

Dated 27 October **2025**

Intercreditor Agreement

between

CELESTIA BIDCO LIMITED

as Company

CELESTIA HOLDCO LIMITED

as Parent

SHANGHAI PUDONG DEVELOPMENT BANK CO., LTD. SHANGHAI BRANCH
(上海浦东发展银行股份有限公司上海分行)

as Original Senior Agent

SHANGHAI PUDONG DEVELOPMENT BANK CO., LTD. SHANGHAI BRANCH
(上海浦东发展银行股份有限公司上海分行)

as Security Agent

and others

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This Agreement is dated 27 October 2025 and made
Between:

- (1) **CELESTIA BIDCO LIMITED**, an exempted company incorporated in the Cayman Islands with limited liability with registration number 424891 and having its registered office at the offices of Conyers Trust Company (Cayman) Limited, Cricket Square, Hutchins Drive, PO Box 2681, Grand Cayman, KY1-1111, Cayman Islands (the **Company**) as the original borrower under the Senior Facilities (the “**Company**” and an “**Original Debtor**”);
- (2) **CELESTIA HOLDCO LIMITED**, an exempted company incorporated in the Cayman Islands with limited liability with registration number 424898 and having its registered office at the offices of Conyers Trust Company (Cayman) Limited, Cricket Square, Hutchins Drive, PO Box 2681, Grand Cayman, KY1-1111, Cayman Islands (the “**Parent**”);
- (3) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Original Senior Arrangers (the “**Original Senior Arrangers**”);
- (4) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Original Senior Lenders (the “**Original Senior Lenders**”);
- (5) **SHANGHAI PUDONG DEVELOPMENT BANK CO., LTD. SHANGHAI BRANCH** (上海浦东发展银行股份有限公司上海分行), incorporated in the PRC with limited liability as agent under the Senior Facilities Agreement (the “**Original Senior Agent**”); and
- (6) **SHANGHAI PUDONG DEVELOPMENT BANK CO., LTD. SHANGHAI BRANCH** (上海浦东发展银行股份有限公司上海分行), incorporated in the PRC with limited liability as security agent 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 Senior Acceleration Event or a Senior Pari Passu Notes Acceleration Event.

“**Accounting Principles**”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; or

- (b) has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Additional Facility”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; or
- (b) has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Affiliate”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; or
- (b) has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Ancillary Document”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; or
- (b) has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Ancillary Facility”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; or
- (b) has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement.

“Ancillary Lender” means each Creditor (or an Affiliate of a Creditor) which makes an Ancillary Facility available pursuant to the terms of the Senior Facilities Agreement or each Senior Pari Passu Facilities Agreement as the context requires and which becomes a Party as an Ancillary Lender pursuant to Clause 16.7 (*New Ancillary Lender*).

“Ancillary Outstandings” means:

- (a) has the meaning given to that term in the Senior Facilities Agreement; or
- (b) has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement.

“Available Senior Commitments”:

- (a) has the meaning given to the term **“Available Commitment”** in the Senior Facilities Agreement; and

- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Borrowing Liabilities” means, in relation to a Group Member and the Parent, the liabilities (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor or Debtor (including, as the context so determines, any party that is to accede to this Agreement as a Creditor or Debtor pursuant to Clause 16 (*Changes to the Parties*)) in respect of Financial Indebtedness arising under the Debt Documents (including, as the context so determines, any new Financial Indebtedness incurred or to be incurred under any document or arrangement intended by the Company to be designated as a Debt Document subject to the provisions of Clause 14 (*New Debt Financings*) and any facility or commitment in relation thereto) (whether incurred solely or jointly and including, without limitation, liabilities as a Senior Borrower under and as defined in the Senior Finance Documents or as Senior Pari Passu Notes Issuer under the Senior Pari Passu Notes Finance Documents).

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in Beijing, Hong Kong, and the Cayman Islands and:

- (a) (in relation to any Transaction Security Document entered into by any Group Member or the Parent) the Relevant Jurisdiction (as defined in the Senior Facilities Agreement) of that Group Member or the Parent;
- (b) (in relation to any date for payment by a Senior Borrower or Senior Pari Passu Notes Issuer) in that Senior Borrower’s or Senior Pari Passu Notes Issuer’s jurisdiction of incorporation;
- (c) (in relation to any date for payment in US\$) New York City; and
- (d) (in relation to any date for payment or purchase of an Optional Currency (as defined in the Senior Facilities Agreement or a Senior Pari Passu Facilities Agreement)) any day specified as such in respect of that currency in the Additional Facility Notice (as defined in the Senior Facilities Agreement or the relevant Senior Pari Passu Facilities Agreement).

“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 Senior Hedging Agreement or a Senior Hedging Ancillary Document based on a 1992 ISDA Master Agreement, any step involved in determining the amount payable in respect of an Early Termination Date (as defined in the 1992 ISDA Master Agreement) under section 6(e) 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 Senior Hedging Agreement or a Senior Hedging Ancillary Document based on a 2002 ISDA Master Agreement, any step involved in

determining an Early Termination Amount (as defined in the 2002 ISDA Master Agreement) under section 6(e) of the 2002 ISDA Master Agreement; and

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

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

“Common Currency” means HKD or RMB, as the case may be.

“Common Currency Amount” means (a) in relation to any amount that is not denominated in the Common Currency, 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 or (b) in relation to any amount that is denominated in the Common Currency, that amount.

“Competitive Sales Process” means any auction or other competitive sales process conducted with the advice of a Financial Adviser as selected by the Security Agent (it being acknowledged that the Security Agent shall have no obligation to select or engage any Financial Adviser unless it shall have been indemnified and/or secured and/or prefunded to its satisfaction) in respect of which the Secured Parties are entitled to participate (other than where the Financial Adviser advises the Security Agent that such participation could prejudice that auction or competitive sales process).

For the purposes of this definition, **“entitled to participate”** shall be interpreted to mean:

- (a) that any offer, or indication of a potential offer, that a Secured Party makes shall be considered by those running the Competitive Sales Process against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder; and
- (b) any Secured Party that is considering making an offer in any Competitive Sales Process is provided with the same information, including any due diligence reports, and access to management that is being provided to any other bidder at the same stage of the process.

If, after having applied the same criteria referred to in paragraph (a) above, the offer or indication of a potential offer made by a Secured Party is not considered by those running the Competitive Sales Process to be sufficient to continue in the sales process, such consideration being against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder (such continuation may include being invited to review additional information or being invited to have an opportunity to make a subsequent or revised offer, whether in another round of bidding or otherwise), then the right of a Secured

Party (as applicable) under this Agreement to so participate shall be deemed to be satisfied.

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

“Credit-Specific Account”:

- (a) has the meaning given to that term in the Senior Facilities Agreement, including, for the avoidance of doubt, the Debt Service Reserve Account (as defined in the Senior Facilities Agreement); and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Credit-Specific Transaction Security”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

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

“Creditor/Creditor Representative Accession Undertaking” means:

- (a) an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor/Creditor Representative Accession Undertaking*);
- (b) a Transfer Certificate or an Assignment Agreement (or any substantially equivalent terms), in each case, as defined in the Senior Facilities Agreement and each other Senior Pari Passu Facilities Agreement, as the context requires;
- (c) an Increase Confirmation - Cancelled Commitments (or any substantially equivalent terms), in each case, as defined in the Senior Facilities Agreement and each other Senior Pari Passu Facilities Agreement, as the context requires; or
- (d) an Additional Facility Lender Accession Notice (or any substantially equivalent terms), in each case, as defined in the Senior Facilities Agreement and each other Senior Pari Passu Facilities Agreement, as the context requires,

as the context may require, (and *provided that* in the case of paragraphs (b) to (d) above, such document includes accession wording to this Agreement substantially in the form set out in the undertaking referred to in paragraph (a) above) or, in the case of an acceding Debtor which is expressed to accede as an Intra-Group Lender in the relevant Debtor Accession Deed, that Debtor Accession Deed.

“Creditors” means the Senior Primary Creditors, the Senior Agents, the Senior Arrangers, the Parent and the Intra-Group Lenders, as the context so determines.

“Debt Disposal” means any disposal of any Liabilities or Debtor Liabilities pursuant to paragraph (a)(iv) of Clause 11.2 (*Distressed Disposals*).

“Debt Document” means each of this Agreement, the Senior Primary Finance Documents, the Security Documents, any agreement evidencing the terms of the Parent Liabilities or the Intra-Group Liabilities and any other document designated as such by the Security Agent and the Company, as the context so determines.

“Debtor” means the Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 16 (*Changes to the Parties*).

“Debtor Accession Deed” means:

- (a) a deed substantially in the form set out in Schedule 1 (*Form of Debtor Accession Deed*); and
- (b) (only in the case of a Group Member or a Holding Company of a Group Member which is acceding as a borrower, a guarantor or a security provider under the Senior Facilities Agreement, any Senior Pari Passu Facilities Agreement or any new Senior Primary Finance Documents pursuant to paragraph (a)(iii) of Clause 14.1 (*New Debt Financings*)) an **“Accession Deed”** as defined in the Senior Facilities Agreement, any Senior Pari Passu Facilities Agreement and any such other Senior Primary Finance Document, as the context requires *provided that* such document includes wording for accession to this Agreement substantially in the form set out in the undertaking referred to in paragraph (a) above.

“Debtor Liabilities” means, in relation to a Group Member or the Parent, any Liabilities owed to any Debtor or the Parent (whether actual or contingent and whether incurred solely or jointly) by that Group Member or the Parent.

“Debtor Resignation Request” means a notice substantially in the form set out in Schedule 3 (*Form of Debtor Resignation Request*).

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

“Defaulting Senior Lender” means a Senior Lender which is a Defaulting Lender under, and as defined in, the Senior Facilities Agreement and each other Senior Pari Passu Facilities Agreement, as the context requires.

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

“Discharge Date” means a Final Discharge Date, a Senior Lender Discharge Date or a Senior Pari Passu Notes Discharge Date.

“Distressed Disposal” means a disposal of any Charged Property, which is:

- (a) being effected at the request of an Instructing Group in circumstances where the Transaction Security has become enforceable as a result of an Acceleration Event which was continuing at the time the request for enforcement was made;
- (b) being effected by enforcement of the Transaction Security as a result of an Acceleration Event which was continuing at the time the request for enforcement was made; or
- (c) being effected after the occurrence of a Distress Event, by a Debtor to a person or persons which is not a Group Member.

“Distress Event” means any of:

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

“Enforcement Action” means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Primary Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
 - (ii) the making of any declaration that any Liabilities are payable on demand;
 - (iii) the making of a demand for payment in relation to a Liability that is payable on demand;
 - (iv) the making of any demand against any Group Member or the Parent in relation to any Guarantee Liabilities of that Group Member or the Parent;
 - (v) the exercise of any right to require any Group Member or the Parent to acquire any Liability (including exercising any put or call option against any Group Member or the Parent for the redemption or purchase of any Liability but excluding any such right which arises as a result of clause 26 (*Debt Purchase Transactions*) of the Senior Facilities Agreement or any substantially equivalent provisions in any Senior Pari Passu Facilities Agreement or any the Senior Pari Passu Notes Finance Documents (as relevant) and excluding any mandatory offer arising as a result of a change of control or asset sale or escrow special mandatory redemption (howsoever described) as set out in a Senior Primary Finance Document);

- (vi) the exercise of any right of set-off, account combination or payment netting against any Group Member or the Parent in respect of any Liabilities other than the exercise of any such right:
 - (A) as Close-Out Netting by a Senior Hedge Counterparty or by a Senior Hedging Ancillary Lender;
 - (B) as Payment Netting by a Senior Hedge Counterparty or by a Senior Hedging Ancillary Lender;
 - (C) as Inter-Hedging Agreement Netting by a Senior Hedge Counterparty;
 - (D) as Inter-Hedging Ancillary Document Netting by a Senior Hedging Ancillary Lender; or
 - (E) which is otherwise expressly permitted under the Senior Primary Finance Documents to the extent that the exercise of that right gives effect to a Permitted Payment; and
- (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any Group Member or the Parent to recover any Liabilities;
- (b) the premature termination or close-out of any hedging transaction under any Senior Hedging Agreement save to the extent permitted by this Agreement;
- (c) the taking of any steps to enforce or require the enforcement of any Transaction Security as a result of an Acceleration Event which was continuing at the time the request for enforcement was made (including the crystallisation of any floating charge forming part of the Transaction Security);
- (d) the entering into of any composition, compromise, assignment or similar arrangement with any Group Member or the Parent 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 16 (*Changes to the Parties*) or any debt buy-backs pursuant to open market debt repurchases, tender offers or exchange offers entered into in accordance with the Senior Primary Finance Documents, and not undertaken as part of an announced restructuring or turnaround plan or while a Default was outstanding under the relevant Senior Primary Finance Document); or
- (e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator, judicial manager or similar officer) in relation to, the winding up, dissolution, administration, judicial management or reorganisation of any Group Member or the Parent which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such Group Member's or the Parent's assets or any suspension of payments or moratorium of any indebtedness of any such Group Member or the Parent, 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 paragraph (a)(vii) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods;
- (ii) any discussions or consultations between, or proposals made by, the Senior Primary Creditors with respect to instructions to enforce any Transaction Security;
- (iii) bringing legal proceedings against any person in connection with any securities violation, securities or listing regulations or common law fraud or to restrain any actual or putative breach of the Debt Documents or for specific performance with no claims for damages;
- (iv) a Secured Party bringing legal proceedings against any person solely for the purpose of:
 - (A) obtaining injunctive relief (or any analogous remedy outside Hong Kong) to restrain any actual or putative breach of any Debt Document to which it is a party;
 - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
 - (C) requesting judicial interpretation of any provision of any Debt Document to which it is a party with no claim for damages;
- (v) a demand made by the Parent or an Intra-Group Lender in relation to the Parent Liabilities or Intra-Group Liabilities to the extent:
 - (A) any resulting Payment would constitute a Permitted Parent Payment or a Permitted Intra-Group Payment, or
 - (B) any Parent Liability or Intra-Group Liability of a Group Member or the Parent are being released or discharged in consideration for the issue of shares in that Group Member *provided that* the ownership interest of that Group Member prior to such issue is not diluted as a result and *provided further that* (in any such case) in the event that the shares of such Group Member are subject to Transaction Security prior to such issue, then the percentage of shares in such Subsidiary subject to Transaction Security is not diluted; and
- (vi) an Ancillary Lender or Senior Hedge Counterparty bringing legal proceedings against any person solely for the purpose of:

- (A) obtaining injunctive relief (or any analogous remedy outside Hong Kong) 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;
- (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages; or
- (D) bringing legal proceedings against any person in connection with any securities violation, securities or listing relations or common law fraud or to restrain any actual or putative breach of the Senior Primary Finance Documents or for specific performance with no claims for damages.

“Event of Default” means any event or circumstance specified as such in the relevant Senior Primary Finance Document.

“Exposure” has the meaning given to that term in Clause 13.1 (*Equalisation Definitions*).

“Fairness Opinion” means, in respect of a Distressed Disposal or a Debt Disposal, an opinion from a reputable, independent and internationally recognised investment bank, firm of accounts or third party professional firm which is regularly engaged in issuing such opinions that the proceeds received or recovered in connection with that Distressed Disposal or Debt Disposal are fair from a financial point of view taking into account all relevant circumstances including, without limitation, the method of enforcement or disposal.

“Final Discharge Date” means the first date on which all Senior Primary Liabilities have been fully and finally discharged to the satisfaction of each applicable Senior Agent (in the case of the Senior Lender Liabilities), each applicable Senior Pari Passu Notes Trustee (in the case of the Senior Pari Passu Notes Liabilities) and each applicable Senior Hedge Counterparty (in the case of its Senior Hedging Liabilities), whether or not as the result of an enforcement, and the Senior Primary Creditors (in that capacity) are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

“Finance Documents” means each of the Senior Facilities Agreement, any Senior Pari Passu Facilities Agreement or any Senior Pari Passu Notes Indenture and any “Finance Documents” as defined therein.

“Financial Adviser” means any:

- (a) independent, reputable, internationally recognised investment bank;
- (b) independent, reputable, internationally recognised accountancy firm; or
- (c) (if all such banks or firms of accountants are subject to conflicting and client or potential client issues and are unable to act in relation to the relevant matter) an independent, reputable, internationally recognised, third-party professional

services firm which is regularly engaged in providing valuations of businesses or financial assets similar or comparable to those subject to the relevant Transaction Security or, where applicable, advising on competitive sales processes,

and, in each case, not being a firm appointed or selected as auditors or as administrator or other relevant officer of the applicable Obligor or Debtor.

“Financial Indebtedness”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Gross Outstandings” means, in relation to a Multi-account Overdraft Facility, the Ancillary Outstandings of that Multi-account Overdraft Facility but calculated on the basis that the words “(net of any Available Credit Balance)” in the meaning referred to in paragraph (a) of the definition of “Ancillary Outstandings” were deleted.

“Group” and “Group Member”:

- (a) (at any time on or prior to the Senior Lender Discharge Date) has the meaning given to those terms in the Senior Facilities Agreement; and
- (b) (at any time after the Senior Lender Discharge Date) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement.

“Guarantee Liabilities” means, in relation to a Group Member or the Parent, the liabilities under the Debt Documents (including, as the context so determines, any new indebtedness incurred or to be incurred under any document or arrangement intended by the Company to be designated as a Debt Document subject to the provisions of Clause 14 (*New Debt Financings*) and any facility or commitment in relation thereto) (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor or Debtor (including, as the context so determines, any party that is to accede to this Agreement as a Creditor or Debtor pursuant to Clause 16 (*Changes to the Parties*)) as or as a result of it being a guarantor or surety including, without limitation, liabilities arising by way of guarantee, indemnity, surety, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Senior Finance Documents or the Senior Pari Passu Notes Finance Documents (as the context requires).

“Guarantee Limitations” means in respect of a Debtor and any payments it is required to make in respect of its Guarantee Liabilities under the Debt Documents the limitations and restrictions applicable to such entity on making any payment in respect of its Guarantee Liabilities as set out in any Senior Primary Finance Document.

“Holding Company”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Insolvency Event” means, in relation to any Material Company, the Parent or a Debtor:

- (a) it is unable or admits inability to pay its debts as they fall due (excluding, for this purpose, where the value of its balance sheet liabilities exceed the value of its balance sheet assets), suspends or threatens to suspend making payments on its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (other than any Senior Primary Creditor) with a view to a general rescheduling of its indebtedness;
- (b) a moratorium is declared in respect of any indebtedness of the Parent, any Material Company or a Debtor; or
- (c) any corporate action, legal proceedings or other formal procedure or formal step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, striking-off, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Parent, any Material Company or a Debtor;
 - (ii) a composition, compromise, assignment or arrangement by the Parent, any Material Company or a Debtor with its creditors; or
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, judicial manager, compulsory manager, restructuring officer or other similar officer in respect of the Parent, any Material Company or a Debtor or any of their respective material assets,

or any analogous procedure or step is taken in any jurisdiction, *provided that* this sub-paragraph shall not apply to:

- (i) any corporate action, legal proceedings or other procedure which is frivolous or vexatious, or is being contested in good faith, and (in each case) is discharged, stayed or dismissed within 30 Business Days of commencement or, if earlier, the date on which it is advertised (or such other period as agreed between the Company and the Instructing Group);
- (ii) (in the case of an application to appoint an administrator or commence proceedings) any proceedings which the Security Agent is satisfied (acting on the instructions of the Instructing Group) will be withdrawn before it is heard or will be unsuccessful; or
- (iii) any action, proceedings, step or procedure which relates to or constitutes a Permitted Transaction (as defined in the Senior Facilities Agreement).

“Instructing Group” means:

- (a) the Super Majority Senior Primary Creditors;
- (b) in relation to instructions as to enforcement of any Credit-Specific Transaction Security, the group of Senior Creditors entitled to give instructions as to enforcement of that Credit-Specific Transaction Security in accordance with which the Security Agent is obliged to act under paragraph (a) of Clause 10.1 (*Enforcement Instructions*),

provided that in each case, in respect of the Senior Primary Credit Participations relating to the Senior Facilities Agreement or another particular Senior Primary Finance Document (as the case may be), if the consent of the proportion of the Senior Lenders or the proportion of such other Senior Primary Creditors (as the case may be) required under and in accordance with the Senior Facilities Agreement or such other Senior Primary Finance Document (as the case may be) in respect of the relevant decision or request for consent is obtained (or the applicable threshold is reached) in relation to a particular decision or request for consent (and if the relevant Senior Primary Finance Documents do not specify a voting threshold for a particular matter, the threshold will be a simple majority of the outstanding principal amount of all Senior Primary Creditors thereunder), all of the Senior Lenders or all such other Senior Primary Creditors (as the case may be) in respect of the Senior Facilities Agreement or such other Senior Primary Finance Document (as the case may be) shall be deemed to have given their consent to that decision or request for consent.

“Intercreditor Amendment” means any amendment or waiver which is subject to Clause 22 (*Consents, amendments and override*).

“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 Senior Hedge Counterparty against liabilities owed to a Debtor by that Senior Hedge Counterparty under a Senior Hedging Agreement in respect of Senior Hedging Liabilities owed to that Senior Hedge Counterparty by that Debtor under another Senior Hedging Agreement.

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

“Intra-Group Lenders” means each Group Member which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another Group Member and which is required to become, or otherwise becomes, a party as an Intra-Group Lender in accordance with the terms of Clause 16 (*Changes to the Parties*).

“Intra-Group Liabilities” means the Liabilities owed by any Group Member to any of the Intra-Group Lenders (but not including, for the avoidance of doubt, any Parent Liabilities).

“Investor Affiliates”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in any other Finance Document,

as the context requires.

“Investors”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; and
- (b) has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in any other Finance Document,

as the context requires.

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

“Legal Reservations”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Liabilities” means all present and future liabilities and obligations at any time of any Group Member or the Parent to any Creditor under the Debt Documents (including by way of the grant of Security under such 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 any Debtor or the Parent 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.

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

“Majority Senior Lenders” has the meaning given to the term **“Majority Lenders”** (or any substantially equivalent term) in the Senior Facilities Agreement and each other Senior Pari Passu Facilities Agreement, as the context requires after the application of:

- (a) clause 26 (*Debt Purchase Transactions*); and
- (b) clause 37.8 (*Disenfranchisement of Conflicted Lenders, Defaulting Lenders and Non- Responding Lenders*),

of the Senior Facilities Agreement or any substantially equivalent provisions in a Senior Pari Passu Facilities Agreement, as the context requires.

“Majority Senior Pari Passu Noteholders” means, at any time, those Senior Pari Passu Noteholders whose Senior Primary Credit Participations under paragraph (b) of the definition thereof at that time aggregate more than 50 per cent. of the total Senior Primary Credit Participations under paragraph (b) of the definition thereof at that time.

“Majority Senior Primary Creditors” means those Senior Primary Creditors whose Senior Primary Credit Participations at that time aggregate more than 50 per cent. of the total Senior Primary Credit Participations at that time.

“Mandatory Prepayment” means a Senior Mandatory Prepayment or a Senior Pari Passu Notes Mandatory Prepayment or any similar or other mandatory prepayment of any other Liabilities required pursuant to any of the Debt Documents.

“Material Adverse Effect” has the meaning given to that term in the Senior Facilities Agreement whether or not the Senior Lender Discharge Date has occurred.

“Material Company” has the meaning given to that term in the Senior Facilities Agreement whether or not the Senior Lender Discharge Date has occurred.

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

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

“Net Outstandings” has the meaning given to that term in the Senior Facilities Agreement.

“New Debt Financing” means any existing, additional, supplemental, incremental or new financing, guarantee or debt arrangement and related security including, without limitation, by way of refinancing, replacement, exchange, set-off, discharge or increase of any new, existing, additional or supplemental financing, guarantee or debt arrangement under a Debt Document (in each case, whether or not in existence at the time of any accessions to this Agreement in respect thereof and including arrangements existing at the time a person becomes a Group Member (whether by acquisition, merger, consolidation or combination) or is assumed in connection with the acquisition of assets, merger, consolidation or combination or otherwise); including by way of any loan, note (including senior or second lien secured, senior unsecured, senior subordinated or subordinated notes, whether in each case in a public or private offering, Rule 144A or other offering), bond or otherwise (including, in each case, term or revolving, any overdraft, hedging, derivative or other ancillary facility or arrangement), issued or incurred, made available or committed and together with any guarantee, security or other credit support by any Group Member or the Parent.

“Non-Credit Related Close-Out” means a Permitted Senior Hedge Close-Out described in any of paragraph (a)(i), (a)(iii), (a)(v) or (a)(vi) of Clause 4.9 (*Permitted Enforcement: Senior Hedge Counterparties*).

“Non-Distressed Disposal” has the meaning given to that term in Clause 11.1 (*Non-Distressed Disposals*).

“Obligor”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

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

“Parent Liabilities” means all present and future liabilities and obligations, whether actual or contingent and whether incurred solely or jointly, of any Debtor to the Parent under any Parent Loan Documents.

“Parent Loan Documents” means any document or intercompany account pursuant to which any Financial Indebtedness is owing from any Debtor to the Parent.

“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, repurchase, defeasance or discharge of those Liabilities (or other liabilities or obligations).

“Payment Netting” means:

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

“Perfection Requirements”:

- (a) has the meaning given to that term in the Senior Facilities Agreement; and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement.

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

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

“Permitted Payment” means a Permitted Senior Hedge Payment, a Permitted Intra-Group Payment, a Permitted Senior Primary Credit Payment or a Permitted Parent Payment.

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

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

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

“PRC” means the People’s Republic of China which, for the purpose of this Agreement, does not include Hong Kong Special Administrative Region, Macau Special Administrative Region or Taiwan.

“Prior Ranking Financing Agreements” means (when used in relation to Parent Liabilities or Intra-Group Liabilities) the Senior Facilities Agreement, any Senior Pari Passu Facilities Agreement and any Senior Pari Passu Notes Indenture.

“Receiver” means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property, as the context may require.

“Recoveries” has the meaning given to that term in Clause 12.1 (*Order of application*).

“Relevant Document” has the meaning given to that term in Clause 14.3 (*Further assurance*).

“Relevant Liabilities” means:

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

“Required Creditor Consent” means, in relation to any proposed matter, step or action taken (the **“Senior Primary Proposed Action”**), the prior consent of:

- (a) if the Senior Primary Proposed Action is prohibited by the terms of the Senior Facilities Agreement or any Senior Pari Passu Facilities Agreement, the requisite Senior Lenders under the relevant agreement; and
- (b) if any Senior Pari Passu Notes are outstanding and the Senior Primary Proposed Action is prohibited by the terms of any Senior Pari Passu Notes Indenture, the relevant Senior Pari Passu Notes Trustee acting on behalf of the requisite Senior Pari Passu Noteholders under the relevant Senior Pari Passu Notes Indenture.

“Retiring Security Agent” has the meaning given to that term in of Clause 15.13(d) (*Resignation of the Security Agent*).

“Secured Liabilities” means all Liabilities and all other present and future obligations at any time due, owing or incurred by any Group Member or Debtor or the Parent to any Secured Party under the Senior Primary Finance 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, each of the Senior Agents, any Receiver or Delegate, the Senior Arrangers and the Senior Primary Creditors from time to time but, in the case of each Senior Agent, Senior Arrangers or any Senior Primary Creditor, only if it is a party to this Agreement or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 16.9 (*Creditor/Creditor Representative Accession Undertaking*).

“Security” means a mortgage, charge, pledge, lien, security assignment, security transfer of title 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 a currency other than the Common Currency, the Security Agent’s spot rate of exchange for the purchase of the relevant currency with the Common Currency in the PRC interbank foreign exchange market or other relevant foreign exchange market (or, if the Security Agent’s spot rate of exchange is not available, such other prevailing rate of exchange as may be selected by the Senior Agent in agreement with the Company) at or about 11:00 a.m. (local time) on a particular day, which shall be notified by the Security Agent in accordance with paragraph (e) of Clause 15.5 (*Duties of the Security Agent*).

“Security Documents” means:

- (a) each of the Transaction Security Documents;
- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured Liabilities; 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 Principles”:

- (a) has the meaning given the term **“Security Principles”** in the Senior Facilities Agreement; or
- (b) has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Security Property” means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as agent or trustee for the Secured Parties for the benefit of 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 agent or 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 agent or trustee for (or otherwise for the benefit of) the Secured Parties;
- (c) the Security Agent's interest in any trust fund created pursuant to Clause 8 (*Turnover of receipts*); and
- (d) any other amounts or property, whether rights, entitlements, chooses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for (or otherwise for the benefit of) the Secured Parties.

