **Security Agent**).

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

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

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

**Acceleration Event** means a Credit Facilities Acceleration Event, a Note Acceleration Event or an Additional Bond Acceleration Event.

**Acceleration Notice** means a notice of an Acceleration Event.

**Accounting Principles** means generally accepted accounting principles in the United Kingdom including IFRS.

**Additional Bond Acceleration Event** means the Creditor Representative in relation to any Additional Bond Liabilities (or, if permitted to do so under the applicable Additional Bond Documents, any of the Additional Bondholders) exercising any acceleration rights (howsoever described) or any acceleration provisions being automatically invoked under the applicable Additional Bond Documents.

**Additional Bond Creditors** means the Additional Bondholders and each Creditor Representative in relation to those Additional Bondholders.

**Additional Bond Discharge Date** means the first date on which all Additional Bond Liabilities have been fully and finally discharged to the satisfaction of the relevant Creditor Representatives in relation to such Additional Bond Liabilities, whether or not as the result of an enforcement, and the Additional Bondholders are under no further obligation to provide financial accommodation to either of the Debtors under the Additional Bond Documents.

**Additional Bond Documents** means each document or instrument entered into between the Borrower and an Additional Bond Creditor which creates or evidences any Additional Bonds.

**Additional Bond Liabilities** means the Liabilities owed by the Debtors to the applicable Creditor Representative on behalf of the relevant Additional Bondholders or to any Additional Bondholders (as the case may be) under the applicable Additional Bond Documents at any time.

**Additional Bond Participation** means, in relation to an Additional Bondholder, the aggregate outstanding principal amount of any Additional Bonds held by it (including any accretion through indexation).

**Additional Bondholders** means the holders from time to time of Additional Bonds.

**Additional Bondholder Agent** means each trustee or agent appointed to act for, and on behalf of, holders of Additional Bond Liabilities under the terms of the Additional Bond Documents relevant to those Additional Bondholders which has acceded to this Agreement as the Creditor Representative of those Additional Bondholders.

**Additional Bonds** means any bonds, notes or any other public or private debt securities issued by the Borrower, provided that:

- (a) the creditors (or a trustee on their behalf) have acceded to this Agreement in accordance with Clause 15.4 (Accession of Additional Bondholders and Creditor Representatives) and, if a trustee has acceded on behalf of a creditor, each such creditor has agreed, in the applicable Additional Bonds Documents, to be bound by the terms of this Agreement;
- (b) the Financial Indebtedness in respect of such bonds, notes or other securities constitutes Permitted Borrower Debt; and
- (c) such Financial Indebtedness is permitted to be incurred by the terms of the Note Documents and any Additional Bond Documents in existence at the relevant time.

**Additional Bonds Creditor Representative Ordinary Course Amounts** means amounts payable under any Additional Bond Documents to a Creditor Representative in respect of any Additional Bondholders for its own account:

- (a) representing fees of such Creditor Representative payable in respect of the ordinary administration of the relevant Additional Bond Documents; or
- (b) by way of indemnity for costs and expenses (including legal and other professional advisory fees) incurred by such Creditor Representative:
  - (i) in respect of the ordinary administration of the relevant Additional Bond Documents; or
  - (ii) in respect of any actual or attempted Enforcement Action which is permitted to be taken under this Agreement,

but excluding any costs and expenses incurred in respect of bringing any suit, claim, action or proceedings against the Security Agent or any other Primary Creditor.

For these purposes, **ordinary administration** includes actions of a Creditor Representative in respect of any Additional Bondholders in relation to purchases or redemptions of Additional Bonds, change of control offers, disposals of assets, defeasance of the Additional Bonds, mergers and consolidations, substitution of the obligor of the Additional Bonds, the adding and release of guarantors or security and the making of modifications, waivers, authorisations, determinations and amendments in respect of the Additional Bonds Documents, in each case to the extent permitted by this Agreement.

**Additional Credit Facilities** mean any credit facility provided to the Borrower, provided that:

- (a) the creditors have acceded to this Agreement in accordance with Clause 15.3 (Accession of Credit Facilities Lenders, Creditor Representatives and Credit Facility Arrangers);
- (b) prior to the Original Credit Facilities Discharge Date, the Financial Indebtedness in respect of such facilities constitutes Permitted Borrower Debt; and
- (c) such Financial Indebtedness is permitted to be incurred by the terms of the Note Documents, any Additional Credit Facilities Documents and any Additional Bond Documents in existence at the relevant time.

**Additional Credit Facilities Agent** means any person or entity appointed, in accordance with the relevant Additional Credit Facilities Documents in relation to any relevant Additional Credit Facilities Liabilities, for and on behalf of the relevant Additional Credit Facilities Finance Parties as their trustee, agent or representative and which has acceded as a party to this Agreement in such capacity.

**Additional Credit Facilities Class** means all Additional Credit Facilities Lenders which have Additional Credit Facilities Liabilities under or in connection with the same Additional Credit Facilities Documents and have equal rights to vote for, or instruct the relevant Additional Credit Facilities Agent to, accelerate those Additional Credit Facilities Liabilities.

**Additional Credit Facilities Creditors** means the Additional Credit Facilities Lenders and each Creditor Representative in relation to those Additional Credit Facilities Lenders.

**Additional Credit Facilities Discharge Date** means the first date on which the Credit Facilities/Hedging Liabilities owed to the Additional Credit Facilities Lenders have been fully and finally discharged to the satisfaction of the applicable Additional Credit Facilities Agent(s), whether or not as a result of an enforcement, and the Additional Credit Facilities Lenders are under no further obligation to provide financial accommodation to a Debtor under the applicable Additional Credit Facilities Documents.

**Additional Credit Facilities Documents** means each document entered into between a Debtor and an Additional Credit Facilities Finance Party setting out the terms of any loan, credit or debt facility which is an Additional Credit Facility and creates or evidences Additional Credit Facilities Liabilities.

**Additional Credit Facilities Finance Party** means with respect to particular Additional Credit Facilities Liabilities, the Additional Credit Facilities Agent, the Security Agent and each Additional Credit Facilities Lender which is owed any Additional Credit Facilities Liabilities or which has any Credit Facilities Commitment.

**Additional Credit Facilities Lender** means each "Lender" as defined in each Additional Credit Facilities Agreement and which has acceded as a party to this Agreement in such capacity.

**Additional Credit Facilities Liabilities** means the Liabilities owed by the Debtors to the Additional Credit Facilities Lenders under or in connection with the Additional Credit Facilities Documents.

**Additional Credit Facilities Participation** means, in relation to an Additional Credit Facilities Creditor, the aggregate of:

- (a) the principal amount of Additional Credit Facilities Liabilities owed to it;
- (b) its unutilised Credit Facilities Commitments under the Additional Credit Facilities, if any.

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

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

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

**Available Commitment** in relation to a Credit Facilities Lender, has the meaning given to the term "Available Commitment" in:

- (a) the Original Credit Facilities Agreement; and
- (b) each relevant Additional Credit Facilities Document.

**Borrowing Liabilities** means, in relation to a Debtor or another member of the Group, the liabilities it may have as a principal debtor to a Creditor or Debtor in respect of Financial Indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities as a Credit Facilities Borrower, liabilities as an issuer of Notes or liabilities as an issuer of Additional Bond Liabilities).

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

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

**Close-Out Netting** means:

- (a) in respect of a Hedging Agreement based on a 1992 ISDA Master Agreement, any step involved in determining the amount payable in respect of an Early Termination Date (as defined in the 1992 ISDA Master Agreement) under section 6(e) of the 1992 ISDA Master Agreement before the application of any subsequent Set-off (as defined in the 1992 ISDA Master Agreement);
- (b) in respect of a Hedging Agreement based on a 2002 ISDA Master Agreement, any step involved in determining an Early Termination Amount (as defined in the 2002 ISDA Master Agreement) under section 6(e) of the 2002 ISDA Master Agreement; and

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

**Common Currency** means Sterling.

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

**Common Transaction Security** means any Transaction Security which is created in favour of the Security Agent as trustee for the other Secured Parties in respect of their Liabilities and which ranks in the order of priority contemplated in Clause 2.2 (Transaction Security).

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

**Credit Facilities** means:

- (a) the Original Credit Facilities; and
- (b) any Additional Credit Facilities.

**Credit Facilities Acceleration Event** means:

- (a) the Original Credit Facilities Agent exercising any of its rights under clause 23.14 (Acceleration) of the Original Credit Facilities Agreement; and
- (b) the relevant Additional Credit Facilities Agent in relation to any Additional Credit Facilities exercising any of its rights under and in accordance with any acceleration provisions of the Additional Credit Facilities Documents.

**Credit Facilities Agent** means:

- (a) in relation to the Original Credit Facilities Agreement, the Original Credit Facilities Agent; and
- (b) in relation to the Additional Credit Facilities Documents, the relevant Additional Credit Facilities Agent.

**Credit Facilities Agent Liabilities** means all present and future liabilities and obligations, actual and contingent, of a Debtor to the Credit Facilities Agents under the Credit Facilities Documents.

**Credit Facilities Agreement** means:

- (a) the Original Credit Facilities Agreement; and
- (b) any credit facilities agreement entered into by the Borrower in respect of the Additional Credit Facilities.

**Credit Facilities Arranger** means:

- (a) in relation to the Original Credit Facilities, the Original Credit Facilities Arrangers; and

- (b) in relation to the Additional Credit Facilities, any person who becomes party to this Agreement as a Credit Facilities Arranger pursuant to Clause 15 (Changes to the Parties).

**Credit Facilities Arranger Liabilities** means all present and future liabilities and obligations, actual and contingent, of a Debtor to any Credit Facilities Arranger under the Credit Facilities Documents.

**Credit Facilities Borrower** means the Borrower in its capacity as Borrower under:

- (a) the Original Credit Facilities Agreement; and
- (b) each relevant Additional Credit Facilities Document.

**Credit Facilities Commitment** means:

- (a) a "Commitment" under and as defined in the Original Credit Facilities Agreement; and
- (b) a commitment or any equivalent concept under any Additional Credit Facilities Documents.

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

**Credit Facilities Documents** means:

- (a) the Original Credit Facilities Documents; and
- (b) the Additional Credit Facilities Documents.

**Credit Facilities Lenders** means each Original Credit Facilities Lender and each Additional Credit Facilities Lender.

**Credit Facilities Liabilities** means the Original Credit Facilities Liabilities and the Additional Credit Facilities Liabilities.

**Credit Facilities/Hedging Creditors** means the Credit Facilities Lenders and the Hedge Counterparties.

**Credit Facilities/Hedging Discharge Date** means the first date on which all Credit Facilities/Hedging Liabilities have been fully and finally discharged to the satisfaction of the relevant Creditor Representative(s) (in the case of the Credit Facilities Liabilities) and each Hedge Counterparty (in the case of its Hedging Liabilities), whether or not as the result of an enforcement, and the Credit Facilities/Hedging Creditors are under no further obligation to provide financial accommodation to any Debtor under the Credit Facilities Documents and Hedging Agreements.

**Credit Facilities/Hedging Liabilities** means the Credit Facilities Liabilities and the Hedging Liabilities.

**Credit Facilities/Hedging Participation** means, in relation to a Credit Facilities/Hedging Creditor, the aggregate of:

- (a) the principal amount of Credit Facilities Liabilities owed to it;
- (b) its unutilised Credit Facilities Commitments, if any;



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

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

**Creditor/Creditor Representative Accession Undertaking** means:

- (a) an undertaking substantially in the form set out in Schedule 1 (Form of Creditor/Creditor Representative Accession Undertaking); or
- (b) a Transfer Certificate or an Assignment Agreement (each as defined in the Original Credit Facilities Agreement),

as the context may require.

**Creditor Representative** means:

- (a) in relation to the Original Credit Facilities Lenders, the Original Credit Facilities Agent;
- (b) in relation to any Additional Credit Facilities Class, the applicable Credit Facilities Agent;
- (c) in relation to any Noteholders, the Note Trustee; and
- (d) in relation to any Additional Bondholders, the applicable Additional Bondholder Agent.

**Creditor Representative Liabilities** means all present and future liabilities and obligations, actual and contingent, of a Debtor to any Creditor Representative and, in the case of a Creditor

Representative in relation to any Additional Bondholders, includes any fiscal, issuing, calculation or paying agent or registrar, in each case under the relevant Primary Creditor Documents.

**Creditors** means the Primary Creditors and the Parent.

**Debt Document** means each of this Agreement, the Primary Creditor Documents, the Security Documents, any agreement evidencing the terms of the Parent Liabilities and any other document designated as such by the Security Agent and the Borrower.

**Debt Purchase Transaction** has the meaning: in respect of the Original Credit Facilities Agreement, given to the term "Debt Purchase Transaction" in the Original Credit Facilities Agreement; and

- (b) in respect of each other Credit Facilities Agreement, given to the equivalent term in the relevant Additional Credit Facilities Documents.

**Debtor** means the Borrower or the Parent.

**Debtor Liabilities** means, in relation to a member of the Group, any liabilities 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 a grace period, the giving of notice, the making of any determination under the Debt Documents or any combination of any of the foregoing) be an Event of Default.

**Defaulting Lender** means a Credit Facilities Lender which is a Defaulting Lender under, and as defined in, each Credit Facilities Agreement.

