

## Intercreditor agreement

Dated \_\_\_\_\_ 2025

between

THE SUPER SENIOR CREDITORS

THE SENIOR CREDITORS

THE SENIOR SUBORDINATED CREDITORS

JOHN WOOD GROUP PLC

as Company

GLAS TRUST CORPORATION LIMITED

acting as Security Agent

AND OTHERS

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THIS AGREEMENT is dated \_\_\_\_\_ 2025 and made between:

- (1) THE FINANCIAL INSTITUTIONS named on the signing pages as Super Senior Agents;
- (2) THE FINANCIAL INSTITUTIONS named on the signing pages as Super Senior Lenders;
- (3) THE FINANCIAL INSTITUTIONS named on the signing pages as Super Senior Arrangers;
- (4) THE FINANCIAL INSTITUTIONS named on the signing pages as Senior Agents;
- (5) THE FINANCIAL INSTITUTIONS named on the signing pages as Senior Lenders;
- (6) [SIRIUS INITIAL FUNDING LENDER] as Senior Lender;
- (7) THE FINANCIAL INSTITUTIONS named on the signing pages as Senior Subordinated Agents;
- (8) THE FINANCIAL INSTITUTIONS named on the signing pages as Senior Subordinated Lenders;
- (9) THE FINANCIAL INSTITUTIONS named on the signing pages as Senior Subordinated Arrangers;
- (10) JOHN WOOD GROUP PLC (the "**Company**");
- (11) THE COMPANIES named on the signing pages as Intra-Group Lenders; [LL Note: S&M to provide a list]
- (12) THE SUBSIDIARIES of the Company named on the signing pages as Debtors (together with the Company, the "**Original Debtors**"); and [LL Note: S&M to provide a list]
- (13) GLAS TRUST CORPORATION LIMITED as security agent for the Secured Parties and the Guaranteed Parties (the "**Security Agent**").

## BACKGROUND

It is intended that this document takes effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

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 Super Senior Acceleration Event, a Senior Acceleration Event or a Senior Subordinated Acceleration Event.

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

**"Agreed Security Principles"** has the meaning given to it in Schedule 4 (*Agreed Security Principles*).

**"Appropriation"** means the appropriation (or similar process) of the shares in the capital of a member of the Group (other than the Company shares or participatory interest in which are not

subject to the Transaction Security) by the Security Agent (or any Receiver or Delegate) which is effected (to the extent permitted under the relevant Security Document and applicable law) by enforcement of the Transaction Security.

**"Australia"** means the Commonwealth of Australia.

**"Australian Controller"** means a controller as defined in section 9 of the Australian Corporations Act.

**"Australian Corporations Act"** means the Corporations Act 2001 (Cth).

**"Australian Debtor"** means a Debtor that is incorporated in Australia.

**"Australian GST"** means any Australian goods and services or similar tax, together with any related interest, penalties, fines or other charge.

**"Available Commitment"** in relation to a Primary Lender, has the meaning given to the term "Available Commitment" (or any equivalent term) in the relevant Primary Finance Document.

**"Borrowing Liabilities"** means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to a Primary Arranger or a Primary Agent which is not a USPP Noteholder) or a Debtor in respect of financial indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a borrower or an issuer under the Primary Finance Documents).

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

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

**"Cash Collateral"** means any cash collateral or cash cover provided to a Primary Lender pursuant to any Primary LC Finance Documents.

**"Cash Proceeds"** means:

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

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

**"Close-Out Netting"** means:

- (a) in respect of a Hedging Agreement based on a 1992 ISDA Master Agreement, any step involved in determining the amount payable in respect of an Early Termination Date (as defined in the 1992 ISDA Master Agreement) under section 6(e) (*Payments on Early*

*Termination*) of the 1992 ISDA Master Agreement before the application of any subsequent Set-off (as defined in the 1992 ISDA Master Agreement);

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

**"Commitment"** means a Super Senior Commitment, a Senior Commitment or a Senior Subordinated Commitment.

**"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 given to all the Guaranteed Parties in respect of their Liabilities.

**"Common Currency"** means US dollars.

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

**"Common Transaction Security"** means any Transaction Security which:

- (a) is created in favour of the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
- (b) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee or security agent (or as *mandatario con rappresentanza*) for the Secured Parties is created in favour of:
  - (i) all the Secured Parties in respect of their Liabilities; or
  - (ii) (to the extent recognized under applicable law, and in any event other than in relation to any Transaction Security governed by Italian law) the Security Agent under a parallel debt structure for the benefit of all the Secured Parties.

**"Competitive Sales Process"** means:

- (a) any auction or other competitive sales process conducted with the advice of a Financial Adviser appointed by, or approved by, the Security Agent pursuant to Clause 13.6 (*Appointment of Financial Adviser*) (and the procedures for which do not expressly exclude the Creditors from participating as prospective buyers, other than where the Financial Adviser advises the Security Agent that such participation could prejudice that auction or competitive sales process); and
- (b) any enforcement of the Transaction Security carried out by way of auction or other competitive sales process pursuant to requirements of applicable law.

**"Completion"** means (a) if the Acquisition is implemented pursuant to the Shareholder Scheme, the date on which the Shareholder Scheme becomes effective in accordance with its terms, or (b) if the Acquisition is implemented pursuant to a takeover offer, the date on which such offer becomes unconditional in all respects (all defined terms have the meaning given to them in the form of the amended and restated RCF Agreement as of the date of this Agreement).

**"Completion Date"** means the date of Completion.

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

**"Credit Card Liabilities"** means the Liabilities owed by any Debtor to the Credit Card Liabilities Lenders under or in connection with the Credit Card Liabilities Agreements.

**"Credit Card Liabilities Agreement"** means any agreement entered into by a Credit Card Liabilities Lender and designated as a Credit Card Liabilities Agreement in accordance with Clause 5.7 (*Designation of Credit Card Liabilities Agreements*), provided that any provider of the financing becomes a Party as a Credit Card Liabilities Lender in respect of that financing pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

**"Credit Card Liabilities Commitment"** means any facility limit, line limit or equivalent however defined in the Credit Card Liabilities Agreement which refers to the total amount which may become outstanding from time to time under such agreement.

**"Credit Card Liabilities Designated Amount"** means, at any time, U.S.\$10,000,000 (or its equivalent in any other currency).

**"Credit Card Liabilities Facility"** means any facility limit, line limit or equivalent however defined in the Credit Card Liabilities Agreement which refers to the facility made available to a Debtor under such agreement.

**"Credit Card Liabilities Lender"** means any entity which becomes a Party as a Credit Card Liabilities Lender pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

**"Credit Card Liabilities Maximum Amount"** has the meaning given to it in paragraph (b)(ii) of Clause 5.7 (*Designation of Credit Card Liabilities Agreements*).

**"Credit Card Liabilities Register"** has the meaning given to it in paragraph (e) of Clause 5.7 (*Designation of Credit Card Liabilities Agreements*).

**"Credit Participation"** means a Super Senior Credit Participation, a Senior Credit Participation or a Senior Subordinated Credit Participation.

**"Creditor Accession Undertaking"** means:

- (a) an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*);
- (b) a Transfer Certificate or an Assignment Agreement (each as defined in the relevant Primary Finance Document) (provided that it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*)),

as the context may require, or

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

**"Creditor Conflict"** means a conflict between the interests of any Super Senior Creditor, any Senior Creditor or any Senior Subordinated Creditor.

**"Creditors"** means the Primary Creditors, the Intra-Group Lenders and the Subordinated Creditors.

**"Debt Disposal"** means any disposal of any Liabilities or Debtors' Intra-Group Receivables pursuant to paragraphs (a)(iv) or (v) of Clause 13.1 (*Facilitation of Distressed Disposals and Appropriation*).

**"Debt Document"** means each of this Agreement, the Super Senior Finance Documents, the Senior Finance Documents, the Senior Subordinated Finance Documents, the Security Documents, the Deeds of Guarantee, any agreement evidencing the terms of the Intra-Group Liabilities or the Subordinated Liabilities and any other document designated as such by the Security Agent and the Company.

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

**"Debtor Accession Deed"** means:

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

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

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

**"Deeds of Guarantee"** means:

- (a) each Existing Deed of Guarantee;
- (b) the Initial Deed of Guarantee; and
- (c) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity or other assurance (other than Security) against financial loss in favour of any of the Guaranteed Parties for any of the Guaranteed Obligations,

but excluding any guarantee, indemnity or other assurance against financial loss under any Surety Bonds Agreement.

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

**"Defaulting Lender"** means, in relation to any Primary Lender, a Primary Lender which is a Defaulting Lender (or an equivalent term) under, and as defined in, any Primary Finance Document.

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

**"Distress Event"** means any of:

- (a) an Acceleration Event;
- (b) the enforcement of any Transaction Security; or
- (c) the making of a demand under any Deed of Guarantee (other than the making of a demand under the Existing Deeds of Guarantee in accordance with paragraph (c) of Clause 5.12 (*Permitted Enforcement: Senior Subordinated Creditors*)).

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

- (a) being effected at the request of the Instructing Group in circumstances where the Transaction Security has become enforceable;
- (b) being effected by enforcement of the Transaction Security (including the disposal of any Property of a member of the Group, the shares in which have been subject to an Appropriation); or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is, or are, not a member, or members, of the Group.

**"EGF Agent"** means the EGF Agent under and as defined in the EGF Agreement or, if there is no EGF Agent (or any equivalent term) under and as defined in the EGF Agreement, each EGF Lender.

**"EGF Agreement"** means the existing bank guarantee facilities agreement made between the Company, the Original Issuers and the Original Guarantors each named therein, the EGF Creditors and others dated on or about the date of this Agreement.

**"EGF Commitment"** means a "Commitment" under and as defined in the EGF Agreement.

**"EGF Creditors"** means each EGF Lender and EGF Agent.

**"EGF Discharge Date"** means the first date on which:

- (a) all EGF Liabilities have been fully and finally discharged to the satisfaction of the EGF Agent, whether or not as the result of an enforcement; and
- (b) the EGF Creditors are under no further obligation to provide financial accommodation to any of the Debtors under any of the Debt Documents.

**"EGF Facility"** has the meaning given to the term "Facility" in the EGF Agreement.



**"EGF Finance Documents"** has the meaning given to the term "Finance Documents" in the EGF Agreement.

**"EGF Lender"** means each Issuing Bank (as defined in the EGF Agreement).

**"EGF Liabilities"** means the Liabilities owed by the Debtors to the EGF Creditors under or in connection with the EGF Facility.

**"EGF Termination Date"** means the date by which all the EGF Liabilities are scheduled to have been repaid in full pursuant to the EGF Agreement.

**"Enforcement"** means:

- (a) the making of any demand against any member of the Group under any Deed of Guarantee;
- (b) the Transaction Security Enforcement;
- (c) the entering into of any composition, compromise, assignment or arrangement with any Debtor which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 20 (*Changes to the Parties*)); and
- (d) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration, judicial management or reorganisation of any Debtor which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such Debtor's assets or any suspension of payments or moratorium of any indebtedness of any such Debtor, or any analogous procedure or step in any jurisdiction.

**"Enforcement Action"** means:

- (a) in relation to any Liabilities:
  - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Primary Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
  - (ii) the making of any declaration that any Liabilities are payable on demand;
  - (iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent:
    - (A) that the demand is made in the ordinary course of dealings between the relevant Debtor and Intra-Group Lender (including in respect of cash pooling arrangements to the extent such arrangements are permitted under the Primary Finance Documents); and
    - (B) that any resulting Payment would be a Permitted Intra-Group Payment);

- (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
  - (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability other than in connection with any mandatory redemption option required in connection with an asset sale offer or change of control offer (however defined) as set out in the Primary Finance Documents);
  - (vi) the exercise of any right of set-off, account combination or payment netting against any Debtor in respect of any Liabilities other than the exercise of any such right:
    - (A) as Close-Out Netting by a Hedge Counterparty;
    - (B) as Payment Netting by a Hedge Counterparty;
    - (C) as Inter-Hedging Agreement Netting by a Hedge Counterparty; or
    - (D) which is otherwise permitted under any Primary Finance Document 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 Debtor to recover any Liabilities;
  - (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement;
  - (c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
  - (d) the entering into of any composition, compromise, assignment or arrangement with any Debtor which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 20 (*Changes to the Parties*)); or
  - (e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration, judicial management or reorganisation of any Debtor which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such Debtor's assets or any suspension of payments or moratorium of any indebtedness of any such Debtor, or any analogous procedure or step in any jurisdiction,
- except that the following shall not constitute Enforcement Action:
- (i) the taking of any action falling within 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 Primary Creditor bringing legal proceedings against any person solely for the purpose of:
  - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
  - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
  - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages;
- (iii) a demand made by a Subordinated Creditor or an Intra-Group Lender in relation to the Subordinated Liabilities or Intra-Group Liabilities (as applicable) to the extent any resulting Payment would constitute a Permitted Subordinated Payment or a Permitted Intra-Group Payment (as applicable); and
- (iv) the exercise of any set-off in respect of tax receivables owed to a member of the Group in the ordinary course of operation of the PNG Loan Facility (and other than by reason of occurrence of a Default).

**"Enforcement Objective"** means maximising, to the extent consistent with a prompt and expeditious realisation of value, the value realised from Transaction Security Enforcement (including with regards to cash recovery).

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

**"Event of Default"** means any event or circumstance (however described) specified as such in the Primary Finance Documents or any equivalent event or circumstance.

**"Existing Deeds of Guarantee"** means [●]. **[LL Note: S&M/Company to list the existing bilateral corporate guarantees supporting the guarantee facilities issued before 14 February 2025]**

**"Existing Guarantee Facilities"** means [●]. **[LL Note: S&M/Company to list the guarantee facilities issued before 14 February 2025 which are supported by the Existing Deeds of Guarantee]**

**"Existing Guarantor"** means [●]. **[LL Note: S&M/Company to list the guarantors under the existing bilateral corporate guarantees supporting the guarantee facilities issued before 14 February 2025]**

**"Exposure"** has the meaning given to that term in Clause 17.1 (*Equalisation definitions*).

"**Agent**" means the Agent under and as defined in the Agreement or, if there is no Agent (or any equivalent term) under and as defined in the Agreement, each Lender.

"**Agreement**" means the facilities agreement made between the Company and the Creditors dated 12 February 2009, as amended and restated on or about the date of this Agreement.

"**Commitment**" means a "Limit" under and as defined in the Agreement.

"**Creditors**" means each Lender and Agent.

"**Discharge Date**" means the first date on which:

- (a) all Liabilities have been fully and finally discharged to the satisfaction of the Agent, whether or not as the result of an enforcement; and
- (b) the Creditors are under no further obligation to provide financial accommodation to any of the Debtors under any of the Debt Documents.

"**Facility**" has the meaning given to the term "Limit" in the Agreement.

"**Finance Documents**" the Agreement, this Agreement, the Initial Deed of Guarantee, the Transaction Security Documents and any other document designated as such by the Company and the Creditors.

"**Lender**" means each Lender (as defined in Agreement).

"**Liabilities**" means the Liabilities owed by the Debtors to the Creditors under or in connection with the Facility.

"**Termination Date**" means the date by which all the Liabilities are scheduled to have been repaid in full pursuant to the Agreement.

"**Fairness Opinion**" means, in respect of a Distressed Disposal or a Liabilities Sale, an opinion that the proceeds received or recovered in connection with that Distressed Disposal or Liabilities Sale 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 later to occur of the Super Senior Discharge Date, the Senior Discharge Date and the Senior Subordinated Discharge Date.

"**Financial Adviser**" means any:

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

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

**"Financial Event of Default"** means any event or circumstance specified as an Event of Default in relation to non-payment, financial covenants, insolvency or insolvency proceedings or creditors' process.

**"First Release Conditions"** has the meaning given to it in paragraph (a) of Clause 2.4 (*Transaction Security release – Senior Subordinated Liabilities (First Release Date)*).

**"First Release Date"** means the date when the Security Agent receives the certificate delivered to it in accordance with Clause 2.4 (*Transaction Security release – Senior Subordinated Liabilities (First Release Date)*).

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

**"Group"** means the Company and each of its Subsidiaries for the time being.

**"Guarantee Liabilities"** means, in relation to a member of the Group, the liabilities and obligations under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (other than to a Surety Bonds Lender under any Surety Bonds Agreement or a Primary Arranger or a Primary Agent which is not a USPP Noteholder) or a Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Primary Finance Documents).

**"Guarantee Lines Agreement"** means any agreement entered into by a Guarantee Lines Lender and designated as a Guarantee Lines Agreement in accordance with Clause 5.9 (*Designation of Guarantee Lines Agreements*). **[LL Note: S&M to confirm/populate Guarantee Lines-related definitions please]**

**"Guarantee Lines Commitment"** means a "Commitment" (or any equivalent term) under and as defined in the Guarantee Lines Agreement.

**"Guarantee Lines Lender"** means any entity which:

- (a) signs this Agreement as a Guarantee Lines Lender; or
- (b) becomes a Party as a Guarantee Lines Lender pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

**"Guarantee Lines Liabilities"** means the Liabilities owed by any Debtor to the Guarantee Lines Lenders under or in connection with the Guarantee Lines Agreements.

**"Guarantee Lines Liabilities Designated Amount"** means, at any time, the aggregate of:

- (a) U.S.\$200,000,000 (or its equivalent in any other currency); and
- (b) the amount of EGF Commitment, ■■■ Commitment or NTL Commitment that is permanently cancelled or repaid (other than by reason of occurrence of a Default or as a result of rebalancing of EGF Commitments pursuant to the terms of the EGF Agreement) up to a maximum amount of U.S.\$600,000,000 (or its equivalent in any other currency).

**"Guarantee Lines Liabilities Maximum Amount"** has the meaning given to it in paragraph (b)(ii) of Clause 5.9 (*Designation of Guarantee Lines Agreements*).

**"Guarantee Lines Liabilities Register"** has the meaning given to it in paragraph (e) of Clause 5.9 (*Designation of Guarantee Lines Agreements*).

**"Guarantee Proceeds"** means any amounts received pursuant to the making of a demand under any Deed of Guarantee, guarantee, indemnity or other assurance against loss provided under any Debt Document in respect of the Guaranteed Obligations (other than any amounts received pursuant to the making of a demand under the Existing Deeds of Guarantee in accordance with paragraph (c) of Clause 5.12 (*Permitted Enforcement: Senior Subordinated Creditors*)).

**"Guaranteed Obligations"** means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Guaranteed Party under the Primary Finance Documents, in each case both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

**"Guaranteed Parties"** means the Security Agent, any Receiver or Delegate and each of the other Primary Creditors from time to time but, in the case of each Primary Creditor, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

**"Hedge Counterparty"** means any entity which becomes a Party as a Hedge Counterparty pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

**"Hedging Agreement"** means any agreement designated as a Hedging Agreement in accordance with Clause 5.5 (*Designation of Hedging Agreements*), provided that any Debtor's counterparty under such agreement becomes a Party as Hedge Counterparty in respect of that agreement pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

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

**"Hedging Liabilities Designated Amount"** means, at any time, U.S.\$25,000,000 (or its equivalent in any other currency).

**"Hedging Liabilities Maximum Amount"** has the meaning given to it in paragraph (b)(ii) of Clause 5.5 (*Designation of Hedging Agreements*).

**"Hedging Liabilities Register"** has the meaning given to it in paragraph (e) of Clause 5.5 (*Designation of Hedging Agreements*).

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

**"IFRS"** means UK adopted international accounting standards within the meaning of section 474(1) of the Companies Act 2006 to the extent applicable to the relevant financial statements.

**"Individual Enforcement Action"** has the meaning given to it in paragraph (b)(i) of Clause 11.8 (*Individual powers of enforcement*).

**"Initial Deed of Guarantee"** means the deed of guarantee dated on or about the date of this Agreement and entered into by, among others, certain of the Debtors and the Security Agent for itself and on behalf of the other Guaranteed Parties.

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

- (a) any resolution is passed or order made for the winding up, dissolution, administration, judicial management or reorganisation of that member of the Group, a moratorium takes effect by operation of law or is declared or comes into force in relation to any indebtedness of that member of the Group or an administrator is appointed to that member of the Group;
- (b) any composition, compromise, assignment or arrangement is made with any of its creditors with a view to avoiding anticipated financial difficulty;
- (c) the appointment of any liquidator, receiver, judicial manager, administrative receiver, administrator, compulsory manager or other similar officer in respect of that member of the Group or any of its assets; or
- (d) any analogous procedure or step is taken in any jurisdiction,

in each case other than a solvent liquidation or reorganisation of any member of the Group expressly permitted by the Primary Finance Documents (including, but not limited to, a case under US Bankruptcy Law).

**"Instructing Group"** means at any time, those RCF Lenders, TL Lenders and USPP Noteholders whose aggregate RCF Credit Participations, TL Credit Participations and USPP Credit Participations at that time aggregate more than 66<sup>2</sup>/<sub>3</sub> per cent. of the total aggregate RCF Credit Participations, TL Credit Participations and USPP Credit Participations of all RCF Lenders, TL Lenders and USPP Noteholders at that time.

**"Intercreditor Amendment"** means any amendment or waiver which is subject to Clause 26 (*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 Hedge Counterparty against liabilities owed to a Debtor by that Hedge Counterparty under a Hedging Agreement in respect of Hedging Liabilities owed to that Hedge Counterparty by that Debtor under another Hedging Agreement.

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

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

**"Intra-Group Liabilities"** means the Liabilities owed by any member of the Group to any of the Intra-Group Lenders (other than the Subordinated Liabilities).

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

**"Italian Banking Act"** means the Legislative Decree No. 385 of 1 September 1993 and the relevant implementing regulations.

**"Italian Bankruptcy Law"** means the Royal Decree No. 267 of 16 March 1942.

**"Italian Civil Code"** means the Italian civil code, enacted by Royal Decree No. 262 of 16 March 1942.

**"Italian Deed of Pledge over Bank Account"** means the Italian law governed deed of pledge over bank account dated on or around this Agreement between, among other, the Security Agent and Wood Italiana S.r.l.

**"Italian Insolvency Code"** means the Legislative Decree No. 14 of 12 January 2019, enacting law No. 155 of 19 October 2017.

**"Italian Law Security Documents"** means the Italian Deed of Pledge over Bank Account and any other Transaction Security Document which is expressed to be or construed to be governed by Italian law.

**"Letter of Credit"** has the meaning given to the term "Letter of Credit" or "Bank Guarantee" (or any equivalent term) in any Primary LC Finance Document.

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

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

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

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

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

the rights in respect of those Liabilities.

**"Liabilities Sale"** means a Debt Disposal pursuant to paragraph (a)(v) of Clause 13.1 (*Facilitation of Distressed Disposals and Appropriation*).



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

**"Majority Senior Subordinated Creditors"** means, at any time, those Senior Subordinated Creditors whose Senior Subordinated Credit Participations at that time aggregate more than  $66\frac{2}{3}$  per cent. of the total Senior Subordinated Credit Participations at that time (provided that the Senior Subordinated Credit Participation in respect of any lender under a guarantee facility, performance bond, letter of credit or equivalent shall be the amount (net of any cash collateral or cash security held by such lender) of that guarantee facility, performance bond, letter of credit or equivalent that is issued and in force and which has not been withdrawn or cancelled at that time).

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

**"Mandatory Prepayment"** means a mandatory prepayment of any of the Primary Liabilities pursuant to clause [8.6] (*Mandatory prepayment and cancellation*) of the RCF Agreement (or any similar clause in any other Primary Finance Document).

**"Material Adverse Effect"** means a material adverse effect on:

- (a) the financial condition, business or assets of any Intra-Group Lender or any Subordinated Creditor (as applicable);
- (b) the ability of any Intra-Group Lender or any Subordinated Creditor (as applicable) to perform and comply with its payment obligations under this Agreement; or
- (c) the validity, legality or enforceability of this Agreement or the rights or remedies of the Secured Parties or Guaranteed Parties under this Agreement.

**"Multi-account Overdraft"** means a Credit Card Liabilities Facility which is an overdraft facility comprising more than one account.

**"Multi-account Overdraft Liabilities"** means the Liabilities arising under any Multi-account Overdraft.

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

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

**"Non-Cash Recoveries"** means:

- (a) any proceeds of a Distressed Disposal or a Debt Disposal; or
- (b) any amount distributed to the Security Agent pursuant to Clause 9.2 (*Turnover by the Creditors*),

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

**"Non-Distressed Disposal"** has the meaning given to that term in Clause 12 (*Non-Distressed Disposals*).

**"NTL Agent"** means the Agent under and as defined in the NTL Agreement or, if there is no Agent (or any equivalent term) under and as defined in the NTL Agreement, each NTL Lender and each NTL Noteholder.

**"NTL Agreement"** means the long-term term loan and notes issuance facilities agreement made between the Company, John Wood Group Finance Limited as borrower, the Original Guarantors named therein, the NTL Creditors and others dated on or about the date of this Agreement.

**"NTL Commitment"** means a "Commitment" under and as defined in the NTL Agreement.

**"NTL Credit Participation"** means, in relation to an NTL Lender or NTL Noteholder, its aggregate NTL Commitments, if any.

**"NTL Creditor"** means each NTL Lender, each NTL Noteholder and NTL Agent.

**"NTL Discharge Date"** means the first date on which:

- (a) all NTL Liabilities have been fully and finally discharged to the satisfaction of the NTL Agent, whether or not as the result of an enforcement; and
- (b) the NTL Creditors are under no further obligation to provide financial accommodation to any of the Debtors under any of the Debt Documents.

**"NTL Facility"** has the meaning given to the term "Loan Facility" or "Notes Facility" in the NTL Agreement, and **"NTL Facilities"** means the "Loan Facility" and the "Notes Facility" (each as defined in the NTL Agreement).

**"NTL Finance Documents"** has the meaning given to the term "Finance Documents" in the NTL Agreement.

**"NTL Lender"** means each Lender (as defined in the NTL Agreement).

**"NTL Liabilities"** means the Liabilities owed by the Debtors to the NTL Creditors under or in connection with the NTL Facilities (but excluding any counter-indemnity liabilities pursuant to the terms and conditions in respect of which any NTL Creditor has issued a Letter of Credit using the proceeds of any NTL Facility as cash collateral).

**"NTL Noteholder"** means each Noteholder (as defined in the NTL Agreement).

**"NTL Termination Date"** means the date by which all the NTL Liabilities are scheduled to have been repaid in full pursuant to the NTL Agreement.

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

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

**"Payment"** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of, or payment for or in respect of, those Liabilities (or other liabilities or obligations), including by way of set-off.

**"Payment Netting"** means:

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

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

**"Permitted Payment"** means a Permitted Intra-Group Payment, a Permitted Senior Payment, a Permitted Senior Subordinated Payment, a Permitted Subordinated Payment or a Permitted Super Senior Payment.

**"Permitted Senior Payments"** means the Payments permitted by Clause 4.1 (*Payment of Senior Liabilities*).

**"Permitted Senior Subordinated Payments"** means the Payments permitted by Clause 5.1 (*Payment of Senior Subordinated Liabilities*).

**"Permitted Subordinated Payments"** means the Payments permitted by Clause 7.2 (*Permitted Payments: Subordinated Liabilities*).

**"Permitted Super Senior Payments"** means the Payments permitted by Clause 3.1 (*Payment of Super Senior Liabilities*).

**"Plan B Agent"** means any agent of the lenders under any Plan B Agreement or, if there is no agent of the lenders under and as defined in any Plan B Agreement, each Plan B Lender.

**"Plan B Agreement"** means any financing agreement entered into by a Plan B Creditor and designated as a Plan B Agreement in accordance with Clause 3.5 (*Designation of Plan B Agreements*), provided that:

- (a) any member of the Group party to such financing agreement becomes a Party as a Debtor pursuant to Clause 20.11 (*New Debtor*); and
- (b)
  - (i) any agent of the providers of financing becomes a Party as a Plan B Agent;
  - (ii) any arranger of the financing becomes a Party as a Plan B Arranger; and
  - (iii) any provider of the financing becomes a Party as a Plan B Lender,in each case pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

**"Plan B Agreement Conditions"** has the meaning given to it in Clause 3.5 (*Designation of Plan B Agreements*).

**"Plan B Arranger"** means any arranger under and as defined in any Plan B Agreement or, if there is no arranger under and as defined in any Plan B Agreement, each Plan B Lender.

**"Plan B Commitment"** means a "Commitment" (or any equivalent term) under and as defined in any Plan B Agreement.

**"Plan B Covenant Trigger Event"** has the meaning given to it in the form of the amended and restated RCF Agreement as of the date of this Agreement.

**"Plan B Creditor"** means each Plan B Lender, Plan B Agent and Plan B Arranger.

**"Plan B Date"** means the date upon which a Plan B Trigger Event occurs.

**"Plan B Discharge Date"** means the first date on which:

- (a) all Plan B Liabilities have been fully and finally discharged to the satisfaction of each Plan B Agent, whether or not as the result of an enforcement; and
- (b) the Plan B Creditors are under no further obligation to provide financial accommodation to any of the Debtors under any of the Debt Documents.

**"Plan B Finance Documents"** has the meaning given to the term "Finance Documents" (or any equivalent term) in any Plan B Agreement.

**"Plan B Lender"** means each "Lender" (or any equivalent term) under any Plan B Agreement.

**"Plan B Liabilities"** means the Liabilities owed by the Debtors to the Plan B Creditors under or in connection with any Plan B Agreement.

**"Plan B Liabilities Designated Amount"** means, at any time, U.S.\$200,000,000 (or its equivalent in any other currency).

**"Plan B Liabilities Maximum Amount"** has the meaning given to it in Clause 3.5 (*Designation of Plan B Agreements*).

**"Plan B Termination Date"** means the date by which all the Plan B Liabilities are scheduled to have been repaid in full pursuant to any Plan B Agreement.

**"Plan B Trigger Event"** has the meaning given to it in the form of the amended and restated RCF Agreement as of the date of this Agreement.

**"PNG Loan Agreement"** means the letter of offer made between Wood Group PNG Limited and the PNG Loan Lender originally dated 13 December 2023, as amended and restated from time to time and on or about the date of this Agreement.

**"PNG Loan Commitment"** means a "Facility Limit" under and as defined in the PNG Loan Agreement.

**"PNG Loan Discharge Date"** means the first date on which:

- (a) all PNG Loan Liabilities have been fully and finally discharged, whether or not as the result of an enforcement; and
- (b) the PNG Loan Lender is under no further obligation to provide financial accommodation to any of the Debtors under any of the Debt Documents.

**"PNG Loan Facility"** has the meaning given to the term "Facility" in the PNG Loan Agreement.

**"PNG Loan Finance Documents"** has the meaning given to the term "Finance Documents" in the PNG Loan Agreement.

**"PNG Loan Lender"** means each lender under the PNG Loan Agreement.

**"PNG Loan Liabilities"** means the Liabilities owed by the Debtors to the PNG Loan Lender under or in connection with the PNG Loan Facility.

**"PNG Loan Termination Date"** means the date by which all the PNG Loan Liabilities are scheduled to have been repaid in full pursuant to the PNG Loan Agreement.

