

EXECUTION VERSION

INTERCREDITOR AGREEMENT

DATED 13 FEBRUARY 2023

BETWEEN

THE BRIDGE LENDER
THE HOLDCO LENDER

UNIKMIND HOLDINGS LIMITED
AS THE COMPANY

THE SUBORDINATED CREDITORS NAMED THEREIN

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED
ACTING AS SECURITY AGENT

AND OTHERS

PROJECT VERDE – INTERCREDITOR AGREEMENT

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THIS AGREEMENT is dated 13 February 2023 and made between:

- (1) **HSBC BANK PLC** (the "**Original Bridge Lender**");
- (2) **HSBC PRIVATE BANK (SUISSE) SA.** (the "**Original HoldCo Lender**");
- (3) **UNIKMIND HOLDINGS LIMITED** (the "**Company**");
- (4) **THE GOODHEART TRUST**, an irrevocable and discretionary trust established in the Isle of Man, acting by Equiom (Isle of Man) Limited, registered in the Isle of Man with registered number 011582C, whose registered office is at Jubilee Buildings, Victoria Street, Douglas, Isle of Man, IM1 2SH as trustee (the "**Trust**");
- (5) **THE INVESTOR** (together with the Company and the Trust, the "**Subordinated Creditors**" and each a "**Subordinated Creditor**"); and
- (6) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** as security trustee for the Secured Parties (the "**Security Agent**").

SECTION 1 INTERPRETATION

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 Bridge Acceleration Event or a HoldCo 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.

"Appropriation" means the appropriation (or similar process) of the shares in the capital of a member of the Group 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.

"Automatic Early Termination" means the termination or close-out of any hedging transaction prior to the maturity of that hedging transaction which is brought about automatically by the terms of the relevant Hedging Agreement and without any party to the relevant Hedging Agreement taking any action to terminate that hedging transaction.

"Available Commitment":

- (a) in relation to a Bridge Lender, has the meaning given to the term "Available Commitment" in the Bridge Facilities Agreement; and
- (b) in relation to a HoldCo Lender, has the meaning given to the term "Available Commitment" in the HoldCo Facility Agreement.

"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 Facility Agent) 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 under the Bridge Finance Documents and liabilities and obligations as a borrower under the HoldCo Finance Documents).

"Bridge Acceleration Event" means the Bridge Agent exercising any of its rights under clause 22.14 (*Acceleration*) of the Bridge Facilities Agreement.

"Bridge Agent" means:

- (a) until such time as an Agent is appointed pursuant to clause 26.1 (*Appointment of the Agent*) of the Bridge Facilities Agreement, the Original Bridge Lender which will act only on behalf of itself and will not act as agent for any Party.
- (b) if there is intended to be more than one Lender under the Bridge Facilities Agreement, any person which is appointed as Agent pursuant to clause 26.1 (*Appointment of the Agent*) of the Bridge Facilities Agreement and which accedes to this Agreement as the Bridge Agent pursuant to Clause 17.5 (*Creditor Accession Undertaking*).

"Bridge Borrower" means the Company.

"Bridge Commitment" means a "Commitment" under and as defined in the Bridge Facilities Agreement.

"Bridge Discharge Date" means the first date on which all of the Bridge Liabilities have been fully and finally discharged to the satisfaction of the Bridge Agent, whether or not as the result of an enforcement, and the Bridge Lenders are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

"Bridge Event of Default" means an Event of Default under the Bridge Facilities Agreement.

"Bridge Facilities Agreement" means the USD 343,000,000 bridge facilities agreement made between the Company, the Original Bridge Lender and others dated on or about the date of this Agreement.

"Bridge Finance Documents" has the meaning given to the term "Finance Documents" in the Bridge Facilities Agreement.

"Bridge Lenders" means the Original Bridge Lender and any other party which becomes a lender under and in accordance with the terms of the Bridge Facilities Agreement;

"Bridge Liabilities" means the Liabilities owed by the Debtors to the Bridge Lenders under the Bridge Finance Documents.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, the Isle of Man and Geneva.

"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 which has a similar effect to either provision referenced in paragraph (a) and paragraph (b) above.

"Commitment" means a Bridge Commitment or a HoldCo 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, to the extent legally possible, given to all the Secured Parties in respect of their Liabilities.

"Common Currency" means the lawful currency of the United Kingdom;

"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 to the extent legally possible:

- (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 for the Secured Parties is created in favour of:
 - (i) all the Secured Parties in respect of their Liabilities; or
 - (ii) the Security Agent under a parallel debt structure for the benefit of all the Secured Parties,

and which ranks in the order of priority contemplated in Clause 2.2 (*Transaction Security*).

"Company Loan Agreement" means each loan agreement entered or to be entered into between the Company and any member of the Target Group.

"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 12.6 (*Appointment of Financial Adviser*); 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.

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

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

- (a) its aggregate Commitments, if any; and
- (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 this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement).

"Credit Related Close-Out" means any Permitted Hedge Close-Out which is not a Non-Credit Related Close-Out.

"Creditor Accession Undertaking" means an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*).

"Creditors" means the Primary Creditors and the Subordinated Creditors.

"Debt Disposal" means any disposal of any Liabilities pursuant to paragraphs (d) or (e) of Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*).

"Debt Document" means each of this Agreement, the Hedging Agreements, the Bridge Finance Documents, the HoldCo Finance Documents (but excluding the Non-Shared HoldCo Security Documents), the Security Documents, the Security Agency Fee Letter, any agreement evidencing the terms of the Subordinated Liabilities and any other document designated as such by the Security Agent and the Company.

"Debtor" means the Company and any person which becomes a Party as a Debtor in accordance with the terms of Clause 17 (*Changes to the Parties*).

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

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

"Defaulting Lender" means:

- (a) in relation to a Bridge Lender, a Bridge Lender which is a Defaulting Lender under, and as defined in, the Bridge Facilities Agreement; and
- (b) in relation to a HoldCo Lender, a HoldCo Lender which is a Defaulting Lender under, and as defined in, the HoldCo Facility Agreement.

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

"Distress Event" means any of:

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

"Distressed Disposal" means a disposal of 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.

"Dollar Facility" has the meaning given to the term "Dollar Facility" in the Bridge Facilities Agreement.

"Dollar Facility Loan" has the meaning given to the term "Dollar Facility Loan" in the Bridge Facilities Agreement.

"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 Bridge Creditor or a HoldCo 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 or the making of a demand in relation to a Liability that is payable on demand;
- (iii) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
- (iv) 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 but excluding any such right which arises as a result of clause 24.1 (*Permitted Debt Purchase Transactions*) of the Bridge Facilities Agreement or as a result of clause 25.1 (*Permitted Debt Purchase Transactions*) of the HoldCo Facility Agreement);
- (v) the exercise of any right of set-off, account combination or payment netting against any member of the Group 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 expressly permitted under the Bridge Facilities Agreement or the HoldCo Facility Agreement to the extent that the exercise of that right gives effect to a Permitted Payment; and
- (vi) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;
- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement (other than pursuant to a Permitted Automatic Early Termination);
- (c) the taking of any steps to enforce or require the enforcement of any Transaction Security;
- (d) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 17 (*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 or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of

payments or moratorium of any indebtedness of any such member of the Group or the Investor, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(vi) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (ii) a Primary Creditor bringing legal proceedings against any person solely for the purpose of:
 - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
 - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
 - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages.

"Event of Default" means:

- (a) any event or circumstance specified as such in the Bridge Facilities Agreement; and
- (b) any event or circumstance specified as such in the HoldCo Facility Agreement.

"Exchange Rate Hedge Excess" means the amount by which the Total Exchange Rate Hedging exceeds 110% of the Term Outstandings.

"Exchange Rate Hedging" means, in relation to a Hedge Counterparty at any time, the aggregate of the notional amounts (denominated in a Hedged Currency) of any exchange rate hedging transactions which are, at that time, in effect under a Hedging Agreement to which that Hedge Counterparty and a Debtor are party.

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

"Facility Agent" means (if applicable) each of the Bridge Agent and the HoldCo Agent.

"Facility Agreement" means each of the Bridge Facilities Agreement and the HoldCo Facility 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 Bridge Discharge Date and the HoldCo Discharge Date.

"Financial Adviser" means any:

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

"Financial Indebtedness" has the meaning given to that term in the Bridge Facilities Agreement and/or the HoldCo Facility Agreement.