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

**Disposal Proceeds** has the meaning given to that term in Clause 10 (Proceeds of Disposals).

**Distress Event** means any of:

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

**Distressed Disposal** means a disposal of an asset of a Debtor which is:

- (a) being effected at the request of the Majority Primary Creditors 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 not a member of the Group.

**Enforcement Action** means:

- (a) in relation to any Liabilities:
  - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a 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 by reason of a default (however described);
- (iii) the making of a demand in relation to a Liability that is payable on demand;
- (iv) the exercise of any right to require a Debtor to acquire any Liability (including exercising any put or call option against a Debtor for the redemption or purchase of any Liability but excluding any such right which arises as a result of clause 25.1 (Permitted Debt Purchase Transactions) of the Original Credit Facilities Agreement or any equivalent provisions in each other Additional Credit Facilities Agreement);
- (v) the exercise of any right of set-off, account combination or payment netting against a Debtor in respect of any Liabilities other than the exercise of any such right:
  - (A) as Close-Out Netting by a Hedge Counterparty;
  - (B) as Payment Netting by a Hedge Counterparty;
  - (C) as Inter-Hedging Agreement Netting by a Hedge Counterparty;
  - (D) which is otherwise expressly permitted under any Credit Facilities Agreement and the Pari Passu Bond Documents to the extent that the exercise of that right gives effect to a Permitted Payment; and
- (vi) the suing for, commencing or joining of any legal or arbitration proceedings against a Debtor to recover any Liabilities;
- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement;
- (c) the taking of any steps to enforce or realise or require the enforcement or realisation of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (d) the entering into of any formal composition, compromise, assignment or similar arrangement with a Debtor which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 15 (Changes to the Parties)); or
- (e) the petitioning, applying or voting for, or the taking of any similar steps (including the appointment of any Insolvency Official) in relation to, the winding up, dissolution, administration or reorganisation of a Debtor 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 that Debtor's assets or any suspension of payments or moratorium of any indebtedness of that Debtor, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(vi) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; or

- (ii) a Secured Creditor bringing legal proceedings against any person solely for the purpose of:
  - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
  - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
  - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages;
- (iii) to the extent entitled by law, the taking of any actions 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 the powers granted to such persons under any security documentation (other than any such action in respect of any sale or disposal pursuant to the Transaction Security and in accordance with this Agreement);
- (iv) bringing legal proceedings against any person in connection with any securities violation, securities or listing regulations or common law fraud or to restrain any actual or putative breach of the Credit Facilities Documents or Pari Passu Bond Documents or for specific performance;
- (v) allegations of material misstatements or omissions made in connection with the offering materials relating to the Notes or Additional Bonds or in reports furnished to the Noteholders or Additional Bondholders or any exchange on which the Notes or Additional Bonds are listed pursuant to information and reporting requirements under the applicable Pari Passu Bond Documents; or
- (vi) demand being made for payment of any of the Liabilities as a result of it being unlawful for any Creditor or Creditor Representative to perform any obligation under their respective Debt Documents.

**Event of Default** means any event or circumstance specified as such (or which has the same effect as an event of default, howsoever described) in the Original Credit Facilities Agreement, the Additional Credit Facilities Documents, the Note Trust Deed or the Additional Bond Documents.

**Exchange Rate Hedge Excess** means the amount by which the Total Exchange Rate Hedged Amount exceeds the Permitted Maximum Exchange Rate Hedged Amount.

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

**Final Discharge Date** means the later to occur of the Credit Facilities/Hedging Discharge Date, the Note Discharge Date and the final Additional Bond Discharge Date.

**Financial Indebtedness** means, without double counting any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

- (c) any amount raised pursuant to any note purchase facility or the issue of bonds (other than performance and similar bonds), notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any counter-indemnity obligation in respect of a guarantee, bond (other than performance or similar bonds), standby or documentary letter of credit or any other instrument issued by a bank or financial institution where the underlying liability otherwise constitutes Financial Indebtedness;
- (g) any amount raised by the issue of redeemable shares which are capable of being redeemed on or before the Final Discharge Date other than those held by a member of the Group;
- (h) any amount of any liability under an advance or deferred purchase agreement if (i) the primary reason behind entering into the agreement is to raise finance or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 180 days after the date of supply;
- (i) any arrangement entered into primarily as a method of raising finance pursuant to which an asset sold or otherwise disposed of by that person is contemplated or intended to be re-acquired by a member of the Group (whether following the exercise of an option or otherwise);
- (j) any amount raised under any other transaction (including any forward sale or purchase agreement) to the extent treated as a borrowing under the Accounting Principles but excluding, for the avoidance of doubt, any amount in respect of any provision deficit of any member of the Group); and
- (k) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.

**Group** means the Borrower and its Subsidiaries.

**Hedge Counterparty** means any person which becomes Party as a Hedge Counterparty pursuant to Clause 15.7 (Creditor/Creditor Representative Accession Undertaking).

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

**Hedged Currency** means the currency (other than Sterling) in which a Loan or a tranche of Notes or a tranche of Additional Bonds (or part of a Loan or tranche of Notes or tranche of Additional Bonds) is denominated.

**Hedging Agreement** means any master agreement, confirmation, schedule or other agreement entered into by the Borrower for the purposes of hedging interest rate or currency risk that is permitted, under the terms of the Credit Facilities Documents and the Pari Passu Bond Documents, to share in the Transaction Security.

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

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

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

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

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

**IFRS** means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

**Impaired Agent** means a Credit Facilities Agent which is an Impaired Agent under, and as defined in, the relevant Credit Facilities Agreement.

**Insolvency Event** means, in relation to a Debtor:

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

**Insolvency Official** means a liquidator, provisional liquidator, administrator (whether appointed by the court or otherwise), administrative receiver, receiver or manager, nominee, supervisor, trustee in bankruptcy, conservator, guardian or other similar official in respect of a company or in respect of the whole or any part of that company's assets or in respect of any arrangement or composition with creditors.

**Insolvency Proceedings** means the winding-up, dissolution, company voluntary arrangement or administration of a company or corporation and shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or of any jurisdiction in which such company or corporation carries on business

including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief from creditors or the appointment of an Insolvency Official.

**Intercreditor Amendment** means any amendment or waiver which is subject to Clause 22 (Consents, Amendments and Override).

**Interest Rate Hedge Excess** means the amount by which the Total Interest Rate Hedged Amount exceeds the Permitted Maximum Interest Rate Hedged Amount.

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

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

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

**Liabilities** means all present and future liabilities and obligations at any time of a Debtor to any Primary Creditor under the Debt Documents, both actual and contingent and whether incurred solely or jointly 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 a Debtor of a Payment on the grounds of preference or otherwise,

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

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

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

the rights and benefits in respect of those Liabilities.

**Loan** has the meaning given to that term in the Credit Facilities Agreement.

**Majority Credit Facilities/Hedging Creditors** means, at any time, those Credit Facilities/Hedging Creditors whose Credit Facilities/Hedging Participations at that time aggregate more than 66 $\frac{2}{3}$ % of the total Credit Facilities/Hedging Participations at that time.

**Majority Credit Facilities Lenders:**

- (a) while the Original Credit Facilities Agreement is the only Credit Facilities Agreement, has the meaning given to the term "Majority Lenders" in the Original Credit Facilities Agreement after the application of:
- (i) paragraph (d) of clause 36.3 (Exceptions);
  - (ii) paragraph (a) of clause 25.2 (Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates); and
  - (iii) clause 36.5 (Disenfranchisement of Defaulting Lenders),
- of the Original Credit Facilities Agreement; or
- (b) at any other time means Credit Facilities Lenders whose Primary Credit Participations in respect of the Credit Facilities Documents aggregate more than 66  $\frac{2}{3}$  per cent. of all the Primary Credit Participations of the Credit Facilities Lenders in respect of the Credit Facilities Documents at that time (in each case after the application of the provisions referred to in sub-paragraphs (a)(i) to (iii) above (and any equivalent provisions in an Additional Credit Facilities Document)).

**Majority Pari Passu Bondholders** means, at any time, Pari Passu Bondholders whose Pari Passu Bond Participations at that time aggregate at least 66 $\frac{2}{3}$  per cent. of the total Pari Passu Bond Participations at that time.

**Majority Primary Creditors** means, at any time, those Primary Creditors whose Primary Credit Participations aggregate more than 50 per cent. of the total Primary Credit Participations outstanding at that time.

**Note Acceleration Event** means the Note Trustee or the requisite percentage of Noteholders (if permitted to do so under the Note Trust Deed) exercising any acceleration rights (howsoever described).

**Note Creditors** means the Noteholders and the Note Trustee.

**Note Discharge Date** means the first date on which all Note Liabilities have been fully and finally discharged to the satisfaction of the Note Trustee, whether or not as the result of an enforcement.

**Note Documents** means this Agreement, the Note Trust Deed, the Notes, the Security Documents and each other document or instrument entered into between the Borrower and a Note Creditor setting out the terms of any Notes or security which creates or evidences any Notes.

**Note Liabilities** means the Liabilities owed by the Borrower to the Note Trustee on behalf of the Noteholders or to the Noteholders under the Note Documents at any time.

**Note Participation** means, in relation to a Noteholder, the aggregate principal amount of the Notes held by it (including any accretion through indexation).



**Note Trust Deed** means the trust deed constituting the Notes and made between the Note Trustee, the Borrower and the Parent and the schedules thereto (including the terms and conditions of the Notes set out therein).

**Note Trustee** means any trustee appointed to act for, and on behalf of, Noteholders under the terms of the Note Documents relevant to those Noteholders, in each case who has acceded to this Agreement in that capacity.

**Note Trustee Ordinary Course Amounts** means amounts payable under any Note Documents to a Note Trustee for its own account:

- (a) representing fees of the Note Trustee payable in respect of the ordinary administration of the relevant Note Documents;
- (b) by way of indemnity for costs, expenses or other liabilities (including legal and other professional advisory fees) incurred by the Note Trustee:
  - (i) in respect of the ordinary administration of the relevant Note Documents; or
  - (ii) in respect of any actual or attempted Enforcement Action which is permitted to be taken under this Agreement,

but excluding any costs and expense incurred in respect of bringing any suit, claim, action or proceedings against the Security Agent or any other Primary Creditor.

For these purposes, **ordinary administration** includes actions of a Note Trustee in relation to purchases or redemptions of Notes, change of control offers, disposals of assets, defeasance of the Notes, mergers and consolidations, substitution of the obligor of the Additional Bonds, the adding and release of guarantors or security and the making of amendments to and the granting of waivers and the making of modifications, authorisations and any determinations in respect of the Note Documents, in each case to the extent permitted by this Agreement.

**Noteholders** means the holders from time to time of Notes.

**Notes** means the notes issued or to be issued by the Borrower under the Note Trust Deed.

**Original Credit Facilities** means Facility A and Facility B under and each as defined in the Original Credit Facilities Agreement.

**Original Credit Facilities Agreement** means the credit facilities agreement dated on or about the date of this Agreement and made between among others, the Parent, the Borrower, the Original Credit Facilities Lenders and the Original Credit Facilities Agent.

**Original Credit Facilities Discharge Date** means the first date on which the Credit Facilities/Hedging Liabilities owed to the Original Credit Facilities Lenders have been fully and finally discharged to the satisfaction of the Original Credit Facilities Agent, whether or not as a result of an enforcement, and the Original Credit Facilities Lenders are under no further obligation to provide financial accommodation to a Debtor under the Original Credit Facilities Documents.

**Original Credit Facilities Documents** has the meaning given to the term "Finance Documents" in the Original Credit Facilities Agreement.

**Original Credit Facilities Liabilities** means the Liabilities owed by the Debtors to the Original Credit Facilities Lenders under or in connection with the Original Credit Facilities Documents.

**Original Credit Facilities Lender** means each "Lender" (as defined in the Original Credit Facilities Agreement) which is a Party to or has acceded as a party to this Agreement in such capacity.

**Other Liabilities** means, in relation to a Debtor or any other member of the Group, any trading and other liabilities (not being Borrowing Liabilities) it may have to the Secured Parties under the Debt Documents or to a Debtor.

**Parent Liabilities** means all money and liabilities owed by the Borrower to the Parent including, but not limited to, those in respect of dividends and other distributions and Financial Indebtedness.

**Pari Passu Bond Creditors** means the Noteholders, the Additional Bondholders, the Note Trustee and each Creditor Representative in relation to any Additional Bondholder.

**Pari Passu Bond Documents** means the Note Documents and the Additional Bond Documents.

**Pari Passu Bond Liabilities** means the Note Liabilities and the Additional Bond Liabilities.

**Pari Passu Bond Participation** means a Note Participation and an Additional Bond Participation.

**Pari Passu Bond Trustees** means the Note Trustee and each Creditor Representative in relation to any Additional Bondholders.

**Pari Passu Bondholders** means the Noteholders and the Additional Bondholders.

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

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

**Payment Netting** means:

- (a) in respect of a Hedging Agreement based on an ISDA Master Agreement, netting under section 2(c) of the relevant ISDA Master Agreement; and
- (b) in respect of a Hedging Agreement not based on an ISDA Master Agreement, netting pursuant to any provision of that Hedging Agreement which has a similar effect to the provision referenced in paragraph (a) above.

**Permitted Additional Bond Payments** means the Payments permitted by Clause 3.2 (Payments: Pari Passu Bond Liabilities).