**"PPSA"** means the Australian Personal Property Securities Act 2009 (Cth).

**"Primary Agent"** means each Super Senior Agent, Senior Agent and Senior Subordinated Agent.

**"Primary Arranger"** means each Super Senior Arranger and Senior Subordinated Arranger.

**"Primary Creditors"** means the Super Senior Creditors, the Senior Creditors and the Senior Subordinated Creditors.

**"Primary Finance Documents"** means the Super Senior Finance Documents, the Senior Finance Documents and the Senior Subordinated Finance Documents.

**"Primary LC Finance Documents"** means the EGF Finance Documents.

**"Primary LC Liabilities"** means the EGF Liabilities.

**"Primary Lenders"** means the Super Senior Lenders, the Senior Lenders and the Senior Subordinated Lenders.

**"Primary Liabilities"** means the Super Senior Liabilities, the Senior Liabilities and the Senior Subordinated Liabilities.

**"Principal"** means at any time, and in relation to the Primary Finance Documents, the then aggregate (without double counting) of the Common Currency Amount of:

- (a) any amounts borrowed (including any amount utilised by way of Letter of Credit) and not repaid or prepaid;
- (b) the committed financial accommodation available (or potentially available) by way of undrawn commitments (or equivalent) in accordance with the terms of those Primary Finance Documents; and
- (c) the uncommitted financial accommodation potentially available by way of establishment of an incremental facility,

under those Primary Finance Documents and, in the case of paragraphs (b) and (c) above, by reference to the application, at that time, of any relevant limitation on the potential amount of that financial accommodation.

**"Principal Increase"** means in relation to an amendment or waiver of the Primary Finance Documents, the extent to which the Principal immediately after that amendment or waiver would (as a result of that amendment or waiver (and after taking account of any repayment or

cancellation to be effected at the same time as, or immediately after, that amendment or waiver)), incrementally exceed the Principal as at the date on which the relevant original Primary Finance Document is entered into (or, if greater, as the later of the date of this Agreement and the date on which such Primary Finance Document is designated as such under the terms of this Agreement) or, if less, the Principal immediately before that amendment or waiver.

**"Property"** of a member of the Group or of a Debtor means:

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

**"RCF Agent"** means the Agent under and as defined in the RCF Agreement.

**"RCF Agreement"** means the facilities agreement made between the Company, the RCF Creditors and others dated 20 October 2021, as amended and restated on or about the date of this Agreement.

**"RCF Credit Participation"** means, in relation to an RCF Lender, the aggregate of:

- (a) its aggregate RCF Elevated Commitments, if any; and
- (b) its aggregate RCF Non-Elevated Commitments, if any.

**"RCF Creditor"** means each RCF Elevated Creditor and RCF Non-Elevated Creditor.

**"RCF Elevated Commitment"** means an "Elevated Facility Commitment" (or any equivalent term) under and as defined in the RCF Agreement.

**"RCF Elevated Creditor"** means each RCF Elevated Lender and RCF Agent.

**"RCF Elevated Discharge Date"** means the first date on which:

- (a) all RCF Elevated Liabilities have been fully and finally discharged to the satisfaction of the RCF Agent, whether or not as the result of an enforcement; and
- (b) the RCF Elevated Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the RCF Elevated Facility.

**"RCF Elevated Facility"** has the meaning given to the term "Elevated Facility" (or any equivalent term) in the RCF Agreement.

**"RCF Elevated Lender"** means each Lender (as defined in the RCF Agreement) in relation to the RCF Elevated Liabilities.

**"RCF Elevated Liabilities"** means the Liabilities owed by the Debtors to the RCF Elevated Creditors under or in connection with the RCF Elevated Facility.

**"RCF Facilities"** means the RCF Elevated Facility and the RCF Non-Elevated Facility.

**"RCF Finance Documents"** has the meaning given to the term "Finance Documents" in the RCF Agreement.

**"RCF Lender"** means each RCF Elevated Lender and RCF Non-Elevated Lender.

**"RCF Liabilities"** means the RCF Elevated Liabilities and the RCF Non-Elevated Liabilities.

**"RCF Non-Elevated Commitment"** means a "Non-Elevated Facility Commitment" under and as defined in the RCF Agreement.

**"RCF Non-Elevated Creditor"** means each RCF Non-Elevated Lender and RCF Agent.

**"RCF Non-Elevated Discharge Date"** means the first date on which:

- (a) all RCF Non-Elevated Liabilities have been fully and finally discharged to the satisfaction of the RCF Agent, whether or not as the result of an enforcement; and
- (b) the RCF Non-Elevated Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the RCF Non-Elevated Facility.

**"RCF Non-Elevated Facility"** has the meaning given to the term "Non-Elevated Facility" (or any equivalent term) in the RCF Agreement.

**"RCF Non-Elevated Lender"** means each Lender (as defined in the RCF Agreement) in relation to the RCF Non-Elevated Liabilities.

**"RCF Non-Elevated Liabilities"** means the Liabilities owed by the Debtors to the RCF Non-Elevated Creditors under or in connection with the RCF Non-Elevated Facility.

**"RCF Termination Date"** means the date by which all the RCF Liabilities are scheduled to have been repaid in full pursuant to the RCF Agreement.

**"Recapitalisation Plan"** has the meaning given to it in the form of the amended and restated RCF Agreement as of the date of this Agreement.

**"Receiver"** means a receiver or receiver and manager, administrative receiver or Australian Controller of the whole or any part of the Charged Property.

**"Recoveries"** has the meaning given to that term in Clause 16.1 (*Order of application*).

**"Related Creditor"** has the meaning given to it in Clause 16.1 (*Order of application*).

**"Relevant Liabilities"** means, in the case of a Debtor, the Liabilities owed to the Creditors together with all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agent.

**"Relevant Primary Creditor"** means, in respect of any Cash Collateral, the Primary Creditor (if any) for which that Cash Collateral is provided.

**"Reserved Amount"** has the meaning given to it in Clause 16.4 (*Treatment of contingent liabilities*).

**"Reserved Matter"** means, in relation to a Debt Document, any provision dealing with:

- (a) the amount of interest that is payable;
- (b) the maturity date; or
- (c) obligation to pay any amount in cash.

**"Scottish Security Agreements"** means each Scots law governed security agreement granted in favour of the Security Agent by a Debtor incorporated in Scotland and dated on or about the date of this Agreement.

**"Scottish Share Pledges"** means each Scots law governed share pledge granted in favour of the Security Agent in respect of the shares in each Debtor incorporated in Scotland and dated on or about the date of this Agreement.

**"Second Release Conditions"** has the meaning given to it in Clause 2.6 (*Transaction Security release – Senior Liabilities*).

**"Second Release Date"** means the date when the Security Agent acknowledges receipt of the certificate delivered to it in accordance with Clause 2.6 (*Transaction Security release – Senior Liabilities*).

**"Secured Obligations"** means all the Liabilities (including any interest, fees, costs or charges which would accrue and become due but for the commencement of an Insolvency Event, whether or not such amounts are allowed or allowable in whole or in part in any such proceeding) and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under:

- (a) prior to the First Release Date, the Primary Finance Documents;
- (b) on and after the First Release Date but before the Second Release Date, the Super Senior Finance Documents and the Senior Finance Documents; and
- (c) on and after the Second Release Date, the Super Senior Finance Documents.

**"Secured Parties"** means the Security Agent, any Receiver or Delegate and:

- (a) prior to the First Release Date, each of the other Primary Creditors from time to time;
- (b) on and after the First Release Date but before the Second Release Date, each of the other Super Senior Creditors and the Senior Creditors from time to time; and
- (c) on and after the Second Release Date, each of the other Super Senior Creditors from time to time,

but, in the case of each Primary Creditor, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect (including any "security interest" as defined in the PPSA but excluding anything which is a Security by operation of section 12(3) of the PPSA which does not, in substance, secure payment or performance of an obligation).

**"Security Agent's Spot Rate of Exchange"** means in respect of the conversion of one currency (the **"First Currency"**) into another currency (the **"Second Currency"**):

- (a) the Security Agent's spot rate of exchange; or
- (b) (if the Security Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Security Agent (acting reasonably),



for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11:00 a.m. (London time) on a particular day, which shall, in either case, be notified by the Security Agent in accordance with paragraph (a) of Clause 19.16 (*Information from the Creditors*).

**"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 Security in favour of any of the Secured Parties as security for any of the Secured Obligations; and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b) above.

**"Security Property"** means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee or security agent (or as *mandatario con rappresentanza*) for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee or security agent (or as *mandatario con rappresentanza*) for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as trustee or security agent for the Secured Parties;
- (c) the Security Agent's interest in any trust fund created pursuant to Clause 9 (*Turnover of Receipts*);
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as trustee on trust or as security agent (or as *mandatario con rappresentanza*)
- (e) for the Secured Parties.

**"Senior Acceleration Event"** means, in relation to any Senior Finance Document, a Senior Agent or Senior Lender(s) (as applicable) exercising any of its acceleration rights (however described) or any acceleration provisions (however described) being automatically invoked, in each case in accordance with such Senior Finance Document.

**"Senior Agent"** means:

- (a) prior to the Completion Date, the Sirius Initial Funding Agent;
- (b) the RCF Agent (acting on behalf of the RCF Elevated Creditors);
- (c) the TL Agent (acting on behalf of the TL Elevated Creditors); and
- (d) each USPP Elevated Noteholder.

**"Senior Commitments"** means:

- (a) prior to the Completion Date, any Sirius Initial Funding Commitments;

- (b) the RCF Elevated Commitments;
- (c) the TL Elevated Commitments; and
- (d) the USPP Elevated Credit Participation.

**"Senior Credit Participation"** means, in relation to a Senior Lender, its aggregate Senior Commitments, if any.

**"Senior Creditors"** means each Senior Lender and Senior Agent.

**"Senior Discharge Date"** means the later to occur of:

- (a) prior to the Completion Date, the Sirius Initial Funding Discharge Date;
- (b) the RCF Elevated Discharge Date;
- (c) the TL Elevated Discharge Date; and
- (d) the USPP Elevated Discharge Date.

**"Senior Finance Documents"** means:

- (a) prior to the Completion Date, the Sirius Initial Funding Finance Documents;
- (b) the RCF Finance Documents;
- (c) the TL Finance Documents; and
- (d) the USPP Finance Documents,

and in each case includes each Transaction Security Document (but only to the extent that such Transaction Security Document is expressed to secure the relevant Senior Liabilities) and each Deed of Guarantee (but only to the extent that such Deed of Guarantee is expressed to guarantee the relevant Senior Liabilities).

**"Senior Lenders"** means:

- (a) prior to the Completion Date, the Sirius Initial Funding Lender;
- (b) each RCF Elevated Lender;
- (c) each TL Elevated Lender; and
- (d) each USPP Elevated Noteholder.

**"Senior Liabilities"** means:

- (a) prior to the Completion Date, any Sirius Initial Funding Liabilities;
- (b) the RCF Elevated Liabilities;
- (c) the TL Elevated Liabilities; and
- (d) the USPP Elevated Liabilities.

**"Senior Subordinated Acceleration Event"** means, in relation to any Senior Subordinated Finance Document, a Senior Subordinated Agent or Senior Subordinated Lender(s) (as applicable) exercising any of its acceleration rights (however described) or any acceleration

provisions (however described) being automatically invoked, in each case in accordance with such Senior Subordinated Finance Document.

**"Senior Subordinated Agent"** means:

- (a) the RCF Agent (acting on behalf of the RCF Non-Elevated Creditors);
- (b) the TL Agent (acting on behalf of the TL Non-Elevated Creditors);
- (c) each USPP Non-Elevated Noteholder;
- (d) the EGF Agent;
- (e) the [REDACTED] Agent;
- (f) each Hedge Counterparty;
- (g) each Credit Card Liabilities Lender;
- (h) prior to the First Release Date, each Surety Bonds Lender; and
- (i) each Guarantee Lines Lender.

**"Senior Subordinated Commitments"** means:

- (a) the RCF Non-Elevated Commitments;
- (b) the TL Non-Elevated Commitments;
- (c) the USPP Non-Elevated Credit Participation;
- (d) the EGF Commitments;
- (e) the [REDACTED] Commitments;
- (f) the PNG Loan Commitments;
- (g) the Credit Card Liabilities Commitments;
- (h) prior to the First Release Date, the Surety Bonds Commitments; and
- (i) the Guarantee Lines Commitments.

**"Senior Subordinated Credit Participation"** means, in relation to a Senior Subordinated Lender or a Hedge Counterparty, the aggregate of:

- (a) its aggregate Senior Subordinated Commitments, if any;
- (b) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of any Hedging Agreement, the amount, if any, payable to it under such Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and

- (c) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out:
- (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the time and date on which the calculation is made was deemed to be 11:00 a.m. (London time) on an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
  - (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the time and date on which the calculation is made was deemed to be 11:00 a.m. (London time) on the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

**"Senior Subordinated Creditors"** means each Senior Subordinated Lender, Senior Subordinated Agent and Senior Subordinated Arranger.

**"Senior Subordinated Discharge Date"** means the later to occur of:

- (a) the RCF Non-Elevated Discharge Date;
- (b) the TL Non-Elevated Discharge Date;
- (c) the USPP Non-Elevated Discharge Date;
- (d) the EGF Discharge Date;
- (e) the [REDACTED] Discharge Date;
- (f) the PNG Loan Discharge Date;
- (g)
  - (i) any Hedging Liabilities have been fully and finally discharged to the satisfaction of the relevant Hedge Counterparty; and
  - (ii) the Hedge Counterparties are under no further obligation to provide financial accommodation to any of the Debtors under any of the Hedging Agreements;
- (h)
  - (i) any Credit Card Liabilities have been fully and finally discharged to the satisfaction of the relevant Credit Card Liabilities Lender; and

- (ii) the Credit Card Liabilities Lenders are under no further obligation to provide financial accommodation to any of the Debtors under any of the Credit Card Liabilities Agreements;
- (i) prior to the First Release Date,
  - (i) any Surety Bonds Liabilities have been fully and finally discharged to the satisfaction of the relevant Surety Bonds Lender; and
  - (ii) the Surety Bonds Lenders are under no further obligation to provide financial accommodation to any of the Debtors under any of the Surety Bonds Agreements; and
- (j)
  - (i) any Guarantee Lines Liabilities have been fully and finally discharged to the satisfaction of the relevant Guarantee Lines Lender; and
  - (ii) the Guarantee Lines Lenders are under no further obligation to provide financial accommodation to any of the Debtors under any of the Guarantee Lines Agreements.

**"Senior Subordinated Finance Documents"** means:

- (a) the RCF Finance Documents;
- (b) the TL Finance Documents;
- (c) the USPP Finance Documents;
- (d) the EGF Finance Documents;
- (e) the [REDACTED] Finance Documents;
- (f) the PNG Loan Finance Documents;
- (g) any Hedging Agreement;
- (h) any Credit Card Liabilities Agreement;
- (i) prior to the First Release Date, any Surety Bonds Agreement; and
- (j) any Guarantee Lines Agreement,

and in each case includes each Transaction Security Document (but only to the extent that such Transaction Security Document is expressed to secure the relevant Senior Subordinated Liabilities) and each Deed of Guarantee (but only to the extent that such Deed of Guarantee is expressed to guarantee the relevant Senior Subordinated Liabilities).

**"Senior Subordinated Lenders"** means each:

- (a) RCF Non-Elevated Lender;
- (b) TL Non-Elevated Lender;
- (c) USPP Non-Elevated Noteholder;
- (d) EGF Lender;

- (e) [REDACTED] Lender;
- (f) PNG Loan Lender;
- (g) Credit Card Liabilities Lender;
- (h) prior to the First Release Date, Surety Bonds Lender; and
- (i) Guarantee Lines Lender.

**"Senior Subordinated Liabilities"** means:

- (a) the RCF Non-Elevated Liabilities;
- (b) the TL Non-Elevated Liabilities;
- (c) the USPP Non-Elevated Liabilities;
- (d) the EGF Liabilities;
- (e) the [REDACTED] Liabilities;
- (f) the PNG Loan Liabilities;
- (g) any Hedging Liabilities;
- (h) any Credit Card Liabilities;
- (i) prior to the First Release Date, any Surety Bonds Liabilities; and
- (j) any Guarantee Lines Liabilities.

**"Sirius Additional Funding"** means funding in the aggregate amount of U.S.\$200,000,000 received by the Company from the Sirius Initial Funding Lender (or any of its Affiliates) on or around the Completion Date as permitted under the Primary Finance Documents.

**"Sirius Additional Funding Designated Amount"** means, at any time, U.S.\$200,000,000.

**"Sirius Additional Funding Agreement"** means any financing agreement entered into by a Sirius Additional Funding Lender and designated as such in accordance with Clause 7.6 (*Designation of Sirius Additional Funding Agreements*).

**"Sirius Additional Funding Lender"** means each Lender (as defined in any Sirius Additional Funding Agreement).

**"Sirius Additional Funding Liabilities"** means the Liabilities owed by the Debtors to the Sirius Additional Funding Lenders under or in connection with any Sirius Additional Funding Agreement.

**"Sirius Additional Funding Maximum Amount"** has the meaning given to it in Clause 7.6 (*Designation of Sirius Additional Funding Agreements*).

**"Sirius Affiliate"** means any Sirius Lender (the **"Investor"**), each of its Affiliates, any trust of which the Investor or any of its Affiliates is a trustee, any partnership of which the Investor or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, the Investor or any of its Affiliates.

**"Sirius Initial Funding Agent"** means the Agent under and as defined in the Sirius Initial Funding Agreement.

**"Sirius Facility Agreement"** means the Sirius Initial Funding Agreement and any Sirius Additional Funding Agreement.

**"Sirius Initial Funding Commitment"** means a "Commitment" under and as defined in the Sirius Initial Funding Agreement.

**"Sirius Initial Funding Discharge Date"** means the first date on which:

- (a) all Sirius Initial Funding Liabilities have been fully and finally discharged to the satisfaction of the Sirius Initial Funding Lender, whether or not as the result of an enforcement; and
- (b) the Sirius Initial Funding Lender is under no further obligation to provide financial accommodation to any of the Debtors under the Sirius Initial Funding Finance Documents.

**"Sirius Initial Funding Facility"** has the meaning given to the term "Facility" in the Sirius Initial Funding Agreement.

**"Sirius Initial Funding Agreement"** means the facility agreement made between, among others, the Sirius Initial Funding Lender and the Company dated [●].

**"Sirius Initial Funding Finance Documents"** has the meaning given to the term "Finance Documents" in the Sirius Initial Funding Agreement.

**"Sirius Initial Funding Lender"** means the Original Lender (as defined in the Sirius Initial Funding Agreement).

**"Sirius Initial Funding Liabilities"** means the Liabilities owed by the Debtors to the Sirius Initial Funding Lender under or in connection with the Sirius Initial Funding Agreement.

**"Sirius Lender"** means the Sirius Initial Funding Lender and any Sirius Additional Funding Lender.

**"Spanish Civil Procedure Act"** means Spanish Act 1/2000 of 7 January, on Civil Procedure (*Ley de Enjuiciamiento Civil*).

**"Spanish Insolvency Act"** means Spanish Royal Legislative Decree 1/2020 of 5 May 2020, approving the consolidated text of the Insolvency Act (*Texto Refundido de la Ley Concursal*), as amended from time to time and in particular, without limitation, by Act 16/2022 of 5 September 2022, amending the consolidated text of the Insolvency Act.

**"Spanish Obligor"** means an Obligor incorporated in Spain.

**"Spanish Public Document"** means, a *documento público*, being either *an escritura pública* or a *póliza* or *efecto intervenido por fedatario público*.

**"Spanish Security Documents"** means any Transaction Security Document governed by the laws of Spain.

**"Spanish VAT Act"** means Spanish Law 37/1992 of 28 December 1992 on Value Added Tax (*Ley del Impuesto sobre el Valor Añadido*) as well as any other law in relation to VAT approved by any of the regions of Spain which have the capacity to do so or in relation to other indirect taxes of a similar nature to VAT, as amended or substituted from time to time.

**"Subordinated Creditor"** means:

- (a) on or after the Completion Date, the Sirius Initial Funding Lender; and

- (b) any Sirius Additional Funding Lender.

**"Subordinated Liabilities"** means, on or after the Completion Date, the Liabilities owed to any Subordinated Creditor by any member of the Group.

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

- (a) has the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
- (i) cast, or control the casting of, more than 50 per cent. of the maximum number of votes that might be cast at a general meeting of the first person;
  - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the first person; or
  - (iii) give directions with respect to the operating and financial policies of the first person with which the directors or other equivalent officers of the first person are obliged to comply; or
- (b) holds beneficially more than 50 per cent. of the issued share capital of the first person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

**"Super Majority Primary Creditors"** means at any time:

- (a) prior to the Super Senior Discharge Date, those Super Senior Lenders whose aggregate Super Senior Credit Participations at that time aggregate more than 90 per cent. of the total aggregate Super Senior Credit Participations of all Super Senior Lenders at that time;
- (b) prior to the Senior Discharge Date, those Senior Lenders whose aggregate Senior Credit Participations at that time aggregate more than 90 per cent. of the total aggregate Senior Credit Participations of all Senior Lenders at that time; and
- (c) prior to the Senior Subordinated Discharge Date, those Senior Subordinated Lenders and Hedge Counterparties whose aggregate Senior Subordinated Credit Participations at that time aggregate more than 90 per cent. of the total aggregate Senior Subordinated Credit Participations of all Senior Subordinated Lenders and Hedge Counterparties at that time.

**"Super Senior Acceleration Event"** means, in relation to any Super Senior Finance Document, a Super Senior Agent or Super Senior Lender(s) (as applicable) exercising any of its acceleration rights (however described) or any acceleration provisions (however described) being automatically invoked, in each case in accordance with such Super Senior Finance Document.

**"Super Senior Agent"** means:

- (a) the NTL Agent; and
- (b) any Plan B Agent.



**"Super Senior Arranger"** means any Plan B Arranger.

**"Super Senior Commitments"** means:

- (a) the NTL Commitments; and
- (b) any Plan B Commitments.

**"Super Senior Credit Participation"** means, in relation to a Super Senior Lender, its aggregate Super Senior Commitments, if any.

**"Super Senior Creditors"** means each Super Senior Lender, Super Senior Agent and Super Senior Arranger.

**"Super Senior Discharge Date"** means the later to occur of:

- (a) the NTL Discharge Date; and
- (b) any Plan B Discharge Date.

**"Super Senior Finance Documents"** means:

- (a) the NTL Finance Documents; and
- (b) any Plan B Finance Documents,

and in each case includes each Transaction Security Document (but only to the extent that such Transaction Security Document is expressed to secure the relevant Super Senior Liabilities) and each Deed of Guarantee (but only to the extent that such Deed of Guarantee is expressed to guarantee the relevant Super Senior Liabilities).

**"Super Senior Lenders"** means each:

- (a) NTL Lender;
- (b) NTL Noteholder; and
- (c) Plan B Lender.

**"Super Senior Liabilities"** means:

- (a) the NTL Liabilities; and
- (b) any Plan B Liabilities.

**"Surety Bonds Agreement"** means any agreement entered into by a Surety Bonds Lender and designated as a Surety Bonds Agreement in accordance with Clause 5.8 (*Designation of Surety Bonds Agreements*).

**"Surety Bonds Claim"** means any "Claim" (or equivalent term) under and as defined in any Surety Bonds Agreement, including any dispute or litigation arising out of such claim.

**"Surety Bonds Commitment"** means, in respect of each Surety Bonds Lender, an amount equal to the aggregate Surety Bonds Liabilities Maximum Amount(s) under the Surety Bonds Agreement(s) to which it is a party.

**"Surety Bonds Event of Default"** means any Event of Default (as such term is defined in any Surety Bonds Agreement) or any event which entitles a Surety Bonds Lender to make a demand

for cash cover for an amount equal to its outstanding aggregate Surety Bonds Liabilities in accordance with the terms of the relevant Surety Bonds Agreement.

**"Surety Bonds Lender"** means any entity which:

- (a) signs this Agreement as a Surety Bonds Lender; or
- (b) becomes a Party as a Surety Bonds Lender pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

**"Surety Bonds Liabilities"** means the Liabilities owed by any Debtor to the Surety Bonds Lenders under or in connection with the Surety Bonds Agreements.

**"Surety Bonds Liabilities Designated Amount"** has the meaning given to it in Clause 5.8 (*Designation of Surety Bonds Agreements*).

**"Surety Bonds Liabilities Maximum Amount"** has the meaning given to it in Clause 5.8 (*Designation of Surety Bonds Agreements*).

**"Surety Bonds Liabilities Register"** has the meaning given to it in Clause 5.8 (*Designation of Surety Bonds Agreements*).

**"Surety Bonds Non-Payment Event"** means:

- (a) any failure by a Debtor to pay indemnity amounts due under a Surety Bonds Agreement; or
- (b) where a Surety Bonds Lender is required to make any payment in respect of any Surety Bonds Claim, or is required to make a payment under or in connection with any "Bond" (or equivalent term) under and as defined in the relevant Surety Bonds Agreement, and the Surety Bonds Lender subsequently demands payment from a Debtor equal to that amount, any failure by the Debtor to make such payment (in whole or in part).

**"Surety Bonds Receivables"** means a Debtor's accounts receivable due or to become due related to all "Bonded Contracts" (or any equivalent term) under and as defined in any Surety Bonds Agreement to the full extent of the Surety Bonds Lender's rights under such Surety Bonds Agreement and/or governing legal and equitable principles up to the aggregate amount paid or incurred by the Surety Bonds Lender under the relevant bonds, and which are either (a) expressly assigned to or held in trust for the Surety Bonds Lender under such Surety Bonds Agreement, or (b) would be recognised and/or given priority under applicable U.S. law and/or in equity, including the doctrine of equitable subrogation as set out in *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132 (1962), as property of the Surety Bonds Lender and not part of the Debtor's estate in bankruptcy or otherwise subject to claims by creditors of the bonded obligee or principal.

**"T2"** means the real time gross settlement system operated by the Eurosystem, or any successor system.

**"TARGET Day"** means any day on which T2 is open for the settlement of payments in euro.

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

**"TL Agent"** means the Agent under and as defined in the TL Agreement.

**"TL Agreement"** means the facilities agreement made between the Company, the TL Creditors and others dated 4 December 2023, as amended and restated on or about the date of this Agreement.

**"TL Credit Participation"** means, in relation to an TL Lender, the aggregate of:

- (a) its aggregate TL Elevated Commitments, if any; and
- (b) its aggregate TL Non-Elevated Commitments, if any.

**"TL Creditor"** means each TL Elevated Creditor and TL Non-Elevated Creditor.

**"TL Elevated Commitment"** means an "Elevated Facility Commitment" under and as defined in the TL Agreement.

**"TL Elevated Creditor"** means each TL Elevated Lender and TL Agent.

**"TL Elevated Discharge Date"** means the first date on which:

- (a) all TL Elevated Liabilities have been fully and finally discharged to the satisfaction of the TL Agent, whether or not as the result of an enforcement; and
- (b) the TL Elevated Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the TL Elevated Facility.

**"TL Elevated Facility"** has the meaning given to the term "Elevated Facility" in the TL Agreement.

**"TL Elevated Lender"** means each Lender (as defined in the TL Agreement) in relation to the TL Elevated Liabilities.

**"TL Elevated Liabilities"** means the Liabilities owed by the Debtors to the TL Elevated Creditors under or in connection with the TL Elevated Facility.

**"TL Facilities"** means the TL Elevated Facility and the TL Non-Elevated Facility.

**"TL Finance Documents"** has the meaning given to the term "Finance Documents" in the TL Agreement.

**"TL Lender"** means each TL Elevated Lender and TL Non-Elevated Lender.

**"TL Liabilities"** means the TL Elevated Liabilities and the TL Non-Elevated Liabilities.

**"TL Non-Elevated Commitment"** means a "Non-Elevated Facility Commitment" under and as defined in the TL Agreement.

**"TL Non-Elevated Creditor"** means each TL Non-Elevated Lender and TL Agent.

**"TL Non-Elevated Discharge Date"** means the first date on which:

- (a) all TL Non-Elevated Liabilities have been fully and finally discharged to the satisfaction of the TL Agent, whether or not as the result of an enforcement; and
- (b) the TL Non-Elevated Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the TL Non-Elevated Facility.

**"TL Non-Elevated Facility"** has the meaning given to the term "Non-Elevated Facility" (or any equivalent term) in the TL Agreement.

**"TL Non-Elevated Lender"** means each Lender (as defined in the TL Agreement) in relation to the TL Non-Elevated Liabilities.

**"TL Non-Elevated Liabilities"** means the Liabilities owed by the Debtors to the TL Non-Elevated Creditors under or in connection with the TL Non-Elevated Facility.

**"TL Termination Date"** means the date by which all the TL Liabilities are scheduled to have been repaid in full pursuant to the TL Agreement.

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

**"Transaction Security Documents"** means the documents listed in Schedule 5 (*Transaction Security Documents*).

**"Transaction Security Enforcement"** means the taking of any steps to enforce or require the enforcement of any Transaction Security, the enforcement or disposal of any Transaction Security, the requesting of a Distressed Disposal and/or the release or disposal of claims and/or Transaction Security on a Distressed Disposal under Clause 0 (*Distressed Disposals and Appropriation*), the giving of instructions as to actions with respect to the Transaction Security and/or the Charged Property following an Insolvency Event under Clause 8.7 (*Security Agent instructions*) and the taking of any other actions consequential on (or necessary to effect) any of those actions.

**"US Bankruptcy Law"** means the United States Bankruptcy Code of 1978 (Title 11 of the United States Code), any other United States federal or state bankruptcy, insolvency or similar law.

**"USPP Credit Participation"** means, in relation to a USPP Noteholder, the aggregate of:

- (a) its USPP Elevated Credit Participation, if any; and
- (b) its USPP Non-Elevated Credit Participation, if any.

**"USPP Elevated Discharge Date"** means the first date on which:

- (a) all USPP Elevated Liabilities have been fully and finally discharged to the satisfaction of the USPP Elevated Noteholders, whether or not as the result of an enforcement; and
- (b) the USPP Elevated Noteholders are under no further obligation to provide financial accommodation to any of the Debtors under the USPP Elevated Notes.

**"USPP Elevated Liabilities"** means the Liabilities owed by the Debtors to the USPP Elevated Noteholders under or in connection with the USPP Elevated Notes.

**"USPP Elevated Noteholder"** means each holder of USPP Elevated Notes.

**"USPP Elevated Notes"** the holder of any series of notes issued pursuant to a USPP NPA with suffix "-1".

**"USPP Finance Documents"** has the meaning given to the term "Finance Documents" in any USPP NPA.

**"USPP Liabilities"** means the USPP Elevated Liabilities and the USPP Non-Elevated Liabilities.

**"USPP Non-Elevated Credit Participation"** means, in relation to a USPP Noteholder that is a holder of a USPP Non-Elevated Note, the aggregate principal amount of that USPP Non-Elevated Note.

**"USPP Non-Elevated Discharge Date"** means the first date on which:

- (a) all USPP Non-Elevated Liabilities have been fully and finally discharged to the satisfaction of the USPP Non-Elevated Noteholders, whether or not as the result of an enforcement; and
- (b) the USPP Non-Elevated Noteholders are under no further obligation to provide financial accommodation to any of the Debtors under the USPP Non-Elevated Notes.

