

Dated [●] 2010

ALMATIS HOLDINGS 3 B.V.

as Parent

ALMATIS HOLDINGS 9 B.V.

as Senior Note Issuer

THE COMPANIES NAMED IN PART 4 OF SCHEDULE 1

as Original Debtors

J.P. MORGAN EUROPE LIMITED

as RCF Agent

WILMINGTON TRUST, FSB

as Senior Note Trustee

WILMINGTON TRUST (LONDON) LIMITED

as Security Agent

and

CERTAIN ENTITIES

as RCF Lenders, Hedge Counterparties, Intra-Group Lenders, Issuing Bank, Arrangers, Intra-Group Borrowers and Structural Creditors

INTERCREDITOR AGREEMENT

LATHAM & WATKINS

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CONTENTS

Clause	Page
1. Definitions and Interpretation	1
2. Ranking and Priority	25
3. Transaction Security	26
4. Credit Facility Lenders and Credit Facility Lender Liabilities	27
5. Senior Noteholders and Senior Note Liabilities	29
6. Hedge Counterparties and Hedging Liabilities	31
7. Guarantee and Indemnity	37
8. Intra-Group Lenders and Intra-Group Liabilities.....	43
9. Structural Creditors and Structural Liabilities	47
10. Effect of Insolvency Event.....	49
11. Turnover of Receipts.....	50
12. Redistribution.....	53
13. Enforcement of Transaction Security	54
14. Proceeds of Disposals	58
15. Application of Proceeds.....	62
16. Equalisation	66
17. The Security Agent	67
18. Change of Security Agent and Delegation.....	77
19. Changes to the Parties.....	78
20. Senior Note Trustee Protections	83
21. Retrenching – Senior Notes	87
22. Costs and Expenses.....	88
23. Indemnities.....	89
24. Information	90
25. Notices	92
26. Preservation	94
27. Consents, Amendments and Override.....	95
28. Counterparts.....	100
29. Governing Law	100
30. Enforcement.....	100
SCHEDULE 1 The Parties.....	102
Part I The Original RCF Lenders	102
Part II The Original Intra-Group Lenders	103
Part III The Original Intra-Group Borrowers	104

Part IV The Original Structural Creditor.....	105
Part V Original Debtors	106
SCHEDULE 2 Form of Debtor Accession Deed	107
SCHEDULE 3 Form of Creditor/Creditor Representative Accession Undertaking	109
SCHEDULE 4 Form of Debtor Resignation Request	112
SCHEDULE 5 Security Enforcement Principles	113
SCHEDULE 6 Form of Indemnity.....	114

THIS AGREEMENT is dated [●]2010 and made between:

ALMATIS HOLDINGS 3 B.V., a limited liability company incorporated under the laws of the Netherlands with its registered office at Rotterdam, The Netherlands, registered with the Rotterdam trade register under company number 24387315 (the “**Parent**”);

ALMATIS HOLDINGS 9 B.V., a limited liability company incorporated under the laws of the Netherlands with its registered office at Rotterdam, The Netherlands, registered with the Rotterdam trade register under company number 24413773 (the “**Senior Note Issuer**”);

J.P. MORGAN EUROPE LIMITED as agent for the RCF Finance Parties (the “**RCF Agent**”);

WILMINGTON TRUST, FSB as trustee for the Senior Noteholders (the “**Senior Note Trustee**”);

THE FINANCIAL INSTITUTIONS listed in Part I of Schedule 1 (*The Parties*) hereto as RCF lenders (the “**Original RCF Lenders**”);

THE COMPANIES listed in Part II of Schedule 1 (*The Parties*) hereto as intra-group lenders (the “**Original Intra-Group Lenders**”);

THE COMPANIES listed in Part III of Schedule 1 (*The Parties*) hereto as intra-group borrowers (the “**Original Intra-Group Borrowers**”);

THE PERSONS listed in Part IV of Schedule 1 (*The Parties*) hereto as structural creditors (the “**Original Structural Creditors**”);

THE SUBSIDIARIES of the Parent listed in Part V of Schedule 1 (*The Parties*) hereto as debtors (together with the Parent and the Senior Note Issuer, the “**Original Debtors**”);

WILMINGTON TRUST (LONDON) LIMITED as security agent for the Secured Parties (the “**Security Agent**”);

J.P. MORGAN PLC and **MERRILL LYNCH INTERNATIONAL** as the arrangers (the “**Arrangers**”); and

JPMORGAN CHASE BANK, N.A. as the issuing bank (the “**Issuing Bank**”).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

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

“**Acceleration Event**” means a Credit Facility Acceleration Event or a Senior Note Acceleration Event.

“**Additional Liabilities**” means, in relation to any Liability, any money, debt or liability due, owing or incurred under or in connection with:

- (a) any refinancing, deferral or extension of such Liability;
- (b) any further advance which may be made under any document, agreement or instrument supplemental to any original finance document under or in connection with which such Liability was incurred or created together with any related interest, fees and costs;
- (c) any claim for damages or restitution in the event of rescission of such Liability or otherwise in connection with any relevant agreement, deed, document or instrument relating to such Liability;
- (d) any claim against any Debtor or Intra-Group Borrower flowing from any recovery by a Debtor or Intra-Group Borrower or any liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer of a payment or discharge in respect of such Liability on the grounds of preference or otherwise; and
- (e) any amount (such as post-insolvency interest and post-insolvency expenses) which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings.

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

“**Agreed Security Principles**” has the meaning given to the term “Agreed Security Principles” in:

- (a) on or prior to the RCF Discharge Date, the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, the relevant Credit Facility Documents.

“**Ancillary Document**” means each document relating to or evidencing an Ancillary Facility.

“**Ancillary Facility**” means:

- (a) on or prior to the RCF Discharge Date, any ancillary facility made available by an Ancillary Lender in accordance with clause 9 (*Ancillary Facilities*) of the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, any ancillary facility made available by an Ancillary Lender under and in accordance with the Credit Facility Documents.

“**Ancillary Lender**” means:

- (a) on or prior to the RCF Discharge Date, each RCF Lender (or Affiliate of a RCF Lender) which makes an Ancillary Facility available pursuant to the terms of the RCF Facility Agreement; and
- (b) following the RCF Discharge Date, each Credit Facility Lender (or Affiliate of a Credit Facility Lender) which makes an Ancillary Facility available pursuant to the terms of the Credit Facility Documents.

“**Arranger**” means the Arrangers and any other person who becomes a party to this Agreement as an Arranger pursuant to Clause 19 (*Changes to the Parties*).

“**Arranger Liabilities**” means all present and future liabilities and obligations, actual and contingent, of any Debtor to any Arranger under the Credit Facility Documents, together with any related Additional Liabilities.

“**Base Currency**” means United States Dollars (USD or \$).

“**Base Currency Amount**” means, in relation to an amount, that amount converted (to the extent not already denominated in the Base Currency) into the Base Currency at the RCF Facility Agent’s Spot Rate of Exchange on or prior to the RCF Discharge Date, and thereafter (if applicable) the Creditor Representative’s Spot Rate of Exchange and to the extent not applicable, the Spot Rate of Exchange of an Acceptable Bank to be agreed among the Parties, in each case on the Business Day prior to the relevant calculation.

“**Borrowing Liabilities**” means, in relation to a member of the Group, the liabilities (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor or Debtor in respect of Financial Indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities as a Borrower under and as defined in the relevant Credit Facility Documents).

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

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

“**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 Document or a Hedging Ancillary Document based on a 1992 ISDA Master Agreement, any step involved in determining the amount payable in respect of an Early Termination Date (as defined in the 1992 ISDA Master Agreement) under section 6(e) of the 1992 ISDA Master Agreement before the application of any subsequent set-off (as defined in the 1992 ISDA Master Agreement);
- (b) in respect of a Hedging Document or a Hedging Ancillary Document based on a 2002 ISDA Master Agreement, any step involved in determining an Early Termination Amount (as defined in the 2002 ISDA Master Agreement) under section 6(e) of the 2002 ISDA Master Agreement; and
- (c) in respect of a Hedging Document or a Hedging Ancillary Document not based on an ISDA Master Agreement, any step involved on a termination of the transactions under that Hedging Document pursuant to any provision of that Hedging Document which has a similar effect to either provision referenced in paragraph (a) and paragraph (b) above.

“**Conflicting Enforcement Instructions**” means instructions (or proposed instructions) as to Enforcement delivered to the Security Agent by or on behalf of both the Majority Super Senior Creditors and the Senior Note Required Holders (in each case acting through their Creditor Representative) that are inconsistent as to the manner of Enforcement, it being understood that, for the purposes of triggering the consultation requirements under paragraph (b) of Clause 13.4 (*Enforcement Instructions* –

Consultation Periods) only and not for any other purpose (including, without limitation, for the purposes of determining the Instructing Group), the failure to give instructions by a Creditor Representative will be deemed to be an instruction inconsistent with any other instructions given.

“**Credit Facility**” means:

- (a) on or prior to the RCF Discharge Date, the RCF Facility; and
- (b) after the RCF Discharge Date, any credit facility that meets the requirements of a “Revolving Credit Facility”¹ under and as defined in the Senior Note Documents (in their current form as at the date of this Agreement) which comprises indebtedness which is only incurred pursuant to section [●] of the Senior Note Indenture and which indebtedness is entitled, under the terms of the Senior Note Documents (as at the date of this Agreement) and (if applicable) the Credit Facility Documents to share in the Transaction Security with the rights and obligations of Credit Facility Lenders as provided for in this Agreement, and in respect of which the creditors, facility agent and arrangers have acceded to this Agreement in accordance with Clause 19.2 (*New Credit Facility Lenders and Creditor Representatives*) and which is permitted by the terms of the Senior Notes Documents to rank senior to the Senior Note Liabilities with respect to the proceeds of any Enforcement of Security.

“**Credit Facility Acceleration Event**” means:

- (a) on or prior to the RCF Discharge Date, the RCF Agent exercising any of its rights under clause 28.21 (*Acceleration*) of the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, the Creditor Representative in relation to any Credit Facility exercising any of its rights under any corresponding acceleration provision(s) of the Credit Facility Documents.

“**Credit Facility Borrower**” has the meaning given to the term “Borrower” in:

- (a) on or prior to the RCF Discharge Date, the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, the relevant Credit Facility Documents.

“**Credit Facility Cash Cover**” has the meaning given to the term “cash cover” in a Credit Facility Document.

“**Credit Facility Commitment**” has the meaning given to the term “Commitment” in:

- (a) on or prior to the RCF Discharge Date, the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, the relevant Credit Facility Documents.

“**Credit Facility Document**” means:

- (a) on or prior to the RCF Discharge Date, each “Finance Document” under, and as defined in, the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, each document or instrument entered into between a member of the Group and a Finance Party setting out

¹ TO BE CONFIRMED BY REFERENCE TO THE NOTES.

the terms of any loan, credit or debt facility or securities which creates or evidences any Credit Facility.

“Credit Facility Guarantor” means:

- (a) on or prior to the RCF Discharge Date, a “Guarantor” under, and as defined, in the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, any member of the Group that provides a guarantee in favour of any Finance Party in connection with any Credit Facility.

“Credit Facility Lender Cash Collateral” means:

- (a) on or prior to the RCF Discharge Date, any cash collateral provided by an RCF Lender to an Issuing Bank pursuant to clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender*) of the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, any cash collateral provided by a Credit Facility Lender to an Issuing Bank pursuant to the corresponding terms of the Credit Facility Documents.

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

“Credit Facility Lender Liabilities” means the Liabilities owed by the Debtors to the Credit Facility Lenders under or in connection with the Credit Facility Documents, together with any related Additional Liabilities.

“Credit Facility Lenders” means:

- (a) on or prior to the RCF Discharge Date, the RCF Lenders; and
- (b) after the RCF Discharge Date, each Lender (under and as defined in the Credit Facility Documents), Issuing Bank and Ancillary Lender.

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

“Creditor Representative” means:

- (a) in relation to the RCF Lenders, the RCF Agent;
- (b) in relation to the Credit Facility Lenders under any Credit Facility (other than the RCF Facility), the facility agent in respect of that Credit Facility;
- (c) in relation to the Senior Noteholders, the Senior Note Trustee; and
- (d) in relation to any Hedge Counterparty, each Hedge Counterparty shall be its own Creditor Representative.

“Creditor/Creditor Representative Accession Undertaking” means:

- (a) an undertaking substantially in the form set out in Schedule 3 (*Form of Creditor/Creditor Representative Accession Undertaking*);

- (b) a Transfer Certificate or an Assignment Agreement (each as defined in the RCF Agreement or other Credit Facility Document); or
- (c) in the case of an acceding Debtor which is expressed to accede as an Intra-Group Lender in the relevant Debtor Accession Deed, that Debtor Accession Deed.

“**Creditor Representative Liabilities**” means all present and future liabilities and obligations, actual and contingent, owed by the Debtors to the Creditor Representatives under or in connection with the Senior Finance Documents, together with any related Additional Liabilities.

“**Creditors**” means the Primary Creditors, the Structural Creditors and the Intra-Group Lenders.

“**Debt Documents**” means each of this Agreement, the Credit Facility Documents, the Senior Note Documents, the Hedging Documents, the Transaction Security Documents, the Structural Debt Documents, the Intra-Group Debt Documents and any other document designated as such by the Security Agent and the Parent.

“**Debtor**” means:

- (a) each Original Debtor (which, for the avoidance of doubt, includes, without limitation, each Borrower and Guarantor under the RCF Facility Agreement from time to time (as those terms are defined therein)); and
- (b) any person which becomes a Party as a Debtor in accordance with the terms of Clause 19 (*Changes to the Parties*).

“**Debtor Accession Deed**” means:

- (a) a deed substantially in the form set out in Schedule 2 (*Form of Debtor Accession Deed*); or
- (b) only in the case of a member of the Group which is acceding as a borrower or a guarantor under the RCF Facility Agreement or other Credit Facility Document) an Accession Deed (as defined in the RCF Facility Agreement or any other Credit Facility Document).

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

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

“**Defaulting Lender**” means:

- (a) on or prior to the RCF Discharge Date, an RCF Lender which is a Defaulting Lender under, and as defined in, the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, a Credit Facility Lender which is a Defaulting Lender under, and as defined in, the relevant Credit Facility Documents.

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

“**Designated Gross Amount**” means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility’s maximum gross amount.

“**Designated Net Amount**” means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility’s maximum net amount.

“**Disposal Proceeds**” has the meaning given to that term in Clause 14 (*Proceeds of Disposals*).

“**Distressed Disposal**” means a disposal of an asset subject to the Transaction Security of a member of the Group which is:

- (a) being effected at the request of the Instructing Group, or if the provisions of paragraph 13.4(d)(i) and 13.4(e)(i) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*) apply, the Enforcing Creditor Group, in circumstances where the Transaction Security has become enforceable;
- (b) being effected by enforcement of the Transaction Security; or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is not a member of the Group (including, without limitation, any disposal of an asset pursuant to Section 363 of the US Bankruptcy Code or a plan of reorganisation pursuant to chapter 11 of the US Bankruptcy Code).

“**Distress Event**” means any of:

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

“**Early Termination Date**” means an Early Termination Date (as defined in the relevant Hedging Document).

“**Enforcement**” means the enforcement of the Transaction Security, the making of a Distressed Disposal and/or the release of claims and/or Transaction Security on a Distressed Disposal under Clause 14.2 (*Distressed Disposals*), the giving of instructions as to actions following an Insolvency Event under Clause 10.7 (*Security Agent Instructions*) and the taking of any other actions to effect the enforcement of the Transaction Security.

“**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 Super Senior Creditor, a Senior Noteholder or Hedge Counterparty (which is not a Super Senior Creditor) to perform its obligations under, or of any voluntary or mandatory prepayments arising under, the Debt Documents;
 - (ii) the making of any declaration that any Liabilities are payable on demand;
 - (iii) the making of a demand for payment in relation to a Liability that is payable on demand;
 - (iv) the making of a demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;

- (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability) other than in connection with an Asset Sale Offer, a Notes Offer or a Change of Control (each as defined in the Senior Note Indenture);
 - (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities or under the Credit Facility Document or the Senior Note Indenture or Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender or Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (vii) the suing for or commencing of any legal proceedings against any member of the Group to recover any Liabilities;
- (b) the exercise or enforcement of any right under any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
 - (c) in relation to the Structural Liabilities or the Intra-Group Liabilities, the exercise by the Security Agent of its right (if any) under the Structural Debt Documents or the Intra-Group Debt Documents, as the case may be, to serve a Conversion Notice (as defined in such Structural Debt Documents or the Intra Group Debt Documents);
 - (d) in relation to any Hedging Liabilities only, the designation of an Early Termination Date under any Hedging Document, or the termination of, or closing out of any transaction under, any Hedging Document, prior to its stated maturity, or the demand for payment of any amount which would become payable on or following an Early Termination Date or any such termination or close-out unless it is a Permitted Hedge Payment;
 - (e) 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 19 (*Changes to the Parties*)); or
 - (f) the petitioning, applying or voting for, or the taking of any formal steps (including the appointment of any liquidator, receiver, administrator, custodian, assignee for the benefit of creditors, administrative receiver, compulsory manager, trustee or similar officer) in relation to, the insolvency, winding up, dissolution, liquidation, receivership, custodianship, assignment for the benefit of creditors, administration, bankruptcy 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 any analogous procedure or step in any jurisdiction,

except that 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 the aforementioned 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, shall not constitute Enforcement Action.

“Enforcement Proceeds” means any amount received or recovered by any Secured Party or otherwise realised by a Secured Party from the assets of a Debtor (including by way of a Distressed Disposal) from any of the following:

- (a) the taking of any steps to enforce or require the enforcement of any Transaction Security over assets of that Debtor;
- (b) the entering into of any composition, compromise, assignment or arrangement with that Debtor in relation to any of the Secured Liabilities; or
- (c) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator, custodian, assignee for the benefit of creditors, administrative receiver, compulsory manager, trustee or similar officer) in relation to, the insolvency, winding up, dissolution, liquidation, receivership, custodianship, assignment for the benefit of creditors, administration or reorganisation of that Debtor, or any analogous procedure or step in any jurisdiction.

“Enforcing Creditor Group” has the meaning ascribed to such term in paragraph 13.4(d)(i) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*).

“Event of Default” means any event or circumstance specified as such in any of the Credit Facility Documents or the Senior Note Indenture.

“Finance Party” means:

- (a) on or prior to the RCF Discharge Date, any RCF Finance Party; and
- (b) after the RCF Discharge Date, has the meaning given to the term “Finance Party” in the relevant Credit Facility Documents.

“Final Discharge Date” means the later to occur of the Super Senior Discharge Date and the Senior Note Discharge Date.

“Group” means the Parent and each of its Restricted Subsidiaries for the time being.

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

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

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

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

“Hedge Counterparty” means:

- (a) a Senior New Hedge Counterparty; and

- (b) a New Hedge Counterparty,

which in each case has not ceased to be a Hedge Counterparty in accordance with this Agreement.

“Hedging Discharge Date” means the date on which all Hedging Liabilities have been fully and finally discharged to the satisfaction of the Hedge Counterparties whether or not as a result of an enforcement, and the Hedge Counterparties are under no further obligation to provide financial accommodation to any of the Debtors under the Hedging Documents.

“Hedging Document” means any Senior New Hedging Agreement and any New Hedging Agreement.

“Hedging Guarantor” means:

- (a) on or prior to the RCF Discharge Date, a “Guarantor” under, and as defined, in the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, any member of the Group that provides a guarantee in favour of any Hedge Counterparty in connection with any Hedging Document.

“Hedging Liabilities” means Senior New Hedging Liabilities and New Hedging Liabilities.

“Hedging Purchase Amount” means, in respect of a transaction under a Senior New Hedging Agreement, the amount that would be payable to or by the relevant Senior New Hedge Counterparty on the relevant date if:

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

“Holding Company” has the meaning given to that term in the RCF Facility Agreement and, after the RCF Discharge Date, any Credit Facility Agreement.

“Impaired Security Agent” means the Security Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Senior Finance Documents or the by the due date for payment;
- (b) the Security Agent otherwise rescinds or repudiates a Senior Finance Document;
- (c) (if the Security Agent is also an RCF Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of “Defaulting Lender” under the terms of the RCF Facility Agreement (or the corresponding provision of the Credit Facility Document); or
- (d) an Insolvency Event (as defined in the RCF Facility Agreement) has occurred and is continuing with respect to the Security Agent;

unless, in the case of paragraph (a) above:

- (1) its failure to pay is caused by:

- (a) administrative or technical error; or
 - (b) a Disruption Event; and
- payment is made within three (3) Business Days of its due date; or
- (2) the Security Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

“Insolvency Event” means:

- (a) in relation to any Debtor:
 - (i) any resolution is passed or order (including without limitation, an order for relief in any bankruptcy case under the United States Bankruptcy Code) made for the winding up, dissolution, administration, bankruptcy or reorganisation (whether pursuant to the United States Bankruptcy Code or otherwise) of that Debtor, a moratorium is declared in relation to any indebtedness of that Debtor or an administrator is appointed to that Debtor;
 - (ii) any composition, compromise, assignment or arrangement is made with any of its creditors;
 - (iii) the appointment of any liquidator, receiver, administrator, custodian, assignee for the benefit of creditors, administrative receiver, compulsory manager, trustee or similar officer in respect of that Debtor or any of its assets;
 - (iv) any voluntary or involuntary insolvency, bankruptcy, receivership, custodianship, liquidation, dissolution, reorganization, assignment for the benefit of creditors, appointment of a custodian, receiver, trustee or other officer with similar powers of any other proceeding for the liquidation, dissolution or other winding up of that Debtor or any of its assets.
- (b) in relation to a Debtor incorporated in Germany, such Debtor:
 - (i) is over-indebted “*überschuldet*” within the meaning of section 19 German Insolvency Code (*InsO*) or unable to pay its debts as they fall due “*zahlungsunfähig*” within the meaning of section 17 German Insolvency Code (*InsO*), suspends making payments on all or a material part of its debts or announces an intention to do so;
 - (ii) commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or, for any of the reasons set out in sections 17 to 19 German Insolvency Code (*InsO*);
 - (iii) files for insolvency “*Antrag auf Eröffnung eines Insolvenzverfahrens*” or the management “*Geschäftsführung*” of any such Debtor is required by law to file for insolvency; or
 - (iv) the competent court takes any of the actions set out in section 21 German Insolvency Code (*InsO*) or the competent court institutes or rejects (for reason of insufficiency of its funds to implement such proceedings) insolvency proceedings against any such Debtor “*Eröffnung des Insolvenzverfahrens*”;

- (c) any analogous events to those mentioned in paragraph (a) and (b) above affecting any Debtor in any jurisdiction; or

“Instructing Group” means, at any time:

- (a) subject to paragraph (b) below, the Majority Super Senior Creditors and the Senior Note Required Holders in each case acting through its respective Creditor Representative;
- (b) in relation to instructions as to Enforcement, the Majority Super Senior Creditors and the Senior Note Required Holders (in each case acting through their respective Creditor Representative), *provided that* if the Security Agent has received Conflicting Enforcement Instructions then:
 - (i) if the instructions are as to Enforcement and these:
 - (A) comply with paragraph (b) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*), *provided that* the Majority Super Senior Creditors and Senior Note Required Holders shall not be obliged to consult under paragraph (b) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*) more than once in relation to each Enforcement; and
 - (B) are instructions to enforce the Transaction Security or otherwise require the Distressed Disposal of the Charged Property, *provided that* it is consistent with the Security Enforcement Principles,

then such Enforcement instructions from the Senior Note Required Holders (acting through its Creditor Representative) will prevail, it being acknowledged that, subject to the other provisions of this Agreement, the timeframe for the realisation of value from the enforcement of the Transaction Security or Distressed Disposal pursuant to such instructions will be determined by such Instructing Group; and

- (ii) in the event that the Super Senior Liabilities have not been fully discharged within six months of the date the first such Enforcement instructions were issued, the instructions as to Enforcement from the Majority Super Senior Creditors (acting through their Creditor Representative) will prevail, *provided that* such instructions have been given and are consistent with the Security Enforcement Principles.