**Permitted Borrower Debt** has the meaning given to that term in the Original Credit Facilities Agreement.

**Permitted Credit Facilities Lender Payments** means the Payments permitted by Clause 3.1 (Payments: Credit Facilities Liabilities).

**Permitted Hedge Payments** means the Payments permitted by Clause 4.3 (Permitted Payments: Hedging Liabilities).

**Permitted Maximum Exchange Rate Hedged Amount** means an amount equal to the portion of the principal amount of the Primary Creditor Liabilities (excluding the Hedging Liabilities) that is not denominated in Sterling.

**Permitted Maximum Interest Rate Hedged Amount** means an amount equal to 105% of the portion of the principal amount of the Primary Creditor Liabilities (excluding the Hedging Liabilities) which has a floating rate of interest.

**Permitted Note Payments** means the Payments permitted by Clause 3.2 (Payments: Pari Passu Bond Liabilities).

**Permitted Parent Payments** means the Payments permitted by Clause 5.2 (Permitted Payments: Parent Liabilities).

**Permitted Payment** means a Permitted Hedge Payment, a Permitted Note Payment, a Permitted Parent Payment, a Permitted Credit Facilities Lender Payment or a Permitted Additional Bond Payment.

**Primary Credit Participations** means the Credit Facilities/Hedging Participations, the Note Participations and the Additional Bond Participations.

**Primary Creditor Documents** means the Hedging Agreements, the Credit Facilities Documents and the Pari Passu Bond Documents.

**Primary Creditor Liabilities** means the Credit Facilities/Hedging Liabilities and the Pari Passu Bond Liabilities.

**Primary Creditors** means the Credit Facilities/Hedging Creditors and the Pari Passu Bond Creditors.

**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 11.1 (Order of application).

**Relevant Liabilities** means:

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

**Retiring Security Agent** has the meaning given to that term in Clause 14 (Change of Security Agent and Delegation).

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

**Secured Parties** means the Security Agent, any Receiver or Delegate and each of the Creditor Representatives, the Credit Facilities Arrangers and the Primary Creditors from time to time but, in the case of the Creditor Representatives, each Credit Facilities Arranger or each Primary Creditor, only if it (or, in the case of any Pari Passu Bondholders, its Creditor Representative) is a party to this Agreement or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 15.7 (Creditor/Creditor Representative Accession Undertaking).

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

**Security Agent's Spot Rate of Exchange** means, in respect of the conversion of one currency (the **First Currency**) into another currency (the **Second Currency**) the Security Agent's spot rate of exchange for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11.00 a.m. (London time) on a particular day, which shall be notified by the Security Agent in accordance with paragraph (d) of Clause 12.6 (Security Agent's obligations).

**Security Documents** means:

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

**Security Property** means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as trustee for the Secured Parties;
- (c) the Security Agent's interest in any trust fund created pursuant to Clause 7 (Turnover of Receipts); and
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Secured Parties.

**Sponsor Affiliate** means each person who directly or indirectly owns any shares in the Parent (each a **Shareholder**), any Shareholder's Affiliates, any trust of which any Shareholder or any of its Affiliates is a trustee, any partnership of which any Shareholder or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, any Shareholder or any of its Affiliates **provided that** any such trust, fund or other entity which has been established for at least six months solely for the purpose of making, purchasing or investing in loans or debt

securities and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by any Shareholder or any of its Affiliates which have been established for the primary or main purpose of investing in the share capital of companies shall not constitute a Sponsor Affiliate.

**Subsidiary** means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

**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).

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

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

**Transaction Security** means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Security Documents.

**Transaction Security Documents** has the meaning given to the term "Transaction Security Documents" in the Credit Facilities Agreement.

**VAT** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) any **Additional Bondholder Credit Facilities Arranger, Borrower, Credit Facilities Agent, Credit Facilities Borrower, Credit Facilities/Hedging Creditor, Credit Facilities Lender, Creditor, Creditor Representative, Debtor, Hedge Counterparty, Note Trustee, Original Credit Facilities Agent, Original Credit Facilities Lender, Parent, Pari Passu Bondholder, Party, Primary Creditor or Security Agent** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
  - (ii) any **Credit Facilities Arranger, Credit Facilities Agent, Creditor, Creditor Representative, Debtor, Hedge Counterparty, Note Trustee, Party** or the **Security Agent** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
  - (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;
  - (v) **enforcing** (or any derivation) the Transaction Security shall include the appointment of an administrator of a Debtor by the Security Agent;

- (vi) **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;
  - (vii) 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;
  - (viii) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
  - (ix) 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
  - (x) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, Clause and Schedule headings are for ease of reference only.

[REDACTED]

[REDACTED]

- (e) **continuing** in relation to any Default or Event of Default arising under any Debt Document means that such Default or Event of Default has not been remedied or waived in accordance with the relevant Debt Document.
- (f) In determining whether any Liabilities have been fully and finally discharged, the relevant Creditor Representative (and, if applicable, the Security Agent) may disregard contingent liabilities (such as the risk of clawback from a preference claim) where it does not believe there is a real possibility that such Liabilities could become actual liabilities.

[REDACTED]

### 1.3 Third Party Rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Rights Act**) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

- (c) Any Receiver, Delegate or any other person described in Clause 12.9 (No proceedings) may, subject to this Clause 1.3 (Third Party Rights) and the Third Parties Rights Act, rely on any Clause of this Agreement which expressly confers rights on it.
- (d) It is agreed and acknowledged by the Parties hereto that whilst the Pari Passu Bondholders are not and will not be parties to this Agreement, by subscribing to, purchasing or otherwise acquiring, as applicable, a Note or an Additional Bond, the Pari Passu Bondholders are deemed to be bound by the terms hereof, in each case pursuant to the terms of the relevant Pari Passu Bond Documents. Save where the relevant Pari Passu Bond Documents permit the relevant Pari Passu Bondholders (or a specified proportion thereof) to give directions to the Security Agent in relation to the enforcement of the Transaction Security, any rights expressed to be exercisable by or granted in favour of Pari Passu Bondholders pursuant hereto and/or the Security Documents are only exercisable by them through their appointed Creditor Representative(s) in accordance with the terms hereof and/or the applicable Pari Passu Bond Documents. The Pari Passu Bondholders may, subject to this Clause 1.3 (Third Party Rights) and the Third Parties Rights Act, rely on Clause 9 (Enforcement of Transaction Security) of this Agreement to the extent it confers rights on them.
- [REDACTED]
- [REDACTED]
- [REDACTED]

## **2. RANKING AND PRIORITY**

### **2.1 Primary Creditor Liabilities**

Without prejudice to the other provisions of this Agreement, including Clause 11 (Application of Proceeds), each of the Parties agrees that the Credit Facilities Liabilities, the Hedging Liabilities and the Pari Passu Bond Liabilities shall rank in right and priority of payment *pari passu* and without any preference between them.

### **2.2 Transaction Security**

Each of the Parties agrees that the Transaction Security shall rank and secure the Credit Facilities Liabilities, the Hedging Liabilities and the Pari Passu Bond Liabilities *pari passu* and without any preference between them (but only to the extent that such Transaction Security is expressed to secure those Liabilities).

### **2.3 Parent Liabilities**

- (a) Each of the Parties agrees that the Parent Liabilities are postponed and subordinated to the Liabilities owed by the Debtors to the Primary Creditors and the Creditor Representative Liabilities.
- (b) This Agreement does not purport to rank any of the Parent Liabilities as between themselves.
- (c) The Parent Liabilities are and shall remain unsecured.

## **3. PRIMARY CREDITORS AND PRIMARY CREDITOR LIABILITIES**

### **3.1 Payments: Credit Facilities Liabilities**

Subject to Clause 3.3 (Restrictions on Payments: Primary Creditor Liabilities), the Debtors may make any Payment in respect of the Credit Facilities Liabilities at any time in accordance with the Credit Facilities Documents.

### **3.2 Payments: Pari Passu Bond Liabilities**

Subject to Clause 3.3 (Restrictions on Payments: Primary Creditor Liabilities), the Debtors may make any Payment in respect of the Pari Passu Bond Liabilities at any time in accordance with the Pari Passu Bond Documents.

### **3.3 Restrictions on Payments: Primary Creditor Liabilities**

Following the occurrence of an Acceleration Event or an Insolvency Event, no Debtor may make (and no Primary Creditor may receive) Payments of the Primary Creditor Liabilities except from Recoveries distributed in accordance with Clause 11 (Application of Proceeds) unless the prior written consent of the Majority Credit Facilities Lenders and the consent of the Majority Pari Passu Bondholders is obtained.

### **3.4 Amendments and Waivers**

- (a) Subject to paragraphs (b) and (c) below and to Clause 4.6 (Amendments and Waivers: Hedging Agreements), the each class of Primary Creditor and the Debtors may amend or waive the terms of the Primary Creditor Documents to which they are a party in accordance with their terms (and subject to any consent required under them) at any time.
- (b) The terms of any Credit Facilities Documents and/or any Pari Passu Bond Documents may not be amended or waived if such amendment or waiver would breach any other term of this Agreement and/or any Credit Facilities Documents and/or any Pari Passu Bonds Documents.
- (c) In respect of an amendment or waiver of a Credit Facilities Document or a Pari Passu Bond Document in accordance with this Clause 3.4, each Credit Facilities Agent and each Pari Passu Bond Trustee may rely on a certificate of the Borrower certifying that such amendment or waiver would not result in a breach of any Credit Facilities Document or Pari Passu Bond Document and shall not be under any obligation to enquire or otherwise determine whether such certificate has been validly given by the Borrower.

### **3.5 Security and Guarantees**

The Primary Creditors may not take, accept or receive and the Parent and Borrower shall not, and shall not permit any member of the Group to, grant the benefit of:



- (a) any Security in respect of the Primary Creditor Liabilities other than the Common Transaction Security; and
- (b) any guarantee, indemnity or other assurance against loss in respect of the Primary Creditor Liabilities other than:
  - (i) those given by the Borrower in the Primary Creditor Documents and this Agreement; or
  - (ii) those given by the Parent in the Common Transaction Security or this Agreement.

#### **4. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES**

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

No person providing hedging arrangements to a Debtor shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to those hedging arrangements nor shall those liabilities be treated as Hedging Liabilities unless that person is or becomes a party to this Agreement as a Hedge Counterparty.

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

The Debtors shall not, and shall procure that no other member of the Group will, make any Payment of the Hedging Liabilities at any time unless:

- (a) that Payment is permitted under Clause 4.3 (Permitted Payments: Hedging Liabilities); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 4.9 (Permitted Enforcement: Hedge Counterparties),

**provided that** following the occurrence of an Acceleration Event or an Insolvency Event, unless the Credit Facilities Discharge Date has occurred or the prior written consent of the Majority Credit Facilities Lenders and the Majority Pari Passu Bondholders is obtained, no Debtor may make (and no Hedge Counterparty may receive) Payment of the Hedging Liabilities except from Recoveries distributed in accordance with Clause 11 (Application of Proceeds).

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

- (a) Subject to paragraph (b) below, the Debtors may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Agreement in accordance with the terms of that Hedging Agreement.
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid.
- (c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to Clause 4.4 (Payment obligations continue), not result in a default (however described) in respect of that Debtor under that Hedging Agreement.

#### **4.4 Payment obligations continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under the terms of any Debt Document by the operation of Clauses 4.2 (Restriction on Payment: Hedging Liabilities) and 4.3 (Permitted Payments: Hedging Liabilities) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

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

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

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

in respect of any of the Hedging Liabilities unless the prior consent of the Majority Credit Facilities/Hedging Creditors and the Majority Pari Passu Bondholders is obtained.

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

- (a) Subject to paragraph (b) below, the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.
- (b) A Hedge Counterparty may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if that amendment or waiver does not breach another term of this Agreement, the Credit Facilities Documents or the Pari Passu Bond Documents.
- (c) In respect of an amendment or waiver of a Hedging Agreement in accordance with this Clause 4.6, a Hedge Counterparty may rely on a certificate of the Borrower certifying that such amendment or waiver would not result in a breach of the Credit Facilities Documents or the Pari Passu Bond Documents and shall not be under any obligation to enquire or otherwise determine whether such certificate has been validly given by the Borrower.

#### **4.7 Security: Hedge Counterparties**

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

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss:
  - (i) given by the Borrower and contained in this Agreement or the Hedging Agreements;  
or
  - (ii) given by the Parent and contained in this Agreement.
- (c) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

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

Subject to Clause 4.9 (Permitted Enforcement: Hedge Counterparties) and Clause 4.10 (Required Enforcement: Hedge Counterparties) and without prejudice to each Hedge Counterparty's rights under Clauses 9.2 (Enforcement Instructions) or Clause 9.3 (Manner of enforcement), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities, any of the hedging transactions under any of the Hedging Agreements at any time.