**"USPP Non-Elevated Liabilities"** means the Liabilities owed by the Debtors to the USPP Non-Elevated Noteholders under or in connection with the USPP Non-Elevated Notes.

**"USPP Non-Elevated Noteholder"** means each holder of USPP Non-Elevated Notes.

**"USPP Non-Elevated Notes"** the holder of any series of notes issued pursuant to a USPP NPA with suffix "-2".

**"USPP Noteholder"** means each USPP Elevated Noteholder and USPP Non-Elevated Noteholder.

**"USPP Notes"** means the USPP Elevated Notes and the USPP Non-Elevated Notes.

**"USPP NPA"** means each of:

- (a) the notes purchase agreement originally dated 13 August 2014 relating to the issuance and sale of the senior USPP Notes by the Company and each of the holders of the USPP Notes named therein pursuant to the amendment and restatement agreement dated on or about the date of this Agreement;
- (b) the notes purchase agreement originally dated 10 December 2018 relating to the issuance and sale of the senior USPP Notes by the Company and each of the holders of the USPP Notes named therein pursuant to the amendment and restatement agreement dated on or about the date of this Agreement; and
- (c) the notes purchase agreement originally dated 24 June 2019 relating to the issuance and sale of the senior USPP Notes by the Company and each of the holders of the USPP Notes named therein pursuant to the amendment and restatement agreement dated on or about the date of this Agreement.

**"USPP Termination Date"** means the date by which all the USPP Liabilities are scheduled to have been repaid in full pursuant to the USPP NPAs and/or the USPP Notes issued thereunder.

**"VAT"** means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112);
- (c) Australian GST; and

- (d) any other tax of a similar nature, whether imposed in the United Kingdom or a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraphs (a) or (b) above, or imposed elsewhere.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:

- (i) any **"Company"**, **"Credit Card Liabilities Lender"**, **"Creditor"**, **"Debtor"**, **"EGF Agent"**, **"EGF Creditor"**, **"EGF Lender"**, **"Existing Guarantor"**, **"████ Agent"**, **"████ Creditor"**, **"████ Lender"**, **"Guarantee Lines Lender"**, **"Hedge Counterparty"**, **"Intra-Group Lender"**, **"NTL Agent"**, **"NTL Creditor"**, **"NTL Lender"**, **"NTL Noteholder"**, **"Party"**, **"Plan B Agent"**, **"Plan B Creditor"**, **"Plan B Lender"**, **"PNG Loan Lender"**, **"Primary Agent"**, **"Primary Arranger"**, **"Primary Creditor"**, **"Primary Lender"**, **"RCF Agent"**, **"RCF Creditor"**, **"RCF Lender"**, **"Security Agent"**, **"Senior Agent"**, **"Senior Creditor"**, **"Senior Lender"**, **"Senior Subordinated Agent"**, **"Senior Subordinated Arranger"**, **"Senior Subordinated Creditor"**, **"Senior Subordinated Lender"**, **"Sirius Additional Funding Lender"**, **"Sirius Affiliate"**, **"Sirius Initial Funding Lender"**, **"Sirius Lender"**, **"Subordinated Creditor"**, **"Super Senior Agent"**, **"Super Senior Arranger"**, **"Super Senior Creditor"**, **"Super Senior Lender"**, **"TL Agent"**, **"TL Creditor"**, **"TL Lender"**, **"USPP Elevated Noteholder"** or **"USPP Non-Elevated Noteholder"** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
- (ii) any **"Credit Card Liabilities Lender"**, **"Creditor"**, **"Debtor"**, **"EGF Agent"**, **"EGF Creditor"**, **"EGF Lender"**, **"████ Agent"**, **"████ Creditor"**, **"████ Lender"**, **"Guarantee Lines Lender"**, **"Hedge Counterparty"**, **"NTL Agent"**, **"NTL Creditor"**, **"NTL Lender"**, **"NTL Noteholder"**, **"Party"**, **"Plan B Agent"**, **"Plan B Creditor"**, **"Plan B Lender"**, **"PNG Loan Lender"**, **"Primary Agent"**, **"Primary Arranger"**, **"Primary Creditor"**, **"Primary Lender"**, **"RCF Agent"**, **"RCF Creditor"**, **"RCF Lender"**, **"Security Agent"**, **"Sirius Additional Funding Lender"**, **"Sirius Initial Funding Lender"**, **"Sirius Lender"**, **"Subordinated Creditor"**, **"TL Agent"**, **"TL Creditor"**, **"TL Lender"**, **"USPP Elevated Noteholder"** or **"USPP Non-Elevated Noteholder"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
- (iii) an **"amount"** includes an amount of cash and an amount of Non-Cash Consideration;
- (iv) **"assets"** includes present and future properties, revenues and rights of every description;
- (v) a **"Debt Document"** or any other agreement or instrument is (other than a reference to a **"Debt Document"** or any other agreement or instrument in **"original form"**) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated (however fundamentally and whether or not more onerously) and includes any change in the purpose of, any extension of, or any increase in, any facility under that Debt Document or other agreement or instrument as permitted by this Agreement;

- (vi) a "**distribution**" of or out of the assets of a member of the Group, includes a distribution of cash and a distribution of Non-Cash Consideration;
- (vii) "**enforcing**" (or any derivation) the Transaction Security includes:
  - (A) the Security Agent appointing, or applying for or consenting in writing to the appointment of, an administrator (or any analogous officer or procedure in any jurisdiction) of a Debtor; and
  - (B) the making of a demand under Clause 19.3 (*Parallel Debt (Covenant to pay the Security Agent)*) by the Security Agent;
- (viii) a "**group of Creditors**" includes all the Creditors and a "**group of Primary Creditors**" includes all the Primary Creditors;
- (ix) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent and a "financing agreement" is an agreement in respect thereof;
- (x) the "**original form**" of a "**Debt Document**" or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
- (xi) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (xii) "**proceeds**" of a Distressed Disposal or of a Debt Disposal includes proceeds in cash and in Non-Cash Consideration;
- (xiii) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law, but if not having the force of law which are binding or customarily complied with) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (xiv) "**shares**" or "**share capital**" includes equivalent ownership interests and "**shareholder**" and similar expressions shall be construed accordingly;
- (xv) "**participating as prospective buyers**" in a Competitive Sales Process means that any offer, or indication of a potential offer, that a creditor of any Primary Liabilities 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. If, after having applied those same criteria, the offer or indication of a potential offer made by a creditor of any Primary Liabilities is not considered by those running the Competitive Sales Process to be sufficient to continue in the auction or other competitive 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 to participate which a creditor of any Primary Liabilities has under this Agreement shall be deemed to be satisfied;

- (xvi) for the purposes of calculating the relevant threshold for any consent, amendment or override, the outstanding commitment of any lender under a guarantee facility, performance bond, letter of credit or equivalent shall be the amount (net of any cash collateral or cash security held by such lender) of that guarantee facility, performance bond, letter of credit or equivalent that is issued and in force and which has not been withdrawn or cancelled at that time;
  - (xvii) a provision of law is a reference to that provision as amended or re-enacted from time to time;
  - (xviii) "**U.S.\$**", "**USD**" and "**US dollars**" is a reference to the lawful currency of the United States of America;
  - (xix) "**£**", "**GBP**" and "**pounds sterling**" is a reference to the lawful currency of the UK; and
  - (xx) "**€**", "**EUR**" and "**euro**" is a reference to the single currency of the Participating Member States.
- (b) A Debtor "**prepaying**" any Surety Bonds Liabilities means:
- (i) that Debtor providing cash cover for those Surety Bonds Liabilities in accordance with the terms of the relevant Surety Bonds Agreement(s);
  - (ii) the maximum amount payable in respect of those Surety Bonds Liabilities being reduced or cancelled in accordance with their terms; or
  - (iii) the relevant Surety Bonds Lender being satisfied that it has no further liability in respect of the relevant Surety Bonds Liabilities,
- and the amount by which Surety Bonds Liabilities are prepaid under paragraphs (i) and (ii) above is the amount of the relevant cash cover, reduction or cancellation.
- (c) If any Party incorporated in Norway is required to hold an amount on trust on behalf of another party, such Party shall hold such money on behalf of or as agent for the other party in a separate account and shall promptly pay or transfer the same to the other or as the other party may direct.
- (d) Section, Clause and Schedule headings are for ease of reference only.
- (e) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been remedied or waived.

### 1.3 **Third party rights**

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in paragraph (b) of Clause 19.12 (*Exclusion of liability*) may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.



#### 1.4 Dutch terms

In this Agreement, where it relates to a Dutch entity or in connection with any security in the Netherlands, a reference to:

- (a) "the Netherlands" means the European part of the Kingdom of the Netherlands and "Dutch" means in or of the Netherlands;
- (b) "winding up" includes a Dutch entity being declared bankrupt (*failliet verklaard*) and a "receiver" includes a curator;
- (c) a "suspension of payments" includes surseance van betaling and an "administrator" includes a bewindvoerder;
- (d) a "dissolution" includes a Dutch entity being dissolved (*ontbonden*); and
- (e) "security" or a "security interest" includes any mortgage (*hypotheek*), pledge (*pandrecht*), right of retention (*recht van retentie*), a retention of title arrangement (*eigendomsvoorbehoud*), privilege (*voorrecht*), a right to reclaim goods (*recht van reclame*) and, in general, any right in rem (*beperkt recht*), created for the purpose of granting security (*goederenrechtelijk zekerheidsrecht*).

#### 1.5 Italian terms

In this Agreement:

- (a) a winding up, administration, reorganization or dissolution (or similar expressions) includes, without limitation, any *liquidazione* and any *procedura concorsuale* (including, without limitation, *fallimento*, *concordato preventivo*, *amministrazione straordinaria delle grandi imprese insolventi*), *cessione dei beni ai creditori* or any other similar proceedings;
- (b) a receiver, administrative receiver, administrator, receiver or the like includes, without limitation, a *curatore*, *commissario giudiziale*, *liquidatore*, *commissario straordinario* or any other person performing the same function of each of the foregoing;
- (c) a matured obligation refers to and includes, without limitation, any *credito liquido ed esigibile*;
- (d) a "Security" includes, without limitation, any *pegno*, *ipoteca*, *privilegio speciale* (including the *privilegio speciale* created pursuant to article 46 of the Italian Banking Act), *cessione del credito in garanzia*, *diritto reale di garanzia* and any other transactions having the same effect as each of the foregoing;
- (e) an insolvency proceeding includes, without limitation, any *procedura concorsuale* (including *liquidazione*, *liquidazione giudiziale*, *concordato fallimentare*, *concordato preventivo* pursuant to article 84 et seq. of the Italian Insolvency Code, *concordato semplificato per la liquidazione del patrimonio* pursuant to article 25-sexies and 25-septies of the Italian Insolvency Code, *domanda di pre-concordato* pursuant to article 44 of the Italian Insolvency Code, *accordo di ristrutturazione dei debiti* pursuant to article 57 of the Italian Insolvency Code, *accordo di ristrutturazione ad efficacia estesa* or a *convenzione di moratoria* pursuant to article 61 and 62 of the Italian Insolvency Code, *accordo di ristrutturazione dei debiti agevolato* pursuant to article 60 of the Italian Insolvency Code,

the appointment of an expert ("*professionista*") for the certification ("*attestazione*") of a "*piano di risanamento*" pursuant to Article 56 of the Italian Insolvency Code, any other procedure indicated as "*piano di risanamento*" or "*piano attestato di risanamento*" or "*procedura di liquidazione*", any insolvency and/or pre-insolvency procedure indicated thereunder, as well as the "*composizione negoziata per la soluzione della crisi d'impresa*" provided for under Articles 12 and ff. of the Italian Insolvency Code, *liquidazione coatta amministrativa*, *amministrazione straordinaria*, *amministrazione straordinaria delle grandi imprese in stato di insolvenza*, *misure urgenti per la ristrutturazione industriale delle grandi imprese in stato di insolvenza*, "*proposte di concordato*" and/or domanda di "pre-concordato" pursuant to article 44 of the Italian Insolvency Code, any *procedura di risanamento* or *procedura di liquidazione* pursuant to Legislative Decree No. 170 of 21 May 2004 and *cessione dei beni ai creditori* pursuant to Article 1977 of the Italian Civil Code);

- (f) a step or procedure taken or similar expressions in connection with insolvency proceedings in respect of any person includes such person formally making a proposal to assign its assets pursuant to article 1977 of the Civil Code (*cessione dei beni ai creditori*) or filing a petition for a *concordato preventivo*, *accordo di ristrutturazione dei debiti*, other procedure described under paragraph (e) above or entering into a similar arrangement for such person's creditors;
- (g) an attachment includes a *pignoramento*;
- (h) "gross negligence" includes *colpa grave*;
- (i) "wilful misconduct" includes *dolo*;
- (j) a "limited liability company" means *società a responsabilità limitata*; and
- (k) a "joint stock company" means *società per azioni*.

#### 1.6 Spanish terms

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

- (a) "insolvency" (*concurso* or any other equivalent legal proceeding) and any step or proceeding related to it has the meaning attributed to them under the Spanish Insolvency Act and "insolvency proceeding" includes, without limitation, a *declaración de concurso*, necessary or voluntary (*necesario o voluntario*) and the filing of the notice of initiation of negotiations with creditors according to articles 585 et seq. of the Spanish Insolvency Act;
- (b) "winding-up, administration or dissolution" includes, without limitation, *disolución*, *liquidación*, or *administración concursal* or any other similar proceedings;
- (c) "receiver, administrative receiver, administrator" or the like includes, without limitation, *administración del concurso*, *administrador concursal*, *liquidador*, *experto en la reestructuración* or any other person performing the same function;
- (d) "composition, compromise, assignment or arrangement with any creditor" includes, without limitation, the celebration of a *convenio* in the context of an insolvency proceeding

or a restructuring plan (*plan de reestructuración*) according to articles 614 et seq. of the Spanish Insolvency Act;

- (e) "person being unable to pay its debts" includes that person being in a state of *insolvencia* or *concurso* according to the Spanish Insolvency Act;
- (f) "matured obligation" includes, without limitation, any *crédito líquido, vencido y exigible*; and
- (g) "security interest or security" includes any mortgage (*hipoteca mobiliaria o inmobiliaria*), pledge (*prenda con o sin desplazamiento posesorio*), *garantía financiera* and, in general, any right in rem (*garantía real*) governed by Spanish law, created for the purpose of granting security.

## 2. Ranking and Priority

### 2.1 Primary Creditor Liabilities

Each of the Parties agrees that the Liabilities owed by the Debtors to the Primary Creditors shall rank in right and priority of payment in the following order and are subordinated to any prior ranking Liabilities as follows:

- (a) **first**, the Super Senior Liabilities *pari passu* and without any preference between them;
- (b) **second**, the Senior Liabilities *pari passu* and without any preference between them; and
- (c) **third**, the Senior Subordinated Liabilities *pari passu* and without any preference between them.

### 2.2 Transaction Security and Deeds of Guarantee

- (a) 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) in the following order:

- (i) prior to the First Release Date:
  - (A) **first**, the Super Senior Liabilities *pari passu* and without any preference between them;
  - (B) **second**, the Senior Liabilities *pari passu* and without any preference between them; and
  - (C) **third**, the Senior Subordinated Liabilities *pari passu* and without any preference between them; and
- (ii) on and after the First Release Date but before the Second Release Date:
  - (A) **first**, the Super Senior Liabilities *pari passu* and without any preference between them; and
  - (B) **second**, the Senior Liabilities *pari passu* and without any preference between them; and

- (iii) on and after the Second Release Date, the Super Senior Liabilities *pari passu* and without any preference between them.
- (b) Each of the Parties agrees that the Deeds of Guarantee shall rank and guarantee the following Liabilities (but only to the extent that the Deeds of Guarantee are expressed to guarantee those Liabilities) in the following order:
  - (i) **first**, the Super Senior Liabilities *pari passu* and without any preference between them;
  - (ii) **second**, the Senior Liabilities *pari passu* and without any preference between them; and
  - (iii) **third**, the Senior Subordinated Liabilities *pari passu* and without any preference between them.

### 2.3 Subordinated and Intra-Group Liabilities

- (a) Each of the Parties agrees that the Subordinated Liabilities and the Intra-Group Liabilities are postponed and subordinated to the Liabilities owed by the Debtors to the Primary Creditors.
- (b) This Agreement does not purport to rank any of the Subordinated Liabilities or the Intra-Group Liabilities as between themselves.
- (c) Each of the Parties (including the Sirius Initial Funding Lender) agrees that on and after the Completion Date:
  - (i) all Sirius Initial Funding Liabilities will automatically become the Subordinated Liabilities (and will, for the avoidance of doubt, no longer constitute the Senior Liabilities or benefit from the Transaction Security or Deeds of Guarantee);
  - (ii) the Sirius Initial Funding Lender will automatically become the Subordinated Creditor (and will, for the avoidance of doubt, no longer constitute the Senior Lender or the Senior Agent);
  - (iii) all Sirius Initial Funding Commitments will no longer constitute Senior Commitments;
  - (iv) the Sirius Initial Funding Discharge Date will no longer constitute the Senior Discharge Date; and
  - (v) the Sirius Initial Funding Finance Documents will no longer constitute the Senior Finance Documents,

and no additional action from any Party (including the Sirius Initial Funding Lender) will be required to effect this.

### 2.4 Transaction Security release – Senior Subordinated Liabilities (First Release Date)

- (a) If:
  - (i) the Completion Date has occurred;
  - (ii) the Company has received the full amount of the Sirius Additional Funding; and
  - (iii) if such Sirius Additional Funding constitutes indebtedness, any relevant financing agreement is designated as a Sirius Additional Funding Agreement in accordance with Clause 7.6 (*Designation of Sirius Additional Funding Agreements*) and condition set out in

paragraph (a)(ii) of Clause 7.6 (*Designation of Sirius Additional Funding Agreements*) is satisfied

(the "**First Release Conditions**"),

the Company may request that the Transaction Security is released in relation to the Senior Subordinated Liabilities by delivery of a certificate (to be prepared in good faith having made due and careful enquiry) to the Security Agent in accordance with this Clause 2.4.

(b) The Security Agent shall only be required to recognise and give effect to release of the Transaction Security in relation to the Senior Subordinated Liabilities requested by the Company pursuant to any certificate if such certificate:

- (i) has been duly executed by the chief financial officer of the Company;
- (ii) confirms that that no Financial Default and no Event of Default is continuing or would result from such release of the Transaction Security; and
- (iii) includes evidence that the First Release Conditions have been satisfied,

and the Security Agent shall be entitled to rely conclusively upon such confirmations, without further enquiry.

(c) Any release of the Transaction Security in relation to the Senior Subordinated Liabilities shall only take effect on the date when the Security Agent receives the certificate delivered to it in accordance with paragraph (b) above and provided that the First Release Conditions have been satisfied.

## 2.5 **Surety Bonds Liabilities**

Each of the Parties (including each Surety Bonds Lender) agrees that on and after the First Release Date:

- (a) all Surety Bonds Liabilities will automatically cease to constitute Senior Subordinated Liabilities or benefit from the Transaction Security or Deeds of Guarantee;
- (b) each Surety Bonds Lender will be deemed to automatically resign from this Agreement in its capacity as such and shall have no further rights or obligations under this Agreement; and
- (c) all Surety Bonds Commitments will no longer constitute Senior Subordinated Commitments,

and no additional action from any Party (including any Surety Bonds Lender) will be required to effect this.

## 2.6 **Transaction Security release – Senior Liabilities (Second Release Date)**

(a) The Company may request that the Transaction Security is released in relation to the Senior Liabilities by delivery of a certificate (to be prepared in good faith having made due and careful enquiry and attaching the relevant financial statements and other supporting documents referred to in paragraph (ii) below) to the Security Agent in accordance with this Clause 2.6 if:

- (i) the First Release Date has occurred; and
- (ii)

- (A) the Net Debt Ratio is equal to or less than 3:1 for each 12 month period ending on:
1. any Test Date occurring after the Pre-Completion Period (the "**First Security Release Test Date**"), calculated in accordance with the Primary Finance Documents by reference to the financial statements and the Compliance Certificate delivered pursuant to and in accordance with the Primary Finance Documents; and
  2. the Test Date, or if earlier, the Quarter Date, in each case occurring immediately after the First Security Release Test Date but immediately prior to receipt of such certificate (such Test Date or Quarter Date, being the "**Second Security Release Test Date**"), calculated in accordance with the Primary Finance Documents:
    - (x) in relation to a Test Date, by reference to the financial statements and Compliance Certificate delivered pursuant to and in accordance with the Primary Finance Documents; and
    - (y) in relation to a Quarter Date, by reference to the financial statements and a certificate substantially in the form of the Compliance Certificate that would have been required to be delivered pursuant to and in accordance with the Primary Finance Documents, in connection with that Quarter Date if that Quarter Date had been a Test Date under the Primary Finance Documents
- (each of the First Security Release Test Date and the Second Security Release Test Date, being a "**Security Release Test Date**"); and
- (B) the Liquidity on each Week End Date immediately preceding each Security Release Test Date is at least U.S.\$100,000,000, as evidenced by a liquidity statement substantially in the form of the Liquidity Statement,
- (paragraphs (i) and (ii) above together, the "**Second Release Conditions**"),
- (b) The Security Agent shall only be required to recognise or give effect to release of the Transaction Security in relation to the Senior Liabilities requested by the Company pursuant to any certificate (and to promptly acknowledge such certificate) if:
- (i) such certificate:
    - (A) has been duly executed by the chief financial officer of the Company;
    - (B) confirms that no Financial Default and no Event of Default is continuing or would result from such release of the Transaction Security; and
    - (C) confirms that the First Release Date has occurred; and
  - (ii) the Instructing Group confirms that the Second Release Conditions have been satisfied, and the Security Agent shall be entitled to rely conclusively upon such confirmations, without further enquiry.

- (c) The confirmation of the Instructing Group in accordance with paragraph (b)(ii) above must not be unreasonably withheld or delayed.
- (d) If any Primary Creditor forming part of the Instructing Group fails:
  - (i) to respond to any request to confirm that the Second Release Conditions have been satisfied or not in accordance with paragraph (b)(ii) above; or
  - (ii) to provide details of its Credit Participation to the Security Agent for the purpose of such request,

within 20 Business Days of that request being made, that Primary Creditor shall be deemed to have voted in favour for the purpose of calculating the RCF Credit Participations, TL Credit Participations or USPP Credit Participations when ascertaining whether the relevant percentage of RCF Credit Participations, TL Credit Participations and USPP Credit Participations has been obtained to give that consent.
- (e) Any release of the Transaction Security in relation to the Senior Liabilities shall only take effect on the date when the Security Agent acknowledges receipt of the certificate delivered to it in accordance with paragraph (b) above and the confirmation under paragraph (b)(ii) above.
- (f) For the purposes of this Clause 2.6, "**Compliance Certificate**", "**Liquidity**", "**Liquidity Statement**", "**Net Debt Ratio**", "**Pre-Completion Period**", "**Quarter Date**", "**Test Date**" and "**Week End Date**" shall have the meaning given to them in the form of the amended and restated RCF Agreement as of the date of this Agreement).

### 3. **Super Senior Creditors and Super Senior Liabilities**

#### 3.1 **Payment of Super Senior Liabilities**

- (a) Subject to paragraph (b) below, the Debtors may make Payments of the Super Senior Liabilities at any time in accordance with the Super Senior Finance Documents, provided that any voluntary prepayment of the Super Senior Liabilities shall be made on a pro rata basis by reference to the then outstanding amount of the Super Senior Commitments.
- (b) Following the occurrence of an Acceleration Event or an Insolvency Event, the Debtors may not make Payments of the Super Senior Liabilities except from Enforcement Proceeds, Guarantee Proceeds or other amounts paid to the Security Agent which, in each case, are then distributed in accordance with Clause 16 (*Application of proceeds*), other than any distribution or dividend out of any Debtor's unsecured assets (pro rata to each unsecured creditor's claim) made by a liquidator, administrator, receiver, administrative receiver, compulsory manager or other similar officer appointed in respect of any Debtor or any of its assets, provided that such distribution or dividend shall be paid to the Security Agent for distribution in accordance with Clause 16.1 (*Order of application*).

#### 3.2 **Amendments and waivers: Super Senior Creditors**

Subject to Clause 3.3 (*Restriction on amendments and waivers: Super Senior Liabilities*), the Super Senior Creditors may amend or waive the terms of the Super Senior Finance Documents in accordance with their terms (and subject to any consent required under them) at any time.

### 3.3 **Restriction on amendments and waivers: Super Senior Liabilities**

(a) The Super Senior Creditors may not amend or waive the terms of the Super Senior Finance Documents if the amendment or waiver is, in relation to the original form of the Super Senior Finance Documents an amendment or waiver which:

- (i) constitutes a Principal Increase;
- (ii) amends the date by which any principal amount under any facility made available under those documents is scheduled to be repaid so that it is earlier than the termination date (or, if applicable, any relevant amortization date), in each case as applicable to the facilities in the relevant Super Senior Finance Document as in force as at the date of this Agreement (or, if later, the date on which such Super Senior Finance Document is designated as such under the terms of this Agreement);
- (iii) constitutes any increase of any commission or other non-interest payment under that Super Senior Finance Document;
- (iv) increases the margin, call protection, make-whole or fees payable under that Super Senior Finance Document;
- (v) has the effect of granting additional Security or guarantees other than in accordance with Clause 3.6 (*Security: Super Senior Creditors*); or
- (vi) has the effect of releasing any Transaction Security other than in accordance with this Agreement,

unless:

- (A) in relation to paragraphs (i), (ii), (v) and (vi) above, the prior written consent of each Primary Creditor is obtained; and
- (B) in relation to paragraphs (iii) and (iv) above:
  - 1. if the additional amounts payable by the Debtors as a result of such amendment or waiver are payable in cash and do not exceed £10,000,000 in any calendar year, the prior written consent of Super Majority Primary Creditors is obtained; and
  - 2. otherwise, the prior consent of each Primary Creditor is obtained.

(b) Prior to the occurrence of the Plan B Date, the NTL Creditors may not amend or waive the terms of the NTL Finance Documents, if the amendment or waiver is, in relation to the original form of the NTL Finance Documents, an amendment or waiver which:

- (i) constitutes a Principal Increase or increase of the total amount of the NTL Commitments as of the date of this Agreement;
- (ii) amends any repayment date, repayment or mandatory prepayment terms under that NTL Finance Document;
- (iii) constitutes any increase of any commission or other non-interest payment under that NTL Finance Document;



- (iv) increases the margin, call protection, make-whole or fees payable under that NTL Finance Document;
- (v) has the effect of granting additional Security or guarantees other than in accordance with Clause 3.6 (*Security: Super Senior Creditors*); or
- (vi) has the effect of releasing any Transaction Security other than in accordance with this Agreement,

unless the prior consent of the Sirius Initial Funding Lender so long as it constitutes the Senior Lender (if any) is obtained.

### 3.4 Designation of Super Senior Finance Documents

If the terms of a document effect a change which would, if that change was effected by way of amendment to, or waiver of, the terms of a Super Senior Finance Document, require the consent of each Primary Creditor or the Super Majority Primary Creditors under Clause 3.3 (*Restriction on amendments and waivers: Super Senior Liabilities*), that document shall not constitute a Super Senior Finance Document for the purposes of this Agreement or a "Finance Document" (or any equivalent term) for the purposes of the relevant Super Senior Finance Documents, without the prior consent of each Primary Creditor or the Super Majority Primary Creditors (as applicable).

### 3.5 Designation of Plan B Agreements

- (a) The Company may designate any financing agreement as a Plan B Agreement if:
  - (i) the prior written consent of the Instructing Group in relation to entry into such Plan B Agreement has been obtained;
  - (ii) the Company has given the RCF Agent (on behalf of the RCF Lenders), the TL Agent (on behalf of the TL Lenders) and each USPP Noteholder not less than 20 Business Days' prior written notice of such Plan B Agreement, including draft principal terms, and offered the RCF Lenders, the TL Lenders and the USPP Noteholders to participate in the provision of funding under such Plan B Agreement on the same terms on a pro rata basis by reference to their aggregate Commitments (subject to any reasonable amendments as may be necessary to accommodate individual needs of the RCF Lenders, the TL Lenders and the USPP Noteholders with respect to the form of the instrument pursuant to which the funding would be made available such as, for example, making such funding available pursuant to both a loan agreement and a note purchase agreement);
  - (iii) the Company has provided a forecast reflecting appropriate sensitivities and approved by the Transaction Committee of the Company to the RCF Agent (on behalf of the RCF Lenders), the TL Agent (on behalf of the TL Lenders) and each USPP Noteholder demonstrating that, in the reasonable opinion of the Company, the entry into a Plan B Agreement is necessary to maintain ongoing liquidity needs of the Group;
  - (iv) such Plan B Agreement is entered into or otherwise becomes effective after the occurrence of the Plan B Covenant Trigger Event; and
  - (v) the lenders under such agreement have consented to such designation
 (the "**Plan B Agreement Conditions**"),

in each case by delivery of a certificate (to be prepared in good faith having made due and careful enquiry) to the Security Agent in accordance with this Clause 3.5.

- (b) The Security Agent shall only be required to recognise and give effect to any designation of a Plan B Agreement requested by the Company pursuant to any certificate (and to acknowledge such certificate) if:
  - (i) such certificate:
    - (A) has been duly executed by the chief financial officer of the Company;
    - (B) confirms that the Plan B Agreement Conditions have been satisfied;
    - (C) specifies the maximum amount of the Plan B Liabilities which are permitted under the relevant Plan B Agreement (the "**Plan B Liabilities Maximum Amount**");
    - (D) attaches such Plan B Agreement; and
    - (E) confirms that the Plan B Liabilities Maximum Amount does not exceed the Plan B Liabilities Designated Amount; and
  - (ii) the Instructing Group confirms that the Plan B Agreement Conditions have been satisfied, and the Security Agent shall be entitled to rely conclusively upon such confirmations, without further enquiry.
- (c) The Security Agent shall not accept or give effect to any designation of a Plan B Agreement under this Clause 3.5 to the extent the Plan B Liabilities Maximum Amount would exceed the Plan B Liabilities Designated Amount.
- (d) Any designation of a Plan B Agreement by the Company shall only take effect on the date when the Security Agent acknowledges receipt of the certificate delivered to it in accordance with paragraph (b) above.

### 3.6 **Security: Super Senior Creditors**

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

- (a) any Security in respect of the Super Senior Liabilities from any member of the Group in addition to the Common Transaction Security which to the extent legally possible and subject to any Agreed Security Principles is, at the same time, also offered either:
  - (i) to the Security Agent as trustee or security agent (or as *mandatario con rappresentanza*) for the other Secured Parties in respect of their Liabilities; or
  - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee or security agent (or as *mandatario con rappresentanza*) for the Secured Parties:
    - (A) to the other Secured Parties in respect of their Liabilities; or
    - (B) (to the extent recognised under applicable law and in any event other than for Security governed by Italian law) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties,

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

(b) any guarantee, indemnity or other assurance against loss in respect of the Super Senior Liabilities from any member of the Group in addition to those in:

- (i) the original form of the relevant Super Senior Finance Documents;
- (ii) this Agreement;
- (iii) any Deed of Guarantee; or
- (iv) any Common Assurance,

if and to the extent legally possible and subject to any Agreed Security Principles, at the same time it is also offered to the Security Agent on behalf of the other Guaranteed Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in paragraph (b) of Clause 2.1 (*Primary Creditor Liabilities*).