“Intercreditor Amendment” means any amendment or waiver of this Agreement which is subject to Clause 27 (*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 Hedge Agreement in respect of Hedging Liabilities owed to that Hedge Counterparty by that Debtor under another Hedging Document.

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

Ancillary Document in respect of Credit Facility Lender Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

“Intra-Group Borrowers” means:

- (a) each Original Intra-Group Borrower; and
- (b) each member of the Group who has had loans or credit made available to it by an Intra-Group Lender and which becomes a party as an Intra-Group Lender in accordance with the terms of Clause 19 (*Changes to the Parties*),

which in each case has not ceased to be an Intra-Group Borrower in accordance with this Agreement.

“Intra-Group Debt Documents” means all documents, agreements and instruments evidencing any Intra-Group Liabilities.

“Intra-Group Lenders” means:

- (a) each Original Intra-Group Lender; and
- (b) each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which becomes a party as an Intra-Group Lender in accordance with the terms of Clause 19 (*Changes to the Parties*),

which in each case has not ceased to be an Intra-Group Lender in accordance with this Agreement.

“Intra-Group Liabilities” means the Liabilities owed by any member of the Group to any of the Intra-Group Lenders, together with any related Additional Liabilities.

“Investor Affiliate”² has the meaning given to such term in:

- (a) on or prior to the RCF Discharge Date, the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, the relevant Credit Facility Documents.

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

“Issuing Bank” has the meaning given to the term “Issuing Bank” in:

- (a) on or prior to the RCF Discharge Date, the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, the relevant Credit Facility Documents.

“Letter of Credit” has the meaning given to the term “Letter of Credit” in:

- (a) on or prior to the RCF Discharge Date, the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, the relevant Credit Facility Documents.

² TO BE CONFIRMED AGAINST DEFINITION IN THE RCF FACILITY AGREEMENT

“**Liabilities**” means all present and future moneys, debts, liabilities and obligations due 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 with any other person or in any other capacity, together with any related Additional Liabilities, including, without limitation, any such amounts (such as post-insolvency interest and post-insolvency expenses) which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings.

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

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

the rights and benefits in respect of those Liabilities.

“**Majority Super Senior Creditors**” means, at any time, those Super Senior Creditors whose Super Senior Credit Participations at that time aggregate more than 66 2/3 per cent. of the total Super Senior Credit Participations at that time.

“**Material Adverse Effect**” has the meaning given to the term “Material Adverse Effect” in:

- (a) on or prior to the RCF Discharge Date, the RCF Facility Agreement; and
- (b) after the RCF Discharge Date, if applicable, the relevant Credit Facility Documents.

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

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

“**New Hedging Agreement**” means any master agreement, confirmation, schedule or other agreement (other than a Senior New Hedging Agreement) entered into by a Borrower and a New Hedge Counterparty for the purposes of hedging interest rate, currency risk or commodity risk that is permitted, under the terms of the Credit Facility Documents and the Senior Note Documents, to share in the Transaction Security.

“**New Hedge Counterparty**” means any person which becomes Party as a New Hedge Counterparty pursuant to Clause 19.5 (*New Hedge Counterparty or change in New Hedge Counterparty*).

“**New Hedging Liabilities**” means the Liabilities owed by any Debtor to the New Hedge Counterparties under or in connection with the New Hedging Agreements and the guarantee and indemnity referred to in Clause 7 (*Guarantee and indemnity*).

“**Non-Credit Related Close-Out**” means a Permitted Hedge Close-Out described in any of paragraphs (a)(ii) or (a)(iv) and (a)(v) of Clause 6.8 (*Permitted Enforcement: Hedge Counterparties*).

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

“**Parallel Debt Obligations**” has the meaning given to it in paragraph (a) of Clause 17.2 (*Parallel Debt (Covenant to pay the Security Agent)*);

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

“**Payment**” means any payment, repayment, prepayment, redemption, defeasance or discharge of any principal, interest or other amount on or in respect of any of the Liabilities (or other liabilities or obligations).

“**Payment Netting**” means:

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

“**Permitted Credit Facility Lender Payments**” means the Payments permitted by Clause 4.1 (*Payment of Credit Facility Lender Liabilities*).

“**Permitted Gross Amount**” means, in relation to a Multi-account Overdraft Facility, any amount, not exceeding the Designated Gross Amount, which is the aggregate gross debit balance of overdrafts comprised in that Multi-account Overdraft Facility.

“**Permitted Hedge Close-Out**” means, in relation to a transaction under a Hedging Document, a termination or close-out of that transaction which is permitted pursuant to Clause 6.8 (*Permitted Enforcement: Hedge Counterparties*).

“**Permitted Hedge Payments**” means the Payments permitted by Clause 6.3 (*Permitted Payments: Hedging Liabilities*).

“**Permitted Intra-Group Payments**” means the Payments permitted by Clause 8.2 (*Permitted Payments: Intra-Group Liabilities*).

“**Permitted Payment**” means a Permitted Hedge Payment, a Permitted Intra-Group Payment, a Permitted Senior Noteholder Payment, a Permitted Subordinated Creditor Payment or a Permitted Credit Facility Lender Payment.

“**Permitted Senior Noteholder Payments**” means the Payments permitted by Clause 5.1 (*Payment of Senior Note Liabilities*).

“**Permitted Subordinated Creditor Payments**” means the Payments permitted by Clause 9.2 (*Permitted Payments: Structural Liabilities*).

“**Primary Creditors**” means the Super Senior Creditors, the Senior Note Creditors and the Hedge Counterparties (which are not Super Senior Creditors).

“**RCF Agent**” means the facility agent under the RCF Facility Agreement.

“**RCF Agent Liabilities**” means the Creditor Representative Liabilities owed by the Debtors to the RCF Agent under or in connection with the RCF Facility.

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

“**RCF Facility**” means the Facility as defined in the RCF Facility Agreement.

“**RCF Facility Agreement**” means the facility agreement comprising a \$ 50,000,000 revolving credit facility made between the Obligors (as defined therein), the RCF Finance Parties and others dated on or about the date of this Agreement.

“**RCF Finance Documents**” has the meaning given to the term “Finance Document” in the RCF Facility Agreement, but excluding the Hedging Documents.

“**RCF Finance Parties**” means each “Finance Party” referred to in the RCF Facility Agreement, other than the Hedge Counterparties.

“**RCF Lenders**” means:

- (a) the Original RCF Lenders;
- (b) any other “Lender” as defined in the RCF Facility Agreement which has become a RCF Lender in accordance with Clause 19.4 (*Change of RCF Lender*),

which in each case has not ceased to be a RCF Lender in accordance with this Agreement.

“**RCF Liabilities**” means the Liabilities owed by the Debtors to the RCF Finance Parties under the RCF Finance Documents, together with any related Additional Liabilities (but excluding any Hedging Liabilities).

“**Receiver**” means a receiver or receiver and manager or administrative receiver or preliminary receiver (*vorläufiger Insolvenzverwalter*) or other similar officer 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 Ancillary Lender**” means, in respect of any Credit Facility Cash Cover, the Ancillary Lender (if any) for which that Credit Facility Cash Cover is provided.

“**Relevant Issuing Bank**” means, in respect of any Credit Facility Cash Cover, the Issuing Bank (if any) for which that Credit Facility Cash Cover is provided.

“**Relevant Liabilities**” means:

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

- (b) in the case of a Debtor, the Liabilities owed to the Creditors together with the Creditor Representative Liabilities owed to the Creditor Representative of those Creditors, the Arranger Liabilities and all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agent.

“**Restricted Subsidiary**” has the meaning given to such term in the RCF Facility Agreement or, following the RCF Discharge Date, in the Senior Note Indenture (in its form at the date of this Agreement) and, if applicable, in the relevant Credit Facility Documents.

“**Retiring Security Agent**” has the meaning given to that term in Clause 18 (*Change of Security Agent and Delegation*).

“**Secured Liabilities**” means the Credit Facility Lender Liabilities, the Creditor Representative Liabilities, the Senior Note Liabilities and the Hedging Liabilities.

“**Secured Obligations**” means:

- (a) all the Secured Liabilities; and
- (b) all other present and future obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under the relevant Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity including the Parallel Debt Obligations.

“**Secured Parties**” means the Super Senior Creditors, the Senior Noteholders, the Hedge Counterparties (which are not Super Senior Creditors), the Creditor Representatives, the Arrangers, the Security Agent and any Receiver or Delegate from time to time but, in the case of each Creditor Representative, Arranger, Super Senior Creditor or Hedge Counterparty (which is not a Super Senior Creditor) only if it is a party to this Agreement or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).

“**Security**” means a mortgage, charge, pledge, assignment, transfer, lien, right of set-off, retention or extended retention of title provision, or any other security interest securing any obligation of any person or any other agreement or arrangement having the effect of giving security or preferential ranking to a creditor, or any other agreement or arrangement having a similar effect.

“**Security Agent’s Spot Rate of Exchange**” means, in respect of the conversion of one currency (the “**First Currency**”) into another currency (the “**Second Currency**”) the Security Agent’s spot rate of exchange for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11:00 am (London time) on a particular day, which shall be notified by the Security Agent in accordance with paragraph (d) of Clause 17.8 (*Security Agent’s obligations*).

“**Security Document**” 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 set out in paragraphs (a) and (b) above.

“**Security Enforcement Principles**” means the principles set out in Schedule 5 (*Security Enforcement Principles*).

“**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 (i) the Liabilities to the Security Agent as trustee for the Secured Parties or (ii) the Parallel Debt Obligations and, in each case, secured by the Transaction Security, together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent for itself in respect of the Parallel Debt Obligations and as trustee for the Secured Parties;
- (c) the Security Agent’s interest in any trust fund created pursuant to Clause 11 (*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..

“**Senior Finance Documents**” means the Credit Facility Documents, the Senior Note Documents and the Hedging Documents.

“**Senior New Hedge Counterparty**” means any RCF Lender which:

- (a) holds no less than the lower of (i) \$ 3,000,000 and (ii) 6% of Commitments under the RCF Facility Agreement at the time it enters into the relevant Hedging Document, and
- (b) becomes Party as a Senior New Hedge Counterparty pursuant to Clause 19.6 (*Senior New Hedge Counterparty or change in Senior New Hedge Counterparty*).

“**Senior New Hedge Counterparty Share**” means, in respect of each Senior New Hedge Counterparty, its pro rata share of the Senior New Hedging Liabilities up to an aggregate of the Senior New Hedging Threshold based on the Termination or Close Out Value of its hedging as a percentage of the aggregate value of Termination or Close Out Value of all Senior New Hedging Liabilities;

“**Senior New Hedging Agreement**” means any master agreement, confirmation, schedule or other agreement (other than a New Hedging Agreement) entered into by a Borrower and the Senior New Hedge Counterparty for the purposes of hedging interest rate, currency risk or commodity risk that is permitted, under the terms of the Credit Facility Documents and the Senior Note Document, to share in the Transaction Security.

“**Senior New Hedging Liabilities**” means Liabilities owed by any Debtor to the Senior New Hedge Counterparties under or in connection with the Senior New Hedging Agreements and the guarantee and indemnity referred to in Clause 7 (*Guarantee and indemnity*).

“**Senior New Hedging Threshold**” means \$ 35,000,000 (calculated as the Termination or Close Out Value).

“**Senior Note Acceleration Event**” means the Senior Note Trustee or any of the Senior Noteholders exercising lawfully any acceleration rights (howsoever described) or any acceleration provisions being automatically invoked in each case under section 6.02 of the Senior Note Indenture.

“**Senior Note Creditors**” means the Senior Noteholders and the Senior Note Trustee.

“**Senior Note Guarantees**” means the “Note Guarantees” as defined in the Senior Note Indenture.

“**Senior Noteholders**” means the holders of the Senior Notes at any time pursuant to the terms of the Senior Note Indenture.

“**Senior Notes**” means the € 110,000,000 aggregate principal amount of [●]% Senior Secured Notes due 2018 and the up to \$ 420,000,000 aggregate principal amount of [●]% Senior Secured Notes due 2018 issued by the Senior Note Issuer pursuant to the terms of the Senior Note Indenture and any additional notes issued from time to time under the Senior Note Indenture.

“**Senior Note Discharge Date**” means the date on which all Senior Note Liabilities have been fully and finally discharged to the satisfaction of the Senior Note Trustee, whether or not as the result of an enforcement, and the Senior Noteholders are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

“**Senior Note Documents**” means:

- (a) the Senior Note Indenture;
- (b) the Senior Notes;
- (c) this Agreement;
- (d) the Senior Note Guarantees; and
- (e) the Transaction Security Documents.

“**Senior Note Indenture**” means the senior secured note indenture dated [●] between, among others, the Senior Note Issuer and the Senior Note Trustee, as amended from time to time.

“**Senior Note Liabilities**” means the Liabilities owed by the Senior Note Issuer and the Debtors to the Senior Note Creditors under the Senior Note Documents, together with any related Additional Liabilities (but excluding any Hedging Liabilities).

“**Senior Note Required Holders**” means the holders of the required principal amount of the then outstanding Senior Notes or, if the required amount is not specified, the holders holding at least a majority of the principal amount of the then outstanding Senior Notes, in accordance with the Senior Note Indenture.

“**Senior Note Trustee Amounts**” has the meaning given to it in Clause 20.11 (*Payments*).

“**Shared 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.

“**Shared Security Notice**” has the meaning given to such term as set out in paragraph (a) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*).

“**Structural Debt Documents**” means all documents, agreements and instruments evidencing any Structural Liabilities.

“**Structural Liabilities**” means all Liabilities of any Debtor to any Structural Creditor together with any related Additional Liabilities.

“**Structural Creditors**” means:

- (a) the persons named in Part 3 of Schedule 2 (*The Parties*) in their capacity as creditors in respect of the Structural Liabilities; and
- (b) any new Structural Creditor which accedes to this Agreement by executing a Creditor/Creditor Representative Accession Undertaking in accordance with the terms of Clause 19 (*Changes to the Parties*),

which in each case has not ceased to be a Structural Creditor in accordance with this Agreement.

“**Subordinated Creditors**” means the Structural Creditors and the Intra-Group Lenders.

“**Subordinated Liabilities**” means the Structural Liabilities and the Intra-Group Liabilities.

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

“**Super Senior Credit Participation**” means, in relation to a Super Senior Creditor (other than a Credit Representative), the aggregate of:

- (a) its aggregate Credit Facility Commitments, if any;
- (b) in respect of any transaction of that Super Senior Creditor under any Senior New 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 by the Debtor under any Senior New 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 Super Senior Creditor and as calculated (in reasonable detail) in accordance with the relevant Senior New Hedging Agreement), *provided that* the aggregate of the amounts payable under this paragraph (b) shall be limited to the Senior New Hedge Counterparty Share; and
- (c) after the RCF Discharge Date, in respect of any transaction of that Super Senior Creditor under any Senior New Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out, the amount, if any, which would be payable to it by the Debtor under that Senior Hedging Agreement in respect of that transaction, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement), that amount to be certified by the relevant Super Senior Creditor and as calculated (in reasonable detail) in accordance with the relevant Senior New Hedging Document *provided that* the aggregate of the amounts payable under paragraph (b) above and those which would be payable under this paragraph (c) shall be limited to the Senior New Hedge Counterparty Share; and

- (d) after the Voting Creditor Discharge Date only:
 - (i) in respect of any hedging transaction of a Hedge Counterparty under any Hedging Document 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 by the Debtor under any Hedging Document 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 reasonable detail) in accordance with the relevant Hedging Document); and
 - (ii) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Document that has, as of the date the calculation is made, not been terminated or closed out:
 - (A) if the relevant Hedging Document is based on an ISDA Master Agreement the amount, if any, which would be payable to it by the Debtor under that Hedging Document in respect of that hedging transaction, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
 - (B) if the relevant Hedging Document is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it by the Debtor under that Hedging Document 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 Document) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Document for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Document) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement), that amount, in each case, to be certified by the relevant Senior Creditor and as calculated in accordance with the relevant Hedging Document.

“**Super Senior Creditors**” means the Credit Facility Lenders, the Senior New Hedge Counterparties and their respective Creditor Representatives.

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

“**Super Senior Liabilities**” means the Credit Facility Lender Liabilities and the Senior New Hedging Liabilities.

“**Tax**” has the meaning given to the term “Tax” in:

- (a) on or prior to the RCF Discharge Date, the RCF Facility Agreement; and

- (b) after the RCF Discharge Date, if applicable, the relevant Credit Facility Documents.

“**Transaction Security**” means the Security created or expressed to be created in favour of the Security Agent under or pursuant to the Transaction Security Documents.

“**Termination or Close-Out Value**” means, as of any day of determination:

- (a) in relation to a Hedging Document which is based on the 1992 ISDA Master Agreement, an amount, determined by the Security Agent, equal to an amount that would be due pursuant to Clause 6(e)(i)(3) of such 1992 ISDA Master Agreement, without application of any set-off and assuming that “Second Method” and “Market Quotation” were elected under such 1992 ISDA Master Agreement, if all transactions governed by such Hedging Document were Terminated Transactions (as such term is defined in the 1992 ISDA Master Agreement) as of such day;
- (b) in relation to a Hedging Document which is based on the 2002 ISDA Master Agreement, an amount, determined by the Security Agent, equal to an amount that would be due pursuant to Clause 6(e)(i) of such 2002 ISDA Master Agreement prior to application of any set-off pursuant to Clause 6(f), if all transactions governed by such Hedging Document were Terminated Transactions (as such term is defined in the 2002 ISDA Master Agreement) as of such day; and
- (b) in relation to a Hedging Document which is not based on an ISDA Master Agreement, an amount, determined by the Security Agent, following a method similar to the methods described in paragraphs (A) or (B) above.

“**Transaction Security Documents**” means:

- (a) each “Transaction Security Document” as defined in the RCF Facility Agreement;
- (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 by the Debtor under any covenant for further assurance in any of the documents set out in paragraphs (a) and (b) above,

which in each case, to the extent legally possible:

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

“**U.S. Bankruptcy Code**” shall mean Title 11 of the United States Code and any successor statute and all rules and regulations promulgated thereunder.

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

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

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) the Parent, any Arranger, Ancillary Lender, Creditor, Creditor Representative, Debtor, Hedge Counterparty, Intra-Group Lender, Issuing Bank, RCF Agent, RCF Lender, RCF Finance Party, Senior Note Issuer, Senior Noteholder, Senior Note Trustee, Party, Security Agent, Secured Party, Super Senior Creditor, Structural Creditor 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 Arranger, Ancillary Lender, Creditor, Debtor, Creditor Representative, Hedge Counterparty, Issuing Bank, Intra-Group Lender, Party, RCF Agent, RCF Lender, RCF Finance Party Senior Note Issuer, Senior Noteholder, Senior Note Trustee, Party, Security Agent, Secured Party, Super Senior Creditor, Structural Creditor or Subordinated Creditor or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement, including, in relation to any Additional Liabilities, any person acting in a corresponding capacity;
 - (iii) “**assets**” includes present and future properties, revenues and rights of every description;
 - (iv) a “**Debt Document**” or any other document, agreement or instrument is (other than a reference to a “**Debt Document**” or any other document, agreement or instrument in “**original form**”) a reference to that Debt Document, or other document, agreement or instrument, as amended, novated, supplemented, extended or restated as permitted or not prohibited by this Agreement;
 - (v) “**enforcing**” (or any derivation) the Transaction Security shall include the appointment of an administrator of a Debtor by the Security Agent;
 - (vi) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (vii) the “**original form**” of a “**Debt Document**” or any other document, agreement or instrument is a reference to that Debt Document, document, agreement or instrument as originally entered into;
 - (viii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint

venture, consortium or partnership (whether or not having separate legal personality);

- (ix) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law, but if not having the force of law, which is generally complied with by those to whom it is addressed) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (x) “**set-off**” includes combining accounts and payment netting except that, in relation to any Hedging Liabilities, “**set-off**” does not include Payment Netting or close-out netting;
 - (xi) “**shares**” or “**share capital**” include equivalent ownership interests (and “**shareholder**” and similar expressions shall be construed accordingly); and
 - (xii) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, Clause and Schedule headings are for ease of reference only.
 - (c) Terms defined in or whose interpretation or construction is provided for in the RCF Facility Agreement or, after the RCF Discharge Date, other Credit Facility Document shall have the same meaning when used in this Agreement unless separately defined or interpreted in this Agreement.
 - (d)
 - (i) Any Default or Event of Default “continuing” or arising under the Senior Note Documents will have the meaning ascribed to such term in the Senior Note Indenture;
 - (ii) any Default or Event of Default “continuing” or arising under the relevant Credit Facility Document will have the meaning ascribed to such term in the relevant Credit Facility Document; and
 - (iii) any Default or Event of Default “continuing” or arising under any other Debt Document will have the meaning ascribed to such term in the relevant Debt Document.
 - (e) In determining whether any Liabilities have been fully and finally discharged, the relevant Creditor Representative (and, if applicable, the Security Agent) will disregard contingent liabilities (such as the risk of clawback from a preference claim) except to the extent that it believes (on advice of its external counsel) that those contingent liabilities will become actual liabilities.

1.3 **Third Party Rights**

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

- (c) Any Receiver or Delegate may, subject to this Clause 1.3 (*Third Party Rights*) and the Third Parties Rights Act, rely on any Clause of this Agreement which expressly confers rights on it.
- (d) The Third Parties Rights Act shall apply to this Agreement in respect of any Senior Noteholder which, by holding a Senior Note has effectively agreed to be bound by the provisions of this Agreement and will be deemed to receive the benefits hereof, and be subject to the terms and conditions hereof, as if such person was a Party hereto. For purposes of this paragraph (d) and paragraph (b) above, upon any person becoming a Senior Noteholder, such person shall be deemed a Party to this Agreement.