"Group" has the meaning given to the term "Group" in the Bridge Facilities Agreement and/or the HoldCo Facility Agreement.

"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 Facility Agent) or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Bridge Finance Documents and the HoldCo Finance Documents).

"Hedge Counterparty" means any entity which becomes a Party as a Hedge Counterparty pursuant to Clause 17.5 (*Creditor Accession Undertaking*).

"Hedged Currency" means the currency in which a Dollar Facility Loan (or part of a Dollar Facility Loan) is denominated, pursuant to the Bridge Facilities Agreement, and which is hedged in respect of exchange rate risk under a Hedging Agreement.

"Hedging Agreement" means any master agreement, confirmation, schedule or other agreement in agreed form entered into or to be entered into by the Company and a Hedge Counterparty for the purpose of Exchange Rate Hedging in relation to the Dollar Facility made or to be made available under the Bridge Facilities Agreement.

"Hedging Force Majeure" means:

- (a) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
 - (i) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or

- (ii) an event similar in meaning and effect to a "Force Majeure Event" (as referred to in paragraph (b) below);
- (b) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement); or
- (c) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, any event similar in meaning and effect to an event described in paragraphs (a) or (b) above.

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

"HoldCo Acceleration Event" means the HoldCo Agent exercising any of its rights under clause 23.14 (*Acceleration*) of the HoldCo Facility Agreement.

"HoldCo Agent" means:

- (a) until such time as an Agent is appointed pursuant to clause 26.1 (*Appointment of the Agent*) of the HoldCo Facility Agreement, the Original HoldCo Lender which will act only on behalf of itself and will not act as agent for any Party; or
- (b) if there is intended to be more than one Lender under the HoldCo Facility Agreement, any person which is appointed as Agent pursuant to clause 27.1 (*Appointment of the Agent*) of the HoldCo Facility Agreement and which accedes to this Agreement as the HoldCo Agent pursuant to Clause 17.5 (*Creditor Accession Undertaking*).

"HoldCo Borrower" means the Company.

"HoldCo Commitment" has the meaning given to the term "Commitment" in the HoldCo Facility Agreement.

"HoldCo Discharge Date" means the first date on which all of the HoldCo Liabilities have been fully and finally discharged to the satisfaction of the HoldCo Agent, whether or not as a result of an enforcement, and the HoldCo Lenders are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

"HoldCo Event of Default" means an Event of Default under the HoldCo Facility Agreement.

"HoldCo Facility" has the meaning given to the term "Facility" in the HoldCo Facility Agreement.

"HoldCo Facility Agreement" means the USD 267,000,000 term facility agreement made between the Company, the HoldCo Lenders and others dated on or about the date of this Agreement.

"HoldCo Finance Documents" has the meaning given to the term "Finance Documents" in the HoldCo Facility Agreement.

"HoldCo Lenders" means the Original Holdco Lender and any other party which becomes a lender under and in accordance with the terms of the HoldCo Facility Agreement.

"HoldCo Liabilities" means the Liabilities owed by the Debtors to the HoldCo Lenders under or in connection with the HoldCo Finance Documents.

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

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

"Instructing Group" means at any time:

- (a) prior to the Bridge Discharge Date, the Majority Primary Creditors; and
- (b) on or after the Bridge Discharge Date, the Majority HoldCo Lenders.

"Intercreditor Amendment" means any amendment or waiver which is subject to Clause 23 (*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.

"Investor" means Teddy Sagi, an Israeli national and Cyprus resident.

"Investor Loan Agreement" means each loan agreement entered or to be entered into between:

- (a) the Investor and the Company;
- (b) the Investor and any member of the Target Group;
- (c) the Investor and Real-Estate TopCo; and

(d) the Investor and any other member of the Real-Estate Group.

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

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

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

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

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

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

the rights in respect of those Liabilities.

"Liabilities Sale" means a Debt Disposal pursuant to paragraph (e) of Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*).

"Majority Bridge Lenders" means the "Majority Lenders" under and as defined in the Bridge Facilities Agreement after the application of clause 36.7 (*Disenfranchisement of Defaulting Lenders*) of the Bridge Facilities Agreement and, until such time as the Bridge Agent is appointed, shall mean the Original Bridge Lender.

"Majority HoldCo Lenders" has the meaning given to the term "Majority Lenders" in the HoldCo Facility Agreement after the application of clause 37.6 (*Disenfranchisement of Defaulting Lenders*) of the HoldCo Facility Agreement and, until such time as the Holdco Agent is appointed, shall mean the Original Holdco Lender.

"Majority Primary Creditors" means, at any time, those Primary Creditors whose Credit Participations at that time aggregate more than 66⅔ per cent. of the total Credit Participations at that time.

"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 8.1 (*Turnover by the Creditors*),

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

"Non-Credit Related Close-Out" means a Permitted Hedge Close-Out described in any of paragraphs (a)(i) or (a)(ii) of Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*).

"Non-Distressed Disposal" has the meaning given to that term in Clause 11 (*Non-Distressed Disposals*).

"Non-Shared HoldCo Security Documents" means:

- (a) the Personal Guarantee;
- (b) the Real-Estate TopCo Share Pledge;
- (c) the assignment of shareholder loans granted by the Trust to any member of the Real-Estate Group; and
- (d) the Account Pledge (each as defined in the HoldCo Facility Agreement).

"Non-Shared HoldCo Transaction Security" means the Security created or evidenced or expressed to be created in favour of the Holdco Lenders under or pursuant to the Non-Shared HoldCo Security Documents.

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

"Payment Netting" means:

- (a) in respect of a Hedging Agreement based on an ISDA Master Agreement, netting under section 2(c) of the relevant ISDA Master Agreement; and

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

"Permitted Automatic Early Termination" means an Automatic Early Termination of a hedging transaction under a Hedging Agreement, the provision of which is permitted under Clause 5.12 (*Terms of Hedging Agreements*).

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

"Permitted Hedge Close-Out" means, in relation to a hedging transaction under a Hedging Agreement, a termination or close-out of that hedging transaction which is permitted pursuant to Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*).

"Permitted Hedge Payments" means the Payments permitted by Clause 5.3 (*Permitted Payments: Hedging Liabilities*).

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

"Permitted Payment" means a Permitted Hedge Payment, Permitted HoldCo Facility Payment, a Permitted Bridge Facility Payment or a Permitted Subordinated Payment.

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

"Primary Creditors" means each Facility Agent, the Bridge Lenders, the HoldCo Lenders and the Hedge Counterparties.

"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.

"Real-Estate TopCo" means LabTech Investments Limited, a company incorporated in Guernsey under registration number 64498.

"Real-Estate Group" means Real-Estate TopCo and its Subsidiaries, from time to time.

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

"Recoveries" has the meaning given to that term in Clause 15.1 (*Order of Application*).

"Relevant Liabilities" means:

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

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

"Secured Parties" means the Security Agent, any Receiver or Delegate and each of the 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 17.5 (*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.

"Security Agency Fee Letter" means the letter dated on or around the date of this Agreement between the Company and the Security Agent setting out the fee referred to in Clause 18.1 (*Security Agent fee*).

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

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

for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11:00 a.m. (London time) on a particular day, which shall, in either case, be notified by the Security Agent in accordance with paragraph (e) of Clause 16.3 (*Duties of the Security Agent*).

"Security Documents" means:

- (a) each of the Transaction Security Documents;

- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured 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 for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as trustee for the Secured Parties;
- (c) the Security Agent's interest in any trust fund created pursuant to Clause 8 (*Turnover of Receipts*); and
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Secured Parties.

"Subordinated Liabilities" means:

- (a) the Liabilities owed to the Investor by (i) the Company or (ii) any member of the Group under any Investor Loan Agreement and any other loan, indebtedness or receivable (whether or not documented) owed to the Investor as lender or creditor by the Company or any member of the Group as borrower or debtor from time to time;
- (b) the Liabilities owed to the Investor by (i) Real-Estate TopCo or (ii) any other member of the Real-Estate Group under any Investor Loan Agreement and any other loan, indebtedness or receivable (whether or not documented) owed to the Investor as lender or creditor by Real-Estate TopCo or any member of the Real-Estate Group as borrower or debtor from time to time;
- (c) the Liabilities owed to the Company by any member of the Group under any Company Loan Agreement and any other loan, indebtedness or receivable (whether or not documented) owed to the Company as lender or creditor any member of the Group as borrower or debtor from time to time; and
- (d) the Liabilities owed to the Trust by (i) Real-Estate TopCo or (ii) any other member of the Real-Estate Group under any Trust Loan Agreement and any other loan, indebtedness or receivable (whether or not documented) owed to the Trust as lender or creditor by Real-Estate TopCo or any other member of the Real-Estate Group as borrower or debtor from time to time.