### 3.7 **Restriction on Enforcement: Super Senior Creditors**

So long as any of the Super Senior Liabilities are or may be outstanding, no Super Senior Creditor shall be entitled to take any Enforcement Action in respect of any of the Super Senior Liabilities owed to it other than in accordance with Clause 3.8 (*Permitted Enforcement: Super Senior Creditors*).

### 3.8 **Permitted Enforcement: Super Senior Creditors**

Each Super Senior Creditor may take Enforcement Action which would be available to it but for Clause 3.7 (*Restriction on Enforcement: Super Senior Creditors*) if:

- (a) the Enforcement Action does not comprise Enforcement;
- (b) at the same time as or prior to, that action, the consent of the Instructing Group to that Enforcement Action is obtained; or
- (c) an Insolvency Event has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event, each Super Senior Creditor shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group to:
  - (i) accelerate any of that member of the Group's Super Senior Liabilities or declare them prematurely due and payable on demand;
  - (ii) exercise any right of set-off or take or receive any Payment in respect of any Super Senior Liabilities of that member of the Group; or
  - (iii) claim and prove in any insolvency process of that member of the Group for the Super Senior Liabilities owing to it.

### 3.9 **No acquisition of Super Senior Liabilities**

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

- (a) enter into any Liabilities Acquisition; or

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

in respect of any of the Super Senior Liabilities.

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

##### **4.1 Payment of Senior Liabilities**

- (a) Subject to paragraph (b) below, the Debtors may make Payments of the Senior Liabilities at any time in accordance with the Senior Finance Documents, provided that:

- (i) prior to the Super Senior Discharge Date, any voluntary prepayment (or, in relation to the RCF Elevated Liabilities only, voluntary cancellation) of the Senior Liabilities shall not be permitted without the consent of the Super Senior Lenders and other Senior Lenders; and

- (ii) on and after the Super Senior Discharge Date:

- (A) any voluntary prepayment of the Senior Liabilities shall be made on a pro rata basis by reference to the then outstanding amount of Commitments (and if any amount of the RCF Elevated Liabilities is so prepaid, a corresponding amount of the RCF Elevated Liabilities should be cancelled), unless the Senior Lenders agree otherwise; and.

- (B) any voluntary cancellation of the RCF Elevated Liabilities (other than as described in paragraph (A) above) shall not be permitted without the consent of other Senior Lenders.

- (b) Following the occurrence of an Acceleration Event or an Insolvency Event, the Debtors may not make Payments of the Senior Liabilities except from Enforcement Proceeds, Guarantee Proceeds or other amounts paid to the Security Agent which, in each case, are then distributed in accordance with Clause 16 (*Application of proceeds*), other than any distribution or dividend out of any Debtor's unsecured assets (pro rata to each unsecured creditor's claim) made by a liquidator, administrator, receiver, administrative receiver, compulsory manager or other similar officer appointed in respect of any Debtor or any of its assets, provided that such distribution or dividend shall be paid to the Security Agent for distribution in accordance with Clause 16.1 (*Order of application*).

##### **4.2 Amendments and waivers: Senior Creditors**

Subject to Clause 4.3 (*Restriction on amendments and waivers: Senior Liabilities*), the Senior Creditors may amend or waive the terms of the Senior Finance Documents in accordance with their terms (and subject to any consent required under them) at any time.

##### **4.3 Restriction on amendments and waivers: Senior Liabilities**

- (a) Subject to paragraphs (b) and (c) below, the Senior Creditors may not amend or waive the terms of the Senior Finance Documents if the amendment or waiver is, in relation to the original form of the Senior Finance Documents an amendment or waiver which:

- (i) constitutes a Principal Increase or increase of the total amount of the RCF Elevated Commitments, TL Elevated Commitments or the USPP Elevated Commitments as of the date of this Agreement;

- (ii) amends the date by which any principal amount under any facility made available under those documents is scheduled to be repaid so that it is earlier than the termination date (or, if applicable, any relevant amortization date), in each case as applicable to the facilities in the relevant Senior Finance Document as in force as at the date of this Agreement (or, if later, the date on which such Senior Finance Document is designated as such under the terms of this Agreement);
- (iii) constitutes any increase of any commission or other non-interest payment under that Senior Finance Document;
- (iv) increases the margin, call protection, make-whole or fees payable under that Senior Finance Document;
- (v) has the effect of granting additional Security or guarantees other than in accordance with Clause 4.5 (*Security: Senior Creditors*); or
- (vi) has the effect of releasing any Transaction Security other than in accordance with this Agreement,

unless:

- (A) in relation to paragraphs (i), (ii), (v) and (vi) above, the prior written consent of each Primary Creditor is obtained; and
  - (B) in relation to paragraphs (iii) and (iv) above:
    - 1. if the additional amounts payable by the Debtors as a result of such amendment or waiver are payable in cash and do not exceed £10,000,000 in any calendar year, the prior written consent of Super Majority Primary Creditors is obtained; and
    - 2. otherwise, the prior consent of each Primary Creditor is obtained.
- (b) Prior to the occurrence of the Plan B Date, the RCF Creditors, the TL Creditors and the USPP Creditors may not amend or waive the terms of the the RCF Finance Documents, the TL Finance Documents or the USPP Finance Documents (as applicable) if the amendment or waiver is, in relation to the original form of the the RCF Finance Documents, the TL Finance Documents or the USPP Finance Documents (as applicable) an amendment or waiver which:
- (i) constitutes a Principal Increase or increase of the total amount of the RCF Elevated Commitments, TL Elevated Commitments or the USPP Elevated Commitments as of the date of this Agreement;
  - (ii) amends any repayment date, repayment or mandatory prepayment terms under that RCF Finance Document, TL Finance Document or the USPP Finance Document (as applicable), other than in relation to rollover loans payable in connection with the RCF Finance Documents;
  - (iii) constitutes any increase of any commission or other non-interest payment under that RCF Finance Document, TL Finance Document or the USPP Finance Document (as applicable);

- (iv) increases the margin, call protection, make-whole or fees payable under that RCF Finance Document, TL Finance Document or the USPP Finance Document (as applicable);
- (v) has the effect of granting additional Security or guarantees other than in accordance with Clause 4.5 (*Security: Senior Creditors*); or
- (vi) has the effect of releasing any Transaction Security other than in accordance with this Agreement,

unless the prior consent of the Sirius Initial Funding Lender so long as it constitutes the Senior Lender (if any) is obtained.

- (c) Prior to the occurrence of the Plan B Date, the Sirius Initial Funding Lender so long as it constitutes a Senior Lender may not amend, waive or agree the terms of any of the documents or instruments pursuant to which the Sirius Initial Funding Liabilities are constituted unless:
  - (i) that amendment, waiver or agreement is required in order to cure minor, technical, or administrative errors; or
  - (ii)
    - (A) prior to the Super Senior Discharge Date, the prior consent of the Majority Super Senior Creditors, the Majority Senior Creditors and the Majority Senior Subordinated Creditors is obtained;
    - (B) on or after the Super Senior Discharge Date but prior to the Senior Discharge Date, the prior consent of the Majority Senior Creditors and the Majority Senior Subordinated Creditors is obtained; or
    - (C) on or after the Senior Discharge Date but prior to the Senior Subordinated Discharge Date, the prior consent of the Majority Senior Subordinated Creditors is obtained.

#### 4.4 Designation of Senior Finance Documents

If the terms of a document effect a change which would, if that change was effected by way of amendment to, or waiver of, the terms of a Senior Finance Document, require the consent of each Primary Creditor or the Super Majority Primary Creditors under Clause 4.3 (*Restriction on amendments and waivers: Senior Liabilities*), that document shall not constitute a Senior Finance Document for the purposes of this Agreement or a "Finance Document" (or any equivalent term) for the purposes of the relevant Senior Finance Documents, without the prior consent of each Primary Creditor or the Super Majority Primary Creditors (as applicable).

#### 4.5 Security: Senior Creditors

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

- (a) any Security in respect of the Senior Liabilities from any member of the Group in addition to the Common Transaction Security which to the extent legally possible and subject to any Agreed Security Principles is, at the same time, also offered either:
  - (i) to the Security Agent as trustee or security agent (or as *mandatario con rappresentanza*) for the other Secured Parties in respect of their Liabilities; or

(ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee or security agent (or as *mandatario con rappresentanza*) for the Secured Parties:

(A) to the other Secured Parties in respect of their Liabilities; or

(B) (to the extent recognised under applicable law and in any event other than for Security governed by Italian law) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties,

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

(b) any guarantee, indemnity or other assurance against loss in respect of the Senior Liabilities from any member of the Group in addition to those in:

(i) the original form of the relevant Senior Finance Documents;

(ii) this Agreement;

(iii) any Deed of Guarantee; or

(iv) any Common Assurance,

if and to the extent legally possible and subject to any Agreed Security Principles, at the same time it is also offered to the Security Agent on behalf of the other Guaranteed Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in paragraph (b) of Clause 2.1 (*Primary Creditor Liabilities*).

#### 4.6 **Restriction on Enforcement: Senior Creditors**

So long as any of the Senior Liabilities are or may be outstanding, a Senior Creditor shall not be entitled to take any Enforcement Action in respect of any of the Senior Liabilities owed to it other than in accordance with Clause 4.7 (*Permitted Enforcement: Senior Creditors*).

#### 4.7 **Permitted Enforcement: Senior Creditors**

Each Senior Creditor (other than the Sirius Initial Funding Lender prior to the occurrence of the Plan B Date) may take Enforcement Action which would be available to it but for Clause 4.6 (*Restriction on Enforcement: Senior Creditors*) if:

(a) the Enforcement Action does not comprise Enforcement;

(b) at the same time as or prior to, that action, the consent of the Instructing Group to that Enforcement Action is obtained; or

(c) an Insolvency Event has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event, each Senior Creditor shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group to:

(i) accelerate any of that member of the Group's Senior Liabilities or declare them prematurely due and payable on demand;

(ii) exercise any right of set-off or take or receive any Payment in respect of any Senior Liabilities of that member of the Group; or

- (iii) claim and prove in any insolvency process of that member of the Group for the Senior Liabilities owing to it.

#### 4.8 **No acquisition of Senior Liabilities**

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

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

in respect of any of the Senior Liabilities.

### 5. **Senior Subordinated Creditors and Senior Subordinated Liabilities**

#### 5.1 **Payment of Senior Subordinated Liabilities**

- (a) Subject to paragraph (b) below, the Debtors may make Payments of the Senior Subordinated Liabilities at any time in accordance with the Senior Subordinated Finance Documents, provided that:
  - (i) prior to the later of Super Senior Discharge Date and the Senior Discharge Date, any voluntary prepayment (or, in relation to the RCF Non-Elevated Liabilities only, voluntary cancellation) of the Senior Subordinated Liabilities (other than any voluntary prepayment arising from the exercise of any set-off in respect of tax receivables owed to a member of the Group in the ordinary course of operation of the PNG Loan Facility (and other than by reason of occurrence of a Default)) shall not be permitted without the consent of the Super Senior Lenders, Senior Lenders and other Senior Subordinated Lenders; and
  - (ii) on and after the later of Super Senior Discharge Date and the Senior Discharge Date:
    - (A) any voluntary prepayment of the Senior Subordinated Liabilities shall be made on a pro rata basis by reference to the then outstanding amount of Commitments (and if any amount of the RCF Non-Elevated Liabilities is so prepaid, a corresponding amount of the RCF Non-Elevated Liabilities should be cancelled), unless the Senior Subordinated Lenders agree otherwise; and
    - (B) any voluntary cancellation of the RCF Non-Elevated Liabilities (other than as described in paragraph (i) above) shall not be permitted without the consent of other Senior Subordinated Lenders.
- (b) Following the occurrence of an Acceleration Event or an Insolvency Event, the Debtors may not make Payments of the Senior Subordinated Liabilities except:
  - (i) from Enforcement Proceeds, Guarantee Proceeds or other amounts paid to the Security Agent which, in each case, are then distributed in accordance with Clause 16 (*Application of proceeds*), other than any distribution or dividend out of any Debtor's unsecured assets (pro rata to each unsecured creditor's claim) made by a liquidator, administrator, receiver, administrative receiver, compulsory manager or other similar officer appointed in respect of any Debtor or any of its assets, provided that such distribution or dividend shall be paid



to the Security Agent for distribution in accordance with Clause 16.1 (*Order of application*);  
or

- (ii) in the case of Payments of the Surety Bonds Liabilities only, Payments to a Surety Bonds Lender from the proceeds of its Surety Bonds Receivables.

## 5.2 **Amendments and waivers: Senior Subordinated Creditors**

Subject to Clause 5.3 (*Restriction on amendments and waivers: Senior Subordinated Liabilities*), the Senior Subordinated Creditors may amend or waive the terms of the Senior Subordinated Finance Documents in accordance with their terms (and subject to any consent required under them) at any time.

## 5.3 **Restriction on amendments and waivers: Senior Subordinated Liabilities**

- (a) The Senior Subordinated Creditors may not amend or waive the terms of the Senior Subordinated Finance Documents if the amendment or waiver is, in relation to the original form of the Senior Subordinated Finance Documents an amendment or waiver which:

- (i) constitutes a Principal Increase;
- (ii) amends the date by which any principal amount under any facility made available under those documents is scheduled to be repaid so that it is earlier than the termination date (or, if applicable, any relevant amortization date), in each case as applicable to the facilities in the relevant Senior Subordinated Finance Document as in force as at the date of this Agreement (or, if later, the date on which such Senior Subordinated Finance Document is designated as such under the terms of this Agreement);
- (iii) constitutes any increase of any commission or other non-interest payment under that Senior Subordinated Finance Document;
- (iv) increases the margin, call protection, make-whole or fees payable under that Senior Subordinated Finance Document;
- (v) has the effect of granting additional Security or guarantees other than in accordance with Clause 5.10 (*Security: Senior Subordinated Creditors*); or
- (vi) has the effect of releasing any Transaction Security other than in accordance with this Agreement,

unless:

- (A) in relation to paragraphs (i), (ii), (v) and (vi) above, the prior written consent of each Primary Creditor is obtained; and
- (B) in relation to paragraphs (iii) and (iv) above:
  - 1. if the additional amounts payable by the Debtors as a result of such amendment or waiver are payable in cash and do not exceed £10,000,000 in any calendar year, the prior written consent of Super Majority Primary Creditors is obtained; and
  - 2. otherwise, the prior consent of each Primary Creditor is obtained.

- (b) Prior to the occurrence of the Plan B Date, the EGF Creditors, the RCF Creditors, the TL Creditors and the USPP Creditors may not amend or waive the terms of the EGF Finance Documents, the RCF Finance Documents, the TL Finance Documents or the USPP Finance Documents (as applicable) if the amendment or waiver is, in relation to the original form of the EGF Finance Documents, the RCF Finance Documents, the TL Finance Documents or the USPP Finance Documents (as applicable) an amendment or waiver which:
- (i) constitutes a Principal Increase;
  - (ii) amends any repayment date or repayment terms under that EGF Finance Document, the RCF Finance Document, TL Finance Document or the USPP Finance Document (as applicable), other than in relation to rollover loans payable in connection with the RCF Finance Documents;
  - (iii) constitutes any increase of any commission or other non-interest payment under that EGF Finance Document, RCF Finance Document, TL Finance Document or the USPP Finance Document (as applicable);
  - (iv) increases the margin, call protection, make-whole or fees payable under that EGF Finance Document, RCF Finance Document, TL Finance Document or the USPP Finance Document (as applicable);
  - (v) has the effect of granting additional Security or guarantees other than in accordance with 5.10 (*Security: Senior Subordinated Creditors*); or
  - (vi) has the effect of releasing any Transaction Security other than in accordance with this Agreement,

unless the prior consent of the Sirius Initial Funding Lender so long as it constitutes a Senior Lender (if any) is obtained.

#### 5.4 **Designation of Senior Subordinated Finance Documents**

If the terms of a document effect a change which would, if that change was effected by way of amendment to, or waiver of, the terms of a Senior Subordinated Finance Document, require the consent of each Primary Creditor or the Super Majority Primary Creditors under Clause 5.3 (*Restriction on amendments and waivers: Senior Subordinated Liabilities*), that document shall not constitute a Senior Subordinated Finance Document for the purposes of this Agreement or a "Finance Document" (or any equivalent term) for the purposes of the Senior Subordinated Finance Documents, without the prior consent of each Primary Creditor or the Super Majority Primary Creditors (as applicable).

#### 5.5 **Designation of Hedging Agreements**

- (a) The Company may designate any hedging agreement entered into by a Hedge Counterparty in compliance with the Primary Finance Documents as a Hedging Agreement, in each case by delivery of a certificate (to be prepared in good faith having made due and careful enquiry) to the Security Agent.
- (b) The Security Agent shall only be required to recognise and give effect to any designation of a Hedging Agreement requested by the Company pursuant to any certificate (and to acknowledge such certificate accordingly) if such certificate:

- (i) has been duly executed by the relevant Hedge Counterparty and the chief financial officer of the Company;
- (ii) specifies the maximum amount of the Hedging Liabilities which are permitted under the relevant Hedging Agreement (the "**Hedging Liabilities Maximum Amount**");
- (iii) attaches the relevant Hedging Agreement;
- (iv) confirms that the relevant Hedging Agreement is entered into in compliance with the Primary Finance Documents;
- (v) confirms that the total number of Hedge Counterparties after such designation will be not more than five; and
- (vi) confirms that the Hedging Liabilities Maximum Amount under the relevant Hedging Agreement does not exceed each of:
  - (A) together with the Hedging Liabilities Maximum Amount under each other Hedging Agreement designated in accordance with this Clause 5.5, the Hedging Liabilities Designated Amount; and
  - (B) U.S.\$5,000,000 (or its equivalent in any other currency),

and the Security Agent shall be entitled to rely conclusively upon such certificate, without further enquiry.

- (c) The Security Agent shall not accept or give effect to any designation of a Hedging Agreement under this Clause 5.5 to the extent the Hedging Liabilities Maximum Amount under the relevant Hedging Agreement would exceed any of (i) together with the Hedging Liabilities Maximum Amount under each other Hedging Agreement designated in accordance with this Clause 5.5, the Hedging Liabilities Designated Amount or (ii) U.S.\$5,000,000 (or its equivalent in any other currency).
- (d) Any designation of a Hedging Agreement by the Company shall only take effect on the date when the Security Agent acknowledges receipt of the certificate delivered to it in accordance with paragraph (b) above.
- (e) The Security Agent shall maintain a register of the Hedge Counterparties and their respective Hedging Liabilities Maximum Amounts (the "**Hedging Liabilities Register**"). The entries in the Hedging Liabilities Register shall be conclusive absent manifest error. The Hedging Liabilities Register shall be available for inspection by the Company and any Hedge Counterparties, at all reasonable times and on reasonable notice to the Security Agent.

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

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

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

#### 5.7 **Designation of Credit Card Liabilities Agreements**

- (a) The Company may designate any card lines agreement as a Credit Card Liabilities Agreement, in each case by delivery of a certificate (to be prepared in good faith having made due and careful enquiry) to the Security Agent in accordance with this Clause 5.7.
- (b) The Security Agent shall only be required to recognise and give effect to any designation of a Credit Card Liabilities Agreement requested by the Company pursuant to any certificate (and to acknowledge such certificate accordingly) if such certificate:
  - (i) has been duly executed by the counterparty under such Credit Card Liabilities Agreement and the chief financial officer of the Company;
  - (ii) specifies the maximum amount of the Credit Card Liabilities which are permitted under the relevant Credit Card Liabilities Agreement (the "**Credit Card Liabilities Maximum Amount**");
  - (iii) attaches the relevant Credit Card Liabilities Agreement; and
  - (iv) confirms that the Credit Card Liabilities Maximum Amount under the relevant Credit Card Liabilities Agreement together with the Credit Card Liabilities Maximum Amount under each other Credit Card Liabilities Agreement designated in accordance with this Clause 5.7 does not exceed the Credit Card Liabilities Designated Amount,

and the Security Agent shall be entitled to rely conclusively upon such certificate, without further enquiry.

- (c) The Security Agent shall not accept or give effect to any designation of a Credit Card Liabilities Agreement under this Clause 5.7 to the extent the Credit Card Liabilities Maximum Amount under the relevant Credit Card Liabilities Agreement together with the Credit Card Liabilities Maximum Amount under each other Credit Card Liabilities Agreement designated in accordance with this Clause 5.7 would exceed the Credit Card Liabilities Designated Amount.
- (d) Any designation of a Credit Card Liabilities Agreement by the Company shall only take effect on the date when the Security Agent acknowledges receipt of the certificate delivered to it in accordance with paragraph (b) above.
- (e) The Security Agent shall maintain a register of the Credit Card Liabilities Lenders and their respective Credit Card Liabilities Maximum Amounts (the "**Credit Card Liabilities Register**"). The entries in the Credit Card Liabilities Register shall be conclusive absent manifest error. The Credit Card Liabilities Register shall be available for inspection by the Company and any Credit Card Liabilities Lenders, at all reasonable times and on reasonable notice to the Security Agent.

#### 5.8 **Designation of Surety Bonds Agreements**

- (a) The Company may designate any surety bonds agreement as a Surety Bonds Agreement, in each case by delivery of a certificate (to be prepared in good faith having made due and careful enquiry) to the Security Agent in accordance with this Clause 5.8.

- (b) The Security Agent shall only be required to recognise and give effect to any designation of a Surety Bonds Agreement requested by the Company pursuant to any certificate (and to acknowledge such certificate) to the extent such certificate:
- (i) has been duly executed by the counterparty under such Surety Bonds Agreement and the chief financial officer of the Company;
  - (ii) specifies the maximum amount of the Surety Bonds Liabilities of the Surety Bonds Lender in respect of all "Bonds" (or any equivalent term) under and as defined in the relevant Surety Bonds Agreement (the "**Surety Bonds Liabilities Maximum Amount**");
  - (iii) attaches the relevant Surety Bonds Agreement; and
  - (iv) confirms that:
    - (i) if the relevant Surety Bonds Agreement is entered into before the date of this Agreement, the Surety Bonds Liabilities Maximum Amount under the relevant Surety Bonds Agreement together with the Surety Bonds Liabilities Maximum Amount under each other Surety Bonds Agreement entered into before the date of this Agreement and designated in accordance with this Clause 5.8 does not exceed U.S.\$350,000,000; and
    - (A) if the relevant Surety Bonds Agreement is entered into on or after the date of this Agreement, the Surety Bonds Liabilities Maximum Amount under the relevant Surety Bonds Agreement together with the Surety Bonds Liabilities Maximum Amount under each other Surety Bonds Agreement entered into on or after the date of this Agreement and designated in accordance with this Clause 5.8 does not exceed an amount equal to the aggregate amount of potential exposure under any counter-indemnity forming part of the Surety Bonds Liabilities under the Surety Bonds Agreements entered into before the date of this Agreement which has been permanently cancelled or repaid (other than by reason of occurrence of a Default) up to an amount not exceeding U.S.\$ 50,000,000
- (in each case, the "**Surety Bonds Liabilities Designated Amount**"),
- and the Security Agent shall be entitled to rely conclusively upon such certificate, without further enquiry.
- (c) The Security Agent shall not accept or give effect to any designation of a Surety Bonds Agreement under this Clause 5.8 to the extent the Surety Bonds Liabilities Maximum Amount under the relevant Surety Bonds Agreement together with the Surety Bonds Liabilities Maximum Amount under each other Surety Bonds Agreement designated in accordance with this Clause 5.8 would exceed the relevant Surety Bonds Liabilities Designated Amount.
- (d) Any designation of a Surety Bonds Agreement by the Company shall only take effect on the date when the Security Agent acknowledges receipt of the certificate delivered to it in accordance with paragraph (b) above.
- (e) The Security Agent shall maintain a register of the Surety Bonds Lenders and their respective Surety Bonds Liabilities Maximum Amounts (the "**Surety Bonds Liabilities Register**"). The

entries in the Surety Bonds Liabilities Register shall be conclusive absent manifest error. The Surety Bonds Liabilities Register shall be available for inspection by the Company and any Surety Bonds Lenders, at all reasonable times and on reasonable notice to the Security Agent.

#### 5.9 Designation of Guarantee Lines Agreements

- (a) The Company may designate any guarantee lines agreement as a Guarantee Lines Agreement, in each case by delivery of a certificate (to be prepared in good faith having made due and careful enquiry) to the Security Agent in accordance with this Clause 5.9.
- (b) The Security Agent shall only be required to recognise and give effect to any designation of a Guarantee Lines Agreement requested by the Company pursuant to any certificate (and to acknowledge such certificate) if such certificate:
  - (i) has been duly executed by the counterparty under such Guarantee Lines Agreement and the chief financial officer of the Company;
  - (ii) specifies the maximum amount of the Guarantee Lines Liabilities which are permitted under the relevant Guarantee Lines Agreement (the "**Guarantee Lines Liabilities Maximum Amount**");
  - (iii) attaches the relevant Guarantee Lines Agreement; and
  - (iv) confirms that the Guarantee Lines Liabilities Maximum Amount under the relevant Guarantee Lines Agreement together with the Guarantee Lines Liabilities Maximum Amount under each other Guarantee Lines Agreement designated in accordance with this Clause 5.9 does not exceed the Guarantee Lines Liabilities Designated Amount,and the Security Agent shall be entitled to rely conclusively upon such certificate, without further enquiry.
- (c) The Security Agent shall not accept or give effect to any designation of a Guarantee Lines Agreement under this Clause 5.9 to the extent the Guarantee Lines Liabilities Maximum Amount under the relevant Guarantee Lines Agreement together with the Guarantee Lines Liabilities Maximum Amount under each other Guarantee Lines Agreement designated in accordance with this Clause 5.9 would exceed the Guarantee Lines Liabilities Designated Amount.
- (d) Any designation of a Guarantee Lines Agreement by the Company shall only take effect on the date when the Security Agent acknowledges receipt of the certificate delivered to it in accordance with paragraph (b) above.
- (e) The Security Agent shall maintain a register of the Guarantee Lines Lenders and their respective Guarantee Lines Liabilities Maximum Amounts (the "**Guarantee Lines Liabilities Register**"). The entries in the Guarantee Lines Liabilities Register shall be conclusive absent manifest error. The Guarantee Lines Liabilities Register shall be available for inspection by the Company and any Guarantee Lines Lenders, at all reasonable times and on reasonable notice to the Security Agent.

#### 5.10 Security: Senior Subordinated Creditors

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

- (a) any Security in respect of the Senior Subordinated Liabilities from any member of the Group in addition to the Common Transaction Security which to the extent legally possible and subject to any Agreed Security Principles is, at the same time, also offered either:
  - (i) to the Security Agent as trustee or security agent (or as *mandatario con rappresentanza*) for the other Secured Parties in respect of their Liabilities; or
  - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee or security agent (or as *mandatario con rappresentanza*) for the Secured Parties:
    - (A) to the other Secured Parties in respect of their Liabilities; or
    - (B) (to the extent recognised under applicable law and in any event other than for Security governed by Italian law) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties,

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

- (b) any guarantee, indemnity or other assurance against loss in respect of the Senior Subordinated Liabilities from any member of the Group in addition to those in:
  - (i) the original form of the relevant Senior Subordinated Finance Documents;
  - (ii) this Agreement;
  - (iii) any Deed of Guarantee;
  - (iv) any Common Assurance;
  - (v) in relation to the Primary LC Finance Documents only, any Cash Collateral permitted under such Primary LC Finance Documents; or
  - (vi) in relation to the Hedging Agreements only, the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),

if and to the extent legally possible and subject to any Agreed Security Principles, at the same time it is also offered to the other Security Agent on behalf of the other Guaranteed Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in paragraph (b) of Clause 2.1 (*Primary Creditor Liabilities*).

#### 5.11 Restriction on Enforcement: Senior Subordinated Creditors

- (a) So long as any of the Senior Subordinated Liabilities (other than the Surety Bonds Liabilities) are or may be outstanding, a Senior Subordinated Creditor (other than a Surety Bonds Lender) shall not be entitled to take any Enforcement Action in respect of any of the Senior Subordinated Liabilities (other than the Surety Bonds Liabilities) owed to it other

than in accordance with Clause 5.12 (*Permitted Enforcement: Senior Subordinated Creditors*).

- (b) So long as any of the Surety Bonds Liabilities are or may be outstanding, a Surety Bonds Lender shall not be entitled to take any Enforcement Action in respect of any of the Surety Bonds Liabilities owed to it other than in accordance with Clause 5.13 (*Permitted Enforcement: Surety Bonds Lenders*).

#### 5.12 **Permitted Enforcement: Senior Subordinated Creditors**

Each Senior Subordinated Creditor may take Enforcement Action which would be available to it but for Clause 5.11 (*Restriction on Enforcement: Senior Subordinated Creditors*) if:

- (a) the Enforcement Action does not comprise Enforcement;
- (b) that Enforcement Action is taken in respect of the Cash Collateral which has been provided in accordance with the Primary LC Finance Documents;
- (c) that Enforcement Action is taken pursuant to paragraph (a)(iv) of the definition of "Enforcement Action" in respect of any Existing Guarantor under any Existing Deed of Guarantee which has been provided in accordance with the Existing Guarantee Facilities, in each case provided that no Enforcement Action is taken in respect of such Existing Guarantor under any Deed of Guarantee (other than the Existing Deed of Guarantee);
- (d) at the same time as or prior to, that action, the consent of the Instructing Group to that Enforcement Action is obtained;
- (e) an Insolvency Event has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event, each Senior Subordinated Creditor shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group to:
  - (i) accelerate any of that member of the Group's Senior Subordinated Liabilities or declare them prematurely due and payable on demand;
  - (ii) prematurely close-out or terminate any Hedging Liabilities of that member of the Group;
  - (iii) exercise any right of set-off or take or receive any Payment in respect of any Senior Subordinated Liabilities of that member of the Group; or
  - (iv) claim and prove in any insolvency process of that member of the Group for the Senior Subordinated Liabilities owing to it; or
- (f) a Hedging Force Majeure (as defined in a Hedging Agreement) has occurred in respect of that Hedging Agreement, the relevant Hedge Counterparty may terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity.