1.4 Dutch Terms

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

- (a) a necessary action to authorise, where applicable, includes without limitation:
 - (i) any action required to comply with the Dutch Works Council Act (*Wet op de ondernemingsraden*); and
 - (ii) obtaining unconditional positive advice (*advies*) from each competent works council;
- (b) a winding-up, administration or dissolution includes a Dutch entity being:
 - (i) declared bankrupt (*failliet verklaard*);
 - (ii) dissolved (*ontbonden*);
- (c) a moratorium includes (*voorlopige*) *surseance van betaling* and granted a moratorium includes (*voorlopige*) *surseance verleend*;
- (d) a trustee in bankruptcy includes a *curator*;
- (e) an administrator includes a *bewindvoerder*;
- (f) a receiver or an administrative receiver does not include a curator or *bewindvoerder*; and
- (g) an attachment includes a *beslag*.

2. RANKING AND PRIORITY

2.1 Ranking

Unless expressly provided to the contrary in this Agreement, the Liabilities shall rank in right and priority of payment in the following order:

- (a) **first**, the Credit Facility Lender Liabilities, the Senior Note Liabilities and the Hedging Liabilities, *pari passu* and without any preference between them; and
- (b) **second**, the Subordinated Liabilities.

2.2 Subordinated Liabilities

- (a) Each of the Parties agrees that the Subordinated Liabilities are postponed and subordinated to the Secured Liabilities.

- (b) This Agreement does not purport to rank any of the Subordinated Liabilities as between themselves.

2.3 **Anti-layering**

Until the Senior Note Discharge Date and unless otherwise agreed by the Senior Note Required Holders, no Obligor shall issue or allow to remain outstanding any Credit Facility Liabilities that:

- (a) are secured by Transaction Security on a junior basis to the other Credit Facility Lender Liabilities and on a senior basis or *pari passu* to the Senior Notes Liabilities; or
- (b) are contractually subordinated in right of payment to any of the other Credit Facility Liabilities and senior in payment to the Senior Notes Liabilities,

in each case unless such ranking or subordination arises as a matter of law, under the terms of this Agreement or the terms of the Credit Facility Documents, or, in the case of Hedging Liabilities that are not Senior Hedging Liabilities, which may rank on a *pari passu* basis but not on a senior basis to the Senior Notes Liabilities.

3. **TRANSACTION SECURITY**

3.1 **Transaction Security**

Each of the Parties agrees that the Transaction Security created pursuant to the Transaction Security Documents shall rank and secure the Credit Facility Lender Liabilities, the Senior Note Liabilities and the Hedging Liabilities, *pari passu* and without any preference between them (but only to the extent that such Transaction Security is expressed to secure those Liabilities).

3.2 **Subordinated Liabilities**

The Subordinated Liabilities shall not be secured by any of the Transaction Security.

3.3 **Security: Debtors' Obligations**

No Debtor shall (and the Parent shall procure that no member of the Group will) grant to any of the Secured Parties the benefit of any Security in respect of that Secured Party's Liabilities, in addition to the Transaction Security, unless, (A) the granting of such Security is permitted by the Senior Note Documents and the Credit Facility Documents, and (B) to the extent legally possible and subject to the Agreed Security Principles, at the same time it is also offered either:

- (a) to the Security Agent as agent and/or 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:
 - (i) to the other Secured Parties in respect of their Liabilities; or
 - (ii) 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 3.1 (*Transaction Security*).

4. CREDIT FACILITY LENDERS AND CREDIT FACILITY LENDER LIABILITIES

4.1 Payment of Credit Facility Lender Liabilities

- (a) The Debtors may make Payments of the Credit Facility Lender Liabilities at any time in accordance with the terms of the Credit Facility Documents.
- (b) Following the delivery of a Shared Security Notice (in accordance with Clause 13.4 (*Enforcement Instructions – Consultation Periods*)) and provided paragraph (a) of Clause 5.1 (*Payment of Senior Note Liabilities*) applies, no member of Group may make a payment of any Credit Facility Lender Liabilities except from Enforcement Proceeds distributed in accordance with Clause 15 (*Application of Proceeds*) or as agreed by the RCF Agent, and the Senior Note Trustee.
- (c) The Parties acknowledge that the agency fees and costs arising in accordance with the Credit Facility Documents are senior obligations of the Debtors and payments in respect of the same are not restricted by or subject to the terms of this Agreement.

4.2 Security: Ancillary Lenders and Issuing Banks

No Ancillary Lender or Issuing Bank will, unless the prior written consent of an Instructing Group is obtained, take, accept or receive from any member of the Group the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities owed to it other than:

- (a) the Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
 - (i) the Credit Facility Documents;
 - (ii) this Agreement; or
 - (iii) the Shared Assurance;
- (c) indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in paragraph (b) above;
- (d) any Credit Facility Cash Cover permitted under the Credit Facility Documents relating to any Ancillary Facility or for any Letter of Credit issued by the Issuing Bank.
- (e) the indemnities contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Document 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 Ancillary Document which is not based on an ISDA Master Agreement); or
- (f) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities,

for the avoidance of doubt, in each case, to the extent legally possible and (where applicable) subject to the Agreed Security Principles.

4.3 **Restriction on Enforcement: Ancillary Lenders and Issuing Banks**

Subject to Clause 4.4 (*Permitted Enforcement: Ancillary Lenders and Issuing Banks*), so long as any of the Credit Facility Lender Liabilities (other than any Liabilities owed to the Ancillary Lenders or Issuing Banks), Senior Note Liabilities and the Senior Hedging Liabilities are or may be outstanding, none of the Ancillary Lenders and the Issuing Banks shall be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it in such capacity.

4.4 **Permitted Enforcement: Ancillary Lenders and Issuing Banks**

- (a) The Ancillary Lenders and the Issuing Banks may take Enforcement Action if:
- (i) at the same time as, or immediately prior to, that action, Enforcement Action has been taken in respect of the Credit Facility Lender Liabilities (excluding the Liabilities owing to Ancillary Lenders or the Issuing Banks), in which case the Ancillary Lenders and the Issuing Banks may take the same Enforcement Action as has been taken in respect of those Credit Facility Lender Liabilities subject to Clause 13.8 (*Alternative Enforcement Actions*);
 - (ii) that action is contemplated by the Credit Facility Documents or Clause 4.2 (*Security: Ancillary Lenders and Issuing Banks*), if applicable;
 - (iii) that Enforcement Action is taken in respect of Credit Facility Cash Cover which has been provided in accordance with the Credit Facility Documents;
 - (iv) at the same time as or prior to, that action, the consent of the Majority Lenders (as defined in the Credit Facility Documents) to that Enforcement Action is obtained; or
 - (v) an Insolvency Event has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event, each Ancillary Lender and each Issuing Bank shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group to:
 - (A) accelerate any of that member of the Group's Credit Facility Lender Liabilities or declare them prematurely due and payable on demand;
 - (B) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Credit Facility Lender Liabilities;
 - (C) exercise any right of set-off or take or receive any Payment in respect of any Credit Facility Lender Liabilities of that member of the Group; or
 - (D) claim and prove in the liquidation of that member of the Group for the Credit Facility Lender Liabilities owing to it.
- (b) Clause 4.3 (*Restriction on Enforcement: Ancillary Lenders and Issuing Banks*) shall not restrict any right of an Ancillary Lender to net or set-off in relation to a Multi-account Overdraft Facility, in accordance with the terms of the Credit Facility Documents, to the extent that the netting or set-off represents a

reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount.

5. SENIOR NOTEHOLDERS AND SENIOR NOTE LIABILITIES

5.1 Payment of Senior Note Liabilities

- (a) The Debtors may make Payments of the Senior Note Liabilities at any time in accordance with the terms of the Senior Note Documents subject to any restrictions contained in Clause [27.24 (*Note Purchase Condition*)] of the RCF Facility Agreement and any related or corresponding provisions in the Credit Facility Documents.
- (b) Following the delivery of a Shared Security Notice in accordance with Clause 13.4 (*Enforcement Instructions – Consultation Periods*), until after the Super Senior Discharge Date no member of the Group may make Payment of the Senior Note Liabilities except from Enforcement Proceeds distributed in accordance with Clause 15 (*Application of Proceeds*) save that the restrictions contained in this paragraph (b) shall not apply to the extent that the Senior Noteholders have acquired all of the rights and obligations of the Credit Facility Lenders and the Senior New Hedge Counterparties in accordance with Clauses 5.2 (*Option to purchase: Senior Noteholders*) and 5.3 (*Terms of Purchase*).
- (c) The Parties acknowledge that Senior Note Trustee Amounts are senior obligations of the Senior Note Issuer, the Parent and the Original Debtors and payments in respect of the same are not restricted by or subject to the terms of this Agreement.

5.2 Option to purchase: Senior Noteholders

- (a) Following the delivery of a Shared Security Notice from the Creditor Representative of the Credit Facility Lenders or by the Senior Note Trustee, one or more of the Senior Noteholders, may, at the expense of such Senior Noteholder or Senior Noteholders (as the case may be), if the Senior Note Trustee gives not less than ten days prior written notice to the Creditor Representative of the Credit Facility Lenders and (to the extent applicable) the Senior New Hedge Counterparties, acquire or procure the acquisition of all (but not part only) of the rights and obligations of the Credit Facility Lenders and the Senior New Hedge Counterparties in connection with the Credit Facility Lender Liabilities under the Credit Facility Documents and the Senior New Hedging Liabilities under the Senior New Hedging Agreements (for the purposes of this Clause 5.2 only, the “**Senior Acquisition Debt**”) by way of transfer under Clause [29] (*Changes to the Lenders*) of the RCF Facility Agreement or the corresponding provision in any other Credit Facility Documents or Senior New Hedging Agreements.
- (b) If more than one Senior Noteholder wishes to exercise the option to purchase the Senior Acquisition Debt, such Senior Noteholders shall acquire the Senior Acquisition Debt pro rata, in the proportion that their holding of the Senior Notes bears to the total aggregate amount of Senior Notes. For the avoidance of doubt, each Senior Noteholder wishing to exercise the option to purchase the Senior Acquisition Debt shall inform the Senior Note Trustee in accordance with the terms of the Senior Note Indenture who will determine the appropriate share of the Senior Acquisition Debt to be acquired by each such Senior Noteholder and who shall inform each such Senior Noteholder accordingly. Furthermore, the Senior Note Trustee shall promptly inform the Creditor

Representative of the Credit Facility Lenders and the Senior New Hedge Counterparties of the Senior Noteholder's, or Senior Noteholders' (as applicable) intention to exercise the option to purchase the Senior Acquisition Debt.

5.3 Terms of Purchase

Any purchase under Clause 5.2 (*Option to purchase: Senior Noteholders*) shall be on the following terms:

- (a) the transfer is lawful and in accordance with the transfer provisions and the terms of the relevant Credit Facility Document;
- (b) payment in full in cash of an amount equal to the Credit Facility Lender Liabilities outstanding as that the date is to be paid, as determined by the Creditor Representative of the Credit Facility Lenders (acting reasonably) together with all related costs and expenses (including legal fees) incurred by the Creditor Representative and/or the Credit Facility Lenders as a consequence of giving effect to the transfer;
- (c) payment in full of the Hedging Purchase Amount in respect of the transaction under the relevant Senior New Hedging Agreement together with all costs and expenses (including legal fees) incurred by the Hedge Counterparties as a consequence of giving effect to that transfer;
- (d) payment in full in cash of the amount which each Credit Facility Lender certifies to be necessary to compensate it for any loss on account of funds borrowed, contracted for or utilised to fund any amount included in the Credit Facility Lender Liabilities resulting from the receipt of that payment otherwise than on the last day of an Interest Period;
- (e) after the transfer, no Credit Facility Lender or Senior New Hedge Counterparty will be under any actual or contingent liability to any Debtor or any other person under this Agreement, any Credit Facility Document for which it is not holding cash collateral in an amount and on terms reasonably satisfactory to it or any Senior New Hedging Agreements;
- (f) the purchasing Senior Noteholders (or, if required by the Credit Facility Lenders and Senior New Hedge Counterparties, a third party acceptable to all the Credit Facility Lenders) shall provide an indemnity to each Credit Facility Lender and each other Finance Party under such Credit Facility and each Senior Hedge Counterparty under the Senior New Hedging Agreements on the date of the relevant transfer on the terms set out in the form of indemnity at Schedule 6 (*Form of Indemnity*); and
- (g) the relevant transfer shall be without recourse to, or warranty from, any Credit Facility Lender or other Finance Party under such Credit Facility or Senior New Hedge Counterparty under any Senior New Hedging Agreements, except that each Credit Facility Lender and Senior New Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that:
 - (i) in the case of a Credit Facility Lender, it is the sole owner, free from all Security and third party interests (other than any arising under the Credit Facility Documents or by operation of law), of all rights and interests under the Credit Facility Documents purporting to be transferred by it by that transfer;

- (ii) in the case of a Senior New Hedge Counterparty, it is the sole owner, free from all Security and third party interests (other than any arising under the Senior New Hedging Agreements or by operation of law) of all rights and interests under the Senior New Hedging Agreements purporting to be transferred by it by that transfer;
 - (iii) it has the power to enter into and make, and has taken all necessary action to authorise its entry into and making, that transfer; and
 - (iv) the Credit Facility Lenders and Senior New Hedge Counterparties are satisfied with the results of any “Know your client” or other similar checks relating to the identity of any person that they are required by law to carry out in relation to such a transfer.
- (h) For the purposes of Clause 5.2 (*Option to purchase: Senior Noteholders*), the term “Senior Noteholder” shall not include the Senior Note Trustee.

6. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

6.1 Identity of New Hedge Counterparties

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

6.2 Restriction on Payment: Hedging Liabilities

Prior to the Final Discharge Date, 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 6.3 (*Permitted Payments: Hedging Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 6.8 (*Permitted Enforcement: Hedge Counterparties*), provided that following the occurrence of an Acceleration Event, unless the Credit Facility Lender Discharge Date has occurred, no member of the Group may make Payment of the Hedging Liabilities except from Enforcement Proceeds distributed in accordance with Clause 15 (*Application of Proceeds*).

6.3 Permitted Payments: Hedging Liabilities

- (a) Subject to paragraph (b) below, the Debtors and each other member of the Group may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Document in accordance with the terms of that Hedging Document:
 - (i) if the Payment is a scheduled Payment arising under the relevant Hedging Document;
 - (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) (and any provision requiring the payment of any tax credit related to Section 2(d), 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 Document is based on a 1992 ISDA Master Agreement);
 - (B) any of sections 2(d) (Deduction or Withholding for Tax), (and any provision requiring the payment of any tax credit related to Section 2(d), 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 Document is based on a 2002 ISDA Master Agreement); or
 - (C) any provision of a Hedging Document which is similar in meaning and effect to any provision listed in paragraphs (A) or (B) above (if the Hedging Document 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 a Credit Related Close-Out in relation to that Hedging Document; and
 - (B) no Event of Default is continuing at the time of that Payment;
 - (v) if the Majority Super Senior Creditors (excluding the Senior New Hedge Counterparties) and Senior Note Required Holders give prior written consent to the Payment being made; or
 - (vi) to the extent that the relevant Debtor's obligation to make the Payment arises out of a reduction in a Relevant Hedging Transaction (as defined in Clause 6.8(a)), following a reduction of Relevant Hedged Debt (as defined in Clause 6.8(a)), in accordance with the provisions of Clause 6.8(a)(iv) below.
- (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 Document to which they are both party is due and unpaid.
 - (c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to Clause 6.4 (*Payment obligations continue*), not result in a default (however described) in respect of that Debtor under that Hedging Document.

6.4 **Payment obligations continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under the terms of any Debt Document by the operation of Clauses 6.2 (*Restriction on Payment: Hedging Liabilities*) and 6.3 (*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.

6.5 **No acquisition of Hedging Liabilities**

Prior to the Credit Facility Lender 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 Hedging Liabilities,

unless the prior written consent of the Majority Super Senior Creditors (excluding the Senior New Hedge Counterparties) and Senior Note Required Holders is obtained.

6.6 **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 Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) this Agreement;
 - (ii) any Shared Assurance; or
 - (iii) the relevant Hedging Document no greater in extent than any of those referred to in paragraphs (i) and (ii) above; or
- (c) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Document 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 Document which is not based on an ISDA Master Agreement),

for the avoidance of doubt, in each case, to the extent legally possible and subject to the Agreed Security Principles.

6.7 **Restriction on Enforcement: Hedge Counterparties**

Subject to Clause 6.8 (*Permitted Enforcement: Hedge Counterparties*) and Clause 6.9 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights as members of an Instructing Group or Enforcing Creditor Group as the case may be under Clauses 13.3 (*Enforcement Instructions*) and 13.5 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action under any of the Hedging Documents at any time.

6.8 **Permitted Enforcement: Hedge Counterparties**

- (a) To the extent it is able to do so under the relevant Hedging Document, a Hedge Counterparty may terminate, reduce or close-out in whole or in part any transaction under that Hedging Document prior to its stated maturity *provided that* (and without prejudice to the application of paragraph (b) below) no such termination, reduction or close-out shall be permitted during the Initial Consultation Period as defined in Paragraph (b) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*):

- (i) if a Distress Event has occurred;
- (ii) if:
 - (A) in relation to a Hedging Document which is based on the 1992 ISDA Master Agreement:
 - (1) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
 - (2) an event similar in meaning and effect to a “Force Majeure Event” (as defined in paragraph (B) below),
 has occurred in respect of that Hedging Document;
 - (B) in relation to a Hedging Document which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement) has occurred in respect of that Hedging Document; or
 - (C) in relation to a Hedging Document 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 has occurred under and in respect of that Hedging Document;
- (iii) if an Event of Default has occurred and is continuing under either clause 28.8 (*Insolvency*) or clause 28.9 (*Insolvency proceedings*) of the RCF Facility Agreement (or the equivalent provisions of any other Credit Facility Documents), section [●] of the Senior Note Indenture or the equivalent provisions in relation to a Debtor which is party to that Hedging Document; or
- (iv) if:
 - (A) transactions have been entered into under Hedging Documents (the “**Relevant Hedging Transactions**”) to hedge currency or interest rate risk in respect of a particular Credit Facility or the Senior Notes (the “**Relevant Hedged Debt**”); and
 - (B) the Relevant Hedged Debt is repaid, prepaid or otherwise reduced (in whole or in part) in accordance with the Credit Facility Documents and the Senior Note Documents, such that the proportion borne by the reduction in the notional amount of the Relevant Hedging Transactions to the aggregate notional amount of the Relevant Hedging Transactions immediately prior to such reduction is the same as the proportion borne by the amount of the prepayment or repayment to the aggregate amount of the Relevant Hedged Debt immediately prior to the prepayment or repayment;
- (v) if the Majority Super Senior Creditors and Senior Note Required Holders give prior written consent to that termination or close-out being made; or
- (vi) if, following the RCF Discharge Date an event similar in meaning and effect to Change of Control (as defined in the RCF Facility

Agreement), “Misrepresentation” (as set out in clause 28.5 (Misrepresentation) of the RCF Facility Agreement) or “Cross Default” (as set out in clause 28.6 (*Cross default*) of the RCF Facility Agreement) has occurred;

- (b) If a Debtor has defaulted on any Payment due under a Hedging Document and the default has continued unwaived or unremedied for more than 20 Business Days (or such longer notice or grace period as the relevant Hedging Document allows) after notice of that default has been given to the relevant Debtor under that Hedging Document, with a copy to the Security Agent pursuant to paragraph (i) of Clause 24.3 (*Notification of prescribed events*), the relevant Hedge Counterparty:
 - (i) may, to the extent it is able to do so under the relevant Hedging Document, terminate or close-out in whole or in part any transaction under that Hedging Document; 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 Document (excluding, for the avoidance of doubt, any enforcement of the Transaction Security).
- (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 Document of that member of the Group in accordance with the terms of the relevant Hedging Document;
 - (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 as between any Hedging Liabilities or take or receive any Payment in respect of any Hedging Liabilities of that member of the Group; or
 - (iv) claim and prove in the liquidation of that member of the Group for the Hedging Liabilities owing to it.
- (d) Notwithstanding the terms of this Clause 6.8, a Senior New Hedge Counterparty shall be entitled to terminate, reduce, close-out in whole or in part any transaction under the relevant Senior New Hedging Agreement prior to its stated maturity in the event that the Commitments made available under the RCF Facility Agreement are in excess of \$50,000,000 and/or the Senior New Hedging Threshold is increased to an amount in excess of \$35,000,000.

6.9 **Required Enforcement: Hedge Counterparties**

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close-out in full any transaction under all or any of the Hedging Documents to which it is party prior to their stated maturity, following:

- (i) the occurrence of an Acceleration Event and delivery to it of a notice from the Security Agent that an Acceleration Event has occurred; and
 - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of an Instructing Group, or if the provisions of paragraphs 13.4(d)(i) and 13.4(e)(i) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*) apply, the Enforcing Creditor Group instructing it to do so).
- (b) Paragraph (a) above shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between any Debtor and any Primary Creditor with the purpose of bringing about that Acceleration Event.
 - (c) If a Hedge Counterparty is entitled to terminate or close-out any transaction under paragraph (b) of Clause 6.8 (*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 transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such transaction following a request to do so by the Security Agent (acting on the instructions of an Instructing Group, or if the paragraphs 13.4(d)(i) and 13.4(e)(i) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*) apply, the Enforcing Creditor Group instructing it to do so).

6.10 Treatment of Payments due to Debtors on termination of transactions under Hedging Documents

- (a) If, on termination of any transaction under any Hedge Document 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 Document) 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.

6.11 Terms of Hedging Documents

The Hedge Counterparties (to the extent a Hedge Counterparty is a party to the Hedging Document in question) and the Debtors party to the Hedging Documents shall ensure that, at all times:

- (a) each Senior New Hedging Agreement documents any hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of "Senior New Hedging Agreement" and that no other hedging arrangements are carried out under or pursuant to a Senior New Hedging Agreement;
- (b) each New Hedging Agreement documents only hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of "New Hedging Agreement" and that no other hedging arrangements are carried out under or pursuant to a New Hedging Agreement;
- (c) each Hedging Document 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;
- (d) in the event of a termination of a transaction entered into under a Hedging Document, whether as a result of:
- (i) a Termination Event or an Event of Default, each as defined in the relevant Hedging Document (in the case of a Hedging Document 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 Document which is not based on an ISDA Master Agreement),

that Hedging Document will:

- (A) if it is based on a 1992 ISDA Master Agreement, provide for payments under the “Second Method” and will make no material amendment to section 6(e) (Payments on Early Termination) of the ISDA Master Agreement;
- (B) if it is based on a 2002 ISDA Master Agreement, make no material amendment to the provisions of section 6(e) (Payments on Early Termination) of the ISDA Master Agreement; or
- (C) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Document is in its favour; and (e) each Hedging Document 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 Document if so required pursuant to Clause 6.9 (*Required Enforcement: Hedge Counterparties*).