"Subsidiary" means, in relation to any person, any entity which is controlled directly or indirectly by that person and any entity (whether or not so controlled) treated as a subsidiary in the latest financial statements of that person from time to time, and control for this purpose means the direct or indirect ownership of the majority of the voting share capital of such entity or the right or ability to direct management to comply with the type of material restrictions and obligations contemplated in this Agreement or to determine the composition of a majority of the board of directors (or like board) of such entity, in each case, whether by virtue of ownership of share capital, contract or otherwise.

"Target" means Kape Technologies plc, a company incorporated in the Isle of Man with company number 011402V and having its registered office at Sovereign House, 4 Christian Road, Douglas, IM1 2SD.

"Target Group" means the Target and its Subsidiaries from time to time.

"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).

"Term Outstandings" means, at any time, the aggregate of the amounts of principal (not including any capitalised or deferred interest) then outstanding under the Dollar Facility.

"Total Exchange Rate Hedging" means, at any time, the aggregate of each Hedge Counterparty's Exchange Rate Hedging at that time.

"Transaction Security" means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Transaction Security Documents, but excluding, for the avoidance of doubt, the Non-Shared HoldCo Transaction Security.

"Transaction Security Documents" means the "Transaction Security Documents" under and as defined in the Bridge Facilities Agreement and excluding, for the avoidance of doubt, the Non-Shared HoldCo Security Documents.

"Trust Loan Agreement" means each loan agreement entered or to be entered into between (i) the Trust and Real-Estate TopCo or (ii) any other member of the Real-Estate Group.

"VAT" means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (c) any other tax of a similar nature, whether imposed in Switzerland, the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraphs (a) or (b) above, or imposed elsewhere.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) any "Company", "Creditor", "Debtor", "Facility Agent", "Hedge Counterparty", "HoldCo Agent", "HoldCo Borrower", "HoldCo Lender", "Company", "Party", "Primary Creditor", "Security Agent", "Bridge Agent", "Bridge Borrower", "Bridge Lender" or "Subordinated Creditor" shall be construed to be a reference to it in its capacity as such and not in any other capacity;
 - (ii) any "Creditor", "Debtor", "Facility Agent", "Hedge Counterparty", any "Party", the "Security Agent" or "Subordinated Creditor" 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 as permitted by this Agreement;
 - (vi) a "**distribution**" of or out of the assets of a member of the Group or the Investor, includes a distribution of cash and a distribution of Non-Cash Consideration;
 - (vii) "**enforcing**" (or any derivation) the Transaction Security includes the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor 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;
 - (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) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
 - (xiv) a provision of law is a reference to that provision as amended or re-enacted from time to time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
 - (c) A Default or an Event of Default is "**continuing**" if it has not been remedied or waived.
 - (d) For the avoidance of doubt, references to the "**Bridge Facilities Agreement**" (including permissions and restrictions in respect thereof) shall not apply following the Bridge Discharge Date.

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 16.10 (*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 Facility Agreements

The Security Agent confirms that it has received a copy of each Facility Agreement.

SECTION 2 RANKING AND PRIMARY CREDITORS

2. RANKING AND PRIORITY

2.1 Primary Creditor Liabilities

Each of the Parties agrees that the Bridge Liabilities, the Holdco Liabilities and the Hedging Liabilities shall rank (subject to the terms of this Agreement) *pari passu* in right and priority of payment and without any preference between them.

2.2 Transaction Security

Each of the Parties agrees that the Transaction Security shall rank and secure the Bridge Liabilities, the Holdco Liabilities and the Hedging Liabilities (subject to the terms of this Agreement) *pari passu* and without any preference between them (but only to the extent that such Transaction Security is expressed to secure those Liabilities).

2.3 Subordinated Liabilities

- (a) Each of the Parties agrees that the Subordinated 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 as between themselves.

2.4 Anti-layering

Notwithstanding anything in a Debt Document to the contrary, no Debtor shall without the prior written approval of the Majority Primary Creditors issue or allow to remain outstanding any Liabilities that are expressed to rank or rank senior in right of payment to any of the Bridge Liabilities, the HoldCo Liabilities or the Hedging Liabilities or are secured or expressed to be secured by Transaction Security on a basis senior to any of the Bridge Liabilities, the HoldCo Liabilities or the Hedging Liabilities, unless such ranking arises as a matter of law.

3. BRIDGE CREDITORS AND BRIDGE LIABILITIES

3.1 Payment of Bridge Liabilities

The Debtors may make Payments of the Bridge Liabilities at any time in accordance with the Bridge Finance Documents.

3.2 Amendments and Waivers: Bridge Lenders

The Bridge Lenders may amend or waive the terms of the Bridge Finance Documents in accordance with their terms (and subject to any consent required under them and subject to Clause 23.2 (*Amendments and Waivers: Transaction Security Documents*)) at any time.

3.3 **Security: Bridge Lenders**

The Bridge Lenders may take, accept or receive the benefit of:

- (a) any Security in respect of the Bridge Liabilities from any member of the Group in addition to the Common Transaction Security which to the extent legally possible is, at the same time, also offered either:
 - (i) to the Security Agent as trustee for the other 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 for the Secured Parties:
 - (A) to the other Secured Parties in respect of their Liabilities; or
 - (B) 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 Clause 2.2 (*Transaction Security*); and

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

if and to the extent legally possible, at the same time it is also offered to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

4. **HOLDCO LENDERS AND HOLDCO LIABILITIES**

4.1 **Payment of HoldCo Liabilities**

The Debtors may make Payments of the HoldCo Liabilities at any time in accordance with the HoldCo Finance Documents.

4.2 **Amendments and Waivers: HoldCo Lenders**

The HoldCo Lenders may amend or waive the terms of the Holdco Finance Documents in accordance with their terms (and subject to any consent required under them) at any time.

4.3 **Security: Holdco Lenders**

The HoldCo Lenders may take, accept or receive the benefit of:

- (a) any Security in respect of the HoldCo Liabilities from any member of the Group or the Investor in addition to the Common Transaction Security and the Non-Shared HoldCo Transaction Security to the extent legally possible is, at the same time, also offered either:
 - (i) to the Security Agent as trustee 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 for the Secured Parties:
 - (A) to the other Secured Parties in respect of their Liabilities; or
 - (B) 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 Clause 2.2 (*Transaction Security*); and

- (b) any guarantee, indemnity or other assurance against loss in respect of the HoldCo Liabilities from any member of the Group in addition to those in:
 - (i) the original form of HoldCo Facility Agreement;
 - (ii) the Personal Guarantee (as defined in the HoldCo Facility Agreement);
 - (iii) this Agreement; or
 - (iv) any Common Assurance,

if and to the extent legally possible, at the same time it is also offered to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

5. **HEDGE COUNTERPARTIES AND HEDGING LIABILITIES**

5.1 **Identity of Hedge Counterparties**

An entity providing hedging arrangements to any Debtor shall only be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities and obligations arising in relation to those hedging arrangements and those liabilities and obligations shall only be treated as Hedging Liabilities if that entity is or becomes a Party as a Hedge Counterparty.

5.2 **Restriction on Payment: Hedging Liabilities**

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

- (a) that Payment is permitted under Clause 5.3 (*Permitted Payments: Hedging Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 5.10 (*Permitted Enforcement: Hedge Counterparties*).