“Senior Acceleration Event”:

- (a) has the meaning given to the term “**Acceleration Event**” in the Senior Facilities Agreement; and/or
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Senior Agent” means:

- (a) the Original Senior Agent and any other agent under and as defined in the Senior Facilities Agreement; and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in any Senior Pari Passu Facilities Agreement; or

as the context requires, which is an original party to this Agreement or has acceded to this Agreement as a Senior Agent of those Senior Lenders pursuant to Clause 16.10 (*Accession of Senior Lenders under*).

“Senior Agent Liabilities” means all present and future liabilities and obligations, whether actual or contingent and whether incurred solely or jointly, of any Debtor to any Senior Agent under the Senior Primary Finance Documents, including (without double-counting), any Senior Pari Passu Notes Trustee Amounts.

“Senior Arranger”:

- (a) the Original Senior Arrangers; and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires, which is an original party to this Agreement or has acceded to this Agreement as a Senior Arranger pursuant to Clause 16.10 (*Accession of Senior Lenders under*).

“Senior Arranger Liabilities” means all present and future liabilities and obligations, whether actual or contingent and whether incurred solely or jointly, of any Debtor owed to any Senior Arranger under or in connection with the Senior Finance Documents.

“Senior Borrower”:

- (a) has the meaning given to the term **“Borrower”** in the Senior Facilities Agreement; and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Senior Commitment”:

- (a) has the meaning given to the term **“Commitment”** in the Senior Facilities Agreement; and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

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

- (a) its aggregate (drawn and undrawn) Senior Commitments, if any;
- (b) in respect of any hedging transaction of that Senior Creditor under any Senior 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 Senior Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Senior Creditor and as calculated in accordance with the relevant Senior Hedging Agreement); and
- (c) (solely to the extent the Senior Lender Discharge Date has occurred) in respect of any hedging transaction of that Senior Hedge Counterparty under any Senior Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out:
 - (i) if the relevant Senior Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Senior 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 Senior Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Senior 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 Senior Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Senior Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Senior Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

“Senior Creditors” means the Senior Lenders and the Senior Hedge Counterparties.

“Senior Debt Purchase Transaction”:

- (a) has the meaning given to the term **“Debt Purchase Transaction”** in the Senior Facilities Agreement as if the reference to **“Commitment”** was a reference to **“Liabilities”** and the reference to **“this Agreement”** was a reference to **“any Senior Primary Finance Document”** and, for the avoidance of doubt includes the Liabilities referred to Clause 4.5 (*No acquisition of Senior Hedging Liabilities*); and
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Finance Document,

as the context requires.

“Senior Default” means a Default under the Senior Facilities Agreement and/or a Senior Pari Passu Facilities Agreement, as the context requires.

“Senior Event of Default”:

- (a) has the meaning given to the term **“Event of Default”** in the Senior Facilities Agreement; and/or
- (b) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Senior Facilities”:

- (a) has the meaning given to the term **“Facilities”** in the Senior Facilities Agreement; or
- (b) has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Senior Facilities Agreement” means the senior facilities agreement made between, among others, the Company and the Original Senior Agent on or about the date of this Agreement.

“Senior Facilities Guarantors” means any guarantor under the Senior Finance Documents.

“Senior Finance Documents” means:

- (a) those documents referred to in the definition of **“Finance Documents”** in the Senior Facilities Agreement; and
- (b) any documents referred to in a substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Senior Finance Party” means:

- (a) each party referred to in the definition of **“Finance Party”** in the Senior Facilities Agreement; and
- (b) any party referred to in a substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Senior Hedge Counterparty”:

- (a) has the meaning given to **“Hedge Counterparty”** in the Senior Facilities Agreement; and
- (b) includes any substantially equivalent provision to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires, and which is either an original party to this Agreement or has acceded to this Agreement as a Senior Hedge Counterparty pursuant to Clause 16.9 (*Creditor/Creditor Representative Accession Undertaking*).

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

“Senior Hedge Transfer” means a transfer of each Senior Hedging Agreement together with:

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

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

in accordance with Clause 16.3 (*Accession or change of Senior Hedge Counterparty*) as described in and subject to Clause 3.9 (*Senior Hedge Transfer: Senior Primary Creditors*).

“Senior Hedging Agreement” means, to the extent designated as such by the Company (in its discretion) and the relevant Senior Hedge Counterparty by notice to the Security Agent, any agreement entered into or to be entered into by a Debtor (or Group Member that is to become a Debtor) and a Senior Hedge Counterparty in relation to a derivative or hedging arrangement entered into (or which has or will be allocated) for the purpose of hedging interest rate or exchange rate risk that the Company confirms in writing to the Senior Primary Creditors at the time at which the relevant agreement is entered into (a) is in respect of any Senior Lender Liabilities and (b) that such entry is not prohibited by the terms of the Senior Primary Finance Documents.

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

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

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

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

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

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

(or the equivalent thereto in the case of any Senior Hedging Agreement not based on an ISDA Master Agreement), in each case as certified by the relevant Senior Hedge Counterparty and as calculated in accordance with the relevant Senior Hedging Agreement.

“Senior Lender Discharge Date” means the first date on which all Senior Lender Liabilities have been fully and finally discharged to the satisfaction of each Senior Agent, whether or not as the result of an enforcement, and the Senior Lenders (in that capacity) are under no further obligation to provide financial accommodation to any of the Debtors under any of the Debt Documents.

“Senior Lender Liabilities” means the Liabilities owed by the Debtors to the Senior Lenders under or in connection with the Senior Finance Documents including, for the avoidance of doubt, any such liabilities in connection with any Additional Facility incurred under any Senior Finance Document.

“Senior Lenders” means each Original Senior Lender, each Lender and each Ancillary Lender as defined in the Senior Facilities Agreement and any substantially equivalent term to that in each Senior Pari Passu Facilities Agreement, as the context requires.

“Senior Liabilities” means the Senior Lender Liabilities and the Senior Hedging Liabilities.

“Senior Liabilities Transfer” means a transfer of the Senior Lender Liabilities as described in Clause 3.8 (*Option to Purchase: Senior Primary Creditors*).

“Senior Mandatory Prepayment” means a mandatory prepayment of any of the Senior Lender Liabilities pursuant to paragraph (c) of clause 9.1 (*Illegality*), clause 10 (*Mandatory Prepayment*) (or otherwise made pursuant to any other provision requiring a mandatory prepayment) of the Senior Facilities Agreement or any substantially equivalent or other provision requiring a mandatory prepayment in each Senior Pari Passu Facilities Agreement, as the context requires.

“Senior Pari Passu Facilities Agreement” means, subject to compliance with the requirements of Clause 14 (*New Debt Financings*), each facility agreement or other document or instrument evidencing the terms of loan, credit or debt facility which is permitted under the terms of the Senior Facilities Agreement as **“Permitted Additional Debt”** to rank *pari passu* with and benefit from the same (or fewer) guarantees and Security as the Transaction Security in respect of the Senior Liabilities, but excluding the Senior Facilities Agreement, and which is designated as such by the Company (in its discretion) by written notice to each Senior Agent who is a party to this Agreement at such time.

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

“Senior Pari Passu Notes” means any notes, securities or other debt instruments issued or to be issued by a Group Member and which are designated as such by the Company (in its discretion) by written notice to each Senior Agent who is a party to this Agreement at such time and which are issued in accordance with the terms of other Senior Primary Finance Documents.

“Senior Pari Passu Notes Acceleration Event” means:

- (a) the Senior Pari Passu Notes Trustee (or any of the Senior Pari Passu Noteholders) exercising any rights to accelerate amounts outstanding under the Senior Pari Passu Notes pursuant to any applicable Senior Pari Passu Notes Indenture; or
- (b) any Senior Pari Passu Notes Liabilities becoming due and payable by operation of any automatic acceleration provisions in any Senior Pari Passu Notes Finance Documents,

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

“Senior Pari Passu Notes Creditors” means the Senior Pari Passu Noteholders and each Senior Pari Passu Notes Trustee.

“Senior Pari Passu Notes Default” means a Senior Pari Passu Notes Event of Default or any event or circumstances which would (with the expiry of a grace period, the giving of notice, the making of any determination provided for in the relevant definition of such Senior Pari Passu Notes Event of Default or any combination of the foregoing, *provided that* any such event or circumstance which requires any determination as to materiality before it may become a Senior Pari Passu Notes Event of Default shall not be a Senior Pari Passu Notes Default until such determination is made) be a Senior Pari Passu Notes Event of Default.

“Senior Pari Passu Notes Discharge Date” means the first date on which all Senior Pari Passu Notes Liabilities have been fully and finally discharged to the satisfaction of each applicable Senior Pari Passu Notes Trustee, whether or not as the result of an enforcement, and the Senior Pari Passu Noteholders (in that capacity) are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

“Senior Pari Passu Notes Event of Default” means an event of default under the relevant Senior Pari Passu Notes Indenture.

“Senior Pari Passu Notes Finance Documents” means the Senior Pari Passu Notes, each Senior Pari Passu Notes Indenture, the Senior Pari Passu Notes Guarantees in respect of the Senior Pari Passu Notes, this Agreement, the Transaction Security Documents and any other document entered into in connection with the Senior Pari Passu Notes (which, for the avoidance of doubt, excludes any document to the extent it sets out rights of the initial purchasers of the Senior Pari Passu Notes (in their capacities as initial purchasers) against any Group Member) and designated a Senior Pari Passu Notes Finance Document by the Company (in its discretion) by written notice to each Senior Agent who is a party to this Agreement at such time.

“Senior Pari Passu Notes Finance Parties” means any Senior Pari Passu Notes Trustee (acting on behalf of itself and the Senior Pari Passu Noteholders which it represents) and the Security Agent.

“Senior Pari Passu Notes Guarantee” means each guarantee granted by a Senior Pari Passu Notes Guarantor in favour of any Senior Pari Passu Notes Creditor contained in any Senior Pari Passu Notes Finance Document.

“Senior Pari Passu Notes Guarantors” means each Group Member which is or becomes a guarantor of Senior Pari Passu Notes in accordance with a Senior Pari Passu Notes Indenture and which is or becomes a Guarantor under (and as defined in) the Senior Facilities Agreement or any substantially equivalent provision in any Senior Pari Passu Facilities Agreement, as the context requires.

“Senior Pari Passu Notes Indenture” means the indenture or indentures pursuant to which any Senior Pari Passu Notes are issued.

“Senior Pari Passu Notes Issue Date” means, in respect of each Senior Pari Passu Notes Indenture, the first date on which a Senior Pari Passu Note is issued pursuant to that Senior Pari Passu Notes Indenture.

“Senior Pari Passu Notes Issuer” means the issuer of any Senior Pari Passu Notes.

“Senior Pari Passu Notes Liabilities” means the Liabilities owed by the Debtors to any Senior Pari Passu Notes Finance Party or Senior Pari Passu Noteholder under or in connection with the Senior Pari Passu Notes or any other Senior Pari Passu Notes Finance Documents (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently, and whether as principal, surety or otherwise) *provided that* the definition of **“Senior Pari Passu Notes Liabilities”** shall not include the Senior Pari Passu Notes Trustee Amounts.

“Senior Pari Passu Notes Mandatory Prepayment” means a mandatory prepayment, repurchase or redemption (including any requirement to make an offer to repurchase) of any of the Senior Pari Passu Notes Liabilities which is of the same type as a Senior Mandatory Prepayment or otherwise made pursuant to the Senior Pari Passu Notes Finance Documents.

“Senior Pari Passu Notes Trustee” means any person acting as trustee or agent under any issue of Senior Pari Passu Notes and which accedes to this Agreement pursuant to Clause 16.11 (*Accession of Senior Pari Passu Notes Trustee*).

“Senior Pari Passu Notes Trustee Amounts” means, in relation to a Senior Pari Passu Notes Trustee, amounts payable to that Senior Pari Passu Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee under the Senior Pari Passu Notes Finance Documents, any provisions (including indemnity provisions) for fees, costs and expenses in favour of that Senior Pari Passu Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee contained in the Senior Pari Passu Notes Finance Documents, all compensation for services provided by that Senior Pari Passu Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee which is payable to that Senior Pari Passu Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee pursuant to the terms of the Senior Pari Passu Notes Finance Documents and all out-of-pocket costs and expenses properly incurred (including reimbursement for expenses incurred) by that Senior Pari Passu Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee in carrying out its duties or performing any service pursuant to the terms of the Senior Pari Passu Notes Finance Documents, including, without limitation:

- (a) compensation for the costs and expenses of the collection by that Senior Pari Passu Notes Trustee of any amount payable to that Senior Pari Passu Notes Trustee for the benefit of the Senior Pari Passu Noteholders; and
- (b) costs and expenses of that Senior Pari Passu Notes Trustee’s advisers, receivers, delegates, attorneys, agents or appointees,

but excluding:

- (i) any payment in relation to any unpaid costs and expenses incurred in respect of any litigation initiated by that Senior Pari Passu Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee on behalf of that Senior Pari Passu Notes Trustee against any of the Senior Finance Parties; and
- (ii) any payment made directly or indirectly on or in respect of any amounts owing under any Senior Pari Passu Notes (including principal, interest, premium or any other amounts to any of the Senior Pari Passu Noteholders).

“Senior Primary Credit Participation” means:

- (a) in relation to a Senior Creditor, its Senior Credit Participation; and
- (b) in relation to a Senior Pari Passu Noteholder, the principal amount of outstanding Senior Pari Passu Notes held by that Senior Pari Passu Noteholder.

“Senior Primary Creditor” means, at any time, the Senior Creditors and the Senior Pari Passu Notes Creditors at such time.

“Senior Primary Creditor Liabilities” means the Senior Lender Liabilities, the Senior Hedging Liabilities and the Senior Pari Passu Notes Liabilities (and in each case, as the context requires, together with the Senior Agent Liabilities and Senior Arranger Liabilities in respect thereof).

“Senior Primary Creditor Representative” means:

- (a) in relation to the Senior Lenders under the Senior Facilities Agreement and each other Senior Pari Passu Facilities Agreement, the relevant Senior Agent; and
- (b) in relation to the Senior Pari Passu Noteholders, the relevant Senior Pari Passu Notes Trustee.

“Senior Primary Finance Documents” means the Senior Finance Documents, the Senior Hedging Agreements and the Senior Pari Passu Notes Finance Documents.

“Senior Primary Guarantor” means a Senior Facilities Guarantor or a Senior Pari Passu Notes Guarantor.

“Senior Primary Liabilities” means, at any time, the Senior Liabilities and the Senior Pari Passu Notes Liabilities, at such time.

“Senior Utilisation”:

- (a) has the meaning given to the term **“Utilisation”** in the Senior Facilities Agreement; or
- (b) has the meaning given to any substantially equivalent provision to that referred to in paragraph (a) above in a Senior Pari Passu Facilities Agreement.

“Subsidiary”:

- (a) (at any time on or prior to the Senior Lender Discharge Date) has the meaning given to those terms in the Senior Facilities Agreement; and
- (b) (at any time after the Senior Lender Discharge Date) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires.

“Super Majority Senior Creditors”: means at any time, those Senior Creditors whose Senior Credit Participations aggregate more than 66 $\frac{2}{3}$ per cent. of the aggregate of the total Senior Credit Participations at that time.

“Super Majority Senior Lenders”:

- (a) has the meaning given to the term **“Super Majority Lenders”** in the Senior Facilities Agreement; and
- (b) includes any substantially equivalent provision to that referred to in paragraph (a) above in a Senior Pari Passu Facilities Agreement,

as the context requires.

“Super Majority Senior Pari Passu Noteholders” means at any time, those Senior Primary Creditors whose Senior Primary Credit Participations under paragraph (b) of the definition thereof at that time aggregate more than 66 $\frac{2}{3}$ per cent. of the total Senior Primary Credit Participations under paragraph (b) of that definition at that time.

“Super Majority Senior Primary Creditors” means at any time, those Senior Primary Creditors whose Senior Primary Credit Participations at that time aggregate more than 66 $\frac{2}{3}$ per cent. of the total Senior Primary Credit Participations at that time.

“Target” has the meaning given to that term in the Senior Facilities Agreement.

“Tax”:

- (a) (at any time on or prior to the Senior Lender Discharge Date) has the meaning given to those terms in the Senior Facilities Agreement; and
- (b) (at any time after the Senior Lender Discharge Date) includes any substantially equivalent term to that referred to in paragraph (a) above in each Senior Pari Passu Facilities Agreement,

as the context requires and **“Taxes”** shall be construed accordingly.

“Third Parties Ordinance” has the meaning given to that term in Clause 1.3 (*Third Party Rights*).

“Transaction Security” means any Security in each case which, to the extent legally possible and subject to the provisions of this Agreement:

- (a) is created, or expressed to be created, in favour of the Security Agent as agent or trustee for the other Secured Parties (or a class of Secured Parties) in respect of the Secured Liabilities; or
- (b) (in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as agent or trustee for the Secured Parties (or a class of Secured Parties)) is created, or expressed to be created, in favour of:
 - (i) all the Secured Parties (or a class of Secured Parties) in respect of the Secured Liabilities; or
 - (ii) the Security Agent for the benefit of all the Secured Parties (or a class of Secured Parties) in respect of the applicable Secured Liabilities,

and in each case subject to Clause 1.7 (*Waiver and termination*).

“Transaction Security Documents” means any document entered into by any Debtor creating or expressed to create Transaction Security.

“Trustee Ordinance” means the Trustee Ordinance (Cap. 29 of the Laws of Hong Kong).

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) the Company, the Parent, any Ancillary Lender, Creditor, Debtor, Intra-Group Lender, Party, Security Agent, Senior Agent, Senior Arranger, Senior Borrower, Senior Creditor, Senior Hedge Counterparty, Senior Lender, Senior Pari Passu Notes Creditor, Senior Pari Passu Noteholder, Senior Pari Passu Notes Trustee or (in relation to paragraph (B) below) any other person, shall be construed:
 - (A) to be a reference to it in its capacity as such and not in any other capacity; and
 - (B) 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 the Security Agent in accordance with this Agreement;
 - (ii) **“assets”** includes properties, assets, businesses, undertakings, revenues and rights of every kind (including uncalled share capital), present and future, actual or contingent and any interest in any of the foregoing;
 - (iii) a **“Debt Document”** or any other agreement or instrument is (unless expressed to be a reference to a Debt Document or any other agreement or instrument in its original form as at a particular date) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated (however fundamentally or whether or not more onerously) and includes any increase in, addition to or extension of or other change to any facility made available under

any such agreement or instrument (in each case to the extent not prohibited by this Agreement);

- (iv) “**enforcing**” (or any derivation) the Transaction Security shall include the appointment of a liquidator (other than in respect of a solvent liquidation of a Material Company which is not an Debtor), receiver, administrative receiver, administrator, compulsory manager, judicial manager or other similar officer of a Debtor by the Security Agent;
- (v) “**indebtedness**” includes any obligation (whether incurred as principal, guarantor or as surety and whether present or future, actual or contingent) for the payment or repayment of money;
- (vi) 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 and, unless specified otherwise, a reference to the original form of the Senior Facilities Agreement is a reference to the Senior Facilities Agreement entered into on or around the date of this Agreement;
- (vii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, fund, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (viii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, one with which entities to which the same applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (ix) “**shares**” or “**share capital**” includes equivalent ownership interests (and “**shareholder**” and similar expressions shall be construed accordingly);
- (x) a “**provision of law**” is a reference to that provision as amended or re-enacted;
- (xi) an “**amendment**” includes any amendment, supplement, variation, novation, modification, replacement or restatement (however fundamental), and amend and amended shall be construed accordingly;
- (xii) a “**consent**” includes an authorisation, permit, approval, consent, exemption, licence, order, filing, registration, recording, notarisation, permission or waiver;
- (xiii) a time of day is a reference to Hong Kong time; and
- (xiv) any corporation into which the Security Agent may be merged or converted, or any corporation with which the Security Agent may be consolidated, or any corporation resulting from any merger, conversion

or consolidation to which the Security Agent shall be a party, or any corporation, including affiliated corporations, to which the Security Agent shall sell or otherwise transfer:

(A) all or substantially all of its assets; or

(B) all or substantially all of its corporate trust business,

shall, on the date when the merger, conversion, consolidation or transfer becomes effective and to the extent permitted by any applicable laws become the successor Security Agent under this Agreement without the execution or filing of any paper or any further act on the part of the parties to this Agreement, unless otherwise required by the Company, and after the said effective date all references in this Agreement to the Security Agent shall be deemed to be references to such successor corporation. Written notice of any such merger, conversion, consolidation or transfer shall immediately be given to the Company and the Senior Primary Creditors by the Security Agent.

- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) A Default (including an Event of Default) is “**continuing**” if it has not been remedied or waived. In addition:
 - (i) if a Default (including an Event of Default) occurs for a failure to deliver a required certificate, notice or other document in connection with another default (an “**Initial Default**”) then at the time such Initial Default is remedied or waived, such Default (including an Event of Default) for a failure to report or deliver a required certificate, notice or other document in connection with the Initial Default will also be cured without any further action; and
 - (ii) any Default for the failure to comply with the time periods, or otherwise to deliver any notice, certificate or other document, as applicable, even though such delivery is not within the prescribed period specified in this Agreement or any other Debt Document shall be deemed to be cured upon the delivery of any such report required by such covenant or notice, certificate or other document, as applicable, even though such delivery is not within the prescribed period specified in this Agreement or any other Debt Document.
- (d) A “**disposal**” means any sale, transfer, grant, lease, licence or other disposal, whether voluntary or involuntary (and “**dispose**” will be construed accordingly).
- (e) The right or requirement of any Party to take or not take any action on or following the occurrence of an Insolvency Event shall cease to apply if the relevant Insolvency Event is no longer continuing (unless an Acceleration Event has occurred and is continuing and without prejudice to any action taken or not taken in accordance with the terms of this Agreement while that Insolvency Event is continuing).

- (f) Secured Parties may only benefit from Recoveries to the extent that the Liabilities of such Secured Parties have the benefit of the guarantees or security under which such Recoveries are received and *provided that*, in all cases, the rights of such Secured Parties shall in any event be subject to the priorities set out in Clause 12 (*Application of proceeds*) and *provided further, however, that* this shall not:
- (i) prevent any Senior Primary Creditor Representative from claiming and being paid Senior Agent Liabilities; or
 - (ii) prevent any Secured Party benefiting from such Recoveries where it was not legally possible or otherwise as a result of the Guarantee Limitations or the terms of this Agreement for that Secured Party to obtain the relevant guarantees or security or affect, in any way, the operation of Clause 13 (*Equalisation*); or
 - (iii) affect or limit, in any way, the operation of Clause 1.7 (*Waiver and termination*), Clause 2.6 (*Additional and/or Refinancing Debt*) and Clause 14 (*New Debt Financings*).
- (g) In determining whether or not any Liabilities have been fully and finally discharged, contingent liabilities (such as the risk of clawback flowing from a preference) shall be disregarded by the relevant Senior Agent, Security Agent or otherwise except to the extent that there is a reasonable likelihood that those liabilities will become actual liabilities.
- (h) Any reference in this Agreement to a Debtor, Group Member or the Parent being able to make any Payment or take any other action not prohibited by the Debt Documents shall include a reference to that Debtor, Group Member or the Parent being permitted to make any arrangement in respect of that Payment or action or take any step or enter into any transaction to facilitate the making of that Payment or the taking of that action.
- (i) Notwithstanding anything to the contrary, where any provision of this Agreement refers to or otherwise contemplates any consent, approval, release, waiver, agreement, notification or other step or action (each an “**Action**”) which may be required from or by any person:
- (i) which is not a Party at such time;
 - (ii) in respect of any agreement which is not in existence at such time;
 - (iii) in respect of any indebtedness which has not been committed or incurred (or an agreement in relation thereto) at such time; or
 - (iv) in respect of Liabilities or Creditors (or other persons) for which the relevant Discharge Date has occurred at or prior to such time,

unless otherwise agreed or specified by the Company, that Action shall not be required (or be required from any person that is a party thereto) and no such provision shall, or shall be construed so as to, in any way prohibit or restrict the rights or actions of any Group Member or the Parent. Further, for the avoidance

of doubt, no references to any agreement which is not in existence (or under which debt obligations have not been actually incurred by a Group Member or the Parent) shall, or shall be construed so as to, in any way prohibit or restrict the rights or actions of any Group Member or the Parent (and no consent, approval, release, waiver, agreement, notification or other step or action shall be required from any party thereto).

- (j) Where any consent is required under this Agreement from:
- (i) a Senior Lender or Senior Finance Party where such consent is required after the Senior Lender Discharge Date;
 - (ii) a Senior Primary Creditor where such consent is required after the Final Discharge Date; or
 - (iii) a Senior Pari Passu Notes Creditor where such consent is required after the Senior Pari Passu Notes Discharge Date or before any person in such capacity has acceded to this Agreement,
- such consent requirement will cease to apply.
- (k) References to the Senior Agent or Security Agent acting on behalf of the applicable Instructing Group or class of Creditors means such Senior Agent or Security Agent acting on behalf of the Instructing Group or class of Creditors which it represents or, if applicable, with the consent of the requisite Instructing Group required under and in accordance with the applicable Debt Document. The Senior Agent or Security Agent will be entitled to seek instructions from the Instructing Group or class of Creditors which it represents to the extent required by the applicable Debt Document as to any action to be taken by it under this Agreement.
- (l) References to the Senior Pari Passu Notes Trustee acting on behalf of the Senior Pari Passu Noteholders means such Senior Pari Passu Notes Trustee acting on behalf of the Senior Pari Passu Noteholders which it represents or, if applicable, with the consent of the requisite number of Senior Pari Passu Noteholders required under and in accordance with the applicable Senior Pari Passu Notes Indenture. A Senior Pari Passu Notes Trustee will be entitled to seek instructions from the Senior Pari Passu Noteholders which it represents to the extent required by the applicable Senior Pari Passu Notes Indenture as to any action to be taken by it under this Agreement.
- (m) Notwithstanding anything to the contrary, nothing in this Agreement shall prohibit a non-cash contribution of any asset (including, without limitation, any participation, claim, commitment, rights, benefits and/or obligations in respect of any Liabilities and/or any other indebtedness borrowed or issued by any Group Member or the Parent from time to time) to a person that is not a Group Member to the Company or the Parent; *provided that* to the extent such transaction results in any indebtedness or claim being outstanding from the Company to any of its respective direct or indirect shareholders, such indebtedness or claim constitutes Parent Liabilities or is otherwise subordinated in accordance with the Finance Documents.

- (n) If the terms of any Debt Document:
- (i) require the relevant Creditors to provide approval (or deemed approval to have been provided) for a particular matter, step or action (for the avoidance of doubt, excluding any such terms which expressly entitle the relevant Creditors to withhold their approval for that matter, step or action) and such approval has been given pursuant to the terms of that Debt Document; or
 - (ii) do not seek to regulate a particular matter, step or action (which shall be the case if the relevant matter, step or action is not the subject of an express requirement or restriction in that Debt Document),

for the purposes of this Agreement that matter, step or action shall not be prohibited by the terms of that Debt Document.

- (o) In determining whether the incurrence of any indebtedness or other amount (including, without limitation, any indebtedness pursuant to Senior Pari Passu Facilities Agreement or any Senior Pari Passu Notes) is prohibited by the terms of any Debt Document or to the extent any amendment or waiver is sought for or to permit any step or other action, the terms of any Debt Document which:
- (i) relate to any Liabilities which are to be promptly refinanced or otherwise replaced with such indebtedness or other amount or that will be refinanced or otherwise replaced concurrently with or immediately following such step or action for which such amendment or waiver is sought (in each case in full); or
 - (ii) will not exist or will cease to be in effect on the date on which such indebtedness or other amount is incurred by a Group Member or the Parent or following the taking effect of such amendment or waiver,

shall not be taken into account (including for the purposes of any vote or consent of any class (including an Instructing Group) for the purposes of any Debt Document in respect of any such amendment or waiver).