6.12 **[PLACEHOLDER – TO BE CONSIDERED: PRESERVATION OF TERMINATION OR CLOSE-OUT RIGHTS FOR THE SENIOR NEW HEDGE COUNTERPARTIES IN ACCORDANCE WITH THE RELEVANT SENIOR NEW HEDGE COUNTERPARTY SHARE]**

7. GUARANTEE AND INDEMNITY

7.1 Guarantee and indemnity

Each Debtor irrevocably and unconditionally, jointly and severally:

- (a) guarantees to each Hedge Counterparty punctual performance by each other Debtor of all that Debtor’s obligations under any Hedging Document;
- (b) undertakes with each Hedge Counterparty that whenever another Debtor does not pay any amount when due under or in connection with any Hedging Document, that Debtor shall immediately on demand (whether as stated

maturity, upon acceleration or otherwise, and at all times thereafter) pay that amount as if it was the principal debtor; and

- (c) agrees with each Hedge Counterparty that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Hedge Counterparty immediately on demand against any cost, loss or liability it incurs as a result of a Debtor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Hedging Document on the date when it would have been due. The amount payable by a Debtor under this indemnity will not exceed the amount it would have had to pay under this Clause 7 if the amount claimed had been recoverable on the basis of a guarantee,

(the “**Guarantee**”).

7.2 **Continuing Guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Debtor under any Hedging Document, regardless of any intermediate payment or discharge in whole or in part.

7.3 **Reinstatement; Stay of Acceleration**

If any discharge, release or arrangement (whether in respect of the obligations of any Debtor or any security for those obligations or otherwise) is made by a Hedge Counterparty in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored or returned in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Debtor under this Clause 7 will continue or be reinstated as if the discharge, release or arrangement had not occurred. If acceleration of the time of payment of any of the guaranteed obligations is stayed upon the moratorium, insolvency, bankruptcy or reorganisation of the Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the guaranteed obligations shall nonetheless be payable by the Debtors forthwith on demand by a Hedge Counterparty.

7.4 **Waiver of defences**

The obligations of each Debtor under this Clause 7 will not be affected by an act, omission, matter or thing which, but for this Clause 7, would reduce, release or prejudice any of its obligations under this Clause 7 (without limitation and whether or not known to it or any Hedge Counterparty) including:

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any other 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 a Debtor or any other person;

- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Hedging Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Hedging Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Hedging Document or any other document or security;
- (g) any insolvency or similar proceedings; or
- (h) with respect to any Debtor incorporated in the US, any defence to its obligations hereunder that it is not a surety under any US state law.

7.5 **Debtor Intent**

Without prejudice to the generality of Clause 7.4 (*Waiver of defences*), each Debtor expressly confirms that it intends that this Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any Hedging Document and/or any facility or amount made available under any of the Hedging Documents.

7.6 **Immediate recourse**

Each Debtor waives any right it may have of first requiring any Hedge Counterparty (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Debtor under this Clause 7. This waiver applies irrespective of any law or any provision of a Hedging Document to the contrary.

7.7 **Appropriations**

Until all amounts which may be or become payable by the Debtors under or in connection with the Hedging Documents have been irrevocably paid in full, each Hedge Counterparty (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Hedge Counterparty (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Debtor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account (bearing interest at commercial rates) any moneys received from any Debtor or on account of any Debtor's liability under this Clause 7.

7.8 **Deferral of Debtors' rights**

Until all amounts which may be or become payable by the Debtors under or in connection with the Hedging Documents have been irrevocably paid in full and unless the Security Agent otherwise directs, no Debtor will exercise any rights which it may have by reason of performance by it of its obligations under the Hedging Documents or by reason of any amount being payable, or liability arising, under this Clause 7:

- (a) to be indemnified by a Debtor;

- (b) to claim any contribution from any other guarantor of any Debtor's obligations under any Hedging Document;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Hedge Counterparties under the Hedging Documents or of any other guarantee or security taken pursuant to, or in connection with, the Hedging Documents by any Hedge Counterparty;
- (d) to bring legal or other proceedings for an order requiring any Debtor to make any payment, or perform any obligation, in respect of which any Debtor has given a guarantee, undertaking or indemnity under Clause 7.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Debtor; and/or
- (f) to claim or prove as a creditor of any Debtor in competition with any Hedge Counterparty.

If a Debtor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Hedge Counterparties by the Debtors under or in connection with the Hedging Documents to be repaid in full on trust for the Hedge Counterparties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 15 (*Application of Proceeds*).

7.9 **Release of Debtors' right of contribution**

If any Debtor (a "**Retiring Debtor**") ceases to be a Debtor in accordance with the terms of the Senior Finance Documents for the purpose of any sale or other disposal of that Retiring Debtor then on the date such Retiring Debtor ceases to be a Debtor:

- (a) that Retiring Debtor is released by each other Debtor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Debtor arising by reason of the performance by any other Debtor of its obligations under any Hedging Document; and
- (b) each other Debtor waives any rights it may have by reason of the performance of its obligations under any Hedging Document or this Clause 7 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Hedge Counterparties under any Hedge Document or this Clause 7 of any other security taken pursuant to, or in connection with, any Hedging Document where such rights or security are granted by or in relation to the assets of the Retiring Debtor.

7.10 **Additional security**

This Guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Hedge Counterparty.

7.11 **Guarantee limitations in respect of Debtors incorporated in Germany³**

- (a) Each Hedge Counterparty agrees that the enforcement of the Guarantee and indemnity pursuant to this Clause 7, shall be limited, in relation to any Debtor incorporated in Germany (a "**German Debtor**"), to the extent that payment

³ UNDER DISCUSSION

under that guarantee and indemnity would cause the German Debtor's (or in case the German Debtor is a GmbH & Co. KG, its general partner's) Net Assets as per the date of enforcement of this guarantee and indemnity to fall below its registered share capital (*Stammkapital*) or where such German Debtor's Net Assets already are below the amount of its registered share capital (*Unterbilanz*), cause such amount to be further reduced and, as a result, cause a violation of Sections 30, 31 of the German Limited Liability Companies Act ("**GmbHG**") in accordance with the jurisprudence from time to time of the German Federal Supreme Court (*Bundesgerichtshof*).

(For purposes of this Clause 7.11, "Net Assets" shall mean the assets pursuant to section 266 (2) (A), (B), (C), (D) and (E) of the German Commercial Code (*Handelsgesetzbuch*) less the sum of the non-subordinated liabilities pursuant to section 266 (3) (B), (C), (D) and (E) of German Commercial Code (*Handelsgesetzbuch*).)

- (b) For the purposes of the calculation of the amounts to be released and/or of which enforcement is limited, the following balance sheet items shall be adjusted as follows:
 - (i) the amount of any increase of the stated share capital (*Stammkapital*) of the German Debtor or, in case the German Debtor is a GmbH & Co. KG, its general partner (*Komplementär*), effected after the date of this Agreement without the prior written consent of the Security Agent shall be deducted from the relevant stated share capital;
 - (ii) loans provided to the Affected German Debtor by a member of the Group shall be disregarded if such loans would be considered subordinated in accordance with Section 39 para. 1 No. 1 to 5 of the German Insolvency Act when preparing a balance sheet in accordance with Section 19 paragraph 2 of the German Insolvency Act; and
 - (iii) loans and other liabilities incurred in violation of the provisions of any Hedging Document shall be disregarded when calculating the Net Assets.
- (c) The relevant German Debtor shall realise, to the extent legally permitted and commercially reasonable, in a situation where it does not have sufficient Net Assets to maintain its (or its general partner's) stated share capital, any and all of its assets that are shown in its balance sheet with a book value (*Buchwert*) that is significantly lower than the market value of the assets if the relevant asset is not necessary for its business (*betriebsnotwendig*).
- (d) The limitations set out in this Clause 7 shall not apply:
 - (i) to any amounts due and payable under the Guarantee and indemnity pursuant to this Clause 7 which relate to funds which have been on-lent or otherwise passed on to the German Debtor or to any of its Subsidiaries and are still outstanding at the time the notification by a Hedge Counterparty of claims raised under Guarantee is made (*provided that* the German Debtor must prove (*Beweislast*) that or to which extent no such amounts have been thus lent, on-lent or otherwise passed on); or
 - (ii) to the extent the German Debtor is a party to a domination agreement (*Beherrschungsvertrag*) as dominated entity (*beherrschtes Unternehmen*) with the Debtors whose obligations under any Hedging

Document (other than under this Clause 7) are enforced as dominating entity (*herrschendes Unternehmen*).

- (e) The enforcement of the Guarantee shall initially be excluded if no later than ten (10) Business Days following a demand by the Security Agent directly to the German Debtor to make an according payment, the managing directors on behalf of the German Debtor have confirmed in writing to the Security Agent:
 - (i) to what extent the Guarantee granted hereunder is an up-stream or crossstream guarantee as described in Clause 7.11(a) above; and
 - (ii) which amount of such cross-stream and/or up-stream guarantee cannot be enforced as it would cause the Net Assets of the German Debtor, or, where the guarantor is a German GmbH & Co. KG Debtor, its general partner to be less than its respective registered share capital (taking into account the adjustments and the realisation duties set out above), (the “**Management Determination**”) and such confirmation is supported by a reasonably satisfactory calculation provided that the Security Agent shall in any event be entitled to enforce the guarantee for any amounts where such enforcement would, in accordance with the Management Determination, not cause the German Debtor’s, or, where the guarantor is a German GmbH & Co. KG Debtor, its general partner’s Net Assets to be less than (or to fall further below) the amount of its respective registered share capital (in each case as calculated and adjusted as set out above). If the German Debtor fails to deliver a Management Determination within ten (10) Business Days after receipt of the payment demand from the Security Agent, the Security Agent shall be entitled to enforce the Guarantee without any limitation or restriction.
- (f) Following the Security Agent’s receipt of a Management Determination, any further enforcement of the Guarantee (i.e. any enforcement to which the Security Agent is not already entitled to pursuant to Clause 7.11(e)) shall be excluded pursuant to Clause 7.11(a) above for a period of no more than 30 Business Days. If the Security Agent receives within such 30 Business Day period (i) an up-to date balance sheet together with (ii) a determination in each case prepared by auditors of international standard and reputation appointed by the relevant German Debtor either confirming the Management Determination or setting out deviations from the Management Determination (the “**Auditor’s Determination**”), the further enforcement of the Guarantee shall be limited, if and to the extent such enforcement would, in accordance with the Auditor’s Determination cause the German Debtor’s, or, where the guarantor is a German GmbH & Co. KG Debtor, its general partner’s Net Assets to be less than (or to fall further below) the amount of its respective registered share capital in each case as calculated and adjusted in accordance with Clause 7.11(b) above. If the German Debtor fails to deliver an Auditor’s Determination within 20 Business Days after receipt of the Management Determination, the Security Agent shall be entitled to enforce the Guarantee without any limitation or restriction.
- (g) If, after it has been provided with an Auditors’ Determination which prevented it from demanding any or only partial payment under this Guarantee, the Security Agent ascertains in good faith that the financial condition of the relevant German Debtor as set out in the Auditors’ Determination has substantially improved, the Security Agent may, at the relevant German Debtor’s cost and expense, arrange for the preparation of an updated balance sheet of the relevant German Debtor by applying the same principles that were used for the preparation of the Auditors’ Determination by the Auditors who prepared the Auditors’ Determination pursuant to paragraph (f) above in order

for such auditors to determine whether (and, if so, to what extent) the impairment of the registered share capital of such German Debtor has been cured as a result of the improvement of the financial condition of the relevant German Debtor. The Security Agent shall be entitled to enforce the Guarantee to the extent that the Auditors determine that the impairment of the registered share capital of such German Debtor has been cured.

- (h) The agreement of the Security Agent to abstain from demanding any or part of the payment under this Guarantee in accordance with the provisions above shall not constitute a waiver (*Verzicht*) of any right granted under this Agreement or any Hedging Document to the Security Agent or any Hedge Counterparty. No reduction of the amount enforceable under this guarantee and indemnity in accordance with the above limitations will prejudice the rights of the Hedge Counterparties to continue enforcing the guarantee and indemnity (subject always to the operation of the limitation set out above at the time of such enforcement) until full satisfaction of the guaranteed claims or prevent the Security Agent from claiming in court that the provision of this Guarantee and/or making payments under this Guarantee by the relevant German Debtor does not fall within the scope of Sections 30 and/or 31 of the GmbHG with the aim that the Security Agent shall be entitled to enforce the Guarantee without any limitation or restriction.

7.12 **Guarantee Limitations in respect of Debtor's incorporated in the Netherlands**

Notwithstanding any other provision of this Clause 7 the guarantee, indemnity and other obligations of any Debtor incorporated in the Netherlands expressed to be assumed in this Clause 7 shall be deemed not to be assumed by such Debtor to the extent that the same would constitute unlawful financial assistance within the meaning of Article 2:207c or 2:98c Dutch Civil Code (*Burgerlijk Wetboek*) or any other applicable financial assistance rules under any relevant jurisdiction (the "**Prohibition**") and the provisions of this Agreement and the Hedging Documents shall be construed accordingly. For the avoidance of doubt it is expressly acknowledged that the relevant Debtors incorporated in the Netherlands will continue to guarantee all such obligations which, if included, do not constitute a violation of the Prohibition.

7.13 **Other Limitations**

The Guarantee does not apply to any liability to the extent that it would result in the guarantee being avoidable, invalid, unenforceable or illegal and with respect to any Acceding Debtor is subject to the limitations set out in the Accession Deed applicable to such Acceding Debtor.

8. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES

8.1 **Restriction on Payment: Intra-Group Liabilities**

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

- (a) that Payment is permitted under Clause 8.2 (*Permitted Payments: Intra-Group Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (b)(iii) of Clause 8.7 (*Permitted Enforcement: Intra-Group Lenders*).

8.2 Permitted Payments: Intra-Group Liabilities

- (a) Subject to paragraph (b) below, the Debtors may make Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) from time to time when due.
- (b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred under any of the Debt Documents unless:
 - (i) prior to the Super Senior Discharge Date, the Instructing Group has consented to that Payment being made;
 - (ii) that Payment is made to facilitate Payment of the Secured Liabilities;
 - (iii) the relevant Payment is expressly permitted to be made under the terms of that acceleration notice; or
 - (iv) any director (or equivalent officer) of any Debtor or any other member of the Group is required by applicable laws (including without limitation, sections 30 and 43 of the German Limited Liability Companies Act) to demand or make that Payment in order to avoid personal and/or criminal liability and this is evidenced by the relevant director in a manner satisfactory to the relevant Creditor Representatives (acting reasonably),

provided that, following the occurrence of an Event of Default that is continuing, no Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) may be made by any Debtor to any member of the Group which is not a Debtor.

8.3 Payment obligations continue

No member of the Group shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 8.1 (*Restriction on Payment: Intra-Group Liabilities*) and 8.2 (*Permitted Payments: Intra-Group Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

8.4 Acquisition of Intra-Group Liabilities

- (a) Subject to paragraph (b) below, each Debtor may, and may permit any other member of the Group to:
 - (i) enter into any Liabilities Acquisition; or
 - (ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,in respect of any Intra-Group Liabilities at any time.
- (b) Subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities if:
 - (i) that action would result in a breach of any of the Credit Facility Documents;

- (ii) that action is between a Debtor and a member of the Group which is not a Debtor and at the time of that action, an Event of Default has occurred and is continuing under any of the Debt Documents; or
 - (iii) that action is between a Debtor and another Debtor and at the time of that action, an Acceleration Event or Insolvency Event has occurred under any of the Debt Documents.
- (c) The restrictions in paragraph (b) above shall not apply if:
- (i) prior to the Super Senior Discharge Date, the Instructing Group has consented to that action; or
 - (ii) on or after the Super Senior Discharge Date but prior to the Senior Note Discharge Date, the Senior Note Required Holders give written consent to that action; or
 - (iii) that action is taken to facilitate Payment of the Secured Liabilities or the making of any Permitted Subordinated Creditor Payment.

8.5 **Security: Intra-Group Lenders**

Prior to the Final Discharge Date, no Intra-Group Lender may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Intra-Group Liabilities.

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

Subject to Clause 8.7 (*Permitted Enforcement: Intra-Group Lenders*), no Intra-Group Lender shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date.

8.7 **Permitted Enforcement: Intra-Group Lenders**

- (a) Prior to the Final Discharge Date and after the occurrence of an Insolvency Event; or
- (b) if any director (or equivalent officer) of any Debtor or any other member of the Group is required by applicable laws (including without limitation, sections 30 and 43 of the German Limited Liability Companies Act) to avoid personal and/or criminal liability and this is evidenced by the relevant director in a manner satisfactory to the relevant Creditor Representatives (acting reasonably),

each Intra-Group Lender may only (unless otherwise directed by the Security Agent (acting on instructions of the Instructing Group) or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Intra-Group Lender in accordance with Clause 10.5 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

- (i) accelerate any of that member of the Group's Intra-Group Liabilities or declare them prematurely due and payable or payable on demand;
- (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Intra-Group Liabilities;

- (iii) exercise any right of set-off or take or receive any Payment in respect of any Intra-Group Liabilities of that member of the Group; or
- (iv) claim and prove in the liquidation of that member of the Group for the Intra-Group Liabilities owing to it,

but shall not take any other Enforcement Action.

8.8 **Representations: Intra-Group Lenders**

On the date of this Agreement, each Intra-Group Lender which is not a Debtor represents and warrants to the Primary Creditors, the Security Agent and the Creditor Representatives that:

- (a) it is a limited liability company or, as the case may be, limited partnership duly incorporated or organised (as applicable) and validly existing under the laws of its jurisdiction of incorporation or organisation;
- (b) subject to the Legal Reservations, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of this Agreement does not and will not:
 - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
 - (ii) constitute a default or termination event (however described) under any such agreement or instrument to an extent, or in a manner which has, or is reasonably likely to have, a Material Adverse Effect.

The term “Legal Reservations” shall have the meaning provided in the RCF Facility Agreement or, following the RCF Discharge Date, the other Credit Facility Documents (if applicable).

8.9 **Intra-Group Lenders’ Agent**

- (a) Each Intra-Group Lender (other than the Parent) irrevocably appoints the Parent to act on its behalf as its agent in relation to this Agreement and irrevocably authorises:
 - (i) the Parent on its behalf to supply all information concerning itself contemplated by this Agreement to the other Parties and to give and receive all notices, consents and instructions, to agree, accept and execute on its behalf all documents in connection with this Agreement (including amendments and variations of, and consents under, this Agreement) and to take such other action as may be necessary or desirable under, or in connection with, this Agreement; and
 - (ii) each other Party to give any notice, demand or other communication to that Intra-Group Lender pursuant to this Agreement to the Parent.
- (b) Each Intra-Group Lender (other than the Parent) confirms that:
 - (i) it will be bound by any action taken by the Parent under, or in connection with, this Agreement; and
 - (ii) each other Party may rely on any action purported to be taken by the Parent on behalf of that Intra-Group Lender.

9. STRUCTURAL CREDITORS AND STRUCTURAL LIABILITIES

9.1 Restriction on Payment: Structural Liabilities

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

- (a) that Payment is permitted under Clause 9.2 (*Permitted Payments: Structural Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 9.8 (*Permitted Enforcement: Structural Creditors*).

9.2 Permitted Payments: Structural Liabilities

- (a) Subject to paragraph (b) below, the Debtors may make Payments in respect of the Structural Liabilities (whether of principal, interest or otherwise) from time to time when due if expressly permitted by the Credit Facility Documents and the Senior Note Documents.
- (b) Payments in respect of the Structural Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Event of Default has occurred under any of the Debt Documents unless:
 - (i) prior to the Super Senior Discharge Date, the Instructing Group has consented to that Payment being made;
 - (ii) on or after the Super Senior Discharge Date, the Senior Note Required Holders give written consent to that Payment being made;
 - (iii) that Payment is made to facilitate Payment of the Secured Liabilities; or
 - (iv) any director (or equivalent officer) of any Debtor or any other member of the Group is required by applicable laws (including without limitation, sections 30 and 43 of the German Limited Liability Companies Act) to demand or make that Payment in order to avoid personal and/or criminal liability.

9.3 Payment obligations continue

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 9.1 (*Restriction on Payment: Structural Liabilities*) and 9.2 (*Permitted Payments: Structural Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

9.4 Acquisition of Structural Liabilities

Prior to the Final Discharge Date, no Debtor may, and may not permit any other member of the Group to:

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

in respect of any Structural Liabilities at any time unless, prior to the Super Senior Discharge Date, the Instructing Group or on or after the Super Senior Discharge Date, the Senior Note Required Holders, consent to that action.

9.5 **Amendments and Waivers: Structural Liabilities**

Prior to the Final Discharge Date, a Structural Creditor may not amend or waive the terms of any agreement evidencing the terms of the Structural Liabilities unless:

- (a) the amendment or waiver is of a minor and administrative nature and is not materially prejudicial to the Primary Creditors;
- (b) prior to the Super Senior Discharge Date, the prior written consent of the Majority Super Senior Creditors and the Senior Note Required Holders is obtained; or
- (c) on or after the Super Senior Discharge Date but prior to the Senior Note Discharge Date, the prior written consent of the Senior Note Required Holders is obtained.

9.6 **Security: Structural Creditors**

Prior to the Final Discharge Date, the Structural Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Structural Liabilities other than as expressly permitted in the Credit Facility Documents and the Senior Note Documents.

9.7 **Restriction on enforcement: Structural Creditors**

Subject to Clause 9.8 (*Permitted Enforcement: Structural Creditors*), none of the Structural Creditors shall be entitled to take any Enforcement Action in respect of any of the Structural Liabilities at any time prior to the Final Discharge Date.

9.8 **Permitted Enforcement: Structural Creditors**

Prior to the Final Discharge Date and after the occurrence of an Insolvency Event, each Structural Creditor may only (unless otherwise directed by the Security Agent (acting on instructions of the Instructing Group) or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Structural Creditor in accordance with Clause 10.5 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

- (a) accelerate any of that member of the Group's Structural 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 Structural Liabilities;
- (c) exercise any right of set-off or take or receive any Payment in respect of any Structural Liabilities of that member of the Group; or
- (d) claim and prove in the liquidation of that member of the Group for the Structural Liabilities owing to it.

10. EFFECT OF INSOLVENCY EVENT

10.1 Credit Facility Cash Cover

This Clause 10 is subject to Clause 15.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*).

10.2 Payment of distributions

- (a) After the occurrence of an Insolvency Event, any Creditor (and, in the case of the Senior Note Trustee, subject to Clause 20.5(*Turnover obligations*)) entitled to receive a distribution out of the assets of the relevant member of the Group subject to the Insolvency Event in respect of Liabilities owed to that Creditor shall, to the extent it is able to do so, including pursuant to applicable law and regulation, direct the person responsible for the distribution of the assets of the relevant member of the Group to pay that distribution to the Security Agent until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Security Agent shall apply distributions paid to it under paragraph (a) above in accordance with Clause 15 (*Application of Proceeds*).

10.3 Set-Off

- (a) Subject to paragraph (b) below, to the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event any Creditor (in the case of the Senior Note Trustee, subject to Clause 20.5 (*Turnover obligations*)) 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 such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction from a Permitted Gross Amount of a Multi-account Overdraft Facility to or towards its Designated Net Amount;
 - (ii) any Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iii) any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty; and
 - (v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender.