5.3 Permitted Payments: Hedging Liabilities

- (a) Subject to paragraph (b) below, the Debtors may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Agreement in accordance with the terms of that Hedging Agreement:
 - (i) if the Payment is a scheduled Payment arising under the relevant Hedging Agreement;
 - (ii) to the extent that the relevant Debtor's obligation to make the Payment arises as a result of the operation of:
 - (A) any of sections 2(d) (*Deduction or Withholding for Tax*), 2(e) (*Default Interest; Other Amounts*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*) and 11 (*Expenses*) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);
 - (B) any of sections 2(d) (*Deduction or Withholding for Tax*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*), 9(h)(i) (*Prior to Early Termination*) and 11 (*Expenses*) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
 - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
 - (iii) to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out;
 - (iv) to the extent that:
 - (A) the relevant Debtor's obligation to make the Payment arises from:
 - (1) a Credit Related Close-Out in relation to that Hedging Agreement; or
 - (2) a Permitted Automatic Early Termination under that Hedging Agreement which arises as a result of an event relating to a Debtor; and
 - (B) no Event of Default is continuing at the time of that Payment or would result from that Payment;

- (v) to the extent that no Event of Default is continuing or would result from that Payment and the relevant Debtor's obligation to make the Payment arises as a result of a close-out or termination arising as a result of:
 - (A) section 5(a)(vii) (*Bankruptcy*) of the 1992 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 1992 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
 - (B) section 5(a)(vii) (*Bankruptcy*) of the 2002 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 2002 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
 - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement) and the equivalent event of default has occurred with respect to the relevant Hedge Counterparty; or
 - (D) the relevant Debtor terminating or closing-out the relevant Hedging Agreement as a result of a Hedging Force Majeure and the Termination Event (as defined in the relevant Hedging Agreement in the case of a Hedging Agreement based on an ISDA Master Agreement) or the equivalent termination event (in the case of a Hedging Agreement not based on an ISDA Master Agreement) has occurred with respect to the relevant Hedge Counterparty; or
- (vi) if the Majority Primary Creditors give prior consent to the Payment being made.
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid unless the prior consent of the Majority Primary Creditors is obtained.
- (c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to Clause 5.4 (*Payment obligations continue*), not result in a default (however described) in respect of that Debtor under that Hedging Agreement.

5.4 **Payment obligations continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 5.2 (*Restriction on Payment: Hedging Liabilities*) and 5.3 (*Permitted Payments: Hedging Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

5.5 No acquisition of Hedging Liabilities

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

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

in respect of any of the Hedging Liabilities unless the prior consent of the Majority Primary Creditors is obtained.

5.6 Amendments and Waivers: Hedging Agreements

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

5.7 Security: Hedge Counterparties

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

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) this Agreement;
 - (ii) any Common Assurance; or
 - (iii) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (i) to (ii) above;
- (c) as otherwise contemplated by Clause 3.3 (*Security: Bridge Lenders*); and
- (d) 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).

5.8 Restriction on Enforcement: Hedge Counterparties

Subject to Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*) and Clause 5.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clause 10.1 (*Enforcement Instructions*) or Clause 10.2 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement

Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

5.9 Permitted Enforcement: Hedge Counterparties

- (a) To the extent it is able to do so under the relevant Hedging Agreement, a Hedge Counterparty may terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:

Non-Credit Related Close-Outs

- (i) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement; or
- (ii) to the extent necessary to comply with paragraph (c) of Clause 5.13 (*Total Exchange Rate Hedging*).

Credit Related Close-Outs

- (iii) if a Distress Event has occurred;
- (iv) if an Event of Default has occurred under clause 22.5 (*Insolvency*) or clause 22.6 (*Insolvency proceedings*) of the Bridge Facilities Agreement, in relation to a Debtor which is party to that Hedging Agreement;
- (v) if a Hedge Counterparty or its Affiliate (as applicable) which is also a Bridge Lender who is not a Defaulting Lender:

- (A) has ceased to be a Bridge Lender;
- (B) has its Commitment reduced to zero; or
- (C) no longer has any Commitment,

in each case, as a result of the exercise of any right or compliance with any obligation (as applicable) under the provisions of Clause 7 (*Illegality, Voluntary Prepayment and Cancellation*) or Clause 8 (*Mandatory Prepayment and Cancellation*) of the Bridge Facilities Agreement.

- (vi) if the Majority Primary Creditors give prior consent to that termination or close-out being made; and
 - (vii) on or immediately following a refinancing (or repayment) and cancellation in full of the Bridge Liabilities.
- (b) If a Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than five Business Days after notice of that default has been given to the Security Agent pursuant to paragraph (g) of Clause 20.3 (*Notification of prescribed events*), the relevant Hedge Counterparty:

- (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and
 - (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.
- (c) After the occurrence of an Insolvency Event in relation to any member of the Group, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that member of the Group to:
- (i) prematurely close-out or terminate any Hedging Liabilities of that member of the Group;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Hedging Liabilities;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Hedging Liabilities of that member of the Group; or
 - (iv) claim and prove in any insolvency process of that member of the Group for the Hedging Liabilities owing to it.

5.10 Required Enforcement: Hedge Counterparties

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
 - (i) the occurrence of a Bridge Acceleration Event and delivery to it of a notice from the Security Agent that that Bridge Acceleration Event has occurred; and
 - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Instructing Group) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that that Bridge Acceleration Event occurred as a result of an arrangement made between any Debtor and any Primary Creditor with the purpose of bringing about that Bridge Acceleration Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under paragraph (b) of Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*) (or would have been able to if that Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request

to do so by the Security Agent (acting on the instructions of the Instructing Group).

5.11 Treatment of Payments due to Debtors on termination of hedging transactions

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

5.12 Terms of Hedging Agreements

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

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

that Hedging Agreement will:

- (A) if it is based on a 1992 ISDA Master Agreement, provide for payments under the "Second Method" and will make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement;

- (B) if it is based on a 2002 ISDA Master Agreement, make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement; or
 - (C) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Agreement is in its favour;
- (d) each Hedging Agreement will not provide for Automatic Early Termination other than to the extent that:
 - (i) the provision of Automatic Early Termination is consistent with practice in the relevant derivatives market, taking into account the legal status and jurisdiction of incorporation of the parties to that Hedging Agreement; and
 - (ii) that Automatic Early Termination is:
 - (A) as provided for in section 6(a) (*Right to Terminate following Event of Default*) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);
 - (B) as provided for in section 6(a) (*Right to Terminate Following Event of Default*) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
 - (C) similar in effect to that described in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
- (e) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to Clause 5.10 (*Required Enforcement: Hedge Counterparties*); and
- (f) each Hedging Agreement will permit the relevant Hedge Counterparty and each relevant Debtor to take such action as may be necessary to comply with Clause 5.13 (*Total Interest Rate Hedging and Total Exchange Rate Hedging*).

5.13 Total Exchange Rate Hedging

- (a) The Company shall procure that, at all times:
 - (i) the Total Exchange Rate Hedging does not exceed the Term Outstandings.
- (b) Subject to paragraph (a) above, if

- (i) the Total Exchange Rate Hedging is less than the Term Outstandings, a Debtor may enter into additional hedging arrangements to increase the Total Exchange Rate Hedging.
- (c) If any reduction in the Term Outstandings results in an Exchange Rate Hedge Excess then, within 5 Business Days of that reduction becoming effective in accordance with the terms of the Bridge Facilities Agreement, the relevant Debtor(s) shall, and the Company shall procure that the relevant Debtor(s) shall, reduce each Hedge Counterparty's Exchange Rate Hedging by that Hedge Counterparty's Exchange Rate Hedging Proportion of that Exchange Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary.
- (d) The relevant Debtor(s) shall, and the Company shall procure that the relevant Debtor(s) will, pay to that Hedge Counterparty (in accordance with the relevant Hedging Agreement) an amount equal to the sum of all payments (if any) that become due from each relevant Debtor to a Hedge Counterparty under the relevant Hedging Agreement(s) as a result of any action described in paragraph (c) above.
- (e) Each Hedge Counterparty shall co-operate in any process described in paragraph (d) above and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging Agreement(s) to a Debtor as a result of any action described in paragraph (c) above.

SECTION 3 OTHER CREDITORS

6. SUBORDINATED LIABILITIES

6.1 Restriction on Payment: Subordinated Liabilities

Prior to the Final Discharge Date, neither the Company nor any other 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 6.2 (*Permitted Payments: Subordinated Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under Clause 6.8 (*Permitted Enforcement: Subordinated Creditors*).

6.2 Permitted Payments: Subordinated Liabilities

The Company may make Payments in respect of the Subordinated Liabilities then due if:

- (a) the Payment is expressly permitted by the Bridge Facilities Agreement and the HoldCo Facility Agreement; or
- (b) the Instructing Group consents to that Payment being made.