- (p) References to any matter being “**permitted**” under one or more of the Debt Documents shall include references to such matters not being expressly prohibited or otherwise approved by the requisite Creditors under those Debt Documents.
- (q) Any requirement that consent be given under this Agreement shall mean such consent is to be given in writing, which, for the purposes of this Agreement, will be deemed to include any instructions, waivers or consents or provided through any applicable clearance system in accordance with the terms of the relevant Debt Documents.
- (r) Until the relevant proceeds are released from such escrow, the provisions of this Agreement shall not apply to or create any restriction in respect of any escrow arrangement pursuant to which the proceeds of any Debt Document are subject and this Agreement shall not govern the rights and obligations of the Creditors

concerned until such proceeds are released from such escrow arrangement in accordance with its terms.

- (s) Any references to terms in this Agreement that are defined in any Debt Document, (the “**Defined Term**”) shall include not only the definition but also terms or mechanics which are equivalent or similar to the manner in which such Defined Term is interpreted under this Agreement.
- (t) For the avoidance of doubt and notwithstanding anything to the contrary in this Agreement or any other Debt Document, nothing in this Agreement shall prohibit any debt exchange, non-cash rollover or other similar or equivalent transaction in relation to any Liabilities.
- (u) Subject to Clause 22.13 (*Agreement to override*), to the extent any step or action is permitted under this Agreement (or permitted subject to the consent of specified Parties), the Parties hereto agree that such step or action will be permitted under the other Debt Documents (or permitted thereunder subject to the consent of such specified Parties) and if there is any conflict between the terms of, or the requirement for any conditions in, this Agreement and any other Debt Document, the terms of, or the requirement for any conditions in, this Agreement will prevail (save to the extent that to do so would result in or have the effect of any Group Member or the Parent contravening any applicable law or regulation, or present a material risk of liability for any Group Member or the Parent and/or its directors or officers, or give rise to a material risk of breach of fiduciary or statutory duties), in each case notwithstanding any restriction or prohibition to the contrary, any provision expressed or purported to override any provision of this Agreement or the requirement to fulfil any additional conditions, in each case, in any other Debt Document.
- (v) References to any Creditors (or any class, group or percentage of any Creditors (including, for the avoidance of doubt, unanimity)) giving any Consent under this Agreement means (in each case) acting through the applicable Senior Agent, if any, or, as applicable, the Security Agent.
- (w) Where any defined term in this Agreement refers to the definitions of such term in another document which is to be entered into after the date of this Agreement (any such other document, a “**Future Document**”) and such Future Document does not contain such definition, the relevant defined term in this Agreement shall be defined by reference to the equivalent term used in the Future Document and if no such equivalent term is used, shall be ignored for the purposes of this Agreement.
- (x) References to the “**equivalent**” of an amount specified in a particular currency (the specified currency amount) shall be construed as a reference to the amount of any other relevant currency which can be purchased with the specified currency amount at the Security Agent’s Spot Rate of Exchange on the date on which the calculation falls to be made for spot delivery, as determined by the Security Agent.
- (y) In ascertaining the Majority Senior Lenders, the Majority Senior Primary Creditors, the Majority Senior Creditors, the Majority Senior Pari Passu

Noteholders, the applicable Super Majority Senior Lenders, the Super Majority Senior Pari Passu Noteholders, the Super Majority Senior Primary Creditors or whether any given percentage of the Senior Credit Participations has been obtained to approve any request for a consent, waiver, amendment or other vote under this Agreement or for the purpose of the allocation of any repayment or prepayment or for the purposes of taking any step, decision, direction or exercise of discretion which is calculated by reference to drawn amounts of any Senior Commitments or Senior Primary Liabilities not denominated in the Common Currency, any such amount not denominated in the Common Currency shall be deemed to be converted into the Common Currency at the Security Agent's Spot Rate of Exchange, in each case, on the date on which that Senior Commitment or those Senior Primary Liabilities were provided under relevant Senior Primary Finance Document.

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) Ordinance (Cap. 623) (the "**Third Parties Ordinance**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in paragraph (b) of Clause 15.11 (*Exclusion of liability*) may, subject to this Clause 1.3 and the Third Parties Ordinance, rely on any Clause of this Agreement which expressly confers rights on it.
- (d) The Third Parties Ordinance shall apply to this Agreement in respect of any Senior Pari Passu Noteholder, which, by holding a Senior Pari Passu Note, as the case may be, has effectively agreed to be bound by the provisions of this Agreement and will be deemed to receive the benefits hereof, and be subject to the terms and conditions hereof, as if such person was a Party hereto. For the purposes of the preceding sentence, upon any such person becoming a Senior Pari Passu Noteholder, that person shall be deemed a Party to this Agreement, *provided that* such person is deemed to be a Party to this Agreement under the terms of the relevant Senior Pari Passu Notes Indenture. In relation to any amendment or waiver of this Agreement, no such person that is deemed to be a party to this Agreement by virtue of this Clause 1.3 is required to consent to or execute any amendment or waiver in order for such amendment or waiver to be effective.

1.4 *Exchange rate fluctuations*

- (a) When applying any monetary limits, thresholds and other exceptions to the representations and warranties, undertakings and Events of Default under this Agreement, the equivalent to an amount in the Common Currency shall be calculated at the rate for the conversion of the Common Currency into the relevant currency of the non-base currency monetary limit, threshold and other exception which would have been used had an audited consolidated balance

sheet of the Group been prepared in accordance with the Accounting Principles, or at the option of the Company at the Agent's Spot Rate of Exchange, in each case, as at the date of the Group incurring or making the relevant disposal, acquisition, investment, lease, loan, debt or guarantee or taking any other relevant action.

- (b) No Event of Default or breach of any representation and warranty or undertaking under this Agreement or the other Senior Primary Finance Documents shall arise merely as a result of a subsequent change in the Common Currency equivalent or any other currency specified for any basket due to fluctuations in currency exchange rates.

1.5 *Creditor rights prior to relevant debt issuance*

To the extent that this Agreement grants rights for the benefit of any Secured Party, no such rights shall accrue or be enforceable against any other party prior to the incurrence of the relevant indebtedness with respect thereto in such capacity and accession to this Agreement by such party in such capacity.

1.6 *Holding Company debt*

Notwithstanding any term of this Agreement, no provision of this Agreement shall: (a) regulate, restrict or prohibit the Parent or any Affiliate thereof that is not a Group Member from incurring any indebtedness, granting any Security over its assets or providing any guarantees, or require the Parent or any Affiliate thereof that is not a Group Member nor the Parent to become a party to (or be bound by) the provisions of this Agreement other than, in the case of the Parent, in respect of the Parent Liabilities and assets in respect of which it has granted Transaction Security; or (b) require any creditor in respect of such indebtedness to become a party to (or be bound by) the provisions of this Agreement.

1.7 *Waiver and termination*

- (a) Notwithstanding anything to the contrary in this Agreement or any other Debt Document, any Party may, together with exercising any right pursuant to paragraph (e) of Clause 22.1 (*Required Consents*), unilaterally waive, relinquish, or otherwise release or decline the right to receive or benefit from, any right in relation to a Debt Document, including in relation to Transaction Security or any guarantee, indemnity or other assurance against loss in respect of any Liabilities owed to it by a Debtor with the prior consent of the Company; and by written notice from the Company to each Senior Agent party to this Agreement and the Security Agent at such time (a "**Unilateral Waiver**").
- (b) Following a Unilateral Waiver by a Party in accordance with paragraph (a) above, the Security Agent shall (i) without prejudice to the rights of any Senior Primary Creditor to enforce, be deemed to have unilaterally waived, relinquished, or otherwise released or declined the right to receive or benefit from the same or any substantially equivalent right to the rights subject to such Unilateral Waiver in respect of that Party only and (ii) at the request and cost of the Company, take any action or execute any document reasonably requested

by the Company which is necessary or desirable to give effect to or evidence the releases and other actions described in this Clause 1.7.

- (c) Any Unilateral Waiver by a Party in accordance with paragraph (a) above shall also be deemed to constitute a waiver of the rights of such Party (and the Security Agent, in respect of that Party only and without prejudice to the rights of the Security Agent and each other Party) under Clause 12 (*Application of proceeds*), Clause 13 (*Equalisation*) and any equalisation or loss sharing provisions under any Debt Document in so far as such provisions relate to the rights subject to such Unilateral Waiver, including such that to the extent that the Liabilities of a Creditor would, but for the Unilateral Waiver, have had the benefit of any guarantee, indemnity or other assurance against loss or Transaction Security under which Recoveries are received by the Security Agent or other Creditors, that Creditor will not benefit from the application of, or receive any payments in respect of, such Recoveries pursuant to Clause 12 (*Application of proceeds*) in respect of those Liabilities; and if, as a result of this paragraph (c), the amount of a payment pursuant to Clause 12 (*Application of proceeds*) to a Creditor that has given a Unilateral Waiver is lower than the amount which would have been so payable to that Creditor if no Unilateral Waiver was given (the difference for that Creditor being its “**Shortfall**”), for the purposes of Clause 13 (*Equalisation*) its Exposure will be deemed to be reduced by an amount equal to the Shortfall.
- (d) To the extent that the consent of any Creditor or other Party (in each case other than the Company and each Party granting such Unilateral Waiver) would be required to give effect to any Unilateral Waiver or any other action or matter set out in this Clause 1.7, such Creditor or other Party shall be deemed to have given such consent.
- (e) Notwithstanding anything to the contrary in this Agreement or any other Debt Document:
 - (i) no breach of any representation, warranty, undertaking, obligation or other term of (or Default or Event of Default under) a Debt Document shall be deemed or construed to have occurred as a direct or indirect result of a Unilateral Waiver or any actions or steps implemented or taken to give effect to that Unilateral Waiver; and
 - (ii) for the purpose of testing or satisfying any requirement (or any qualifier or definition based upon such a requirement) in any Debt Document that any guarantee, indemnity or other assurance against loss or any Transaction Security must, to the extent legally possible, be given, or expressed to be given, to all Secured Parties in respect of their Liabilities, any Liabilities the subject of a Unilateral Waiver shall be deemed to have been given or expressed to have been given that guarantee, indemnity or other assurance against loss or any Transaction Security.

1.8 No Investor Affiliate recourse

No Senior Primary Creditor will have any recourse to any Investor Affiliate (excluding the Parent, the Company and any Group Member but, in respect of the Parent, on a

limited recourse basis and with respect to the assets which are the subject to Transaction Security only and subject to the terms of the any Transaction Security Documents or Debt Document to which it is a party) in respect of any term of any Debt Document, any statements by any Investor Affiliate, or otherwise except in each case in the case of fraud, or intention to mislead (in which case any liability shall be determined in accordance with applicable law).

1.9 Personal Liability

- (a) No director, officer, employee or other individual acting (or purporting to act) on behalf of any Investor Affiliate, the Parent, the Company or any Group Member (or of any Affiliate thereof) shall be personally liable for any representation, statement, certification made or deemed to be made by him or her, an Investor Affiliate, the Parent, the Company or any Group Member or any certificate, notice or other document required to be delivered under, or in connection with, any Debt Document, whether or not signed by that director, officer, employee or other individual, save in the case of fraud, or intention to mislead (in which case any liability shall be determined in accordance with applicable law) and each such individual may rely on this Clause subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Ordinance.
- (b) Where any natural person gives a certificate or other document or otherwise gives a representation or statement on behalf of any of the parties to the Debt Documents pursuant to any provision thereof and such certificate or other document, representation or statement proves to be incorrect, the individual shall incur no personal liability in consequence of such certificate, other document, representation or statement being incorrect save where such individual acted fraudulently in giving such certificate, other document, representation or statement being incorrect (in which case any liability of such individual shall be determined in accordance with applicable law) and each such individual may rely on this Clause subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Ordinance.

2 Ranking and priority

2.1 Creditor Liabilities

Each of the Parties agrees that the Liabilities owed by the Debtors to the Senior Primary Creditors shall rank in right and priority of payment such that the Senior Lender Liabilities, the Senior Pari Passu Notes Liabilities, the Senior Hedging Liabilities (and, in each case, together with the applicable Senior Arranger Liabilities and Senior Agent Liabilities in respect thereof) shall rank *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 following Liabilities (but only to the extent that such Transaction Security is expressed to secure those Liabilities), the Senior Lender Liabilities, the Senior Pari Passu Notes Liabilities, and the Senior Hedging Liabilities (and, in each case, together with the

applicable Senior Arranger Liabilities and the Senior Agent Liabilities, in respect thereof) and without prejudice to Clause 13 (*Equalisation*) *pari passu* and without any preference between them.

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 Senior Primary Creditors.
- (b) This Agreement does not purport to rank any of the Parent Liabilities as between themselves.

2.4 Intra-Group Liabilities

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

2.5 Additional Facility

- (a) The Senior Lenders may from time to time (as permitted under the terms of the Senior Facilities Agreement) put in place an Additional Facility (as defined in the Senior Facilities Agreement) without the prior consent of any person (except the relevant Debtor(s) whose consent is required under the Senior Facilities Agreement), and the amount of that Additional Facility (together with interest, fees and commission on that amount) shall be treated as being part of the Senior Lender Liabilities.
- (b) In particular, but without limitation, each of the Secured Parties irrevocably authorises and directs the Senior Agent and the Security Agent (as applicable) to execute (at the cost of the Company in accordance with clauses 2.3(g) and (h) (*Additional Facility*) of the Senior Facilities Agreement) any amendment to this Agreement and such other Debt Documents required to reflect such arrangements to enable such financing to take place and share in the Transaction Security as permitted in accordance with the Debt Documents.

2.6 Additional and/or Refinancing Debt

The Creditors hereby acknowledge and agree that the Debtors (or any of them) shall be permitted, subject to Clause 14 (*New Debt Financings*), to:

- (a) incur additional Borrowing Liabilities and/or Guarantee Liabilities in respect of New Debt Financings; and/or
- (b) refinance, replace or otherwise restructure (in whole or in part from time to time) Borrowing Liabilities (or any other liabilities and obligations subject to the terms of this Agreement from time to time) with the proceeds of such New Debt Financings and/or incur Guarantee Liabilities in respect of any such refinancing,

replacement or restructuring of Borrowing Liabilities, Guarantee Liabilities and/or other liabilities, including by way of New Debt Financings,

which in any such case are intended to rank *pari passu* with any existing Liabilities and/or share *pari passu* with any existing Transaction Security and/or to rank behind any existing Liabilities and/or to share in any existing Transaction Security behind such existing Liabilities *provided that*, in all cases, the incurring of any such liabilities and the grant of the applicable Security in relation thereto is not prohibited under the Senior Primary Finance Documents.

3 *Senior Primary Creditor and Senior Primary Creditor Liabilities*

3.1 *Payments of Senior Primary Creditor Liabilities*

The Debtors may make Payments in respect of the Senior Primary Creditor Liabilities at any time *provided that*, (a) if that Payment is in respect of any Senior Hedging Liabilities, it is a Permitted Senior Hedge Payment; and (b) following the occurrence of an Acceleration Event or an Insolvency Event, no Debtor may make (and no Senior Primary Creditor may receive) Payments of the Senior Primary Creditor Liabilities except from Recoveries distributed in accordance with Clause 12 (*Application of proceeds*) *provided that* (i) in the case where the only Acceleration Event that is continuing is a Senior Acceleration Event under a Senior Primary Finance Document, one or more members of the Group may make Payments to effect the discharge of the Senior Primary Liabilities under that Senior Primary Finance Document (in which case and conditional upon such event occurring, that Senior Acceleration Event under that Senior Primary Finance Document shall be deemed to have ceased to occur for the purposes of this Clause 3.1), and (ii) any amount standing to the credit of a Credit-Specific Account as at the date of any Acceleration Event under the terms of the Senior Primary Finance Document relevant to that Credit-Specific Account may be applied in payment of interest and other debt servicing in accordance with the terms of that Senior Primary Finance Document.

3.2 *Amendments and waivers*

- (a) Subject to paragraph (b) below the Senior Primary Creditors (other than the Senior Hedge Counterparties who are subject to Clause 4.6 (*Amendments and waivers: Senior Hedging Agreements*)) and Debtors may amend or waive the terms of the Senior Primary Finance Documents in accordance with their terms (and subject only to any consent required under them) at any time and nothing in this Agreement or any other Debt Document shall restrict any amendments and waivers made or granted in accordance with Clause 14 (*New Debt Financings*).
- (b) Paragraph (a) above shall not apply in respect of any amendment to the terms of any Permitted Additional Debt or any amendments and waivers made or granted in accordance with Clause 14 (*New Debt Financings*) at any time prior to the Senior Lender Discharge Date which would result in the terms of such Permitted Additional Debt or New Debt Financing breaching the restrictions set out in the Senior Facilities Agreement.

3.3 *Security and guarantees: Senior Primary Creditors*

Other than as set out in Clause 3.4 (*Security: Ancillary Lenders*), the Senior Primary Creditors (other than the Senior Hedge Counterparties) may take, accept or receive the benefit of:

- (a) any Security from any Group Member or the Parent in respect of the Senior Primary Creditor Liabilities in addition to the Transaction Security:
 - (i) if (except for any Security permitted by Clause 3.4 (*Security: Ancillary Lenders*)) and to the extent legally possible and subject to any Security Principles, at the same time it is also offered either:
 - (A) to the Security Agent as agent or trustee for the other Senior Primary Creditors in respect of their Liabilities; or
 - (B) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as agent or trustee for the Senior Primary Creditors:
 - (I) to the other Senior Primary Creditors in respect of their Liabilities; or
 - (II) to the Security Agent under a parallel debt structure, joint and several creditor structure or agency structure for the benefit of the other Senior Primary Creditors,
 - and ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*), *provided that* all amounts received or recovered by any Senior Primary Creditor with respect to such Security are immediately paid to the Security Agent and held and applied in accordance with Clause 12 (*Application of proceeds*); or
 - (ii) if such Security constitutes Credit-Specific Transaction Security; and
- (b) any guarantee, indemnity or other assurance against loss from any Group Member or the Parent in respect of the Senior Primary Creditor Liabilities, in addition to those in:
 - (i) (if any) the original form of Senior Facilities Agreement, any Senior Pari Passu Facilities Agreement or any Senior Pari Passu Notes Indenture;
 - (ii) this Agreement; or
 - (iii) any Common Assurance,

if (except for any guarantee, indemnity or other assurance against loss permitted under Clause 3.4 (*Security: Ancillary Lenders*) or the terms of the Finance Documents) and to the extent legally possible and subject to any Security Principles, the other Senior Primary Creditors already benefit from such a guarantee, indemnity or other assurance against loss or at the same time it is also offered to the other Senior Primary Creditors in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and priority*) and all amounts received or recovered by a Senior

Primary Creditor with respect to such guarantee, indemnity or other assurance against loss are immediately paid to the Security Agent and held and applied in accordance with Clause 12 (*Application of proceeds*).

3.4 *Security: Ancillary Lenders*

No Ancillary Lender will, unless the prior consent of the Majority Senior Lenders under the Senior Facilities Agreement or the Senior Pari Passu Facilities Agreement (as the context requires) is obtained, take, accept or receive from any Group Member or the Parent, the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities owed to it other than:

- (a) the Transaction Security (other than any Credit-Specific Transaction Security);
- (b) each guarantee, indemnity or other assurance against loss contained in:
 - (i) (if any) the original form of the Senior Facilities Agreement or any substantially equivalent provisions in any Senior Pari Passu Facilities Agreement;
 - (ii) this Agreement; or
 - (iii) any Common Assurance;
- (c) guarantees, indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in paragraph (b) above;
- (d) the indemnities or any netting or set-off arrangement contained in an ISDA Master Agreement (in the case of a Senior Hedging Ancillary Document which is based on an ISDA Master Agreement) or any indemnities or any netting or set-off arrangements which are similar in meaning and effect to those indemnities, netting or set-off arrangements (in the case of a Senior Hedging Ancillary Document which is not based on an ISDA Master Agreement);
- (e) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities; or
- (f) any Security, guarantee, indemnity or other assurance against loss permitted under Clause 3.3 (*Security and guarantees: Senior Primary Creditors*).

3.5 *Restriction on Enforcement: Senior Primary Creditors*

No Senior Primary Creditor may take any Enforcement Action under paragraph (c), (d) or (e) of that definition without the prior written consent of the Instructing Group.

3.6 *Restriction on Enforcement: Ancillary Lenders*

Subject to Clause 3.7 (*Permitted Enforcement: Ancillary Lenders*), so long as any of the Senior Liabilities (other than any Liabilities owed to the Ancillary Lenders) are or

may be outstanding, the Ancillary Lenders shall not be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it.

3.7 Permitted Enforcement: Ancillary Lenders

- (a) The Ancillary Lenders may take Enforcement Action if:
- (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Senior Lender Liabilities (excluding the Liabilities owing to Ancillary Lenders), in which case the Ancillary Lenders may take the same Enforcement Action as has been taken in respect of those Senior Lender Liabilities;
 - (ii) that action is contemplated by, and can be taken by the Ancillary Lenders under, the Senior Facilities Agreement and each Senior Pari Passu Facilities Agreement or Clause 3.4 (*Security: Ancillary Lenders*);
 - (iii) at the same time as or prior to that action, the consent of the Instructing Group for that Enforcement Action is obtained; or
 - (iv) to the extent permitted under applicable law, an Insolvency Event has occurred, in which case after the occurrence of that Insolvency Event, each Ancillary Lender shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that Group Member to:
 - (A) accelerate any of that Group Member's Senior Lender Liabilities or declare them prematurely due and payable on demand;
 - (B) make a demand under any guarantee, indemnity or other assurance against loss given by the Parent or that Obligor in respect of any Senior Lender Liabilities;
 - (C) exercise any right of set-off or take or receive any Payment in respect of any Senior Lender Liabilities of the Parent or that Obligor; or
 - (D) claim and prove in the liquidation, administration, judicial management or other insolvency proceedings of the Parent or that Obligor for the Senior Lender Liabilities owing to it.
- (b) Clause 3.6 (*Restriction on Enforcement: Ancillary Lenders*) shall not restrict any right of an Ancillary Lender (as the context requires) to net or set-off in relation to a Multi-account Overdraft Facility, in accordance with the terms of the Senior Facilities Agreement and any other Senior Pari Passu Facilities Agreement (as the context requires), to the extent that the netting or set-off represents a reduction from the Gross Outstandings of that Multi-account Overdraft Facility to or towards an amount equal to its Net Outstandings.

3.8 Option to Purchase: Senior Primary Creditors

- (a) Subject to paragraphs (b) and (c) below, a Senior Agent and/or a Senior Pari Passu Notes Trustee (each on behalf of one or more of the Senior Primary Creditors) (the “**Purchasing Senior Primary Creditors**”) may after the occurrence of a Distress Event, by giving not less than 10 days’ prior written notice to the Security Agent, require the transfer to the Purchasing Senior Primary Creditors (or to a nominee or nominees), in accordance with Clause 16.2 (*Change of Senior Lenders*), of all, but not part, of the rights, benefits and obligations in respect of the Senior Lender Liabilities if:
- (i) that transfer is lawful and subject to paragraph (ii) below, otherwise permitted by the terms of the applicable Senior Finance Documents;
 - (ii) any conditions relating to such a transfer contained in the applicable Senior Finance Documents, as applicable, are complied with other than:
 - (A) any requirement to obtain the consent of, or consult with, any Debtor or other Group Member relating to such transfer, which consents or consultation shall not be required; and
 - (B) any condition more onerous than those contained in clause 25 (*Changes to the Lenders*) of the original form of the Senior Facilities Agreement;
 - (iii) the Senior Agent(s), on behalf of the Senior Lenders that are transferring their Senior Lender Liabilities to the Purchasing Senior Primary Creditors, is paid an amount equal to the aggregate of:
 - (A) all of the Senior Lender Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Finance Documents if the Senior Facilities were being prepaid by the relevant Debtors on the date of that payment; and
 - (B) all costs and expenses (including legal fees) incurred by the Senior Agent(s) and/or the Senior Lenders as a consequence of giving effect to that transfer.
 - (iv) as a result of that transfer the Senior Lenders have no further actual or contingent liability to any Debtor under the Senior Finance Documents;
 - (v) an indemnity is provided from (or on behalf of) the Purchasing Senior Primary Creditors (but, for the avoidance of doubt, this does not include a Senior Pari Passu Notes Trustee) (or from another third party acceptable to all the Senior Lenders) in a form satisfactory to each Senior Lender in respect of all losses which may be sustained or incurred by each Senior Lender in consequence of any sum received or recovered by any Senior Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Senior Lender for any reason; and
 - (vi) the transfer is made without recourse to, or representation or warranty from, the Senior Lenders, or the Senior Pari Passu Notes Creditors,

except that each Senior Lender and Senior Pari Passu Note Creditor shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.

- (b) Subject to paragraph (c) of Clause 3.9 (*Senior Hedge Transfer: Senior Primary Creditors*), the Purchasing Senior Primary Creditors may only require a Senior Liabilities Transfer if, at the same time, they require a Senior Hedge Transfer in accordance with Clause 3.9 (*Senior Hedge Transfer: Senior Primary Creditors*) and if, for any reason, a Senior Hedge Transfer cannot be made in accordance with Clause 3.9 (*Senior Hedge Transfer: Senior Primary Creditors*) no Senior Liabilities Transfer may be required to be made. If more than one Purchasing Senior Primary Creditor wishes to exercise the option to purchase the Senior Lender Liabilities, each such Purchasing Senior Primary Creditor shall acquire the Senior Lender Liabilities pro rata, in the proportion that its Senior Credit Participation bears to the aggregate Senior Credit Participations of all the Purchasing Senior Primary Creditors. Any Purchasing Senior Primary Creditors wishing to exercise the option to purchase the Senior Lender Liabilities shall inform the Senior Primary Creditor Representatives in accordance with the terms of the Senior Primary Finance Documents, who will determine (consulting with each other as required) the appropriate share of the Senior Lender Liabilities to be acquired by each such Purchasing Senior Primary Creditor and who shall inform each such Purchasing Senior Primary Creditor accordingly. Furthermore, the Senior Primary Creditor Representative(s) (as applicable) shall promptly inform the Senior Primary Creditor Representatives of the Senior Lenders and the relevant Hedge Counterparties of the Purchasing Senior Primary Creditors' intention to exercise the option to purchase the Senior Lender Liabilities.
- (c) At the request of the Senior Primary Creditor Representative(s) (on behalf of all the Purchasing Senior Primary Creditors), the Senior Agent(s) shall notify the Purchasing Senior Primary Creditors of the sum of the amounts described in paragraphs (a)(iii)(A) and (a)(iii)(B) above.

3.9 *Senior Hedge Transfer: Senior Primary Creditors*

- (a) A Senior Primary Creditor Representative (on behalf of the Purchasing Senior Primary Creditors, acting as a whole) may, by giving not less than ten (10) days' prior written notice to the Security Agent, require a Senior Hedge Transfer:
- (i) if either:
- (A) the Purchasing Senior Primary Creditors require, at the same time, a Senior Liabilities Transfer under Clause 3.8 (*Option to Purchase: Senior Primary Creditors*); or
- (B) all the Purchasing Senior Primary Creditors require that Senior Hedge Transfer at any time on or after the Senior Lender Discharge Date; and
- (ii) if:

- (A) that transfer is lawful and otherwise permitted by the terms of the Senior Hedging Agreements;
 - (B) any conditions (other than the consent of, or any consultation with, any Debtor or other Group Member) relating to that transfer contained in the Senior Hedging Agreements are complied with;
 - (C) each Senior Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of: (1) the Senior Hedging Purchase Amount in respect of the hedging transactions under the relevant Senior Hedging Agreement at that time; and (2) all costs and expenses (including legal fees) incurred as a consequence of giving effect to that transfer;
 - (D) as a result of that transfer, the Senior Hedge Counterparties have no further actual or contingent liability to any Debtor under the Senior Hedging Agreements;
 - (E) an indemnity is provided from (or on behalf of) the Purchasing Senior Primary Creditors (but for the avoidance of doubt this does not include a Senior Pari Passu Notes Trustee) which is receiving (or for which a nominee is receiving) that transfer (or from another third party acceptable to the relevant Hedge Counterparty) in a form reasonably satisfactory to the relevant Senior Hedge Counterparty in respect of all losses which may be sustained or incurred by that Senior Hedge Counterparty in consequence of any sum received or recovered by that Senior Hedge Counterparty being required (or it being alleged that it is required) to be paid back by or clawed back from the Senior Hedge Counterparty for any reason;
 - (F) that transfer is made without recourse to, or representation or warranty from, the relevant Senior Hedge Counterparty, except that the relevant Senior Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer; and
 - (G) the relevant Hedge Counterparty is satisfied with the results of any “**know your customer**” or other similar checks relating to the identity of any person that they are required by law or other internal policy requirement to carry out in relation to such transfer.
- (b) A Senior Primary Creditor Representative (acting on behalf of the Purchasing Senior Primary Creditors) and any Senior Hedge Counterparty may agree (in respect of the Senior Hedging Agreements (or one or more of them) to which that Senior Hedge Counterparty is a party) that a Senior Hedge Transfer

required by the Purchasing Senior Primary Creditors pursuant to paragraph (a) above shall not apply to that Senior Hedging Agreement(s) or to the Senior Hedging Liabilities and Hedge Counterparty Obligations under that Senior Hedging Agreement(s).