10.4 Non-cash distributions

If the Security Agent or any other Secured Party receives a distribution in a form other than in cash in respect of any of the Liabilities, the Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Liabilities.

10.5 Filing of claims

Without prejudice to any Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that the netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount), until the Final Discharge Date, after the occurrence of an Insolvency Event each Creditor irrevocably authorises the Security Agent (acting in accordance with Clause 10.7 (*Security Agent Instructions*)), on its behalf, to:

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

10.6 Creditors' actions

Each Creditor will:

- (a) do all things that the Security Agent (acting in accordance with Clause 10.7 (*Security Agent Instructions*)) reasonably requests in order to give effect to this Clause 10; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 10 or if the Security Agent (acting in accordance with Clause 10.7 (*Security Agent Instructions*)) reasonably requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent (acting in accordance with Clause 10.7 (*Security Agent Instructions*)) or grant a power of attorney to the Security Agent (on such terms as the Security Agent (acting in accordance with Clause 10.7 (*Security Agent Instructions*)) may reasonably require, *provided that* the Senior Note Trustee shall not be obliged to grant such power of attorney) to enable the Security Agent to take such action.

10.7 Security Agent Instructions

For the purposes of Clause 10.5 (*Filing of claims*) and Clause 10.6 (*Creditors' actions*) the Security Agent shall act:

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

11. TURNOVER OF RECEIPTS

11.1 Credit Facility Cash Cover

This Clause 11 is subject to Clause 15.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*) and, in the case of the Senior Note Trustee, to Clause 20.5 (*Turnover obligations*).

11.2 Turnover by the Creditors

Subject to Clause 11.4 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date any Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not either:
 - (i) a Permitted Payment; or
 - (ii) made in accordance with Clause 15 (*Application of Proceeds*);
- (b) other than where Clause 10.3 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- (c) notwithstanding paragraphs (a) and (b) above, and other than where Clause 10.3 (*Set-Off*) applies, any amount:
 - (i) on account of, or in relation to, any of the Liabilities:
 - (A) after the occurrence of a Distress Event; or
 - (B) as a result of any other litigation or proceedings against a Debtor or a member of the Group (other than after the occurrence of an Insolvency Event in respect of that Debtor or that member of the Group); or
 - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event; or

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*);
- (e) other than where Clause 10.3 (*Set-Off*) applies, any distribution in cash or in kind or Payment of, or on account of or in relation to, any of the Liabilities owed by any Debtor 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 Debtor,

that Creditor will:

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

- (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement.

11.3 Exclusions

Clause 11.2 (*Turnover by the Creditors*) shall not apply to any receipt or recovery:

- (a) by way of:
 - (i) Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (ii) Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
 - (iv) Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; or
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that that netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount); or
- (c) if such turnover is reasonably likely to lead to any personal and/or criminal liability of any managing director of any Debtor or any other member of the Group pursuant to applicable laws (including without limitation, sections 30 and 43 of the German Limited Liability Companies Act) and this is evidenced by the relevant director in a manner satisfactory to the relevant Creditor Representatives (acting reasonably).

11.4 Permitted assurance and receipts

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

- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by Clause 19 (*Changes to the Parties*),

which is permitted by the relevant Credit Facility Documents and Senior Note Documents and is not in breach of Clause 6.5 (*No acquisition of Hedging Liabilities*) or Clause 8.4 (*Acquisition of Intra-Group Liabilities*) and that Primary Creditor shall not be obliged to account to any other Party for any sum received by it as a result of that action.

11.5 Sums received by Debtors

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

- (a) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and separate from other assets, property or funds 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.

11.6 **Saving provision**

If, for any reason, any of the trusts expressed to be created in this Clause 11 should fail or be unenforceable, the affected Creditor or Debtor will promptly pay an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

11.7 **Non-creation of charge**

Nothing in this Clause 11 or any other provision of this Agreement is intended to or shall create a charge or other security.

12. **REDISTRIBUTION**

12.1 **Recovering Creditor's rights**

- (a) Any amount paid by a Creditor (a “**Recovering Creditor**”) to the Security Agent under Clause 10 (*Effect of Insolvency Event*) or Clause 11 (*Turnover of Receipts*) shall be treated as having been paid by the relevant Debtor and distributed to the Security Agent, the Creditor Representatives, the Arrangers, the Super Senior Creditors, the Senior Noteholders and the Hedge Counterparties (which are not Senior Hedge Counterparties) (each a “**Sharing Creditor**”) in accordance with the terms of this Agreement.
- (b) On a distribution by the Security Agent under paragraph (a) above of a Payment received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid to the Security Agent (the “**Shared Amount**”) will be treated as not having been paid by that Debtor and to the extent permitted by law, the liability of the relevant Debtor to the relevant Creditor shall be increased (or shall be treated as not having been reduced) by an amount equal to the Shared Amount made by such Creditor to the Security Agent pursuant to paragraph (a) above and the relevant Debtor shall indemnify the relevant Creditor against any loss it may suffer as a result of paying such Shared Amount.

12.2 **Reversal of redistribution**

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor and is repaid by that Recovering Creditor to that Debtor, then:
 - (i) each Sharing Creditor and, in the case of the Senior Note Trustee, subject to Clause 20.5 (*Turnover obligations*) shall, upon request of the Security Agent, pay to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount received by it (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the “**Redistributed Amount**”); and

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

12.3 Deferral of Subrogation

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

12.4 Exceptions

- (a) This Clause 12 shall not apply to the extent that the Recovering Creditor would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Debtor and, in such case, the Recovering Creditor shall be entitled to rely on Clause 16 (*Equalisation*).
- (b) A Recovering Creditor is not obliged to share with any Secured Party any amount which the Recovering Creditor has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that Secured Party of the legal or arbitration proceedings; and
 - (ii) that Secured Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

13. ENFORCEMENT OF TRANSACTION SECURITY

13.1 Credit Facility Cash Cover

This Clause 13 is subject to Clause 15.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*).

13.2 Enforcement

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

13.3 Enforcement Instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security or taking any other Enforcement Action unless instructed otherwise by the Instructing Group, or if the provisions of paragraph 13.4(d)(i) and 13.4(e)(i) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*) apply, the Enforcing Creditor Group, in accordance with Clause 13.4 (*Enforcement Instructions – Consultation Periods*).
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms and subject to Clause 13.4 (*Enforcement Instructions – Consultation Periods*), the Instructing Group, or if the provisions of paragraph 13.4(d)(i) and 13.4(e)(i) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*) apply, the Enforcing Creditor Group, may give instructions to the Security Agent as to the Enforcement of the Transaction Security as they see fit *provided that* the instructions as to Enforcement given by the Instructing Group, or if the provisions of paragraph 13.4(d)(i) and 13.4(e)(i) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*) apply, the Enforcing Creditor Group, are consistent with the Security Enforcement Principles.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 13.3 (*Enforcement Instructions*) and need not concern itself as to whether or not those instructions are consistent with the Security Enforcement Principles, *provided that* in each case the Security Agent shall obtain the Financial Advisor’s Opinion in accordance with the Security Enforcement Principles prior to taking any action in accordance with such instructions.

13.4 Enforcement Instructions – Consultation Periods

- (a) If either of the Majority Super Senior Creditors or the Senior Note Required Holders (in each case acting through their Creditor Representative) (each a “**Creditor Group**”) wish to instruct the Security Agent to commence Enforcement Action, such Creditor Group (acting through its Creditor Representative) must give notice of the proposed instructions as to Enforcement (the “**Shared Security Notice**”) to the Security Agent and the Creditor Representative for each of the Super Senior Creditors and/or the Senior Note Trustee (as appropriate) at least 5 Business Days prior to the proposed date of issuance of instructions under such enforcement proposal (the “**Proposed Enforcement Instruction Date**”) and in the case of any notice to the Senior Note Trustee, the Senior Note Trustee shall promptly notify the Senior Noteholders of such Shared Security Notice.
- (b) The delivery of a Shared Security Notice shall commence a 45 day consultation period (or such shorter period as the relevant Creditor Representatives shall agree) (the “**Initial Consultation Period**”) during which time the Creditor Representative for each of the Super Senior Creditors and the Senior Note Trustee shall consult with each other in good faith (whilst keeping the Security Agent informed), with a view to co-ordinating the proposed instructions as to Enforcement and keep the Security Agent informed of such consultation and co-ordination efforts.
- (c) During the Initial Consultation Period, neither the Super Senior Creditors nor the Senior Noteholders shall be entitled to accelerate their respective Liabilities nor close-out any Hedging Documents (save that the relevant Creditor Representative shall be entitled to cancel all available commitments under the

relevant Credit Facility if an Event of Default (as defined in the relevant Credit Facility Document) has occurred and is continuing.

- (d) The Creditor Representatives for each of the Super Senior Creditors and the Senior Note Trustee shall not be obliged to consult (or, in the case of paragraph (ii) below, shall be obliged to consult for such shorter period of time as the Instructing Group may determine) in accordance with paragraph (b) above or paragraph (f) below if:
 - (i) where an Event of Default is continuing in relation to Liabilities owed to the relevant Creditor Group and such Creditor Group (the “**Enforcing Creditor Group**”) determines (acting reasonably and in good faith) (and notifies the Creditor Representatives of the Super Senior Creditors, the Senior Note Trustee and the Security Agent) that to enter into such consultations and thereby delay the commencement of enforcement of the Transaction Security could reasonably be expected to have a material and adverse effect on:
 - (A) the Security Agent’s ability to enforce any of the Transaction Security; or
 - (B) the realisation proceeds of any enforcement of the Transaction Security in any material respect; or
 - (ii) the Senior Note Trustee, the Creditor Representative of each other Super Senior Creditor agree on the proposed Enforcement Action and no Initial Consultation Period is required.
- (e) If consultation has taken place for at least 45 days as set out in paragraph (b) above (or such shorter period as determined under paragraph (d)) or if consultation has taken place for a period of 10 days (or such lesser period as the relevant Creditor Representatives may agree) as set out in paragraph (f) below (or was not required to occur as provided for in paragraph (d)), there shall be no further obligation to consult and the Security Agent may act as follows:
 - (i) in accordance with the instructions of the Enforcing Creditor Group which provides instructions to enforce the Transaction Security or otherwise requires the Distressed Disposal of Charged Property, *provided that* the same are consistent with the Security Enforcement Principles, it being understood that the Security Agent need not concern itself as to whether or not such instructions are consistent with the Security Enforcement Principles; and
 - (ii) in the event Conflicting Enforcement Instructions are outstanding, in accordance with the instructions from the Instructing Group and the Instructing Group may issue instructions as to Enforcement to the Security Agent at any time thereafter.

For the avoidance of doubt, to the extent the Security Agent does not receive any instructions as to Enforcement following the Initial Consultation Period (as such term is defined in paragraph (b) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*)), the Security Agent shall take no action.

- (f) If the Majority Super Senior Creditors or the Senior Note Required Holders (acting reasonably) consider that the Security Agent is enforcing the Security in a manner which is not consistent with the Security Enforcement Principles, subject to paragraph (c) above, the Creditor Representatives for the relevant

Super Senior Creditors or the Senior Note Trustee shall give notice to the Creditor Representatives for the other Super Senior Creditors and the Senior Note Trustee (as appropriate) after which the Creditor Representatives for the other Super Senior Creditors and the Senior Note Trustee shall consult with the Security Agent for a period of 10 days (or such lesser period as the relevant Creditor Representatives may agree) with a view to agreeing the manner of Enforcement *provided that* such Creditor Representatives shall not be obliged to consult under this paragraph (f) more than once in relation to each Enforcement Action.

13.5 Manner of enforcement

- (a) If the Transaction Security is being enforced or other action as to Enforcement is being taken pursuant to Clause 13.3 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security or take other action as to Enforcement in such manner (including, without limitation, the selection of any administrator of any Debtor to be appointed by the Security Agent) as the Enforcing Creditor Group or the Instructing Group, as applicable, shall instruct, provided any such instructions are consistent with the Security Enforcement Principles, it being understood that the Security Agent need not concern itself as to whether or not such instructions are consistent with the Security Enforcement Principles, *provided that* in each case the Security Agent shall obtain the Financial Advisor's Opinion in accordance with the Security Enforcement Principles prior to taking any action in accordance with such instructions.
- (b) For the avoidance of doubt, in the absence of written instructions from the Instructing Group or if applicable, the Enforcing Creditor Group, the Security Agent is not required to take any action.

13.6 Duties owed

Each of the Secured Parties and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security prior to the Final Discharge Date, the duties of the Security Agent and of any Receiver or Delegate owed to the Hedge Counterparties, the Senior Note Trustee and the Senior Noteholders in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to paragraph (c) of Clause 14.2 (*Distressed Disposals*), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors under general law.

13.7 Waiver of rights

To the extent permitted under applicable law and subject to Clause 13.3 (*Enforcement Instructions*), Clause 13.5 (*Manner of enforcement*), paragraph (c) of Clause 14.2 (*Distressed Disposals*) 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 sum received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

13.8 Alternative Enforcement Actions

After the Security Agent has commenced an Enforcement Action it shall not accept any subsequent instructions from anyone other than the Enforcing Creditor Group or the

Instructing Group, as applicable, that instructed it to take such Enforcement Action, regarding any other Enforcement Action over or relating to shares or assets directly or indirectly the subject of the Enforcement Action which has been commenced (in the context of an Enforcement Action relating to the shares in a company, for example, this paragraph would restrict any Enforcement Action relating to those shares or to the assets of that company or the shares in or assets of any direct or indirectly Subsidiary of that company).

This Clause 13.8 shall not restrict the right of any other Instructing Group to instruct the Security Agent to take any Enforcement Action over any shares or assets which are not directly or indirectly the subject of a prior Enforcement Action, subject to compliance with the requirements of Clause 13.4 (*Enforcement Instructions – Consultation Periods*).

14. PROCEEDS OF DISPOSALS

14.1 Non-Distressed Disposals

- (a) In this Clause 14.1, “**Disposal Proceeds**” means the proceeds of a Non-Distressed Disposal (as defined in paragraph (b) below).
- (b) If, in respect of a disposal of an asset by a Debtor which is subject to the Transaction Security or a disposal of the shares in the capital of any Holding Company (for the avoidance of doubt, whether or not such Holding Company is itself a Debtor) of a Debtor to a person or persons outside the Group which:
 - (i) is permitted under the Credit Facility Documents;
 - (ii) is permitted under the Senior Note Indenture; and
 - (iii) is not a Distressed Disposal,(a “**Non-Distressed Disposal**”),

the relevant member of the Group is also permitted under this Agreement to make such disposal and the Security Agent is irrevocably authorised and instructed to execute and deliver on behalf of each Creditor and Debtor (at the cost of the relevant Debtor and without any consent, sanction, authority or further confirmation from any Creditor or Debtor) but subject to paragraph (c) below:

- (i) to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;
- (ii) where that asset consists of shares in the capital of a Debtor, to release the Transaction Security or any other claim (relating to a Debt Document) over that Debtor’s assets and/or the shares and/or assets of any of its Restricted Subsidiaries;
- (iii) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and
- (iv) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraphs (i) and (ii) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable,

provided that in the case of a Non-Distressed Disposal made within the Group, any Transaction Security granted by, or other claim (relating to a Debt Document) relating to, the transferee will not be released and to the extent that replacement Transaction Security is required from the transferee under the terms of the Debt Documents, such Transaction Security will (subject to any requirements relating to the release, retaking, amendment or extension of the Transaction Security under the Debt Documents) be granted at the same time as (or before) the Non-Distressed Disposal is effected and *provided further that* no claim of a Debtor or other member of the Group shall be released if such release will lead to any personal and/or criminal liability of any director (or equivalent officer) of any Debtor or any other member of the Group pursuant to applicable laws (including without limitation, sections 30 and 42 of the German Limited Liability Companies Act) and this is evidenced by the relevant director in a manner satisfactory to the relevant Creditor Representatives (acting reasonably).

- (c) If that Non-Distressed Disposal is not made, each release of Transaction Security or any claim described in paragraph (b) above shall have no effect and the Transaction Security or claim subject to that release shall continue in such force and effect as if that release had not been effected.
- (d) If any Disposal Proceeds are required to be applied in mandatory prepayment of any of the Secured Liabilities pursuant to the terms of the relevant Senior Finance Documents then the Disposal Proceeds shall be applied in or towards Payment of such Secured Liabilities in accordance with the terms of the relevant Senior Finance Documents and the consent of any other Party shall not be required for that application.

14.2 **Distressed Disposals**

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

- (a) *Release of Transaction Security /non-crystallisation certificates*: to release the Transaction Security, or any other claim over that asset and execute and deliver or enter into any release of that Transaction Security, or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
- (b) *Release of liabilities and Transaction Security on a share sale (Debtor)*: if the asset which is disposed of consists of shares in the capital of a Debtor, to release (or instruct 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 an Intra-Group Lender, or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors, the Subordinated Creditors and Debtors;

- (c) *Release of liabilities and Transaction Security on a share sale (Holding Company)*: if the asset which is disposed of consists of shares in the capital of any Holding Company of a Debtor (for the avoidance of doubt, whether or not such Holding Company is itself a Debtor), to release (or instruct 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 an Intra-Group Lender or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtor;

- (d) *Disposal of liabilities on a share sale*: provided always that the disposal is in accordance with the Security Enforcement Principles, if the asset which is disposed of consists of shares in the capital of a Debtor or the Holding Company of a Debtor (a "**Share Disposal**") and the Security Agent (acting in accordance with Clause 14.3(c) (*Distressed Disposal – Application of Proceeds*)) decides to dispose of all or any part of:

- (i) the Liabilities; or

- (ii) the Debtor Liabilities,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company (a "**Liabilities Disposal**");

- (A) (if the Security Agent (acting in accordance with Clause 14.3(c) (*Distressed Disposal – Application of Proceeds*)) below does not intend that any transferee of those Liabilities or Debtor Liabilities (the "**Transferee**") will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all (and not part only) of those Liabilities owed to the Primary Creditors or Debtor Liabilities *provided that* notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement;

- (B) (if the Security Agent (acting in accordance with Clause 14.3(c) (*Distressed Disposal – Application of Proceeds*)) below does intend that any Transferee will be treated as a Primary Creditor or a Secured Party for the

purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of:

- (1) all (and not part only) of the Liabilities owed to the Primary Creditors; and
- (2) all or part of any other Liabilities and the Debtor Liabilities,

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

- (e) *Transfer of obligations in respect of liabilities on a share sale*: if the asset which is disposed of consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the “**Disposed Entity**”) and the Security Agent (acting in accordance with Clause 14.3(c) (*Distressed Disposal – Application of Proceeds*)) decides to transfer to another Debtor (the “**Receiving Entity**”) all or any part of the Disposed Entity’s obligations or any obligations of any Subsidiary of that Disposed Entity in respect of:

- (i) the Intra-Group Liabilities; or
- (ii) the Debtor Liabilities,

to execute and deliver or enter into any agreement to:

- (A) agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities on behalf of the relevant Intra-Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
- (B) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities are to be transferred.

14.3 **Distressed Disposal – Application of Proceeds**

- (a) The net proceeds of each Distressed Disposal (and the net proceeds of any disposal of Liabilities or Debtor Liabilities pursuant to Clause 14.2(d) above) shall be paid to the Security Agent for application in accordance with Clause 15 (*Application of Proceeds*) as if those proceeds were the proceeds of an enforcement of the Transaction Security and, to the extent that any disposal of Liabilities or Debtor Liabilities has occurred pursuant to Clause 14.2(d) above, as if that disposal of Liabilities or Debtor Liabilities had not occurred.
- (b) In the case of a Distressed Disposal (or a disposal of Liabilities pursuant to Clause 14.2(d) above) effected by or at the request of the Security Agent (acting in accordance with paragraph (c) below), the Security Agent shall take reasonable care to obtain a fair market price (but shall not be liable to any Party for the actual price obtained) in the prevailing market conditions (though the Security Agent shall have no obligation to postpone any such Distressed Disposal or disposal of Liabilities in order to achieve a higher price).
- (c) For the purposes of Clause 14.2 (b), (c) and (d) and paragraph (b) above, the Security Agent shall act:

- (i) if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 13.5 (*Manner of enforcement*);
- (ii) in any other case on the instructions of the Instructing Group, or if the provisions of paragraph 13.4(d)(i) and 13.4(e)(i) of Clause 13.4 (*Enforcement Instructions – Consultation Periods*) apply; the Enforcing Creditor Group, and
- (iii) in the case of paragraphs (i) and (ii) above, only to the extent that any release or disposal is reasonably likely not to lead to any personal and/or criminal liability of any managing director of any Debtor or any other member of the Group pursuant to applicable laws (including, without limitation, section 30 and 43 of the German Limited Liability Companies Act) and the relevant Creditor Representatives have taken comfort thereof through receipt of evidence from the relevant director which was satisfactory to them (acting reasonably).

For the avoidance of doubt, to the extent the Security Agent does not receive any instructions, it shall not be required to take any action.

14.4 **Creditors’, Subordinated Creditors’ and Debtors’ actions**

Each Creditor (other than the Senior Note Trustee), each Subordinated Creditor and, until the Final Discharge Date, each Debtor will:

- (a) do all things (or direct its Creditor Representative to do all things) that the Security Agent requests in order to give effect to this Clause 14 (*Proceeds of Disposals*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by this Clause 14 (*Proceeds of Disposals*)); and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 14 (*Proceeds of Disposals*) or if the Security Agent requests that any Creditor (or Creditor Representative if so directed by its Creditors) 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 14.1 (*Non-Distressed Disposals*) or Clause 14.2 (*Distressed Disposals*) as the case may be.