6.3 Payment obligations continue

Neither the Company nor any other Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 6.1 (*Restriction on Payment: Subordinated Liabilities*) and 6.2 (*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.

6.4 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, unless the prior consent of the Instructing Group is obtained.

6.5 Amendments and Waivers: Subordinated Creditors

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

- (a) the prior consent of the Instructing Group is obtained; or
- (b) that amendment, waiver or agreement is of a minor and administrative nature and is not prejudicial to the Primary Creditors.

6.6 Security: Subordinated Creditors

The Subordinated Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from any member of the Group in respect of any of the Subordinated Liabilities prior to the Final Discharge Date.

6.7 Restriction on Enforcement: Subordinated Creditors

Subject to Clause 6.8 (*Permitted Enforcement: Investor*), 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.

6.8 Permitted Enforcement: Subordinated Creditors

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 that Subordinated Creditor in accordance with Clause 7.4 (*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) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Subordinated Liabilities;
- (c) 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
- (d) claim and prove in any insolvency process of that member of the Group for the Subordinated Liabilities owing to it.

6.9 Documentation of subordinated loans

Each Subordinated Creditor shall ensure that, following the date of this Agreement:

- (a) any loan made by it to a Debtor or a member of the Group or, as applicable, any member of the Real-Estate Group; or

- (b) any receivable or other indebtedness owed to it by a Debtor or a member of the Group or, as applicable, any member of the Real-Estate Group,

is documented in writing prior to being made and the relevant Subordinated Creditor shall promptly provide the Security Agent with a copy of the document evidencing such loan, receivable or other indebtedness.

SECTION 4

INSOLVENCY, TURNOVER AND ENFORCEMENT

7. EFFECT OF INSOLVENCY EVENT

7.1 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 have been paid in full.
- (b) The Security Agent shall apply distributions made to it under paragraph (a) above in accordance with Clause 15 (*Application of Proceeds*).

7.2 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 an Insolvency Event in relation to that member of the Group, 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 15 (*Application of Proceeds*).
- (b) Paragraph (a) above shall not apply to:
 - (i) any Close-Out Netting by a Hedge Counterparty;
 - (ii) any Payment Netting by a Hedge Counterparty; and
 - (iii) any Inter-Hedging Agreement Netting by a Hedge Counterparty.

7.3 Non-cash distributions

If the Security Agent or any other Secured 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.

7.4 Filing of claims

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.

7.5 Further assurance – Insolvency Event

Each Creditor will:

- (a) do all things that the Security Agent requests in order to give effect to this Clause 7; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 7 or if the Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action.

7.6 Security Agent instructions

For the purposes of Clause 7.1 (*Distributions*), Clause 7.4 (*Filing of claims*) and Clause 7.5 (*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 10.1 (*Enforcement Instructions*) or Clause 10.2 (*Manner of enforcement*); or
- (b) in the absence of any such instructions, as the Security Agent sees fit.

8. TURNOVER OF RECEIPTS

8.1 Turnover by the Creditors

Subject to Clause 8.2 (*Exclusions*) and to Clause 8.3 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is neither:
 - (i) a Permitted Payment; nor
 - (ii) made in accordance with Clause 15 (*Application of Proceeds*);

- (b) other than where paragraph (a) of Clause 7.2 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- (c) notwithstanding paragraphs (a) and (b) above, and other than where paragraph (a) of Clause 7.2 (*Set-Off*) applies, any amount:
 - (i) on account of, or in relation to, any of the Liabilities:
 - (A) after the occurrence of a Distress Event; or
 - (B) as a result of any other litigation or proceedings against a 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 15 (*Application of Proceeds*);
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 15 (*Application of Proceeds*); or
- (e) other than where paragraph (a) of Clause 7.2 (*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 15 (*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:
 - (A) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and
 - (B) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and
- (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement.

8.2 Exclusions

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

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

8.3 Permitted assurance and receipts

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

- (a) arrange with any person which is not a 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 17 (*Changes to the Parties*),

which is permitted by the Bridge Facilities Agreement or the HoldCo Facility Agreement 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.

8.4 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.

8.5 Saving provision

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

8.6 Turnover of Non-Cash Consideration

For the purposes of this Clause 8, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to Clause 8.1

(*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 13.2 (*Cash value of Non-Cash Recoveries*).

9. REDISTRIBUTION

9.1 Recovering Creditor's rights

- (a) Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 7 (*Effect of Insolvency Event*) or Clause 8 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and shall be applied by the Security Agent in accordance with Clause 15 (*Application of Proceeds*).
- (b) On an application by the Security Agent pursuant to Clause 15 (*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.

9.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returned by that Recovering Creditor to that Debtor, then:
 - (i) each Party that received any part of that Shared Amount pursuant to an application by the Security Agent of that Shared Amount under Clause 9.1 (*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 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.

9.3 Deferral of subrogation

- (a) No Creditor (other than a Subordinated 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 (other than the Investor) 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 (other than a Subordinated 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 Creditor until such time as all of the Liabilities owing to each Creditor (other than a Subordinated Creditor) have been irrevocably discharged in full.

10. ENFORCEMENT OF TRANSACTION SECURITY

10.1 Enforcement Instructions

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

10.2 Manner of enforcement

If the Transaction Security is being enforced pursuant to Clause 10.1 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator (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.

10.3 Waiver of rights

To the extent permitted under applicable law and subject to Clause 10.1 (*Enforcement Instructions*), Clause 10.2 (*Manner of enforcement*), Clause 12.4 (*Fair value*) and Clause 15 (*Application of Proceeds*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

10.4 Duties owed

Each of the Secured Parties and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security, the duties of the Security Agent and of any Receiver or Delegate owed to them in respect of the

method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to Clause 12.4 (*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.

10.5 Enforcement through Security Agent only

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

10.6 Non-Shared HoldCo Transaction Security

For the avoidance of doubt, this Clause 10 does not apply to the Non-Shared Holdco Transaction Security.

SECTION 5
NON-DISTRESSED DISPOSALS, DISTRESSED DISPOSALS, DIVIDEND
PROCEEDS AND CLAIMS

11. NON-DISTRESSED DISPOSALS AND DIVIDEND PROCEEDS

11.1 Definitions

In this Clause 11:

- (a) **"Disposal Proceeds"** means the proceeds of a Non-Distressed Disposal;
- (b) **"Dividend Proceeds"** means any dividend or other distribution received by the Company from a member of the Target Group including by way of an issuance of shares; and
- (c) **"Non-Distressed Disposal"** means a disposal of:
 - (i) an asset of a member of the Group; or
 - (ii) an asset which is subject to the Transaction Security,
to a person or persons outside the Group where:
 - (A) (prior to the Bridge Discharge Date) the Bridge Agent notifies the Security Agent that that disposal is permitted under the Bridge Finance Documents;
 - (B) the HoldCo Agent notifies the Security Agent that that disposal is permitted under the HoldCo Finance Documents; and
 - (C) that disposal is not a Distressed Disposal.

11.2 Facilitation of Non-Distressed Disposals

- (a) If a disposal of an asset is a Non-Distressed Disposal, the Security Agent is irrevocably authorised (at the cost of the Company and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) but subject to paragraph (b) below:
 - (i) to release the Transaction Security or any other claim (relating to a Debt Document) 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 (relating to a Debt Document) over that member of the Group's Property; and
 - (iii) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraphs (i) and (ii) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.

- (b) Each release of Transaction Security or any claim described in paragraph (a) above shall become effective only on the making of the relevant Non-Distressed Disposal.