- (c) If a Senior Primary Creditor Representative is entitled to require a Senior Hedge Transfer under this Clause, the Senior Hedge Counterparties shall, at the request of the Senior Primary Creditor Representative, provide details of the amounts referred to in paragraph (a)(ii)(C) above.

4 *Senior Hedge Counterparties and Senior Hedging Liabilities*

4.1 *Identity of Senior Hedge Counterparties*

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

4.2 *Restriction on Payment: Senior Hedging Liabilities*

Prior to the later of the Senior Lender Discharge Date and the Senior Pari Passu Notes Discharge Date, no Debtor shall, and the Company shall procure that no other Group Member will, make any Payment of the Senior Hedging Liabilities at any time unless:

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

4.3 *Permitted Payments: Senior Hedging Liabilities*

- (a) Subject to paragraph (b) below, the Debtors shall have the right to make Payments to any Senior Hedge Counterparty in respect of the Senior Hedging Liabilities then due to that Senior Hedge Counterparty under any Senior Hedging Agreement in accordance with the terms of that Senior Hedging Agreement:
 - (i) if the Payment is a scheduled Payment arising under the relevant Senior Hedging Agreement (or another ordinary course payment under a Senior Hedging Agreement, including any payment in relation to fees, costs and expenses);
 - (ii) to the extent that the relevant Debtor's obligation to make the Payment arises as a result of the operation of:

- (A) any of sections 2(d) (*Deduction or Withholding for Tax*), 2(e) (*Default Interest; Other Amounts*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*) and 10 (*Expenses*) of the 1992 ISDA Master Agreement (if the Senior Hedging Agreement is based on a 1992 ISDA Master Agreement);
 - (B) any of sections 2(d) (*Deduction or Withholding for Tax*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*), 9(h)(i) (*Prior to Early Termination*) and 10 (*Expenses*) of the 2002 ISDA Master Agreement (if the relevant Senior Hedging Agreement is based on a 2002 ISDA Master Agreement); or
 - (C) any provision of a Senior Hedging Agreement which is similar in meaning and effect to any provision listed in paragraph (A) or (B) above (if that Senior Hedging Agreement is not based on an ISDA Master Agreement);
- (iii) to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out, or that Payment is made at any time prior to an Acceleration Event (other than in respect of a Credit Related Close-Out);
- (iv) to the extent that:
 - (A) the relevant Debtor's obligation to make the Payment arises from a Credit Related Close-Out in relation to that Senior Hedging Agreement; and
 - (B) no Senior Event of Default or Senior Pari Passu Notes Event of Default is continuing at the time of that Payment;
- (v) if the Payment is a Payment pursuant to Clause 12.1 (*Order of application*);
- (vi) if the Majority Senior Primary Creditors give prior consent to the Payment being made; or
- (vii) if, at any time prior to a Distress Event, the Payment arises directly or indirectly as a result of any close-out, termination or other similar or equivalent action by a Group Member.
- (b) No Payment may be made to a Senior Hedge Counterparty under paragraph (a) above if:
 - (i) any scheduled Payment due from that Senior Hedge Counterparty to a Debtor under a Senior Hedging Agreement to which they are both party is due and unpaid unless the consent of the Majority Senior Primary Creditors is obtained; or
 - (ii) an Acceleration Event or an Insolvency Event has occurred (except for a Payment to a Senior Hedge Counterparty which is a distribution of

Recoveries in accordance with Clause 12 (*Application of proceeds*)) unless the consent of the Instructing Group is obtained.

- (c) Failure by a Debtor to make a Payment to a Senior 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 Senior Hedging Agreement or any other Senior Primary Finance Document (as applicable).
- (d) Nothing in this Agreement obliges a Senior Hedge Counterparty to make a payment to a Debtor under a Senior Hedging Agreement to which they are both party if any scheduled Payment due from that Debtor to the Senior Hedge Counterparty under that Senior Hedging Agreement is due and unpaid. For the avoidance of doubt, this provision shall not affect any Payment which is due from a Senior Hedge Counterparty to a Debtor as a result of a Senior Hedging Agreement to which they are both a party being terminated or closed-out.

4.4 *Payment obligations continue*

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

4.5 *No acquisition of Senior Hedging Liabilities*

Without prejudice to Clause 4.6 (*Amendments and waivers: Senior Hedging Agreements*), no Debtor shall, and each Debtor shall procure that no other Group Member 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 each case pursuant to which payment is made by a Group Member to a person which is not a Group Member in respect of Senior Hedging Liabilities, unless:

- (i) the prior consent of the Majority Senior Lenders is obtained; or
- (ii) the relevant Liabilities Acquisition relates to Senior Hedging Liabilities (or rights, benefits and/or obligations in relation thereto) in respect of which a Payment could be made under Clause 4.3 (*Permitted Payments: Senior Hedging Liabilities*).

4.6 *Amendments and waivers: Senior Hedging Agreements*

- (a) Subject to paragraph (b) below, the Senior Hedge Counterparties may not, at any time, amend or waive any term of the Senior Hedging Agreements.

- (b) A Senior Hedge Counterparty and any Debtor may amend or waive any term of a Senior Hedging Agreement in accordance with the terms of that Senior Hedging Agreement if that amendment or waiver does not breach another term of this Agreement or any other Senior Primary Finance Documents (if applicable).

4.7 *Security: Senior Hedge Counterparties*

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

- (a) the Transaction Security (other than any Credit-Specific Transaction Security);
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) (if any) the original form of the Senior Facilities Agreement, any Senior Pari Passu Facilities Agreement or any Senior Pari Passu Notes Indenture;
 - (ii) this Agreement;
 - (iii) any Common Assurance; or
 - (iv) the relevant Senior Hedging Agreement (provided any such guarantee, indemnity or other assurance against loss is no greater in extent than any of those referred to in paragraphs (i) to (iii) above, ignoring for this purpose any limitations applicable to any guarantee, indemnity or other assurance referred to in paragraphs (i) to (iii) above);
- (c) to the extent such Security, guarantee, indemnity or other assurance against loss has (or could have) been granted in compliance with or is as otherwise contemplated by Clause 3.3 (*Security and guarantees: Senior Primary Creditors*); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Senior Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which, in terms of the rights to which they give rise, are similar to those indemnities (in the case of a Senior Hedging Agreement which is not based on an ISDA Master Agreement).

4.8 *Restriction on Enforcement: Senior Hedge Counterparties*

Subject to Clause 4.9 (*Permitted Enforcement: Senior Hedge Counterparties*) and Clause 4.10 (*Required Enforcement: Senior Hedge Counterparties*), the Senior Hedge Counterparties shall not take any Enforcement Action in respect of any of the Senior Hedging Liabilities or any of the hedging transactions under any of the Senior Hedging Agreements at any time.

4.9 *Permitted Enforcement: Senior Hedge Counterparties*

- (a) To the extent it is able to do so under the relevant Senior Hedging Agreement and is not otherwise prohibited by this Agreement, a Senior Hedge Counterparty may terminate or close-out in whole or in part any hedging transaction under and in accordance with the terms of that Senior Hedging Agreement prior to its stated maturity:
- (i) at any time prior to a Distress Event;
 - (ii) if a Distress Event has occurred;
 - (iii) if:
 - (A) in relation to a Senior 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 Senior Hedging Agreement;
 - (B) in relation to a Senior 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 Senior Hedging Agreement; or
 - (C) in relation to a Senior 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 Senior Hedging Agreement; and
 - (iv) if an Insolvency Event has occurred in relation to a Debtor which is party to that Senior Hedging Agreement;
 - (v) if the Majority Senior Primary Creditors give prior consent to that termination or close-out being made; or
 - (vi) for the purpose of ensuring the aggregate notional amount of all hedging entered into by the Group with one or more Senior Hedge Counterparties in respect of any specific indebtedness or exposure does not exceed the maximum aggregate amount of that indebtedness or other exposure from time to time (in each case to the extent agreed by the Group Member party to that Senior Hedging Agreement either in that Senior Hedging Agreement or otherwise).
- (b) If a Debtor has defaulted on any Payment due under a Senior Hedging Agreement (after allowing any applicable notice or grace periods) and the

default has continued unwaived for more than five Business Days after notice of that default has been given to the Security Agent pursuant to paragraph (f) 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 Senior Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Senior Hedging Agreement; and
 - (ii) until such time as the Security Agent has given notice to that Senior 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 Senior Hedging Liabilities due under that Senior Hedging Agreement.
- (c) To the extent permitted under applicable law, after the occurrence of an Insolvency Event, each Senior 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 Senior Hedging Liabilities of a Group Member;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that Group Member or the Parent in respect of any Senior Hedging Liabilities;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Senior Hedging Liabilities of that Group Member or the Parent; or
 - (iv) claim and prove in the liquidation, administration, judicial management or other insolvency proceedings of that Group Member or the Parent for the Senior Hedging Liabilities owing to it.

4.10 Required Enforcement: Senior Hedge Counterparties

- (a) Subject to paragraph (b) below, a Senior Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Senior Hedging Agreements to which it is party prior to their stated maturity, following:
 - (i) the occurrence of an Acceleration Event and delivery to it of a notice from the Security Agent that an Acceleration Event has occurred; and
 - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Instructing Group) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between any Debtor and any Senior Primary Creditor, with the purpose of bringing about that Acceleration Event.

- (c) If a Senior Hedge Counterparty is entitled to terminate or close-out any hedging transaction under paragraph (b) of Clause 4.9 (*Permitted Enforcement: Senior Hedge Counterparties*) (or would have been able to if that Senior Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such hedging transaction, that Senior 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 Instructing Group).

4.11 *Treatment of Payments due to Debtors on termination of Senior Hedging Transactions*

- (a) If, on termination of any hedging transaction under any Senior 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 Senior Hedging Agreement) falls due from a Senior Hedge Counterparty to the relevant Debtor, then that amount shall be paid by that Senior 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 Senior Hedge Counterparty to the Security Agent in accordance with paragraph (a) above shall discharge the Senior Hedge Counterparty's obligation to pay that amount to that Debtor.

4.12 *Terms of Senior Hedging Agreements*

- (a) The Senior Hedge Counterparties (to the extent party to the Senior Hedging Agreement in question) and the Debtors party to the Senior Hedging Agreements shall ensure that, at all times:
 - (i) each Senior Hedging Agreement is based either:
 - (A) on an ISDA Master Agreement; or
 - (B) on another framework agreement which is similar in effect to an ISDA Master Agreement;
 - (ii) in the event of a termination of the hedging transaction entered into under a Senior Hedging Agreement, whether as a result of the occurrence of:
 - (A) a Termination Event or an Event of Default, each as defined in the relevant Senior Hedging Agreement (where that Senior Hedging Agreement is based on an ISDA Master Agreement); or
 - (B) an event similar in meaning and effect to those described in paragraph (A) above (where that Senior Hedging Agreement is not based on an ISDA Master Agreement),

that Senior Hedging Agreement will:

- (I) 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;
 - (II) 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
 - (III) if it is not based on an ISDA Master Agreement, provide for any other method of determining the amount, if any, payable in respect of that termination, 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 Senior Hedging Agreement is in its favour; and
- (iii) each Senior Hedging Agreement shall provide that the relevant Senior Hedge Counterparty will be entitled to designate an Early Termination Date (as defined in the relevant Senior Hedging Agreement) or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to Clause 4.10 (*Required Enforcement: Senior Hedge Counterparties*).
- (b) Unless otherwise agreed by the Company from time to time, notwithstanding anything to the contrary in any Senior Hedging Agreement, no Senior Hedging Agreement shall prohibit or restrict any action by any member of the Group not prohibited or restricted under the other Senior Finance Documents.
 - (c) Unless otherwise agreed by the Company from time to time, any hedging agreement executed by any member of the Group prior to the date on which it became a member of the Group which the Company intends should become a Senior Hedging Agreement (an ***Existing Senior Hedging Agreement***) shall be deemed amended by this Agreement to the extent necessary so as to ensure that the terms of such Existing Senior Hedging Agreement comply with the terms of this Agreement in all respects (and the relevant Debtor and the Senior Hedge Counterparty party to such Existing Senior Hedging Agreement each consent and agree to all such amendments by their execution of, or accession to, this Agreement and acknowledge and confirm that the Existing Senior Hedging Agreement will be construed accordingly).
 - (d) To the extent that the terms of a Senior Hedging Agreement are inconsistent with the terms of this Agreement, the terms of this Agreement shall prevail.

4.13 Notice and Acknowledgement of Transaction Security

Each Senior Hedge Counterparty, by its entry into this Agreement (or, as the case may be, by its entry into a Creditor/Creditor Representative Accession Undertaking as a Senior Hedge Counterparty), acknowledges receipt of notice of assignment pursuant to the applicable Security Documents of the proceeds owing by that Senior Hedge

Counterparty to any Debtor pursuant to the Senior Hedging Agreement(s) to which that Senior Hedge Counterparty is a party).

4.14 *Novation, termination and amendments: Senior Hedging Agreements*

Notwithstanding any other Clause in this Agreement, the Debtors and the Senior Hedge Counterparties may terminate, close-out (in whole or in part), amend, assign, novate or otherwise modify any Senior Hedging Agreement (in each case, subject to the terms set out in the relevant Senior Hedging Agreement) in connection with any novation of any hedging arrangements *provided that* such termination, close-out, amendment, assignment, novation or other modification is not prohibited by the terms of the Debt Documents.

5 *Parent and Parent Liabilities*

5.1 *Restriction on Payment: Parent Liabilities*

Prior to the Final Discharge Date, the Company shall not, and the Company shall procure that no other Group Member 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 5.8 (*Permitted Enforcement: Parent Creditors*).

5.2 *Permitted Payments: Parent Liabilities*

- (a) The Company or any Group Member may make any Payments in respect of the Parent Liabilities (whether of principal, interest or otherwise) if such payment is expressly permitted by all the Prior Ranking Financing Agreements or, to the extent not so expressly permitted, unless the Required Creditor Consent has been obtained.
- (b) Payments in respect of the Parent Liabilities may not be made pursuant to paragraph (a) above, if, at the time of the Payment, an Acceleration Event has occurred, unless the Required Creditor Consent has been obtained.
- (c) Nothing in this Agreement or any of the Debt Documents shall prohibit or restrict at any time prior to an Acceleration Event any roll-up or capitalisation of any amount under any Parent Loan Document or the issue of any payment in kind instruments in satisfaction of any amount under any Parent Loan Document or any forgiveness, write-off or capitalisation of any Parent Liabilities or the release or other discharge of any such Parent Liabilities.

5.3 *Payment obligations continue*

None of the Parent, the Company nor any other Group Member shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Parent Loan Document by the operation of Clause 5.1 (*Restriction on Payment: Parent Liabilities*) and Clause 5.2 (*Permitted Payments: Parent Liabilities*)

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

5.4 *No acquisition of Parent Liabilities*

Prior to the Final Discharge Date, the Debtors shall not, and shall procure that no other Group Member 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 Parent Liabilities at any time unless the relevant Liabilities Acquisition relates to Parent Liabilities in respect of which a Payment could be made under Clause 5.2 (*Permitted Payments: Parent Liabilities*).

5.5 *Amendments and waivers: Parent Creditors*

- (a) Prior to the Final Discharge Date, subject to paragraph (b) below, the Parent and the Debtors shall not amend, waive or vary the terms of any of the documents or instruments pursuant to which the Parent Liabilities are constituted which would result in the interests of any Secured Party being adversely affected in any material respect or the ranking and/or subordination contemplated by this Agreement being impaired.
- (b) Paragraph (a) above does not apply to any amendment, waiver or consent:
 - (i) which (or to the extent such term following such amendment, waiver or consent) is not prohibited to be a term of such documents or instruments by the Prior Ranking Financing Agreements or, to the extent prohibited, in respect of which the Required Creditor Consent has been obtained;
 - (ii) which has been made with the prior Required Creditor Consent; or
 - (iii) which is minor, technical or administrative or corrects a manifest error.

5.6 *Security: The Parent*

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 from any Group Member in respect of any of the Parent Liabilities, unless that action is expressly permitted by all the Prior Ranking Financing Agreements or, to the extent not so expressly permitted, the Required Creditor Consent is obtained.

5.7 *Restriction on Enforcement: The Parent*

Subject to Clause 5.8 (*Permitted Enforcement: Parent Creditors*), the Parent shall not be entitled to take any Enforcement Action in respect of any of the Parent Liabilities at any time prior to the Final Discharge Date, unless:

- (a) such Enforcement Action is solely a demand for payment, set-off, account combination or payment netting which is permitted by Clause 5.2 (*Permitted Payments: Parent Liabilities*); or
- (b) otherwise consented to by the Security Agent or an Instructing Group.

5.8 *Permitted Enforcement: Parent Creditors*

After the occurrence of an Insolvency Event in relation to a Debtor, the Parent may only (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of the Parent in accordance with Clause 7.4 (*Filing of claims*)) exercise any right it may otherwise have in respect of that Debtor to:

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

but shall not take any other Enforcement Action.

5.9 *Parent Liabilities: exceptions*

Notwithstanding anything to the contrary, nothing in this Agreement or any of the Debt Documents shall prohibit or restrict:

- (a) any Payment made to the Parent expressly permitted under and in accordance with the terms of all the Prior Ranking Financing Agreements;
- (b) any Payment or other return made by way of a roll-up or capitalisation of any amount, an issue of shares, an incurrence of indebtedness constituting Parent Liabilities (including the issue of payment-in-kind instruments) or any other similar or equivalent step, action or arrangement not prohibited under the Prior Ranking Financing Agreements; or
- (c) any payment made (whether cash or in kind) or other step or action taken to facilitate any Payment (or other matter) in respect of any Parent Liabilities (in each case to the extent that such Payment or other matter is expressly permitted by this Clause 5).

6 *Intra-Group Lenders and Intra-Group Liabilities*

6.1 *Restriction on Payment: Intra-Group Liabilities*

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

- (a) that Payment is permitted under Clause 6.2 (*Permitted Payments: Intra-Group Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under Clause 6.7 (*Permitted Enforcement: Intra-Group Lenders*).

6.2 Permitted Payments: Intra-Group Liabilities

- (a) Subject to paragraph (b) below, the Company or any Group Member may make any Payments in respect of Intra-Group Liabilities (whether of principal interest or otherwise) if such payment is not prohibited by the Prior Ranking Financing Agreements or, to the extent prohibited, unless the Required Creditor Consent has been obtained.
- (b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred, unless:
 - (i) an Instructing Group consents to that Payment being made; or
 - (ii) that Payment is made to facilitate Payment of:
 - (A) Senior Primary Creditor Liabilities, Senior Agent Liabilities or Senior Arranger Liabilities; or
 - (B) Liabilities owed to the Security Agent.

6.3 Payment Obligations continue

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Intra-Group Liabilities by the operation of Clause 6.1 (*Restriction on Payment: Intra-Group Liabilities*) and Clause 6.2 (*Permitted Payments: Intra-Group Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of either of those Clauses.

6.4 Acquisition of Intra-Group Liabilities

Each Debtor may, and may permit any other Group Member to:

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

in respect of any Intra-Group Liabilities at any time unless an Acceleration Event or Insolvency Event has occurred at the time of the relevant Liabilities Acquisition or, that action is prohibited by the Prior Ranking Finance Agreements except where to the extent prohibited, the Required Creditor Consent is obtained.

6.5 *Security: Intra-Group Lenders*

Prior to the Final Discharge Date, the Intra-Group Lenders may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Intra-Group Liabilities unless that Security, guarantee, indemnity or other assurance against loss is expressly permitted by the Prior Ranking Financing Agreements or, to the extent not so expressly permitted, the Required Creditor Consent has been obtained.

6.6 *Restriction on Enforcement: Intra-Group Lenders*

Subject to Clause 6.7 (*Permitted Enforcement: Intra-Group Lenders*), (other than the demand for any payment, set off, account combination or payment netting in relation to any payment permitted by Clause 6.2 (*Permitted Payments: Intra-Group Liabilities*)), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date unless otherwise consented to by the Instructing Group.

6.7 *Permitted Enforcement: Intra-Group Lenders*

After the occurrence of an Insolvency Event, each Intra-Group Lender may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Intra-Group Lender in accordance with Clause 7.4 (*Filing of claims*)), exercise any right it may otherwise have against any Group Member to:

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

but shall not take any other Enforcement Action.

6.8 *Representations: Intra-Group Lenders*

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

- (a) it is duly incorporated or established (or, as the case may be, organised) and validly existing under the laws of its jurisdiction of incorporation (or, as the case may be, organised);

- (b) subject to the Legal Reservations and Perfection Requirements, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations; and
- (c) subject to the Legal Reservations and Perfection Requirements, the execution, delivery and performance by it of, and the transactions contemplated by, this Agreement, in each case, do not contravene:
 - (i) any law or regulation applicable to it in any material respect;
 - (ii) its constitutional document in any material respect; or
 - (iii) any agreement or instrument binding upon it or any of its assets to the extent such contravention or conflict has or would have a Material Adverse Effect.

6.9 *Intra-Group Liabilities: Exceptions*

Notwithstanding anything to the contrary in this Agreement or any other Debt Document and without imposing any additional obligation or restriction on any Group Member, nothing in this Agreement (including this Clause 6 or Clause 16 (*Changes to the Parties*)) or any other Debt Document shall prohibit or restrict any capitalisation, forgiveness, write-off, waiver, release, transfer or other discharge of any Intra-Group Liabilities (or any amounts due, payable or owing in connection therewith) or any other amount due, payable or owing by one Group Member to another Group Member, in the case of Intra-Group Liabilities unless an Acceleration Event has occurred and is continuing.

7 *Effect of Insolvency Event*

7.1 *Payment of distributions*

- (a) After the occurrence of an Insolvency Event, any Party entitled to receive a distribution out of the assets of a 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 12 (*Application of proceeds*).

7.2 *Set-off*

- (a) Subject to paragraph (b) below, to the extent that any Group Member's or the Parent's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 12 (*Application of proceeds*).
- (b) Paragraph (a) above shall not apply to:

- (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Gross Outstandings of a Multi-account Overdraft Facility to or towards an amount equal to its Net Outstandings;
- (ii) any Close-Out Netting by a Senior Hedge Counterparty or a Senior Hedging Ancillary Lender;
- (iii) any Payment Netting by a Senior Hedge Counterparty or a Senior Hedging Ancillary Lender;
- (iv) any Inter-Hedging Agreement Netting by a Senior Hedge Counterparty;
- (v) any Inter-Hedging Ancillary Document Netting by a Senior Hedging Ancillary Lender; and
- (vi) any set-off which gives effect to a payment or distribution not prohibited by the terms of this Agreement or which is otherwise permitted to be made under this Agreement, in each case, notwithstanding the occurrence of the relevant Insolvency Event.

7.3 *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.

7.4 *Filing of claims*

Without prejudice to any Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that the netting or set-off represents a reduction of the Gross Outstandings of that Multi-account Overdraft Facility to or towards an amount equal to its Net Outstandings), after the occurrence of an Insolvency Event in relation to an Obligor, each Creditor irrevocably authorises the Security Agent (acting in accordance with Clause 7.6 (*Security Agent instructions*) and with express faculty of self-contracting, sub-empowering or multiple representation), on its behalf, to:

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

7.5 *Creditors' actions*

Each Creditor will:

- (a) do all things that the Security Agent requests in order to give effect to this Clause 7; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 7 or if the Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require, although no Senior Pari Passu Notes Trustee shall be under any obligation to grant such powers of attorney) to enable the Security Agent to take such action.

7.6 *Security Agent instructions*

For the purposes of Clause 7.4 (*Filing of claims*) and Clause 7.5 (*Creditors' actions*), the Security Agent shall act:

- (a) on the instructions of the group of Senior Primary Creditors entitled, at that time, to give instructions under Clause 10.1 (*Enforcement Instructions*) or Clause 10.2 (*Manner of enforcement - Transaction Security*);
- (b) in the absence of any such instructions, as the Security Agent sees fit (which may include taking no action).

7.7 *Limitation by applicable laws*

Each of the provisions of this Clause 7 shall apply only to the extent permitted by applicable laws.

8 *Turnover of receipts*

8.1 *Turnover by the Creditors*

Subject to Clause 8.2 (*Exclusions*) and Clause 8.3 (*Permitted assurance and receipts*), Clause 14 (*New Debt Financings*) and, in the case of Senior Pari Passu Notes Trustee Amounts, to Clause 23.2 (*Turnover obligation*) if at any time prior to the Final Discharge Date, any Creditor receives or recovers from any Debtor:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is either:
 - (i) prohibited by the terms of this Agreement; or
 - (ii) not made in accordance with Clause 12 (*Application of proceeds*);
- (b) other than where Clause 7.2 (*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 7.2 (*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 Debtor or the Parent (other than after the occurrence of an Insolvency Event); 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 12 (*Application of proceeds*);

- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 12 (*Application of proceeds*); or
- (e) other than where Clause 7.2 (*Set-off*) applies, any distribution in cash Payment of, or on account of or in relation to, any of the Liabilities owed by any Group Member or the Parent which is not in accordance with Clause 12 (*Application of proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that Group Member or the Parent,

that Creditor will (in the case of any receipts and recoveries referred to in paragraph (e) above, if a Distress Event has not occurred, only if required by the Security Agent acting on the instructions of an Instructing Group):

- (i) in relation to any 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 (or otherwise on behalf and for the account of) the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and
 - (B) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and
- (ii) in relation to any receipts and recoveries received or recovered by way of set off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement.

8.2 Exclusions

Clause 8.1 (*Turnover by the Creditors*) shall not apply to any receipt or recovery:

- (a) by way of:

- (i) Close-Out Netting by a Senior Hedge Counterparty or a Senior Hedging Ancillary Lender;
 - (ii) Payment Netting by a Senior Hedge Counterparty or a Senior Hedging Ancillary Lender;
 - (iii) Inter-Hedging Agreement Netting by a Senior Hedge Counterparty; or
 - (iv) Inter-Hedging Ancillary Document Netting by a Senior Hedging Ancillary Lender;
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that that netting or set-off represents a reduction from the Gross Outstandings of that Multi-account Overdraft Facility to or towards an amount equal to its Net Outstandings);
- (c) made in accordance with Clause 2.6 (*Additional and/or Refinancing Debt*) and/or Clause 14 (*New Debt Financings*) to the extent that such receipt or recovery was funded directly or indirectly by the proceeds of any indebtedness incurred under or pursuant to any New Debt Financing;
- (d) made in accordance with Clause 13 (*Equalisation*);
- (e) in respect of funds received by the Security Agent for its own account; or
- (f) that has been distributed by a Senior Pari Passu Notes Trustee to any Senior Pari Passu Noteholders in accordance with the applicable Senior Pari Passu Notes Finance Documents unless that Senior Pari Passu Notes Trustee, as applicable, had received at least two Business Days' prior notice that an Acceleration Event or an Insolvency Event has occurred in relation to a Debtor or that the receipt or recovery falls within Clause 8.1 (*Turnover by the Creditors*) in each case prior to distribution of the relevant amount.

8.3 *Permitted assurance and receipts*

Nothing in this Agreement shall restrict the ability of any Senior Primary Creditor or other Party that is not a Group Member to:

- (a) arrange with any person which is not a Group Member or a Holding Company of any Group Member 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 restrict the terms or application of proceeds or recoveries of such assurance; or
- (b) make any assignment or transfer permitted by Clause 16 (*Changes to the Parties*),

which:

- (i) is permitted by the Senior Primary Finance Documents under which the relevant Liabilities were incurred; and

- (ii) is not in breach of Clause 4.5 (*No acquisition of Senior Hedging Liabilities*), Clause 5.4 (*No acquisition of Parent Liabilities*) or any provision of (if prior to the Final Discharge Date) the Senior Facilities Agreement and each other Senior Pari Passu Facilities Agreement, (if prior to the Senior Pari Passu Notes Discharge Date) the Senior Pari Passu Notes Indenture(s) pursuant to which any Senior Pari Passu Notes remain outstanding,

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

8.4 Sums received by Debtors

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

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

8.5 Saving provision

If, for any reason, any of the trusts expressed to be created in this Clause 8 should fail or be unenforceable, the affected Creditor or Debtor will promptly pay 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.