### 5.13 Permitted Enforcement: Surety Bonds Lenders

Each Surety Bonds Lender may take Enforcement Action which would be available to it but for Clause 5.11 (*Restriction on Enforcement: Senior Subordinated Creditors*) if:

- (a) that Enforcement Action does not comprise Enforcement;
- (b) that Enforcement Action is taken pursuant to paragraph (d) of the definition of "Enforcement Action" which constitutes adjusting, compromising or settling a Surety Bonds Claim, including:
  - (i) in respect of Performance Bond in the penal sum of U.S.\$182,753,858 naming AMEC Programs, Inc., subsequently replaced by Wood Programs, Inc. as principal, and Fidelity and Deposit Company of Maryland, Zurich American Insurance Company, Insurance Company of the State of Pennsylvania, and American Home Assurance Company, jointly and severally, as sureties, and the United States of America, as obligee, for the Aegis Ashore Missile Facility, Poland, Contract No. W912GB-16-C-0005; and
  - (ii) any claim made on Bond Number US3999558 by City of San Antonio, acting by and through the City Public Service Board against EH North America, including the pending lawsuit filed by City of San Antonio, acting by and through the City Public Service Board against EH North America, Wood Group USA, Inc. and others;
- (c)
  - (i) such Surety Bonds Lender notifies the Company and the Security Agent that a Surety Bonds Non-Payment Event relating to such Surety Bonds Lender has occurred and no Enforcement has occurred within 10 days from the date of such notice; and
  - (ii) that Enforcement Action does not constitute action described in paragraph (a) or (b) of the definition of "Enforcement"; or
- (d)
  - (i) such Surety Bonds Lender notifies the Company and the Security Agent that a Surety Bonds Event of Default relating to such Surety Bonds Lender has occurred and no Enforcement has occurred within 120 days from the date of such notice; and
  - (ii) that Enforcement Action does not constitute action described in paragraph (a) or (b) of the definition of "Enforcement".

### 5.14 No acquisition of Senior Subordinated Liabilities

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

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

in respect of any of the Senior Subordinated Liabilities.

## **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 member of the Group 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 paragraph (b) of Clause 6.7 (*Permitted Enforcement: Intra-Group Lenders*).

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

- (a) Subject to paragraph (b) below, the Debtors may make Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) from time to time when due if the making of that Payment would not result in a breach of any Primary Finance Document.
- (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) prior to the Super Senior Discharge Date, the Majority Super Senior Creditors consent to that Payment being made;
  - (ii) on or after the Super Senior Discharge Date but prior to the Senior Discharge Date, the Majority Senior Creditors consent to that Payment being made;
  - (iii) on or after the Senior Discharge Date but prior to the Senior Subordinated Discharge Date, the Majority Senior Subordinated Creditors consent to that Payment being made; or
  - (iv) that Payment is made to facilitate Payment of the Primary Liabilities.

### **6.3 Payment obligations continue**

No Debtor nor any other member of the Group shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 6.1 (*Restriction on Payment: Intra-Group Liabilities*) and 6.2 (*Permitted Payments: Intra-Group Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

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

- (a) Subject to paragraph (b) below, each Debtor may, and may permit any other member of the Group to:
    - (i) enter into any Liabilities Acquisition; or
    - (ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,
- in respect of any Intra-Group Liabilities at any time.

- (b) Subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities if:
  - (i) that action would result in a breach of the Primary Finance Documents; or
  - (ii) at the time of that action, an Acceleration Event has occurred.
- (c) The restrictions in paragraph (b) above shall not apply if:
  - (i) prior to the Super Senior Discharge Date, the Majority Super Senior Creditors consent to that action;
  - (ii) on or after the Super Senior Discharge Date but prior to the Senior Discharge Date, the Majority Senior Creditors consent to that action;
  - (iii) on or after the Senior Discharge Date but prior to the Senior Subordinated Discharge Date, the Majority Senior Subordinated Creditors consent to that action; or
  - (iv) that action is made to facilitate Payment of the Primary Liabilities.

#### 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:

- (a) that Security, guarantee, indemnity or other assurance against loss is expressly permitted by the Primary Finance Documents;
- (b) prior to the Super Senior Discharge Date, the prior consent of the Majority Super Senior Creditors, the Majority Senior Creditors and the Majority Senior Subordinated Creditors is obtained;
- (c) on or after the Super Senior Discharge Date but prior to the Senior Discharge Date, the prior consent of the Majority Senior Creditors and the Majority Senior Subordinated Creditors is obtained; or
- (d) on or after the Senior Discharge Date but prior to the Senior Subordinated Discharge Date, the prior consent of the Majority Senior Subordinated Creditors is obtained.

#### 6.6 **Restriction on enforcement: Intra-Group Lenders**

Subject to Clause 6.7 (*Permitted Enforcement: Intra-Group Lenders*), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date.

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

After the occurrence of an Insolvency Event in relation to any member of the Group, each Intra-Group Lender may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Intra-Group Lender in accordance with Clause 8.5 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

- (a) accelerate any of that member of the Group's Intra-Group Liabilities or declare them prematurely due and payable or payable on demand;

- (b) exercise any right of set-off or take or receive any Payment in respect of any Intra-Group Liabilities of that member of the Group; or
- (c) claim and prove in any insolvency process of that member of the Group for the Intra-Group Liabilities owing to it.

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

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

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

#### 6.9 **Notice and acknowledgement: Transaction Security**

- (a) By execution of this Agreement (or, as the case may be, a Creditor Accession Undertaking), each Intra-Group Lender hereby notifies each Debtor that it has, on or about the date of this Agreement (or, as the case may be, on or about the date of such Creditor Accession Undertaking), assigned to the Security Agent by way of Transaction Security all of its rights in respect of any agreement evidencing the terms of the Intra-Group Liabilities which are owing to that Intra-Group Lender, provided that such Intra-Group Lender will remain liable in respect of each Intra-Group Liability to perform all the obligations assumed by it in respect of that Intra-Group Liability. The instructions set out in this paragraph (a) may not be revoked or amended by an Intra-Group Lender without the prior consent of the Security Agent. None of the Security Agent, its agents, any receiver or any other person will at any time be under any obligation or liability to the relevant Debtor(s) under or in respect of any Intra-Group Liabilities. This notification is deemed to be made on the date of this

Agreement (or, as the case may be, a Creditor Accession Undertaking) and subsequently on the date on which any new Intra-Group Liabilities are incurred.

- (b) Each Debtor, by its execution of this Agreement (or, as the case may be, a Debtor Accession Deed), acknowledges the notice given to it by the Intra-Group Lenders pursuant to paragraph (a) above. Each Debtor confirms that:
- (i) it has not received notice of the interest of any third party in any Intra-Group Liabilities; and
  - (ii) it will make payments and give notices under any Intra-Group Liabilities as directed by the Security Agent from time to time.

This acknowledgement is deemed to be given on the date of this Agreement (or, as the case may be, a Debtor Accession Undertaking) and subsequently on the date on which any new Intra-Group Liabilities are incurred.

## **7. Subordinated Creditor and Subordinated Liabilities**

### **7.1 Restriction on Payment: Subordinated Liabilities**

Prior to the Final Discharge Date, no Debtor shall, and the Company shall procure that no other member of the Group will, make any Payment of the Subordinated Liabilities at any time unless:

- (a) that Payment is permitted under Clause 7.2 (*Permitted Payments: Subordinated Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under Clause 7.9 (*Permitted Enforcement: Subordinated Creditor*).

### **7.2 Permitted Payments: Subordinated Liabilities**

Any member of the Group may make Payments in respect of the Subordinated Liabilities then due if:

- (a) the Payment is expressly permitted by each Primary Finance Document; or
- (b) the Payment constitutes any conversion of any outstanding loan, credit or any other indebtedness which is permitted under the terms of any Primary Finance Document and is owed by a member of the Group to another member of the Group or a Subordinated Creditor into a capital loan, distributable reserves or share capital of any member of the Group or any other capitalisation, forgiveness, waiver, release or other discharge of that loan, credit or indebtedness, in each case on a cashless basis and which does not result in adverse tax consequences for the Group.

### **7.3 Payment obligations continue**

Neither the Company nor any other Debtor or member of the Group shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 7.1 (*Restriction on Payment: Subordinated Liabilities*) and 7.2 (*Permitted Payments: Subordinated Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

#### 7.4 **No acquisition of Subordinated Liabilities**

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

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

in respect of any of the Subordinated Liabilities.

#### 7.5 **Amendments and waivers: Subordinated Creditor**

Prior to the Final Discharge Date, any Subordinated Creditor may amend, waive or agree the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted in accordance with their terms (and subject to any consent required under them) at any time if:

- (a) such amendment, waiver or agreement would not result in:
  - (i) the interests of the Secured Parties being adversely affected in any material respect or the ranking or subordination contemplated by this Agreement being impaired;
  - (ii) any change to any scheduled repayment date or any mandatory prepayment provision under any document documenting Subordinated Liabilities which would make any relevant amount payable before the Final Discharge Date; or
  - (iii) any changes to provisions relating to the payment of interest or any other amount which would make any relevant amount payable in cash prior to the Final Discharge Date;
- (b) that amendment, waiver or agreement is required in order to cure minor, technical or administrative errors; or
- (c) the prior consent of the Super Majority Primary Creditors is obtained.

#### 7.6 **Designation of Sirius Additional Funding Agreements**

- (a) In relation to any Sirius Additional Funding which constitutes indebtedness, the Company and the Sirius Initial Funding Lender shall:

- (i) designate such financing agreement as a Sirius Additional Funding Agreement, in each case by written notice to be provided to the Security Agent; and
- (ii) procure that:
  - (A) any member of the Group party to such financing agreement becomes a Party as a Debtor pursuant to Clause 20.11 (*New Debtor*) (unless any member of the Group party to such agreement is already party to this Agreement as a Debtor); and
  - (B) any provider of the financing becomes a Party as a Sirius Additional Funding Lender pursuant to Clause 20.10 (*Creditor Accession Undertaking*) (unless the provider of such financing is already party to this Agreement as a Sirius Initial Funding Lender, in which case such provider will automatically become a party to

this Agreement as a Sirius Additional Funding Lender from the moment of designation of such financing agreement as a Sirius Additional Funding Agreement)

in each case no later than on the same date when such financing agreement is entered into.

(b) The Security Agent shall only be required to recognise and give effect to any designation of any Sirius Additional Funding Agreement requested in accordance with paragraph (a) above pursuant to any certificate if such certificate:

- (i) has been duly executed by the chief financial officer of the Company and the authorised signatory of the Sirius Initial Funding Lender;
- (ii) specifies the maximum amount of the Sirius Additional Funding Liabilities which are permitted under the relevant Sirius Additional Funding Agreement (the "**Sirius Additional Funding Maximum Amount**");
- (iii) attaches such Sirius Additional Funding Agreement;
- (iv) is delivered after the Completion Date has occurred; and
- (v) confirms that the Sirius Additional Funding Maximum Amount under the relevant Sirius Additional Funding Agreement together with the Sirius Additional Funding Maximum Amount under each other Sirius Additional Funding Agreement designated in accordance with this Clause 7.6 does not exceed the Sirius Additional Funding Designated Amount,

and the Security Agent shall be entitled to rely conclusively upon such certificate, without further enquiry.

(c) The Security Agent shall not accept or give effect to any designation of a Sirius Additional Funding Agreement under this Clause 7.6 to the extent the Sirius Additional Funding Maximum Amount under the relevant Sirius Additional Funding Agreement together with the Sirius Additional Funding Maximum Amount under each other Sirius Additional Funding Agreement designated in accordance with this Clause 7.6 would exceed the Sirius Additional Funding Designated Amount.

(d) Any designation of a Sirius Additional Funding Agreement by the Company shall take effect on the date when the Security Agent receives the certificate delivered to it in accordance with paragraph (a)**Error! Reference source not found.** above and the parties to such Sirius Additional Funding Agreement accede to this Agreement in accordance with paragraph (a)(ii) above.

#### 7.7 **Security: Subordinated Creditor**

No Subordinated Creditor may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from any member of the Group in respect of any of the Subordinated Liabilities prior to the Final Discharge Date, unless:

- (a) that Security, guarantee, indemnity or other assurance against loss is expressly permitted by each Primary Finance Document;
- (b)

- (i) prior to the Super Senior Discharge Date, the Majority Super Senior Creditors, the Majority Senior Creditors and the Majority Senior Subordinated Creditors consent to that that Security, guarantee, indemnity or other assurance against loss being taken, accepted or received;
- (ii) on or after the Super Senior Discharge Date but prior to the Senior Discharge Date, the Majority Senior Creditors and the Majority Senior Subordinated Creditors consent to that Security, guarantee, indemnity or other assurance against loss being taken, accepted or received; or
- (iii) on or after the Senior Discharge Date but prior to the Senior Subordinated Discharge Date, the Majority Senior Subordinated Creditors consent to that Security, guarantee, indemnity or other assurance against loss being taken, accepted or received.

#### 7.8 **Restriction on Enforcement: Subordinated Creditor**

Subject to Clause 7.9 (*Permitted Enforcement: Subordinated Creditor*), no Subordinated Creditor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Final Discharge Date.

#### 7.9 **Permitted Enforcement: Subordinated Creditor**

After the occurrence of an Insolvency Event in relation to any member of the Group, each Subordinated Creditor may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of the Subordinated Creditor in accordance with Clause 8.5 (*Filing of claims*)) exercise any right it may otherwise have in respect of that member of the Group to:

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

#### 7.10 **Representations: Subordinated Creditor**

Each Subordinated Creditor represents and warrants to the Primary Creditors and the Security Agent that:

- (a) it is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and



- (c) the entry into and performance by it of, and the transactions contemplated by, this Agreement does not and will not:
  - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets to an extent or in a manner which has or could reasonably be expected to have a Material Adverse Effect; or
  - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

## **8. Effect of Insolvency Event**

### **8.1 Treatment of Cash Collateral**

This Clause 8 is subject to Clause 16.3 (*Treatment of Cash Collateral*).

### **8.2 Distributions**

- (a) After the occurrence of an Insolvency Event in relation to any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group 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 member of the Group to make that distribution to the Security Agent (or to such other person as the Security Agent shall direct) until the Liabilities owing to the Secured Parties and the Guaranteed Parties have been paid in full.
- (b) The Security Agent shall apply distributions made to it under paragraph (a) above in accordance with Clause 16 (*Application of proceeds*).

### **8.3 Set-off**

- (a) Subject to paragraph (b) below, to the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of a Distress 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 16 (*Application of proceeds*).
- (b) Paragraph (a) above shall not apply to:
  - (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings;
  - (ii) any Close-Out Netting by a Hedge Counterparty;
  - (iii) any Payment Netting by a Hedge Counterparty;
  - (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty; and
  - (v) any such discharge of the Surety Bonds Liabilities from the proceeds of the Surety Bonds Receivables.

### **8.4 Non-cash distributions**

If the Security Agent or any other Secured Party or Guaranteed Party receives a distribution in the form of Non-Cash Consideration in respect of any of the Liabilities, (other than any distribution of

Non-Cash Recoveries), the Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Liabilities.

#### **8.5 Filing of claims**

Without prejudice to any Credit Card Liabilities Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that the netting or set-off represents a reduction of the Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings), after the occurrence of an Insolvency Event in relation to any member of the Group, each Creditor irrevocably authorises the Security Agent, on its behalf, to:

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

#### **8.6 Further assurance – Insolvency Event**

Each Creditor will:

- (a) do all things that the Security Agent requests in order to give effect to this Clause 8; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 8 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 (subject to compliance with any applicable laws and constitutional documents) grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action.

#### **8.7 Security Agent instructions**

For the purposes of Clause 8.2 (*Distributions*), Clause 8.5 (*Filing of claims*) and Clause 8.6 (*Further assurance – Insolvency Event*) the Security Agent shall act:

- (a) on the instructions of the group of Primary Creditors entitled, at that time, to give instructions under Clause 11.2 (*Enforcement instructions*) or Clause 11.4 (*Manner of enforcement*); or
- (b) in the absence of any such instructions, as it considers in its discretion to be appropriate.

### **9. Turnover of Receipts**

#### **9.1 Turnover**

This Clause 9 is subject to Clause 16.3 (*Treatment of Cash Collateral*).

## 9.2 Turnover by the Creditors

Subject to Clause 9.3 (*Exclusions*) and to Clause 9.4 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is neither:
  - (i) a Permitted Payment;
  - (ii) in the case of the Surety Bonds Lenders only, made from the proceeds of any Surety Bonds Receivables; nor
  - (iii) made in accordance with Clause 16 (*Application of proceeds*);
- (b) other than where paragraph (a) of Clause 8.3 (*Set-off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- (c) notwithstanding paragraphs (a) and (b) above, and other than where paragraph (a) of Clause 8.3 (*Set-off*) applies, any amount:
  - (i) on account of, or in relation to, any of the Liabilities:
    - (A) after the occurrence of a Distress Event; or
    - (B) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
  - (ii) 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 16 (*Application of proceeds*);
- (d) any Enforcement Proceeds or Guarantee Proceeds except in accordance with Clause 16 (*Application of proceeds*); or
- (e) other than where paragraph (a) of Clause 8.3 (*Set-off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with Clause 16 (*Application of proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,

that Creditor will:

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

### 9.3 Exclusions

Clause 9.2 (*Turnover by the Creditors*) shall not apply to any receipt or recovery:

- (a) by way of:
  - (i) Close-Out Netting by a Hedge Counterparty;
  - (ii) Payment Netting by a Hedge Counterparty;
  - (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
  - (iv) operation of loss sharing arrangements under the EGF Agreement; or
- (b) by a Credit Card Liabilities Lender by way of that Credit Card Liabilities Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that that netting or set-off represents a reduction of the Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings); or
- (c) made in accordance with Clause 17 (*Equalisation*).

### 9.4 Permitted assurance and receipts

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

- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by Clause 20 (*Changes to the Parties*),

which:

- (i) is permitted by the Primary Finance Documents;
- (ii) is not in breach of Clause 3.9 (*No acquisition of Super Senior Liabilities*);
- (iii) is not in breach of Clause 4.8 (*No acquisition of Senior Liabilities*);
- (iv) is not in breach of Clause 5.14 (*No acquisition of Senior Subordinated Liabilities*);  
and
- (v) is not in breach of Clause 7.4 (*No acquisition of Subordinated Liabilities*),

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

### 9.5 Amounts received by Debtors

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

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

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

#### 9.6 **Saving provision**

If, for any reason, any of the trusts expressed to be created in this Clause 9 should fail or be unenforceable, the affected Creditor or the affected Debtor will promptly pay or distribute an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

#### 9.7 **Turnover of Non-Cash Consideration**

For the purposes of this Clause 9, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to Clause 9.2 (*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 14.2 (*Cash value of Non-Cash Recoveries*).

#### 9.8 **Amounts received by Primary Agents**

If any of the Primary Agents receives or recovers any amount of Guarantee Proceeds under the terms of any of the Primary Finance Documents, that Primary Agent will hold the amount of that receipt or recovery equal to the Guarantee Proceeds on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with Clause 16 (*Application of proceeds*).

### 10. **Redistribution**

#### 10.1 **Recovering Creditor's rights**

- (a) Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 8 (*Effect of Insolvency Event*) or Clause 9 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and shall be applied by the Security Agent in accordance with Clause 16 (*Application of proceeds*).
- (b) On an application by the Security Agent pursuant to Clause 16 (*Application of proceeds*) of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent by the Recovering Creditor (the "**Shared Amount**") will be treated as not having been paid or distributed by that Debtor.

#### 10.2 **Reversal of redistribution**

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returnable by that Recovering Creditor to that Debtor, then:
  - (i) each Party that received any part of that Shared Amount pursuant to an application by the Security Agent of that Shared Amount under Clause 10.1 (*Recovering Creditor's rights*) (a "**Sharing Party**") shall, upon request of the Security Agent, pay or distribute to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse

that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and

- (ii) as between the relevant Debtor, each Recovering Creditor and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor.
- (b) The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Party.

### 10.3 **Deferral of subrogation**

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

## 11. **Enforcement of Transaction Security and Deeds of Guarantee**

### 11.1 **Enforcement**

This Clause 11 is subject to Clause 16.3 (*Treatment of Cash Collateral*).

### 11.2 **Enforcement instructions**

- (a) The Security Agent may refrain from enforcing the Transaction Security and/or making of any demand under any Deed of Guarantee or taking any other action as to Enforcement unless instructed otherwise by the Instructing Group.
- (b) Subject to the Transaction Security and/or any Deed of Guarantee 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 or making of any demand under the Deeds of Guarantee or taking any other action as to Enforcement as they see fit.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 11.2.

### 11.3 **Overriding principle**

Each of the Secured Parties and the Debtors acknowledges that it shall be the primary and overriding aim of any Transaction Security Enforcement to achieve the Enforcement Objective. In giving any instructions in connection with any Transaction Security Enforcement the applicable Instructing Group shall use commercially reasonable endeavours (acting in good faith) to meet the Enforcement Objective.

#### 11.4 Manner of enforcement

If the Transaction Security and/or any Deed of Guarantee is being enforced or other action as to Enforcement is being taken pursuant to Clause 11.2 (*Enforcement instructions*), the Security Agent shall enforce the Transaction Security and/or make any demand under such Deed of Guarantee or take other action as to Enforcement in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Security Agent) as the Instructing Group shall instruct or, in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate.

#### 11.5 Exercise of voting rights

- (a) Each Intra-Group Lender and Subordinated Creditor will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent.
- (b) The Security Agent shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by the Instructing Group.

#### 11.6 Waiver of rights

To the extent permitted under applicable law and subject to Clause 11.2 (*Enforcement instructions*), Clause 11.4 (*Manner of enforcement*), Clause 13.4 (*Fair value*) and Clause 16 (*Application of proceeds*), each of the Secured Parties and the Guaranteed Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security or any Deed of Guarantee 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, any Deed of Guarantee or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations or the Guaranteed Obligations is so applied.

#### 11.7 Duties owed

Each of the Secured Parties and the Guaranteed Parties and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security or make any demand under any Deed of Guarantee, 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 or the making of any demand under any Deed of Guarantee shall, subject to Clause 13.4 (*Fair value*), 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.

#### 11.8 Independent powers of enforcement

- (a) Subject to paragraphs (b)-(c)**Error! Reference source not found.** below, the Secured Parties and the Guaranteed Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to make any demand under any Deed of Guarantee or to exercise any right, power, authority or discretion arising under the Security Documents or any Deed of Guarantee except through the Security Agent.

- (b) Without prejudice to the terms of Clause 5.13 (*Permitted enforcement: Surety Bonds Lenders*), if any Primary Agent notifies the Security Agent of occurrence of a Default resulting from a failure to make a payment of an amount of principal, interest or fees representing Primary Liabilities and the Instructing Group does not give consent to take any Enforcement Action in accordance with this Agreement within 180 days following the date of notification:
- (i) each Secured Party and each Guaranteed Party shall be entitled to take any Enforcement Action (including any Enforcement pursuant to paragraph (c) or (d) of the definition of "Enforcement" but excluding any Enforcement pursuant to paragraph (a) or (b) of the definition of "Enforcement") (the "**Individual Enforcement Action**"); and
  - (ii) if the Instructing Group gives consent to take any Enforcement Action in accordance with this Agreement after any Secured Party or Guaranteed Party takes any Individual Enforcement Action, such Secured Party or Guaranteed Party shall be entitled to proceed with such Individual Enforcement Action, provided that it does not conflict with any Enforcement Action which the Instructing Group has taken or to which the Instructing Group has given consent.
- (c) Each Guaranteed Party shall have an independent power to make any demand under any Existing Deed of Guarantee of which it has the benefit in accordance with paragraph (c) of Clause 5.12 (*Permitted Enforcement: Senior Subordinated Creditors*).

## 12. **Non-Distressed Disposals**

### 12.1 **Definitions**

In this Clause 12:

**"Disposal Proceeds"** means the proceeds of a Non-Distressed Disposal;

**"Disposal Proceeds Instructing Group"** means at any time, those RCF Lenders, TL Lenders and USPP Noteholders whose aggregate RCF Credit Participations, TL Credit Participations and USPP Credit Participations at that time aggregate more than 50 per cent. of the total aggregate RCF Credit Participations, TL Credit Participations and USPP Credit Participations of all RCF Lenders, TL Lenders and USPP Noteholders at that time; and

**"Non-Distressed Disposal"** means a disposal of:

- (a) an asset (or an interest therein or a part thereof) of a member of the Group; or
- (b) an asset (or an interest therein or a part thereof) which is subject to the Transaction Security,

to a person or persons where:

- (i) (prior to the Super Senior Discharge Date) each Super Senior Agent notifies the Security Agent that that disposal is permitted under the relevant Super Senior Finance Documents;
- (ii) (prior to the Senior Discharge Date) each Senior Agent notifies the Security Agent that that disposal is permitted under the relevant Senior Finance Documents;



- (iii) (prior to the Senior Subordinated Discharge Date) each Senior Subordinated Agent notifies the Security Agent that that disposal is permitted under the relevant Senior Subordinated Finance Documents; and
- (iv) that disposal is not a Distressed Disposal.

## 12.2 Facilitation of Non-Distressed Disposals

If a disposal of an asset is a Non-Distressed Disposal:

- (a) the Security Agent is irrevocably authorised (at the cost of the Company and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Guaranteed Party or any Debtor) but subject to paragraph (b) below:
  - (i) to release the Transaction Security or any other claim over that asset;
  - (ii) where that asset consists of shares in the capital of a member of the Group, to release the Transaction Security or any other claim over that member of the Group's Property (and any Subsidiary of that member of the Group's Property) and release any Deed of Guarantee granted by that member of the Group or any Subsidiary of that member of the Group; and
  - (iii) to execute and deliver or enter into any release of the Transaction Security, any Deed of Guarantee or any claim, in each case, described in paragraphs (i) and (ii) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.
- (b) Each release of Transaction Security, any Deed of Guarantee, any Guarantee Liabilities or any claim described in paragraph (a) above shall become effective only on the making of the relevant Non-Distressed Disposal.

## 12.3 Disposal Proceeds

If any Disposal Proceeds are required to be applied in mandatory prepayment of any Primary Liabilities then those Disposal Proceeds shall be applied in or towards Payment of:

- (a) **first**, the Super Senior Liabilities in accordance with the terms of the Super Senior Finance Documents *pari passu* and without any preference between them (without any obligation to apply those amounts towards the Senior Liabilities or the Senior Subordinated Liabilities);
- (b) **second**, after the discharge in full of the Super Senior Liabilities (or otherwise to the extent not required to be applied in discharge of the Super Senior Liabilities under the terms of the Super Senior Finance Documents), the Senior Liabilities in accordance with the terms of the Senior Finance Documents *pari passu* and without any preference between them (without any obligation to apply those amounts towards the Senior Subordinated Liabilities); and
- (c) **third**, after the discharge in full of the Senior Liabilities (or otherwise to the extent not required to be applied in discharge of the Senior Liabilities under the terms of the Senior Finance Documents), the Senior Subordinated Liabilities in accordance with the terms of

the Senior Subordinated Finance Documents *pari passu* and without any preference between them,

and the consent of any other Party shall not be required for that application.

#### 12.4 Disposal Proceeds Account

- (a) After the occurrence of a Plan B Covenant Trigger Event, the Debtors may not withdraw any amounts from the Disposal Proceeds Account without the prior written consent of the Disposal Proceeds Instructing Group (acting reasonably) which consent shall not be required more than once.
- (b) If any Primary Creditor forming part of the Disposal Proceeds Instructing Group fails:
  - (i) to respond to any consent request for withdrawal of any amounts from the Disposal Proceeds Account in accordance with paragraph (a) above; or
  - (ii) to provide details of its Credit Participation to the Security Agent for the purpose of such consent,

within 20 Business Days of that request being made, that Primary Creditor's RCF Credit Participation, TL Credit Participation or USPP Credit Participation (as the case may be) shall be deemed to be zero for the purpose of calculating the RCF Credit Participations, TL Credit Participations or USPP Credit Participations when ascertaining whether the relevant percentage of RCF Credit Participations, TL Credit Participations and USPP Credit Participations has been obtained to give that consent.

- (c) Notwithstanding paragraph (a) above, the Company may withdraw cash from the Disposal Proceeds Account solely for the purposes of satisfying its obligations under any of the Primary Finance Documents to prepay any of the Primary Liabilities.

### 13. Distressed Disposals and Appropriation

#### 13.1 Facilitation of Distressed Disposals and Appropriation

- (a) If a Distressed Disposal or an Appropriation is being effected the Security Agent is irrevocably authorised (at the cost of the Company and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Guaranteed Party or any Debtor):
  - (i) *release of Transaction Security/non-crystallisation certificates*: to release the Transaction Security or any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that Transaction Security or claim and the applicable Deed of Guarantee and, issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
  - (ii) *release of liabilities and Transaction Security on a share sale/Appropriation (Debtor)*: if the asset subject to the Distressed Disposal or Appropriation 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:
      - 1. its Borrowing Liabilities;

2. its Guarantee Liabilities; and
3. its Other Liabilities,

provided that where Liabilities are being released, the Liabilities of each Primary Creditor being discharged in part but not in full from the proceeds of that Distressed Disposal or Appropriation as applicable) must be released on a pro rata basis within the relevant class of Primary Creditors;

- (B) any Transaction Security or any Deed of Guarantee granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
- (C) any other claim of a Subordinated Creditor, an Intra-Group Lender, or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and the relevant Debtors;

- (iii) *release of liabilities and Transaction Security on a share sale/Appropriation (Holding Company)*: if the asset subject to the Distressed Disposal or Appropriation 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:
  1. its Borrowing Liabilities;
  2. its Guarantee Liabilities; and
  3. its Other Liabilities,

provided that where Liabilities are being released, the Liabilities of each Primary Creditor being discharged in part but not in full from the proceeds of that Distressed Disposal or Appropriation as applicable) must be released on a pro rata basis within the relevant class of Primary Creditors;

- (B) any Transaction Security or any Deed of Guarantee granted by that Holding Company or any Subsidiary of that Holding Company over any of its assets; and
- (C) any other claim of a Subordinated Creditor, an Intra-Group Lender or another Debtor over that Holding Company's assets or over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and the relevant Debtors;

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

- (A) the Liabilities (other than Liabilities due to any Primary Agent which is not a USPP Noteholder or Primary Arranger); or
- (B) the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables (the "**Transferee**") will not be treated as a Primary Creditor, a Secured Party or a Guaranteed Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Creditors and Debtors provided that notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Primary Creditor, a Secured Party or a Guaranteed Party for the purposes of this Agreement, provided that where Liabilities are being disposed of, the Liabilities of each Primary Creditor being discharged in part but not in full from the proceeds of that Distressed Disposal or Appropriation as applicable) must be disposed of on a pro rata basis within the relevant class of Primary Creditors;

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

- (A) the Liabilities (other than Liabilities due to any Primary Agent which is not a USPP Noteholder or Primary Arranger); or
- (B) the Debtors' Intra-Group Receivables,

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

- 1. all (and not part only) of the Liabilities owed to the Primary Creditors (other than to any Primary Agent which is not a USPP Noteholder or Primary Arranger); and
- 2. all or part of any Liabilities (other than Liabilities owed to any Primary Agent which is not a USPP Noteholder or Primary Arranger) and the Debtors' Intra-Group Receivables,

on behalf of, in each case, the relevant Creditors and the relevant Debtors, provided that where Liabilities are being disposed of, the Liabilities of each Primary Creditor being discharged in part but not in full from the proceeds of that Distressed Disposal or Appropriation as applicable) must be disposed of on a pro rata basis within the relevant class of Primary Creditors;

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

- (A) the Intra-Group Liabilities; or
- (B) the Debtors' Intra-Group Receivables,

to execute and deliver or enter into any agreement to:

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

provided that where Liabilities are being transferred, the Liabilities of each Primary Creditor being discharged in part but not in full from the proceeds of that Distressed Disposal or Appropriation as applicable) must be transferred on a pro rata basis within the relevant class of Primary Creditors.