#### **4.9 Permitted Enforcement: Hedge Counterparties**

- (a) To the extent it is able to do so under the relevant Hedging Agreement, a Hedge Counterparty may terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:
- (i) at the request of a Debtor provided that, in respect of a termination or close-out prior to the Credit Facilities Discharge Date, an Acceleration Event or an Insolvency Event has not occurred;
  - (ii) if a Distress Event has occurred;
  - (iii) if:
    - (A) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
      - I. an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
      - II. an event similar in meaning and effect to a Force Majeure Event (as defined in paragraph (B) below),has occurred in respect of that Hedging Agreement;
    - (B) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement) has occurred in respect of that Hedging Agreement; or
    - (C) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, any event similar in meaning and effect to an event described in paragraph (A) or (B) above has occurred under and in respect of that Hedging Agreement;
  - (iv) if an Event of Default has occurred under either clause 23.6 (Insolvency) or clause 23.7 (Insolvency proceedings) of the Original Credit Facilities Agreement or the equivalent provisions of any other Credit Facilities Documents, condition 11 of the Note Trust Deed or the equivalent provisions of any Additional Bond Document, in relation to a Debtor which is party to that Hedging Agreement;
  - (v) if the Majority Credit Facilities/Hedging Creditors and the Majority Pari Passu Bondholders give prior consent to that termination or close-out being made; or

- (vi) if:
  - (A) transactions have been entered into under Hedging Agreements (the **Relevant Hedging Transactions**) to hedge currency or interest rate risk in respect of the Credit Facilities, any Notes or any Additional Bonds (the **Relevant Hedged Debt**); and
  - (B) the Relevant Hedged Debt is repaid, prepaid or otherwise reduced (in whole or in part) in accordance with the Credit Facilities Documents or the Pari Passu Bond Documents (as applicable),

such that the proportion borne by the reduction in the notional amount of the Relevant Hedging Transactions to the aggregate notional amount of the Relevant Hedging Transactions immediately prior to such reduction is the same as the proportion borne by the amount of the prepayment or repayment to the aggregate amount of the Relevant Hedged Debt immediately prior to the prepayment or repayment.

- (b) If a Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default is continuing for more than 21 days (or such longer notice or grace period as the relevant Hedging Agreement allows) after notice of that default has been given to the relevant Debtor under that Hedging Agreement, with a copy to the Security Agent pursuant to paragraph (i) of Clause 19.3 (Notification of prescribed events), the relevant Hedge Counterparty:
  - (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and
  - (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.
- (c) After the occurrence of an Insolvency Event in relation to any Debtor, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that Debtor to:
  - (i) prematurely close-out or terminate any Hedging Liabilities of that Debtor in accordance with the terms of the relevant Hedging Agreement;
  - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that Debtor in respect of any Hedging Liabilities;
  - (iii) exercise any right of set-off as between Hedging Liabilities or take or receive any Payment in respect of any Hedging Liabilities of that Debtor; or
  - (iv) claim and prove in the liquidation of that Debtor for the Hedging Liabilities owing to it.

#### **4.10 Required Enforcement: Hedge Counterparties**

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
  - (i) the occurrence of an Acceleration Event and delivery to it of a notice from the Security Agent that that an Acceleration Event has occurred; and

- (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Majority Primary Creditors) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between a Debtor and any Primary Creditor with the purpose of bringing about that Acceleration Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under paragraph (b) of Clause 4.9 (Permitted Enforcement: Hedge Counterparties) (or would have been able to if that Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Security Agent (acting on the instructions of the Majority Primary Creditors).

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

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

#### **4.12 Terms of Hedging Agreements**

The Hedge Counterparties (to the extent party to the Hedging Agreement in question) and the Debtors party to the Hedging Agreements shall ensure that, at all times:

- (a) each Hedging Agreement documents only hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of **Hedging Agreement** and that no other hedging arrangements are carried out under or pursuant to a Hedging Agreement;
- (b) each Hedging Agreement is based either:
  - (i) on an ISDA Master Agreement; or
  - (ii) on another framework agreement which is similar in effect to an ISDA Master Agreement;
- (c) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of:
  - (i) a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement); or
  - (ii) an event similar in meaning and effect to either of those described in paragraph (i) above (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),

that Hedging Agreement will:

- (A) if it is based on a 1992 ISDA Master Agreement, provide for payments under the "Second Method" and will make no material amendment to section 6(e) (Payments on Early Termination) of the ISDA Master Agreement;
  - (B) if it is based on a 2002 ISDA Master Agreement, make no material amendment to the provisions of section 6(e) (Payments on Early Termination) of the ISDA Master Agreement; or
  - (C) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Agreement is in its favour;
- (d) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to Clause 4.10 (Required Enforcement: Hedge Counterparties); and
  - (e) each Hedging Agreement will permit the relevant Hedge Counterparty and each relevant Debtor to take such action as may be necessary to comply with Clause 4.13 (Total Interest Rate Hedged Amount and Total Exchange Rate Hedged Amount).

#### **4.13 Total Interest Rate Hedged Amount and Total Exchange Rate Hedged Amount**

- (a) The Borrower shall procure that, at all times:
  - (i) the Total Interest Rate Hedged Amount does not exceed the Permitted Maximum Interest Rate Hedged Amount; and
  - (ii) the Total Exchange Rate Hedged Amount does not exceed the Permitted Maximum Exchange Rate Hedged Amount.
- (b) Subject to paragraph (a) above, if:
  - (i) the Total Interest Rate Hedged Amount is less than the Permitted Maximum Interest Rate Hedged Amount, a Debtor may (but shall be under no obligation to) enter into additional hedging arrangements to increase the Total Interest Rate Hedged Amount; or
  - (ii) the Total Exchange Rate Hedged Amount is less than the Permitted Maximum Exchange Rate Hedged Amount, a Debtor may (but shall be under no obligation to) enter into additional hedging arrangements to increase the Total Exchange Rate Hedged Amount.

### **5. PARENT AND PARENT LIABILITIES**

#### **5.1 Restriction on Payment: Parent Liabilities**

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

- (a) that Payment is permitted under Clause 5.2 (Permitted Payments: Parent Liabilities); or

- (b) the taking or receipt of that Payment is permitted under Clause 5.6 (Permitted Enforcement: Parent).

## **5.2 Permitted Payments: Parent Liabilities**

The Borrower may make Payments in respect of the Parent Liabilities if:

- (a) the Payment is not prohibited by the Credit Facilities Documents or any Pari Passu Bond Document; or
- (b) (if the Payment is prohibited by any Credit Facilities Document or any Pari Passu Bond Document) the Creditor Representative(s) in respect of the applicable Credit Facilities Document or Pari Passu Bond Document consent to that Payment being made.

## **5.3 No acquisition of Parent Liabilities**

Prior to the Final Discharge Date, the Borrower 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 Liabilities, unless:

- (i) prior to the Credit Facilities/Hedging Discharge Date, the prior consent of the Majority Credit Facilities/Hedging Creditors and the Majority Pari Passu Bondholders is obtained; or
- (ii) on or after the Credit Facilities/Hedging Discharge Date, the consent of the Majority Pari Passu Bondholders is obtained.

## **5.4 Security: Parent Liabilities**

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

## **5.5 Non-Petition: Parent**

Prior to the Final Discharge Date, except as permitted in Clause 5.6 (Permitted Enforcement: Parent), the Parent shall not be entitled to:

- (a) initiate or join any person in initiating any Insolvency Proceedings in relation to the Borrower or the appointment of an Insolvency Official in relation to the Borrower or in relation to the whole or any substantial part of the undertaking or assets of the Borrower; or
- (b) take any Enforcement Action in respect of any of the Parent Liabilities; or
- (c) following a Distress Event, take any steps or proceedings that would result in any amount held by or on behalf of the Borrower being applied, or any of the Parent Liabilities being met, otherwise than in accordance with Clause 11 (Application of Proceeds) and each other provision in this Agreement relating to the application of funds.

## **5.6 Permitted Enforcement: Parent**

After the occurrence of an Insolvency Event in relation to the Borrower, the Parent may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of the Parent in accordance with Clause 6.4 (Filing of claims)), exercise any right it may otherwise have against the Borrower to:

- (a) accelerate any of the Borrower's Parent Liabilities or declare them prematurely due and payable or payable on demand;
- (b) exercise any right of set-off or take or receive any Payment in respect of any Parent Liabilities of the Borrower; or
- (c) claim and prove in the liquidation of the Borrower for the Parent Liabilities owing to it.

## **6. EFFECT OF INSOLVENCY EVENT**

### **6.1 Payment of distributions**

- (a) After the occurrence of an Insolvency Event in relation to a Debtor, any Party entitled to receive a distribution out of the assets of that Debtor in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that Debtor to pay that distribution to the Security Agent until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Security Agent shall apply distributions paid to it under paragraph (a) above in accordance with Clause 11 (Application of Proceeds).

### **6.2 Set-Off**

- (a) Subject to paragraph (b) below, to the extent any Debtor's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that Debtor, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 11 (Application of Proceeds).
- (b) Paragraph (a) above shall not apply to:
  - (i) any Close-Out Netting by a Hedge Counterparty;
  - (ii) any Payment Netting by a Hedge Counterparty; and
  - (iii) any Inter-Hedging Agreement Netting by a Hedge Counterparty.

### **6.3 Non-cash distributions**

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

### **6.4 Filing of claims**

After the occurrence of an Insolvency Event in relation to a Debtor, each Creditor irrevocably authorises the Security Agent (acting in accordance with Clause 6.6 (Security Agent instructions)), on its behalf, to:



- (a) take any Enforcement Action (in accordance with the terms of this Agreement) against that Debtor;
- (b) demand, sue, prove and give receipt for any or all of that Debtor's Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of that Debtor's Liabilities; and
- (d) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover that Debtor's Liabilities.

## **6.5 Creditors' actions**

Each Creditor will:

- (a) do all things that the Security Agent (acting in accordance with Clause 6.6 (Security Agent instructions)) requests in order to give effect to this Clause 6; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 6 or if the Security Agent (acting in accordance with Clause 6.6 (Security Agent instructions)) requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent (acting in accordance with Clause 6.6 (Security Agent instructions)) or grant a power of attorney to the Security Agent (on such terms as the Security Agent (acting in accordance with Clause 6.6 (Security Agent instructions)) may reasonably require) to enable the Security Agent to take such action.

## **6.6 Security Agent instructions**

For the purposes of Clause 6.4 (Filing of claims) and Clause 6.5 (Creditors' actions) the Security Agent:

- (a) shall act on the instructions of the Majority Primary Creditors; or
- (b) in the absence of any such instructions, may, but shall not be obliged to, take such action as it sees fit,

subject, in each case, as provided in this Agreement including, without limitation, Clause 12.5(e) (Security Agent's discretions).

## **7. TURNOVER OF RECEIPTS**

### **7.1 Turnover by the Creditors**

Subject to Clause 7.2 (Exclusions) and to Clause 7.3 (Permitted assurance and receipts), if at any time prior to the Final Discharge Date, any Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not either:
  - (i) a Permitted Payment; or
  - (ii) made in accordance with Clause 11 (Application of Proceeds);
- (b) other than where Clause 6.2 (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 Clause 6.2 (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 a member Debtor (other than after the occurrence of an Insolvency Event in respect of that Debtor); or
  - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,
 

other than, in each case, any amount received or recovered in accordance with Clause 11 (Application of Proceeds);
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 11 (Application of Proceeds); or
- (e) other than where Clause 6.2 (Set-Off) applies, any distribution in cash or in kind or Payment of, or on account of or in relation to, any of the Liabilities owed by a Debtor which is not in accordance with Clause 11 (Application of Proceeds) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that Debtor,

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 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; 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.

## 7.2 Exclusions

Clause 7.1 (Turnover by the Creditors ) shall not apply to any receipt or recovery by way of:

- (a) Close-Out Netting by a Hedge Counterparty;
- (b) Payment Netting by a Hedge Counterparty; or
- (c) Inter-Hedging Agreement Netting by a Hedge Counterparty.

## 7.3 Permitted assurance and receipts

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

(a) arrange with any person which is not a Debtor 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 15 (Changes to the Parties),

which:

(i) is permitted by:

(A) the Credit Facilities Agreements; and

(B) the Pari Passu Bond Documents; and

(ii) is not in breach of Clause 4.5 (No acquisition of Hedging Liabilities),

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

#### 7.4 Sums received by Debtors

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

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

(b) promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement.

#### 7.5 Saving provision

If, for any reason, any of the trusts expressed to be created in this Clause 7 (Turnover of Receipts) should fail or be unenforceable, the affected Creditor or Debtor will promptly pay an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

### 8. REDISTRIBUTION

#### 8.1 Recovering Creditor's rights

(a) Any amount paid by a Creditor or a Creditor Representative (a **Recovering Creditor**) to the Security Agent under Clause 6 (Effect of Insolvency Event) or Clause 7 (Turnover of Receipts) shall be treated as having been paid by the relevant Debtor and distributed to the Security Agent, Creditor Representatives, Credit Facilities Arrangers and Primary Creditors (each a **Sharing Creditor**) in accordance with the terms of this Agreement.

(b) On a distribution by the Security Agent under paragraph (a) above of a Payment received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid to the Security Agent (the **Shared Amount**) will be treated as not having been paid by that Debtor.

## 8.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor and is repaid by that Recovering Creditor to that Debtor, then:
- (i) each Sharing Creditor shall, upon request of the Security Agent, pay to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the **Redistributed Amount**); and
  - (ii) as between the relevant Debtor and each relevant Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Debtor.
- (b) The Security Agent shall not be obliged to pay any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

## 8.3 Deferral of Subrogation

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

## 9. ENFORCEMENT OF TRANSACTION SECURITY

### 9.1 Enforcement

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

### 9.2 Enforcement Instructions

- (a) The Security Agent shall, subject to Clause 12.5(e) (Security Agent's discretions), act or refrain from acting with respect to the enforcement of the Transaction Security in accordance with the instructions in writing of the Majority Primary Creditors.
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms, the Majority Primary Creditors may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit. In the event the Majority Primary Creditors refrain from giving instructions, the Security Agent shall be entitled to do nothing.
- (c) The Security Agent is entitled to rely on and comply with any instructions given in accordance with this Clause 9.2 (Enforcement Instructions), Clause 9.3 (Manner of enforcement) and Clause 9.4 (Exercise of voting rights).
- (d) Any instructions given in accordance with this Clause 9.2 (Enforcement Instructions) will be binding on all of the Secured Parties.