9 Redistribution

9.1 Recovering Creditor's rights

- (a) Any amount paid by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 7 (*Effect of Insolvency Event*) or Clause 8 (*Turnover of receipts*) shall be treated as having been paid by the relevant Debtor and distributed to the Security Agent, Senior Agents, Senior Arranger and Senior 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 (as the case may be) (the "**Shared Amount**") will be treated as not having been paid by that Debtor.

9.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor and is repaid by that Recovering Creditor to that Debtor, then:
 - (i) each Sharing Creditor shall (subject in the case of Senior Pari Passu Notes Trustee Amounts to Clause 23.2 (*Turnover obligation*)), upon request of the Security Agent, pay to that 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) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

9.3 *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.

10 *Enforcement of Transaction Security*

10.1 *Enforcement Instructions*

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by:
 - (i) in the case of any Credit-Specific Transaction Security:
 - (A) the group of Senior Creditors entitled to give instructions to the Security Agent in respect of the enforcement of that Credit-Specific Transaction Security in accordance with the terms of the relevant Senior Facilities Agreement or Senior Pari Passu Facilities Agreement; or
 - (B) if the Senior Facilities Agreement or Senior Pari Passu Facilities Agreement does not provide for enforcement instructions to be given by a specific group of Senior Lenders in respect of that Credit-Specific Transaction Security, those Senior Lenders whose Senior Credit Participation in respect of the Senior

Facility or Senior Facilities to which that Credit-Specific Transaction Security relates aggregate more than 66 ⅔ per cent. of the aggregate Commitments of all of the Senior Lenders under that Senior Facilities Agreement or Senior Pari Passu Facilities Agreement (or, if the aggregate Commitments in respect of such Senior Facility or Senior Facilities have been reduced to zero, aggregated more than 66 ⅔ per cent. of the aggregate Commitments immediately prior to their reduction to zero); or

(ii) in all other cases, the Super Majority Senior Primary Creditors,

and, notwithstanding anything to the contrary in this Agreement or any Debt Documents, will not accept responsibility or be liable for any losses to any person or any liability arising as a result of so refraining from enforcing the Transaction Security.

- (b) Subject to the Transaction Security having become enforceable in accordance with its terms, the Instructing Group may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 10.1.

10.2 Manner of enforcement - Transaction Security

If the Transaction Security is being enforced pursuant to Clause 10.1 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator, liquidator (other than in respect of a solvent liquidation of a Material Company which is not an Obligor), receiver, administrative receiver, administrator, compulsory manager, judicial manager or other similar officer of any Debtor to be appointed by the Security Agent) as the Instructing Group shall instruct, or in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate.

10.3 Exercise of voting rights

- (a) Subject to paragraph (c) below, each Creditor (other than each Senior Agent, Senior Pari Passu Notes Trustee and Senior Arranger) 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 Group Member as instructed by the Security Agent.
- (b) Subject to paragraph (c) below, the Security Agent shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by the Instructing Group.
- (c) Nothing in this Clause 10.3 entitles any Party to exercise or require any other Creditor to exercise such power of voting or representation to waive, reduce, discharge, extend the due date for (or change the basis for accrual of any)

payment of or reschedule any of the Liabilities owed to that Creditor or impair or otherwise adversely affect any Credit-Specific Transaction Security.

10.4 *Waiver of rights*

To the extent permitted under applicable law and subject to Clause 10.1 (*Enforcement Instructions*), Clause 10.2 (*Manner of enforcement - Transaction Security*), paragraphs (b) and (c) of Clause 11.2 (*Distressed Disposals*) and Clause 12 (*Application of proceeds*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Liabilities is so applied.

10.5 *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, the duties of the Security Agent and of any Receiver or Delegate owed to them in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to paragraphs (b) and (c) of Clause 11.2 (*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.

10.6 *Enforcement through Security Agent only*

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

11 *Non-Distressed Disposals and Distressed Disposals*

11.1 *Non-Distressed Disposals*

- (a) Notwithstanding anything to the contrary in this Agreement or any other Debt Document (including any provisions in this Agreement or any other Debt Document which are expressed to or purport to override any other provisions of this Agreement or any other Debt Document as a condition or otherwise to the taking of any action or step), the Security Agent (on behalf of itself and the Secured Parties) hereby agrees (and is irrevocably authorised, instructed and obliged to do so by, and without any further consent, agreement, instruction, direction, confirmation, payment, certification or other document, request or information from, any Creditor, other Secured Party or Debtor) that, it shall promptly following receipt of a written request from the Company to the Security Agent:
 - (i) release (or procure that any other relevant person releases) from the Transaction Security and the Senior Primary Finance Documents:

(A) any Security (and/or any other claim relating to a Debt Document) over any asset which the Company has confirmed pursuant to paragraph (c) below is the subject of:

- (1) a disposal not prohibited by the terms of any Senior Finance Document (or, to the extent any applicable Senior Finance Document prohibits such disposal, the applicable Senior Agent authorises the release in accordance with the terms of the applicable Senior Finance Document or the Required Creditor Consent for such disposal has been obtained) (including a disposal to a Group Member, but without prejudice to any obligation of any Group Member in a Senior Finance Document to provide replacement security); or
- (2) any other transaction not prohibited by the terms of any Senior Finance Document pursuant to which that asset will cease to be held or owned by a Group Member or the Parent;

(in each case, a “**Non-Distressed Disposal**”);

(B) any Security (and/or any other claim relating to a Debt Document) over any document or other agreement requested in order for any Group Member or the Parent to effect any amendment or waiver in respect of that document or agreement or otherwise exercise any rights, comply with any obligations or take any action in relation to that document or agreement (in each case to the extent the Company has confirmed pursuant to paragraph (c) below it is not prohibited by the terms of any Senior Finance Document) in order to implement that Non-Distressed Disposal;

(C) any Security (and/or any other claim relating to a Debt Document) over any asset of any Group Member or the Parent which has ceased to be a Debtor; and

(D) any Security (and/or any other claim relating to a Debt Document) over any other asset to the extent that the Company has confirmed pursuant to paragraph (c) below such release is in accordance with the terms of any Senior Finance Document; and

(ii) to the extent that the Company has confirmed pursuant to paragraph (c) below that such release is in accordance with the terms of any Senior Finance Document, in the case of a disposal of shares or other ownership interests in a Debtor or other Group Member (or any Holding Company of any Debtor), or any other transaction pursuant to which a Debtor or other Group Member (or any Holding Company of any Debtor) will cease to be a Group Member or a Debtor (including, without limitation, pursuant to Clause 16.14 (*Resignation of a Debtor*)), release (or procure that any other relevant person releases) that Debtor and its Subsidiaries

from all present and future liabilities (both actual and contingent) under the Senior Primary Finance Documents and the respective assets of such Debtor and its Subsidiaries (and the shares in any such Debtor and/or Subsidiary) from the Transaction Security and the Senior Primary Finance Documents (including any claim relating to a Debt Document).

- (b) If that Non-Distressed Disposal is not made by the time specified in the written request from the Company to the Security Agent contemplated by paragraph (a) above or by the stipulated time specified in the definitive agreement for such disposal, each such release of Transaction Security or any claim described in paragraph (a) 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 and the Company shall, at its expense, do all such things as are directed by the applicable Senior Agent (acting reasonably) to restore insofar as is legally possible the Security which is the subject of such release.
- (c) When making any request for a release pursuant to sub-paragraph (a)(i)(A), (a)(i)(B), (a)(i)(D) or (a)(ii) of this Clause 11.1 the Company shall confirm in writing to the Security Agent that:
 - (i) in the case of any release requested pursuant to sub-paragraph (a)(i)(A) or (a)(i)(B) above, the relevant disposal or other action is not prohibited by the terms of any Finance Document, in each case, as the case may be, as at the date of completion of such release, or at the option of the Company, on the date that the definitive agreement for such disposal or similar transaction is entered into; or
 - (ii) in the case of any release requested pursuant to paragraph (a)(i)(D) or (a)(ii) above, the relevant release is in accordance with terms of the Finance Documents,

and the Security Agent shall be entitled to rely on that confirmation for all purposes under the Senior Primary Finance Documents.

- (d) The Security Agent shall (on behalf of itself and the Senior Primary Creditors) and hereby agrees to (and is irrevocably authorised, instructed and obliged to do so by, and without any further consent, agreement, sanction, authority, instruction, direction, confirmation, payment, certification or other document, request or information from any Creditor, other Secured Party or Debtor) promptly enter into (or procure that any relevant person enters into) and deliver such documentation and/or take such other action as the Company shall require to give effect to, or to evidence, any release (including in any official register) or other matter contemplated by or in connection with this Clause 11.1 (including the issuance of any certificates of non-crystallisation of floating charges, any consent to dealing or any other similar or equivalent document that may be required or desirable).
- (e) Without prejudice to the foregoing and for the avoidance of doubt, if requested by the Company in accordance with the terms of the Finance Documents (and *provided that* the requested action is not expressly prohibited by any of the other Finance Documents), the Security Agent, the Creditors and the other Secured

Parties shall promptly execute any guarantee, security or other release and/or any amendment, supplement or other documentation relating to any Transaction Security or Security Documents as contemplated by the terms of any of the Finance Documents and the Security Agent (on behalf of itself and the Senior Primary Creditors) hereby agrees to execute, if requested by the Company, (and is irrevocably authorised, instructed and obliged to do so by, and without any further consent, agreement, sanction, authority, instruction, direction, confirmation, payment, certification or other document, request or information from, any Creditor, other Secured Party or Debtor) any such release or document on behalf of the Creditors the other Secured Parties. When making any request pursuant to this paragraph (e) the Company shall confirm in writing to the Security Agent that such request is in accordance with the terms of a Finance Document (and the requested action is not expressly prohibited by any of the other Finance Documents) and the Security Agent shall be entitled to rely on that confirmation for all purposes under the Senior Primary Finance Documents.

- (f) For the avoidance of doubt, if any Group Member is required or permitted under the Senior Primary Finance Documents to apply the proceeds of any disposal or other transaction or such other amounts in prepayment, redemption or any other discharge or reduction of any Senior Primary Liabilities:
 - (i) no such application of those proceeds or amounts shall require the consent of any Party or will result in a direct or indirect breach of any Finance Document; and
 - (ii) any such application shall discharge in full any obligation to apply those proceeds or amounts in prepayment, redemption or any other discharge or reduction of any Liabilities,

provided that, this paragraph (f) is without prejudice to any right of any Group Member or the Parent to apply any proceeds of any disposal or other transaction in prepayment, redemption or any other discharge or reduction of any Parent Liabilities to the extent expressly permitted by all the Prior Ranking Financing Agreements.

11.2 *Distressed Disposals*

- (a) Subject to paragraph (d) below, if a Distressed Disposal of any asset is being effected, the Security Agent is irrevocably authorised (at the cost of the relevant Debtor without any consent, sanction, authority or further confirmation from any Creditor or Debtor):
 - (i) **release of 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 Security on a share sale (Debtor):** if the asset which is disposed of consists of shares in the capital of a Debtor, to release:

- (A) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (I) its Borrowing Liabilities;
 - (II) its Guarantee Liabilities; and
 - (III) its Other Liabilities;
- (B) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
- (C) any other claim of an Intra-Group Lender, the Parent or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

(iii) **release of liabilities and Security on a share sale (Holding Company):** if the asset which is disposed of consists of shares in the capital of any Holding Company of a Debtor, to release:

- (A) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - (I) its Borrowing Liabilities;
 - (II) its Guarantee Liabilities; and
 - (III) its Other Liabilities;
- (B) any Transaction Security granted by that Holding Company or any Subsidiary of that Holding Company over any of its assets; and
- (C) any other claim of an Intra-Group Lender, the Parent or another Debtor over the assets of that Holding Company and any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtors;

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

- (A) the Liabilities; or
- (B) the Debtor Liabilities,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company:

- (I) (if the Security Agent (acting in accordance with paragraph (c) below) does not intend that any transferee of those Liabilities or Debtor Liabilities (the “**Transferee**”) will be treated as a Senior 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 Senior Primary Creditor or a Secured Party for the purposes of this Agreement; and
- (II) (if the Security Agent (acting in accordance with paragraph (c) below) does intend that any Transferee will be treated as a Senior 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 Senior Primary Creditors; and
 - 2. all or part of any other Liabilities and the Debtor Liabilities,on behalf of, in each case, the relevant Creditors and Debtors;
- (v) **transfer of obligations in respect of liabilities on a share sale:** if the asset which is disposed of consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the “**Disposed Entity**”) and the Security Agent (acting in accordance with paragraph (c) 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:
 - (A) the Intra-Group Liabilities; or
 - (B) the Debtor Liabilities,to (i) execute and deliver or enter into any agreement to agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities on behalf of the relevant Intra-Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations and to (ii) accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities are to be transferred.

- (b) The net proceeds of each Distressed Disposal (and the net proceeds of any disposal of Liabilities or Debtor Liabilities pursuant to paragraphs (a)(iv) and (a)(v) above) shall be paid to the Security Agent (as the case may be) for application in accordance with Clause 12 (*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 paragraphs (a)(iv) and (a)(v) 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 paragraphs (a)(iv) and (a)(v) above) effected by or at the request of the Security Agent, the Security Agent shall take reasonable care to obtain a fair market price in the prevailing market conditions (although the Security Agent shall not have any obligation to postpone any such Distressed Disposal or disposal of Liabilities in order to achieve a higher price).
- (d) Where Borrowing Liabilities in respect of any Senior Primary Liabilities would otherwise be released pursuant to paragraph (a) above, the Creditor to whom such Borrowing Liabilities are owed may elect to have those Borrowing Liabilities transferred to a Holding Company of the Company, in which case the Security Agent is irrevocably authorised (at the cost of the relevant Debtor or the Company and without any consent, sanction, authority or further confirmation from any Creditor or Debtor) to execute such documents as are required to so transfer those Borrowing Liabilities.

11.3 *Adjustment of Mandatory Prepayments*

Subject to any terms under any Senior Primary Finance Document to the contrary, if the making of any Senior Mandatory Prepayment (an “**Original Mandatory Prepayment**”) would directly or indirectly result in the notional amount of any outstanding Senior Hedging Liabilities exceeding the outstanding principal amount (following such Original Mandatory Prepayment) under any Debt Document to which the Company determines such Senior Hedging Liabilities relate (the “**Relevant Debt**”), the Company may (upon written notice to each relevant Senior Agent and Hedge Counterparty) reduce the amount of such Mandatory Prepayment so that the aggregate of:

- (a) the reduced Mandatory Prepayment; and
- (b) the amount required to be applied in close-out of the relevant Senior Hedging Liabilities to reduce the notional amount thereof to the outstanding principal amount of the Relevant Debt,

is equal to the amount of the Original Mandatory Prepayment and no Default or Event of Default shall arise under any Debt Document to the extent that any mandatory prepayment is adjusted in accordance with this Clause 11.3.

11.4 *Fair value*

- (a) In the case of:

- (i) a Distressed Disposal; or
- (ii) a Debt Disposal,

effected by, or at the request of, the Security Agent, the Security Agent shall act in accordance with this Agreement, *provided that* the Parties instructing the Security Agent shall take reasonable care to obtain a fair market price having regard to the prevailing market conditions (though none of such Parties shall have any obligation to postpone (or request the postponement of) any Distressed Disposal or Debt Disposal in order to achieve a higher price).

- (b) The Security Agent may seek to satisfy the requirement in Clause 11.4 (*Fair value*) in any manner.
- (c) Without prejudice to the generality of paragraph (b) above, the requirement in paragraph (a) above shall be satisfied (and as between the Creditors and the Debtors shall be conclusively presumed to be satisfied) and the Security Agent will be taken to have discharged all its obligations in this respect under this Agreement, the other Debt Documents and generally at law if:
 - (i) that Distressed Disposal or Debt Disposal is made pursuant to any process or proceedings approved or supervised by or on behalf of any court of law;
 - (ii) that Distressed Disposal or Debt Disposal is made by, at the direction of or under the control of, a liquidator, receiver, administrative receiver, administrator, judicial manager, compulsory manager or other similar officer (or any analogous officer in any jurisdiction) appointed in respect of a Group Member or the assets of a Group Member;
 - (iii) that Distressed Disposal or Debt Disposal is made pursuant to a Competitive Sales Process; or
 - (iv) if a Financial Adviser appointed by the Security Agent has delivered a Fairness Opinion to the Security Agent in respect of that Distressed Disposal or Debt Disposal.

11.5 Restriction on Enforcement

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

- (a) the Security Agent is not authorised to release any Debtor, Subsidiary or Holding Company from any Borrowing Liabilities or Guarantee Liabilities owed to any Senior Primary Creditor except in accordance with Clause 11.2 (*Distressed Disposals*); and
- (b) in the case that any Senior Primary Creditor Liability is secured by any Credit-Specific Transaction Security, the Security Agent is not authorised to release any Debtor, Subsidiary or Holding Company from that Senior Primary Creditor Liability under the Senior Primary Finance Documents in connection with a Distressed Disposal unless the cash amount of the enforcement proceeds of such Distressed Disposal is equal to or in excess of the amount standing to the credit

of the relevant Credit-Specific Account (or, if lower, the amount of such Senior Primary Creditor Liability under the Senior Primary Finance Document) plus the equivalent amount relating to each other Senior Primary Creditor Liability similarly affected, and, in such case, an amount of such enforcement proceeds in cash equal to the amount standing to the credit of the relevant Credit-Specific Account (or, if lower, the then principal amount of such Senior Primary Creditor Liability under the Senior Primary Finance Document) shall be treated for the purposes of Clause 12 (*Application of proceeds*) as a Recovery from the Credit-Specific Transaction Security over that Credit-Specific Account and not as a Recovery from the other Transaction Security.

11.6 *Appointment of Financial Adviser*

- (a) Without prejudice to Clause 15.8 (*Rights and discretions*), the Security Agent may engage, or approve the engagement of, (in each case on such terms as it may consider appropriate (including, without limitation, restrictions on that Financial Adviser's liability and the extent to which any advice, valuation or opinion may be relied on or disclosed)), pay for and rely on the services of a Financial Adviser to provide advice, a valuation or an opinion in connection with:
 - (i) a Distressed Disposal or a Debt Disposal;
 - (ii) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal; or
 - (iii) any amount of non-cash consideration.
- (b) For the purposes of paragraph (a) above, the Security Agent shall act:
 - (i) on the instructions of the Instructing Group; or
 - (ii) in the absence of any such instructions, as it considers in its discretion to be appropriate.

11.7 *Creditors' and Debtors' actions*

- (a) Each Creditor, the Parent and each Debtor will:
 - (i) do all things that the Security Agent reasonably requests in order to give effect to this Clause 11 (which shall include, without limitation, the execution of any assignments, transfers, releases, delegation of faculties, powers of attorney or other documents that the Security Agent may reasonably consider to be necessary to give effect to the releases or disposals contemplated by this Clause 11); and
 - (ii) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 11 or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the reasonable instructions of the Security Agent,

provided that the proceeds of those disposals are applied in accordance with Clause 11.1 (*Non-Distressed Disposals*) or Clause 11.2 (*Distressed Disposals*) (as the case may be).

- (b) Each Secured Party, the Parent and each Debtor irrevocably authorises and instructs the Security Agent (at the cost of the relevant Secured Party, the Parent or the relevant Debtor and without any further consent, agreement, sanction, authority, instruction, direction, confirmation, payment, certification or other document, request or information from any Secured Party, the Parent or any Debtor) to be its agent to do anything which that Secured Party, the Parent or that Debtor has authorized the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement, but has failed to do (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 release and disposals contemplated by this Clause 11 or Clause 14 (*New Debt Financings*).

12 *Application of proceeds*

12.1 *Order of application*

- (a) Subject to Clause 1.7 (*Waiver and termination*), and Clause 12.2 (*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 any Transaction Security (for the purposes of this Clause 12, the “**Recoveries**”) shall be applied by the Security Agent at any time as it (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 12), in the following order of priority:
 - (i) to the extent that such Recoveries do not relate to the realisation or enforcement of any Credit-Specific Transaction Security, or the application of any amount standing to the credit of a Credit-Specific Account:
 - (A) in discharging on a *pro rata* basis all costs and expenses incurred by any Security Agent, any Receiver or any Delegate in connection with any realisation or enforcement of any Transaction Security (other than any Credit-Specific Transaction Security) taken in accordance with the terms of this Agreement;
 - (B) in payment or reimbursement, on a *pro rata* basis, of all costs and expenses incurred by any Senior Agent or Senior Primary Creditor in connection with any realisation or enforcement of any Transaction Security (other than any Credit-Specific Transaction Security) taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 7.5 (*Creditors’ actions*);
 - (C) in payment or distribution to:

- (I) each Senior Agent on its own behalf and on behalf of the relevant Senior Arrangers and the relevant Senior Lenders;
- (II) each Senior Pari Passu Notes Trustee on its own behalf and on behalf of the Senior Pari Passu Notes Creditors; and
- (III) the Senior Hedge Counterparties,

for application towards the discharge of:

- 1. the Senior Arranger Liabilities and the Senior Lender Liabilities (in accordance with the terms of the Senior Finance Documents);
- 2. the Senior Pari Passu Notes Liabilities (in accordance with the terms of the Senior Pari Passu Notes Finance Documents); and
- 3. the Senior Hedging Liabilities (on a pro rata basis between the Senior Hedging Liabilities of each Senior Hedge Counterparty),

on a pro rata basis and ranking *pari passu* between paragraphs (I), (II) and (III) above; or

- (D) if none of the Debtors is under any further actual or contingent liability under any Senior Primary Finance Document, in payment to any other person to whom any Security Agent is obliged to pay in priority to any Debtor; and
 - (E) the balance, if any, in payment to the relevant Debtor; or
- (ii) to the extent that such Recoveries relate to the realisation or enforcement of any Credit-Specific Transaction Security, or the application of any amount standing to the credit of a Credit-Specific Account:
- (A) in discharging on a *pro rata* basis all costs and expenses incurred by the Security Agent, any Receiver or any Delegate in connection with any realisation or enforcement of such Credit-Specific Transaction Security taken in accordance with the terms of this Agreement;
 - (B) in payment or reimbursement, on a *pro rata* basis, of all costs and expenses incurred by any Senior Primary Creditor under the Debt Documents to which that Credit-Specific Transaction Security relates in connection with any realisation or enforcement of such Credit-Specific Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 7.5 (*Creditors' actions*);

- (C) in payment to the Senior Agent and/or the Senior Pari Passu Note Trustee (as applicable) in respect of the Debt Documents to which that Credit-Specific Transaction Security relates on its own behalf and on behalf of the relevant Senior Primary Creditors for application towards discharge of the relevant Senior Primary Creditor Liabilities to which that Credit-Specific Transaction Security relates; and
 - (D) the balance, if any, in the manner set out in sub-paragraphs (A) to (E) (inclusive) of paragraph (i) above.
- (b) Each Secured Party authorises the Security Agent to hold any non-cash consideration received or recovered in connection with the realisation or enforcement of all or any part of the Transaction Security until cash is received for any such non-cash consideration, *provided that* the Security Agent may distribute any such non-cash consideration to a Secured Party which has agreed, on terms satisfactory to the Security Agent, to receive (and which is entitled, in accordance with paragraph (a), to receive) such non-cash consideration and the Liabilities owed to that Secured Party shall be reduced by an amount equal to the value of that non-cash consideration upon receipt by that Secured Party of that non-cash consideration.

12.2 *Prospective liabilities*

Following a Distress Event, the Security Agent may, in its discretion, hold any amount of the Recoveries not in excess of the Expected Amount (as defined below) 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 that Security Agent shall think fit until otherwise directed by the Instructing Group (the interest being credited to the relevant account) for later application under Clause 12.1 (*Order of application*) in respect of:

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

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future (the “**Expected Amount**”).

12.3 *Investment of proceeds*

Prior to the application of the proceeds of the Security Property, in accordance with Clause 12.1 (*Order of application*), the Security Agent may, in its discretion, hold all or part of those proceeds (but not in excess of the amounts due or to become due and while so held the excess of the interest charged on the Liabilities shall not exceed the interest earned on such suspense or impersonal account(s)) in an interest bearing suspense or impersonal account(s) in the name of that Security Agent with such financial institution (including itself) and for so long as that Security Agent shall think fit until otherwise directed by an Instructing Group (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 12.

12.4 *Currency conversion*

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

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

12.6 *Good discharge*

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent:
 - (i) may be made to the relevant Senior Agent on behalf of its Senior Primary Creditors;
 - (ii) shall be made directly to the Senior 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) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution by the Security Agent.

- (c) The Security Agent is not under any obligation to make the payments to the Senior Agents, the Relevant Ancillary Lenders or the Senior Hedge Counterparties under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Creditor are denominated pursuant to the relevant Debt Document.

12.7 *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 relevant Debt Documents under which those Liabilities have arisen.

13 *Equalisation*

13.1 *Equalisation Definitions*

For the purposes of this Clause 13:

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

"Exposure" means:

- (a) in relation to a Senior Lender, the aggregate amount of its participation (if any, and without double counting) in all Senior Utilisations outstanding under the Senior Facilities Agreement or any Senior Pari Passu Facilities Agreement (as the context requires) at the Enforcement Date (assuming, notwithstanding paragraph (g) of Clause 1.2 (*Construction*) all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims between Senior Lenders pursuant to any loss-sharing arrangement in the Senior Facilities Agreement (or any substantially equivalent provision in a Senior Pari Passu Facilities Agreement (as the context requires)) which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Senior Facilities Agreement or any Senior Pari

Passu Facilities Agreement (as the context requires) and amounts owed to it by a Debtor in respect of any Ancillary Facility; and

- (b) in relation to a Senior Hedge Counterparty:
 - (i) if that Senior Hedge Counterparty has terminated or closed out any hedging transaction under any Senior Hedging Agreement in accordance with the terms of this Agreement on or prior to the Enforcement Date, the amount, if any, payable to it under that Senior Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Senior Hedge Counterparty and as calculated in accordance with the relevant Senior Hedging Agreement) and to the extent that amount constitutes Senior Hedging Liabilities; and
 - (ii) if that Senior Hedge Counterparty has not terminated or closed out any hedging transaction under any Senior Hedging Agreement on or prior to the Enforcement Date:
 - (A) if the relevant Senior Hedging Agreement is based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Senior Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
 - (B) if the relevant Senior Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Senior Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be the date on which an event similar in meaning and effect (under that Senior Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Senior Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Senior Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),to the extent that amount constitutes Senior Hedging Liabilities, such amount, in each case, to be certified by the relevant Senior Hedge Counterparty and as calculated in accordance with the relevant Senior Hedging Agreement.

13.2 Implementation of equalisation

- (a) The provisions of this Clause 13 shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate.

- (b) Without prejudice to the generality of paragraph (a) above, if the provisions of this Clause 13 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the relevant Creditors shall make appropriate adjustment payments amongst themselves.

13.3 *Equalisation*

- (a) Subject to paragraph (b) below, if, for any reason, any Senior Primary Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the Senior Lenders, the Senior Pari Passu Noteholders and the Senior Hedge Counterparties in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures of all the Senior Lenders, the Senior Pari Passu Noteholders and the Senior Hedge Counterparties at the Enforcement Date, subject to Clause 1.7 (*Waiver and termination*), the Senior Lenders, the Senior Pari Passu Noteholders and the Senior Hedge Counterparties will make such payments amongst themselves as the Security Agent shall require to put the Senior Lenders, the Senior Pari Passu Noteholders and the Senior Hedge Counterparties in such a position that (after taking into account such payments) those losses are borne in those proportions.
- (b) Paragraph (a) does not apply to the Senior Lenders in respect of any Senior Lender Liabilities owed to them which are discharged by applying the proceeds from the realisation or enforcement of any relevant Credit-Specific Transaction Security. If any of such Senior Lender Liabilities remain unpaid after application of the aforementioned enforcement proceeds, only the unpaid portion of such Senior Lender Liabilities shall be taken into account in calculating the Exposure and the losses of those Senior Lenders for the purpose of paragraph (a) above.