- (b) If any Transaction Security proposed to be released under this Clause 13.1 includes Cash Collateral, the Security created or evidenced or expressed to be created or evidenced under or pursuant to the relevant Primary LC Finance Document shall not be released without the consent of the Security Agent or the Primary Creditor with which that Cash Collateral is held.

#### 13.2 **Form of consideration for Distressed Disposals and Debt Disposals**

Subject to Clause 14.5 (*Security Agent protection*), a Distressed Disposal or a Debt Disposal may be made in whole or in part for consideration in the form of cash or, if not for cash, for Non-Cash Consideration which is acceptable to the Security Agent.

#### 13.3 **Proceeds of Distressed Disposals and Debt Disposals**

The net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Security Agent for application in accordance with Clause 16 (*Application of proceeds*) and, to the extent that:

- (a) any Liabilities Sale has occurred; or
- (b) any Appropriation has occurred,

as if that Liabilities Sale, or any reduction in the Secured Obligations or the Guaranteed Obligations resulting from that Appropriation, had not occurred.

#### 13.4 **Fair value**

In the case of:

- (a) a Distressed Disposal; or
- (b) a Liabilities Sale,

effected by, or at the request of, the Security Agent, the Security Agent shall take reasonable care to obtain a fair market price having regard to the prevailing market conditions (though the Security

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

**13.5 Fair value – safe harbours**

- (a) The Security Agent may seek to satisfy the requirement in Clause 13.4 (*Fair value*) in any manner.
- (b) Without prejudice to the generality of paragraph (a) above, the requirement in Clause 13.4 (*Fair value*) 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 Liabilities Sale 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 Liabilities Sale is made by, at the direction of or under the control of, a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer (or any analogous officer in any jurisdiction) appointed in respect of a member of the Group or the assets of a member of the Group;
  - (iii) that Distressed Disposal or Liabilities Sale is made pursuant to a Competitive Sales Process; or
  - (iv) a Financial Adviser appointed by the Security Agent pursuant to Clause 13.6 (*Appointment of Financial Adviser*) has delivered a Fairness Opinion to the Security Agent in respect of that Distressed Disposal or Liabilities Sale.

**13.6 Appointment of Financial Adviser**

- (a) Without prejudice to Clause 19.9 (*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 which is subject to Clause 9.2 (*Turnover by the Creditors*).
- (b) For the purposes of paragraph (a) above, the Security Agent shall act:
  - (i) on the instructions of the Instructing Group if the Financial Adviser is providing a valuation for the purposes of Clause 14.2 (*Cash value of Non-Cash Recoveries*); or
  - (ii) otherwise in accordance with Clause 13.7 (*Security Agent's actions*).

**13.7 Security Agent's actions**

For the purposes of Clauses 13.1 (*Facilitation of Distressed Disposals and Appropriation*), 13.2 (*Form of consideration for Distressed Disposals and Debt Disposals*), 13.4 (*Fair value*) and 13.5

(*Fair value – safe harbours*) the Security Agent shall act in accordance with Clause 11.4 (*Manner of enforcement*).

#### **14. Non-Cash Recoveries**

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

To the extent the Security Agent receives or recovers any Non-Cash Recoveries, it may (acting on the instructions of the Instructing Group) but without prejudice to its ability to exercise discretion under Clause 16.2 (*Prospective liabilities*):

- (a) distribute those Non-Cash Recoveries pursuant to Clause 16 (*Application of proceeds*) as if they were Cash Proceeds;
- (b) hold, manage, exploit, collect, realise and dispose of those Non-Cash Recoveries; and
- (c) hold, manage, exploit, collect, realise and distribute any resulting Cash Proceeds.

##### **14.2 Cash value of Non-Cash Recoveries**

- (a) The cash value of any Non-Cash Recoveries shall be determined by reference to a valuation obtained by the Security Agent from a Financial Adviser appointed by the Security Agent pursuant to Clause 13.6 (*Appointment of Financial Adviser*) taking into account any notional conversion made pursuant to Clause 16.6 (*Currency conversion*).
- (b) If any Non-Cash Recoveries are distributed pursuant to Clause 16 (*Application of proceeds*), the extent to which such distribution is treated as discharging the Liabilities shall be determined by reference to the cash value of those Non-Cash Recoveries determined pursuant to paragraph (a) above.

##### **14.3 Primary Agents and Non-Cash Recoveries**

- (a) Subject to paragraph (b) below and to Clause 14.4 (*Alternative to Non-Cash Consideration*), if, pursuant to Clause 16.1 (*Order of application*), a Primary Agent receives Non-Cash Recoveries for application towards the discharge of any Liabilities, that Primary Agent shall apply those Non-Cash Recoveries in accordance with the relevant Primary Finance Documents as if they were Cash Proceeds.
- (b) A Primary Agent may:
  - (i) use any reasonably suitable method of distribution, as it may determine in its discretion, to distribute those Non-Cash Recoveries in the order of priority that would apply under the relevant Primary Finance Document if those Non-Cash Recoveries were Cash Proceeds;
  - (ii) hold any Non-Cash Recoveries through another person; and
  - (iii) hold any amount of Non-Cash Recoveries for so long as that Primary Agent shall think fit for later application pursuant to paragraph (a) above.

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

- (a) If any Non-Cash Recoveries are to be distributed pursuant to Clause 16 (*Application of proceeds*), the Security Agent shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify the Primary Creditors entitled to receive those Non-Cash Recoveries pursuant to that distribution (the "**Entitled Creditors**").

- (b) If:
  - (i) it would be unlawful for an Entitled Creditor to receive such Non-Cash Recoveries (or it would otherwise conflict with that Entitled Creditor's constitutional documents for it to do so); and
  - (ii) that Entitled Creditor promptly so notifies the Security Agent and supplies such supporting evidence as the Security Agent may reasonably require,
 that Primary Creditor shall be a "**Cash Only Creditor**" and the Non-Cash Recoveries to which it is entitled shall be "**Retained Non-Cash**".
- (c) To the extent that, in relation to any distribution of Non-Cash Recoveries, there is a Cash Only Creditor:
  - (i) the Security Agent shall not distribute any Retained Non-Cash to that Cash Only Creditor (or to any Primary Agent on behalf of that Cash Only Creditor) but shall otherwise treat the Non-Cash Recoveries in accordance with this Agreement;
  - (ii) the Security Agent shall notify the relevant Primary Agent of that Cash Only Creditor's identity and its status as a Cash Only Creditor; and
  - (iii) to the extent notified pursuant to paragraph (ii) above, no Primary Agent shall distribute any of those Non-Cash Recoveries to that Cash Only Creditor.
- (d) Subject to Clause 14.5 (*Security Agent protection*), the Security Agent shall hold any Retained Non-Cash and shall, acting on the instructions of the Cash Only Creditor entitled to it, manage, exploit, collect, realise and dispose of that Retained Non-Cash for cash consideration and shall distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of proceeds*).
- (e) On any such distribution of Cash Proceeds which are attributable to a disposal of any Retained Non-Cash, the extent to which such distribution is treated as discharging the Liabilities due to the relevant Cash Only Creditor shall be determined by reference to:
  - (i) the valuation which determined the extent to which the distribution of the Non-Cash Recoveries to the other Entitled Creditors discharged the Liabilities due to those Entitled Creditors; and
  - (ii) the Retained Non-Cash to which those Cash Proceeds are attributable.
- (f) Each Primary Creditor shall, following a request by the Security Agent (acting in accordance with Clause 13.7 (*Security Agent's actions*)), notify the Security Agent of the extent to which paragraph (b)(i) above would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries.

#### 14.5 **Security Agent protection**

- (a) No Distressed Disposal or Debt Disposal may be made in whole or part for Non-Cash Consideration if the Security Agent has reasonable grounds for believing that its receiving, distributing, holding, managing, exploiting, collecting, realising or disposing of that Non-Cash Consideration would have an adverse effect on it.



- (b) If Non-Cash Consideration is distributed to the Security Agent pursuant to Clause 9.2 (*Turnover by the Creditors*) the Security Agent may, at any time after notifying the Creditors entitled to that Non-Cash Consideration and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Non-Cash Consideration for cash consideration (and distribute any Cash Proceeds of that Non-Cash Consideration to the relevant Creditors in accordance with Clause 16 (*Application of proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.
- (c) If the Security Agent holds Retained Non-Cash for a Cash Only Creditor (each as defined in Clause 14.4 (*Alternative to Non-Cash Consideration*)) the Security Agent may at any time, after notifying that Cash Only Creditor and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Retained Non-Cash for cash consideration (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Retained Non-Cash would have an adverse effect on it.

#### 15. **Further Assurance – Disposals and Releases**

- (a) Each Creditor and each Debtor will:
  - (i) do all things that the Security Agent requests in order to give effect to Clause 12 (*Non-Distressed Disposals*) and Clause 13 (*Distressed Disposals and Appropriation*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by those Clauses); and
  - (ii) if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests that any Creditor or any Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

provided that the proceeds of those disposals are applied in accordance with Clause 12 (*Non-Distressed Disposals*) or Clause 13 (*Distressed Disposals and Appropriation*) as the case may be.
- (b) Each Creditor and each Debtor irrevocably authorises and instructs the Security Agent (at the cost of the relevant Creditor or Debtor and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Guaranteed Party or Debtor) to be its agent to do anything which that Creditor or that Debtor has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by Clauses 12 (*Non-Distressed Disposals*), 13 (*Distressed Disposals and Appropriation*) and 13 (*Further Assurance – Disposals and Releases*)).

## 16. Application of proceeds

### 16.1 Order of application

- (a) Subject to Clause 16.2 (*Prospective liabilities*) and Clause 16.3 (*Treatment of Cash Collateral*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document (including any Guarantee Proceeds) or in connection with the realisation or enforcement of all or any part of the Transaction Security or taking any other action as to Enforcement, including any conveyance or distribution (including via a credit bid) of assets, debt or equity securities in connection with an Insolvency Event, including under a chapter 7 or chapter 11 plan of reorganization or liquidation in any Insolvency Event or liquidation proceeding of any member of the Group (for the purposes of this Clause 16, the "**Recoveries**") shall be applied by the Security Agent at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 16), in the following order of priority:
- (i) in discharging any sums owing to the Security Agent (other than pursuant to Clause 19.3 (*Parallel Debt (Covenant to pay the Security Agent)*), any Receiver or any Delegate;
  - (ii) in discharging all costs and expenses incurred by any Primary Creditor in connection with any realisation or enforcement of the Transaction Security or the making of any demand under any Deed of Guarantee taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 8.6 (*Further assurance – Insolvency Event*);
  - (iii) in payment or distribution to each Super Senior Agent on its own behalf and on behalf of the other Super Senior Creditors (if applicable) for application towards the discharge of the Super Senior Liabilities (in accordance with the terms of the Super Senior Finance Documents), in each case on a *pari passu* and *pro rata* basis;
  - (iv) in payment or distribution to each Senior Agent on its own behalf and on behalf of the other Senior Creditors (if applicable) for application towards the discharge of the Senior Liabilities (in accordance with the terms of the Senior Finance Documents), in each case on a *pari passu* and *pro rata* basis;
  - (v) in payment or distribution to each Senior Subordinated Agent on its own behalf and on behalf of the other Senior Subordinated Creditors (if applicable) for application towards the discharge of the Senior Subordinated Liabilities (in accordance with the terms of the Senior Subordinated Finance Documents but provided that, in relation to any Hedging Agreement, any payment should be limited to the Hedging Liabilities Maximum Amount under such Hedging Agreement), in each case on a *pari passu* and *pro rata* basis;
  - (vi) if none of the Debtors is under any further actual or contingent liability under any Super Senior Finance Document, Senior Finance Document or Senior Subordinated Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and

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

- (b) If, in the event of insolvency of any Spanish Obligor, a Creditor is declared to be a specially related person ("*persona especialmente relacionada*") under articles 282 or 283 of the Spanish Insolvency Act (the "**Related Creditor**") and, as a result thereof, the receivables of that Creditor against any Spanish Obligor are considered subordinated claims for the purposes of the insolvency proceedings, all Recoveries from, or in respect of the assets of, such Spanish Obligor shall be applied by the Security Agent in accordance with this Clause 17.1, save that any Related Creditor shall not be entitled to receive any amount of such Recoveries under this Agreement and the ranking of each Related Creditor's claims and recoveries with respect to such Spanish Obligor shall be determined in accordance with the ranking of claims and payment order set out by the Spanish Insolvency Act for subordinated claims.

#### 16.2 **Prospective liabilities**

Following a Distress Event the Security Agent may, in its discretion:

- (a) hold any amount of the Recoveries which is in the form of cash, and any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any Non-Cash Consideration, in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) as the Security Agent shall think fit (the interest being credited to the relevant account); and
- (b) hold, manage, exploit, collect and realise any amount of the Recoveries which is in the form of Non-Cash Consideration,

in each case for so long as the Security Agent shall think fit for later application under Clause 16.1 (*Order of application*) in respect of:

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

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

#### 16.3 **Treatment of Cash Collateral**

- (a) Nothing in this Agreement shall prevent any Primary Creditor in respect of the Primary LC Liabilities taking any Enforcement Action in respect of any Cash Collateral which has been provided for it in accordance with the Primary LC Finance Documents.
- (b) Nothing in this Agreement shall prevent any Primary Creditor in respect of the Primary LC Liabilities receiving and retaining any amount in respect of any Cash Collateral provided for it in accordance with the Primary LC Finance Documents, including:
- (i) any Cash Collateral which is provided to protect any EGF Lender against any foreign exchange movement in accordance with the EGF Agreement (as described in clause [5.7] (*Revaluation of New Bank Guarantees*) of the original EGF Agreement), provided that if there is a claim in relation to any Primary LC Liabilities to which that Cash Collateral relates, the Relevant Primary Creditor shall be:

- (A) entitled to receive any amounts in respect of that Cash Collateral up to an amount equal to the relevant foreign exchange movement; and
- (B) pay any remaining amount in respect of that Cash Collateral to the Security Agent for distribution in accordance with Clause 16.1 (*Order of application*); and
- (ii) provided that no Distress Event is continuing at the time of receipt, any Cash Collateral which is provided for the purposes of voluntary prepayment or repayment on the original maturity date under the EGF Agreement, in each case as permitted under the EGF Agreement and this Agreement,

provided that any other Cash Collateral received by any Primary Creditor in respect of any Primary LC Liabilities shall, upon such Primary LC Liabilities becoming due and payable, be paid by such Primary Creditor to the Security Agent for application in accordance with Clause 16.1 (*Application of proceeds*).

- (c) Each Primary Creditor in respect of the Primary LC Liabilities shall upon the request of the Security Agent from time to time promptly notify the Security Agent of the amount of Cash Collateral held by it.
- (d) For the purposes of determining the Majority Senior Subordinated Creditors, the Senior Subordinated Credit Participations of the relevant Senior Subordinated Lenders shall be deemed reduced by the amount of Cash Collateral respectively held by them.
- (e) Any Senior Subordinated Liabilities which benefit from Cash Collateral shall not be taken into account for the purposes of Clause 16.1 (*Order of application*) or Clause 17 (*Equalisation*) to the extent of such Cash Collateral.

#### 16.4 **Treatment of contingent liabilities**

- (a) To the extent that a Primary Creditor has contingent Liabilities outstanding on any date on which a payment is made in accordance with Clause 16.1 (*Order of application*), those contingent Liabilities shall be included within that Primary Creditor's outstanding Liabilities but any amount that would otherwise be payable to that Primary Creditor or its Primary Agent in accordance with Clause 16.1 (*Order of application*) (a "**Reserved Amount**") shall, instead, be reserved for by the Security Agent on behalf of that Primary Creditor.
- (b) If a contingent Liability in respect of which a Reserved Amount has been reserved for by the Security Agent pursuant to paragraph (a) above crystallises, the relevant Primary Creditor may notify the Security Agent and any Reserved Amount in respect of that Liability shall promptly be paid by the Security Agent to the applicable Primary Creditor.
- (c) If a contingent Liability in respect of which a Reserved Amount has been reserved for by the Security Agent pursuant to paragraph (a) above ceases to be a contingent Liability due to the expiry of those contingent Liabilities, the relevant Primary Creditor shall promptly notify the Security Agent and any Reserved Amount in respect of that Liability shall thereafter be held by the Security Agent as proceeds for application pursuant to Clause 16.1 (*Order of application*) at such time as determined by the Security Agent.

#### 16.5 Investment of Cash Proceeds

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

#### 16.6 Currency conversion

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

#### 16.7 Permitted deductions

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

#### 16.8 Good discharge

- (a) Any distribution or payment to be made in respect of the Secured Obligations or the Guaranteed Obligations by the Security Agent may be made to the relevant Primary Agent on behalf of its Primary Creditors (if applicable).
- (b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Security Agent:
  - (i) in the case of a payment made in cash, to the extent of that payment; and
  - (ii) in the case of a distribution of Non-Cash Recoveries, as determined by Clause 14.2 (*Cash value of Non-Cash Recoveries*).

- (c) The Security Agent is under no obligation to make the payments to the Primary Agents under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Primary Creditor are denominated pursuant to the relevant Debt Document.

#### 16.9 Calculation of amounts

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

- (a) notionally convert the Liabilities owed to any person into a common base currency (decided in its discretion by the Security Agent), that notional conversion to be made at the Security Agent's Spot Rate of Exchange in respect of the conversion of the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made into the notional base currency; and
- (b) assume that all amounts received or recovered as a result of the enforcement or realisation of the Security Property or the making of a demand under any Deed of Guarantee are applied in discharge of the Liabilities in accordance with the terms of the Debt Documents under which those Liabilities have arisen.

### 17. Equalisation

#### 17.1 Equalisation definitions

For the purposes of this Clause 17:

**"Enforcement Date"** means the first date (if any) on which a 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 Super Senior Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations or principal amounts (as applicable) outstanding under the Super Senior Finance Documents at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming (pro forma, if appropriate) any transfer of claims between Super Senior Lenders pursuant to any loss-sharing arrangement in the Super Senior Finance Documents which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees, make whole and commission owed to it under the Super Senior Finance Documents;
- (b) in relation to a Senior Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations or principal amounts (as applicable) outstanding under the Senior Finance Documents at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in

respect of those liabilities) and assuming (pro forma, if appropriate) any transfer of claims between Senior Lenders pursuant to any loss-sharing arrangement in the Senior Finance Documents which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees, make whole and commission owed to it under the Senior Finance Documents;

- (c) in relation to a Senior Subordinated Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations or principal amounts (as applicable) outstanding under the Senior Subordinated Finance Documents at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming (pro forma, if appropriate) any transfer of claims between Senior Subordinated Lenders pursuant to any loss-sharing arrangement in the Senior Subordinated Finance Documents which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees, make whole and commission owed to it under the Senior Subordinated Finance Documents and amounts owed to it by a Debtor in respect of any Primary LC Liabilities but excluding any amount owed to it by a Debtor in respect of any Primary LC Liabilities to the extent (and in the amount) that Cash Collateral has been provided by a Debtor in respect of that amount and is available to that Primary Lender pursuant to the relevant Primary LC Finance Document; and
- (d) in relation to a Hedge Counterparty:
  - (i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement in accordance with the terms of that Hedging Agreement on or prior to the Enforcement Date, the amount, if any, payable to it under that Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and
  - (ii) if that Hedge Counterparty has not terminated or closed out any hedging transaction under any Hedging Agreement on or prior to the Enforcement Date:
    - (A) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
    - (B) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that

Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

**"Utilisation"** means a "Utilisation" (or any equivalent term) under and as defined in any Primary Finance Document.

#### **17.2 Implementation of equalisation**

- (a) The Security Agent shall periodically, and in any event following receipt of any Enforcement Proceeds, Guarantee Proceeds or any other amounts in accordance with Clause 9.2 (*Turnover by the Creditors*), consider whether any equalisation payment is required and, if so, implement such equalisation in accordance with this Clause 17.
- (b) Without prejudice to the generality of paragraph (a) above, if the provisions of this Clause 17 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the relevant Primary Creditors shall make appropriate adjustment payments amongst themselves.

#### **17.3 Equalisation**

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



Subordinated Lenders and Hedge Counterparties in such a position that (after taking into account such payments) those losses are borne in those proportions.

#### **17.4 Turnover of enforcement proceeds**

(a) If:

- (i) the Security Agent or any Super Senior Agent 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 (including, for the avoidance of doubt, any Guarantee Proceeds and Enforcement Proceeds) to the relevant Super Senior Creditors but is entitled to pay or distribute those amounts to Primary Creditors who, in accordance with the terms of this Agreement, are subordinated in right and priority of payment to the relevant Super Senior Creditors; and
- (ii) the Super Senior Discharge Date has not yet occurred,

then the Primary Creditors subordinated as mentioned in paragraph (i) above shall make such payments or distributions to the Super Senior Creditors as the Security Agent shall require to place the Super Senior Creditors in the position they would have been in had such amounts been available for application against the Super Senior Liabilities.

(b) If:

- (i) the Security Agent or any Senior Agent 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 Creditors but is entitled to pay or distribute those amounts to Primary Creditors who, in accordance with the terms of this Agreement, are subordinated in right and priority of payment to the relevant Senior Creditors; and
- (ii) the Senior Discharge Date has not yet occurred,

then the Primary Creditors subordinated as mentioned in paragraph (i) above shall make such payments or distributions to the Senior Creditors as the Security Agent shall require to place the Senior Creditors in the position they would have been in had such amounts been available for application against the Senior Liabilities.

#### **17.5 Notification of Exposure**

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

#### **17.6 Default in payment**

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

Creditor(s) or any other Primary Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

## 18. **Miscellaneous Primary Creditor undertakings**

### 18.1 **Consultation on Recapitalisation Plan**

Following the delivery of the Recapitalisation Plan pursuant to any Primary Finance Document, the RCF Lenders, the TL Lenders and the USPP Noteholders agree to consult in good faith with each other in respect of the contents of such Recapitalisation Plan.

### 18.2 **AR Facility**

- (a) The Primary Creditors agree that, to the extent that such Primary Creditors have a deposit account control agreement (or similar arrangement) ("**AR Account Controls**") on a bank account of an AR Originator under the AR Facility, all collections in respect of any AR Facility Receivables that are deposited into such bank account of the AR Originator by an AF Receivable Counterparty shall be transferred by the AR Originator (or a designee on its behalf) to the Receivables Subsidiary, notwithstanding the applicable Account Controls or any exercise or enforcement action thereunder.
- (b) The Primary Creditors acknowledge that the AR Originators have granted the Receivables Subsidiary and its assignees or lenders full rights and interests to any amount received (whether misdirected or otherwise) by the AR Originators in respect of any AR Facility Receivables from an AF Receivable Counterparty. For the avoidance of doubt, no Primary Creditor shall be required to make any payment or account for any loss to the AR Receivables Subsidiary (or any other party) in relation to any AR Facility Receivable as a result of any failure by an AR Originator (or a designee on its behalf) to transfer monies to the AR Receivables Subsidiary.
- (c) For the purpose of this Clause 18.2:

"**AR Facility**" means the receivable financing program between the AR Receivable Subsidiary and [REDACTED].

"**AR Originator**" means a Debtor who is also an Originator as under and as defined in the AR Facility.

"**AR Facility Receivables**" means the AR Originators' receivables of the Debtors which have been assigned to the AR Originator in accordance with the AR Facility.

"**AR Receivable Counterparty**" means an obligor in respect of an AR Facility Receivable.

"**AR Receivables Subsidiary**" means Wood Group Receivables LLC.

## 19. **The Security Agent**

### 19.1 **Appointment of the Security Agent**

- (a) Each other Secured Party and Guaranteed Party appoints the Security Agent to act as its security agent (including, for the purposes of Italian law, as *mandatario con rappresentanza*) under and in connection with the relevant Super Senior Finance Documents, Senior Finance Documents and Senior Subordinated Finance Documents (with the express consent pursuant to articles 1394 and 1395 of the Italian Civil Code, for the purposes of Italian law).

- (b) Any reference in this Agreement to "security agent" means that the Security Agent is acting as security agent and security trustee (or as *mandatario con representanza*).
- (c) In connection with the ratification and raising of any Primary Finance Document (or any novation, amendment, supplement, restatement, replacement or assignment of the same) into the status of a Spanish Public Document, the Security Agent shall act as the representative of each Secured Party and is hereby authorised on behalf of each Secured Party to appear before a Spanish notary, enter into, enforce the rights of each Secured Party and represent each Secured Party in respect of the granting of any Spanish Public Document, including the notarisation of this Agreement or any other Finance Document (or any novation, amendment, supplement, restatement, replacement or assignment of the same).
- (d) Each Secured Party hereby releases the Security Agent, to the extent legally possible, from any restriction related with conflict of interest, representing multiple parties (*multirepresentación*) and self-dealing (*autocontratación*).
- (e) Notwithstanding the above, the Security Agent, acting at its discretion and to the extent reasonably possible (but subject to the terms of this Agreement, may invite the Secured Parties to enter into and/or to enforce the rights under each Finance Document (including any Spanish Security Document) jointly with the Security Agent. For the avoidance of doubt, the provision above does not grant any right to the Secured Parties to enter into and/or to enforce the rights under each Finance Document (including any Spanish Security Document) jointly with the Security Agent.
- (f) Each Secured Party hereby undertakes that, promptly upon request by the Security Agent, such Secured Party will ratify and confirm all transactions entered into and actions carried out by the Security Agent in the proper exercise of the power granted to it by the Secured Parties above.

#### 19.2 **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) To the extent that the security trusts established by this Agreement are not effective to confer the benefit of any Transaction Security upon any Secured Party:
  - (i) the Security Agent shall act as security agent, and not as security trustee, for the relevant Secured Party in respect of that Transaction Security; and
  - (ii) paragraph (a) above shall not apply to that Secured Party and that Transaction Security.
- (c) Paragraph (b) above shall not affect or limit paragraph (c) of Clause 19.3 (*Parallel Debt (Covenant to pay the Security Agent)*) with respect to any Security Document.
- (d) Each of the Primary Creditors authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions.

#### 19.3 **Parallel Debt (Covenant to pay the Security Agent)**

- (a) Each Debtor hereby irrevocably and unconditionally undertakes to pay to the Security Agent amounts equal to any amounts owing from time to time by that Debtor to any Secured Party or

any Guaranteed Party under any Super Senior Finance Document, any Senior Finance Document and any Senior Subordinated Finance Document as and when those amounts are due.

- (b) Each Debtor and the Security Agent acknowledge that the obligations of each Debtor under paragraph (a) above are several and are separate and independent from, and shall not in any way limit or affect, the corresponding obligations of that Debtor to any Secured Party or any Guaranteed Party under any Super Senior Finance Documents, any Senior Finance Document and any Senior Subordinated Finance Document (its "**Corresponding Debt**") nor shall the amounts for which each Debtor is liable under paragraph (a) above (its "**Parallel Debt**") be limited or affected in any way by its Corresponding Debt provided that:
  - (i) the Parallel Debt of each Debtor shall be decreased to the extent that its Corresponding Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and
  - (ii) the Corresponding Debt of each Debtor shall be decreased to the extent that its Parallel Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and
  - (iii) the amount of the Parallel Debt of a Debtor shall at all times be equal to the amount of its Corresponding Debt.
- (c) For the purpose of this Clause 19.3, the Security Agent acts in its own name and not as a trustee, and its claims in respect of the Parallel Debt shall not be held on trust. The Security granted under the Security Documents to the Security Agent to secure the Parallel Debt is granted to the Security Agent in its capacity as creditor of the Parallel Debt and shall not be held on trust.
- (d) All monies received or recovered by the Security Agent pursuant to this Clause 19.3, and all amounts received or recovered by the Security Agent from or by the enforcement of any Security granted to secure the Parallel Debt, shall be applied in accordance with Clause 16.1 (*Order of application*).
- (e) Without limiting or affecting the Security Agent's rights against the Debtors (whether under this Clause 19.3 or under any other provision of the Super Senior Finance Documents, the Senior Finance Documents or the Senior Subordinated Finance Documents), each Debtor acknowledges that:
  - (i) nothing in this Clause 19.3 shall impose any obligation on the Security Agent to advance any sum to any Debtor or otherwise under any Super Senior Finance Document, any Senior Finance Document or any Senior Subordinated Finance Document, except in its capacity as a Primary Lender or Hedge Counterparty; and
  - (ii) for the purpose of any vote taken under any Super Senior Finance Document, any Senior Finance Document or any Senior Subordinated Finance Document, the Security Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Primary Lender or Hedge Counterparty.
- (f) For the purposes of paragraph (i) of Clause 16.1 (*Order of application*), the Parallel Debt of each Debtor shall be deemed to be owing the Primary Agents, the Primary Arrangers, the Primary Lenders and the Hedge Counterparties (as applicable).

- (g) Paragraphs (a) to (f) above do not apply to any Transaction Security Document governed by Italian law or Norwegian law.

#### 19.4 Instructions

- (a) The Security Agent shall:
- (i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Instructing Group; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in accordance with instructions given to it by that Creditor or group of Creditors).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction from the Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Instructing Group shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties and Guaranteed Parties.
- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties and the Guaranteed Parties including, without limitation, Clauses 19.7 (*No duty to account*) to Clause 19.12 (*Exclusion of liability*), Clause 19.15 (*Confidentiality*) to Clause 19.22 (*Custodians and nominees*) and Clause 19.25 (*Acceptance of title*) to Clause 19.28 (*Disapplication of Trustee Acts*); 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 12 (*Non-Distressed Disposals*);
    - (B) Clause 16.1 (*Order of application*);
    - (C) Clause 16.2 (*Prospective liabilities*);
    - (D) Clause 16.3 (*Treatment of Cash Collateral*); and
    - (E) Clause 16.7 (*Permitted deductions*).

- (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 the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.
- (f) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:
  - (i) it has not received any instructions as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,
 the Security Agent shall:
  - (A) other than where paragraph (B) below applies, do so having regard to the interests of all the Secured Parties and the Guaranteed Parties; or
  - (B) if (in its opinion) there is a Creditor Conflict in relation to the matter in respect of which the discretion is to be exercised, do so having primary regard to the interests of all the Super Senior Creditors or, after the Super Senior Discharge Date, all the Senior Creditors.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the provisions of Clause 11 (*Enforcement of Transaction Security and Deeds of Guarantee*) in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

#### 19.5 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 Primary Agent a copy of any document received by the Security Agent from any Debtor under any Debt Document; and
  - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Debt Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) Without prejudice to Clause 23.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Primary Creditors.

(e) To the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, the Security Agent shall upon a request by that Party, promptly notify that Party of the relevant Security Agent's Spot Rate of Exchange.

(f) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied).