### **9.3 Manner of enforcement**

If the Transaction Security is being enforced pursuant to Clause 9.2 (Enforcement Instructions), the Security Agent shall, subject as provided in Clause 12.5(e) (Security Agent's discretions), enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator of any Debtor to be appointed by the Security Agent) as the Majority Primary Creditors shall instruct.

### **9.4 Exercise of voting rights**

- (a) Each Creditor agrees with the Security Agent that it will, or will procure that its Creditor Representative on its behalf (save where the relevant Pari Passu Bond Documents permit the relevant Pari Passu Bondholders (or a specified proportion thereof) to give directions to the Security Agent in relation to the enforcement of the Transaction Security) will, cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent but only where such vote relates to the enforcement of Transaction Security.
- (b) The Security Agent shall, subject as provided in Clause 12.5(e) (Security Agent's discretions), give instructions for the purposes of paragraph (a) of this Clause 9.4 (Exercise of voting rights) only as directed by the Majority Primary Creditors.

### **9.5 Waiver of rights**

To the extent permitted under applicable law and subject to Clause 9.2 (Enforcement Instructions), Clause 9.3 (Manner of enforcement), Clause 11 (Application of Proceeds) and paragraph (c) of Clause 10.2 (Distressed Disposals), 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 sum received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

### **9.6 Duties owed**

Each of the Secured Parties and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security prior to the Final Discharge Date, the duties of the Security Agent and of any Receiver or Delegate owed to the Note Creditors and the Additional Bond Creditors in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to paragraph (c) of Clause 10.2 (Distressed Disposals), 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.

## **10. PROCEEDS OF DISPOSALS**

### **10.1 Non-Distressed Disposals**

- (a) In this Clause 10.1:

**Disposal Proceeds** means the proceeds of a Non-Distressed Disposal (as defined in paragraph (b) below).

- (b) If, in respect of a disposal of:
  - (i) an asset by a Debtor; or

(ii) an asset which is subject to the Transaction Security,

to a person or persons outside the Group (other than the Parent):

- (A) (prior to the Credit Facilities Discharge Date) the relevant Credit Facilities Agents each notify the Security Agent such that disposal is permitted under the relevant Credit Facilities Documents;
- (B) (prior to the Note Discharge Date) the Borrower certifies to the Security Agent that such disposal is permitted under, or is not prohibited by, the Note Documents;
- (C) (prior to the Additional Bond Discharge Date) the Borrower certifies to the Security Agent that such disposal is permitted under, or is not prohibited by, the Additional Bond Documents; and
- (D) that disposal is not a Distressed Disposal,

**(a Non-Distressed Disposal),**

the Security Agent is irrevocably authorised and shall be obliged (at the cost of the Borrower and without any consent, sanction, authority or further confirmation from any Creditor or Debtor) but subject to paragraph (c) below:

- I. to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;
- II. where that asset consists of all of the issued shares in the capital of a Debtor, to release the Transaction Security or any other claim (relating to a Debt Document) over that Debtor's assets; and
- III. to execute and deliver or enter into any release of the Transaction Security 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,

provided that, in the case of a Non-Distressed Disposal made to another Debtor or within the Group, any Transaction Security granted by, or any other claim (relating to a Debt Document) relating to, the transferee will not be released and to the extent that replacement Transaction Security is required from the transferee under the terms of the Debt Documents, such Transaction Security will (subject to any requirements relating to the release, retaking, amendment or extension of the Transaction Security under the Debt Documents) be granted at the same time as (or before) the Non-Distressed Disposal is effected.

- (c) If that Non-Distressed Disposal is not made, each release of Transaction Security or any claim described in paragraph (b) above shall have no effect and the Transaction Security or claim subject to that release shall continue in such force and effect as if that release had not been effected.
- (d) If any Disposal Proceeds are required to be applied in mandatory prepayment of the Credit Facilities Liabilities and/or the Pari Passu Bond Liabilities then such Disposal Proceeds shall be applied in accordance with the relevant Debt Documents and the consent of any other Party shall not be required for that application.
- (e) The Credit Facilities Agent shall provide the certification listed in paragraph (b)(ii)(A) above as soon as reasonably practicable following notification from the Borrower and/or the Security Agent of the proposed disposal.

## 10.2 Distressed Disposals

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

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

(ii) *release of liabilities and Transaction Security on a share sale (Borrower)*: if the asset which is disposed of consists of shares in the capital of the Borrower or a Subsidiary of the Borrower (the Borrower or such Subsidiary being a **Relevant Company**), to release:

(A) that Relevant Company and any Subsidiary of that Relevant Company from all or any part of:

I. its Borrowing Liabilities; and

II. its Other Liabilities;

(B) any Transaction Security granted by that Relevant Company or any Subsidiary of that Relevant Company over any of its assets; and

(C) any other claim of the Parent over that Relevant Company's assets or over the assets of any Subsidiary of that Relevant Company,

on behalf of the Creditors and Debtors;

(iii) *disposal of liabilities on a share sale*: if the asset which is disposed of consists of shares in the capital of a Relevant Company and the Security Agent (acting in accordance with paragraph (d) below) decides to dispose of all or any part of:

(A) the Liabilities; or

(B) the Debtor Liabilities,

owed by that Relevant Company or any Subsidiary of that Relevant Company:

I. (if the Security Agent (acting in accordance with paragraph (d) below) does not intend that any transferee of those Liabilities or Debtor Liabilities (the **Transferee**) will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtor Liabilities **provided that** notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement; and

II. (if the Security Agent (acting in accordance with paragraph (d) below) does intend that any Transferee will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of:

(1) all (and not part only) of the Liabilities owed to the Primary Creditors; and

(2) all or part of any other Liabilities and the Debtor Liabilities,

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

(iv) *transfer of obligations in respect of liabilities on a share sale*: if the asset which is disposed of consists of shares in the capital of a Relevant Company (the **Disposed Entity**) and the Security Agent (acting in accordance with paragraph (d) below) decides to transfer to another Debtor (the **Receiving Entity**) all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of the Debtor Liabilities, to execute and deliver or enter into any agreement to:

(A) agree to the transfer of all or part of the obligations in respect of those Debtor Liabilities on behalf of the relevant Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and

(B) to accept the transfer of all or part of the obligations in respect of those Debtor Liabilities on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Debtor Liabilities are to be transferred.

(b) The net proceeds of each Distressed Disposal (and the net proceeds of any disposal of Liabilities or Debtor Liabilities pursuant to paragraph (a)(iii) above) shall be paid to the Security Agent for application in accordance with Clause 11 (Application of Proceeds) as if those proceeds were the proceeds of an enforcement of the Transaction Security and, to the extent that any disposal of Liabilities or Debtor Liabilities has occurred pursuant to paragraph (a)(iii)II above), as if that disposal of Liabilities or Debtor Liabilities had not occurred.

(c) In the case of a Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (a)(iii)II above) effected by or at the request of the Security Agent, the Security Agent shall act in accordance with paragraph (d) below).

(d) For the purposes of paragraphs (a)(ii), (a)(iii), (a)(iv) and (c) above, the Security Agent shall, subject as provided in Clause 12.5(e) (Security Agent's discretions) act:

(i) if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 9.3 (Manner of enforcement); and

(ii) in any other case, on the instructions in writing of the Majority Primary Creditors.

In the absence of any such instructions, the Security Agent may refrain from acting.

### 10.3 Creditors' and Debtors' actions

Each Creditor and Debtor will:

(a) do all things that the Security Agent requests in order to give effect to this Clause 10 (Proceeds of Disposals) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by this Clause 10); and

(b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 10 (Proceeds of Disposals) 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 10.1 (Non-Distressed Disposals) or Clause 10.2 (Distressed Disposals) as the case may be.

## **11. APPLICATION OF PROCEEDS**

### **11.1 Order of application**

Subject to Clause 11.2 (Prospective liabilities), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 11, the **Recoveries**) shall be held by the Security Agent on trust to apply them at any time (to the extent it is lawfully able to do so) (and subject to the provisions of this Clause 11 (Application of Proceeds)), in the following order of priority:

- (a) in discharging any sums owing to, or liabilities incurred by, the Security Agent, any Receiver or any Delegate;
- (b) in payment of all costs, expenses and liabilities incurred by any Creditor Representative or 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 this Agreement, including (without limitation) Clause 6.5 (Creditors' actions) or 10.3 (Creditors' and Debtors' actions);
- (c) in payment to:
  - (i) the Original Credit Facilities Agent on its own behalf and on behalf of the Original Credit Facilities Arrangers and the Original Credit Facilities Lenders;
  - (i) each Additional Credit Facilities Agent on its own behalf and on behalf of the relevant Credit Facilities Arrangers and the relevant Additional Credit Facilities Lenders under the applicable Additional Credit Facilities;
  - (ii) the Hedge Counterparties;
  - (iii) the Note Trustee on its own behalf and on behalf of the Noteholders; and
  - (iv) each Creditor Representative in relation to any Additional Bonds on its own behalf and on behalf of the relevant Additional Bondholders,

for application towards the discharge on a pro rata basis of:

- (A) the Credit Facilities Agent Liabilities and the Credit Facilities Arranger Liabilities in accordance with the terms of the relevant Credit Facilities Documents and on a pro rata basis;
- (B) the Original Credit Facilities Liabilities in accordance with the terms of the Original Credit Facilities Documents;
- (C) the Additional Credit Facilities Liabilities in accordance with the terms of the Additional Credit Facilities Documents and on a pro rata basis between the Additional Credit Facilities Liabilities arising pursuant to each Additional Credit Facilities Class;
- (D) the Hedging Liabilities (on a pro rata basis between the Hedging Liabilities of each Hedge Counterparty);

- (E) the Note Liabilities (in accordance with the terms of the Note Documents); and
  - (F) the Additional Bond Liabilities (in accordance with the terms of the relevant Additional Bond Documents and on a pro rata basis between Additional Bonds issued pursuant to different Additional Bond Documents);
- (d) if none of the Debtors is under any further actual or contingent liability under any Credit Facilities Documents, Hedging Agreement or Pari Passu Bond Documents, in payment to any person to whom the Security Agent is obliged to pay in priority to any Debtor; and
  - (e) the balance, if any, in payment to the relevant Debtor.

## **11.2 Prospective liabilities**

Following a Distress Event the Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under Clause 11.1 (Order of application) in respect of:

- (a) any sum owing to, or liability incurred by, any Security Agent, any Receiver or any Delegate; and
- (b) any part of the Liabilities, the Creditor Representative Liabilities or the Credit Facilities Arranger Liabilities,

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

## **11.3 Investment of proceeds**

Prior to the application of the proceeds of the Security Property in accordance with Clause 11.1 (Order of application) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this Clause 11.

## **11.4 Currency Conversion**

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at the Security Agent's Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

## **11.5 Permitted Deductions**

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

its capacity as Security Agent under any of the Debt Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

## **11.6 Good Discharge**

- (a) Any payment to be made in respect of the Secured Obligations by the Security Agent:
- (i) may be made to the relevant Creditor Representative on behalf of its Creditors; or
  - (ii) shall be made directly to the Hedge Counterparties,

and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.

- (b) The Security Agent is under no obligation to make the payments to the Agents or the Hedge Counterparties under paragraph (a) of this Clause 11.6 in the same currency as that in which the Liabilities owing to the relevant Creditor are denominated.

## **11.7 Calculation of Amounts**

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

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

## **12. THE SECURITY AGENT**

### **12.1 Trust**

- (a) The Security Agent declares that it shall hold the Security Property on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Each of the parties to this Agreement agrees that the Security Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Security Documents to which the Security Agent is expressed to be a party (and no others shall be implied). Those duties, obligations and responsibilities are solely of a mechanical and administrative nature.

### **12.2 No independent power**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Security Documents (other than the Credit Facilities Agreement, the Notes, the Note Trust Deed, the Additional Bonds and the trust deed in relation to any Additional Bonds) except through the Security Agent.