13.4 *Turnover of Enforcement Proceeds*

If:

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

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

13.5 Notification of Exposure

Before each occasion on which it intends to implement the provisions of this Clause 13, the Security Agent shall send notice to each Senior Hedge Counterparty, the relevant Senior Agent (on behalf of the Senior Lenders and Senior Arranger(s)) and the Senior Pari Passu Notes Trustee (on behalf of the Senior Pari Passu Notes Creditors) requesting that it notify the Security Agent of, respectively, its Exposure, the Exposure of each Senior Lender and the Exposure of each Senior Pari Passu Noteholder (if any).

13.6 Default in payment

If a Creditor fails to make a payment due from it under this Clause 13, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Primary Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Senior Primary Creditor(s) in respect of costs) but shall have no liability or obligation towards such Senior Primary Creditor(s) or any other Senior Primary Creditor, Senior Agent, Senior Arranger or Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

14 New Debt Financings

14.1 New Debt Financings

- (a) Each Party irrevocably consents and agrees that any New Debt Financing (including any New Debt Financing entered into before the date hereof or already subject to this Agreement) of any Group Member or Holding Company or any Material Company and documentation in relation thereto may (I) be treated and designated as a Senior Facility and a Senior Pari Passu Facilities Agreement, a Senior Hedging Agreement (including as applicable whether constituting Senior Hedging Liabilities), Senior Pari Passu Notes and become subject to this Agreement; (II) be secured by any Transaction Security; and (III) be treated and rank as such for the purposes of this Agreement, *provided that*:
 - (i) the Company certifies to each existing Senior Agent and the Security Agent that the proposed New Debt Financing is not prohibited under any Finance Document and it otherwise complies with the requirements (if any) of the then existing Finance Documents relating thereto;
 - (ii) the Company supplies to the Security Agent as soon as practicable and in any case within ten (10) Business Days prior to any accession under paragraph (a)(iii) below, (A) copies of the Finance Documents governing the terms of that New Debt Financing (including any security documents and priority agreements relating to the New Debt Financing) to which it is a party (excluding or redacting, unless otherwise agreed by the Company, any fee or syndication letters or other documentation and details of any pricing or financial ratios, in each case, relating to the New Debt Financing relating thereto) and (B) any documents or other information required to be delivered under the Senior Facilities Agreement or relevant Senior Pari Passu Facilities Agreement;

- (iii) the borrower or issuer (as applicable), guarantors and third party security providers which are Group Members in respect of, and the Senior Agent or Senior Pari Passu Notes Trustee (and, if applicable, lenders) under the relevant New Debt Financing execute this Agreement or sign a Creditor/Creditor Representative Accession Undertaking or Debtor Accession Deed (as applicable); and
 - (iv) the New Debt Financing (and any related Security Documents and other Debt Documents) is expressed to be subject to the terms of this Agreement and the applicable rights and benefits of the parties thereto are regulated accordingly.
- (b) Subject to compliance with the requirements of paragraphs (a)(i) to (a)(iv) above, the Parent, the Company and any other Group Member or any Material Company may enter into a New Debt Financing and all Liabilities under (and in each case as so designated by the Company):
- (i) new Senior Primary Finance Documents shall be deemed to be Senior Primary Liabilities and rank *pari passu* in all respects with all existing Senior Primary Liabilities; and
 - (ii) new Senior Finance Documents, new Senior Pari Passu Notes Finance Documents and new Senior Hedging Agreements shall be deemed to be Senior Lender Liabilities, Senior Pari Passu Notes Liabilities and Senior Hedging Liabilities (as applicable) and rank *pari passu* in all respects with all existing Senior Lender Liabilities, Senior Pari Passu Notes Liabilities and Senior Hedging Liabilities,

for the purposes of this Agreement and the other Debt Documents.

- (c) Nothing in this Clause 14.1 or any other Debt Document shall restrict the Parent, the Company or any Group Member or any Material Company, the Creditors (or any of them) and the providers of a New Debt Financing agreeing the ranking of their respective claims among themselves in documentation separate to this Agreement and entered into solely between such parties (or on their behalf by an agent).
- (d) Each Debtor shall grant or re-grant any Transaction Security and/or agrees to any amendment of a Security Document required under the terms of that New Debt Financing or as may be required under any applicable law in order to give effect to the ranking set out in Clause 2.2 (*Transaction Security*), in each case, subject to the Security Principles and the requirements of Clause 14.2 (*Transaction Security: New Debt Financings*).

14.2 Transaction Security: New Debt Financings

- (a) To the extent that a New Debt Financing is permitted under Clause 14.1 (*New Debt Financings*), the Parties agree that, in connection with a New Debt Financing, each Senior Agent, each Senior Pari Passu Notes Trustee and the Security Agent (and any other Creditor party to a Transaction Security Document) are authorised and instructed by all Creditors (and in each case are

obliged at the request and cost of the Company) to enter into promptly any new Security Document, promptly amend or waive any terms of an existing Security Document and/or promptly release any asset from Transaction Security and/or to effect the ranking, priority guarantees and Security of the New Debt Financing, subject to the following conditions:

- (i) any new Transaction Security in relation to such New Debt Financing shall be:
 - (A) subject to the Guarantee Limitations, applicable law and the other terms of this Agreement, granted in favour of the then existing Secured Parties (as the case may be, or in each case, class thereof) or to the Security Agent on their behalf;
 - (B) unless otherwise agreed by the Company, on terms substantially the same (except that it shall also secure any New Debt Financing) as the terms of the existing Transaction Security over equivalent asset(s); and
 - (C) for the purpose of this Agreement, be considered as having secured the relevant Liabilities *pari passu* with the then existing Transaction Security;
- (ii) any amendment or waiver of a Security Document or release and re-grant of Transaction Security shall only be undertaken if: (i) to the extent necessary under applicable law to give effect to the ranking set out in Clause 2.2 (*Transaction Security*); and (ii) in any other case (*provided that* in such other case (if it is legally possible and in the opinion of the Company (acting reasonably) it is commercially feasible to do so, it is not possible to implement the New Debt Financing by either granting additional Transaction Security and/or amending the terms of the existing Transaction Security, and without breach of any term or condition of any Senior Facility), second or further priority (if applicable) Transaction Security (the “**Additional Transaction Security**”) will be taken instead of releasing and re-granting the existing Transaction Security and in such circumstances the relevant Liabilities will be secured by such Additional Transaction Security and will nonetheless be deemed and treated for the purposes of this Agreement as secured by the existing Transaction Security Documents and the Additional Transaction Security *pari passu* with other Liabilities which would otherwise have the same ranking as contemplated by such New Debt Financing);
- (iii) if any asset is to be released from Transaction Security, promptly upon giving effect to that release, replacement Transaction Security is, subject to applicable law, the Debt Documents, the Guarantee Limitations, the Security Principles and other terms of this Agreement, granted in favour of the Security Agent for and on behalf of the providers and/or agents and/or trustees of the New Debt Financing and (in relation to Transaction Security) the existing Secured Parties (or relevant class thereof) benefitting from the Security on substantially the same terms as

the Transaction Security released (except that it shall also secure any New Debt Financing); and

- (iv) to the extent customary legal opinions as to due capacity, authority, execution and enforceability (together with customary supporting legal documentation, certificates and resolutions) are issued in relation to re-taken, new or amended Security Documents in connection with a New Debt Financing, the Security Agent shall be entitled to rely on such legal opinions and shall receive documentary evidence of such reliance.
- (b) For the purpose of the Company determining if a matter is “**commercially feasible**” under this Clause, the Company may take into account (among other things in its good faith opinion) any action which is reasonably likely to have a material adverse effect on the borrowing, incurring, assumption, establishment (including pricing and commercial terms thereof), underwriting, placing, distribution or any other similar action, obtaining any consent, approval, release or waiver or agreement to any amendment in connection therewith (in the good faith judgment of the board of directors of the Company (for which it can conclusively rely on advice and market feedback of the arrangers of such New Debt Financing)), and the Company shall not be acting unreasonably if it considers that a particular action is reasonably likely to have a material adverse effect on the borrowing, incurring, assumption, establishment (including pricing and commercial terms thereof), underwriting, placing, distribution or any other similar action, obtaining any consent, approval, release or waiver or agreement to any amendment in connection therewith (in the good faith judgment of the board of directors of the Company (for which it can conclusively rely on advice and market feedback of the arrangers of such New Debt Financing))).
- (c) Each of the Secured Parties agrees that subject to paragraph (a) above:
 - (i) not to take any action to challenge the validity or enforceability of the Additional Transaction Security by reason of it being expressed to be second ranking (or any other lower ranking); and
 - (ii) that Additional Transaction Security may be granted by any Debtor in order to secure all or any part of any Senior Hedging Liabilities and/or any New Debt Financing.

14.3 *Further assurance*

- (a) A “**Relevant Document**” means any document or Debt Document to be entered into in connection with this Clause 14 or which is otherwise reasonably required by the Company (upon notice to the applicable Senior Agent, Security Agent or Creditor) to be executed in relation to a New Debt Financing or any other Debt Document including, without limitation, any amendment, waiver or release agreement in respect of any Debt Document or Security Document, any grant of Security pursuant to a Security Document, the entry into any additional or replacement intercreditor agreement (on substantially the same terms as this Agreement except for the incorporation of such New Debt Financing).

- (b) Each Creditor, Senior Agent and other Secured Party agrees that it shall (at the cost and expense of the Debtors):
- (i) promptly co-operate with the Debtors with a view to satisfying the conditions in this Clause 14 in respect of any New Debt Financing; and
 - (ii) promptly execute (including at the reasonable request of the Company or the Security Agent) all such Relevant Documents, take such other actions and give such instructions to the Security Agent as may reasonably be required, in each case, in connection with any guarantee or Security and with any incurrence or borrowing, in accordance with this Clause 14 in relation to a New Debt Financing.
- (c) Each Senior Agent and the Security Agent party to this Agreement is irrevocably authorised, instructed or obliged by the Creditors and other Secured Parties for which it acts as agent or trustee to execute promptly on their behalf any such Relevant Document or take any other action set out in or in connection with the provisions of this Clause 14.3, in each case which is consistent with and required pursuant to this Clause 14.3, without the requirement for any further authorisation or consent from such Creditors.
- (d) Upon becoming a Party to this Agreement, each Senior Agent confirms that pursuant to paragraph (c) above, it is irrevocably authorised, instructed and obliged pursuant to the terms of the relevant Debt Documents to promptly execute any Relevant Document or take any other action set out in or in connection with the provisions of this Clause 14.3 on behalf of the then relevant Creditors or other Secured Party without the requirement for any further authorisation or consent from such Creditors or other Secured Party.
- (e) Notwithstanding the foregoing, nothing in this Clause 14.3 shall oblige the Security Agent or any Senior Agent to execute any document if it would impose personal liabilities or obligations on, or adversely affect the right, duties or immunities of, the Security Agent or that Senior Agent (*provided that* the incurrence of such New Debt Financing and any steps taken to effect the same shall not adversely affect the rights of any Security Agent or Senior Agent) and nothing in this Clause 14.3 shall be construed as a commitment to advance or arrange any New Debt Financing.
- (f) Each Creditor and each other Secured Party hereby irrevocably authorises and instructs each of their respective Senior Agents and the Security Agent (as applicable) to execute any Relevant Document as contemplated by this Clause 14.3.
- (g) The Company shall (or another Debtor so elected shall), within 15 Business Days of demand, pay to each Creditor and the Security Agent the amount of all reasonable third party costs and expenses (including legal expenses) reasonably incurred by them (or in the case of the Security Agent, by any Receiver or Delegate) (in each case, subject to agreed caps, if any) in connection with the satisfaction of the conditions of this Clause and the consideration, negotiation, preparation, printing, execution and perfection of any Relevant Document.

- (h) Each Debtor confirms:
- (i) the authority of the Company to give effect to the terms of or facilitate the implementation, assumption or establishment of a New Debt Financing entered into or assumed in compliance with this Agreement; and
 - (ii) that its guarantee and indemnity set out in this Agreement (or any applicable Accession Deed or other Debt Document), any equivalent provision of any New Debt Financing, and all Transaction Security granted by it will entitle the applicable creditors under any New Debt Financing and the persons providing to benefit from such guarantee and indemnity and such Transaction Security (subject only to any applicable limitations on such guarantee and indemnity set out in any Accession Deed (including any limitation in relation to unlawful financial assistance) or other document pursuant to which it became a Debtor) and extend to include all obligations arising under or in respect of any New Debt Financing.

15 *The Security Agent*

15.1 *Security Agent as trustee*

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Each of the Senior Primary Creditors authorises the Security Agent to act as security agent and trustee for the Secured Parties and perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions.

15.2 *Parallel debt*

- (a) In this Clause 15.2:

“Secured Creditor Claim” means any amount which an Obligor owes to a Secured Party under or in connection with the Debt Documents.
- (b) Notwithstanding any other provision of this Agreement, each Obligor hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as a Senior Primary Creditor Representative, sums equal to and in the currency of each amount payable as the Secured Creditor Claim under each of the Debt Documents as and when that amount falls due for payment under the relevant Debt Documents or would have fallen due but for any discharge resulting from failure of a Secured Party to take appropriate steps, in insolvency proceedings affecting that Obligor, to preserve its entitlement to be paid that amount (**“Security Agent Claim”**). Such undertaking shall constitute an own independent right of the Security Agent to demand and receive payment of the Security Agent Claim.

- (c) Unless expressly provided to the contrary in any Debt Document, the Security Agent holds:
- (i) the benefit of any Security Agent Claims; and
 - (ii) any proceeds of security created by a Transaction Security Document, for the benefit, and as the property, of the Secured Parties and so that they are not available to the personal creditors of the Security Agent.
- (d) The property rights under paragraph (c) above are located in the jurisdiction where the Security Agent maintains its accounts in respect of those property rights.
- (e) Each Obligor must pay the Security Agent, as an independent and separate creditor, an amount equal to each Secured Creditor Claim on its due date.
- (f) The Security Agent may enforce performance of any Security Agent Claim in its own name as an independent and separate right. This includes any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in respect of any kind of insolvency proceeding.
- (g) Each Secured Party must, at the request of the Security Agent, perform any act required in connection with the enforcement of any Security Agent Claim. This includes joining in any proceedings as co-claimant with the Security Agent.
- (h) Each Obligor irrevocably and unconditionally waives, to the fullest extent permitted by law, any right it may have to require a Secured Party to join in any proceedings as co-claimant with the Security Agent in respect of any Security Agent Claim.
- (i) Discharge by an Obligor of a Secured Creditor Claim will discharge:
- (i) the corresponding Security Agent Claim in the same amount; and
 - (ii) the corresponding Secured Creditor Claim in the same amount.
- (j) Discharge by an Obligor of a Security Agent Claim will discharge the corresponding Secured Creditor Claim in the same amount.
- (k) The aggregate amount of the Security Agent Claims against an Obligor in connection with the Debt Documents will never exceed the aggregate amount of Secured Creditor Claims owed by such Obligor under the relevant Debt Document.
- (l) A defect affecting a Security Agent Claim against an Obligor in connection with the Debt Documents will not affect any Secured Creditor Claim under the Debt Documents.
- (m) A defect affecting a Secured Creditor Claim against an Obligor in connection with the Debt Documents will not affect any Security Agent Claim under the Debt Documents.

- (n) If the Security Agent returns to any Obligor, whether in any kind of insolvency proceedings or otherwise, any recovery in respect of which it has made a payment to a Secured Party, that Secured Party must repay an amount equal to that recovery to the Security Agent.
- (o) For the purpose of this Clause 15.2, the Security Agent acts in its own name and not as a trustee, and its claims under this Clause shall not be held on trust. The Security granted under the Transaction Security Documents to the Security Agent to secure the claims of the Security Agent under this Clause is granted to the Security Agent in its capacity as creditor and shall not be held on trust.

15.3 *Instructions*

- (a) Subject to paragraphs (d) and (e) below, the Security Agent shall act in accordance with any instructions given to it by the Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) or, if so instructed by the Instructing Group (or any other Creditor or group of Creditor from whom it is required to take instructions under this Agreement), 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 or directions received by it from Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) are duly given in accordance with the terms of the Debt Documents and (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any direction, from the Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any 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) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Instructing Group shall override any conflicting instructions given by any other Parties.
- (d) Paragraph (a) shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clause 15.6 (*No*

duty to account) to Clause 15.11 (*Exclusion of liability*), Clause 15.14 (*Confidentiality*) to Clause 15.19 (*Custodians and nominees*) and Clause 15.22 (*Acceptance of title*) to Clause 15.25 (*Disapplication*); and

- (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:

- (A) Clause 11.1 (*Non-Distressed Disposals*);
- (B) Clause 12.1 (*Order of application*);
- (C) Clause 12.2 (*Prospective liabilities*);
- (D) Clause 12.5 (*Permitted Deductions*); and
- (E) Clause 14 (*New Debt Financings*),

which instruction and authority shall have been given under the terms of such Clauses and not the instructions of the Instructing Group pursuant to paragraphs (a) and (b) above.

- (e) If giving effect to instructions given by the Instructing Group 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 that Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.

- (f) In exercising any discretion to exercise a right, power or authority under this Agreement where either:

- (i) it has not received any instructions, as to the exercise of that discretion; or
- (ii) the exercise of that discretion is subject to paragraph (d)(iv) above, other than paragraph (d)(iv)(A) above in relation to a Non-Distressed Disposal which is permitted by the Senior Facilities Agreement,

the Security Agent shall do so having regard to the interests of all the Secured Parties.

- (g) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in so acting.

- (h) Without prejudice to the provisions of Clause 10 (*Enforcement of Transaction Security*), 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 "good faith" discretion to be appropriate. In determining whether to act or refrain from acting,

the Security Agent shall be entitled to request instructions from any Creditor or Creditor Group.

15.4 *No fiduciary duties to Debtor or the Parent*

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of any Debtor, any Intra-Group Lender or the Parent.

15.5 *Duties of the Security Agent*

- (a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:
 - (i) forward to each Senior Agent, Senior Pari Passu Notes Trustee and to each Senior Hedge Counterparty a copy of any document received by the Security Agent from any Debtor or the Parent under any Debt Document; and
 - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Debt Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) The Security Agent shall promptly inform (i) each Senior Primary Creditor Representative, and (ii) each Senior Hedge Counterparty of the occurrence of any Default or any default by a Debtor or the Parent in the due performance of or compliance with its obligations under any Debt Document of which the Security Agent has received notice from any other party to this Agreement.
- (e) 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, the applicable Senior Primary Credit Representative shall promptly request the Security Agent to provide the Security Agent's Spot Rate of Exchange for the purposes of such calculation and shall, promptly upon being notified by the Security Agent of the Security Agent's Spot Rate of Exchange for the purposes of such calculation notify that Party of such Security Agent's Spot Rate of Exchange.
- (f) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement and Debt Documents to which it is expressed to be a party (and no others shall be implied).

15.6 *No duty to account*

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

15.7 *Business with the Debtors or Group Member*

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

15.8 Rights and discretions

- (a) The Security Agent may:
 - (i) rely upon any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party, any Creditor, a Debtor, or the Parent, upon a certificate signed by or on behalf of that person; and
 - (ii) assume that:
 - (A) any instructions received by it from the Instructing Group, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked (and no revocation of any such instructions shall affect any action taken by the Security Agent in reliance on such instructions prior to actual receipt of a written notice of revocation); and
 - (C) if it receives any instructions under Clause 10 (*Enforcement of Transaction Security*) to act in relation to the Transaction Security, that all applicable conditions under the Debt Documents for so acting have been satisfied.
- (b) The Security Agent may assume (unless it has received notice to the contrary from a Senior Hedge Counterparty or a Senior Primary Creditor Representative) that:
 - (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and
 - (iii) any notice made by the Company is made on behalf of and with the consent and knowledge of all the Debtors and/or the Parent.
- (c) The Security Agent may engage and rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) whose advice or services may at any time seem necessary, expedient or desirable.
- (d) The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:

- (i) be liable for any error of judgment made by any such person; or
- (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

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

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

15.9 Responsibility for documentation

None of the Security Agent, any Receiver or any Delegate is responsible or liable for:

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

15.10 No duty to monitor

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;

- (b) as to the performance, default or any breach by any Party of its obligations under any Debt Document; or
- (c) whether any other event specified in any Debt Document has occurred.

15.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate) none of the Security Agent, any Receiver nor any Delegate shall be liable for:
 - (i) any losses, damages or costs to any person or diminution in value or any liability arising as a result of taking or not taking any action under or in connection with any Debt Documents, the Security Property, or otherwise, unless directly caused by its fraud, gross negligence or wilful misconduct;
 - (ii) the exercise of, or the failure to exercise, any right, authority, discretion or power given to it by or in connection with any of the Debt Documents, the Security Property, 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, unless directly caused by its fraud, gross negligence or wilful misconduct;
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property;
 - (iv) any determination as to whether any information provided or to be provided to any Secured Party is non-public information, the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise; or
 - (v) without prejudice to the generality of paragraphs (i) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

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

- (b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property except in the case of gross negligence, wilful misconduct or fraud, 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 Ordinance.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
 - (i) any “**know your customer**” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Senior Primary Creditor,

on behalf of any Senior Primary Creditor and each Senior Primary Creditor confirms to the Security Agent, that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.

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

15.12 Senior Primary Creditors' indemnity to the Security Agent

- (a) Each Senior Primary Creditor (other than any Senior Agent or Senior Pari Passu Notes Trustee) shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Senior Primary Creditors (other than any Creditor Representative) for the time being (or, if the Liabilities due to the Primary Creditors (other than any Senior Agent or Senior Pari Passu Notes Trustee) are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent,

Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).

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

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

- (c) Subject to paragraph (d) below, the Company shall, to the maximum extent permitted under any applicable laws, reimburse any Senior Primary Creditor for any payment that Senior Primary Creditor makes to the Security Agent pursuant to paragraph (a) above.
- (d) Paragraph (c) above shall not apply to the extent that the indemnity payment in respect of which the Senior Primary Creditor claims reimbursement relates to a liability of the Security Agent to a Debtor or the Parent.

15.13 *Resignation of the Security Agent*

- (a) The Security Agent may resign and appoint one of its affiliates as successor by giving notice to the Company and the Secured Parties.
- (b) Alternatively, the Security Agent may resign by giving 30 days' notice to the Company and the Secured Parties in which case the Majority Senior Primary Creditors may appoint a successor Security Agent.

- (c) If the Majority Senior Primary Creditors have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after the notice of resignation was given, the Security Agent (after consultation with the Company and the Senior Agents) may appoint a successor Security Agent.
- (d) A retiring Security Agent (the “**Retiring Security Agent**”) shall:
 - (i) 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; and
 - (ii) enter into and deliver to the successor Security Agent those documents and effect any registrations as may be required for the transfer or assignment of all of its rights and benefits under the Debt Documents to the successor Security Agent.
- (e) A Debtor or the Parent must, at its own reasonable cost, take any action and enter into and deliver any document which is reasonably required by the Retiring Security Agent to ensure that a Security Document provides for effective and perfected Security in favour of any successor Security Agent.
- (f) 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.
- (g) 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 (d) above and paragraph (b) of Clause 15.23 (*Winding Up of trust*)) but shall, in respect of any act or omission by it whilst it was the Security Agent, remain entitled to the benefit of this Clause 15 (The Security Agent) and Clause 18.1 (*Debtors’ indemnity*) and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date. 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.
- (h) The Majority Senior Primary Creditors and the Senior Pari Passu Notes Trustee(s) may, in consultation with the Company, by written 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 Company or any other Debtor.

15.14 Confidentiality

- (a) In acting as trustee or agent for the Secured Parties (as applicable), 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 that Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

15.15 *Information from the Creditors*

- (a) Each Creditor shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.
- (b) If a Senior Primary Creditor changes its name it shall, at its own expense and within seven (7) Business Days from the date of the change of name, deliver to the Security Agent an original or certified true copy of a legal opinion issued by the legal advisers to such Senior Primary Creditor in that Senior Primary Creditor's jurisdiction of incorporation, addressed to the Security Agent (in form and substance satisfactory to the Security Agent):
 - (i) identifying the Senior Primary Creditor which has changed its name, its new name and the date from which the change has taken effect; and
 - (ii) confirming that the Senior Primary Creditor's obligations under this Agreement remain legal, valid, binding and enforceable obligations even after the change of name.
- (c) If a Senior Primary Creditor is involved in a corporate reorganisation or reconstruction, it shall, at its own expense and within seven (7) Business Days from the effective date of such corporate reorganisation or reconstruction, deliver to the Security Agent an original or certified true copy of a legal opinion issued by the legal advisers to such Senior Primary Creditor:
 - (i) in that Senior Primary Creditor's jurisdiction of incorporation and, in the case of any Senior Lenders, the jurisdiction of that Senior Lender's Facility Office; and
 - (ii) in each of those jurisdictions governing the Finance Documents to which the Senior Primary Creditor is a party,

confirming that the Senior Primary Creditor's obligations under those Finance Documents remain legal, valid and binding obligations enforceable as against the surviving entity after the corporate reorganisation or reconstruction.
- (d) If a Senior Lender fails to provide and deliver to the Security Agent any of the legal opinions referred to in paragraphs (b) or (c) above, it shall, upon the request of the Security Agent, sign and deliver to the relevant Senior Agent with copy to the Security Agent, a Transfer Certificate,

transferring all its rights and obligations under the Finance Documents to the new entity.

15.16 *Credit appraisal by the Secured Parties*

Without affecting the responsibility of any Debtor or the Parent 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, the Parent and Group Member;
- (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.

15.17 *No responsibility to perfect Transaction Security*

The Security Agent shall have no responsibility for perfecting the Transaction Security and shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Debtor or the Parent 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 or the Parent 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.

15.18 Insurance by Security Agent

- (a) The Security Agent shall be under no 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, that Security Agent 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 the Instructing Group 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.

15.19 Custodians and nominees

The Security Agent may (to the extent legally permitted) appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets held by the Security Agent as trustee or agent of the Secured Parties (as applicable) or any assets over which Security is created pursuant to the Transaction Security Documents as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to any such assets 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.

15.20 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 (except, in the case of the Security Agent, for any loss for which the Security Agent would have been responsible if the fraud, misconduct or default causing such loss had been

committed by the Security Agent itself (after taking into account any provisions in any Debt Document that exclude the Security Agent's obligations or liabilities)).

15.21 *Additional Security Agents*

- (a) The Security Agent may at any time appoint (and subsequently remove), to the extent legally permitted, any person to act as a separate trustee or agent or as a co-trustee or co-agent jointly with it if (i) it in good faith 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 that Security Agent deems to be relevant (acting reasonably) or (iii) for obtaining or enforcing any judgment in any jurisdiction, and that Security Agent shall give prior notice to the Company and each of the Senior Agents 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 incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement and to the extent agreed in writing by the Company prior to its incurrence, be treated as costs and expenses reasonably incurred by the Security Agent.

15.22 *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 or the Parent may have to any of the Charged Property and shall not be liable for or bound to require any Debtor or the Parent to remedy any defect in its right or title.

15.23 *Winding Up of trust*

If the Security Agent, with the approval of each of the Senior Agents, Senior Pari Passu Notes Trustee and each Senior Hedge Counterparty, determines that:

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

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Transaction Security Documents; and

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

15.24 Powers supplemental

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

15.25 Disapplication

The statutory duty of care set out in section 3A of the Trustee Ordinance 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 Ordinance and the provisions of this Agreement, the provisions of this Agreement shall, to the extent allowed by law, prevail.

16 Changes to the Parties

16.1 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 16.

16.2 Change of Senior Lenders

- (a) A Senior 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 Senior Facilities Agreement (or any Senior Pari Passu Facilities Agreement (as the context requires)) to which it is a party; and
 - (ii) subject to paragraph (b) below, any assignee or transferee has (if not already party to this Agreement as a Senior Lender) acceded to this Agreement, as a Senior Lender, pursuant to Clause 16.9 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) Paragraph 16.2(a)(ii) above shall not apply in respect of (i) any Senior Debt Purchase Transaction permitted by clause 26 (*Debt Purchase Transactions*) of the Senior Facilities Agreement (or any substantially equivalent provision in a Senior Pari Passu Facilities Agreement) and (ii) any Liabilities Acquisition of the Senior Lender Liabilities, Senior Pari Passu Notes Liabilities or Senior Hedging Liabilities by a Group Member, an Investor Affiliate or the Parent permitted under the Senior Facilities Agreement, or any other Senior Primary Finance Document, and, in each case, effected in accordance with the terms of the Debt Documents.