11.3 Disposal Proceeds and Dividend Proceeds

If any Disposal Proceeds or Dividend Proceeds are required to be applied in mandatory prepayment of the Bridge Liabilities or the HoldCo Liabilities, then those Disposal Proceeds or Dividend Proceeds (as applicable) shall be applied in or towards Payment of:

- (a) **first**, the Bridge Liabilities in accordance with the terms of the Bridge Facilities Agreement (without any obligation to apply those amounts towards the HoldCo Liabilities save to the extent otherwise set out in the Bridge Facilities Agreement); and
- (b) **then**, after the discharge in full of the Bridge Liabilities, the HoldCo Liabilities in accordance with the terms of the HoldCo Facility Agreement,

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

12. DISTRESSED DISPOSALS AND APPROPRIATION

12.1 Facilitation of Distressed Disposals and Appropriation

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 Debtor):

- (a) *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 issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
- (b) *release of liabilities and Transaction Security on a share sale/Appropriation (Debtor)*: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:
 - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
 - (ii) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and

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

on behalf of the relevant Creditors and Debtors;

- (c) *release of liabilities and Transaction Security on a share sale/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:

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

- (A) its Borrowing Liabilities;

- (B) its Guarantee Liabilities; and

- (C) its Other Liabilities;

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

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

on behalf of the relevant Creditors and Debtors;

- (d) *facilitative disposal of liabilities on a share sale/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 the Liabilities (other than Liabilities due to any Facility Agent) 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 (the "**Transferee**") will not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities on behalf of the relevant Creditors and Debtors **provided that** notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement; and

- (e) *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 the Liabilities (other than Liabilities due to any Facility Agent) 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 will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of:

- (A) all (and not part only) of the Liabilities owed to the Primary Creditors (other than to any Facility Agent); and

- (B) all or part of any other Liabilities (other than Liabilities owed to any Facility Agent),

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

12.2 Form of consideration for Distressed Disposals and Debt Disposals

Subject to Clause 13.4 (*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.

12.3 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 15 (*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 resulting from that Appropriation, had not occurred.

12.4 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).

12.5 Fair value – safe harbours

- (a) The Security Agent may seek to satisfy the requirement in Clause 12.4 (*Fair value*) in any manner.
- (b) Without prejudice to the generality of paragraph (a) above, the requirement in Clause 12.4 (*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 12.6 (*Appointment of Financial Adviser*) has delivered a Fairness Opinion to the Security Agent in respect of that Distressed Disposal or Liabilities Sale.

12.6 Appointment of Financial Adviser

- (a) Without prejudice to Clause 16.7 (*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 8.1 (*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 13.2 (*Cash value of Non-Cash Recoveries*); or
 - (ii) otherwise in accordance with Clause 12.7 (*Security Agent's actions*).

12.7 Security Agent's actions

For the purposes of Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*), Clause 12.2 (*Form of consideration for Distressed Disposals and Debt Disposals*), Clause 12.4 (*Fair Value*) and Clause 12.5 (*Fair value – safe harbours*), the Security Agent shall act:

- (a) in the case of an Appropriation or if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 10.2 (*Manner of enforcement*); and
- (b) in any other case:

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

13. NON-CASH RECOVERIES

13.1 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 15.2 (*Prospective liabilities*)):

- (a) distribute those Non-Cash Recoveries pursuant to Clause 15 (*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.

13.2 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 12.6 (*Appointment of Financial Adviser*) taking into account any notional conversion made pursuant to Clause 15.4 (*Currency conversion*).
- (b) If any Non-Cash Recoveries are distributed pursuant to Clause 15 (*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.

13.3 Facility Agents and Non-Cash Recoveries

- (a) Subject to paragraph (b) below, if, pursuant to Clause 15.1 (*Order of application*), a Facility Agent receives Non-Cash Recoveries for application towards the discharge of any Liabilities, that Facility Agent shall apply those Non-Cash Recoveries in accordance with the relevant Facility Agreement as if they were Cash Proceeds.
- (b) A Facility 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 Facility Agreement 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 Facility Agent shall think fit for later application pursuant to paragraph (a) above.

13.4 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 8.1 (*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 15 (*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.

14. FURTHER ASSURANCE – DISPOSALS AND RELEASES

Each Creditor and Debtor will:

- (a) do all things that the Security Agent requests in order to give effect to Clause 11 (*Non-Distressed Disposals*) and Clause 12 (*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
- (b) if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

provided that the proceeds of those disposals are applied in accordance with Clause 11 (*Non-Distressed Disposals*) or Clause 12 (*Distressed Disposals and Appropriation*) as the case may be.

SECTION 6

15. APPLICATION OF PROCEEDS

15.1 Order of application

Subject to Clause 15.2 (*Prospective liabilities*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 15, the "**Recoveries**") shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 15), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent, any Receiver or any Delegate;
- (b) in discharging all costs and expenses incurred by any Primary Creditor in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 7.5 (*Further assurance – Insolvency Event*);
- (c) in payment or distribution to:
 - (i) the Bridge Agent on its own behalf and on behalf of the other Bridge Lenders; and
 - (ii) the Hedge Counterparties,for application towards the discharge of:
 - (A) the Bridge Liabilities (in accordance with the terms of the Bridge Facilities Agreement); and
 - (B) the Hedging Liabilities (on a *pro rata* basis between the Hedging Liabilities of each Hedge Counterparty);on a *pro rata* basis between paragraph (A) and paragraph (B) above;
- (d) in payment or distribution to the HoldCo Agent on its own behalf and on behalf of the other HoldCo Lenders for application (in accordance with the terms of the HoldCo Finance Documents) towards the discharge of the HoldCo Liabilities;
- (e) if none of the Debtors is under any further actual or contingent liability under any Bridge Finance Document, Hedging Agreement or HoldCo 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
- (f) the balance, if any, in payment or distribution to the relevant Debtor.

15.2 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 15.1 (*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.

15.3 Investment of Cash Proceeds

Prior to the application of the proceeds of the Security Property in accordance with Clause 15.1 (*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 15.

15.4 Currency conversion

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

15.5 Permitted Deductions

The Security Agent shall be entitled, in its discretion, (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any 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).

15.6 Good Discharge

- (a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent:
 - (i) may be made to the relevant Facility Agent on behalf of its Primary Creditors; and
 - (ii) shall be made directly to the Hedge Counterparties.
- (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 13.2 (*Cash value of Non-Cash Recoveries*).
- (c) The Security Agent is under no obligation to make the payments to the Facility Agents or the Hedge Counterparties 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.

15.7 Calculation of Amounts

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

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

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

SECTION 7 THE PARTIES

16. THE SECURITY AGENT

16.1 Security Agent as trustee

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Each of the 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.

16.2 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.
- (d) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;

- (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clauses 16.5 (*No duty to account*) to Clause 16.10 (*Exclusion of liability*), Clause 16.13 (*Confidentiality*) to Clause 16.20 (*Custodians and nominees*) and Clause 16.23 (*Acceptance of title*) to Clause 16.26 (*Disapplication of Trustee Acts*);
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 11 (*Non-Distressed Disposals*);
 - (B) Clause 15.1 (*Order of application*);
 - (C) Clause 15.2 (*Prospective liabilities*); and
 - (D) Clause 15.5 (*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 do so as it considers in its discretion to be appropriate.
- (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 10 (Enforcement of Transaction Security) and the remainder of this Clause 16.2, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.
- (i) The Security Agent may carry out what in its discretion it considers to be administrative acts, or acts which are incidental to any instruction, without any instructions (though not contrary to any such instruction), but so that no such

instruction shall have any effect in relation to any administrative or incidental act performed prior to actual receipt of such instruction by the Security Agent.

16.3 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 Facility Agent and to each Hedge Counterparty 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) 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 20.3 (*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).

16.4 No fiduciary duties to Debtors or Subordinated Creditors

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

16.5 No duty to account

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

16.6 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.

16.7 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) 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.

16.8 Responsibility for documentation

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

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

16.9 No duty to monitor

The Security Agent shall not be bound to enquire:

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

16.10 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.

16.11 Primary Creditors' indemnity to the Security Agent

- (a) Each Primary Creditor 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.

16.12 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 Facility Agents and, prior to the Bridge Discharge Date only, the Hedge Counterparties) may appoint a successor Security Agent.

- (d) The retiring Security Agent shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents. The 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 16.24 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 16 and Clause 19.1 (*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.

16.13 Confidentiality

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

16.14 Information from the Creditors

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

16.15 Credit appraisal by the Secured Parties

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

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

16.16 Security Agent's management time and additional remuneration

- (a) Any amount payable to the Security Agent under Clause 16.11 (*Primary Creditors' indemnity to the Security Agent*), Clause 18 (*Costs and expenses*) or Clause 19.1 (*Indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the 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.

16.17 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).

16.18 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.

16.19 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.

16.20 Custodians and nominees

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

16.21 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) considers, in its discretion, to be appropriate.
- (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.

16.22 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 in its discretion that appointment to be appropriate;

- (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.

16.23 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.

16.24 Winding up of trust

If the Security Agent, with the approval of each Facility Agent and, prior to the Bridge Discharge Date only, each Hedge Counterparty, determines that:

- (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) 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 16.12 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

16.25 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.