**19.6 No fiduciary duties to Debtors**

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

**19.7 No duty to account**

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

**19.8 Business with the Group**

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

**19.9 Rights and discretions**

(a) The Security Agent may:

(i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

(ii) assume that:

(A) any instructions received by it from the Instructing Group, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents;

(B) unless it has received notice of revocation, that those instructions have not been revoked; and

(C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Debt Documents for so acting have been satisfied; and

(iii) rely on a certificate from any person:

(A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

(B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

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

(b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Parties and agent for the Guaranteed Parties) that:

(i) no Default has occurred;

- (ii) any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and
  - (iii) any notice made by the Company is made on behalf of and with the consent and knowledge of all the Debtors.
- (c) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Primary Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
 unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- (h) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

#### **19.10 Responsibility for documentation**

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

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, a Debtor or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;



- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Secured Party or any Guaranteed 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.

#### 19.11 **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.

#### 19.12 **Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document or the Security Property;
  - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this paragraph (b) subject to Clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
- (i) any "know your customer" or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Primary Creditor,
- on behalf of any Primary Creditor and each Primary Creditor confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.
- (d) Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Debt Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

#### **19.13 Primary Creditors' indemnity to the Security Agent**

- (a) Each Primary Creditor (other than any Primary Agent but including each USPP Noteholder) shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Primary Creditors for the time being (or, if the Liabilities due to the Primary Creditors are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).

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

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

- (c) Subject to paragraph (d) below, the Company shall immediately on demand reimburse any Primary Creditor for any payment that 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 Primary Creditor claims reimbursement relates to a liability of the Security Agent to a Debtor.

#### **19.14 Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Primary Creditors and the Company.
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the Primary Creditors and the Company, in which case the Instructing Group may appoint a successor Security Agent.
- (c) If the Instructing Group has not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Primary Agents) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents. The Company shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
- (i) the appointment of a successor; and

- (ii) the transfer of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 19.26 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 18 and Clause 22.1 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Instructing Group may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Company.

#### **19.15 Confidentiality**

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

#### **19.16 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) Each Hedge Counterparty, Credit Card Liabilities Lender, Surety Bonds Lender and Guarantee Lines Lender shall promptly provide to the Security Agent copies of all Hedging Agreements, Credit Card Liabilities Agreements, Surety Bonds Agreements and Guarantee Lines Agreements to which that Hedge Counterparty, Credit Card Liabilities Lender, Surety Bonds Lender and Guarantee Lines Lender (as applicable) is a party, unless copies thereof have already been shared by or on behalf of the Company.

#### **19.17 Credit appraisal by the Secured Parties and Guaranteed Parties**

Without affecting the responsibility of any Debtor for information supplied by it or on its behalf in connection with any Debt Document, each Secured Party and each Guaranteed 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 member of the Group;

- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (c) whether that Secured Party or that Guaranteed Party (as applicable) has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Security Property, the transactions contemplated by the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

**19.18 Security Agent's management time and additional remuneration**

- (a) Any amount payable to the Security Agent under Clause 19.13 (*Primary Creditors' indemnity to the Security Agent*), Clause 21 (*Costs and expenses*) or Clause 22.1 (*Indemnity to the Security Agent*) shall, for so long as an Event of Default is continuing, include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Company and the Primary Creditors, and is in addition to any other fee paid or payable to the Security Agent.
- (b) Without prejudice to paragraph (a) above, in the event of:
  - (i) a Default; or
  - (ii) the Security Agent being requested by a Debtor or the Instructing Group to undertake duties which the Security Agent and the Company agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Debt Documents; or
  - (iii) the Security Agent and the Company agreeing that it is otherwise appropriate in the circumstances,

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

- (c) If the Security Agent and the Company fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Company or, failing approval, nominated (on the application of the Security Agent) by the President

for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Company) and the determination of any investment bank shall be final and binding upon the Parties.

**19.19 Reliance and engagement letters**

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

**19.20 No responsibility to perfect Transaction Security**

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

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

**19.21 Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:

- (i) to insure any of the Charged Property;
- (ii) to require any other person to maintain any insurance; or
- (iii) to verify any obligation to arrange or maintain insurance contained in any Debt Document,

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

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

**19.22 Custodians and nominees**

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets held by the Security Agent as trustee or security agent for the Secured Parties and the Guaranteed Parties 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.

#### **19.23 Delegation by the Security Agent**

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

#### **19.24 Additional Security Agents**

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

#### **19.25 Acceptance of title**

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

#### 19.26 **Winding up of trust**

If the Security Agent, with the approval of each Primary Agent, determines that:

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

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 19.14 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

#### 19.27 **Powers supplemental to Trustee Acts**

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

#### 19.28 **Disapplication of Trustee Acts**

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

#### 19.29 **Subordinated Creditor, Intra-Group Lenders and Debtors: Power of Attorney**

Each Subordinated Creditor, each Intra-Group Lender and each Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent (at the cost of the relevant Subordinated Creditor, the relevant Intra-Group Lender or Debtor and without any consent, sanction, authority or further confirmation from any Subordinated Creditor, any Intra-Group Lender or Debtor) to be its attorney to do anything which that Subordinated Creditor, that Intra-Group Lender or Debtor has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Security Agent may delegate that power on such terms as it sees fit).

#### 19.30 **Security Agent's protections**

Any protection given to the Security Agent under this Clause 18 shall apply to any action taken by, or instructions given to, the Security Agent under any other provision of this Agreement.

#### 19.31 **Chile**

- (a) Each of the Debtors (other than the Company) hereby authorises the Company:



- (i) to sign and accept on its behalf the appointment of the Security Agent as collateral agent in Chile (*agente de garantías*) per the terms of Article 18 of Law No. 20,190 of Chile, authorising it to take such actions on its behalf with special authorization to self-contract (*autocontratar*) and to exercise the authorities stated in this Agreement, together with such actions and powers as are incidental thereto, including, but not limited to carrying out all acts, execute all public or private instruments, and enter into all agreements that should be necessary, in Chile or to have effect in Chile, for purposes of completing, amending, expanding, correcting, and/or perfecting, the Deed of Appointment /*Contrato de Agencia de Garantías*/ and the designation of the Security Agent as collateral agent in Chile (*agente de garantías*); and
  - (ii) to execute, re-execute or confirm before a Chilean notary public the Agreement or any other financing documents that contain subordination provisions for purpose of complying with the formalities set forth in article 2489 of the Chilean Civil Code) in relation to subordination of credits.
- (b) Each of the Secured Parties (other than the Security Agent) hereby authorises the Security Agent:
- (i) to sign on its behalf the appointment of the Security Agent as collateral agent in Chile (*agente de garantías*) per the terms of Article 18 of Law No. 20,190 of Chile, authorising it to take such actions on its behalf with special authorization to self-contract (*autocontratar*) and to exercise the authorities stated in this Agreement, together with such actions and powers as are incidental thereto, including, but not limited to carrying out all acts, execute all public or private instruments, and enter into all agreements that should be necessary, in Chile or to have effect in Chile, for purposes of completing, amending, expanding, correcting, and/or perfecting, the Deed of Appointment /*Contrato de Agencia de Garantías*/ and the designation of the Security Agent as collateral agent in Chile (*agente de garantías*); and
  - (ii) to execute, re-execute or confirm before a Chilean notary public the Agreement or any other financing documents that contain subordination provisions for purpose of complying with the formalities set forth in article 2489 of the Chilean Civil Code) in relation to subordination of credits.

#### 19.32 Italy

- (a) Each other Secured Party:
- (i) appoints the Security Agent as common representative (*mandatario con rappresentanza*) for the purposes of executing in its name and on behalf of the Secured Parties the Italian Law Security Documents and security agent under and for the purposes of any Italian Law Security Document;
  - (ii) grants the Security Agent the power to negotiate and approve the terms and conditions of such Italian Law Security Documents and any amendment and/or restatement, confirmation and/or confirmation and extension thereof, execute any other agreement or instrument, give or receive any notice or declaration, identify and specify to third parties the names of the Secured Parties at any given date, collect any and all amounts due to the Secured Parties under each Italian Law Security Document and take any other action

in relation to the creation, perfection, maintenance, confirmation and extension, enforcement and release of the security created thereunder and the performance of the Italian Law Security Documents, any amendments and/or waivers thereof and any other such agreement, instrument, notices or declaration, in each case, in the name and on behalf of the Secured Parties;

- (iii) confirms that the Security Agent is entitled to release any Italian Law Security Document upon payment in full of any amounts due thereunder before the expiry of the applicable claw-back or ineffectiveness period, subject to satisfaction of the conditions set out in the Italian Law Security Documents and this Agreement;
  - (iv) confirms that, in the event that any security created under the Italian Law Security Documents remains registered in the name of a Secured Party after it has ceased to be a Secured Party, then the Security Agent shall remain empowered to execute a release of such security in its name and on its behalf;
  - (v) undertakes to grant any power of attorney as it might be needed or appropriate for the Security Agent to act in accordance with and within the limits of this Agreement, the Primary Finance Documents and any Italian Law Security Document;
  - (vi) undertakes to ratify and approve any such action taken in the name and on behalf of the Italian Secured Parties by the Security Agent acting in its appointed capacity; and
  - (vii) authorises the Security Agent to, in its name and on its behalf, exercise such rights, powers and discretions as are delegated to the Security Agent by the terms hereof, the Finance Documents and the Italian Law Security Documents together with all rights, powers and discretions as are incidental thereto or necessary to give effect to the provisions contained herein.
- (b) Each other Secured Party acknowledges and agrees that the Security Agent may enter in its name and on its behalf as direct representative into contractual arrangements pursuant to or in connection with the Italian Law Security Documents to which the Security Agent is also a party (in its capacity as common representative or otherwise) and expressly authorises the Security Agent, pursuant to article 1395 of the Italian Civil Code. The Secured Parties expressly waive any right they may have under article 1394 of the Italian Civil Code in respect of contractual arrangements entered into by the Security Agent in their name and on their behalf pursuant to or in connection with the Italian Law Security Documents and releases the Security Agent from any restrictions on representing several persons and self-dealing under any applicable law.
- (c) Each other Secured Party (other than the Security Agent) agrees that the Security Agent will be exempted from any reporting duty (*obbligo di rendiconto*) pursuant to article 1713 of the Italian Civil Code, save as in the case of its gross negligence (*colpa grave*) and wilful misconduct (*dolo*).

### 19.33 Scotland

In respect of the Security Agent's discretion to grant consent pursuant to clause [6.6] of the original form of the Scottish Security Agreements or clause [11.1.1] of the original form of the Scottish Share Pledges, where the Security Agent seeks instruction from the Creditors (or any of them) as to the exercise of such discretion, the relevant Creditors shall give full consideration to the Agreed Security Principles in the provision of such requested instruction.

#### 19.34 Spain

- (a) In relation to the Spanish Security Documents, the Security Agent shall:
- (i) accept, hold, administer and (subject to the same having become enforceable and to the terms of this Agreement) enforce and release any such Spanish Security Document granted, transferred or assigned or otherwise granted under a non-accessory security right to the Secured Parties or to the Security Agent in its own name as security agent for the benefit of the Secured Parties or on behalf of the Secured Parties; and
  - (ii) administer, enforce and (subject to the same having become enforceable and to the terms of this Agreement) release in the name of and on behalf of the Secured Parties any Spanish Security Document which is pledged or otherwise transferred to any Secured Party under an accessory security right in the name and on behalf of the Secured Parties.
- (b) Each Secured Party (other than the Security Agent) hereby authorises the Security Agent to accept as its representative any mortgage, pledge or other creation of any accessory security right made to such Secured Party in relation to the Debt Documents and to act and execute on its behalf as its representative, subject to the terms of the Debt Documents, amendments or releases of, accessions and alterations to, and to carry out similar dealings with regard to any Spanish Security Document which creates a mortgage, pledge or any other accessory security right.
- (c) Each relevant Debtor and each relevant Secured Party agrees that the Spanish Security Documents entered into between them in addition to this Agreement shall be subject to the relevant terms of this Agreement.
- (d) The Security Agent shall and is hereby authorised by each of the Secured Parties (and to the extent it may have any interest therein, every other party hereto) to execute on behalf of itself and each other Party where relevant without the need for any further referral to, or authority from, any other person all necessary releases or confirmations of any security created under the Spanish Security Documents in relation to the disposal of any asset which is permitted under the Spanish Security Documents or consented or agreed upon in accordance with the Debt Documents.
- (e) Each Secured Party hereby irrevocably authorises the Security Agent to act on its behalf and if required under applicable law, or if otherwise appropriate, in its name and on its behalf in connection with the acceptance, preparation, execution, enforcement and delivery of the Spanish Security Documents and the perfection and monitoring of the Spanish Security Documents, including but not limited to, any share pledge, mortgage, assignment or transfer of title for security purposes. The Security Agent is authorised to make all statements necessary or appropriate in connection with the foregoing sentence and collect all amounts payable to any Secured Party in respect of any Security Document in one or more accounts opened by the Security Agent for such purpose, and the Security Agent shall thereafter distribute any such amounts due to the Secured Parties in accordance with the provisions of this Agreement.
- (f) It is hereby agreed that, in relation to any jurisdiction the courts of which would not recognise or give effect to the trust expressed to be created by this Clause, the relationship of the Secured Parties to the Security Agent in relation to any Spanish Security Document shall be construed as one of principal and agent but, to the extent permissible under the laws of such jurisdiction, all the other provisions of this Clause shall have full force and effect between the Parties.

## 20. **Changes to the Parties**

### 20.1 **Assignments and transfers**

No Party may:

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

in respect of any Debt Documents or the Liabilities except as permitted by Clause 18 (*The Security Agent*) or this Clause 20.

### 20.2 **No change of Subordinated Creditor**

No Subordinated Creditor may:

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

in respect of the Subordinated Liabilities owed to it until after the Final Discharge Date.

### 20.3 **Affiliate of Subordinated Creditor**

If any Affiliate of a Subordinated Creditor is a creditor of a Debtor in respect of any Borrowings (as defined in the RCF Agreement (or any equivalent provisions in any other Primary Finance Document)) (other than financial indebtedness permitted pursuant to clause [21.18] (*Affiliate transactions*)) of the RCF Agreement (or any equivalent provision in any other Primary Finance Document), that Subordinated Creditor will procure that such Affiliate accedes to this Agreement as a Subordinated Creditor pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

### 20.4 **Change of Primary Lender**

Subject to Clauses 20.5 (*Change of Senior Subordinated Creditor under Existing Deed of Guarantee*) and 20.6 (*Change of Hedge Counterparty*), a Primary Lender may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights 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 Primary Finance Documents to which it is a party; and
- (ii) any assignee or transferee has (if not already Party as a Super Senior Lender, Senior Lender or Senior Subordinated Lender (as the case may be)) acceded to this Agreement, as a Super Senior Lender, Senior Lender or Senior Subordinated Lender (as the case may be), pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

### 20.5 **Change of Senior Subordinated Creditor under Existing Deed of Guarantee**

A Senior Subordinated Creditor under an Existing Deed of Guarantee may:

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

in respect of any Existing Deed of Guarantee if:

- (i) that assignment or transfer is in accordance with the terms of the Existing Deed of Guarantee to which it is a party; and
- (ii) any assignee or transferee has (if not already a Party as a Senior Subordinated Creditor) acceded to this Agreement, as a Senior Subordinated Creditor, pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

**20.6 Change of Hedge Counterparty**

A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already a Party as a Hedge Counterparty) acceded to this Agreement as a Hedge Counterparty, pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

**20.7 Change of Primary Agent**

No person shall become a Primary Agent unless at the same time, it accedes to this Agreement as a Super Senior Agent, Senior Agent or Senior Subordinated Agent (as the case may be), pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

**20.8 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:

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

in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already a Party as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 20.10 (*Creditor Accession Undertaking*).

**20.9 New Intra-Group Lender**

If any Intra-Group Lender or any member of the Group makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in each case for an amount exceeding U.S.\$5,000,000 (or its equivalent in any other currency), the Company will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Intra-Group Lender) accedes to this Agreement as an Intra-Group Lender, pursuant to Clause 20.10 (*Creditor Accession Undertaking*) within 30 days of the date on which such loan, credit or financial arrangement is made. If any member of the Group has acceded to this Agreement in any capacity other than as an Intra-Group Lender, it shall be deemed also to have acceded to this Agreement as an Intra-Group Lender.

**20.10 Creditor Accession Undertaking**

With effect from the date of acceptance by the Security Agent of a Creditor Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor Accession Undertaking:

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

#### 20.11 **New Debtor**

- (a) If any member of the Group:
  - (i) incurs any Liabilities (other than any Intra-Group Liabilities for the amount equal to or less than U.S.\$5,000,000 (or its equivalent in any other currency)); or
  - (ii) gives any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities (other than any Intra-Group Liabilities for the amount equal to or less than U.S.\$5,000,000 (or its equivalent in any other currency)),

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 (b) below, no later than contemporaneously with the incurrence of those Liabilities or the giving of that assurance or (in the case of Intra-Group Liabilities) within 30 days of the date on which such loan, credit or financial arrangement is made.

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

#### 20.12 **Additional parties**

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor Accession Undertaking delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Primary Finance Document.
- (b) The Security Agent shall only be obliged to sign and accept a Debtor Accession Deed or Creditor Accession Undertaking delivered to it once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the accession by the prospective party to this Agreement.
- (c) Each Party shall promptly upon the request of the Security Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Security Agent (for itself) in order for the Security Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Debt Documents.

### 20.13 Resignation of a Debtor

- (a) The Company may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (b) The Security Agent shall accept a Debtor Resignation Request and notify the Company and each other Party of its acceptance if:
  - (i) the Company has confirmed that no Default is continuing or would result from the acceptance of the Debtor Resignation Request;
  - (ii) to the extent that the Super Senior Discharge Date has not occurred, each Super Senior Agent notifies the Security Agent that that Debtor is not, or has ceased to be, a borrower or a guarantor under, and is under no actual or contingent obligations in respect of, the Super Senior Finance Documents to which such Super Senior Agent is a party;
  - (iii) to the extent that the Senior Discharge Date has not occurred, each Senior Agent notifies the Security Agent that that Debtor is not, or has ceased to be, a borrower or a guarantor under, and is under no actual or contingent obligations in respect of, the Senior Finance Documents to which such Senior Agent is a party;
  - (iv) to the extent that the Senior Subordinated Discharge Date has not occurred:
    - (A) each Senior Subordinated Agent (other than any Hedge Counterparty, any Credit Cards Liabilities Lender, any Surety Bonds Lender and any Guarantee Lines Lender) notifies the Security Agent that that Debtor is not, or has ceased to be, a borrower or a guarantor under, and is under no actual or contingent obligations in respect of, the Senior Subordinated Finance Documents to which such Senior Subordinated Agent is a party; and
    - (B) each Hedge Counterparty, each Credit Cards Liabilities Lender, each Surety Bonds Lender and each Guarantee Lines Lender notifies the Security Agent that that Debtor is under no actual or contingent obligations to that Hedge Counterparty, Credit Cards Liabilities Lender, Surety Bonds Lender or Guarantee Lines Lender (as applicable) in respect of the Hedging Liabilities, Credit Cards Liabilities, Surety Bonds Liabilities or Guarantee Lines Liabilities (as applicable); and
  - (v) the Company confirms that that Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities and the Subordinated Liabilities.
- (c) Upon notification by the Security Agent to the Company of its acceptance of the resignation of a Debtor, that member of the Group shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.

## 21. Costs and expenses

### 21.1 Transaction expenses

The Company shall, promptly on demand, within 10 Business Days of demand, pay the Security Agent the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent and by any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of:

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

#### **21.2 Amendment costs**

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

#### **21.3 Enforcement and preservation costs**

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

#### **21.4 Stamp taxes**

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

#### **21.5 Interest on demand**

If any Creditor or any Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is 1 per cent. per annum over the rate at which the Security Agent would be able to obtain by placing on deposit with a leading bank an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select provided that if any such rate is below zero, that rate will be deemed to be zero.

### **22. Other Indemnities**

#### **22.1 Indemnity to the Security Agent**

- (a) Each Debtor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them as a result of:
  - (i) any failure by the Company to comply with its obligations under Clause 21 (*Costs and expenses*);
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Transaction Security;



- (iv) the exercise or purported exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;
  - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
  - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
  - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 22.1 will not be prejudiced by any release or disposal under Clause 13 (*Distressed Disposals and Appropriation*) taking into account the operation of that Clause 13.
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties and the Guaranteed 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 this Clause 22.1 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.

## **22.2 Company's indemnity to Primary Creditors**

The Company shall promptly and as principal obligor indemnify each Primary Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 13 (*Distressed Disposals and Appropriation*).

## **23. Information**

### **23.1 Dealings with Security Agent and Primary Agents**

Subject to clause [30.5] (*Communication when Agent is Impaired Agent*) of the RCF Agreement (or any similar clause in any other Primary Finance Document), each Primary Creditor shall deal with the Security Agent exclusively through its Primary Agent (if any, and otherwise shall deal directly).

### **23.2 Disclosure between Primary Creditors and Security Agent**

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

### **23.3 Notification of prescribed events**

- (a) If an Event of Default or Default either occurs or ceases to be continuing the relevant Primary Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent.

- (b) If an Acceleration Event occurs the relevant Primary Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (c) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security or makes a demand under any Deed of Guarantee it shall notify each Secured Party and each Guaranteed Party of that action.
- (d) If any Primary Creditor intends to exercise any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security or make a demand under any Deed of Guarantee it shall give reasonable prior notice to the Security Agent and the Security Agent shall, upon receiving that notification, notify each Secured Party and each Guaranteed Party of that action.
- (e) If any Intra-Group Lender intends to exercise any right it may have to take action in accordance with Clause 6.7 (*Permitted Enforcement: Intra-Group Lenders*) it shall give reasonable prior notice to the Security Agent and the Security Agent shall, upon receiving that notification, notify each Secured Party and each Guaranteed Party of that action.
- (f) If a Subordinated Creditor intends to exercise any right it may have to take action in accordance with Clause 7.9 (*Permitted Enforcement: Subordinated Creditor*) it shall give reasonable prior notice to the Security Agent and the Security Agent shall, upon receiving that notification, notify each Secured Party and each Guaranteed Party of that action.
- (g) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Primary Agent.
- (h) If a Mandatory Prepayment is waived the relevant Primary Agent shall notify the Security Agent of the amount of the Mandatory Prepayment waived and the Security Agent shall, upon receiving that notification, notify each other Primary Agent.

## 24. Notices

### 24.1 Communications in writing

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

### 24.2 Security Agent's communications with Primary Creditors

The Security Agent shall be entitled to carry out all dealings with the Primary Creditors through their respective Primary Agents and may give to the Primary Agents, as applicable, any notice, document or other communication required to be given by the Security Agent to a Primary Creditor.

### 24.3 Addresses

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

- (a) in the case of the Company, that identified with its name below;
- (b) in the case of the Security Agent, that identified with its name below; and

- (c) in the case of each other Party, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,

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

#### **24.4 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
  - (i) if by way of electronic mail address, under the terms of Clause 24.6 (*Electronic communication*); or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address, and, if a particular department or officer is specified as part of its address details provided under Clause 24.3 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Company in accordance with this Clause 24.4 will be deemed to have been made or delivered to each of the Debtors.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **24.5 Notification of address and electronic mail address**

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

#### **24.6 Electronic communication**

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

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

#### **24.7 English language**

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

### **25. Preservation**

#### **25.1 Partial invalidity**

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

#### **25.2 No impairment**

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

#### **25.3 Remedies and waivers**

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

#### 25.4 **Waiver of defences**

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

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

#### 25.5 **Priorities not affected**

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

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

## 26. Consents, Amendments and Override

### 26.1 Required consents

(a) Subject to paragraph (b) below and Clauses 26.4 (*Exceptions*), 26.5 (*Excluded Super Senior Credit Participations, Senior Credit Participations and Senior Subordinated Credit Participations*) and 26.6 (*Disenfranchisement of Sirius Affiliates*), this Agreement may be amended or waived only with the consent of:

- (i) the Majority Super Senior Creditors;
- (ii) the Majority Senior Creditors;
- (iii) the Majority Senior Subordinated Creditors;
- (iv) the Security Agent; and
- (v) the Company,

and any such amendment or waiver will be binding on all Parties.

(b) An amendment or waiver that has the effect of changing or which relates to:

- (i) definitions of "Credit Card Liabilities Designated Amount", "Credit Card Liabilities Maximum Amount", "Guarantee Lines Liabilities Designated Amount", "Guarantee Lines Liabilities Maximum Amount", "Hedging Liabilities Designated Amount", "Hedging Liabilities Maximum Amount", "Instructing Group", "Majority Senior Creditors", "Majority Senior Subordinated Creditors", "Majority Super Senior Creditors", "Plan B Liabilities Designated Amount", "Plan B Liabilities Maximum Amount", "Sirius Additional Funding Designated Amount", "Super Majority Primary Creditors" and "Surety Bonds Liabilities Designated Amount" in Clause 1.1 (*Definitions*);
- (ii) Clause 2.4 (*Transaction Security release – Senior Subordinated Liabilities (First Release Date)*), Clause 3.1 (*Payment of Super Senior Liabilities*), Clause 3.3 (*Restrictions on amendments and waivers: Super Senior Liabilities*), Clause 3.5 (*Designation of Plan B Agreements*), Clause 4.1 (*Payment of Senior Liabilities*), Clause 4.3 (*Restrictions on amendments and waivers: Senior Liabilities*), Clause 5.1 (*Payment of Senior Subordinated Liabilities*), Clause 5.3 (*Restrictions on amendments and waivers: Senior Subordinated Liabilities*), Clause 9 (*Turnover of Receipts*), Clause 10 (*Redistribution*), Clauses 11.2 (*Enforcement instructions*), Clause 11.3 (*Overriding principle*), Clause 12 (*Non-Distressed Disposals*), Clause 13 (*Distressed Disposals and Appropriation*), Clause 16 (*Application of proceeds*), Clause 17 (*Equalisation*), Clause 19.4 (*Instructions*) or this Clause 26; or
- (iii) the order of priority or subordination or the application of recoveries (including non-cash recoveries) under this Agreement,

shall not be made without the consent of:

- (A) subject to paragraph (F) below, the Primary Agents other than the Sirius Initial Funding Agent;

- (B) subject to paragraph (F) below, each Primary Lender, other than the Sirius Initial Funding Lender;
- (C) each Hedge Counterparty;
- (D) the Security Agent;
- (E) the Company; and
- (F) the Sirius Initial Funding Agent and the Sirius Initial Funding Lender so long as each is a Senior Agent or Senior Lender, as applicable, and provided that, in relation to amendments described in paragraph (i) above, the Plan B Date has occurred,

provided that an amendment or waiver of any definition if its effect would be to amend or waive any provision described in paragraphs (i)-(iii) above shall not be made without the consent of the relevant Parties described above which consent would be necessary to amend that provision.

- (c) Any consents required in connection with actions taken under or in respect of Clause 3.3 (*Restrictions on amendments and waivers: Super Senior Liabilities*), Clause 4.3 (*Restrictions on amendments and waivers: Senior Liabilities*), Clause 5.3 (*Restriction on amendments and waivers: Senior Subordinated Liabilities*) or Clause 7.5 (*Amendments and waivers: Subordinated Creditor*) shall be in addition to any consents required under the other Primary Finance Documents and nothing in those clauses shall be construed as amending or overriding any consent requirements in those other Primary Finance Documents.

#### **26.2 Amendments and waivers: Transaction Security Documents and Deeds of Guarantee**

- (a) Subject to paragraphs (b)-(d) below and paragraph (c) of Clause 26.4 (*Exceptions*), any amendment or waiver of, or consent under, any Transaction Security Document or the Deed of Guarantee shall not be made without the prior consent of the Primary Creditors whose consent to that amendment, waiver or consent is required under the relevant Primary Finance Documents.
- (b) Any Existing Deed of Guarantee may be amended or waived only with the consent of the Existing Guarantor and the Primary Creditor which are party to it.
- (c) Any Existing PNG Loan Security Document may be amended or waived only with the consent of the Existing PNG Loan Security Provider and the Primary Creditor which are party to it.
- (d) Any Guarantor under the Initial Deed of Guarantee may resign in accordance with requirements of the Initial Deed of Guarantee and other Primary Finance Documents (if any).

#### **26.3 Effectiveness**

- (a) Any amendment, waiver or consent given in accordance with this Clause 26 will be binding on all Parties and the Security Agent may effect, on behalf of any Primary Creditor, any amendment, waiver or consent permitted by this Clause 26.
- (b) Without prejudice to the generality of Clause 19.9 (*Rights and discretions*) the Security Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

#### 26.4 Exceptions

- (a) Subject to paragraphs (c)-(e) below, an amendment, waiver or consent which relates to the rights or obligations of a Primary Agent, a Primary Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty (to the extent that the amendment, waiver or consent would adversely affect that Hedge Counterparty) may not be effected without the consent of that Primary Agent or, as the case may be, that Primary Arranger, the Security Agent or that Hedge Counterparty.
- (b) Subject to paragraphs (c)-(e) below, any amendment (or waiver which has the effect of amendment) not already contemplated by this Agreement that has the effect of changing or which relates to the rights of, and which imposes new or additional obligations on or withdraws or reduces the rights of, a Sirius Lender in relation to:
  - (i) its enforcement rights under this Agreement (including under Clause 4.7 (*Permitted Enforcement: Senior Creditors*) or Clause 7.9 (*Permitted Enforcement: Subordinated Creditor*));
  - (ii) its voting or consent rights (including, where required under this Agreement, taking into account its Credit Participations for the purposes of ascertaining the Majority Senior Creditors, approving a Consent, participating in any vote of the Secured Creditors, or approving any other action under this Agreement);
  - (iii) the amendment provisions (including under Clause 4.2 (*Amendments and waivers: Senior Creditors*), Clause 4.3 (*Restriction on amendments and waivers: Senior Liabilities*), Clause 7.5 (*Amendments and waivers: Subordinated Creditor*) or this Clause 26 (*Consents, Amendments and Override*));
  - (iv) its economic rights (including any Reserved Matter) under the Sirius Initial Funding Agreement or any Sirius Additional Funding Agreement;
  - (v) its Liabilities being guaranteed or secured by the Transaction Security (or the ranking of its Liabilities in relation to Transaction Security) or being offered Security in respect of its Liabilities (including under Clause 2.2 (*Transaction Security and Deeds of Guarantee*), Clause 3.6 (*Security: Super Senior Creditors*), Clause 4.5 (*Security: Senior Creditors*) or Clause 5.10 (*Security: Senior Subordinated Creditors*);
  - (vi) any provision relating to prepayments which could permit the Group to make a prepayment of the Sirius Initial Funding Liabilities without the consent of the relevant Sirius Lender to the extent that such prepayment would constitute a New Pre-Completion EoD Trigger (as defined in any Primary Finance Document);
  - (vii) Clause 10 (*Redistribution*) or Clause 16 (*Application of proceeds*); or
  - (viii) the order of priority or subordination under this Agreement,may not be effected without the consent of such Sirius Lender.
- (c) Neither paragraph (a) above nor paragraph (a) of Clause 26.2 (*Amendments and waivers: Transaction Security Documents and Deeds of Guarantee*) shall apply:
  - (i) to any release of Transaction Security, Deed of Guarantee, claim or Liabilities; or



(ii) to any consent,

which, in each case, the Security Agent gives in accordance with Clause 12 (*Non-Distressed Disposals*) or 13 (*Distressed Disposals and Appropriation*).