- (c) Any Senior Pari Passu Noteholder may assign, transfer or novate any of its rights and obligations to any person without the need for such person to execute and deliver to the Security Agent a duly completed Creditor/Creditor Representative Accession Undertaking, *provided that* such person is subject to the terms and conditions of this Agreement as provided under the terms of the relevant Senior Pari Passu Notes Indenture and the relevant Senior Pari Passu Notes Trustee that acts on its behalf has acceded to this Agreement.

16.3 Accession or change of Senior Hedge Counterparty

A Senior Hedge Counterparty may (in accordance with the terms of the relevant Senior Hedging Agreement and subject to any consent required under that Senior Hedging Agreement) transfer any of its rights and benefits or obligations in respect of the Senior Hedging Agreements to which it is a party if any transferee has (if not already party to this Agreement as a Senior Hedge Counterparty) acceded to this Agreement as a Senior Hedge Counterparty pursuant to Clause 16.9 (*Creditor/Creditor Representative Accession Undertaking*).

16.4 Change of Senior Agent

No person shall become a Senior Agent unless at the same time, it accedes to this Agreement in such capacity pursuant to Clause 16.9 (*Creditor/Creditor Representative Accession Undertaking*).

16.5 Change of Intra-Group Lender

Subject to Clause 6.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Intra-Group Liabilities to another Group Member if that Group Member (as the case may be) has, to the extent required to accede to this Agreement pursuant to the terms of the Debt Documents (if not already party to this Agreement as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 16.9 (*Creditor/Creditor Representative Accession Undertaking*) (*provided that* such Group Member (as the case may be) will not be required to accede to this Agreement as an Intra-Group Lender under this Clause 16.5 if it would otherwise not have been required to do so under the terms of Clause 16.6 (*New Intra-Group Lender*) if it had been the original creditor of such Intra-Group Liability).

16.6 New Intra-Group Lender

If any Intra-Group Lender or any Offshore Group Member makes any loan to or grants any credit to or makes any other financial arrangement having similar effect and is required to accede to this Agreement pursuant to the terms of the Debt Documents, it (and the Company shall procure the Offshore Group Member giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Intra-Group Lender)) shall accede to this Agreement as an Intra-Group Lender pursuant to Clause 16.9 (*Creditor/Creditor Representative Accession Undertaking*).

16.7 New Ancillary Lender

If any Affiliate of a Senior Lender becomes an Ancillary Lender in accordance with clause 7.8 (*Affiliates of Lenders as Ancillary Lenders*) of the Senior Facilities Agreement (or any substantially equivalent provision in a Senior Pari Passu Facilities Agreement (as the context requires)), it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already party to this Agreement as a Senior Lender) acceded to this Agreement as a Senior Lender and (to the extent required by the provisions thereof) to the Senior Facilities Agreement (or any substantially equivalent provision in a Senior Pari Passu Facilities Agreement (as the context requires)) as an Ancillary Lender pursuant to Clause 16.9 (*Creditor/Creditor Representative Accession Undertaking*).

16.8 Arrangers

An arranger with respect to a New Debt Financing shall have the right to accede as a Senior Arranger (as applicable) pursuant to 16.9 (*Creditor/Creditor Representative Accession Undertaking*).

16.9 Creditor/Creditor Representative Accession Undertaking

With effect from the date of acceptance by the Security Agent (and, in the case of an Affiliate of a Senior Lender, the Senior 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 Agent shall be discharged from further obligations towards the Security Agent and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date);
- (b) as from that date, the replacement or new Creditor or Agent shall assume the same obligations and become entitled to the same rights, as if it had been an original Party to this Agreement in that capacity; and
- (c) to the extent envisaged by the Senior Facilities Agreement or Senior Pari Passu Facilities Agreement, any new Ancillary Lender (which is an Affiliate of a Senior Lender) shall also become party to the Senior Facilities Agreement (or any Senior Pari Passu Facilities Agreement (as the context requires)) as an Ancillary Lender to the extent required under the Senior Facilities Agreement (or any Senior Pari Passu Facilities Agreement (as the context requires)) and shall assume the same obligations and become entitled to the same rights as if it had been an original party to the Senior Facilities Agreement (or any Senior Pari Passu Facilities Agreement (as the context requires)) as an Ancillary Lender,

and each other Party irrevocably authorises and instructs the Security Agent (and as the case may be the Senior Agent) to execute on its behalf any Creditor/Agent Accession Undertaking which has been duly completed and signed on behalf of that person.

16.10 Accession of Senior Lenders under New Debt Financing

- (a) In order for any New Debt Financing to be a **Senior Facility** for the purposes of this Agreement:
- (i) the Company shall designate that New Debt Financing as a Senior Facility and confirm in writing to the Security Agent and Senior Agents that the establishment of that New Debt Financing as a Senior Facility under this Agreement complies with the provisions of Clause 2.6 (*Additional and/or Refinancing Debt*) and Clause 14 (*New Debt Financings*);
 - (ii) each creditor in respect of that New Debt Financing (or the facility agent, for and on behalf of all of the creditors in respect of that New Debt Financing) shall accede to this Agreement as a Senior Lender in relation to that New Debt Financing pursuant to Clause 16.9 (*Creditor/Creditor Representative Accession Undertaking*);
 - (iii) each arranger in respect of that New Debt Financing (or the facility agent, for and on behalf of all of the arrangers in respect of that New Debt Financing) shall accede to this Agreement as a Senior Arranger in relation to that New Debt Financing pursuant to Clause 16.9 (*Creditor/Creditor Representative Accession Undertaking*);
 - (iv) the facility agent in respect of that New Debt Financing shall accede (in its capacity as such) to this Agreement as the Senior Agent in relation to that New Debt Financing pursuant to Clause 16.9 (*Creditor/Creditor Representative Accession Undertaking*); and
 - (v) each Party irrevocably authorises and instructs the Security Agent to, in relation to that New Debt Financing pursuant to Clause 16.9 (*Creditor/Creditor Representative Accession Undertaking*)) execute on its behalf any Creditor/Creditor Representative Accession Undertaking which has been duly completed and signed on behalf of that person.
- (b) The Security Agent shall only countersign a Creditor/Creditor Representative Accession Undertaking referred to in this Clause 16.10 upon completion of all “**know your customer**” or other similar checks under all applicable laws and regulations relating to any person that the Security Agent is required to carry out in relation to such accession, the completion of which the Security Agent shall promptly notify to the Senior Primary Creditors.

16.11 Accession of Senior Pari Passu Notes Trustee

- (a) The Company shall procure that, on or prior to any Senior Pari Passu Notes Issue Date, the relevant Senior Pari Passu Notes Trustee (and, if such entity ceases to act as trustee in relation to the Senior Pari Passu Notes for any reason, any successor or other person which is appointed or acts as trustee under the relevant Senior Pari Passu Notes Indenture) shall promptly complete, sign and deliver to the Security Agent a Creditor/Creditor Representative Accession Undertaking under which such Senior Pari Passu Notes Trustee agrees to be bound by this Agreement as a Senior Pari Passu Notes Trustee as if it had originally been a Party to this Agreement in such capacity and confirms that

each Senior Pari Passu Noteholders under the relevant Senior Pari Passu Notes Indenture are subject to the terms of this Agreement. In connection with the foregoing, the Security Agent is authorised and instructed by each other Party to make such changes to the terms relating to the rights and duties of such Senior Pari Passu Notes Trustee and any other Party as are required by such Senior Pari Passu Notes Trustee without the consent of any other Party ***provided that*** such changes would not have a material adverse effect on the other Parties.

- (b) Subject to paragraph (a) above, each Party (other than the relevant proposed trustee under paragraph (a) above) irrevocably authorises and instructs the Security Agent to execute on its behalf any Creditor/Creditor Representative Accession Undertaking which has been duly completed and signed on behalf of that person.
- (c) The Security Agent shall only countersign such Creditor/Creditor Representative Accession Undertaking upon completion of all “**know your customer**” or other similar checks under all applicable laws and regulations relating to any person that the Security Agent is required to carry out in relation to such accession, and the completion of which the Security Agent shall promptly notify to the Senior Primary Creditors.

16.12 New Debtor

- (a) If any Group Member:
 - (i) incurs any Liabilities under any Senior Primary Finance Documents; or
 - (ii) gives any security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities under the Senior Primary Finance Documents,

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

- (b) If any Affiliate of a Senior Borrower becomes a borrower of an Ancillary Facility in accordance with clause 7.9 (*Affiliates of Borrowers*) of the Senior Facilities Agreement (or any substantially equivalent provision of a Senior Pari Passu Facilities Agreement (as the context requires)), the relevant Senior Borrower shall procure that its Affiliate accedes to this Agreement as a Debtor no later than contemporaneously with the date on which it becomes a borrower.
- (c) With effect from the date of acceptance by the Security Agent of a Debtor Accession Deed duly executed and delivered to the Security Agent by the new Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party to this Agreement as a Debtor.

16.13 Additional Parties

- (a) Each of the Parties instructs and appoints the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor/Creditor Representative Accession Undertaking and Debtor Resignation Request 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 (i) 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 Senior Facilities Agreement or Senior Pari Passu Facilities Agreement; (ii) the Security Agent has completed all “**know your customer**” or other similar checks under all applicable laws and regulations relating to any person that the Security Agent is required to carry out in relation to such accession, the completion of which the Security Agent shall promptly notify to the Senior Primary Creditors; and (iii) in the case of a Debtor Resignation Request, the Security Agent is satisfied that the requirements of clauses 27.4 (*Resignation of a Borrower*) and/or 27.5 (*Resignation of a Security Provider*) of the Senior Facilities Agreement or any substantially equivalent provision in a Senior Pari Passu Facilities Agreement have been met.
- (b) In the case of a Creditor/Creditor Representative Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Senior Lender):
 - (i) the Security Agent shall as soon as reasonably practicable after receipt by it, sign and accept that Creditor/Creditor Representative Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement *provided that* the Security Agent has completed all “**know your customer**” or other similar checks under all applicable laws and regulations relating to any person that the Security Agent is required to carry out in relation to such proposed accession, the completion of which the Security Agent shall promptly notify to the Senior Primary Creditors; and
 - (ii) the Security Agent shall as soon as reasonably practicable after signing and accepting that Creditor/Creditor Representative Accession Undertaking in accordance with paragraph (a) above, deliver that Creditor/Creditor Representative Accession Undertaking to the Senior Agent.

16.14 Resignation of a Debtor

- (a) The Company may request that a Debtor (other than the Company) ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (b) Subject to paragraph (a) of Clause 11.1 (*Non-Distressed Disposals*), the Security Agent shall accept a Debtor Resignation Request and notify the Company and each other Party of its acceptance if the Company certifies for the benefit of the Security Agent that:
 - (i) no Default is continuing or would result from the acceptance of the Debtor Resignation Request and such resignation is not prohibited pursuant to the terms of any Debt Document;

- (ii) to the extent that the Senior Lender Discharge Date has not occurred, that Debtor is not, or has ceased to be, or will cease to be concurrently with such resignation, a Senior Borrower (which it shall do as soon as practicable on request by the Company);
 - (iii) that Debtor is not, or will cease to be concurrently with such resignation, under any actual or contingent obligations to that Senior Hedge Counterparty in respect of the Senior Hedging Liabilities under a Senior Hedging Agreement (which it shall do as soon as practicable on request by the Company); and
 - (iv) to the extent the Senior Pari Passu Notes Discharge Date has not occurred, that Debtor is not, or has ceased to be, or will cease to be concurrently with such resignation, a borrower or an issuer of Senior Pari Passu Notes or a Senior Pari Passu Notes Guarantor (which it shall do as soon as practicable on request by the Company).
- (c) Upon notification by the Security Agent to the Company of its acceptance of the resignation of a Debtor, that Group Member shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.

17 Costs and expenses

17.1 Security Agent's ongoing costs

- (a) In the event of:
 - (i) an Event of Default (other than in relation to a Debt Document evidencing Intra-Group Liabilities); or
 - (ii) the Security Agent being requested by a Debtor, the Parent or the Instructing Group (as applicable) to undertake duties which that Security Agent and the Company agree to be of an exceptional nature and/or outside the scope of the normal duties of that Security Agent any Receiver or Delegate under the Debt Documents,

the Company shall (or another Debtor so elected shall) pay to the Security Agent any additional remuneration that may be agreed between them.

- (b) If the Security Agent and the Company fail to agree upon the nature of those duties or upon any additional remuneration referred to in this Clause 17.1, 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 Company (acting reasonably) or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of Hong Kong (the costs of the nomination and of the investment bank being payable by the Company) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

17.2 Interest on demand

Without duplication of any default interest payable under any Debt Document, if any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall (to the extent such accrual does not result in any double counting under the provisions of this Agreement and the provisions of the relevant Debt Documents) accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is equal to 130 per cent. of the rate at which the Security Agent was being offered, by leading banks in the Hong Kong interbank market, 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.

18 Indemnities

18.1 Debtors' indemnity

- (a) Each Debtor shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred (but excluding any costs and expenses arising as a result of the Security Agent's fraud, gross negligence or wilful default) by any of them:
 - (i) in relation to or as a result of:
 - (A) the taking, holding, protection or enforcement of the Transaction Security; or
 - (B) 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
 - (C) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents; or
 - (D) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
 - (ii) which otherwise relates to any of the Security Property or the performance of the terms of this Agreement (other than to the extent arising as a result of the Security Agent's fraud, gross negligence or wilful misconduct).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 18.1 will not be prejudiced by any release or disposal under Clause 11.2 (*Distressed Disposals*) taking into account the operation of that Clause.

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 indemnity in Clause 18.1 (*Debtors' indemnity*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it, in each case in accordance with Clause 12.1 (*Order of application*).

18.3 *The Company's indemnity to Senior Primary Creditors*

The Company shall, to the maximum extent permitted under any applicable law, indemnify each Senior Primary Creditor against any cost, loss or liability, whether or not reasonably foreseeable, reasonably incurred by any of them in relation to or arising out of the operation of Clause 11.2 (*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 Senior Agents in the case of a Senior Lender or Senior Pari Passu Notes Creditor) any information that the Security Agent may reasonably specify as being necessary or desirable to enable that Security Agent to perform its functions as trustee or agent.
- (b) Subject to clause 33.5 (*Communication when Agent is Impaired Agent*) of the Senior Facilities Agreement and any substantially equivalent provision in a Senior Pari Passu Facilities Agreement, each Senior Lender shall deal with the Security Agent exclusively through its Senior Agent and the Senior Hedge Counterparties shall deal directly with the Security Agent and shall not deal through any agent.
- (c) The Security Agent, each Senior Agent shall not be under any obligation to act as agent or otherwise on behalf of any Senior 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 and the Parent consents, until the Final Discharge Date, to the disclosure by any of the Senior Primary Creditors, the Senior Agents, the Senior Arrangers and the Security Agent to each other (whether or not through a Senior Agent and/or the Security Agent) of such information concerning the Debtors or the Parent as any Senior Primary Creditor, any Senior Agent, any Senior Arranger or the Security Agent shall see fit to the extent that the disclosure of such information (a) does not breach any applicable law, and (b) prior to the taking of any Enforcement Action, would not result in any person receiving any material non-public information.

19.3 *Notification of prescribed events*

- (a) If a Senior Default or a Senior Pari Passu Notes Default either occurs or ceases to be continuing, the Senior Agent or the Senior Pari Passu Notes Trustee (as applicable) shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification,

notify the Senior Agent the relevant Senior Pari Passu Notes Trustee (as applicable) and each Senior Hedge Counterparty.

- (b) If an Acceleration Event occurs the Senior Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (c) If a Senior Pari Passu Notes Acceleration Event occurs the relevant Senior Pari Passu Notes Trustee shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (d) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Secured Party of that action.
- (e) If any Senior 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 other Party of that action.
- (f) If a Debtor defaults on any Payment due under a Senior Hedging Agreement, the Senior Hedge Counterparty which is party to that Senior Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Senior Agent the relevant Senior Pari Passu Notes Trustee(s) and each other Senior Hedge Counterparty.
- (g) If a Senior Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Senior Hedging Agreement under Clause 4.9 (*Permitted Enforcement: Senior Hedge Counterparties*) it shall notify the Security Agent shall, upon receiving that notification, notify each Senior Agent and each other Senior Hedge Counterparty.

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 Senior Primary Creditors

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

- (a) with the Senior Lenders, the Senior Arrangers, and the Senior Pari Passu Notes Creditors through their respective Senior Agents and may give to the Senior Agents, as applicable, any notice or other communication required to be given by the Security Agent to a Senior Lender, Senior Arranger or Senior Pari Passu Notes Creditor; and
- (b) with each Senior Hedge Counterparty directly with that Senior 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 any person which is a Party on the date of this Agreement, that identified with its signature below; and
- (b) in the case of each other Party, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,

or any substitute address, 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 electronic mail, 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 it and then only if it is expressly marked for the attention of the department or officer identified in Clause 20.3 (*Addresses*) (or any substitute department or officer as that Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Company in accordance with this Clause 20.4 will be deemed to have been made or delivered to each of the Debtors, the Parent and each of the Creditors (other than a Senior Primary Creditor).

20.5 *Notification of address and electronic mail address*

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

20.6 *Electronic communication*

- (a) Any communication to be made under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Parties:

- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication (with such agreement to be deemed to be given by each person which is a Party unless otherwise notified to the contrary by the Security Agent and the Company);
 - (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 Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
 - (c) Any electronic communication which becomes effective, in accordance with paragraph (a) above, after 5.00pm in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
 - (d) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 20.6.

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.

20.8 *Notices to all Creditors*

- (a) Where any request for a consent, amendment or waiver which requires the consent of all the Parties to this Agreement or any class of Creditors (or percentage of such class) (as the case may be) is received by a Senior Agent from a Debtor, the relevant Senior Agent shall provide notice of such request to such Parties or the relevant class of Creditors at the same time.
- (b) Where an instruction is required by a Senior Agent from a class of Creditors (or a percentage of such class), notice of such instruction shall be provided to each Creditor in the relevant class at the same time.

21 *Preservation*

21.1 *Waiver of defences*

The provisions of this Agreement or any Transaction Security will not be affected by an act, omission, matter or thing which, but for this Clause 21.1, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

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

21.2 *Partial invalidity*

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

21.3 *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 nor any other provision of that Debt Document will be impaired as against the other party(ies) to that Debt Document.

21.4 Remedies and waivers

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

21.5 Priorities not affected

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

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

22 Consents, amendments and override

22.1 Required Consents

- (a) Subject to paragraphs (b), (c), (d) and (e) below, to Clause 14 (*New Debt Financings*), Clause 22.4 (*Exceptions*), Clause 22.5 (*Snooze/lose*) and to Clause 22.6 (*Disenfranchisement of Investor Affiliates*), this Agreement may be amended or waived only with the consent of the Company, the Senior Agents and the Security Agent.
- (b) Subject to paragraph (e) below, Clause 13 (*Equalisation*), Clause 22.4 (*Exceptions*) and Clause 22.5 (*Snooze/lose*)), an amendment or waiver of this Agreement that has the effect of changing or which relates to:
 - (i) any change to the definition of Instructing Group, Majority Senior Lenders, Majority Senior Primary Creditors, Majority Senior Pari Passu Noteholders, Required Creditor Consent, Super Majority Senior Primary Creditors, Super Majority Senior Lenders, Super Majority Senior Creditors or Super Majority Senior Pari Passu Noteholders;

- (ii) a change to any of the Debtors other than in accordance with the terms of the Senior Primary Finance Documents;
- (iii) Clause 9 (*Redistribution*), Clause 10 (*Enforcement of Transaction Security*), Clause 12 (*Application of proceeds*) or this Clause 22 (*Consents, amendments and override*);
- (iv) the order of priority or subordination under this Agreement;
- (v) paragraphs (d)(iii), (e) and (f) of Clause 15.3 (*Instructions*);
- (vi) any provision which expressly requires the consent of all of the Senior Primary Creditors; or
- (vii) Clause 8 (*Turnover of receipts*) or Clause 13 (*Equalisation*);

other than an amendment or waiver which, without prejudice to the other terms of this Agreement, is consequential to or required to implement a “**Structural Adjustment**” (as defined in the Senior Facilities Agreement or in the equivalent term in any Debt Document) shall not be made without the consent of:

- (A) each of the Senior Agents acting in accordance with the provisions of the applicable Finance Documents;
 - (B) each Senior Lender;
 - (C) each Senior Pari Passu Notes Trustee on behalf of the Senior Pari Passu Noteholders in respect of which it represents;
 - (D) each Senior Hedge Counterparty but only to the extent that such amendment or waiver would adversely affect the rights and obligations of the Senior Hedge Counterparties;
 - (E) the Security Agent; and
 - (F) the Company.
- (c) Subject to paragraph (a) above, Clause 22.2 (*Amendments and waivers: Transaction Security Documents*) and Clause 22.4 (*Exceptions*), where the Security Agent consent is required for any amendment or waiver in this Clause 22, the Security Agent shall act on the instructions of the relevant group of Creditors; *provided that* in all cases such consent of the Security Agent shall be deemed to have been given without such instruction or consent where the Senior Agents have given their consent on behalf of Creditors which in aggregate comprise that relevant group of Creditors.
- (d) This Agreement may be amended by the Senior Agents, the Security Agent and the Company without the consent of any other Party (i) to cure defects, omissions or manifest errors or resolve ambiguities or inconsistencies or reflect changes which are, in each case, a minor, technical or administrative nature or (ii) otherwise for the benefit of all or any of the Secured Parties.

- (e) Notwithstanding anything to the contrary in the Debt Documents, a Creditor may unilaterally waive, relinquish or otherwise irrevocably give up all or any of its rights under any Debt Document with the consent of the Company.

22.2 Amendments and waivers: Transaction Security Documents

Save as otherwise required or permitted by Clause 14.2 (*Transaction Security: New Debt Financings*), Clause 22.1 (*Required Consents*) and subject to paragraph (b) of Clause 22.4 (*Exceptions*) and Clause 22.5 (*Snooze/lose*) the Security Agent may, if authorised by:

- (a) the applicable Super Majority Senior Lenders under (A) the Senior Facilities Agreement; and (B) each other Senior Pari Passu Facilities Agreement; and
- (b) the Super Majority Senior Pari Passu Noteholders;

and if the Company consents, amend the terms of, release or waive any of the requirements of or grant *consents* under, any of the Transaction Security Documents which shall be binding on each Party ***provided that*** in the case of such an amendment or waiver of, or consent under, any Transaction Security Document creating the Credit-Specific Transaction Security, such amendment, waiver or consent shall only require the consent of the Senior Primary Creditor Representative in respect of the Senior Primary Creditor Liabilities to which that Credit-Specific Transaction Security relates.

22.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this Clause 22 will be binding on all Parties and the Security Agent may effect, on behalf of any Senior Agent, Senior Arranger or Creditor, any amendment, waiver or consent permitted by this Clause 22.
- (b) Without prejudice to the generality of Clause 15.8 (*Rights and discretions*), the Security Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

22.4 Exceptions

- (a) Subject to paragraphs (b) and (c) below, an amendment, waiver or consent which relates to the rights or obligations which are personal to a Senior Agent, a Senior Arranger, the Security Agent in its capacity as such (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) may not be effected without the consent of that Senior Agent or, as the case may be, that Senior Arranger or the Security Agent.
- (b) Neither paragraph (a) above, nor Clause 22.2 (*Amendments and waivers: Transaction Security Documents*) shall apply:
 - (i) to any release of Transaction Security; or
 - (ii) to any amendment, waiver or consent,

which, in each case, the Security Agent gives in accordance with Clause 2.6 (*Additional and/or Refinancing Debt*), Clause 11 (*Non-Distressed Disposals and Distressed Disposals*) and Clause 14.2 (*Transaction Security: New Debt Financings*), or is consequential to or required to implement a Structural Adjustment (as defined in the Senior Facilities Agreement or in the equivalent term in any Debt Document).

- (c) Paragraph (a) above shall apply to a Senior Arranger only to the extent that Senior Arranger Liabilities are then owed to that Senior Arranger.

22.5 *Snooze/lose*

If in relation to:

- (a) a request for a Consent in relation to any of the terms of an Applicable Agreement;
- (b) a request to participate in any other vote of Senior Creditors or Senior Pari Passu Notes Creditors under the terms of an Applicable Agreement;
- (c) a request to approve any other action under an Applicable Agreement; or
- (d) a request to provide any confirmation or notification under an Applicable Agreement,

any Senior Primary Creditor (or in the case of a Senior Primary Creditor that is represented by a Senior Agent, the relevant Senior Agent):

- (i) fails to respond to that request within 20 Business Days (or, if the Company agrees to a longer time period in relation to that request or the Company specifies a longer period in that request during which a Senior Primary Creditor may respond, on or prior to the expiry of such longer period so agreed or specified by the Company) of that request being made; or
- (ii) fails to provide details of its Senior Primary Credit Participation to the Security Agent within the timescale specified by the Security Agent:
 - (A) in the case of paragraphs (a) to (c) above, that Senior Primary Creditor's Senior Primary Credit Participation shall be deemed to be zero for the purpose of calculating the Senior Primary Credit Participation when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Primary Credit Participations has been obtained to give that Consent, carry that vote or approve that action; and
 - (B) in the case of paragraph (d) above, that confirmation or notification shall be deemed to have been given.

For the purpose of this Clause 22.5, an “**Applicable Agreement**” shall mean this Agreement and any other Debt Document which does not contain a snooze/lose

provision substantially equivalent to this clause or which applies with a shorter period than that specified in this Clause 22.5.

22.6 Disenfranchisement of Investor Affiliates

- (a) For the purposes of this Clause 22.6, a “**Purchaser**” means any Obligor, Senior Lender, Senior Pari Passu Noteholder, Senior Pari Passu Notes Trustee or Senior Hedge Counterparty which is, or is acting on behalf of, a Senior Borrower or an Investor Affiliate, for so long as it remains, or is acting on behalf of, a Senior Borrower or an Investor Affiliate which is party to a Senior Debt Purchase Transaction or beneficially owns all or part of the share capital or equity (or equivalent) interests in a person that is a Senior Lender, Senior Hedge Counterparty or Senior Pari Passu Noteholder or a party to a Senior Debt Purchase Transaction.
- (b) Each Purchaser that provides a Senior Primary Credit Participation irrevocably acknowledges and agrees that (in the case of an Investor Affiliate, for so long as it remains an Investor Affiliate or a Senior Borrower):
 - (i) in relation to any meeting or conference call to which all the Senior Primary Creditors (or any class of Senior Primary Creditors) are invited to attend or participate, unless the Security Agent otherwise agrees, it shall not attend or participate in the same or be entitled to receive the agenda or any minutes of the same;
 - (ii) in its capacity as a Senior Primary Creditor, unless the Security Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Security Agent or one or more of the Senior Primary Creditors;
 - (iii) in ascertaining the Majority Senior Primary Creditors, the Majority Senior Lenders, the Majority Senior Pari Passu Noteholders, the applicable Super Majority Senior Lenders or the Super Majority Senior Pari Passu Noteholders or whether any given percentage (including, for the avoidance of doubt, unanimity of those groups of Creditors under this Agreement) of the Senior Primary Credit Participation (or the agreement of any specified group of Creditors) has been obtained to give an instruction or approve any request for a consent, waiver, amendment or other vote under this Agreement, such Senior Primary Credit Participation owned by such Senior Primary Credit Participation shall be deemed to be zero; and
 - (iv) subject to paragraph (iii) above, such Purchaser shall be deemed not to be a Senior Primary Creditor,

provided that, in each case, such consent, waiver, amendment or other vote:

- (A) does not result or is not intended to result in any Senior Primary Credit Participation of that Purchaser under the Senior Facilities Agreement, the relevant Senior Pari Passu Facilities Agreement or the relevant Senior Hedging Agreement being treated in any

manner which is inconsistent with the treatment proposed to be applied to any other Senior Primary Credit Participation under the Senior Facilities Agreement, the relevant Senior Pari Passu Facilities Agreement or the relevant Senior Hedging Agreement (as the case may be); or

- (B) is not materially detrimental (in comparison to the other Senior Primary Creditors) to the rights and/or interests of that Purchaser solely in its capacity as a Senior Primary Creditor (and, for the avoidance of doubt, excluding its interests as a direct or indirect holder of equity in the Company (whether directly or indirectly)), and each Purchaser upon becoming a Party expressly agrees and acknowledges that the operation of this paragraph shall not of itself be so detrimental to it in comparison to the other Finance Parties or otherwise.
- (c) Each Senior Primary Creditor shall, unless the Senior Debt Purchase Transaction is an assignment or transfer, promptly notify the Security Agent in writing if it knowingly enters into a Senior Debt Purchase Transaction with a Senior Borrower or an Investor Affiliate or beneficially owns all or any part of the share capital of or equity (or equivalent) interests in a person that is a Senior Lender, Senior Hedge Counterparty or Senior Pari Passu Noteholder or a party to a Senior Debt Purchase Transaction (a “**Senior Notifiable Debt Purchase Transaction**”), such notification to be substantially in the form set out in Part I (*Form of Notice on entering into Senior Notifiable Debt Purchase Transaction*) of Schedule 4 (*Forms of Senior Notifiable Debt Purchase Transaction Notice*).
- (d) A Senior Lender or Senior Hedge Counterparty shall promptly notify the Security Agent if a Senior Notifiable Debt Purchase Transaction to which it is a party is terminated or ceases to be with a Senior Borrower or an Investor Affiliate or if it ceases to beneficially own all or any part of the share capital of or equity (or equivalent) interests in a person that is a Senior Lender, Senior Hedge Counterparty or Senior Pari Passu Noteholder or a party to a Senior Debt Purchase Transaction, such notification to be substantially in the form set out in Part II (*Form of Notice on termination of Senior Notifiable Debt Purchase Transaction*) of Schedule 4 (*Forms of Senior Notifiable Debt Purchase Transaction Notice*)).