16.26 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.

16.27 Debtors: Power of Attorney

Each Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that 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).

17. CHANGES TO THE PARTIES

17.1 Assignments and transfers

No Party may:

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

in respect of any Debt Documents or the Liabilities except as permitted by this Clause 17.

17.2 Change of Bridge Lender or HoldCo Lender

(a) A Bridge Lender or HoldCo Lender may:

- (i) assign any of its rights; or
- (ii) transfer by novation any of its rights and obligations,

in respect of any Debt Documents or the Liabilities if:

- (A) that assignment or transfer is in accordance with the terms of the Facility Agreement to which it is a party; and
- (B) any assignee or transferee has (if not already a Party as a Bridge Lender or HoldCo Lender (as the case may be)) acceded to this Agreement, as a Bridge Lender or a HoldCo Lender (as the case may be), pursuant to Clause 17.5 (*Creditor Accession Undertaking*).

17.3 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, pursuant to Clause 17.5 (*Creditor Accession Undertaking*) as a Hedge Counterparty.

17.4 Change of Facility Agent

No person shall become a Facility Agent unless at the same time, it accedes to this Agreement as a Bridge Agent or HoldCo Agent (as the case may be), pursuant to Clause 17.5 (*Creditor Accession Undertaking*).

17.5 Creditor Accession Undertaking

- (a) Subject to paragraph (b) below, 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:
 - (i) 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
 - (ii) 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.
- (b) No Hedge Counterparty may accede to this Agreement following the Bridge Discharge Date.

17.6 New Debtor

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

the Debtors will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor, in accordance with paragraph (b) below, no later than contemporaneously with the incurrance of those Liabilities or the giving of that assurance.
- (b) With effect from the date of acceptance by the Security Agent of a Debtor Accession Deed duly executed and delivered to the Security Agent by the new

Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Debtor.

17.7 Additional parties

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.

SECTION 8

ADDITIONAL PAYMENT OBLIGATIONS

18. FEES, COSTS AND EXPENSES

18.1 Security Agent fee

The Company shall pay to the Security Agent (for its own account) a security agent fee in the amount and at the times agreed in the Security Agency Fee Letter.

18.2 Transaction expenses

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

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and
- (b) any other Debt Documents executed after the date of this Agreement.

18.3 Amendment costs

If a Debtor requests an amendment, waiver or consent, the Company 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.

18.4 Enforcement and preservation costs

The Company 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.

18.5 Stamp taxes

The Company 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.

18.6 Interest on demand

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the

rate which is two 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.

19. OTHER INDEMNITIES

19.1 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 18 (*Costs and expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;
 - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
 - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
 - (vii) acting as 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 19.1 will not be prejudiced by any release or disposal under Clause 12 (*Distressed Disposals and Appropriation*) taking into account the operation of that Clause 12.
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 19.1 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.

19.2 **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 12 (*Distressed Disposals and Appropriation*).

SECTION 9 ADMINISTRATION

20. INFORMATION

20.1 Dealings with Security Agent and Facility Agents

- (a) Subject to clause 32.5 (*Communication when Agent is Impaired Agent*) of the Bridge Facilities Agreement and to clause 33.5 (*Communication when Agent is Impaired Agent*) of the HoldCo Facility Agreement, each Bridge Lender and each HoldCo Lender shall deal with the Security Agent exclusively through its Facility Agent and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through any Facility Agent.
- (b) No Facility Agent shall be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.

20.2 Disclosure between Primary Creditors and Security Agent

Notwithstanding any agreement to the contrary, each of the Debtors and the Subordinated Creditors consents, until the Final Discharge Date, to the disclosure by any Primary Creditor and the Security Agent to each other (whether or not through a Facility 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.

20.3 Notification of prescribed events

- (a) If a Bridge Event of Default either occurs or ceases to be continuing the Bridge Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the HoldCo Agent.
- (b) If a Bridge Acceleration Event occurs the Bridge Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (c) The Bridge Agent shall notify the Security Agent of the Bridge Discharge Date and the Security Agent shall, upon receiving that notification, notify each other Party.
- (d) If a HoldCo Event of Default either occurs or ceases to be continuing the HoldCo Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Bridge Agent.
- (e) If a HoldCo Acceleration Event occurs the HoldCo Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (f) The HoldCo Agent shall notify the Security Agent of the HoldCo Discharge Date and the Security Agent shall, upon receiving that notification, notify each other Party.

- (g) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.
- (h) If any Primary Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.
- (i) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (j) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party
- (k) If any of the Term Outstandings are to be reduced (whether by way of repayment, prepayment, cancellation or otherwise) the Company shall notify each Hedge Counterparty of:
 - (i) the date and amount of that proposed reduction; and
 - (ii) any Exchange Rate Hedge Excess that would result from that proposed reduction and that Hedge Counterparty's Exchange Rate Hedging Proportion (if any) of that Exchange Rate Hedge Excess.
- (l) Each Hedge Counterparty shall provide to the Security Agent such information reasonably requested by it in connection with each Hedging Agreement it has entered into.

21. NOTICES

21.1 Communications in writing

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

21.2 Security Agent's communications with Primary Creditors

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

- (a) with the Bridge Lenders and the HoldCo Lenders through their respective Facility Agents and may give to the Facility Agents, as applicable, any notice, document or other communication required to be given by the Security Agent to a Bridge Lender or HoldCo Lender; and
- (b) with each Hedge Counterparty directly with that Hedge Counterparty.

21.3 Addresses

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

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

or any substitute address, fax number or department or officer which that Party may notify to the Security Agent (or the Security Agent may notify to the other Parties, if a change is made by the Security Agent) by not less than five Business Days' notice.

21.4 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,and, if a particular department or officer is specified as part of its address details provided under Clause 21.3 (*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 21.4 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.

21.5 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 21.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

21.6 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 the Investor or a Debtor 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 21.6.

21.7 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.

22. PRESERVATION

22.1 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.

22.2 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.

22.3 Remedies and waivers

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

22.4 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 22.4, 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.

22.5 **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.

23. **CONSENTS, AMENDMENTS AND OVERRIDE**

23.1 **Required consents**

- (a) Subject to paragraph (b) below and to Clause 23.4 (*Exceptions*), this Agreement may be amended or waived only with the consent of the Facility Agents, the Majority Bridge Lenders, the Majority HoldCo Lenders and the Security Agent.
- (b) An amendment or waiver that has the effect of changing or which relates to:
 - (i) Clause 9 (*Redistribution*), Clause 15 (*Application of Proceeds*) or this Clause 23 (*Consents, amendments and override*);
 - (ii) paragraphs (d)(iii), (e) and (f) of Clause 16.2 (*Instructions*); and
 - (iii) the order of priority or subordination under this Agreement,

shall not be made without the consent of:

- (A) the Facility Agents;
- (B) the Bridge Lenders;
- (C) the HoldCo Lenders;
- (D) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty); and
- (E) the Security Agent.

23.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to paragraph (b) below and to Clause 23.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Instructing Group, and if the Company consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.
- (b) Subject to paragraph (c) of Clause 23.4 (*Exceptions*), any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:
 - (i) the nature or scope of the Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
 - (iii) the release of any Transaction Security,

shall not be made without the prior written consent of the Bridge Lenders whose consent to that amendment, waiver or consent is required under the Bridge Facilities Agreement and the HoldCo Lenders whose consent to that amendment, waiver or consent is required under the HoldCo Facility Agreement and the Hedge Counterparties.

23.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this Clause 23 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 23.
- (b) Without prejudice to the generality of Clause 16.7 (*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.

23.4 Exceptions

- (a) Subject to paragraph (c) below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:
 - (i) in the case of a Primary Creditor (other than any Facility Agent), in a way which affects or would affect Primary Creditors of that Party's class generally; or
 - (ii) in the case of a Debtor, to the extent consented to by the Company under paragraph (a) of Clause 23.2 (*Amendments and Waivers: Transaction Security Documents*),

the consent of that Party is required.

- (b) Subject to paragraphs (c) below, an amendment, waiver or consent which relates to the rights or obligations of a Facility Agent, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the consent of that Facility Agent or, as the case may be, the Security Agent or that Hedge Counterparty.
- (c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 23.2 (*Amendments and Waivers: Transaction Security Documents*) shall apply:
 - (i) to any release of Transaction Security, claim or Liabilities; or
 - (ii) to any consent

which, in each case, the Security Agent gives in accordance with Clause 11 (*Non-Distressed Disposals*) or Clause 12 (*Distressed Disposals and Appropriation*).