(d) Paragraph (a) above shall apply to a Primary Arranger only to the extent that Liabilities are then owed to that Primary Arranger.

(e) Any term of this Agreement may be amended or waived by the Company and the Security Agent without the consent of any other Party in order to cure minor, technical or administrative errors.

**26.5 Excluded Super Senior Credit Participations, Senior Credit Participations and Senior Subordinated Credit Participations**

(a) Subject to paragraph (b) below, if in relation to:

- (i) a request for a Consent in relation to any of the terms of this Agreement;
- (ii) a request to participate in any other vote of Super Senior Creditors, Senior Creditors or Senior Subordinated Creditors under the terms of this Agreement;
- (iii) a request to approve any other action under this Agreement;
- (iv) a request to provide any confirmation or notification under this Agreement; or
- (v) a request to provide details of an Exposure,

any Primary Creditor:

- (A) fails to respond to that request within 30 Business Days of that request being made; or
- (B) (in the case of a Primary Creditor and paragraphs (i) to (iii) above), fails to provide details of its Super Senior Credit Participation, Senior Credit Participation or Senior Subordinated Credit Participation (as the case may be) to the Security Agent within the timescale specified by the Security Agent:

1. in the case of paragraphs (i) to (iii) above, that Primary Creditor's Super Senior Credit Participation, Senior Credit Participation or Senior Subordinated Credit Participation (as the case may be) shall be deemed to be zero for the purpose of calculating the Super Senior Credit Participations, Senior Credit Participations or Senior Subordinated Credit Participations when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations, Senior Credit Participations or Senior Subordinated Credit Participations has been obtained to give that Consent, carry that vote or approve that action;
2. in the case of paragraphs (i) to (iii) above, that Primary Creditor's status as a Super Senior Creditor, Senior Creditor or Senior Subordinated Creditor shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of Primary Creditors has been obtained to give that Consent, carry that vote or approve that action;

3. in the case of paragraph (iv) above, that confirmation or notification shall be deemed to have been given; and
4. in the case of paragraph (v) above, that Primary Creditor's Exposure shall be deemed to be zero.

(b) Paragraph (a) above shall not apply to:

- (a) an amendment or waiver referred to in paragraphs (a) or (b) of Clause 26.1 (*Required consents*); and
- (b) any consent in relation to the Disposal Proceeds Account referred to in Clause 12.4 (*Disposal Proceeds Account*).

#### 26.6 **Disenfranchisement of Sirius Affiliates**

(a) Subject to paragraph (b) of Clause 26.1 (*Required consents*) and paragraph (b) of Clause 26.4 (*Exceptions*):

- (i) for so long as a Sirius Affiliate (i) beneficially owns a Credit Participation or (ii) has entered into a sub-participation agreement relating to a Credit Participation or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated; and
- (ii) provided that the Plan B Date has not occurred,

in ascertaining:

(A) the Majority Super Senior Creditors, Majority Senior Creditors or Majority Senior Subordinated Creditors; or

(B) whether:

1. any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations, Senior Credit Participations or Senior Subordinated Credit Participations; or
2. the agreement of any specified group of Primary Creditors,

has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement, that Credit Participation shall be deemed to be zero and, subject to paragraph (b) below, that Sirius Affiliate (or the person with whom it has entered into that sub-participation, other agreement or arrangement (a "**Counterparty**")) shall be deemed not to be:

(C) a Super Senior Lender (in the case of a Super Senior Credit Participation);

(D) a Senior Lender (in the case of a Senior Credit Participation); or

(E) a Senior Subordinated Lender or a Hedge Counterparty, as applicable (in the case of a Senior Subordinated Credit Participation),

provided that paragraphs (C)-(E) above shall not apply to the extent that a Counterparty is a Super Senior Lender, a Senior Lender, a Senior Subordinated Creditor or a Hedge

Counterparty, (as the case may be) by virtue otherwise than by beneficially owning the relevant Credit Participation.

(b) Each Sirius Affiliate that is a Super Senior Lender, a Senior Lender, a Senior Subordinated Lender or a Hedge Counterparty agrees that:

- (i) in relation to any meeting or conference call to which all the Primary Creditors or any combination of the groups of Primary Creditors are invited to attend or participate, it shall not attend or participate in the same if so requested by the Security Agent or, unless the Security Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
- (ii) it shall not, unless the Security Agent otherwise agrees, be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Security Agent or one or more of the Primary Creditors,

other than, in respect of the Sirius Initial Funding Lender so long as it constitutes a Senior Lender, in relation to any amendment or waiver for which its' consent is required in accordance with paragraph (b) of Clause 26.1 (*Required consents*) or paragraph (b) of Clause 26.4 (*Exceptions*).

(c) Paragraphs (a) and (b) above shall only apply to voting under and for the purposes of this Agreement and not, for the avoidance of doubt, in relation to any matter solely in respect of the Sirius Initial Funding Agreement.

#### 26.7 **Disenfranchisement of Defaulting Lenders**

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

- (i) the Majority Super Senior Creditors, Majority Senior Creditors or Majority Senior Subordinated Creditors; or
- (ii) whether:
  - (A) any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations, Senior Credit Participations or Senior Subordinated Credit Participations; or
  - (B) the agreement of any specified group of Primary Creditors,

has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

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

1. a Super Senior Lender;
2. a Senior Lender; or
3. a Senior Subordinated Lender or Hedge Counterparty, as applicable,

as the case may be.

- (b) For the purposes of this Clause 26.7, the Security Agent may assume that the following Primary Creditors are Defaulting Lenders:
- (i) any Primary Lender which has notified the Security Agent that it has become a Defaulting Lender;
  - (ii) any Primary Lender to the extent that the relevant Primary Agent has notified the Security Agent that that Primary Lender is a Defaulting Lender; and
  - (iii) any Primary Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" in the RCF Agreement (or any equivalent provisions in any other Primary Finance Document) has occurred,

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

#### **26.8 Pro rata interest settlement**

Paragraph (c) of clause [23.9] (*Pro rata interest settlement*) of the RCF Agreement (or any similar clause in any other Primary Finance Document which includes such clause) shall apply to any request for a Consent, to carry any other vote or approve any action under this Agreement in relation to the Creditors under such Primary Finance Document.

#### **26.9 Calculation of participations**

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

#### **26.10 Deemed consent**

Subject to paragraph (b) of Clause 26.4 (*Exceptions*), if the EGF Creditors, the NTL Creditors, the RCF Creditors, the TL Creditors or the USPP Creditors give a Consent in respect of the Super Senior Finance Documents, Senior Finance Documents or the Senior Subordinated Finance Documents then, if that action was permitted by the terms of this Agreement, the Sirius Initial Funding Lender so long as it constitutes a Senior Lender (prior to the occurrence of the Plan B Date only), the Intra-Group Lenders and the Subordinated Creditors 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 Super Senior Creditors may reasonably require to give effect to this Clause.

#### **26.11 Excluded consents**

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

- (a) amending any Reserved Matter;
- (b) increasing or decreasing the Liabilities;

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

#### 26.12 **Agreement to override**

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

#### 27. **Counterparts**

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

#### 28. **Bail-In**

##### 28.1 **Contractual recognition of bail-in**

Notwithstanding any other term of any Debt Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Debt Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Debt Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

##### 28.2 **Bail-in definitions**

In this Clause 28:

**"Article 55 BRRD"** means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

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

**"Bail-In Legislation"** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to the United Kingdom, the UK Bail-In Legislation; and
- (c) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

**"EEA Member Country"** means any member state of the European Union, Iceland, Liechtenstein and Norway.

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

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

**"UK Bail-In Legislation"** means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**"Write-down and Conversion Powers"** means:

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

29. **Acknowledgement regarding any Supported QFCs**

- (a) To the extent that the Debt Documents provide support, through a guarantee or otherwise, for Hedging Agreements or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the Parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under

the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Debt Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

- (b) In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Debt Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Debt Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

- (c) As used in this Clause 29, the following terms have the following meanings:

**"BHC Act Affiliate"** of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, Section 1841(k) of Title 12 of the United States Code) of such party.

**"Covered Entity"** means any of the following:

- (a) a "covered entity" as that term is defined in, and interpreted in accordance with, Section 252.82(b) of Title 12 of the United States Code of Federal Regulations;
- (b) a "covered bank" as that term is defined in, and interpreted in accordance with, Section 47.3(b) of Title 12 of the United States Code of Federal Regulations; or
- (c) a "covered FSI" as that term is defined in, and interpreted in accordance with, Section 382.2(b) of Title 12 of the United States Code of Federal Regulations.

**"Default Right"** has the meaning assigned to that term in, and shall be interpreted in accordance with Section 252.81, 47.2 or 382.1 of Title 12 of the United States Code of Federal Regulations, as applicable.

**"QFC"** has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with Section 5390(c)(8)(D) of Title 12 of the United States Code.

### 30. **Governing Law**

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

### 31. **Enforcement**

#### 31.1 **Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraphs (a) and (b) above, no Secured Party and no Guaranteed 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 and the Guaranteed Parties may take concurrent proceedings in any number of jurisdictions.

#### 31.2 **Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law:
  - (i) each Debtor (unless incorporated in England and Wales):
    - (A) irrevocably appoints Wood Group Kenny Limited (with registered number 01398385) of Booths Park, Chelford Road, Knutsford, England, WA16 8QZ as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and Wood Group Kenny Limited, by its execution of this Agreement, accepts that appointment; and
    - (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned; and
  - (ii) each Subordinated Creditor (unless incorporated in England and Wales):
    - (A) irrevocably appoints Wood Group Kenny Limited (with registered number 01398385) of Booths Park, Chelford Road, Knutsford, England, WA16 8QZ as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and Wood Group Kenny Limited, by its execution of this Agreement, accepts that appointment; and
    - (B) agrees that failure by a process agent to notify that Subordinated Creditor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (in the case of an agent for service of process for a Debtor), a Subordinated Creditor must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Super Senior Agents or, after the Super Senior Discharge Date, the Senior Agents or, after the Senior Discharge Date, the Senior



Subordinated Agents. Failing this, the Super Senior Agents, the Senior Agents or the Senior Subordinated Agents (as the case may be) may appoint another agent for this purpose.

## **32. Australian provisions**

### **32.1 Exclusion of certain PPSA provisions**

Where any Secured Party has a security interest (as defined in the PPSA) under any Debt Document, to the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
  - (i) each Secured Party with the benefit of the security interest need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
  - (ii) sections 142 and 143 of the PPSA are excluded;
- (b) for the purposes of section 115(7) of the PPSA, each Secured Party with the benefit of the security interest need not comply with sections 132 and 137(3);
- (c) each Party waives its right to receive from any Secured Party any notice required under the PPSA (including a notice of a verification statement);
- (d) if a Secured Party with the benefit of a security interest exercises a right, power or remedy in connection with it, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Secured Party states otherwise at the time of exercise. However, this Clause does not apply to a right, power or remedy which can only be exercised under the PPSA; and
- (e) if the PPSA is amended to permit the Parties to agree not to comply with or to exclude other provisions of the PPSA, the Security Agent may notify the Company and the Secured Parties that any of these provisions is excluded, or that the Secured Parties need not comply with any of these provisions.

This Clause does not affect any rights a person has or would have other than by reason of the PPSA and applies despite any other Clause in any Debt Document.

### **32.2 Australian Administrator to an Australian Debtor**

If:

- (a) the Security Agent is notified by a Party or under the Australian Corporations Act that an administrator has been appointed (other than by the Security Agent) to an Australian Debtor; and
- (b) the Security Agent is entitled under section 441A of the Australian Corporations Act to enforce a Transaction Security over that Australian Debtor's property within the decision period provided for under that section,

then:

- (i) the Security Agent shall promptly notify the Primary Creditors of the appointment and seek instructions from the Instructing Group as to whether or not it should enforce that Transaction Security within that "decision period" (as defined in the Australian Corporations Act); and

- (ii) if the Security Agent does not receive instructions from the Instructing Group by a time which the Security Agent considers is the latest time by which instructions should be received in order for it to be able to arrange the enforcement of the Transaction Security within that period, then the Security Agent may (but all Parties acknowledge that the Security Agent is not obligated to unless it shall have been indemnified and/or secured and/or prefunded to its satisfaction) enforce that Transaction Security but need not to do (and is not liable to the Primary Creditors if it does not do so).

THIS AGREEMENT has been executed and delivered as a deed on the date stated at the beginning of this Agreement.

**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) GLAS Trust Corporation Limited (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, John Wood Group PLC as company, GLAS Trust Corporation Limited as security agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

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

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

the "**Relevant Documents**".

IT IS AGREED as follows:

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

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

THIS AGREEMENT has been executed and delivered as a deed on the date stated at the beginning of this Agreement.

#### **The Acceding Debtor**

[Executed as a deed )

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

\_\_\_\_\_  
Director

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

#### **OR**

[Executed as a deed

By: [*Full name of Acceding Debtor*]

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Address of witness

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Occupation of witness]

Address for notices:

Address:

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

Fax:

**The Security Agent**

GLAS Trust Corporation Limited

By:

Date:

**SCHEDULE 2**  
**FORM OF CREDITOR ACCESSION UNDERTAKING**

To: GLAS Trust Corporation Limited as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below.

From: *[Acceding Creditor]*

[It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.]\*\*

THIS UNDERTAKING is made on [date] by *[insert full name of Acceding Creditor]* (the "**Acceding Creditor**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated [ ] between, among others, John Wood Group PLC as company (the "**Company**"), GLAS Trust Corporation Limited as security agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding Creditor being accepted as a [ ] for the purposes of the Intercreditor Agreement, the Acceding Creditor confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [ ] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [ ] 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 Creditor hereby appoints the Security Agent as its agent in connection with the ratification and raising of any Debt Document into a Spanish Public Document and hereby authorises the Security Agent to enter into, and represent the Acceding Creditor in connection with the grant of, any Spanish Public Document relating to the Accession Deed. For the avoidance of doubt, the Acceding Creditor expressly waives any *auto-contratación* (self contracting) or *conflicto de intereses* (conflict of interest) which may arise in connection with the raising of any Debt Document to the status of a Spanish Public Document.

This Accession Deed may be formalised in a Spanish Public Document at the cost of the Company, so that it may have the status of a public document and for all purposes contemplated in Article 517, number 4 of the Spanish Civil Procedure Act. The public deed raising this Accession Deed to the status of public document must reproduce in Spanish terms and conditions the granting of authority by the Secured Parties to the Security Agent under clause 18.33 (*Appointment of the Security Agent as agent and administrator in relation to Spanish Security Documents*) of the Intercreditor Agreement.

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

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\*\* Include only in the case of a Creditor which is acceding as an Intra-Group Lender or a Subordinated Creditor.

THIS UNDERTAKING has been [entered into]/ [executed and delivered as a deed]<sup>\*\*\*\*</sup> on the date stated at the beginning of this Undertaking.

Acceding [Creditor]

[Executed as a deed]

*[insert full name of Acceding Creditor]*

By:

Address:

Fax:

Accepted by the Security Agent

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for and on behalf of

GLAS Trust Corporation Limited

Date:

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<sup>\*\*\*\*</sup> Include only in the case of a Creditor which is acceding as an Intra-Group Lender or a Subordinated Creditor.

**SCHEDULE 3**  
**FORM OF DEBTOR RESIGNATION REQUEST**

To: [ ] as Security Agent

From: [resigning Debtor] and [John Wood Group PLC]

Dated:

**John Wood Group PLC – Intercreditor Agreement dated [ ] 2025**  
**(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 20.13 (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [resigning Debtor] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
  - (a) no Default is continuing or would result from the acceptance of this request; and
  - (b) [resigning Debtor] is under no actual or contingent obligations in respect of the Intra-Group Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

John Wood Group PLC

[resigning Debtor]

By:

By:



**SCHEDULE 4**  
**AGREED SECURITY PRINCIPLES**

**1. Considerations**

- 1.1 In determining what guarantees and Security will be provided in support of the Guaranteed Obligations and the Secured Obligations (as applicable) the following matters (the “Agreed Security Principles”) will be taken into account. Guarantees shall not be granted, and Security shall not be created or perfected, to the extent that it would:
- (A) result in any breach of corporate benefit, financial assistance, fraudulent preference or thin capitalisation laws or regulations (or analogous restrictions) of any applicable jurisdiction;
  - (B) result in a significant risk to the officers of the relevant grantor of Security (as defined below) of contravention of their fiduciary duties and/or of civil or criminal liability; or
  - (C) result in costs that, in the opinion of the Security Agent, are disproportionate to the benefit obtained by the beneficiaries of that Security.
- 1.2 For the avoidance of doubt, in these Agreed Security Principles, "cost" includes, but is not limited to, income tax cost, registration taxes payable on the creation or enforcement or for the continuance of any Security, stamp duties, out-of-pocket expenses, and other fees and expenses directly incurred by the relevant guarantor or grantor of Security or any of its direct or indirect owners, subsidiaries or Affiliates.
- 1.3 Notwithstanding anything to the contrary in this Agreement or any other Debt Document, no member of the Group incorporated in an Excluded Jurisdiction shall be required to provide any guarantee or Security unless the Company and the Security Agent agree otherwise (each acting reasonably). The “Excluded Jurisdictions” are (A) India; (B) Iraq; (C) Papua New Guinea; (D) Azerbaijan; (E) Algeria; (F) Trinidad and Tobago; (G) Equatorial Guinea; and (H) such other jurisdictions in which a member of the Group is incorporated which the Company and the Security Agent may agree from time to time.

**2. Obligations to be guaranteed and secured**

- 2.1 Subject to paragraph 1 (Considerations), the obligations to be guaranteed are Guaranteed Obligations and the obligations to be secured are the Secured Obligations.
- 2.2 To the extent possible under applicable laws, all guarantees and Security are to be granted in favour of the Security Agent (acting for and on behalf of the Guaranteed Parties or the Secured Parties (as applicable)) and not the Guaranteed Parties or the Secured Parties (as applicable) individually. “Parallel debt” provisions shall be used where necessary; such provisions will be contained in this Agreement and not the individual Security Documents unless required under local laws.
- 2.3 Subject to paragraph 2.4 below, the definitions of Guaranteed Obligations, Guaranteed Parties, Secured Obligations and Secured Parties should follow the definitions of these terms in this Agreement.

2.4 The Secured Obligations will be limited:

- (A) to avoid any breach of corporate benefit, financial assistance, fraudulent preference, thin capitalization rules or the law or regulations (or analogous restrictions) of any applicable jurisdiction; and
- (B) to avoid any risk to officers of the relevant member of the Group that is granting Transaction Security of contravention of their fiduciary duties and/or civil or criminal or personal liability.

2.5 The form of guarantee given by each Obligor is set out in the Initial Deed of Guarantee and, with respect to any additional guarantor, is subject to any limitations set out in the guarantor accession deed applicable to such additional guarantor.

### **3. General terms of the Transaction Security**

- 3.1 Where appropriate, defined terms in the Security Documents should mirror those in this Agreement.
- 3.2 The parties to this Agreement agree to negotiate the form of any Security Document entered into after the date of this Agreement in good faith and will ensure that the commercial terms of any such document shall be consistent with the terms of the Transaction Security Documents entered into on or around the date of this Agreement.
- 3.3 Subject to paragraph 3.2 above and consistent with the terms of the Transaction Security Documents entered into on or around the date of this Agreement, the Security Documents will permit disposals of assets where such disposal is permitted under the Primary Finance Documents and the Security Agent shall have authority to do all things reasonably requested to release Security in respect of the asset that is the subject of any such disposal in accordance with this Agreement.
- 3.4 Subject to paragraph 3.2 above and consistent with the terms of the Transaction Security Documents entered into on or around the date of this Agreement, the terms of the Security Documents will not prohibit or otherwise restrict or condition the ability of the Group from dealing with its receivables if it is permitted under the terms of the Primary Finance Documents. If required, the Parties whose consent to such amendments is required in accordance with this Agreement shall act in good faith to agree such amendments to the Security Documents as may be required to enable the sale of receivables by an obligor for the purposes of a Permitted Receivables Financing (as defined in the form of the amended and restated RCF Agreement as of the date of this Agreement).
- 3.5 The Security Agent will hold one set of Transaction Security for all Secured Parties unless local law or standard market practice in the relevant jurisdiction requires separate ranking Security for different classes of debt and/or creditors.

### **4. Terms of Security Documents**

- 4.1 Any representations, warranties or undertakings which are required to be included in any Security Document shall reflect (to the extent to which the subject matter of such representation, warranty

and undertaking is the same as the corresponding representation, warranty and undertaking in the Primary Finance Documents) the commercial deal set out in the Primary Finance Documents (save to the extent that Secured Parties' local counsel deem it necessary to include any further provisions (or deviate from those contained in this Agreement) in order to protect or preserve the Transaction Security granted to the Secured Parties).

- 4.2 The following principles will be reflected in the terms of any Transaction Security:
- (A) the Transaction Security will be first ranking, to the extent possible;
  - (B) the Transaction Security shall not be enforceable until the occurrence of an Acceleration Event; and
  - (C) the Transaction Security shall not adversely impact or restrict the ordinary course operations of the Group (if such actions are otherwise permitted under the Primary Finance Documents).
- 4.3 Any requirements for perfection of Transaction Security and the trigger events relating to any other rights and obligations of the parties under any Security Documents shall be consistent with the approach taken in the English law governed Transaction Security Documents entered into on or around the date of this Agreement, unless the Company and the Security Agent (each acting reasonably) agree otherwise.
- 4.4 Each Security Document must contain a clause which records that if there is a direct conflict between the Security Document and this Agreement then (to the fullest extent permitted by law) the provisions of this Agreement will take priority over the provisions of the Security Document.

## **5. Governing law**

- 5.1 All Security Documents (other than Transaction Security over shares, bank accounts, receivables, insurances, hedging agreements and intragroup loan agreements pursuant to paragraphs 5.2 to 5.5 below) will be governed by the law of the jurisdiction of incorporation of the applicable grantor of Transaction Security unless that grantor of Transaction Security has material assets (including material real estate and material intellectual property) located in, or which are otherwise subject to the laws of, those jurisdictions in which case further Transaction Security may be required by the Security Agent in those jurisdictions, subject always to these Agreed Security Principles.
- 5.2 Transaction Security over shares shall be governed by the laws of the country to be agreed between the Company and the Security Agent (each acting reasonably) and could be governed by the laws of the country in which the entity whose shares are being secured is incorporated and not necessarily by the laws of the country in which the grantor of such Transaction Security is incorporated.
- 5.3 Transaction Security over bank accounts or real estate shall be governed by the laws of the country to be agreed between the Company and the Security Agent (each acting reasonably) and could be governed by the laws of the country in which the bank account or real estate is located and not necessarily by the laws of the country in which the grantor of such Transaction Security is incorporated.

- 5.4 Transaction Security over intellectual property shall be governed by the laws of the country to be agreed between the Company and the Security Agent (each acting reasonably), having regard to the materiality and type of the intellectual property concerned and not necessarily by the laws of the country in which the grantor of such Transaction Security is incorporated.
- 5.5 Transaction Security over receivables, insurances, hedging agreements and intragroup loan agreements shall be governed by the laws of the country to be agreed between the Company and the Security Agent (each acting reasonably) and could be governed by the laws of the governing law of the receivable, insurance, hedging agreement or intragroup loan agreement concerned and not necessarily by the laws of the country in which the grantor of such Transaction Security is incorporated.

## **6. Joint ventures**

No Transaction Security shall be granted over the shares, stock or securities issued by any joint venture to any member of the Group which are restricted from being secured under a joint venture agreement, shareholder agreement or other similar agreement.

**SCHEDULE 5**  
**TRANSACTION SECURITY DOCUMENTS**  
**PART I**  
**CONDITIONS PRECEDENT**

	<b>Transaction Security Document</b>	<b>Name of Security providers</b>	<b>Governing law</b>
1.	All asset security agreement	<ul style="list-style-type: none"> <li>i. Amec Foster Wheeler Limited</li> <li>ii. Amec Foster Wheeler International Limited</li> <li>iii. Wood and Company Limited</li> <li>iv. Amec Foster Wheeler (Holdings) Limited</li> <li>v. Wood International Limited</li> <li>vi. Amec Foster Wheeler Group Limited</li> <li>vii. Amec Foster Wheeler Energy Limited</li> <li>viii. Automated Technology Group Holdings Limited</li> <li>ix. AFW Finance 2 Limited</li> <li>x. Wood Transmission and Distribution Limited</li> <li>xi. John Wood Group Finance Limited</li> <li>xii. John Wood Group Funding Limited</li> </ul>	English law
2.	Share pledge	<ul style="list-style-type: none"> <li>i. John Wood Group Holdings Limited</li> <li>ii. Wood Group Engineering &amp; Operations Support Limited</li> <li>iii. Foster Wheeler Europe</li> </ul>	English law
3.	Fixed charge over bank accounts and assignment of intragroup receivables	<ul style="list-style-type: none"> <li>i. Wood Iberia S.L.U.</li> <li>ii. Amec Foster Wheeler Asia Pacific Pte Ltd.</li> </ul>	English law
4.	Security agreement in respect of bank accounts	<ul style="list-style-type: none"> <li>i. John Wood Group Finance Limited</li> <li>ii. John Wood Group Funding Limited</li> </ul>	English law
5.	Security agreement in respect of insurance and	<ul style="list-style-type: none"> <li>i. John Wood Group PLC</li> </ul>	English law

	contractual rights		
6.	All asset security agreement	<ul style="list-style-type: none"> <li>i. John Wood Group PLC</li> <li>ii. John Wood Group Holdings Limited</li> <li>iii. JWGUSA Holdings Limited</li> <li>iv. WGPSN (Holdings) Limited</li> <li>v. Wood Group Holdings (International) Limited</li> <li>vi. Wood Group Investments Limited</li> <li>vii. PSN Asia Limited</li> <li>viii. Wood Group Engineering (North Sea) Limited</li> <li>ix. Wood Group Limited</li> <li>x. Wood Group UK Limited</li> <li>xi. Wood Group Engineering &amp; Operations Support Limited</li> <li>xii. JWG Investments Limited</li> <li>xiii. Mustang Engineering Limited</li> </ul>	Scots law
7.	Statutory pledge over shares	<ul style="list-style-type: none"> <li>i. John Wood Group PLC</li> <li>ii. John Wood Group Holdings Limited</li> <li>iii. JWGUSA Holdings Limited</li> <li>iv. WGPSN (Holdings) Limited</li> <li>v. Wood Group Investments Limited</li> <li>vi. Wood Group Engineering &amp; Operations Support Limited</li> </ul>	Scots law
8.	Charge over receivables	<ul style="list-style-type: none"> <li>i. AFW Finance 2 Limited</li> <li>ii. Wood International Limited</li> <li>iii. Amec Foster Wheeler Group Limited</li> <li>iv. Amec Foster Wheeler Limited</li> <li>v. Wood Chile Limitada</li> <li>vi. Wood Canada Limited</li> <li>vii. Amec Foster Wheeler Energia S.L.U.</li> <li>viii. Wood Group Norway A.S.</li> <li>ix. John Wood Group Holdings B.V.</li> <li>x. Amec Foster Wheeler International Limited</li> <li>xi. Amec Foster Wheeler Asia Pacific Pte Limited</li> </ul>	Scots law
9.	Pledge and security agreement in respect of shares and grant of all-	<ul style="list-style-type: none"> <li>i. Amec Foster Wheeler Industrial Power Company, Inc.</li> <li>ii. Amec Foster Wheeler North America Corp.</li> <li>iii. Amec Foster Wheeler USA Corporation</li> <li>iv. Foster Wheeler Energy Corporation</li> <li>v. Mustang International, Inc.</li> <li>vi. Swaggart Brothers, Inc.</li> </ul>	New York law

	assets security	vii. Swaggart Logging & Excavation LLC viii. Wood Contract Services LLC ix. Wood Group Alaska, LLC x. Wood Group PSN, Inc. xi. Wood Group Support Services, Inc. xii. Wood Group USA, Inc. xiii. Wood Group US Holdings, Inc. xiv. Foster Wheeler Inc. xv. Foster Wheeler LLC xvi. JWGUSA Holdings, Inc.	
10.	Multi-Party General Security Agreement	i. Wood Canada Limited ii. Wood Group Canada, Inc.	Laws of Alberta, Canada
11.	Securities pledge	i. Wood Group Holdings (International) Limited	Laws of Alberta, Canada
12.	Securities pledge	i. Wood UK Limited	Laws of Alberta, Canada
13.	Security agreement in respect of accounts, intercompany loans, insurances, trade receivables, inventory and operating assets	i. Wood Group Norway AS	Norwegian law
14.	Share pledge	i. Wood Group Investments Limited	Norwegian law
15.	General security deed	i. Wood Group Australia Pty Ltd ii. Wood Australia Pty Ltd	Laws of Victoria and the Commonwealth of Australia
16.	Share security deed	i. Wood Group Holdings (International) Limited	Laws of Victoria and the

			Commonwealth of Australia
17.	Omnibus deed of pledge over assets	i. John Wood Group Holdings B.V.	Dutch law
18.	Debenture	i. Amec Foster Wheeler Asia Pacific Pte. Ltd. ii. Wood Group International Services Pte. Ltd.	Singapore law
19.	Share security agreement	i. Wood International Limited ii. PSN Overseas Limited	Singapore law

**PART II**  
**CONDITIONS SUBSEQUENT**

	<b>Transaction Security Document</b>	<b>Name of Security providers</b>	<b>Governing law</b>
1.	Non-possessory pledge ( <i>prenda sin desplazamiento</i> ) over all Wood Chile Limitada's equity rights	i. Wood Canada Limited ii. Wood Iberia S.L. iii. Wood Chile Limitada	Chilean law
2.	Collateral Agency Agreement	i. John Wood Group Finance Limited ii. Wood Canada Limited iii. Wood Iberia S.L. iv. Wood Chile Limitada	Chilean law
3.	Promissory pledge over current and future trade receivables and arbitral awards	i. Wood Iberia, S.L.U. ii. Amec Foster Wheeler Energia, S.L.U.	Spanish law
4.	Share pledge	i. Wood Italiana S.r.l. ii. Wood Iberia S.L.U.	Spanish law
5.	Share pledge	i. FW Investment Holdings S.à r.l. ii. Amec Foster Wheeler Energia S.L.U.	Spanish law
6.	Pledge over Bank Accounts	i. Wood Iberia, S.L.U.	Spanish law



7.	A pledge over receivables should there be any receivables to be pledged upon the satisfaction of the Conditions Subsequent	<ul style="list-style-type: none"> <li>i. Wood Iberia, S.L.U.</li> <li>ii. Amec Foster Wheeler Energia, S.L.U.</li> </ul>	Spanish law
8.	Notarial deed of pledge of shares in the share capital of John Wood Group Holdings B.V.	<ul style="list-style-type: none"> <li>i. John Wood Group Holdings Limited</li> <li>ii. John Wood Group Holdings B.V.</li> </ul>	Dutch law
9.	Bank account pledge agreement	<ul style="list-style-type: none"> <li>i. Wood Italiana S.r.l.</li> </ul>	Italian law

## SIGNATURES

***[LL Note: To be populated before signing once Parties are confirmed]***