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 in connection with the realisation or enforcement of all or any part of the Transaction Security or otherwise paid to the Security Agent for application pursuant to this Clause (for the purposes of this Clause 15 (*Application of Proceeds*), 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 (*Application of Proceeds*)), in the following order of priority:

- (a) **first**, in payment of the following amounts: *pari passu* and pro rata any sums owing to the Security Agent, any Receiver or any Delegate and any Senior Note Trustee Amounts payable to the Senior Note Trustee;
 - (b) **second**, *pari passu* and pro rata to each Creditor Representative (to the extent not included in (a) above) of the unpaid fees, costs, expenses and liabilities (and all interest thereon as provided in the relevant Senior Finance Documents) of each Creditor Representative and any receiver, attorney or agent appointed by such Creditor Representative under any Transaction Security Document or this Agreement (to the extent that such Security has been given in favour of such obligations);
 - (c) **third**, *pari passu* and pro rata, in or towards payment of all costs and expenses incurred by the Super Senior Creditors;
 - (d) **fourth**, in or towards payment to:
 - (i) the RCF Agent on its own behalf and on behalf of the RCF Finance Parties (or, following the RCF Discharge Date, each Creditor Representative(s) in respect of a Credit Facility on its own behalf and on behalf of the Arrangers and Credit Facility Lenders under that Credit Facility);
 - (ii) the Senior New Hedge Counterparties,
for application towards the discharge of:
 - (A) the RCF Agent Liabilities, the Arranger Liabilities, RCF Liabilities and the Credit Facility Lender Liabilities (or, following the RCF Discharge Date, the Creditor Representative Liabilities owed to the Creditor Representatives in respect of each Credit Facility and the Credit Facility Lender Liabilities and the related Arranger Liabilities) in accordance with the terms of the Credit Facility Documents; and
 - (B) the Senior New Hedging Liabilities up to the Senior New Hedging Threshold and in accordance with the relevant Senior New Hedge Counterparty Share;
- on a pro rata basis as between paragraphs (A) and (B) above;
- (e) **fifth**, after the Super Senior Discharge Date, *pari passu* and pro rata in or towards payment to the Senior Note Trustee on behalf of the Senior Noteholders, each of the Senior New Hedge Counterparties (with outstanding Senior New Hedging Liabilities) and New Hedge Counterparties for application towards any unpaid costs and expenses incurred by or on behalf of any Senior Noteholders, Senior New Hedge Counterparties (with outstanding Senior New Hedging Liabilities) and the New Hedge Counterparties in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of the Transaction Security Documents and this Agreement or any action taken at the request of the Security Agent;
 - (f) **sixth**, after the Super Senior Discharge Date, to the Senior Note Trustee on behalf of the Senior Noteholders for application towards the discharge of the Senior Note Liabilities (in accordance with the Senior Note Indenture), to each of the Senior New Hedge Counterparties (with outstanding Senior New Hedging Liabilities above the Senior New Hedging Threshold) and New Hedge

Counterparties for application towards the remaining Senior New Hedging Liabilities and New Hedging Liabilities;

- (g) **seventh**, after the Senior Discharge Date, in payment of the surplus (if any) to the relevant Debtor or other person entitled to it.

15.2 **Prospective liabilities**

Following a Distress Event, the Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with an Acceptable Bank (or itself) and for so long as the Security Agent (in its sole discretion) deems appropriate until otherwise directed by the Majority Super Senior Creditors (acting through its Creditor Representative) (the interest being credited to the relevant account) for later application under Clause 15.1 (*Order of Application*) in respect of:

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

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

15.3 **Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral**

- (a) Nothing in this Agreement shall prevent any Issuing Bank, or Ancillary Lender taking any Enforcement Action in respect of any Credit Facility Cash Cover which has been provided for it in accordance with the Credit Facility Documents.
- (b) To the extent that any Credit Facility Cash Cover is not held with the Relevant Issuing Bank, Relevant Ancillary Lender, all amounts from time to time received or recovered in connection with the realisation or enforcement of that Credit Facility Cash Cover shall be paid to the Security Agent and 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, in the following order of priority:
 - (i) to the Relevant Issuing Bank and Relevant Ancillary Lender towards the discharge of the Credit Facility Lender Liabilities for which that Credit Facility Cash Cover was provided; and
 - (ii) the balance, if any, in accordance with Clause 15.1 (*Order of Application*).
- (c) To the extent that any Credit Facility Cash Cover is held with the Relevant Issuing Bank or Relevant Ancillary Lender nothing in this Agreement shall prevent that Relevant Issuing Bank or Relevant Ancillary Lender receiving and retaining any amount in respect of that Credit Facility Cash Cover.
- (d) Nothing in this Agreement shall prevent any Issuing Bank receiving and retaining any amount in respect of any Credit Facility Lender Cash Collateral provided for it in accordance with the terms of the Credit Facility Documents.

15.4 **Investment of 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 those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with an Acceptable Bank (referred to in paragraph (a) of such definition in the RCF Facility Agreement) (including itself) and for so long as the Security Agent shall think fit until otherwise directed by the Majority Super Senior Creditors (acting through its Creditor Representative) (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.

15.5 **Currency Conversion**

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

15.6 **Permitted Deductions⁴**

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

15.7 **Good Discharge**

- (a) Any payment to be made in respect of the Secured Obligations by the Security Agent:
 - (i) may be made to the relevant Creditor Representatives on behalf of its Creditors;
 - (ii) may be made to the Relevant Issuing Bank or Relevant Ancillary Lender in accordance with paragraph (b) (i) of Clause 15.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*); or
 - (iii) shall be made directly to the Hedge Counterparties,and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Creditor Representatives or the Hedge Counterparties under paragraph (a) of this Clause 15.7 in the same currency as that in which the Liabilities owing to the relevant Creditor are denominated.

⁴ UNDER CONSIDERATION

15.8 Calculation of Amounts

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

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

16. EQUALISATION

16.1 Equalisation Definitions

For the purposes of this Clause 16:

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

16.2 Implementation of equalisation

The provisions of this Clause 16 (*Equalisation*) shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate. Without prejudice to the generality of the preceding sentence, if the provisions of this Clause 16 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Super Senior Credit Participations and the Super Senior Creditors shall make appropriate adjustment payments amongst themselves.

16.3 Equalisation

If, for any reason, any Super Senior Liabilities remain unpaid after the Enforcement Date and after the application of Recoveries, as defined in, and in accordance with Clause 15.1 (*Order of Application*) and the resulting losses are not borne by the Primary Creditors in the proportions which their Super Senior Credit Participations at the Enforcement Date bore to the aggregate Super Senior Credit Participations of all the Super Senior Creditors at the Enforcement Date, the Super Senior Creditors will make such payments, from such Recoveries (as defined in Clause 15.1 (*Order of Application*)) actually applied, amongst themselves as the Security Agent shall require to put the Super Senior Creditors in such a position that (after taking into account such payments) those losses are borne in those proportions.

16.4 Turnover of enforcement proceeds

If:

- (a) the RCF Agent or any relevant Creditor Representative is not entitled, for reasons of applicable law, to pay amounts received pursuant to enforcement of the Transaction Security to the Super Senior Creditors but is entitled to distribute those amounts to Creditors (such Creditors, the **"Receiving**

Creditors”) who, in accordance with the terms of this Agreement, are subordinated in right and priority of payment to the Super Senior Creditors; and

- (b) the Super Senior Discharge Date has not yet occurred (nor would occur after taking into account such payments),

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

16.5 **Notification of Exposure**

Before each occasion on which it intends to implement the provisions of this Clause 16 (*Equalisation*), the Security Agent shall send notice to the RCF Agent (on behalf of the RCF Finance Parties), the relevant Creditor Representative (on behalf of any other Super Senior Creditor) and each Hedge Counterparty requesting that it notify it of, respectively, its exposure and that of each Super Senior Creditor (if any).

16.6 **Default in payment**

If a Creditor fails to make a payment due from it under this Clause 16 (*Equalisation*), the Security Agent shall be entitled (but not obliged) to take action on behalf of the Super Senior Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Super Senior Creditor(s) in respect of costs) but shall have no liability or obligation towards such Super Senior Creditor(s), any other Super Senior Creditor or Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

17. **THE SECURITY AGENT**

17.1 **Trust**

- (a) The Security Agent declares that it shall hold the Security Property on trust for the Secured Parties on the terms set out in this Agreement.
- (b) Except as provided in paragraph (a) above and, without limiting or affecting Clause 17.2 (*Parallel Debt (Covenant to pay the Security Agent)*), each other Secured Party appoints the Security Agent to act as security agent under and in connection with the relevant Security Documents and this Agreement.
- (c) Each other Secured Party agrees that the Security Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Security Documents to which the Security Agent is expressed to be a party (and no others shall be implied). The duties of the Security Agent under the Debt Documents are solely mechanical and administrative in nature.

17.2 **Parallel Debt (Covenant to pay the Security Agent)**

- (a) Each of the Debtors hereby irrevocably and unconditionally agrees and undertakes with the Security Agent (by way of an abstract acknowledgement of debt (*abstraktes Schuldanerkenntnis*)) and each Secured Party acknowledges that each of the Debtors shall pay to the Security Agent sums equal to, and in the currency of, any sums owing by it to a Secured Party (other than to the Security Agent solely by operation of this provision) under any Senior Finance Documents (the “**Principal Obligations**”) as and when the same fall due for payment under the relevant Senior Finance Document (together with the

obligations described in paragraph (e) below, the “**Parallel Debt Obligations**”).

- (b) Each of the Debtors and each Secured Party (other than the Security Agent) acknowledges that the right of the Security Agent to demand payment of the Parallel Debt Obligations shall be independent and several from the rights of the other Secured Parties to demand payment of the Principal Obligations *provided that* the payment by a Debtor of its Parallel Debt Obligations to the Security Agent in accordance with this Clause 17.2 shall also discharge (in the amount of the relevant payment) the corresponding Principal Obligations and vice versa the payment by a Debtor of its Principal Obligations in accordance with the provisions of the Senior Finance Documents shall also discharge (in the amount of the relevant payment) the corresponding Parallel Debt Obligations *provided further that* no Principal Obligation shall be discharged by a discharge of the Parallel Debt Obligations if such discharge of the Parallel Debt Obligations is effected by virtue of any set-off, counterclaim or similar defence invoked by a Debtor vis-à-vis the Security Agent other than in accordance with the terms of the Senior Finance Documents.
- (c) Despite the foregoing, any payment under the Senior Finance Documents shall be made to the Security Agent unless expressly stated otherwise in any Senior Finance Document or unless the Security Agent directs such payment to be made to a person other than the Security Agent.
- (d) Without limiting or affecting the Security Agent’s rights against any Debtor (whether under this Clause 17.2 or under any other provision of the Senior Finance Documents), the Security Agent agrees with each other Secured Party (on a several and divided basis) that it will not exercise its rights under the Parallel Debt Obligations in respect of the Principal Obligations owing to a Secured Party except with the consent of the Instructing Group. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Security Agent’s right to act in the protection or preservation of rights under any Transaction Security Document or to enforce any Transaction Security as contemplated by this Agreement, the relevant Transaction Security Document or any other Senior Finance Document (or to do any act reasonably incidental to the foregoing).
- (e) The Security Agent, the Debtors and each of the other Secured Parties agree that the Security Agent shall be the joint and several creditor (*Gesamtgläubiger*) (together with the relevant other Secured Party) of each and every obligation of the Debtors towards that other Secured Party under the Senior Finance Documents and that accordingly the Security Agent will have its own and independent right to demand performance by the Debtors of those obligations (*Gesamtgläubigerschaft*) in full.

17.3 Transaction Security under German law

- (a) Each of the Secured Parties (other than the Security Agent) hereby appoints the Security Agent as trustee (*Treuhänder*) and administrator for the purpose of accepting and, administering the German Security Documents (as such term is defined in the RCF Facility Agreement) for and on behalf of the other Secured Parties and the Security Agent hereby accepts such appointment on the terms and subject to the conditions set out in this Agreement. The Security Agent shall (i) hold and administer any German Security Documents, administer and (subject to it having become enforceable) realise any German Transaction Security granted to it under a non-accessory security right (*nicht-akzessorische Sicherheit*) in its own name as trustee (*treuhänderisch*) for the benefit of the

Secured Parties and (ii) administer and (subject to it having become enforceable) realise in the name and on behalf of the Secured Parties any German Transaction Security which is granted to the Secured Parties under an accessory security (*akzessorische Sicherheit*) in the name and on behalf of the Secured Parties.

- (b) Each Secured Party (other than the Security Agent) hereby authorises the Security Agent to accept as its representative (*Stellvertreter*) any pledge or other creation of any accessory security right made to such Secured Party in relation to the Senior Finance Documents and to act and execute on its behalf as its representative (*Stellvertreter*), subject to the terms of this Agreement, amendments or releases of, accessions and alterations to, and to carry out similar dealings with regard to any German Transaction Security Document which creates a pledge or any other accessory security right (*akzessorische Sicherheit*).
- (c) Each Secured Party which becomes a party to any Senior Finance Document ratifies and approves all acts and declarations previously done by the Security Agent on such Secured Party's behalf (including for the avoidance of doubt the declarations made by the Security Agent as representative without power of attorney (*Vertreter ohne Vertretungsmacht*)) in relation to the creation of any pledge (*Pfandrecht*) on behalf and for the benefit of any Secured Party.
- (d) Each relevant Debtor and each relevant Secured Party agrees that the German Security Documents entered into between them in addition to this Agreement shall be subject to the relevant terms of this Agreement.
- (e) The Security Agent shall and is hereby authorised by each of the Secured Parties (and to the extent it may have any interest therein, every other party hereto) to execute on behalf of itself and each other party hereto where relevant without the need for any further referral to, or authority from, any other person all necessary releases or confirmations of any security created under the German Security Documents.
- (f) Each Secured Party hereby irrevocably authorises the Security Agent to act on its behalf and if required under applicable law, or if otherwise appropriate, in its name and in its behalf in connection with the preparation, execution and delivery of the German Security Documents and the perfection and monitoring off the German Security Documents. The Security Agent is authorised to make all statements necessary or appropriate in this connection.
- (g) For the purposes of this Clause 17.3, each Secured Party releases the Security Agent from the restrictions of section 181 German Civil Code (*BGB*) or any similar restriction of the applicable laws of any other jurisdiction. The Security Agent has the power to grant sub-power of attorney including the right to release the sub-attorney "*Untervollmacht*" from the restrictions of section 181 German Civil Code (*BGB*) or any similar restriction of the applicable laws of any other jurisdiction.
- (h) It is hereby agreed that, in relation to any jurisdiction the courts of which would not recognise or give effect to the trust expressed to be created by paragraph (a) above, the relationship of the Secured Parties to the Security Agent in relation to any German Transaction Security Interest shall be construed as one of principal and agent but, to the extent permissible under the laws of such jurisdiction, all the other provisions of this Clause 17.3 shall have full force and effect between the Parties.

17.4 **No independent power**

Subject to Clause 15.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*) the Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Security Documents (other than the RCF Facility Agreement, the facility agreement in relation to any other Credit Facility, the Senior Notes, the Senior Note Guarantees and the Senior Note Indenture or make or receive any declarations in relation thereto except through the Security Agent.

17.5 **Instructions to Security Agent and exercise of discretion**

- (a) Subject to paragraphs (d) and (e) below, the Security Agent shall act in accordance with any instructions given to it by the Instructing Group (acting through the relevant Creditor Representatives) or, if so instructed by the Instructing Group, refrain from exercising any right, power, authority or discretion vested in it as Security Agent and shall be entitled to assume that (i) any instructions received by it from the Creditor Representatives, the Creditors or a group of Creditors are duly given in accordance with the terms of the Debt Documents and (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any direction, from the Instructing Group as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Security Agent may refrain from acting unless and until those instructions or clarification are received by it.
- (c) Save as provided in Clause 13 (*Enforcement of Transaction Security*), any instructions given to the Security Agent by the Instructing Group shall override any conflicting instructions given by any other 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, the provisions set out in Clauses 17.7 (*Security Agent's discretions*) to Clause 17.22 (*Disapplication*);
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 14.1 (*Non-Distressed Disposals*);
 - (B) Clause 15.1 (*Order of Application*);
 - (C) Clause 15.2 (*Prospective liabilities*);
 - (D) Clause 15.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*); and
 - (E) Clause 15.6 (*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 any amendment or waiver which is subject to Clause 27 (*Consents, Amendments and Override*) (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 this Agreement where either:
 - (i) it has not received any instructions from the Instructing Group 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 having regard to the interests of all the Secured Parties.

17.6 **Security Agent's Actions**

Without prejudice to the provisions of Clause 13 (*Enforcement of Transaction Security*) and Clause 17.5 (*Instructions to Security Agent and exercise of discretion*), the Security Agent may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action (or refrain from taking action) in the exercise of any of its powers and duties under the Debt Documents as it considers in its discretion to be appropriate. The Security Agent shall have all the rights, privileges and immunities which gratuitous trustees have or may have in England, even though it is entitled to remuneration.

17.7 **Security Agent's discretions**

The Security Agent may:

- (a) assume (unless it has received actual notice to the contrary from a Hedge Counterparty or one of the Creditor Representatives) that (i) no Default has occurred and no Debtor is in breach of or default under its obligations under any of the Debt Documents and (ii) any right, power, authority or discretion vested by any Debt Document in any person has not been exercised;
- (b) if it receives any instructions or directions under Clause 13 (*Enforcement of Transaction Security*) to take any action in relation to the Transaction Security or any Enforcement or Enforcement Action, assume that all applicable conditions under the Debt Documents for taking that action have been satisfied;
- (c) engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, surveyors or other experts (whether obtained by the Security Agent or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable;
- (d) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party, any Creditor or a Debtor, upon a certificate signed by or on behalf of that person; and
- (e) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Debt Documents) until it has received any indemnification and/or security that

it may in its discretion require (whether by way of payment in advance or otherwise and such indemnification or security, in the case of the Senior Note Creditors, being granted by the ultimate beneficial owners of the Senior Notes and not by (i) the Senior Note Trustee or; (ii) prior to definitisation of the Senior Notes, the registered owner of the Senior Notes) for all costs, losses and liabilities which it may incur in so acting.

17.8 **Security Agent's obligations**

The Security Agent shall promptly:

- (a) copy to (i) each Creditor Representative and (ii) each Hedge Counterparty the contents of any notice or document received by it from any Debtor under any Debt Document;
- (b) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party *provided that*, except where a Debt Document expressly provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party;
- (c) inform (i) each Creditor Representative and (ii) each Hedge Counterparty of the occurrence of any Default or any default by a Debtor in the due performance of or compliance with its obligations under any Debt Document of which the Security Agent has received notice from any other party to this Agreement; and
- (d) to the extent that a Party (other than the Security Agent) is required to calculate a Base Currency Amount, and upon a request by that Party, notify that Party of the relevant Security Agent's Spot Rate of Exchange.

17.9 **Excluded obligations**

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

- (a) be bound to enquire as to (i) whether or not any Default has occurred or (ii) the performance, default or any breach by a Debtor of its obligations under any of the Debt Documents;
- (b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;
- (d) have any duty to ensure:
 - (i) that any payment or other financial benefit in respect of any of the Security Property or any Liabilities are duly and punctually paid, received or collected; or
 - (ii) the taking up of any (or any offer of any) stocks, shares, rights, moneys or other property accruing or offered at any time by way of interest, dividend, redemption, bonus, rights, preference, option, warrant or

otherwise in respect of any of the Security Property or any Liabilities;
or

- (e) have or be deemed to have any relationship of trust or agency with, any Debtor or Subordinated Creditor.

17.10 **Exclusion of liability**

None of the Security Agent, any Receiver or any Delegate shall accept responsibility or be liable for:

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

17.11 **No proceedings**

No Party (other than the Security Agent, that Receiver or that Delegate) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause 17.11 (*No proceedings*), subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Rights Act.

17.12 **Own responsibility**

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

- (a) the financial condition, status and nature of each member of the Group;

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

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

17.13 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 of the Debt Documents or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Debt Documents or of the Transaction Security;
- (d) take, or to require any of the Debtors to take, any steps to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under the laws of any jurisdiction; or
- (e) require any further assurances in relation to any of the Security Documents.

17.14 Insurance by Security Agent

- (a) The Security Agent shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Debt Documents. The Security Agent shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless a Creditor Representative or a Hedge Counterparty shall have requested it to do so in writing and the Security Agent shall have failed to do so within fourteen days after receipt of that request.

17.15 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and, provided it has appointed the custodian or nominee, 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.

17.16 Acceptance of title

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

17.17 Refrain from illegality

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

17.18 Business with the Debtors

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with any of the Debtors whether or not it may or does lead to a conflict with the interests of any of the Secured Parties. Similarly the Security Agent may undertake business with or for others even though it may lead to a conflict with the interests of any of the Secured Parties.

17.19 Winding up of trust

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

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

17.20 **Powers supplemental**

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

17.21 **Trustee division separate**

- (a) In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its Syndicated Loans Agency department which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.

17.22 **Disapplication**

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

17.23 **Subordinated Creditors and Debtors: Power of Attorney**

- (a) Each Subordinated Creditor and Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do (until the Final Discharge Date) anything which that Subordinated Creditor or Debtor has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do within 10 Business Days of receiving notice requiring it to do so (and the Security Agent may delegate that power on such terms as it sees fit). Each Subordinated Creditor and Debtor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted in this Clause 17.23.
- (b) Each of the Subordinated Creditors and Debtors hereby relieves the Security Agent from the restrictions of self-dealing pursuant to Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) or any other applicable restrictions of self-dealing pursuant to any other applicable law, in each case to the extent legally possible, to perform its duties and obligations as Security Agent hereunder. The Security Agent shall have the authority to sub-delegate the power granted hereunder in accordance with this Agreement and to grant an exemption from the restrictions imposed by such code provision to any sub-delegate.

17.24 **Security Enforcement Principles**

The Security Enforcement Principles shall bind each Party.

17.25 No fiduciary duties

Nothing in this Agreement constitutes the Security Agent (except as expressly provided in this Agreement) as a trustee or fiduciary of any other person.

18. CHANGE OF SECURITY AGENT AND DELEGATION

18.1 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Parent and the Senior Creditors and the Senior Note Trustee.
- (b) Alternatively the Security Agent may resign by giving not less than 30 days' notice to the other Parties in which case the Instructing Group may after consultation with the Parent and the Senior Note Issuer appoint a successor Security Agent.
- (c) If the Instructing Group have not appointed a successor Security Agent in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Agent (after consultation with the Parent, the Creditor Representatives and the Hedge Counterparties) may appoint a successor Security Agent.
- (d) The retiring Security Agent (the "**Retiring Security Agent**") shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents.
- (e) The Security Agent's resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer of all of the Security Property (including, without limitation, all rights in respect of the Parallel Debt Obligations) to that successor. Each Creditor and Debtor will do all things that the Security Agent requests in order to give effect to such transfer of Security Property (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 transfer).
- (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 17.19 (*Winding up of trust*) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Agent, remain entitled to the benefit of Clauses 17 (*The Security Agent*), 23.1 (*Debtors' indemnity*) and 23.3 (*Primary Creditors' indemnity*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) After consultation with the Parent and the Senior Note Issuer, the Instructing Group may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above (or, at any time the Security Agent is an Impaired Security Agent, by giving any shorter notice determined by the Instructing Group). In this event, the Security Agent shall resign in accordance with paragraph (b) above (or in accordance with such shorter notice as determined by the Instructing Group) but the cost referred to in paragraph (d) above shall be for the account of the Parent.

18.2 Delegation

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

18.3 Additional Security Agents

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

19. CHANGES TO THE PARTIES

19.1 Assignments and transfers

No Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities except as permitted by this Clause 19.

19.2 New Credit Facility Lenders and Creditor Representatives

- (a) At any time on or following the RCF Discharge Date, in order for any credit facility (other than the RCF Facility) to be a “Credit Facility” for the purposes of this Agreement:
 - (i) each creditor in respect of that credit facility shall accede to this Agreement as a Credit Facility Lender;
 - (ii) each arranger in respect of that credit facility shall accede to this Agreement as an Arranger; and
 - (iii) the facility agent in respect of that credit facility shall accede to this Agreement as the Creditor Representative in relation to that credit

facility pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).