### 12.3 Instructions to Security Agent and exercise of discretion

- (a) Subject to paragraphs (e) and (g) below and subject as provided in Clause 12.5(e) (Security Agent's discretions), the Security Agent shall act in accordance with any instructions in writing given to it by the Majority Primary Creditors or, if so instructed in writing by the Majority Primary Creditors, refrain from exercising, any right, power, authority or discretion vested in it as Security Agent and shall be entitled to assume that (i) any instructions received by it from a Creditor Representative, the Creditors or a group of Creditors are duly given in accordance with the terms of the Debt Documents and (ii) unless it has received actual notice in writing of revocation, that those instructions have not been revoked.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Primary Creditors as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Security Agent may refrain from acting unless and until those instructions or clarification are received by it.
- (c) Notwithstanding any other provision of this Agreement, where the Security Agent is entitled or required to act in accordance with the instructions of a Creditor Representative it shall not be bound to enquire whether any requisite approval of any class of Creditors (or a majority of any such class) has been obtained under the relevant Debt Documents.
- (d) Save as provided in Clause 9 (Enforcement of Transaction Security), any instructions given to the Security Agent by the Majority Primary Creditors in accordance with Clause 9.2 (Enforcement Instructions) shall override any conflicting instructions given by any other Parties.
- (e) Prior to following any instructions from any Primary Creditor or a Creditor Representative, the Security Agent may (if it is reasonable in the opinion of the Security Agent for it to do so) request and rely upon an opinion of counsel or opinion of another qualified expert, at the expense of the Borrower.
- (f) Paragraph (a) above shall not apply:
  - (i) where this Agreement expressly provides otherwise;
  - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, the provisions set out in Clauses 12.5 (Security Agent's discretions) to Clause 12.20 (Disapplication);
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 11.2 (Prospective liabilities); and
    - (B) Clause 11.5 (Permitted Deductions).
- (g) If giving effect to instructions given by the Majority Primary 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 accordance with Clause 22 (Consents, Amendments and Override), in respect of that Intercreditor Amendment.

- (h) In exercising any discretion to exercise a right, power or authority under this Agreement where either:
- (i) it has not received any instructions from the Majority Primary Creditors as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to paragraph (f)(iv) above,

the Security Agent shall, if it chooses to exercise such discretion, do so having regard to the interests of all the Secured Parties.

#### **12.4 Security Agent's Actions**

Without prejudice to the provisions of Clause 9 (Enforcement of Transaction Security) and Clause 12.3 (Instructions to Security Agent and exercise of discretion), the Security Agent may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Debt Documents as it considers in its discretion to be appropriate.

#### **12.5 Security Agent's discretions**

The Security Agent may:

- (a) assume (unless it has received actual notice to the contrary from a Hedge Counterparty or from one of the Creditor Representatives) that (i) no Default has occurred and no Debtor is in breach of or default under its obligations under any of the Debt Documents and (ii) any right, power, authority or discretion vested by any Debt Document in any person has not been exercised;
- (b) if it receives any instructions or directions under Clause 9 (Enforcement of Transaction Security) to take any action in relation to the Transaction Security, assume that all applicable conditions under the Debt Documents for taking that action have been satisfied;
- (c) engage (at the cost of the Borrower) and rely on the advice or services of any legal advisers, accountants, tax advisers, surveyors or other experts (whether obtained by the Security Agent or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable;
- (d) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party, any Creditor or a Debtor, upon a certificate signed by or on behalf of that person; and
- (e) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Debt Documents) until it has received any indemnification and/or security and/or pre-payment that it may in its discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in so acting.

#### **12.6 Security Agent's obligations**

The Security Agent shall promptly:

- (a) copy to (i) each Creditor Representative and (ii) each Hedge Counterparty the contents of any notice or document received by it from any Debtor under any Debt Document;

- (b) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party **provided that**, except where a Debt Document expressly 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;
- (c) inform (i) each Creditor Representative and (ii) each Hedge Counterparty of the occurrence of any Default or any default by a Debtor in the due performance of or compliance with its obligations under any Debt Document of which the Security Agent has received notice in writing from any other party to this Agreement; and
- (d) to the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, and upon a request by that Party, notify that Party of the relevant Security Agent's Spot Rate of Exchange.

### **12.7 Excluded obligations**

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

- (a) be bound to enquire as to (i) whether or not any Default has occurred or (ii) the performance, default or any breach by a Debtor of its obligations under any of the Debt Documents;
- (b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty; or
- (d) have or be deemed to have any relationship of trust or agency with, any Debtor.

### **12.8 Exclusion of liability**

None of the Security Agent, any Receiver nor any Delegate shall accept responsibility or be liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;
- (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;
- (c) any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Debt Documents, the Security Property or otherwise, whether in accordance with an instruction from a Creditor Representative or a Hedge Counterparty or otherwise unless directly caused by its gross negligence or wilful misconduct;
- (d) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Debt Documents, the Security Property or any other

agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Debt Documents or the Security Property; or

- (e) any shortfall which arises on the enforcement or realisation of the Security Property.

### **12.9 No proceedings**

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

### **12.10 Own responsibility**

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

- (a) the financial condition, status and nature of each Debtor and of each other member of the Group;
- (b) the legality, validity, effectiveness, adequacy and 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 and/or completeness of any information provided by the Security Agent or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property,

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

### **12.11 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 a 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 of the Debt Documents 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 applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Debt Documents or of the Transaction Security;
- (d) take, or to require any of the Debtors to take, any steps 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 the laws of any jurisdiction; or
- (e) require any further assurances in relation to any of the Security Documents.

#### **12.12 Insurance by Security Agent**

- (a) The Security Agent shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Debt Documents. The Security Agent shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.
- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless a Creditor Representative or a Hedge Counterparty shall have requested it to do so in writing and the Security Agent shall have failed to do so within 14 days after receipt of that request.

#### **12.13 Custodians and nominees**

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets 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.

#### **12.14 Acceptance of title**

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

#### **12.15 Refrain from illegality**

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



#### **12.16 Business with the Debtors**

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

#### **12.17 Winding up of trust**

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

- (a) 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
- (b) any Retiring Security Agent shall release, without recourse or warranty, all of its rights under each of the Security Documents.

#### **12.18 Powers supplemental**

The rights, powers and discretions conferred upon the Security Agent by this Agreement shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by general law or otherwise.

#### **12.19 Trustee division separate**

- (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 of its other divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.

#### **12.20 Disapplication**

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 allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

### **13. THE PARI PASSU BOND TRUSTEES**

#### **13.1 Instructions to the Pari Passu Bond Trustees**

In acting under and in accordance with this Agreement, each Pari Passu Bond Trustee shall act in accordance with the provisions of the relevant Pari Passu Bond Documents and is entitled to seek instructions from the Pari Passu Bondholders at any time in accordance with the terms of the relevant Pari Passu Bond Documents and where it so acts on the instructions of the requisite proportion of the relevant Pari Passu Bondholders in accordance with the relevant Pari Passu Bond Documents, no Pari Passu Bond Trustee shall incur any liability to any person for so acting.

### **13.2 Capacity**

- (a) Each Pari Passu Bond Trustee enters into this Agreement solely in its capacity as trustee under each Pari Passu Bond Document to which it is a party and nothing in this Agreement shall impose on it any obligation to pay any amount out of its personal assets.
- (b) No Pari Passu Bond Trustee shall be charged with knowledge of existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless it has actual notice of the existence of those facts and that the payment is required or prohibited by this Agreement or the relevant Pari Passu Bond Documents.
- (c) Each Pari Passu Bond Trustee and each Pari Passu Bondholder agrees that each Pari Passu Bond Trustee shall act under this Agreement in accordance with the terms of the relevant Pari Passu Bond Documents.

### **13.3 Payments**

- (a) Notwithstanding any other provision of this Agreement, any obligation of a Pari Passu Bond Trustee to make any payment of any amount under this Agreement shall be only to make payment of such amount to the extent that (i) it has actual knowledge that such obligation has arisen and (ii) it has not distributed any such amount to Pari Passu Bondholders in accordance with any applicable Pari Passu Bond Documents.
- (b) Nothing in this Agreement shall prevent payment by the Borrower of Note Trustee Ordinary Course Amounts or Additional Bonds Creditor Representative Ordinary Course Amounts as and when the same are due and payable.

### **13.4 Indemnity**

No Creditor Representative shall have any obligation to take any action or to exercise any of its trusts, powers, authorities and discretions under this Agreement unless it is indemnified and/or secured and/or pre-funded to its satisfaction in respect of all costs, expenses and liabilities which it would in its opinion incur by taking that action.

### **13.5 Liability of the Pari Passu Bond Trustees**

- (a) No Pari Passu Bond Trustee shall owe any fiduciary duty to any Primary Creditor (except in respect of the persons for whom it acts as trustee under any relevant Pari Passu Bond Documents).
- (b) No Pari Passu Bond Trustee shall be:
  - (i) personally 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 a Pari Passu Bond Trustee in good faith in accordance with this Agreement or any Pari Passu Bond Document in a manner that a Pari Passu Bond Trustee believed to be within the scope of the authority conferred on it by this Agreement, by any Pari Passu Bond Document or by law (other than for its own gross negligence or wilful misconduct); or
  - (ii) personally liable for or on account of any statements, representations, warranties, covenants or obligations stated to be those of any other Party provided however, that a Pari Passu Bond Trustee (or any successor Pari Passu Bond Trustee) shall be liable under this Agreement for its own gross negligence or wilful misconduct,

and each other Party waives any such claims against each Pari Passu Bond Trustee.

- (c) No Pari Passu Bond Trustee shall have any responsibility for the actions of any Pari Passu Bondholder.
- (d) Each Pari Passu Bond Trustee has only those duties which are expressly specified in this Agreement or the relevant Pari Passu Bond Documents. Those duties set out in this Agreement are solely of a mechanical and administrative nature.

### **13.6 Creditors and each Pari Passu Bond Trustee**

No Pari Passu Bond Trustee is required to have any regard to the interests of the Credit Facilities/Hedging Creditors.

### **13.7 Each Pari Passu Bond Trustee; reliance and information**

- (a) A Pari Passu Bond Trustee may rely on any notice, consent or certificate given or granted by the Credit Facilities Agent or the Security Agent under this Agreement without being under any obligation to enquire or otherwise determine whether any such notice, consent or certificate has been validly given or granted by the Credit Facilities Agent or the Security Agent.
- (b) A Pari Passu Bond Trustee is entitled to assume that:
  - (i) any payment or other distribution made in respect of the Pari Passu Bond Liabilities has been made in accordance with the provisions of this Agreement;
  - (ii) the proceeds of enforcement of any security conferred by the Security Documents have been applied in the order set out in Clause 11 (Application of Proceeds);
  - (iii) no Event of Default has occurred; and
  - (iv) the Final Discharge Date has not occurred,

unless it has actual notice to the contrary. A Pari Passu Bond Trustee is not obliged to monitor or enquire whether any Default or Event of Default has occurred.

### **13.8 No Action**

A Pari Passu Bond Trustee is not required to indemnify any other person, whether or not a Party, in respect of any of the transactions contemplated by this Agreement. A Pari Passu Bond Trustee will have no obligation to monitor or check the performance or non-performance by the other Parties of their respective obligations under this Agreement.

### **13.9 Departmentalisation**

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

### **13.10 Reliance and information**

- (a) A Pari Passu Bond Trustee may:

- (i) rely and shall be fully protected in acting or refraining from acting upon any notice or other document reasonably believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person;
  - (ii) rely on any statement made by any person regarding any matters which may be assumed to be within his knowledge or within his powers to verify; and
  - (iii) engage and rely on professional advisers selected by it (including those representing a person other than a Pari Passu Bond Trustee).
- (b) Without affecting the responsibility of a Debtor for information supplied by it or on its behalf in connection with any Debt Document, each Primary Creditor (other than the relevant Pari Passu Bond Trustee) confirms that it has not relied exclusively on any information provided to it by the a Pari Passu Bond Trustee in connection with any Debt Document. A Pari Passu Bond Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

### **13.11 Other parties not affected**

This Clause 13 is intended to afford protection to each Pari Passu Bond Trustee only (and, in relation to Clause 13.4 (Indemnity), each other Creditor Representative). No provision of this Clause 13 shall:

- (a) alter or change the rights and obligations as between the other Parties; or
- (b) limit or otherwise alter any rights, obligations or liabilities (including provisions releasing a Pari Passu Bond Trustee from any liability) between the a Pari Passu Bond Trustee and a Pari Passu Bondholder as provided in any relevant Pari Passu Bond Documents.

### **13.12 Provisions survive termination**

The provisions of this Clause 13 shall survive any termination of this Agreement.

## **14. CHANGE OF SECURITY AGENT AND DELEGATION**

### **14.1 Resignation of the Security Agent**

- (a) The Security Agent may resign without giving any reason and without liability and appoint one of its affiliates as successor by giving notice to the Borrower, the Creditor Representatives and the Hedge Counterparties.
- (b) Alternatively the Security Agent may resign without giving any reason and without liability by giving notice to the other Parties in which case the Majority Primary Creditors may appoint a successor Security Agent.
- (c) If the Majority Primary Creditors have not appointed a successor Security Agent in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Agent (after consultation with the Creditor Representatives and the Hedge Counterparties) may appoint a successor Security Agent.
- (d) The retiring Security Agent (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.

- (e) The Security Agent's resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer of all of the Security Property 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 12.17 (Winding up of trust) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Agent, remain entitled to the benefit of Clauses 12 (The Security Agent), 18.1 (Borrower's indemnity) and 18.3 (Primary Creditors' indemnity). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Primary 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.

#### **14.2 Delegation**

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Debt Documents.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub-delegate.
- (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.

#### **14.3 Additional Security Agents**

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it (i) if it considers that appointment to be in the interests of the Secured Parties or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant or (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Agent shall give prior notice to the Parent, each of the Creditor Representatives and each of the Hedge Counterparties of that appointment.
- (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Agent by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable 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.

## **15. CHANGES TO THE PARTIES**

### **15.1 Assignments and transfers**

No Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities except as permitted by this Clause 15.

### **15.2 No change of Parent**

The Parent may not assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Parent Liabilities until after the Final Discharge Date other than as envisaged by Clause 5.3 (No acquisition of Parent Liabilities).