23.5 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment:
 - (i) in ascertaining:
 - (A) the Majority Primary Creditors; or
 - (B) whether:
 - (1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Credit Participations; or
 - (2) the agreement of any specified group of Primary Creditors,

has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

that Defaulting Lender's 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:

(C) a Bridge Lender; or

(D) a HoldCo Lender,

as the case may be.

(b) For the purposes of this Clause 23.5, the Security Agent may assume that the following Primary Creditors are Defaulting Lenders:

- (i) any Bridge Lender or HoldCo Lender which has notified the Security Agent that it has become a Defaulting Lender;
- (ii) any Bridge Lender or HoldCo Lender to the extent that the relevant Facility Agent has notified the Security Agent that that Bridge Lender or HoldCo Lender is a Defaulting Lender;
- (iii) any Bridge 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 Bridge Facilities Agreement has occurred; and
- (iv) any HoldCo 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 HoldCo Facility Agreement has occurred,

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

23.6 Pro rata interest settlement in Facility Agreement

Paragraph (c) of Clause 23.10 (*Pro rata interest settlement*) of the Bridge Facilities Agreement and paragraph (c) of clause 24.10 (*Pro rata interest settlement*) of the HoldCo Facility Agreement shall apply to any request for a Consent, to carry any other vote or approve any action under this Agreement.

23.7 Calculation of Credit Participations

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

23.8 No liability

None of the Creditors will be liable to any other Creditor, or Debtor for any Consent given or deemed to be given under this Clause 23.

23.9 Agreement to override

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

24. BAIL-IN

24.1 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.

24.2 Bail-In definitions

In this Clause 24:

"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:
 - (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.

25. **COUNTERPARTS**

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

SECTION 10

GOVERNING LAW AND ENFORCEMENT

26. GOVERNING LAW

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

27. ENFORCEMENT

27.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to decide any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to decide Disputes and accordingly no Party will argue to the contrary.

27.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law:
 - (i) each Debtor and each Subordinated Creditor (unless incorporated or resident (as applicable) in England and Wales):
 - (A) irrevocably appoints GlobeInvestUK Ltd of Labs Atrium, Stables Market, London, England, NW1 8AH as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
 - (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (in the case of an agent for service of process for a Debtor or a Subordinated Creditor), must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Bridge Agent or, after the Bridge Discharge Date, the HoldCo Agent. Failing this, the Bridge Agent or the HoldCo Agent (as the case may be) may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Company and each Subordinated Creditor and is intended to be and is delivered by them as a deed on the date specified above.

SCHEDULE 1
FORM OF DEBTOR ACCESSION DEED

THIS AGREEMENT is made on [] and made between:

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

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

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

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

the "**Relevant Documents**".

IT IS AGREED as follows:

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

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

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

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

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

The Acceding Debtor

[EXECUTED AS A DEED)

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

Director

Director/Secretary

OR

[EXECUTED AS A DEED

By: [*Full name of Acceding Debtor*]

Signature of Director

Name of Director

in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness]

Address for notices:

Address:

Fax:

The Security Agent

[Full Name of Current Security Agent]

By:

Date:

SCHEDULE 2
FORM OF CREDITOR ACCESSION UNDERTAKING

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

[To: *[Insert full name of current Bridge Agent]* as Bridge Agent.]*

From: *[Acceding Creditor]*

THIS UNDERTAKING is made on *[date]* by *[insert full name of new Bridge Lender/HoldCo Lender/Bridge Agent/HoldCo Agent]* (the "**Acceding [Bridge Lender/HoldCo Lender/Bridge Agent/HoldCo Agent]**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated [] between, among others, *[INSERT NAME OF COMPANY]* as Company, *[INSERT NAME OF SECURITY AGENT]* as security agent, *[INSERT NAME OF BRIDGE AGENT]* as bridge agent *[INSERT NAME OF HOLDCO AGENT]* as holdco 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 *[Bridge Lender/HoldCo Lender/Bridge Agent/HoldCo Agent/Hedge Counterparty]* being accepted as a *[Bridge Lender/HoldCo Lender/Bridge Agent/HoldCo Agent]* for the purposes of the Intercreditor Agreement, the Acceding *[Bridge Lender/HoldCo Lender/Bridge Agent/HoldCo Agent/Hedge Counterparty]* confirms that, as from *[date]*, it intends to be party to the Intercreditor Agreement as a *[Bridge Lender/HoldCo Lender/Bridge Agent/HoldCo Agent/Hedge Counterparty]* and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a *[Bridge Lender/HoldCo Lender/Bridge Agent/HoldCo Agent/Hedge Counterparty]* and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

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

THIS UNDERTAKING has been entered into on the date stated above.

Acceding *[Creditor]*

[EXECUTED as a DEED]
[insert full name of Acceding Creditor]

By:

Address:

Fax:

Accepted by the Security Agent

for and on behalf of

[Insert full name of current Security Agent]

Date:

SIGNATURES

The Company

EXECUTED as a **DEED** by **UNIKMIND**)
HOLDINGS LIMITED acting by)

Director

Name:

Address:

Fax:

The Trust

EXECUTED AS A DEED BY EQUIOM (ISLE OF MAN) LIMITED (as trustee of the Goodheart Trust), a company incorporated in the Isle of Man, acting by a director and its secretary/two directors being persons who, in accordance with the laws of that territory, are acting under the authority of Equiom (Isle of Man) Limited



Direc
Direc
Limited f Man)

Address:

Equiom (Isle of Man) Limited

1st Floor Jubilee Buildings

Victoria Street

Douglas

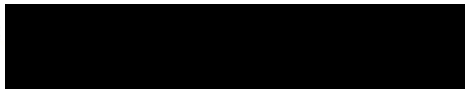
Isle of Man

IM1 2SH

Attention:



Email:

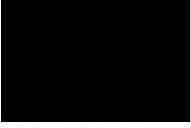


The Investor

BY EXECUTING THIS AGREEMENT, YOU ARE CONFIRMING THE FOLLOWING:

- (A) THAT YOU UNDERSTAND AND AGREE TO BE LEGALLY BOUND BY THE PROVISIONS OF THIS AGREEMENT; AND
- (B) THAT YOU HAVE HAD THE OPPORTUNITY TO TAKE INDEPENDENT LEGAL ADVICE ON THE PROVISIONS OF THIS AGREEMENT AND THE EFFECT OF THE TRANSACTION CONTEMPLATED BY IT AND HAVE EITHER OBTAINED SUCH LEGAL ADVICE OR HAVE DECLINED TO DO SO.

Signed and delivered as a Deed
by **TEDDY SAGI**
in the presence of:

) 
)
)

Signature:

Name:

Occupation:

Address:

Fax: n/a

The Security Agent

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED

By:

Address:

8 Canada Square

London

E14 5HQ

Fax: +44.20.7991.4350

Email: Ctla.trustee.admin@hsbc.com

Attention: ISVTrustee Services Administration

The Bridge Lender

HSBC BANK PLC

By:

The HoldCo Lender

HSBC PRIVATE BANK (SUISSE) SA.

By:

By:

The Security Agent

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED

By:

Address:

8 Canada Square

London

E14 5HQ

Fax: +44.20.7991.4350

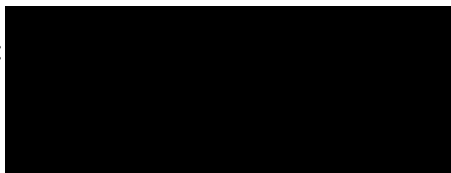
Email: Ctla.trustee.admin@hsbc.com

Attention: ISVTrustee Services Administration

The Bridge Lender

HSBC BANK PLC

By:



Managing Associate General Counsel

The HoldCo Lender

HSBC PRIVATE BANK (SUISSE) SA.

By:

By:

The Security Agent

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED

By:

Address:

8 Canada Square

London

E14 5HQ

Fax: +44.20.7991.4350

Email: Ctla.trustee.admin@hsbc.com

Attention: ISVTrustee Services Administration

The Bridge Lender

HSBC BANK PLC

By:

The HoldCo Lender

HSBC PRIVATE BANK (SUISSE) SA.

By

By