22.7 Restrictions on Senior Debt Purchase Transactions

No Debtor, Group Member or Investor Affiliate shall enter into any Senior Debt Purchase Transactions other than on terms (i) substantially similar to, and (ii) no more favourable to it than those set out in, clause 26 (*Debt Purchase Transactions*) of the Senior Facilities Agreement.

22.8 Disenfranchisement of Defaulting Senior Lenders

- (a) For so long as a Defaulting Senior Lender has any Available Senior Commitments in ascertaining the Senior Primary Credit Participation or whether any relevant percentage (including for the avoidance of doubt, unanimity) of Senior Primary Credit Participations or the agreement of any

specified group of Senior Primary Creditors, in each case, has been obtained to approve any request for a Consent or to carry any vote or approve any action under this Agreement, that Defaulting Senior Lender's Senior Commitments shall be reduced by the amount of its Available Senior Commitments and, to the extent that that reduction results in that Defaulting Senior Lender's Senior Commitments being zero, that Defaulting Senior Lender shall be deemed not to be a Senior Lender.

- (b) For the purposes of this Clause 22.8, the relevant Senior Agent and the Security Agent may assume that the following Creditors are Defaulting Senior Lenders:
- (i) any Senior Lender which has notified the Security Agent and its relevant Senior Agent that it has become a Defaulting Senior Lender;
 - (ii) any Senior Lender if the relevant Senior Agent has notified the Security Agent that that Creditor is a Defaulting Senior Lender; and
 - (iii) any Senior Lender in relation to which it is aware that any of the events or circumstances referred to in the definition of "**Defaulting Lender**" in the Senior Facilities Agreement, any Senior Pari Passu Facilities Agreement (as appropriate) has occurred,

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

22.9 Calculation of Senior Primary Credit Participations

- (a) For the purpose of ascertaining whether any relevant percentage of Senior Primary Credit Participations has been obtained under this Agreement, the Security Agent may notionally convert the Senior Primary Credit Participations into their Common Currency Amounts.
- (b) Each Senior Pari Passu Notes Trustee will, upon the request of the Security Agent, promptly provide the Security Agent with details of the Senior Primary Credit Participations of the Creditors whom it represents (which shall be calculated as at the time stipulated by the Security Agent in such request) and (if applicable) details of the extent to which such Senior Primary Credit Participations have been voted for or against any request.
- (c) Each Senior Agent will, upon the request of the Security Agent, promptly provide the Security Agent with details of the Senior Primary Credit Participations of the Creditors whom it represents (which shall be calculated as at the time stipulated by the Security Agent or the relevant Senior Agent (as applicable) in such request) and (if applicable) details of the extent to which such Senior Primary Credit Participations have been voted for or against any request.
- (d) Each Hedge Counterparty will, upon the request of the Security Agent or any other Senior Agent, promptly provide the details of its Senior Primary Credit

Participations which shall be calculated as at the time stipulated by the Security Agent or the relevant Senior Agent (as applicable) in such request and (if applicable) details of the extent to which such Senior Primary Credit Participations have been voted for or against any request.

22.10 *Deemed Consent*

If a Senior Agent gives a Consent in respect of the Senior Finance Documents then, if that action was permitted by the terms of this Agreement, the Intra-Group Lenders and the Company 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 relevant Senior Agent may reasonably require to give effect to paragraph (a) above.

22.11 *Excluded Consents*

Clause 22.10 (*Deemed Consent*) does not apply to any Consent which has the effect of:

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

22.12 *No liability*

None of the Senior Agents nor the Senior Primary Creditors will be liable to any other Creditor, Senior Agent, the Parent or Debtor for any Consent given or deemed to be given under this Clause 22.

22.13 *Agreement to override*

- (a) Subject to paragraph (b) below, unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents to the contrary.
- (b) Notwithstanding anything to the contrary in this Agreement, paragraph (a) above will not cure, postpone, waive or negate in any manner any default or event of default (however described) under any Debt Document (or any event that would, but for paragraph (a) above, constitute a default or event of default (howsoever described)) as between any Creditor and any Debtor or the Parent that are party to that Debt Document.

23 *Senior Pari Passu Notes Trustees*

23.1 *Liability*

- (a) It is expressly understood and agreed by the Parties that this Agreement is executed and delivered by each Senior Pari Passu Notes Trustee not individually or personally but solely in its capacity as trustee in the exercise of the powers and authority conferred and vested in it under the relevant Senior Pari Passu Notes Finance Documents for and on behalf of the Senior Pari Passu Noteholders only for which the Senior Pari Passu Notes Trustee acts as trustee.
- (b) It is further understood and agreed by the Parties that in no case shall any Senior Pari Passu Notes Trustee 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 that Senior Pari Passu Notes Trustee in good faith in accordance with this Agreement in a manner that such Senior Pari Passu Notes Trustee believed to be within the scope of the authority conferred on it by this Agreement or any of the Senior Pari Passu Notes Finance Documents or by law, or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party; *provided that* each Senior Pari Passu Notes Trustee shall be personally liable under this Agreement for its own fraud, gross negligence or wilful misconduct. It is also acknowledged that no Senior Pari Passu Notes Trustee shall have any responsibility for the actions of any individual Creditor or Noteholder (save in respect of its own actions).
- (c) No Senior Pari Passu Notes Trustee is responsible for the appointment or for monitoring the performance of the Security Agents.
- (d) The Security Agent agrees and acknowledges that it shall have no claim against any Senior Pari Passu Notes Trustee in respect of any fees, costs and expenses due and payable to, or incurred by, the Security Agent.
- (e) No Senior Pari Passu Notes Trustee shall be under an obligation to instruct or direct the Security Agent to take any Enforcement Action unless it shall have been instructed to do so by the Senior Pari Passu Noteholders for whom it acts as trustee and if it shall have been indemnified and/or secured to its satisfaction.

23.2 Turnover obligation

Notwithstanding any provision in this Agreement to the contrary, a Senior Pari Passu Notes Trustee shall only have an obligation to turn over or repay amounts received or recovered under this Agreement by it (i) if it had actual knowledge that the receipt or recovery is an amount received in breach of a provision of this Agreement (a “**Turnover Receipt**”) and (ii) to the extent that, prior to having such actual knowledge, it has not distributed the amount of the Turnover Receipt to the Senior Pari Passu Noteholders for which it acts as trustee in accordance with the provisions of the relevant Senior Pari Passu Note Indenture. For the purpose of this Clause 23.2, (i) “**actual knowledge**” of the Senior Pari Passu Note Trustee shall be construed to mean the Senior Pari Passu Note Trustee shall not be charged with knowledge (actual or otherwise) of the existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless a responsible officer of such Senior Pari Passu Note Trustee has received, not less than two Business Days’ prior to

the date of such payment, a written notice that such payments are required or prohibited by this Agreement; and (ii) “**responsible officer**” when used in relation to the Senior Pari Passu Note Trustee means any person who is an officer within the corporate trust and agency department of the Senior Pari Passu Note Trustee, including any director, associate director, vice president, assistance vice president, senior associate, assistant treasurer, trust officer, or any other officer of the Senior Pari Passu Note Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement.

23.3 No action

- (a) Notwithstanding any other provision of this Agreement, no Senior Pari Passu Notes Trustee shall have any obligation to take any action under this Agreement unless it is indemnified and/or secured and/or prefunded by the Debtors or the Senior Pari Passu Noteholders to its satisfaction. No Senior Pari Passu Notes Trustee shall have an obligation to indemnify any other person, whether or not a Party, in respect of any of the transactions contemplated by this Agreement. In no event shall the permissive rights of a Senior Pari Passu Notes Trustee to take action under this Agreement be construed as an obligation to do so.
- (b) Prior to taking any action under this Agreement a Senior Pari Passu Notes Trustee may request and rely upon an opinion of counsel or opinion of another qualified expert, at the expense of the Company or another Debtor.
- (c) Notwithstanding any other provisions of this Agreement or any other Senior Pari Passu Notes Finance Document to which a Senior Pari Passu Notes Trustee is a party to, in no event shall a Senior Pari Passu Notes Trustee be liable for special, indirect, punitive or consequential loss or damages of any kind whatsoever (including, but not limited to, loss of business, goodwill, opportunity or profits) whether or not foreseeable even if such Senior Pari Passu Notes Trustee has been advised of the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence, for breach of contract or otherwise.

23.4 Reliance on certificates

The Senior Pari Passu Notes Trustees shall at all times be entitled to and may rely (without enquiry) on any notice, consent or certificate given or granted by any Party without being under any obligation to enquire or otherwise determine whether any such notice, consent or certificate has been given or granted by such Party properly acting in accordance with the provisions of this Agreement.

23.5 No fiduciary duty

No Senior Pari Passu Notes Trustee shall be deemed to owe any fiduciary duty to any Creditor (save in respect of the Senior Pari Passu Noteholders for whom it acts as trustee), Debtor or any Group Member and shall not be personally liable to any Creditor (other than the Senior Pari Passu Noteholders for whom it acts as trustee) if it shall in good faith mistakenly pay over or distribute to any Creditor or to any other person cash,

property or securities to which any other Creditor (other than the Senior Pari Passu Noteholders for whom it acts as trustee) shall be entitled by virtue of this Agreement or otherwise. With respect to the Creditors (other than the Senior Pari Passu Noteholders for whom it acts as trustee), each Senior Pari Passu Notes Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in the Senior Pari Passu Notes Finance Documents pursuant to which it acts as trustee and this Agreement and no implied agreement, covenants or obligations with respect to the other Creditors shall be read into this Agreement against a Senior Pari Passu Notes Trustee.

23.6 *Debt assumptions*

- (a) Each Senior Pari Passu Notes Trustee is entitled to assume that in respect of the Secured Liabilities:
 - (i) no Acceleration Event has occurred;
 - (ii) no Senior Default, Senior Event of Default or termination event (however described) has occurred; and
 - (iii) the Final Discharge Date has not occurred,unless it has actual notice to the contrary.
- (b) The Senior Pari Passu Notes Trustee is not obliged to monitor or enquire whether any such default has occurred.

23.7 *Senior Pari Passu Notes Creditors*

In acting pursuant to this Agreement and the relevant Senior Pari Passu Notes Indenture, the Senior Pari Passu Notes Trustee is not required to have any regard to the interests of any Creditor other than the Senior Pari Passu Noteholders for which it is the Senior Pari Passu Notes Trustee.

23.8 *Claims of Security Agent*

The Security Agent agrees and acknowledges that it shall have no claim against the Senior Pari Passu Notes Trustees in respect of any fees, costs, expenses and liabilities due and payable to, or incurred by, the Security Agent.

23.9 *Reliance and advice*

Each Senior Pari Passu Notes Trustee may:

- (a) rely and shall be fully protected in acting or refraining from acting upon any notice or document reasonably believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person;
- (b) rely on any statement made by any person regarding any matters which may be assumed to be within its knowledge or within its powers to verify; and

- (c) engage, pay for and rely on professional advisers selected by it (including those representing a person other than the Senior Pari Passu Notes Trustee).

23.10 Provisions survive termination

The provisions of this Clause 23 shall survive any termination or discharge of this Agreement.

23.11 Other Parties not affected

No provision of this Clause 23 shall alter or change the rights and obligations as between the other Parties in respect of each other. This Clause 23 is intended to afford protection to the Senior Pari Passu Notes Trustees only.

23.12 Instructions

In acting under this Agreement, a Senior Pari Passu Notes Trustee shall act in accordance with the relevant Senior Pari Passu Notes Indenture and shall seek necessary instructions from the Senior Pari Passu Noteholders for whom it acts as trustee at any time to the extent provided for and in accordance with the relevant Senior Pari Passu Notes Indenture and, where it acts on the instructions of such Senior Pari Passu Noteholders, a Senior Pari Passu Notes Trustee shall not incur any liability to any person for so acting.

23.13 Responsibility of Senior Pari Passu Notes Trustee

- (a) No Senior Pari Passu Notes Trustee shall be responsible to any other Senior Finance Party, Hedge Counterparty or Senior Pari Passu Notes Finance Party for the legality, validity, effectiveness, enforceability, adequacy, accuracy, completeness or performance of:
 - (i) any Senior Finance Document, Senior Pari Passu Notes Finance Document, Senior Hedging Agreement or any other document;
 - (ii) any statement or information (whether written or oral) made in or supplied in connection with any Senior Finance Document, Senior Pari Passu Notes Finance Document, Senior Hedging Agreement or any other document; or
 - (iii) any observance by any Debtor of its obligations under any Finance Document or any other document.
- (b) Each Senior Pari Passu Notes Trustee may rely, and shall be fully protected in acting or refraining from acting upon, any notice, certificate or other document reasonably believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person.

23.14 Confirmation

Without affecting the responsibility of any Debtor or the Company for information supplied by it or on its behalf in connection with any Senior Primary Finance

Documents, each Senior Primary Creditor (other than the Senior Pari Passu Notes Trustee and the Security Agent) confirms that it:

- (a) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Senior Finance Documents, the Senior Pari Passu Notes Finance Documents or the Senior Hedging Agreements (including the financial condition and affairs of each Debtor or their related entities and the nature and extent of any recourse against any Party or its assets); and
- (b) has not relied exclusively on any information provided to it by a Senior Pari Passu Notes Trustee in connection with any Debt Document.

23.15 *Provision of information*

No Senior Pari Passu Notes Trustee is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party. No Senior Pari Passu Notes Trustee is responsible for:

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

23.16 *Departmentalism*

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

23.17 *Disclosure of information*

Each Debtor irrevocably authorises any Senior Pari Passu Notes Trustee to disclose to any Creditor or other Debtor any information that is received by the Senior Pari Passu Notes Trustee in its capacity as the Senior Pari Passu Notes Trustee.

23.18 *Illegality*

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

23.19 *Resignation of Senior Pari Passu Notes Trustee*

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

23.20 *Senior Pari Passu Notes Trustee assumptions*

- (a) The Senior Pari Passu Notes Trustee is entitled to assume that:
 - (i) any payment or other distribution made pursuant to this Agreement in respect of the Senior Pari Passu Notes Liabilities (as the case may be) has been made in accordance with the provisions of this Agreement; and
 - (ii) any Security, collateral, guarantee or indemnity or other assurance granted to it has been done so in compliance with Clause 3.3 (*Security and guarantees: Senior Primary Creditors*).

23.21 *Agents*

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

23.22 *No requirement for bond or surety*

No Senior Pari Passu Notes Trustee shall be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Agreement.

23.23 *Senior Pari Passu Notes Trustee Amounts and payments*

No provision of this Agreement shall alter or otherwise affect the rights and obligations of any Debtor to make payments in respect of the Senior Pari Passu Notes Trustee Amounts as and when the same are due and payable and demand, receipt and retention by any Senior Pari Passu Notes Trustee of the same or taking of any step or action by any Senior Pari Passu Notes Trustee in respect of its rights under the Senior Pari Passu Notes Finance Documents to the same.

24 *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.

25 *Governing law*

This Agreement is governed by Hong Kong law.

26 *Enforcement*

26.1 *Jurisdiction*

- (a) The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 26.1 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.

26.2 *Service of process*

- (a) Without prejudice to any other mode of service allowed under any relevant law each Debtor (unless incorporated under Hong Kong law):
 - (i) irrevocably appoints The Law Debenture Corporation (H.K.) Limited as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with this Agreement; and
 - (ii) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned.

If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (on behalf of all the Debtors) must promptly (and in any event within 10 days of such event taking place) notify the Senior Agents and appoint another agent on terms acceptable to the Senior Agent or, after the Senior Lender Discharge Date, the Senior Pari Passu Notes Trustee (each acting reasonably and in good faith). Failing this, the Senior Agent or Senior Pari Passu Notes Trustee (as the case may be) may appoint another agent for this purpose.

- (b) Each Debtor expressly agrees and consents to the provisions of this Clause 26 and Clause 25 (*Governing law*).

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Intra-Group Lenders, the Debtors, the Parent and the Company and is intended to be and is delivered by them as a deed on the date specified above and shall take effect as a deed notwithstanding the fact that the other parties hereto have executed this Agreement under hand.

Schedule 1
Form of Debtor Accession Deed

THIS AGREEMENT is made on [●] and made between:

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

This Agreement is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] between, amongst others, [●] as Company, [●] as security agent, [●] as senior agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

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

[Insert details (date, parties and description) of relevant documents including, as the case may be, any limitation language applicable to the relevant Debtor]

(the “**Relevant Documents**”).

IT IS AGREED as follows:

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

on trust for (or otherwise for the benefit of) the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

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

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

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

[5]/[6] This Agreement is governed by Hong Kong law.

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

The Acceding Debtor

For Hong Kong companies executing with common seal:

SIGNED, SEALED and DELIVERED)
as a deed by)
[Name of Director] [[and)
[Name of Director/Secretary]]) Print name:
for and on behalf of) Director
[NAME OF THE COMPANY])
) [.....
) Print name:
) Director / Secretary]

In the presence of:

Witness's signature: [Affix common seal]

Name:

Address:

For Hong Kong companies executing without common seal:

EXECUTED and DELIVERED)
as a deed by)
[Name of Director] and)
[Name of Director/Secretary]) Print name:
for and on behalf of) Director
[NAME OF THE COMPANY])
)
) Print name:
) Director / Secretary]

In the presence of:

Witness's signature:

Name:

Address:

For foreign companies executing with common seal:

SIGNED, SEALED and DELIVERED)
as a deed by)
[Name of Director] [[and)
[Name of Director/Secretary]]) Print name:
for and on behalf of) Director
[NAME OF THE COMPANY])
) [.....
) Print name:
) Director / Secretary]

In the presence of:

Witness's signature: [Affix common seal]

Name:

Address:

The Security Agent

By: [Full name of current Security Agent]

Date: [●]

For Display Only

Schedule 2

Form of Creditor/Creditor Representative Accession Undertaking

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

[To: [Insert full name of current Senior Agent] as Senior Agent.]¹

From: [Acceding Creditor/Agent]

This Undertaking is made on [date] by [insert full name of applicable party] (the “**Acceding Party**”) in relation to the intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] between, amongst others, [●] as Company, [●] as security agent, [●] as senior agent and the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding Party being accepted as a [*insert applicable defined terms and capacity*] for the purposes of the Intercreditor Agreement, the Acceding Party confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [*insert applicable defined terms and capacity*] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [*insert applicable defined terms and capacity*] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[The Acceding Party is an Affiliate of a Senior Lender and has become a provider of an Ancillary Facility. In consideration of the Acceding Party being accepted as an Ancillary Lender for the purposes of the Senior Facilities Agreement, the Acceding Party confirms, for the benefit of the parties to the Senior Facilities Agreement, that, as from [date], it intends to be party to the Senior Facilities Agreement [or the Senior Pari Passu Facilities Agreement, as the case may be] as an Ancillary Lender, and undertakes to perform all the obligations expressed [in the [Senior Facilities Agreement] / [insert details of the relevant Senior Pari Passu Facilities Agreement] to be assumed by a Senior Finance Party and agrees that it shall be bound by all the provisions of the [Senior Facilities Agreement] / [insert details of the relevant Senior Pari Passu Facilities Agreement], as if it had been an original party to the Senior Facilities Agreement as an Ancillary Lender.]

[The Acceding Party has become a provider of hedging arrangements to the [Company]. In consideration of the Acceding Party being accepted as a Senior Hedge Counterparty for the purposes of the [Senior Facilities Agreement / insert details of the relevant Senior Pari Passu Facilities Agreement], the Acceding Party confirms, for the benefit of the parties to the [Senior Facilities Agreement / insert details of the relevant Senior Pari Passu Facilities Agreement] that, as from [date], it intends to be party to the [Senior Facilities Agreement / insert details of the relevant Senior Pari Passu Facilities Agreement], and undertakes to perform all the obligations expressed in the [Senior Facilities Agreement / insert details of the relevant Senior Pari Passu

¹ Include only in the case of: (i) an Ancillary Lender which is an Affiliate of a Senior Lender.

Facilities Agreement] to be assumed by a Senior Hedge Counterparty and agrees that it shall be bound by all the provisions of the [Senior Facilities Agreement / insert details of the relevant Senior Pari Passu Facilities Agreement], as if it had been an original party to the [Senior Facilities Agreement / insert details of the relevant Senior Pari Passu Facilities Agreement] as a Senior Hedge Counterparty.]

[The Acceding Party expressly ratifies and approves any and all acts done by the Security Agent on its behalf prior to execution by the Acceding Party of this [Creditor/Agent] Accession Undertaking.]

This Undertaking is governed by Hong Kong law.

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

Acceding [Creditor/Agent]

[Executed as a Deed
[insert full name of Acceding
Creditor/Agent]

}

By:

Address:

Accepted by the Security Agent
for and on behalf of

}

Signed:

[Insert full name of current Security Agent]

Date:

[Accepted by the Security Agent]
for and on behalf of

}

Signed:

[Insert full name of current Security Agent]

Date]²

² Include only in the case of an Ancillary Lender which is an Affiliate of a Senior Lender.

Schedule 3
Form of Debtor Resignation Request

To: [●] as Security Agent

From: [resigning Debtor] and [the Company]

Dated:

Dear Sirs,

Intercreditor Agreement dated [●] 2025 between, amongst others, Celestia BidCo Limited as Company, [●] as security agent, [●] as agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement) (the “Intercreditor Agreement”)

1. We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
2. Pursuant to Clause 16.14 (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [resigning Debtor] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
 - (a) no Event of Default is continuing or would result from the acceptance of this request; [and]
 - (b) [Add relevant confirmation from Clause 16.14 (*Resignation of a Debtor*)].
4. This letter is governed by Hong Kong law.

[the Company]

[resigning Debtor]

By: _____

By: _____

Schedule 4
Forms of Senior Notifiable Debt Purchase Transaction Notice

Part I
Form of Notice on entering into Senior Notifiable Debt Purchase Transaction

To: [●] as Security Agent

From: [*The Senior Lender*]

Dated: [●]

Celestia BidCo Limited – Intercreditor Agreement dated [●] 2025 (the “Intercreditor Agreement”)

1. We refer to paragraph (c) of Clause 22.6 of the Intercreditor Agreement. Terms defined in the Intercreditor Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. We have entered into a Senior Notifiable Debt Purchase Transaction.
3. The Senior Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our [Senior Commitment(s)/Senior Credit Participation] as set out below.

[Senior Commitment / Senior Hedging Agreement]	Amount of our Senior Commitment / Senior Credit Participation to which Senior Notifiable Debt Purchase Transaction relates (Common Currency)
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[●]	<i>[insert amount (of that Senior Primary Credit Participation) to which the relevant Senior Debt Purchase Transaction applies]</i>
-----	---

[●]	<i>[insert amount (of that Senior Primary Credit Participation) to which the relevant Senior Debt Purchase Transaction applies]</i>
-----	---

[*Senior Primary Creditor*]

By: _____

Part II
Form of Notice on termination of Senior Notifiable Debt Purchase Transaction

To: [●] as Security Agent

From: [The Senior Lender]

Dated: [●]

Celestia BidCo Limited – Intercreditor Agreement dated [●] 2025 (the “Intercreditor Agreement”)

1. We refer to paragraph (d) of Clause 22.6 of the Intercreditor Agreement. Terms defined in the Intercreditor Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. A Senior Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [●] has [terminated]/[ceased to be with an Investor Affiliate].
3. The Senior Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our [Senior Commitment(s)/Senior Credit Participation] as set out below.

[Senior Commitment / Senior Hedging Agreement]	Amount of our Senior Commitment / Senior Credit Participation to which Senior Notifiable Debt Purchase Transaction relates (Common Currency)
---	---

[●]	<i>[insert amount (of that Senior Primary Credit Participation) to which the relevant Senior Debt Purchase Transaction applies]</i>
-----	---

[●]	<i>[insert amount (of that Senior Primary Credit Participation) to which the relevant Senior Debt Purchase Transaction applies]</i>
-----	---

[Senior Primary Creditor]

By: _____

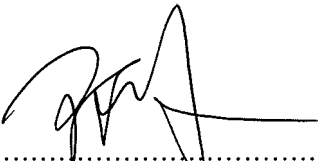
The Company / Purchaser / Obligor

By: _____

Name: [●]

The Parent

SIGNED, SEALED and DELIVERED)
as a deed by CELESTIA)
HOLDCO LIMITED)
by CHEN Weihao)
who, in accordance with the laws of)
the Cayman Islands,)
is authorised to execute this Deed)
on its behalf)


.....
Name: CHEN Weihao
Title: Director

in the presence of:)

Witness' Signature:

Name:

Address:

Sean
.....
MENG ZHANG
.....
Shanghai
.....

L.S

The Original Senior Arranger and Original Senior Lender



For and on behalf of



CHINA CITIC BANK CORPORATION LIMITED, SHANGHAI BRANCH (中信银行股份有限公司上海分行)

Name: 赵元新

Title: 负责人

Notice Details

Address: 上海市浦东新区世博馆路138号 (2F CITIC Plaza, No.112-138, Shiboguan Road, Pudong New Area, Shanghai, China)
Attention: 蒋磊 (Jiang Lei)
Tel: 13681798508
Email: jianglei_sh@citicbank.com

The Original Senior Arranger and Original Senior Lender

For and on behalf of



SHANGHAI PUDONG DEVELOPMENT BANK CO., LTD. SHANGHAI BRANCH
(上海浦东发展银行股份有限公司上海分行)

Name: 汪素南

Title: 上海浦东发展银行上海分行行长

Notice Details

Address: 上海市浦东南路588号19楼 (19F No.588, South Pudong Road, Shanghai, China, 200120)

Attention: 何皓奇 (He Haoqi)

Tel: 021-68887293

Email: hehq@spdb.com.cn

The Original Senior Agent

For and on behalf of

SHANGHAI PUDONG DEVELOPMENT BANK CO., LTD. SHANGHAI BRANCH
(上海浦东发展银行股份有限公司上海分行)

Name: 汪素南

Title: 上海浦东发展银行上海分行行长

Notice Details

Address: 上海市浦东南路588号19楼 (19F No.588, South Pudong Road, Shanghai, China, 200120)
Attention: 何皓奇 (He Haoqi)
Tel: 021-68887293
Email: hehq@spdb.com.cn

The Security Agent

For and on behalf of

SHANGHAI PUDONG DEVELOPMENT BANK CO., LTD. SHANGHAI BRANCH
(上海浦东发展银行股份有限公司上海分行)

Name: 汪素南

Title: 上海浦东发展银行上海分行行长

Notice Details

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