- (b) A Credit Facility Lender may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if:
 - (i) that assignment or transfer is in accordance with the terms of the relevant Credit Facility Documents; and
 - (ii) any assignee or transferee has (if not already party to this Agreement as a Credit Facility Lender) acceded to this Agreement as a Credit Facility Lender pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).
- (c) No creditor shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of this Agreement as a Credit Facility Lender unless such creditor has acceded to this Agreement as a Credit Facility Lender in accordance with paragraphs (a) or (b) above.

19.3 **Change of Senior Creditor**

A Credit Facility Lender (other than a RCF Finance Party) may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if:

- (a) that assignment or transfer is in accordance with the terms of the relevant Credit Facility Document; and
- (b) any assignee or transferee has (if not already party to this Agreement as a Credit Facility Lender) acceded to this Agreement as a Credit Facility Lender pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).

No creditor (other than a RCF Lender) shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of this Agreement as a Credit Facility Lender unless such creditor (or, as the case may be, the trustee in relation to the debt securities held by such creditor) has acceded to this Agreement in accordance with paragraphs (a) or (b) above.

19.4 **Change of RCF Lender**

A RCF Lender may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if:

- (a) that assignment or transfer is in accordance with the terms of the RCF Facility Agreement; and
- (b) any assignee or transferee has (if not already party to this Agreement as a RCF Lender) acceded to this Agreement, as a RCF Lender pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).

19.5 **New Hedge Counterparty or change in New Hedge Counterparty**

- (a) No person shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising

in relation to any New Hedging Agreement unless it has acceded to this Agreement as a New Hedge Counterparty.

- (b) A New Hedge Counterparty may (in accordance with the terms of the relevant New Hedging Agreement and subject to any consent required under that New Hedging Agreement) transfer any of its rights and benefits or obligations in respect of the New Hedging Agreements to which it is a party and (if required) the Deed of Guarantee (New Hedge Counterparty) if any transferee has (if not already party to this Agreement as a New Hedge Counterparty) acceded to this Agreement as a New Hedge Counterparty pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).

19.6 Senior New Hedge Counterparty or change in Senior New Hedge Counterparty

- (a) No person shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to any Senior New Hedging Agreement unless it has acceded to this Agreement as a Senior New Hedge Counterparty.
- (b) A Senior New Hedge Counterparty may (in accordance with the terms of the relevant Senior New Hedging Agreement and subject to any consent required under that Senior New Hedging Agreement) transfer any of its rights and benefits or obligations in respect of the Senior New Hedging Agreements to which it is a party and (if required) the Deed of Guarantee (Senior New Hedge Counterparty) if any transferee has (if not already party to this Agreement as a Senior New Hedge Counterparty) acceded to this Agreement as a Senior New Hedge Counterparty pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).

19.7 Change of Creditor Representative

No person shall become a Creditor Representative unless at the same time, it accedes to this Agreement as a Creditor Representative pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).

19.8 New Intra-Group Lender

If any member of the Group makes a loan to or grants any credit to or makes any other financial arrangement having similar effect with any member of the Group which is a Debtor, where such loan or credit increases the aggregate amount of all outstanding intra-group loans or financial arrangements with similar effect to members of the Group which are Debtors to an amount exceeding \$ 10,000,000 at any time, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already party to this Agreement as an Intra-Group Lender) accedes to this Agreement, as an Intra-Group Lender pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).

19.9 Change of Intra-Group Lender

Subject to Clause 8.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already party to this Agreement as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).

19.10 **New Structural Creditor**

If the Parent becomes a borrower in respect of Financial Indebtedness from any direct or indirect shareholder in the Parent, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already party to this Agreement as a Structural Creditor) accedes to this Agreement, as a Structural Creditor pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).

19.11 **Change of Structural Creditor**

Subject to Clause 9.4 (*Acquisition of Structural Liabilities*) and to the terms of the other Debt Documents, any Structural Creditor may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Structural Liabilities if the assignee or transferee has (if not already party to this Agreement as a Structural Creditor) acceded to this Agreement as a Structural Creditor, pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).

19.12 **New Ancillary Lender**

If any Affiliate of a Credit Facility Lender becomes an Ancillary Lender in accordance with clause 9.8 (*Representations: Intra-Group Lenders*) of the RCF Facility Agreement (or the equivalent provision of any other Credit Facility Document), it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already party to this Agreement as a Credit Facility Lender) acceded to this Agreement as a Credit Facility Lender and to the RCF Facility Agreement (or, following the Super Senior Discharge Date, the facility agreement relating to the relevant Credit Facility) as an Ancillary Lender pursuant to Clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*).

19.13 **Creditor/Creditor Representative Accession Undertaking**

With effect from the date of acceptance by the Security Agent and, in the case of an Affiliate of a Credit Facility Lender, the Creditor Representative in relation to the relevant Credit Facility, of a Creditor/Creditor Representative Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor/Creditor Representative Accession Undertaking:

- (a) any Party ceasing entirely to be a Creditor or a Creditor Representative shall be discharged from further obligations towards the Security Agent and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and
- (b) as from that date, the replacement or new Creditor, Subordinated Creditor or Creditor Representative shall assume the same obligations, and become entitled to the same rights, as if it had been an original Party to this Agreement in that capacity; and
- (c) any new Ancillary Lender (which is an Affiliate of a Credit Facility Lender) shall also become party to the RCF Facility Agreement (or, following the RCF Discharge Date, the facility agreement relating to the relevant Credit Facility) as an Ancillary Lender and shall assume the same obligations and become entitled to the same rights as if it had been an original party to the RCF Facility Agreement (or, following the RCF Discharge Date, the facility agreement relating to the relevant Credit Facility) as an Ancillary Lender.

19.14 **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 incurrence 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 to this Agreement as a Debtor.

19.15 **Additional parties**

- (a) Each of the Parties irrevocably appoints and instructs the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor/Creditor Representative Accession Undertaking delivered to the Security Agent and the Security Agent shall, subject to paragraphs (c) and (d) below, promptly after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Debt Document.
- (b) In the case of a Creditor/Creditor Representative Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Credit Facility Lender):
 - (i) the Security Agent shall, as soon as practicable after signing and accepting that Creditor/Creditor Representative Accession Undertaking in accordance with paragraph (a) above, deliver that Creditor/Creditor Representative Accession Undertaking to the relevant Creditor Representative; and
 - (ii) the relevant Creditor Representative shall, as soon as practicable after receipt by it, sign and accept that Creditor/Creditor Representative Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.
- (c) The relevant Creditor Representative shall be obliged to sign and accept a Debtor Accession Deed or Creditor/Creditor Representative Accession Undertaking received by it promptly after receipt by it *provided that* it is satisfied that it has complied with all necessary “know your customer” or similar other checks under all applicable laws and regulations in relation to the accession by the prospective party to this Agreement.
- (d) Each Party shall promptly upon the request of the Security Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Security Agent (for itself) from time to time in order for the Security Agent to carry out and be satisfied with the results of all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Debt Documents.

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

19.16 **Resignation of a Debtor**

- (a) The Parent may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (b) The Security Agent shall accept a Debtor Resignation Request and notify the Parent and each other Party of its acceptance if:
 - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Debtor Resignation Request;
 - (ii) to the extent that the Super Senior Discharge Date has not occurred, the Creditor Representative in relation to each Credit Facility notifies the Security Agent that that Debtor is not, or has ceased to be, a Credit Facility Borrower, a Credit Facility Guarantor or a Hedging Guarantor;
 - (iii) to the extent that the Hedging Discharge Date has not occurred, each Hedge Counterparty notifies the Security Agent (such notice not to be unreasonably delayed) that that Debtor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities;
 - (iv) to the extent that the Senior Note Discharge Date has not occurred, the Senior Note Trustee notifies the Security Agent that the Debtor is not, or has ceased to be, a Senior Note Issuer or a guarantor of the Senior Notes; and
 - (v) the Parent confirms that that Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities and the Subordinated Liabilities.
- (c) Upon notification by the Security Agent to the Parent of its acceptance of the resignation of a Debtor, that member of the Group shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.
- (d) The Security Agent shall, promptly upon receipt of a Debtor Resignation Request, request the notifications required in paragraph (b) above and each party required to give a notification under paragraph (b) above shall, promptly following receipt of the request (and provided the relevant conditions in paragraph (b) above have been met) give such notification.

19.17 **Notification by Security Agent**

The Security Agent shall notify the Creditor Representatives promptly of the receipt and execution by it on their behalf of any Debtor Accession Deed.

20. SENIOR NOTE TRUSTEE PROTECTIONS

20.1 Limitation of Senior Note Trustee Liability

It is expressly understood and agreed by the Parties that this Agreement is executed and delivered by the Senior Note Trustee not individually or personally but solely in its capacity as the Senior Note Trustee in the exercise of the powers and authority

conferred and vested in it under the Senior Note Documents. It is further understood by the Parties that in no case shall the Senior Note Trustee be (i) responsible or accountable in damages or otherwise to any other Party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by the Senior Note Trustee in good faith in accordance with this Agreement and the Senior Note Trustee in a manner that the Senior Note Trustee believed to be within the scope of the authority conferred on the Senior Note Trustee by this Agreement and the Senior Note Documents or by law, or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party, provided however, that the Senior Note Trustee (or any such successor noteholder trustee) shall be personally liable under this Agreement for its own gross negligence or wilful misconduct. It is also acknowledged that the Senior Note Trustee shall not have any responsibility for the actions of any individual holder of the Senior Notes.

20.2 Senior Note Trustee not fiduciary for other Creditors

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

20.3 Reliance on certificates

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

20.4 Senior Note Trustee

In acting under and in accordance with this Agreement the Senior Note Trustee shall act in accordance with the Senior Notes Indenture and shall seek any necessary instruction from the relevant Senior Noteholders to the extent provided for, and in accordance with, the relevant Senior Notes Indenture, and where it so acts on the instructions of the Senior Noteholders, the Senior Note Trustee shall not incur any liability to any person for so acting other than in accordance with the Senior Note Indenture. Furthermore, prior to taking any action under this Agreement, the Senior Note Trustee may reasonably request and rely upon an opinion of counsel or opinion of another qualified expert, at the Senior Note Issuer's expense, as applicable; provided, however, that any such opinions shall be at the expense of the Senior Noteholders if such actions are on the instructions of the Senior Noteholders.

20.5 Turnover obligations

Notwithstanding any provision in the Agreement to the contrary, the Senior Note Trustee shall only have an obligation to turn over or repay amounts received or recovered under this Agreement by it (i) if it had actual knowledge that the receipt or

recovery is an amount received in breach of a provision of this Agreement (a “**Turnover Receipt**”) and (ii) to the extent that, prior to receiving that knowledge, it has not distributed the amount of the Turnover Receipt to the Senior Noteholders in accordance with the provisions of the relevant Senior Note Indenture. For the purpose of this Clause 20.5, (i) “actual knowledge” of the Senior Note Trustee shall be construed to mean the Senior Note Trustee shall not be charged with knowledge (actual or otherwise) of the existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless a responsible officer of such Senior Note Trustee has received, not less than two Business Days’ prior to the date of such payment, a written notice that such payments are required or prohibited by this Agreement; and (ii) “responsible officer” when used in relation to the Senior Note Trustee means any person who is an officer within the corporate trust and agency department of the Senior Note Trustee, including any director, associate director, vice president, assistance vice president, senior associate, assistant treasurer, trust officer, or any other officer of the Senior Note Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement.

20.6 Creditors and the Senior Note Trustee

In acting pursuant to this Agreement and the Senior Notes Indenture, the Senior Note Trustee is not required to have any regard to the interests of the Creditors (other than the Senior Noteholders) or any Subordinated Creditor.

20.7 Senior Note Trustee; reliance and information

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

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

20.8 No action

The Senior Note Trustee shall not have any obligation to take any action under this Agreement unless it is indemnified and/or secured to its satisfaction (whether by way of payment in advance or otherwise) by the Debtors or the Senior Noteholders, as

applicable in accordance with the terms of the Senior Note Indenture. The Senior Note Trustee is not required to indemnify any other person, whether or not a Party in respect of the transactions contemplated by this Agreement.

20.9 **Departmentalisation**

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

20.10 **Other parties not affected**

This Clause 20 is intended to afford protection to the Senior Note Trustee only and no provision of this Clause 20 shall alter or change the rights and obligations as between the other parties in respect of each other.

20.11 **Payments**

Subject, where Clause 15 (*Application of Proceeds*) is applicable, to Clause 15 (*Application of Proceeds*), nothing in this Agreement shall prevent (i) payment by the Senior Note Issuer or any Debtor of fees, costs and expenses of the Senior Note Trustee (including any amount payable to the Senior Note Trustee by way of indemnity, remuneration or reimbursement for expenses incurred) payable to the Senior Note Trustee for its own account pursuant to the Senior Note Documents or any engagement letter between the Senior Note Trustee and the Senior Note Issuer, and the costs of any actual or attempted Enforcement Action which is permitted by this Agreement which are recoverable pursuant to the terms of the Senior Notes Finance Documents (collectively, “**Senior Note Trustee Amounts**”); or (ii) the receipt and retaining of such Senior Note Trustee Amounts by the Senior Note Trustee.

20.12 **Security Agent and the Senior Note Trustee**

- (a) The Senior Note Trustee is not responsible for the appointment or for monitoring the performance of the Security Agent.
- (b) The Security Agent agrees and acknowledges that it shall have no claim against the Senior Note Trustee in respect of any fees, costs, expenses and liabilities due and payable to, or incurred by, the Security Agent.
- (c) The Senior Note Trustee shall be under no obligation to instruct or direct the Security Agent to take any Security enforcement action unless it shall have been instructed to do so by the Senior Noteholders and indemnified and/or secured to its satisfaction.

20.13 **Provision of information**

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

- (a) providing any Super Senior Creditors or Senior Noteholder with any credit or other information concerning the risks arising under or in connection with the Senior Finance Documents, Hedging Documents or Senior Note Documents (including any information relating to the financial condition or affairs of any

Obligor, the Senior Note Issuer or their related entities or the nature or extent of recourse against any Party or its assets) whether coming into its possession before, on or after the date of this Agreement; or

- (b) obtaining any certificate or other document from any Obligor or the Senior Note Issuer.

20.14 **Disclosure of information**

Each Obligor and the Senior Note Issuer irrevocably authorises the Senior Note Trustee to disclose to any Super Senior Creditors any information that is received by the Senior Note Trustee in its capacity as the Senior Note Trustee.

20.15 **Illegality**

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

20.16 **Resignation of Senior Note Trustee**

The Senior Note Trustee may resign or be removed in accordance with the terms of the Senior Note Indenture, *provided that* a replacement Senior Note Trustee agrees with the Parties to become the replacement trustee under this Agreement by the execution of an Accession Deed.

20.17 **Provisions Survive Termination**

The provisions of this Clause 20 shall survive any termination or discharge of this Agreement.

21. **RETRANCHING – SENIOR NOTES**

- (a) Any retranching of the Senior Notes (as contemplated under the terms of the Senior Note Documents (in the form at the date of this Agreement)) shall be permitted *provided that*:
 - (i) no amendments shall be made to Clause 2 (*Ranking and Priority*);
 - (ii) no amendments shall be made to the Transaction Security which would result in increased or new hardening periods or otherwise require a release or retake of the Transaction Security which could be prejudicial to the rights and interests of the Super Senior Creditors; and
 - (iii) such retranching does not result in the maturity of the Senior Notes being the same as or earlier than the termination date under the Credit Facility Document,

in each, without the consent of all the Super Senior Creditors.

- (b) If the Senior Notes are re-tranched pursuant to this Clause 21, the Senior Note Issuer hereby agrees to enter into any documents as requested by the Senior Note Trustee, including a further intercreditor deed, in order to give effect to any new ranking of the Senior Notes resulting from such re-tranching.

22. COSTS AND EXPENSES

22.1 Security Agent's ongoing costs

- (a) In the event of (i) an Event of Default which is continuing or (ii) the Security Agent considering it necessary or (iii) the Security Agent being requested by a Debtor or the Instructing Group to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under the Debt Documents, the Parent shall pay to the Security Agent any additional remuneration that may be agreed between them.
- (b) If the Security Agent and the Parent fail to agree upon the nature of those duties or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the parties to this Agreement, *provided that* such investment bank shall not be an affiliate of the Security Agent or any of the Secured Parties.

22.2 Transaction expenses

The Parent shall, within three Business Days of demand, pay (or procure the payment to) the Security Agent the amount of all documented costs and expenses (including legal fees, subject to a cap, if any, agreed between the Parent and the Security Agent) (together with any applicable VAT) reasonably incurred by the Security Agent and any Receiver or Delegate in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

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

22.3 Stamp taxes

The Parent shall pay and, within three Business Days of demand, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to all stamp duty, registration and other similar Tax payable in respect of any Debt Document (other than a Creditor/Creditor Representative Accession Undertaking).

22.4 Interest on demand

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall, without double-counting, 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 under any other Debt Document) at the rate which is one per cent. per annum over the rate at which the Security Agent was being offered, by leading banks in the London interbank market, deposits in an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select.

22.5 Enforcement and preservation costs

The Parent shall, within three Business Days of demand, pay (or procure the payment) 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.

23. INDEMNITIES

23.1 Debtors' indemnity

Subject to any applicable guarantee limitations, each Debtor shall, within three Business Days of demand, indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them:

- (a) in relation to or as a result of:
 - (i) any failure by the Parent to comply with obligations under Clause 22 (*Costs and Expenses*);
 - (ii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iii) the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;
 - (iv) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents; or
- (b) which otherwise relates to any of the Security Property or the performance of the terms of this Agreement (otherwise than as a result of its gross negligence or wilful misconduct).

Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 23.1 (*Debtors' indemnity*) will not be prejudiced by any release or disposal under Clause 14.2 (*Distressed Disposals*) taking into account the operation of that Clause 14.2 (*Distressed Disposals*) provided that such person remains to be a member of the Group after such release or disposal.

23.2 Priority of indemnity

The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in Clause 23.1 (*Debtors' indemnity*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

23.3 Primary Creditors' indemnity

Each Primary Creditor (except the Creditor Representatives) shall (in the proportion that the Liabilities due to it bears to the aggregate of the Liabilities due to all the Primary Creditors for the time being (or, if the Liabilities due to each of those Primary Creditors is zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of

demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document) and the Debtors shall jointly and severally indemnify each Primary Creditor against any payment made by it under this Clause 23 (*Indemnities*).

23.4 **Parent's indemnity to Primary Creditors**

The Parent shall promptly and as principal Debtor 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 pursuant to the operation of Clause 14.2 (*Distressed Disposals*).

24. **INFORMATION**

24.1 **Information and dealing**

- (a) The Creditors and Creditor Representatives shall provide to the Security Agent from time to time (the Creditors acting through the relevant Creditor Representative as applicable) any information that the Security Agent may reasonably specify as being necessary to enable the Security Agent to perform its functions as Security Agent or trustee *provided that* no Creditor or Creditor Representative will be entitled to disclose any confidential information (including any material non-public information) if expressly prohibited by the Debt Documents.
- (b) Subject to clause 37.5 (*Communication when Agent is Impaired Agent*) of the RCF Facility Agreement (or, following the RCF Discharge Date, any equivalent provision of any facility agreement in relation to a Credit Facility) each Credit Facility Lender shall deal with the Security Agent exclusively through the Creditor Representative in relation to each Credit Facility and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through any agent.
- (c) No Creditor Representative shall be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.
- (d) Each Super Senior Creditor other than the Hedge Counterparties shall deal with the Security Agent exclusively through the relevant Creditor Representative and each Senior Noteholder shall deal with the Security Agent exclusively through the Senior Note Trustee.

24.2 **Disclosure**

Provided that they are otherwise in compliance with the confidentiality provisions under the Credit Facility Documents or the Senior Note Documents (as applicable), but notwithstanding any agreement to the contrary, each other of the Debtors consents, until the Final Discharge Date, to the disclosure by any of the Primary Creditors, the Creditor Representatives, the Arrangers and the Security Agent to each other (whether or not through the Creditor Representatives or the Security Agent) of such information concerning the Debtors as any Primary Creditor, any Arranger, any Creditor Representative or the Security Agent shall see fit.

24.3 Notification of prescribed events

- (a) If an Event of Default or a Default under the Credit Facility Document either occurs or ceases to be continuing the Creditor Representative shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Creditor Representatives and Hedge Counterparty.
- (b) If an Event of Default or a Default under the Senior Note Indenture either occurs or ceases to be continuing the Senior Note Trustee shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representatives and Hedge Counterparty.
- (c) If an Acceleration Event occurs, the relevant Creditor Representative shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and Hedge Counterparty.
- (d) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Creditor Representative and Hedge Counterparty of that action.
- (e) 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 Creditor Representative and Hedge Counterparty of that action.
- (f) If a Debtor defaults on any Payment due under a Hedging Document (prior to the expiry of any applicable notice or grace periods under that Hedging Document) or Hedging Deed of Guarantee, the Hedge Counterparty which is party to that Hedging Document shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.
- (g) If a Hedge Counterparty terminates or closes-out, in whole or in part, any transaction under any Hedging Document under Clause 6.8 (*Permitted Enforcement: Hedge Counterparties*) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.
- (h) Each of the Creditor Representatives and each Hedge Counterparty shall promptly notify the Security Agent of the occurrence of the Final Discharge Date.

24.4 Hedge Counterparty

- (a) Each Hedge Counterparty shall on request from either Creditor Representative or the Security Agent from time to time notify each Creditor Representative and the Security Agent of the Notional Amount (as defined in the relevant Hedging Document) of each Hedging Document to which it is a party and the residual maturity of each such Hedging Document.
- (b) If any Hedge Counterparty does not promptly on request notify each of the Creditor Representatives and the Security Agent of any matter pursuant to paragraph (a) above, the Creditor Representatives and the Security Agent may assume that the Notional Amount (as defined in the relevant Hedging Document) of each relevant Hedging Document is that set out in that Hedging

Document and may calculate the residual maturity of each relevant Hedging Document by reference to that Hedging Document.

25. NOTICES

25.1 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.

25.2 Security Agent's communications with Primary Creditors

The Security Agent shall be entitled to carry out all dealings with the Primary Creditors (other than the Hedge Counterparties) and the Arrangers through the relevant Creditor Representative and may give to the relevant Creditor Representative any notice or other communication required to be given by the Security Agent to a Primary Creditor and with each Hedge Counterparty directly with that Hedge Counterparty.

25.3 Addresses

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

- (a) in the case of the Parent or the Senior Note Issuer, that identified with its name below;
- (b) in the case of the Security Agent, that identified with its name below; and
- (c) in the case of each other Party, that identified with its name on the signature pages in this Agreement and 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.

25.4 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 seven 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 25.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent or the Senior Note Trustee will be effective only when actually received by the Security Agent or the Senior Note Trustee and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's (or the Senior Note Trustee's) signature below (or any substitute department or officer as the Security Agent or the Senior Note Trustee shall specify for this purpose).