### **15.3 Accession of Credit Facilities Lenders, Creditor Representatives and Credit Facilities Arrangers**

- (a) In order for any credit facility (other than the Original Credit Facilities) to be a "Credit Facility " for the purposes of this Agreement:
- (i) each creditor in respect of that credit facility shall accede to this Agreement as a Credit Facilities Lender;
  - (ii) each arranger in respect of that credit facility shall accede to this Agreement as a Credit Facilities Arranger; and
  - (iii) the facility agent in respect of that credit facility shall accede to this Agreement as the Creditor Representative in relation to that credit facility pursuant to Clause 15.7 (Creditor/Creditor Representative Accession Undertaking).
- (b) A Credit Facilities Lender may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if:
- (i) that assignment or transfer is in accordance with the terms of the relevant Credit Facilities Agreement; and
  - (ii) subject to paragraph (c) below, any assignee or transferee has (if not already party to this Agreement as a Credit Facilities Lender) acceded to this Agreement, as a Credit Facilities Lender, pursuant to Clause 15.7 (Creditor/Creditor Representative Accession Undertaking).
- (c) Paragraph (b)(ii) above shall not apply in respect of any Debt Purchase Transaction permitted by clause 25.1 (Permitted Debt Purchase Transactions) of the Original Credit Facilities Agreement (or the equivalent provisions of any Additional Credit Facilities Agreement) entered into by the Credit Facilities Borrower and effected in accordance with the terms of the Debt Documents.
- (d) No creditor, (other than an Original Credit Facilities Lender) shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of this Agreement as a Credit Facilities Lender unless such creditor has acceded to this Agreement as a Credit Facilities Lender in accordance with paragraphs (a) or (b) above.

### **15.4 Accession of Additional Bondholders and Creditor Representatives**

- (a) In order for indebtedness in respect of any issuance of debt securities to constitute "Additional Bond Liabilities" for the purposes of this Agreement, the trustee in respect of those debt securities shall accede to this Agreement as the Additional Bondholder Agent and Creditor Representative in

relation to those Additional Bond Liabilities pursuant to Clause 15.7 (Creditor/Creditor Representative Accession Undertaking).

- (b) An Additional Bond Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if that assignment or transfer is in accordance with the terms of the relevant Additional Bond Documents.
- (c) No creditor shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of this Agreement as an Additional Bond Creditor unless the trustee in relation to the debt securities held by such creditor has acceded to this Agreement in accordance with paragraph (a) above.

#### **15.5 Change of Hedge Counterparty**

- (a) A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights and benefits or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already party to this Agreement as a Hedge Counterparty) acceded to this Agreement as a Hedge Counterparty pursuant to Clause 15.7 (Creditor/Creditor Representative Accession Undertaking).
- (b) No person shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to any Hedging Agreement as Hedge Counterparty unless it has acceded to this Agreement as a Hedge Counterparty.

#### **15.6 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 15.7 (Creditor/Creditor Representative Accession Undertaking).

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

#### **15.8 Additional parties**

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each Creditor/Agent 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.

- (b) The Borrower shall provide the Security Agent with copies (certified by a director of the Borrower to be true and complete) of each Debt Document as soon as reasonably practicable following execution.

## **16. ADDITIONAL INDEBTEDNESS**

### **16.1 Incurrence of additional indebtedness**

If the Borrower gives written notice to the Security Agent, the Creditor Representatives and the Hedge Counterparties that it intends to increase its Liabilities under any Credit Facilities Agreement and / or refinance any Credit Facilities Agreement with a Credit Facilities Agreement referred to in paragraph (b) of the definition thereof and / or create any Additional Credit Facilities Liability and / or issue any debt securities under which it will incur additional indebtedness (**Additional Indebtedness**) which is, under the terms of the Pari Passu Bond Documents and the Credit Facilities Documents, permitted to share in the Transaction Security, then the Parties will (at the cost of the Borrower) enter into such documentation as may be necessary to ensure that any obligations and liabilities incurred by the Borrower in respect of such Additional Indebtedness will have the ranking (and that the creditors under such Additional Indebtedness will have the rights and obligations) permitted to be conferred upon it in accordance with the Pari Passu Bond Documents and the Credit Facilities Documents (including, without limitation, the entry into a new intercreditor agreement on substantially the same terms as this Agreement) provided that such documentation does not adversely affect the interests of any of the Secured Creditors.

### **16.2 Authorisation of Creditor Representatives**

- (a) The Note Trustee is authorised to and shall enter into the documentation described in Clause 16.1 above on behalf of itself and the Noteholders and the same shall be binding for all purposes on the Noteholders.
- (b) Any Creditor Representative in relation to any Additional Bonds is authorised to and shall enter into the documentation described in Clause 16.1 above on behalf of itself and the relevant Additional Bondholders and the same shall be binding for all purposes on those Additional Bond Creditors.
- (c) If any Credit Facilities Lender fails to enter into the documentation described in Clause 16.1 above within 10 Business Days of being requested to do so by the Security Agent or the Borrower, the applicable Credit Facilities Agent is authorised to and shall (provided that the relevant Credit Facilities Lender has not notified the Credit Facilities Agent prior to such date that the entry into such documentation would be illegal for or contrary to any regulation with which the relevant Credit Facilities Lender is required to comply or customarily complies) enter into such documentation on such Credit Facilities Lender's behalf and the same shall be binding for all purposes on such Credit Facilities Lender.
- (d) For the avoidance of doubt, no consent or approval from a Creditor is required to enable a Creditor Representative to act pursuant to this Clause 16.2.

## **17. COSTS AND EXPENSES**

### **17.1 Security Agent's ongoing costs**

- (a) In the event of (i) a Default or (ii) the Security Agent considering it necessary or expedient or (iii) the Security Agent being requested by a Debtor or the Majority Primary Creditors to undertake duties which the Security Agent and the Borrower agree to be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under the Debt Documents, the Borrower shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them.



- (b) If the Security Agent and the Borrower fail to agree upon the nature of those duties or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrower 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 Borrower) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

## **17.2 Transaction expenses**

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

## **17.3 Stamp taxes**

The Borrower 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.

## **17.4 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 1 per cent. per annum over the rate at which the Security Agent was being offered, by leading banks in the London interbank market, on deposits in an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select.

## **17.5 Enforcement and preservation costs**

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

## **18. INDEMNITIES**

### **18.1 Borrower's indemnity**

The Borrower shall promptly (and in any event, within three Business Days of demand) 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:

- (a) in relation to or as a result of:

- (i) any failure by the Borrower to comply with obligations under Clause 17 (Costs and Expenses);
  - (ii) the taking, holding, protection or enforcement of the Transaction Security;
  - (iii) the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law; or
  - (iv) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents; or
- (b) which otherwise relates to any of the Security Property or the performance of the terms of this Agreement (otherwise than as a result of its gross negligence or wilful misconduct).

The Borrower expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 18.1 (Borrower's indemnity) will not be prejudiced by any release or disposal under Clause 10.2 (Distressed Disposals) taking into account the operation of that Clause 10.2.

## 18.2 Priority of indemnity

The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnities in Clauses 17 (Costs and expenses) and this Clause 18.1 (Borrower's indemnity) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

## 18.3 Primary Creditors' indemnity

- (a) Each Primary Creditor (other than any Creditor Representative) shall (in the proportion that the Liabilities due to it bears to the aggregate of the Liabilities due to all the Primary Creditors (other than the Creditor Representatives) for the time being (or, if the Liabilities due to each of those Primary Creditors is zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document) and the Borrower shall indemnify each Primary Creditor against any payment made by it under this Clause 18.
- (b) For the purposes only of paragraph (a) above, to the extent that any hedging transaction under a Hedging Agreement has not been terminated or closed-out, the Hedging Liabilities due to any Hedge Counterparty in respect of that hedging transaction will be deemed to be:
  - (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of those hedging transactions, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
  - (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early

Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

#### **18.4 Borrower's indemnity to Primary Creditors**

The Borrower shall promptly (and in any event, within three Business Days of demand) 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 10.2 (Distressed Disposals).

### **19. INFORMATION**

#### **19.1 Information and dealing**

- (a) The Creditors shall provide to the Security Agent from time to time (through their respective Creditor Representatives where applicable) any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as trustee.
- (b) Subject to clause 32.5 (Communication when Agent is Impaired Agent) of the Original Credit Facilities Agreement (or, following the Original Credit Facilities Discharge Date, any equivalent provision of the applicable Credit Facilities Agreement), each Credit Facilities Lender shall deal with the Security Agent exclusively through the Credit Facilities Agent and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through any agent.
- (c) No Creditor Representative shall be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.

#### **19.2 Disclosure**

Notwithstanding any agreement to the contrary, each of the Debtors consents, after the occurrence of an Event of Default which is continuing and until the Final Discharge Date, to the disclosure by any of the Primary Creditors, the Creditor Representatives, the Credit Facilities Arrangers and the Security Agent to each other (whether or not through a Creditor Representative or the Security Agent) of such information concerning the Debtors as any Primary Creditor, any Creditor Representative, any Credit Facilities Arranger or the Security Agent shall see fit provided that, prior to an Acceleration Event, such disclosure would not result in any Pari Passu Bondholder receiving any material non-public information.

#### **19.3 Notification of prescribed events**

- (a) If an Event of Default or a Default under a Credit Facilities Agreement either occurs or ceases to be continuing the relevant Credit Facilities Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Creditor Representative and each Hedge Counterparty.
- (b) If an Event of Default or a Default under the Note Documents either occurs or ceases to be continuing the Note Trustee shall, upon becoming aware of that occurrence or cessation, notify the

Security Agent and the Security Agent shall, upon receiving that notification, notify each other Creditor Representative and each Hedge Counterparty.

- (c) If an Event of Default or a Default either occurs or ceases to be continuing under the Additional Bond Documents the relevant Creditor Representative shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Creditor Representative and each Hedge Counterparty.
- (d) If a Credit Facilities Acceleration Event occurs the relevant Credit Facilities Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (e) If a Note Acceleration Event occurs the Note Trustee shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (f) If any Additional Bond Acceleration Event occurs, the relevant Creditor Representative shall, upon receiving that notification, notify each other Party.
- (g) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.
- (h) 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.
- (i) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.
- (j) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under Clause 4.9 (Permitted Enforcement: Hedge Counterparties) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.
- (k) If any of the Credit Facilities or the aggregate principal amount of Notes or the Additional Bonds outstanding are to be reduced (whether by way of repayment, prepayment, cancellation or otherwise), the Parent shall notify each Hedge Counterparty of:
  - (i) the date and amount of that proposed reduction;
  - (ii) any Interest Rate Hedge Excess that would result from that proposed reduction and that Hedge Counterparty's Interest Rate Hedge Proportion (if any) of that Interest Rate Hedge Excess; and
  - (iii) any Exchange Rate Hedge Excess that would result from that proposed reduction and that Hedge Counterparty's Exchange Rate Hedge Proportion (if any) of that Exchange Rate Hedge Excess.
- (l) If the Security Agent receives a notice under paragraph (a) of Clause 3.5 (Security and Guarantees) it shall upon receiving that notice, notify, and send a copy of that notice to, the Credit Facilities Agent.

## **20. NOTICES**

### **20.1 Communications in writing**

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

### **20.2 Security Agent's communications with Credit Facilities Lenders, Noteholders, Hedge Counterparties and Additional Bondholders**

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

- (a) with the Credit Facilities Lenders, the Credit Facilities Arrangers, the Noteholders and the Additional Bondholders through their respective Creditor Representatives and may give to the Creditor Representatives, as applicable, any notice or other communication required to be given by the Security Agent to a Credit Facilities Lender, Credit Facilities Arranger, Noteholder or Additional Bondholder; and
- (b) with each Hedge Counterparty directly with that Hedge Counterparty.

### **20.3 Addresses**

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

- (a) in the case of the Parent or the Borrower, 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, fax number or department or officer which that Party may notify to the Security Agent (or the Security Agent may notify to the other Parties, if a change is made by the Security Agent) by not less than five Business Days' notice.

### **20.4 Delivery**

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

and, if a particular department or officer is specified as part of its address details provided under Clause 20.3 (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 20.4 will be deemed to have been made or delivered to each of the Debtors.

#### **20.5 Notification of address and fax number**

Promptly upon receipt of notification of an address, email address and fax number or change of address, email address or fax number pursuant to Clause 20.3 (Addresses) or changing its own address or fax number, the Security Agent shall notify the other Parties.

#### **20.6 Electronic communication**

- (a) Any communication to be made between the Security Agent and a Creditor Representative, an Credit Facilities Arranger, a Credit Facilities Lender, a Hedge Counterparty, a Noteholder, an Additional Bondholder or a Debtor under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Security Agent and the relevant Creditor Representative, Credit Facilities Arranger, Credit Facilities Lender, Hedge Counterparty, Noteholder, Additional Bondholder or Debtor:
- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Security Agent and a Creditor Representative, a Credit Facilities Arranger, a Credit Facilities Lender, a Hedge Counterparty, a Noteholder, an Additional Bondholder or a Debtor will be effective only when actually received in readable form and in the case of any electronic communication made by a Credit Facilities Lender, Hedge Counterparty, Noteholder, Credit Facilities Arranger, Creditor Representative, Additional Bondholder or Debtor to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

#### **20.7 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.

### **21. PRESERVATION**

#### **21.1 Partial invalidity**

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

## **21.2 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.

## **21.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Agreement shall operate as a waiver or any such right or remedy, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## **21.4 Waiver of defences**

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 21.4, 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, a Debtor or other person;
- (b) the release of a Debtor or any other person under the terms of any composition or arrangement with any creditor of a Debtor;
- (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, a Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Debtor or 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.

## **21.5 Priorities not affected**

Except as otherwise provided in this Agreement the priorities referred to in Clause 1.4 (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 such Liabilities, amendment or variation to any of the

Debt Documents, or by any variation or satisfaction of, any of such 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.

## 21.6 Snooze/Lose

(a) In this Clause 21.6, a **Request** means:

- (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 Primary Creditors under the terms of this Agreement;
- (iii) a request to approve any other action under this Agreement; or
- (iv) a request to provide any confirmation or notification under this Agreement,

and, in each case, references to this Agreement shall include, but not be limited to, Clause 9 (Enforcement of Transaction Security) and Clause 22 (Consents, Amendments and Override).

(b) If in relation to a Request, any Hedge Counterparty or any Creditor Representative (for itself or on behalf of the Primary Creditors it represents) or, in accordance with paragraph (d) below, the Pari Passu Bondholders fail to respond to that Request within 20 Business Days of that Request being made:

- (i) in the case of a Request referred to in paragraphs (a)(i) to (iii) above, the Primary Credit Participations of that Hedge Counterparty or Creditor Representative, or of the Primary Creditors represented by that Creditor Representative, or of the relevant Pari Passu Bondholders shall be deemed to be zero for the purpose of calculating the Primary Credit Participations when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Primary Credit Participations has been obtained to give that Consent, carry that vote or approve that action;
- (ii) in the case of paragraphs (a)(i) to (iii) above, the status of that Hedge Counterparty or Creditor Representative, or of the Primary Creditors represented by that Creditor Representative, or of the relevant Pari Passu Bondholders as a Primary Creditor shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of Primary Creditors has been obtained to give that Consent, carry that vote or approve that action; and
- (iii) in the case of paragraph (a)(iv) above, that confirmation or notification shall be deemed to have been given.

(c) No Creditor Representative will be liable to any Primary Creditor it represents for any Consent given or deemed to be given if such Primary Creditor fails to provide that Creditor Representative with its instructions in relation to any Request in sufficient time to enable such Creditor Representative to respond to such Request within the time period specified in paragraph (b) above.



- (d) If the Creditor Representative in respect of any Pari Passu Bondholders fails to deliver an instruction to the Security Agent after having been instructed to do so by the relevant Pari Passu Bondholders in accordance with the terms and conditions of the applicable Pari Passu Bond Documents, the Security Agent will accept an instruction in writing directly from the relevant Pari Passu Bondholders provided that such instruction is provided in accordance with condition 13(c) of the Notes or the equivalent provision of any Additional Bond Document.

## **22. CONSENTS, AMENDMENTS AND OVERRIDE**

### **22.1 Required consents**

Subject to Clause 22.4 (Exceptions) and to Clause 22.5 (Disenfranchisement of Sponsor Affiliates), this Agreement may be amended or waived only with the consent of each Creditor Representative, the Security Agent and the Parent (except for any amendments to cure defects, resolve ambiguities or reflect changes of a minor, technical or administrative nature which amendments may be made by the Security Agent and the Debtors). To the extent that any amendment, waiver or consent affects the rights and obligations of certain Parties only (the Affected Parties) and could not reasonably be expected to be adverse to the interests of the other Parties, only the consent of the Affected Parties to such amendment, waiver or consent will be needed to agree to the amendment, waiver or consent.

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

- (a) Subject to paragraph (b) below and to Clause 22.4 (Exceptions) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Majority Primary Creditors, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.
- (b) Subject to paragraph (b) of Clause 22.4 (Exceptions), the prior consent of the Primary Creditors is required to authorise any amendment or waiver of, or consent under, any Transaction Security Document which would affect the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed.

### **22.3 Effectiveness**

Any amendment, waiver or consent given in accordance with this Clause 22 (Consents, Amendments and Override) will be binding on all Parties and the Security Agent may effect, on behalf of any Creditor Representative, Credit Facilities Arranger or Creditor, any amendment, waiver or consent permitted by this Clause 22 (Consents, Amendments and Override).

### **22.4 Exceptions**

- (a) Subject to paragraphs (b), to (d) below, an amendment, waiver or consent which relates to the rights or obligations of a Creditor Representative, a Credit Facilities Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the consent of that Creditor Representative or, as the case may be, that Credit Facilities Arranger, the Security Agent or that Hedge Counterparty.
- (b) Paragraph (b) of Clause 22.2 (Amendments and Waivers: Transaction Security Documents) shall not 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 10 (Proceeds of Disposals).

- (c) Paragraph (a) above shall apply to a Credit Facilities Arranger only to the extent that Credit Facilities Arranger Liabilities are then owed to that Credit Facilities Arranger.
- (d) Paragraph (b) of Clause 22.2 (Amendments and Waivers: Transaction Security Documents) shall not apply to any amendment of Clause 13 (The Pari Passu Bond Trustees) which could not reasonably be expected to be adverse to the interests of the other Parties, in respect of which only the consent of the Pari Passu Bond Trustees and the Security Agent to such amendment will be needed to agree to the amendment.

## **22.5 Disenfranchisement of Sponsor Affiliates**

- (a) For so long as a Sponsor Affiliate (i) beneficially owns a Credit Facilities Commitment or (ii) has entered into a sub-participation agreement relating to a Credit Facilities Commitment 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 Credit Facilities/Hedging Creditors; or

- (B) whether:

- I. any relevant percentage (including, for the avoidance of doubt, unanimity) of Credit Facilities/Hedging Participations; or

- II. 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 Commitment shall be deemed to be zero and, subject to paragraph (ii) below, that Sponsor Affiliate (or the person with whom it has entered into that sub-participation, other agreement or arrangement (a **Counterparty**)) shall be deemed not to be a Credit Facilities Lender.

- (ii) Paragraphs (i)(B)I and (i)(B)II above shall not apply to the extent that a Counterparty is a Credit Facilities Lender by virtue otherwise than by beneficially owning the relevant Credit Facilities Commitment.

- (b) Each Sponsor Affiliate that is a Credit Facilities Lender agrees that:

- (i) in relation to any meeting or conference call to which all the Credit Facilities/Hedging Creditors or all the 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.

## **22.6 Disenfranchisement of Defaulting Lenders**

- (a) For so long as a Defaulting Lender has any Available Commitment:

- (i) in ascertaining:
    - (A) the Majority Credit Facilities/Hedging Creditors; or
    - (B) whether:
      - I. any relevant percentage (including, for the avoidance of doubt, unanimity) of Credit Facilities/Hedging Participations; or
      - II. the agreement of any specified group of Primary Creditors,
- has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

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

(b) For the purposes of this Clause 22.6, the Security Agent may assume that the following Creditors are Defaulting Lenders:

- (i) any Credit Facilities Lender which has notified the Security Agent that it has become a Defaulting Lender;
- (ii) any Credit Facilities Lender to the extent that the Credit Facilities Agent has notified the Security Agent that that Credit Facilities Lender is a Defaulting Lender; and
- (iii) any Credit Facilities Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of **Defaulting Lender** in the Original Credit Facilities Agreement (or, after the Original Credit Facilities Discharge Date, the equivalent provisions of any other Credit Facilities Agreement) has occurred,

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

## 22.7 Calculation of Pari Passu Bond Participations

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

## 22.8 Deemed consent

If, at any time prior to the Final Discharge Date, the Credit Facilities Lenders, the Noteholders and the Pari Passu Creditors give a Consent in respect of the Credit Facilities Documents and the Pari Passu Bond Documents then, if that action was permitted by the terms of this Agreement, the Parent will (or will be deemed to):

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

- (b) do anything (including executing any document) that the Credit Facilities Lenders and the Pari Passu Bondholders may reasonably require to give effect to paragraph (a) of this Clause 22.8.

#### **22.9 Excluded consents**

Clause 22.8 (Deemed consent) does not apply to any Consent which has the effect of:

- (a) increasing or decreasing the Liabilities owed to the Parent;
- (b) changing the basis upon which any Permitted Payments owed to the Parent are calculated (including the timing, currency or amount of such Payments); or
- (c) changing the terms of this Agreement in a manner which adversely affects the ranking or priority of the Liabilities owed to the Parent.

#### **22.10 No liability**

None of the Credit Facilities Lenders, the Noteholders or the Creditor Representatives will be liable to any other Creditor, Creditor Representative or Debtor for any Consent given or deemed to be given under this Clause 22.

#### **22.11 Agreement to override**

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

### **23. 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.

### **24. GOVERNING LAW**

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

### **25. ENFORCEMENT**

#### **25.1 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a **Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 25.1 is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

**THIS AGREEMENT** has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Debtors and is intended to be and is delivered by them as a deed on the date specified above.

**SCHEDULE 1**

**FORM OF CREDITOR/CREDITOR REPRESENTATIVE ACCESSION UNDERTAKING**

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

From: *[Acceding Creditor/Creditor Representative]*

THIS UNDERTAKING is made on *[date]* by *[insert full name of new Credit Facilities Lender/Hedge Counterparty/Additional Bond Creditor/Credit Facilities Agent/Note Trustee]* (the **Acceding [Credit Facilities Lender/Hedge Counterparty/Additional Bond Creditor/Credit Facilities Agent/Note Trustee/Additional Bondholder Agent]**) in relation to the intercreditor agreement (the **Intercreditor Agreement**) dated [ ] between, among others, BAA (DSH) Limited as parent, BAA (SH) PLC as company, *[INSERT NAME OF SECURITY AGENT]* as security agent, *[INSERT NAME OF ORIGINAL CREDIT FACILITIES AGENT]* as Original Credit Facilities Agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding *[Credit Facilities Lender/Hedge Counterparty/Additional Bond Creditor/Credit Facilities Agent/Note Trustee/Additional Bondholder Agent]* being accepted as a *[Credit Facilities Lender/Hedge Counterparty/Additional Bond Creditor/Credit Facilities Agent/Note Trustee/Additional Bondholder Agent]* for the purposes of the Intercreditor Agreement, the Acceding *[Credit Facilities Lender/Hedge Counterparty/Additional Bond Creditor/Credit Facilities Agent/Note Trustee/Additional Bondholder Agent]* confirms that, as from *[date]*, it intends to be party to the Intercreditor Agreement as a *[Credit Facilities Lender/Hedge Counterparty/Additional Bond Creditor/Credit Facilities Agent/Note Trustee/Additional Bondholder Agent]* and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a *[Credit Facilities Lender/Hedge Counterparty/Additional Bond Creditor/Credit Facilities Agent/Note Trustee/Additional Bondholder Agent]* 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.

Acceding *[Creditor/Creditor Representative]*

**[EXECUTED as a DEED]**

*[insert full name of Acceding*

*Creditor/Creditor Representative]*

By:

Address:

Fax:

Accepted by the Security Agent

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

*[Insert full name of current Security Agent]*

Date:

**SIGNATORIES**

**The Debtors**

**The Parent**

**EXECUTED as a DEED**

**By BAA (DSH) LIMITED**

[Redacted Signature]

Signature of Director

[Redacted Name]

Name of Director

in the presence of

[Redacted Signature]

Signature of witness

[Redacted Name]

Name of witness

The Compass Centre

Address of witness

Nelson Road

Hounslow

Middlesex TW6 2GW

Solicitor

Occupation of witness

Address: The Compass Centre, Nelson Road,  
Hounslow, Middlesex, TW6 2GW

Fax: [Redacted]



**The Borrower**

**EXECUTED as a DEED**

By **BAA (SH) PLC**

[Redacted]

Signature of Director

[Redacted]

Name of Director

in the presence of

[Redacted]

Signature of witness

[Redacted]

Name of witness

The Compass Centre

Address of witness

Nelson Road

Hounslow

Middlesex TW6 2GW

Solicitor

Occupation of witness

Address: The Compass Centre, Nelson Road,  
Hounslow, Middlesex TW6 2GW

Fax: [Redacted]

**The Security Agent**

[Redacted]

By: [Redacted]

Address: [Redacted]

Fax: [Redacted]

Attention: [Redacted]

**The Original Credit Facilities Agent**

[Redacted]

By: [Redacted]

**The Note Trustee**

[Redacted]

By: [Redacted]

**The Original Credit Facilities Lenders**

[Redacted]

By: [Redacted]

[Redacted]

By: [Redacted]

[Redacted]

By: [Redacted]

[Redacted]

By: [Redacted]

[Redacted]

By: [Redacted]

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Authorised Officer

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Name of authorised person

[Redacted signature area]

Signature of authorised person

Authorised Officer

Office held

[Redacted name area]

Name of authorised person

[Redacted]

by

*sign here*

[Redacted]



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

*print name*

[Redacted]

*sign here*

[Redacted]



\_\_\_\_\_  
Director

*print name*

[Redacted]

**The Original Credit Facilities Arrangers**

[Redacted]

By:

[Redacted]

[Redacted]

By:

[Redacted]

[Redacted]

By:

[Redacted]

[Redacted]

By: [Redacted]

[Redacted]

By: [Redacted]

[Redacted]

By: [Redacted]

[Redacted]

By: [Redacted]