- (c) All notices to and from a Debtor shall be sent through the relevant Creditor Representative. The Parent may make and/or deliver as agent of each Debtor notices and/or requests on behalf of each Debtor.
- (d) Any communication or document made or delivered to the Parent or the Senior Note Issuer in accordance with this Clause 25.4 will be deemed to have been made or delivered to each of the Debtors.

25.5 Notification of address, email address and fax number

Promptly upon receipt of notification of an address, email address and fax number or change of address, email address or fax number pursuant to Clause 25.3 (*Addresses*) or changing its own address, email address or fax number, the Security Agent shall notify the other Parties.

25.6 Electronic communication

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

25.7 English language

- (a) Any notice or communication 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, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

25.8 Hedging Documents

For the avoidance of doubt, this Clause 25 (*Notices*) shall not apply to any communication between a Hedge Counterparty and a Debtor under or in connection with a Hedging Document.

26. PRESERVATION

26.1 Partial invalidity

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

26.2 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.

26.3 Remedies and waivers

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

26.4 Waiver of defences

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 26.4, 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 including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Debt 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;
- (h) any insolvency or similar proceedings; or
- (i) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of any person under any Debt Document resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order.

26.5 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 Secured Parties or by any intermediate reduction or increase in, amendment, replacement, supplement 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 Secured Parties 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.

27. CONSENTS, AMENDMENTS AND OVERRIDE

27.1 Required consents

- (a) Subject to paragraph (b) below, to Clause 27.4 (Exceptions) and to Clause 27.5 (*Disenfranchisement of Investor Affiliates*), this Agreement may be amended or waived or any consent may be given under it with the written agreement of the Majority Super Senior Creditors, the Senior Note Required Holders and the Parent and the Security Agent (except for amendments of a minor, technical or administrative nature which may be effected by the Security Agent and the Parent) *provided that* to the extent an amendment, waiver or consent only affects one class of Secured Party, and such amendment, waiver or consent could not reasonably be expected to materially and adversely affect the interests of the other classes of Secured Party, only written agreement from the affected class shall be required.
- (b) An amendment or waiver of this Agreement that has the effect of changing or which relates to:
 - (i) Clause 2 (*Ranking and Priority*), Clause 11 (*Turnover of Receipts*), Clause 12 (*Redistribution*), Clause 13 (*Enforcement of Transaction Security*), Clause 14 (*Proceeds of Disposals*), Clause 15 (*Application of Proceeds*), this Clause 27 (*Consents, Amendments and Override*);
 - (ii) paragraphs (d)(iii), (e) and (f) of Clause 17.5 (*Instructions to Security Agent and exercise of discretion*); and
 - (iii) the order of priority or subordination under this Agreement,

shall not be made without the written consent of all of:

- (A) the Credit Facility Lenders;
 - (B) the Senior Note Trustee (acting on the instruction of Senior Noteholders holding 90% of the principal amount of the then outstanding Senior Notes);
 - (C) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty);
 - (D) the Parent; and
 - (E) the Security Agent.
- (c) Subject to Clause 27.4 (*Exceptions*), any amendment or waiver or consent given in accordance with this Clause 27 (*Consents, Amendments and Override*) will be binding on all Parties.

27.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to paragraph (b) of Clause 14.1 (*Non-Distressed Disposals*), Clause 14.2 (*Distressed Disposals*), paragraph (b) below and to Clause 27.4 (*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 Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.
- (b) Subject to paragraph (c) of Clause 27.4 (*Exceptions*), the prior consent of the Creditor Representatives (acting on the instruction and on behalf of the Credit Facility Lenders required to consent or vote in connection with provisions dealing with consents, amendments and waivers in the relevant Credit Facility Document), the Hedge Counterparties, the Senior Note Required Holders and the Security Agent is required to authorise any amendment or waiver of, or consent under, any Transaction Security Document which would affect the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed.

27.3 Effectiveness

Any amendment, waiver or consent given in accordance with this Clause 27 (*Consents, Amendments and Override*) will be binding on all Parties and the Security Agent may effect, on behalf of any Creditor Representative, Arranger or Creditor, any amendment, waiver or consent permitted by this Clause 27 (*Consents, Amendments and Override*).

27.4 Exceptions

- (a) Subject to paragraphs (c) to (d) 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, in a way which affects or would affect Primary Creditors of that Party's class generally (and for the avoidance of doubt, the Credit Facility Lenders are a different class of Primary Creditor from the Senior Note Creditors); or

- (ii) in the case of a Debtor, to the extent consented to by the Parent under paragraph (a) of Clause 27.2 (*Amendments and Waivers: Transaction Security Documents*), the consent of that Party (or in the case of the Senior Noteholders, the consent of the Senior Note Trustee is required),

the consent of the Party is required.

- (b) Subject to paragraphs (c) and (d) below, an amendment, waiver or consent which relates to the rights or obligations of a Creditor Representative, an Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the consent of that Creditor Representative or, as the case may be, Arranger, the Security Agent or that Hedge Counterparty.
- (c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 27.2 (*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 14 (*Proceeds of Disposals*).
- (d) Paragraphs (a) and (b) above shall apply to an Arranger only to the extent that Arranger Liabilities are then owed to that Arranger.
- (e) This Agreement may be amended by the Creditor Representatives, the Security Agent and the Parent without the consent of any other Party to cure defects, typographical errors, resolve ambiguities or reflect changes in each case of a minor technical or administrative nature.

27.5 **Disenfranchisement of Investor Affiliates**

- (a) For so long as a Investor Affiliate (i) beneficially owns a Credit Facility Commitment or (ii) has entered into a sub-participation agreement relating to a Credit Facility Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:
 - (i) in ascertaining:
 - (A) the Majority Super Senior Creditors; or
 - (B) whether:
 - (1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations; or
 - (2) the agreement of any specified group of Primary Creditors,
- has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

that Credit Facility Commitment shall be deemed to be zero and that Investor Affiliate (or the person with whom it has entered into that subparticipation, other agreement or arrangement (a “**Counterparty**”)) shall be deemed not to be a Credit Facility Lender (except to the extent that a Counterparty is a Credit Facility Lender by virtue otherwise than by beneficially owning the relevant Credit Facility Commitment).

- (b) Each Investor Affiliate that is a Credit Facility Lender agrees that:
 - (i) in relation to any meeting or conference call to which all the Super Senior Creditors, all the Primary Creditors, all the Credit Facility Lenders or any combination of those groups of Primary Creditors are invited to attend or participate, it shall not attend or participate in the same if so requested by the RCF Agent or, unless the RCF Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
 - (ii) it shall not, unless the RCF Agent otherwise agrees, be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the RCF Agent or one or more of the Primary Creditors.

27.6 **Disenfranchisement of Defaulting Lenders**

- (a) For so long as a Defaulting Lender has any Available Commitment:
 - (i) in ascertaining:
 - (A) the Majority Super Senior Creditors; or
 - (B) whether:
 - (1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior 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 a Credit Facility Lender.
- (b) For the purposes of this Clause 27.6, the relevant Creditor Representative may assume that the following Creditors are Defaulting Lenders:
 - (i) any Credit Facility Lender which has notified the Security Agent that it has become a Defaulting Lender;
 - (ii) any Credit Facility Lender to the extent that the relevant Creditor Representative has notified the Security Agent that that Credit Facility Lender is a Defaulting Lender; and

- (iii) any Credit Facility Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of “Defaulting Lender” in the RCF Facility Agreement (or the equivalent provisions of any other Credit Facility Document) has occurred, unless it has received notice to the contrary from the Credit Facility Lender concerned (together with any supporting evidence reasonably requested by the relevant Creditor Representative Agent) or the relevant Creditor Representative is otherwise aware that the Credit Facility Lender has ceased to be a Defaulting Lender.

27.7 **Calculation of Super Senior Credit Participations**

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

27.8 **Deemed consent**

If, at any time prior to the Final Discharge Date, the Primary Creditors give a consent, approval, release or waiver or agreement to any amendment (a “**Consent**”) in respect of the Senior Finance Documents then, if that action was permitted by the terms of this Agreement, the Subordinated Creditors and the Parent will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
- (b) do anything (including executing any document) that the Primary Creditors may reasonably require to give effect to paragraph (a) of this Clause 27.8.

27.9 **Excluded consents**

Clause 27.8 (*Deemed consent*) does not apply to any Consent which has the effect of:

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

27.10 **No liability**

None of the Primary Creditors or Creditor Representatives will be liable to any other Creditor or Debtor for any Consent given or deemed to be given under this Clause 27.

27.11 **Agreement to override**

- (a) The other Debt Documents are subject to this Agreement. Unless expressly stated otherwise in this Agreement, in the event of a conflict between the terms of a Debt Document and this Agreement the terms of this Agreement shall prevail.
- (b) Notwithstanding anything to the contrary in this agreement, the preceding paragraph (a) as between any Creditor and any Debtor or any member of the Group will not cure, postpone, waive or negate in any manner any default or

event of default (howsoever described) under any Debt Document as provided in the relevant Debt Document.

28. 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.

29. GOVERNING LAW

This Agreement and any non-contractual obligation arising out of or in connection with this Agreement is governed by, and shall be construed in accordance with, English law.

30. ENFORCEMENT

30.1 Jurisdiction

- (a) Subject to paragraph (c) below, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) or any non-contractual obligation arising out of or in connection with this Agreement (a “**Dispute**”).
- (b) Subject to paragraph (c) below, the Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 30.1 is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

30.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law each Debtor (unless incorporated in England and Wales):
 - (i) irrevocably appoints Almatris UK Limited c/o Gallaghers, 69-85 Tabernacle Street, P.O. Box 698, London EC2A 4RR as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
 - (ii) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned;
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (in the case of an agent for service of process for a Debtor) must immediately (and in any event within 15 Business Days of such event taking place) notify the Creditor Representative of the relevant Credit Facility Lenders and appoint another agent on terms acceptable to the Creditor Representative of the relevant Credit Facility Lenders. Failing this, the Creditor Representative of the relevant Credit Facility Lender or the Senior Note Trustee may appoint another agent for this purpose.
- (c) Each Debtor expressly agrees and consents to the provisions of this Clause 30 and Clause 29 (*Governing Law*).

This Agreement has been delivered as a deed on the date stated at the beginning of this Agreement.

SCHEDULE 1

The Parties

**Part I
The Original RCF Lenders**

- 1) JP Morgan Chase Bank, N.A
- 2) Bank of America, N.A

Part II
The Original Intra-Group Lenders

Name of Original Intra-Group Lender	Company number	Place of incorporation
Almatis Holdings 3 B.V.	24387315	The Netherlands
Almatis Holdings 9 B.V.	24413773	The Netherlands
Almatis B.V.	24253371	The Netherlands
Almatis GmbH	HRB 2360 (local court (<i>Amtsgericht</i>) of Ludwigshafen am Rhein)	Germany
Almatis Holdings 7 B.V.	24387290	The Netherlands
Almatis, Inc.	3750817	Delaware, USA
Almatis US Holding Inc.	3750819	Delaware, USA
Almatis Asset Holding LLC	3769768	Delaware, USA
Blitz F07-neunhundert-sechzig-drei GmbH	HRB 81516 (local court (<i>Amtsgericht</i>) of Ludwigshafen am Rhein)	Germany
Almatis Holdings GmbH	HRB 5238 (local court (<i>Amtsgericht</i>) of Ludwigshafen am Rhein)	Germany
Qingdao Almatis Co., Ltd.		China
Qingdao Almatis Trading Co., Ltd.		China
Almatis Alumina Private Ltd.		India

Part III
The Original Intra-Group Borrowers

Name of Original Intra-Group Lender	Company number	Place of incorporation
Almatis Holdings 3 B.V.	24387315	The Netherlands
Almatis Holdings 9 B.V.	24413773	The Netherlands
Almatis B.V.	24253371	The Netherlands
Almatis GmbH	HRB 2360 (local court (<i>Amtsgericht</i>) of Ludwigshafen am Rhein)	Germany
Almatis Holdings 7 B.V.	24387290	The Netherlands
Almatis, Inc.	3750817	Delaware, USA
Almatis US Holding Inc.	3750819	Delaware, USA
Almatis Asset Holding LLC	3769768	Delaware, USA
Blitz F07-neunhundert-sechzig-drei GmbH	HRB 81516 (local court (<i>Amtsgericht</i>) of Ludwigshafen am Rhein)	Germany
Almatis Holdings GmbH	HRB 5238 (local court (<i>Amtsgericht</i>) of Ludwigshafen am Rhein)	Germany
Qingdao Almatis Co., Ltd.		China
Qingdao Almatis Trading Co., Ltd.		China
Almatis Alumina Private Ltd.		India

Part IV
The Original Structural Creditor

Name of Original Structural Creditor	Company number	Place of incorporation
Almatis Topco 2 B.V.		The Netherlands

Part V
Original Debtors

Name of Original Debtor	Company number	Place of incorporation
Almatis Holdings 3 B.V.	24387315	The Netherlands
Almatis Holdings 9 B.V.	24413773	The Netherlands
Almatis B.V.	24253371	The Netherlands
Almatis GmbH	HRB 2360 (local court (<i>Amtsgericht</i>) of Ludwigshafen am Rhein)	Germany
Almatis Holdings 7 B.V.	24387290	The Netherlands
Almatis, Inc.	3750817	Delaware, USA
Almatis US Holding Inc.	3750819	Delaware, USA
Almatis Asset Holding LLC	3769768	Delaware, USA
Blitz F07-neunhundert-sechzig-drei GmbH	HRB 81516 (local court (<i>Amtsgericht</i>) of Ludwigshafen am Rhein)	Germany
Almatis Holdings GmbH	HRB 5238 (local court (<i>Amtsgericht</i>) of Ludwigshafen am Rhein)	Germany

SCHEDULE 2

Form of Debtor Accession Deed

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

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

This agreement is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] between, amongst others, [●] as Security Agent, [●] as RCF Agent, the Creditors and the 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 provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
4. [In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the

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

[4]/[5] This Agreement and any non-contractual obligations arising out of or in connection with it are governed by, and shall be construed in accordance with, 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])

Address for notices:

Address:

Fax:

The Security Agent

[Full Name of Security Agent]

By:

Date:

SCHEDULE 3

Form of Creditor/Creditor Representative Accession Undertaking

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

From: [Acceding Creditor/Creditor Representative]

THIS UNDERTAKING is made on [date] by [insert full name of new Super Senior Creditor/RCF Lender/Credit Facility Lender/Creditor Representative/Intra-Group Lender/Structural Creditor] (the “**Acceding [Super Senior Creditor/RCF Lender/Credit Facility Lender/ New Hedge Counterparty/ Senior New Hedge Counterparty/Creditor Representative/Intra-Group Lender/Structural Creditor]**”) in relation to the intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] between, among others, [INSERT NAME OF SECURITY AGENT] as Security Agent, [INSERT NAME OF AGENTS] as RCF Agent, the Creditors and the Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding [Super Senior Creditor / RCF Lender / Credit Facility Lender / New Hedge Counterparty / Senior New Hedge Counterparty / Creditor Representative / Intra-Group Lender / Structural Creditor] being accepted as a [Super Senior Creditor / RCF Lender / Credit Facility Lender / New Hedge Counterparty / Senior New Hedge Counterparty / Creditor Representative / Intra-Group Lender/Structural Creditor] for the purposes of the Intercreditor Agreement, the Acceding [Super Senior Creditor / RCF Lender / Credit Facility Lender / New Hedge Counterparty / Senior New Hedge Counterparty / Creditor Representative / Intra-Group Lender / Structural Creditor] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Super Senior Creditor / RCF Lender / Credit Facility Lender / New Hedge Counterparty / Senior New Hedge Counterparty / Creditor Representative / Intra-Group Lender / Structural Creditor] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Super Senior Creditor / RCF Lender / Credit Facility Lender/ New Hedge Counterparty / Senior New Hedge Counterparty / Creditor Representative / Intra-Group Lender / Structural Creditor] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

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

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

Acceding [Creditor/Creditor Representative]

[EXECUTED as a DEED]

[insert full name of Acceding Creditor/Agent]

By:

Address:

Fax:

Accepted by the Security Agent

for and on behalf of

[Insert full name of current Security Agent]

Date:

SCHEDULE 4

Form of Debtor Resignation Request

To: [●] as Security Agent

From: [resigning Debtor] and [Parent]

Dated:

Dear Sirs

Almatis - Intercreditor Agreement

dated [●] 2010 (the “**Intercreditor Agreement**”)

1. We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
2. Pursuant to Clause 19.16 (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [resigning Debtor] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) [resigning Debtor] is under no actual or contingent obligations in respect of the Subordinated Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by, and shall be construed in accordance with, English law.

[Parent]

[resigning Debtor]

By:

By:

SCHEDULE 5

Security Enforcement Principles

1. It shall be the primary and over-riding aim of any enforcement of the Transaction Security to be in accordance with the Security Enforcement Principles.
2. The Security Enforcement Principles may be amended, varied or waived with the prior written consent of the Majority Super Senior Creditors and the Senior Note Required Holders [and the Security Agent]⁵.
3. The Transaction Security will be enforced and other action as to Enforcement will be taken such that all proceeds of Enforcement are received by the Security Agent in cash for distribution in accordance with Clause 15 (*Application of Proceeds*).
4. The Enforcement Action must be prompt and expeditious and reasonably expected to realise proceeds from the assets subject to Enforcement Action within 6 months of receipt of the initial enforcement instructions delivered to the Security Agent in accordance with Clause 13 (*Enforcement of Transaction Security*).
5. On a proposed Enforcement of any of the Transaction Security over assets or the shares in a member of the Group over which Transaction Security exists, the Security Agent (acting on the instructions of the Enforcing Creditor Group (if paragraphs(d)(i) and (e)(i) of clause 13.4 (*Enforcement Instructions – Consultation Periods*) apply) or Instructing Group, as applicable) shall appoint a “big four” accounting firm, any reputable and independent international investment bank or other reputable and independent professional services firm with experience in restructuring and enforcement (a “**Financial Advisor**”) to opine as expert that the proceeds received from any such Enforcement is reasonable from a financial point of view for a prompt and expeditious sale after taking into account all relevant circumstances, (the “**Financial Advisor’s Opinion**”).
6. The Security Agent shall be under no obligation to appoint a Financial Advisor or to seek the advice of a Financial Advisor, unless expressly required to do so by this Schedule or any other provision of this Agreement. Prior to making any appointment of a Financial Advisor, the Security Agent is entitled to ensure that cost cover (at a level it is satisfied with acting reasonably) has been provided.
7. The Financial Advisor’s Opinion (or any equivalent opinion obtained by the Security Agent in relation to any other Enforcement of the Action that such action is fair from a financial point of view after taking into account all relevant circumstances) will be conclusive evidence that the Security Enforcement Principles have been met.

⁵ UNDER CONSIDERATION

SCHEDULE 6

Form of Indemnity

[To come]

SIGNATURES

THE PARENT

ALMATIS HOLDINGS 3 B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax: +31 (0) 181 217 853

THE SENIOR NOTE ISSUER

ALMATIS HOLDINGS 9 B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax: +31 (0) 181 217 853

THE DEBTORS

ALMATIS HOLDINGS 3 B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax:

ALMATIS HOLDINGS 9 B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax:

ALMATIS B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax:

ALMATIS GMBH

By:

Address:

Fax:

ALMATIS HOLDINGS 7 B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax:

ALMATIS US HOLDING INC.

By:

Address:

Fax:

ALMATIS, INC.

By:

Address:

Fax:

ALMATIS ASSET HOLDING LLC

By:

Address:

Fax:

BLITZ F07-NEUNHUNDERT-SECHZIG-DREI GMBH

By:

Address:

Fax:

ALMATIS HOLDINGS GMBH

By:

Address:

Fax:

THE STRUCTURAL LENDER

ALMATIS TOPCO 2 B.V.

By:

Address:

Fax:

Attention:

THE ORIGINAL INTRA-GROUP LENDERS

ALMATIS HOLDINGS 3 B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax:

ALMATIS HOLDINGS 9 B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax:

ALMATIS B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax:

ALMATIS GMBH

By:

Address:

Fax:

ALMATIS HOLDINGS 7 B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax:

ALMATIS US HOLDING INC.

By:

Address:

Fax:

ALMATIS, INC.

By:

Address:

Fax:

ALMATIS ASSET HOLDING LLC

By:

Address:

Fax:

BLITZ F07-NEUNHUNDERT-SECHZIG-DREI GMBH

By:

Address:

Fax:

ALMATIS HOLDINGS GMBH

By:

Address:

Fax:

QINGDAO ALMATIS CO., LTD.

By:

Address:

Fax:

QINGDAO ALMATIS TRADING CO., LTD.

By:

Address:

Fax:

ALMATIS ALUMINA PRIVATE LTD.

By:

Address:

Fax:

THE ORIGINAL INTRA-GROUP BORROWERS

ALMATIS HOLDINGS 3 B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax:

ALMATIS HOLDINGS 9 B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax:

ALMATIS B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax:

ALMATIS GMBH

By:

Address:

Fax:

ALMATIS HOLDINGS 7 B.V.

By:

Address: Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands

Fax:

ALMATIS US HOLDING INC.

By:

Address:

Fax:

ALMATIS, INC.

By:

Address:

Fax:

ALMATIS ASSET HOLDING LLC

By:

Address:

Fax:

BLITZ F07-NEUNHUNDERT-SECHZIG-DREI GMBH

By:

Address:

Fax:

ALMATIS HOLDINGS GMBH

By:

Address:

Fax:

QINGDAO ALMATIS CO., LTD.

By:

Address:

Fax:

QINGDAO ALMATIS TRADING CO., LTD.

By:

Address:

Fax:

ALMATIS ALUMINA PRIVATE LTD.

By:

Address:

Fax:

THE SECURITY AGENT

WILMINGTON TRUST (LONDON) LIMITED

By:

Address:

Fax:

Attention:

THE RCF AGENT

J.P. MORGAN EUROPE LIMITED

By:

Address:

Fax:

Attention:

THE ORIGINAL RCF LENDERS

JPMORGAN CHASE BANK, N.A.

By:

Address: 125 London Wall, London EC2Y 5AJ

Fax:

Attention:

BANK OF AMERICA, N.A.

By:

Address: 2 King Edward Street, London EC1A 1HQ

Fax:

Attention:

THE ARRANGERS

J.P. MORGAN PLC

By:

Address: 125 London Wall, London EC2Y 5AJ, United Kingdom

Fax:

Attention:

MERRILL LYNCH INTERNATIONAL

By:

Address: 2 King Edward Street, London EC1A 1HQ, United Kingdom

Fax:

Attention:

THE SENIOR NOTE TRUSTEE

WILMINGTON TRUST, FSB

By:

Address: CCS – Global Finance Division, 166 Mercer Street, Suite 2-R, New York, NY 10012-3249, United States of America

Fax: +1 (212) 343 1079

Attention: Adam Berman

THE ISSUING BANK

JPMORGAN CHASE BANK, N.A.

By:

Address:

Fax: