

**Dated 7 November 2016**

**BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED**

as Revolving Agent

The Revolving Lenders

**CODERE S.A.**

as the Parent

**CODERE NEWCO S.A.U.**

as the Company

**CODERE FINANCE 2 (LUXEMBOURG) S.A.**

as the Issuer

**GLAS TRUST CORPORATION LIMITED**

as Senior Secured Note Trustee

**CODERE FINANCE 2 (LUXEMBOURG) S.A. AND CODERE NEWCO S.A.U.  
AND  
CODERE S.A.**

as Original Debtors

**GLAS TRUST CORPORATION LIMITED**

acting as Security Agent

and others

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**INTERCREDITOR AGREEMENT**

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**THIS AGREEMENT** is dated 7 November 2016 and made between:

- (1) **BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED**, as revolving agent (the “**Revolving Agent**”);
- (2) **THE FINANCIAL INSTITUTIONS** named on the signing pages as supers senior revolving lenders (the “**Revolving Lenders**”);
- (3) **BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED, BARCLAYS BANK PLC, JEFFERIES FINANCE LLC and MORGAN STANLEY BANK INTERNATIONAL LIMITED** as revolving arrangers (the “**Revolving Arrangers**”);
- (4) **GLAS TRUST CORPORATION LIMITED** as trustee for the Senior Secured Noteholders (the “**Senior Secured Note Trustee**”);
- (5) **UPON ACCESSION**, each Surety Bond Provider;
- (6) **UPON ACCESSION**, each Hedge Counterparty;
- (7) **UPON ACCESSION**, each Investor;
- (8) **CODERE S.A.** (the “**Parent**”);
- (9) **CODERE FINANCE 2 (LUXEMBOURG) S.A.**, a public limited liability company (*société anonyme*) incorporated and existing under the laws of the Grand Duchy of Luxembourg, having its registered office at 6C, rue Gabriel Lippmann, L-5365 Munsbach and registered with the Luxembourg Register of Commerce and Companies under number B 199415 (the “**Issuer**”);
- (10) **CODERE NEWCO S.A.U.** as the borrower under the Initial Super Senior Revolving Facilities Agreement (the “**Company**”);
- (11) **CODERE S.A., CODERE NEWCO S.A.U. and CODERE FINANCE 2 (LUXEMBOURG) S.A.** as the Original Intra-Group Lenders (the “**Original Intra-Group Lenders**”);
- (12) **THE SUBSIDIARY** of the Parent named on the signing pages as a Debtor (together with the Parent and the Company, the “**Original Debtors**”); and
- (13) **GLAS TRUST CORPORATION LIMITED** as security trustee for the Secured Parties (the “**Security Agent**”).

**IT IS AGREED** as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

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

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

“**Acceleration Event**” means a Credit Facility Acceleration Event, a Surety Bond Facility Acceleration Event or a Pari Passu Debt Acceleration Event.

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

“**Aggregate Surety Bond Facility Priority Amount**” means EUR 20,000,000.

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

“**Allocated Super Senior Hedging Amount**” means, with respect to a Super Senior Hedge Counterparty, the portion of the Super Senior Hedging Amount allocated to that Super Senior Hedge Counterparty less any portion released by that Super Senior Hedge Counterparty, in each case under Clause 6.14 (*Allocation of Super Senior Hedging Liabilities*).

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

“**Ancillary Facility**” means:

- (a) on or prior to the Revolving Lender Discharge Date, any ancillary facility made available in accordance with the Initial Revolving Facility Agreement; and
- (b) following the Revolving Lender Discharge Date, any ancillary facility made available under and in accordance with the relevant Credit Facility Agreement.

“**Ancillary Lender**” means:

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

“**Argentine Guarantor**” means any Credit Facility Guarantor incorporated in Argentina.

“**Arranger**” means each Credit Facility Arranger and each Pari Passu Arranger, in each case, which is a Party as a Revolving Arranger or becomes a Party as an Arranger pursuant to Clause 22.10 (*Accession of Credit Facility Creditors under new Credit Facilities*) or Clause 22.12 (*Accession of Pari Passu Debt Creditors under new Pari Passu Notes or Pari Passu Facilities*), as the case may be.

“**Arranger Liabilities**” means all present and future liabilities and obligations (whether actual or contingent and whether incurred solely or jointly) of any Debtor to any Arranger under the Debt Documents.

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

“**Available Commitment**”:

- (a) in relation to a Revolving Lender, has the meaning given to the term “Available Commitment” in the Initial Revolving Facility Agreement;
- (b) in relation to any other Credit Facility Lender, has the meaning given to the term “Available Commitment” in the relevant Credit Facility Agreement; and
- (c) in relation to a Pari Passu Lender, has the meaning given to the term “Available Commitment” in the relevant Pari Passu Facility Agreement.

“**Borrowing Liabilities**” means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to a Credit Facility Arranger or a Creditor Representative) or a Debtor in respect of Liabilities arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a borrower under the Credit Facility Documents or the Surety Bond Facility Agreement and liabilities and obligations as a borrower or issuer under the Pari Passu Debt Documents).

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

- (a) (in relation to any date for payment or purchase of euro) any TARGET Day; or
- (b) (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.

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

“**Close-Out Netting**” means:

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

“**Colombian Guarantor**” means any Credit Facility Guarantor incorporated in Colombia.

“**Colombian Insolvency Law**” means Colombian Law 1116 of 2006, as subsequently amended and supplemented.

“**Commitment**” means a Credit Facility Commitment, a Surety Bond Facility Commitment or a Pari Passu Facility Commitment.

“**Common Assurance**” means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible and subject to any Agreed Security Principles, given to all the Secured Parties in respect of their Liabilities.

“**Common Currency**” means euro.

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

“**Common Transaction Security**” means any Transaction Security which to the extent legally possible and subject to any Agreed Security Principles:

- (a) is created in favour of the Security Agent as trustee for the other Secured Parties (including if represented by the Security Agent as their agent (*mandatario con rappresentanza* or *apoderado*)) in respect of their Liabilities; or
- (b) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties is created in favour of all the Secured Parties in respect of their Liabilities,

and which (subject to the terms of this Agreement) ranks in the order of priority contemplated in Clause 2.2 (*Transaction Security*).

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

“**Credit Facility**” means:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Facility; and
- (b) after the Revolving Lender Discharge Date, any credit facility (or credit facilities) that meets the requirements of a “Credit Facility” under and as defined in the Pari Passu Debt Documents 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:
  - (i) agent of the lenders in respect of the credit facility becomes a Party as a Creditor Representative;
  - (ii) arranger (if any) of the credit facility has become a Party as a Credit Facility Arranger; and
  - (iii) lender in respect of the credit facility has become a Party as a Credit Facility Lender,
 in respect of that credit facility pursuant to Clause 22.10 (*Accession of Credit Facility Creditors under new Credit Facilities*).

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

- (a) on or prior to the Revolving Lender Discharge Date, the Revolving Agent exercising any of its rights under clause 28.17 (*Acceleration*) of the Initial Revolving Facility Agreement or any acceleration provisions being automatically invoked under the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, the Creditor Representative in relation to any Credit Facility exercising any of its rights under any Equivalent Provision(s) of the relevant Credit Facility Agreement or any acceleration provisions being automatically invoked under the relevant Credit Facility Agreement,

other than the right to declare any amount payable on demand but including making a demand on amounts placed on demand.

“**Credit Facility Agreement**” means:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, in relation to a Credit Facility, the facility agreement documenting that Credit Facility.

**“Credit Facility Arranger”** means:

- (a) on or prior to the Revolving Lender Discharge Date, the Revolving Arrangers; and
- (b) after the Revolving Lender Discharge Date, any arranger of any other Credit Facility which becomes a Party pursuant to Clause 22.10 (*Accession of Credit Facility Creditors under new Credit Facilities*).

**“Credit Facility Borrower”** means a “Borrower” under and as defined in:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, the relevant Credit Facility Agreement.

**“Credit Facility Cash Cover”** means “cash cover” under and as defined in:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, the relevant Credit Facility Agreement.

**“Credit Facility Cash Cover Document”** means, in relation to any Credit Facility Cash Cover, any Credit Facility Document which creates or evidences, or is expressed to create or evidence, the Security required to be provided over that Credit Facility Cash Cover by the relevant Credit Facility Agreement.

**“Credit Facility Commitment”** means “Commitment” under and as defined in:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, the relevant Credit Facility Agreement.

**“Credit Facility Creditors”** means each Creditor Representative in relation to a Credit Facility, each Credit Facility Arranger and each Credit Facility Lender.

**“Credit Facility Documents”** means:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Finance Documents; and
- (b) after the Revolving Lender Discharge Date, if applicable, each document or instrument entered into between a member of the Group and a Credit Facility Creditor setting out the terms of any credit facility which creates or evidences any Credit Facility Liabilities.

**“Credit Facility Guarantor”** means:

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

**“Credit Facility Lender Cash Collateral”** means:

- (a) on or prior to the Revolving Lender Discharge Date, any cash collateral provided by a Revolving Lender to an Issuing Bank pursuant to clause 7.4 (*Cash collateral by Non-*

*Acceptable L/C Lender and Borrower's option to provide cash cover*) of the Initial Revolving Facility Agreement; and

- (b) after the Revolving Lender Discharge Date, if applicable, any cash collateral provided by a Credit Facility Lender to an Issuing Bank pursuant to the terms of the relevant Credit Facility Agreement.

**“Credit Facility Lender Discharge Date”** means the first date on which all Credit Facility 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.

**“Credit Facility Lender Liabilities Transfer”** means a transfer of the Credit Facility Liabilities described in Clause 7.1 (*Option to purchase: Pari Passu Debt Creditors*).

**“Credit Facility Lenders”** means:

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

**“Credit Facility Liabilities”** means the Liabilities owed by any Debtor to the Credit Facility Creditors under or in connection with the Credit Facility Documents.

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

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

- (a) an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor/Creditor Representative Accession Undertaking*); or
- (b) a Transfer Certificate or an Assignment Agreement (each as defined in the relevant Credit Facility Agreement or Pari Passu Facility Agreement) **provided that** it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Creditor/Creditor Representative Accession Undertaking*); or
- (c) an Increase Confirmation (as defined in the relevant Credit Facility Agreement or Pari Passu Facility Agreement) **provided that** it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Creditor/Creditor Representative Accession Undertaking*), as the context may require, or
- (d) 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”** means:

- (a) in relation to the Revolving Lenders, the Revolving Agent;
- (b) in relation to the Credit Facility Lenders under any other Credit Facility, the facility agent in respect of that Credit Facility which has acceded to this Agreement as the Creditor Representative of those Credit Facility Lenders pursuant to Clause 22.10 (*Accession of Credit Facility Creditors under new Credit Facilities*);
- (c) in relation to the Senior Secured Noteholders, the Senior Secured Note Trustee; and

- (d) in relation to any other Pari Passu Noteholders or Pari Passu Lenders, the person which has acceded to this Agreement as the Creditor Representative of those Pari Passu Noteholders or Pari Passu Lenders pursuant to Clause 22.12 (*Accession of Pari Passu Debt Creditors under new Pari Passu Notes or Pari Passu Facilities*).

**“Creditor Representative Amounts”** means fees, costs and expenses of a Creditor Representative payable to a Creditor Representative for its own account pursuant to the relevant Debt Documents or any engagement letter between a Creditor Representative and a Debtor (including any amount payable to a Creditor Representative by way of indemnity, remuneration or reimbursement for expenses incurred), and the costs incurred by a Creditor Representative in connection with any actual or attempted Enforcement Action which is permitted by this Agreement which are recoverable pursuant to the terms of the Debt Documents.

**“Creditor Representative Liabilities”** means all present and future liabilities and obligations, whether actual or contingent, owed by the Debtors to the Creditor Representatives under or in connection with any Credit Facility Document and the Pari Passu Debt Document. For the avoidance of doubt, Creditor Representative Liabilities does not include any amount in respect of principal, interest thereunder, redemption, prepayment premium, premium or similar amounts.

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

**“Debt Disposal”** means any disposal of any Liabilities or Debtors’ Intra-Group Receivables pursuant to paragraphs (d) or (e) of Clause 15.1 (*Facilitation of Distressed Disposals*).

**“Debt Document”** means each of this Agreement, the Hedging Agreements, the Credit Facility Documents, the Surety Bond Agreement, the Pari Passu Debt Documents, the Security Documents, any agreement evidencing the terms of the Intra-Group Liabilities or the Subordinated Liabilities and any other document designated as such by the Security Agent and the Parent.

**“Debt Related Hedging Liabilities”** means, on any date, in respect of a Hedge Counterparty which has been allocated an Allocated Super Senior Hedging Amount and its Hedging Liabilities, the amount in the Common Currency Amount, if any, that would be payable to that Hedge Counterparty if the relevant hedging transactions were closed out on that date (in respect of hedging transactions which have not been closed out) or the close-out amount, if any, that is payable to that Hedge Counterparty (in respect of hedging transactions which have been closed out) in respect of Exchange Rate Hedging Transactions and Interest Rate Hedging Transactions in respect of which a close-out amount would be or is payable to the Hedge Counterparty, in each case, as calculated in accordance with the relevant Hedging Agreement, up to, but not exceeding, the Allocated Super Senior Amount.

**“Debtor”** means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 22 (*Changes to the Parties*).

**“Debtor Accession Deed”** means:

- (a) a deed substantially in the form set out in Schedule 1 (*Form of Debtor Accession Deed*) or any other form agreed between the Security Agent and the Parent; or
- (b) (only in the case of a member of the Group which is acceding as a borrower, issuer or guarantor under a Credit Facility Document, the Surety Bond Facility Agreement or Pari Passu Debt Document) an accession document in the form required by the relevant Credit Facility Document or Pari Passu Debt Document (**provided that** it contains an accession to this Agreement which is substantially in the form set out in Schedule 1 (*Form of Debtor Accession Deed*)).

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

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

**“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 **provided that** no such event or circumstance which requires the satisfaction of a determination as to materiality before it is an Event of Default shall constitute a Default until that condition is satisfied.

**“Defaulting Lender”** means:

- (a) on or prior to the Revolving Lender Discharge Date, a Revolving Lender which is a “Defaulting Lender” under, and as defined in, the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, a Credit Facility Lender which is a “Defaulting Lender” under, and as defined in, the relevant Credit Facility Documents;
- (c) the Surety Bond Provider which is a “Defaulting Lender” under, and as defined in, the Surety Bond Facility Agreement; and
- (d) at any time, a Pari Passu Lender which is a “Defaulting Lender” under and as defined in the relevant Pari Passu Facility Agreement.

**“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, that Multi-account Overdraft’s “Designated Gross Amount” under and as defined in the Initial Revolving Facility Agreement or any Equivalent Provision of any other Credit Facility Agreement.

**“Designated Net Amount”** means, in relation to a Multi-account Overdraft, that Multi-account Overdraft’s “Designated Net Amount” under and as defined in the Initial Revolving Facility Agreement or any Equivalent Provision of any other Credit Facility Agreement.

**“Distress Event”** means any of:

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

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

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

**“Enforcement”** means the enforcement or disposal of any Transaction Security, the requesting of a Distressed Disposal and/or the release or disposal of claims and/or Transaction Security on a Distressed Disposal under Clause 15 (*Distressed Disposals*), the giving of instructions as to actions with respect to

the Transaction Security and/or the Charged Property following an Insolvency Event under Clause 10.7 (*Security Agent instructions*) and the taking of any other actions consequential on (or necessary to effect) any of those actions (but excluding the delivery of an Initial Enforcement Notice).

**“Enforcement Action”** means:

- (a) in relation to any Liabilities:
  - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Primary Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
  - (ii) the making of any declaration that any Liabilities are payable on demand;
  - (iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent (A) that the demand is made in the ordinary course of dealings between the relevant Debtor and Intra-Group Lender and (B) that any resulting Payment would be a Permitted Intra-Group Payment);
  - (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
  - (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability other than in connection with an asset sale offer or a change of control offer (however defined) as set out in the Credit Facility Documents, the Surety Bond Agreement or Pari Passu Debt Documents) and excluding any open market purchases of, or any voluntary tender offer or exchange offer for, Pari Passu Notes at a time at which no Default is continuing;
  - (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 other than the exercise of any such right:
    - (A) as Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
    - (B) as Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
    - (C) as Inter-Hedging Agreement Netting by a Hedge Counterparty;
    - (D) as Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; or
    - (E) which is otherwise expressly permitted under the Credit Facility Documents, the Surety Bond Facility Agreement and the Pari Passu Debt Documents to the extent that the exercise of that right gives effect to a Permitted Payment; and
  - (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;

- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement (other than pursuant to a Permitted Automatic Early Termination);
- (c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (d) the entering into of any composition, compromise, assignment or arrangement with any 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 22 (*Changes to the Parties*) or (to the extent permitted under the Credit Facility Documents) any debt buy-backs pursuant to any open market purchases of, or voluntary tender offer or exchange offer for, Pari Passu Notes at a time at which no Default is continuing); or
- (e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(ii), (iii), (iv) and (vii) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (ii) a Primary Creditor bringing legal proceedings against any person solely for the purpose of:
  - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
  - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
  - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages; or
- (iii) bringing legal proceedings against any person in connection with any fraud, securities violation or securities or listing regulations; or
- (iv) allegations of material misstatements or omissions made in connection with the offering materials relating to any Pari Passu Notes or in reports furnished to the Pari Passu Noteholders or any exchange on which the Pari Passu Notes are listed by a member of the Group pursuant to the information and reporting requirements under the Pari Passu Debt Documents; or
- (v) to the extent entitled by law, the taking of action against any creditor (or any agent, trustee or receiver acting on behalf of such creditor) to challenge the basis on which any sale or disposal is to take place pursuant to powers granted to such persons under any security documentation.

“**Enforcement Instructions**” means instructions as to Enforcement (including the manner and timing of Enforcement) given by the Majority Super Senior Creditors, the Surety Bond Provider or the Majority Pari Passu Creditors to the Security Agent **provided that** instructions not to undertake Enforcement or an absence of instructions as to Enforcement shall not constitute “Enforcement Instructions”.

“**Enforcement Objective**” has the meaning given to that term in Schedule 4 (*Enforcement Principles*).

“**Enforcement Principles**” means the principles set out in Schedule 4 (*Enforcement Principles*).

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

“**Equivalent Provision**” means:

- (a) with respect to a Credit Facility Agreement, in relation to a provision or term of the Initial Revolving Facility Agreement, any equivalent provision or term in the Credit Facility Agreement which is similar in meaning and effect;
- (b) with respect to a Surety Bond Facility Agreement, in relation to a provision or term of the Initial Revolving Facility Agreement, any equivalent provision or term in the Surety Bond Facility Agreement which is similar in meaning and effect;
- (c) with respect to a Pari Passu Facility Agreement, in relation to a provision or term of the Initial Revolving Facility Agreement, any equivalent provision or term in the Pari Passu Facility Agreement which is similar in meaning and effect; and
- (d) with respect to a Pari Passu Note Indenture, in relation to a provision or term of the Senior Secured Note Indenture, any equivalent provision or term in the Pari Passu Note Indenture which is similar in meaning and effect.

“**Event of Default**” means any event or circumstance specified as such in a Credit Facility Agreement, a Surety Bond Facility Agreement, a Pari Passu Note Indenture or a Pari Passu Facility Agreement.

“**Exchange Rate Hedge Excess**” means, with respect to a Relevant Hedged Debt, the amount by which the Total Exchange Rate Hedging with respect to that Relevant Hedged Debt, exceeds the Permitted Maximum Exchange Rate Hedged Amount with respect to that Relevant Hedged Debt.

“**Exchange Rate Hedging**” means, in relation to a Hedge Counterparty and with respect to a Relevant Hedged Debt, the aggregate of the notional amounts denominated in a Hedged Currency, hedged by the relevant Debtors under each Hedging Agreement which is an Exchange Rate Hedging Transaction in relation to that Relevant Hedged Debt and to which that Hedge Counterparty is party.

“**Exchange Rate Hedging Proportion**” means, in relation to a Hedge Counterparty and that Hedge Counterparty’s Exchange Rate Hedging with respect to a Relevant Hedged Debt, the proportion (expressed as a percentage) borne by that Hedge Counterparty’s Exchange Rate Hedging to the Total Exchange Rate Hedging with respect to that Relevant Hedged Debt.

“**Exchange Rate Hedging Transaction**” means a derivative transaction entered into by a Debtor (other than the Parent) and a Hedge Counterparty for the purposes of protection against or benefit from fluctuations in the rate of exchange of one currency into another, in respect of Credit Facility Liabilities and/or Pari Passu Debt Liabilities and that is permitted under the terms of each of the Credit Facility Documents, the Surety Bond Facility Agreement and the Pari Passu Documents (in their form as at the date of execution of the relevant Exchange Rate Hedging Agreement) to share in the Transaction Security.

“**Exposure**” has the meaning given to that term in Clause 18.1 (*Equalisation Definitions*).

“**Fairness Opinion**” has the meaning given to that term in Schedule 4 (*Enforcement Principles*).

“**Final Discharge Date**” means the later to occur of the Super Senior Discharge Date and the Pari Passu Discharge Date.

“**Financial Adviser**” has the meaning given to that term in Schedule 4 (*Enforcement Principles*).

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

“**Guarantee Liabilities**” means, in relation to a member of the Group, the liabilities and obligations under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (other than to a Credit Facility Arranger or a Creditor Representative) or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Credit Facility Documents, the Surety Bond Facility Agreement and the Pari Passu Debt Documents).

“**Guarantor Accession Date**” means, the earlier to occur of:

- (a) the date on which the Parent procures that sufficient members of the Restricted Group accede to the Initial Revolving Facility Agreement in accordance with clause 31.4 (*Additional Guarantors*) as required to comply with the Guarantor Coverage Test (as defined in the Initial Revolving Facility Agreement) by delivering all of the documents and evidence required pursuant to clause 4.1 (*Initial conditions precedent*) as set out in Part 1B of Schedule 2 (*Conditions precedent to initial Utilisation*) (in each case, of the Initial Revolving Facility Agreement); and
- (b) the date falling ninety (90) days after the Closing Date (as such term is defined in the Initial Revolving Facility Agreement).

“**Hedge Counterparty**” means:

- (a) any entity which is named on the signing pages as a Hedge Counterparty; and
- (b) any entity which becomes a Party as a Hedge Counterparty pursuant to Clause 22.14 (*Creditor/Creditor Representative Accession Undertaking*),

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

“**Hedge Transfer**” means a transfer to some or all of the Pari Passu Noteholders and the Pari Passu Lenders (or to their nominee or nominees) of (subject to paragraph (b) of Clause 7.2 (*Hedge Transfer: Pari Passu Debt Creditors*)), each Hedging Agreement together with:

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

in accordance with Clause 22.6 (*Change of Hedge Counterparty*).

“**Hedged Currency**” means the currency in which a Relevant Hedged Debt (or part of a Relevant Hedged Debt) is denominated and which is hedged in respect of exchange rate risk under a Hedging Agreement.

**“Hedging Agreement”** means any master agreement, confirmation, schedule or other agreement entered into or to be entered into between a Debtor (other than the Parent) and a Hedge Counterparty for the purpose of hedging interest rate or foreign exchange rate risk in respect of Credit Facility Liabilities and/or Pari Passu Debt Liabilities and/or other foreign exchange rate risk and, in each case, which is permitted under the terms of each of the Credit Facility Documents, the Surety Bond Facility Agreement and the Pari Passu Debt Documents (in their form as at the date of execution of the relevant Hedging Agreement) to share in the Transaction Security.

**“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 that Ancillary Lender makes available a Hedging Ancillary Facility.

**“Hedging Force Majeure”** means:

- (a) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
  - (i) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
  - (ii) an event similar in meaning and effect to a “Force Majeure Event” (as referred to in paragraph (b) below);
- (b) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement); or
- (c) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, any event similar in meaning and effect to an event described in paragraphs (a) or (b) above.

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

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

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

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

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

“**Initial Enforcement Notice**” has the meaning given to such term in Clause 13.2 (*Instructions to enforce*).

“**Initial Revolving Facility**” means the “Facility” under and as defined in the Initial Revolving Facility Agreement.

“**Initial Revolving Facility Agreement**” means the revolving facility agreement made between the Parent, the Company, the Revolving Lenders and others dated 24 October 2016.

“**Initial Revolving Facility Liabilities**” means the Liabilities owed by the Debtors to the Credit Facility Creditors under the Initial Revolving Finance Documents.

“**Initial Revolving Finance Documents**” means the “Finance Documents” under and as defined in the Initial Revolving Facility Agreement.

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

- (a) any resolution is passed or order made for the winding up, *concurso mercantil*, *quiebra*, dissolution, administration or reorganisation of that member of the Group, a moratorium is declared in relation to any indebtedness of that member of the Group or an administrator is appointed to that member of the Group;
- (b) any composition, compromise, assignment or arrangement is made with any of its creditors (other than a Creditor in its capacity as such) as part of a general composition, compromise, assignment or arrangement affecting such member of the Group’s creditors generally by reason or actual anticipated financial difficulties;
- (c) the appointment of any liquidator, receiver, *síndico*, *conciliador*, administrative receiver, administrator, compulsory manager or other similar officer in respect of that member of the Group or any of its assets;
- (d) with respect to any Colombian Guarantor, that such entity enters into a reorganization proceeding (*proceso de reorganización*) or a judicial liquidation proceeding (*proceso de liquidación judicial*) under Colombian Law 1116 of 2006;
- (e) in relation to a member of the Group incorporated in Italy, bankruptcy (*fallimento*) arrangements with creditors (*concordato preventivo*), forced administration liquidation (*liquidazione coatta amministrativa*), extraordinary administration of large companies in insolvency (*amministrazione straordinaria della grandi imprese in stato di insolvenza*), assignments for the benefit of creditors (*cessione di beni ai creditori*), arrangements with creditors in the context of Article 67, paragraph 2, letter (d) of the Italian Insolvency Law or restructuring arrangements pursuant to Article 182-*bis* and 182-*septies* of the Italian Insolvency Law, out-of-court restructurings or winding-up (*liquidazione*) set out in the Italian Insolvency Law, the Italian Civil Code, or any other applicable laws, as well as any other proceeding defined as “*procedura di risanamento*” or “*procedura concorsuale*” under Legislative Decree No. 170 dated 21 May 2004;
- (f) in case of a Luxembourg company:
  - (i) where the Luxembourg company is subject to bankruptcy (*faillite*) within the meaning of Articles 437 ff. of the Luxembourg Commercial Code or any other

insolvency proceedings pursuant to the Council Regulation (EC) N° 1346/2000 of 29 May 2000 on insolvency proceedings, controlled management (*gestion contrôlée*) within the meaning of the grand ducal regulation of 24 May 1935 on controlled management, suspension of payments (*sursis de paiement*) within the meaning of Articles 593 ff. of the Luxembourg Commercial Code, composition with creditors (*concordat préventif de la faillite*) within the meaning of the law of 14 April 1886 on arrangements to prevent insolvency, or voluntary or judicial liquidation (*liquidation volontaire ou judiciaire*) pursuant to the law of 10 August 1915 on commercial companies, as amended, general settlement with creditors, reorganisation or similar laws affecting the rights of creditors generally,

- (ii) where the Luxembourg company is in a state of cessation of payments (*cessation de payments*) and has lost its commercial creditworthiness (*ébranlement de crédit*),
  - (iii) where an application has been made by it or by any other entitled person for the appointment of a *commissaire, juge-commissaire, liquidateur, curateur* or similar officer pursuant to any insolvency or similar proceedings; and
  - (iv) where a petition for the opening of such proceedings has been presented by it or by any other person entitled to do so;
- (g) with respect to any Mexican Guarantor, that such entity incurs in a generalized default of its payment obligations (*incumplimiento generalizado de sus obligaciones de pago*) as set forth under Articles 9, 10 and/or 11 of the Mexican Insolvency Law; or
  - (h) any analogous procedure or step is taken in any jurisdiction (including, in Spain, an “*auto de declaración de concurso, convenio judicial o extrajudicial de acreedores*” pursuant to Spanish Insolvency Law.

**“Instructing Group”** means:

- (a) subject to paragraph (b) below, the Majority Super Senior Creditors and the Majority Pari Passu Creditors; and
- (b) in relation to instructions as to Enforcement, the group of Primary Creditors entitled to give instructions as to Enforcement under Clause 13.2 (*Instructions to enforce*).

**“Intercreditor Amendment”** means any amendment or waiver which is subject to Clause 28 (*Consents, Amendments and Override*).

**“Interest Rate Hedge Excess”** means, with respect to a Relevant Hedged Debt, the amount by which the Total Interest Rate Hedging with respect to that Relevant Hedged Debt exceeds the Permitted Maximum Interest Rate Hedged Amount with respect to that Relevant Hedged Debt.

**“Interest Rate Hedging”** means, in relation to a Hedge Counterparty and with respect to a Relevant Hedged Debt, the aggregate of the notional amounts hedged by the relevant Debtors under each Hedging Agreement which is an Interest Rate Hedging Transaction in relation to that Relevant Hedged Debt and to which that Hedge Counterparty is party.

**“Interest Rate Hedging Proportion”** means, in relation to a Hedge Counterparty and that Hedge Counterparty’s Interest Rate Hedging with respect to a Relevant Hedged Debt, the proportion (expressed as a percentage) borne by that Hedge Counterparty’s Interest Rate Hedging to the Total Interest Rate Hedging with respect to a Relevant Hedged Debt.

**“Interest Rate Hedging Transaction”** means a derivative transaction entered into by a Debtor (other than the Parent) and a Hedge Counterparty for the purposes of protection against or benefit from fluctuations in interest rates, in respect of Credit Facility Liabilities and/or Pari Passu Debt Liabilities

and that is permitted under the terms of each of the Credit Facility Documents, the Surety Bond Facility Agreement and the Pari Passu Documents (in their form as at the date of execution of the relevant Exchange Rate Hedging Agreement) to share in the Transaction Security.

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

**“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 Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

**“Intra-Group Lenders”** means each Original Intra-Group Lender and each member of the Group which becomes a Party as an Intra-Group Lender in accordance with the terms of Clause 22.9 (*New Intra-Group Lender*).

**“Intra-Group Liabilities”** means the Liabilities owed by any member of the Group to any of the Intra-Group Lenders.

**“Investor”** has the meaning given to the term “Original Investor” in the Initial Revolving Facility Agreement.

**“Investor Affiliate”** has the meaning given to the term “Original Investor Affiliate” in the Initial Revolving Facility Agreement.

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

**“Issuing Bank”** means any “Issuing Bank” under and as defined in:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, the relevant Credit Facility Agreement.

**“Italian Civil Code”** means the Italian civil code (*codice civile*), enacted by Royal Decree No. 22 of March 16, 1942, as subsequently amended and supplemented.

**“Italian Debtor”** has the meaning given to the term “Italian Guarantor” in the Initial Revolving Facility Agreement.

**“Italian Insolvency Law”** means Royal Decree No. 267 of 16 March 1942 Italy.

**“Italian Security Documents”** means all Transaction Security Documents governed by Italian law and **“Italian Security Document”** means any one of them.

**“Letter of Credit”** means any “Letter of Credit” under and as defined in:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, the relevant Credit Facility Agreement.

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

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

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

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

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

the rights in respect of those Liabilities.

“**Liabilities Sale**” means a Debt Disposal pursuant to paragraph (e) of Clause 15.1 (*Facilitation of Distressed Disposals*).

“**Local Debt Financing**” has the meaning given to such term in the Initial Revolving Facility Agreement.

“**Majority Credit Facility Lenders**” means:

- (a) on or prior to the Revolving Lender Discharge Date, the “Majority Lenders” under, and as defined in, the Initial Revolving Facility Agreement after the application of:
  - (i) clause 41.4 (*Excluded Commitments*);
  - (ii) paragraph (a) of clause 30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Original Investor Affiliates*); and
  - (iii) clause 41.6 (*Disenfranchisement of Defaulting Lenders*),
 of the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, at any time, those Credit Facility Lenders whose Super Senior Credit Participations at that time aggregate more than sixty-six and two-thirds per cent. (66.67%) of the total Super Senior Credit Participations of all Credit Facility Lenders at that time.

“**Majority Pari Passu Creditors**” means, at any time, those Pari Passu Lenders, Pari Passu Noteholders and Pari Passu Hedge Counterparties whose Pari Passu Credit Participations at that time aggregate more than fifty per cent. (50%) of the total Pari Passu Credit Participations at that time.

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

“**Mexican Guarantor**” means a Credit Facility Guarantor or a Surety Bond Guarantor incorporated in Mexico.

“**Mexican Insolvency Law**” means the Mexican *Ley de Concursos Mercantiles*, as subsequently amended and supplemented.

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

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

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

“**Non-Credit Related Close-Out**” means a Permitted Hedge Close-Out described in any of paragraphs (a)(i), (a)(ii) or (a)(iii) or (a)(iv) or (a)(v) of Clause 6.9 (*Permitted Enforcement: Hedge Counterparties*).

“**Non-Distressed Disposal**” has the meaning given to that term in Clause 14 (*Non-Distressed Disposals*).

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

“**Panamanian Guarantor**” means a Guarantor which is incorporated in Panama.

“**Pari Passu Arranger**” means any arranger of a credit facility which creates or evidences any Pari Passu Debt Liabilities which becomes a Party pursuant to Clause 22.12 (*Accession of Pari Passu Debt Creditors under new Pari Passu Notes or Pari Passu Facilities*).

“**Pari Passu Credit Participation**” means:

- (a) in relation to a Pari Passu Hedge Counterparty, its aggregate Pari Passu Hedge Credit Participation; and
- (b) in relation to a Pari Passu Noteholder or a Pari Passu Lender, the aggregate of:
  - (i) its aggregate Pari Passu Facility Commitments, if any;
  - (ii) to the extent not falling within paragraphs (a) or (b)(i) above, the aggregate outstanding principal amount of any Pari Passu Debt Liabilities in respect of which it is the creditor, if any.

“**Pari Passu Creditors**” means the Pari Passu Debt Creditors and the Pari Passu Hedge Counterparties.

**“Pari Passu Debt Acceleration Event”** means a Creditor Representative in relation to any Pari Passu Debt Liabilities (or any of the other Pari Passu Debt Creditors) exercising any acceleration rights under the Pari Passu Debt Documents (howsoever described) or any acceleration provisions being automatically invoked in each case under the Pari Passu Debt Documents (excluding placing amounts on demand but including making a demand on amounts placed on demand).

**“Pari Passu Debt Creditors”** means:

- (a) each Senior Secured Note Creditor; and
- (b) each other Creditor Representative in relation to any Pari Passu Debt Liabilities, each Pari Passu Arranger, each other Pari Passu Noteholder and each Pari Passu Lender.

**“Pari Passu Debt Discharge Date”** means the first date on which all Pari Passu Debt Liabilities have been fully and finally discharged to the satisfaction of the Creditor Representative(s) in relation to any Pari Passu Debt Liabilities, whether or not as the result of an enforcement, and the Pari Passu Debt Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Pari Passu Debt Documents.

**“Pari Passu Debt Documents”** means:

- (a) each Senior Secured Note Document; and
- (b) each other document or instrument entered into between any member of the Group and a Pari Passu Debt Creditor setting out the terms of any credit facility, notes, indenture or debt security which creates or evidences any Pari Passu Debt Liabilities to the extent permitted by the other Debt Documents.

**“Pari Passu Debt Liabilities”** means the Liabilities owed by the Debtors to the Pari Passu Debt Creditors under or in connection with the Pari Passu Debt Documents.

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

**“Pari Passu Facility”** means any credit facility made available to the Parent or any Restricted Subsidiary where any:

- (a) agent of the lenders in respect of the credit facility becomes a Party as a Creditor Representative;
- (b) arranger of the credit facility has become a party as a Pari Passu Arranger; and
- (c) lender in respect of the credit facility has become a Party as a Pari Passu Lender,

in respect of that credit facility pursuant to Clause 22.12 (*Accession of Pari Passu Debt Creditors under new Pari Passu Notes or Pari Passu Facilities*).

**“Pari Passu Facility Agreement”** means a facility agreement setting out the terms of any credit facility which creates or evidences any Pari Passu Debt Liabilities.

**“Pari Passu Facility Commitment”** means any “Commitment” under and as defined in a Pari Passu Facility Agreement.

**“Pari Passu Hedge Counterparty”** means each Hedge Counterparty to the extent it is owed Pari Passu Hedging Liabilities.

**“Pari Passu Hedge Credit Participation”** means, in relation to a Pari Passu Hedge Counterparty, the aggregate of:

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

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

**“Pari Passu Hedging Liabilities”** means the Hedging Liabilities to the extent they are not Super Senior Hedging Liabilities.

**“Pari Passu Lender”** means each “Lender” under and as defined in the relevant Pari Passu Facility Agreement.

**“Pari Passu Liabilities”** means the Pari Passu Debt Liabilities and the Pari Passu Hedging Liabilities.

**“Pari Passu Note Indenture”** means the Senior Secured Note Indenture and any other note indenture setting out the terms of any debt security which creates or evidences any Pari Passu Debt Liabilities.

**“Pari Passu Note Trustee”** means:

- (a) the Senior Secured Note Trustee; and

- (b) any other note trustee in respect of Pari Passu Notes which has acceded to this Agreement as a Creditor Representative pursuant to Clause 22.12 (*Accession of Pari Passu Debt Creditors under new Pari Passu Notes or Pari Passu Facilities*).

**“Pari Passu Noteholder”** means a Senior Secured Noteholder and any other holder from time to time of any Pari Passu Notes.

**“Pari Passu Notes”** means:

- (a) the Senior Secured Notes; and
- (b) any other senior secured notes issued or to be issued by the Parent or a Restricted Subsidiary under a Pari Passu Note Indenture.

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

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

**“Payment Netting”** means:

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

**“Permitted Automatic Early Termination”** means an Automatic Early Termination of a hedging transaction under a Hedging Agreement, the provision of which is permitted under Clause 6.12 (*Terms of Hedging Agreements*).

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

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

**“Permitted Hedge Close-Out”** means, in relation to a hedging transaction under a Hedging Agreement, a termination or close-out of that hedging transaction which is permitted pursuant to Clause 6.9 (*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 Pari Passu Debt Payments”** means the Payments permitted by Clause 5.1 (*Payment of Pari Passu Debt Liabilities*).

**“Permitted Payment”** means a Permitted Hedge Payment, a Permitted Surety Bond Payment, a Permitted Intra-Group Payment, a Permitted Pari Passu Debt Payment, a Permitted Credit Facility Payment or a Permitted Investor Payment.

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

“**Permitted Maximum Exchange Rate Hedged Amount**” means, with respect to a Relevant Hedged Debt, an amount equal to one hundred per cent. (100%) of the Term Outstandings thereof.

“**Permitted Maximum Interest Rate Hedged Amount**” means, with respect to a Relevant Hedged Debt, an amount equal to one hundred per cent. (100%) of the Term Outstandings thereof.

“**Permitted Reorganisation**” has the meaning given to such term in the Initial Revolving Facility Agreement.

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

“**Primary Creditors**” means the Super Senior Creditors and the Pari Passu Creditors.

“**Property**” of a member of the Group or of a Debtor means:

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

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

“**Recoveries**” has the meaning given to that term in Clause 17.1 (*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 Hedged Debt**” has the meaning given to that term in paragraph (c) of Clause 6.13 (*Total Interest Rate Hedging and Total Exchange Rate Hedging*).

“**Relevant Hedging Transaction**” has the meaning given to that term in paragraph (c) of Clause 6.13 (*Total Interest Rate Hedging and Total Exchange Rate Hedging*).

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

“**Relevant Surety Bond Facility Priority Amount**” means, in relation to a Surety Bond Facility, at any time, the amount agreed between the Parent and the provider of that Surety Bond Facility from time to time (as set out in the relevant Surety Bond Facility Agreement or otherwise) **provided that** the

aggregate of all such Relevant Surety Bond Facility Priority Amounts shall not at any time exceed the Aggregate Surety Bond Facility Priority Amount.

**“Required Pari Passu Creditors”** means:

- (a) each Creditor Representative acting on behalf of any Pari Passu Lenders or Pari Passu Noteholders; and
- (b) at any time, those Pari Passu Hedge Counterparties whose Pari Passu Hedge Credit Participations at that time aggregate more than fifty per cent. (50%) per cent. of the total Pari Passu Hedge Credit Participations at that time.

**“Required Super Senior Creditors”** means, at any time, those Super Senior Creditors whose Super Senior Credit Participations at that time aggregate more than fifty per cent. (50%) of the total Super Senior Credit Participations at that time.

**“Restricted Subsidiary”** means a Subsidiary of the Parent other than an Unrestricted Subsidiary.

**“Revolving Agent”** means the facility agent under and as defined in the Initial Revolving Facility Agreement.

**“Revolving Arranger”** means any arranger under and as defined in the Initial Revolving Facility Agreement.

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

**“Revolving Lenders”** means each Lender (as defined in the Initial Revolving Facility Agreement), Issuing Bank and Ancillary Lender.

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

**“Secured Parties”** means the Security Agent, any Arranger, any Receiver or Delegate and each of the Primary Creditors from time to time but, in the case of each Primary Creditor, only if it (or, in the case of a Pari Passu Noteholder, its Creditor Representative) is a Party or has acceded to this Agreement in the appropriate capacity pursuant to Clause 22.14 (*Creditor/Creditor Representative Accession Undertaking*).

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

**“Security Agent’s Spot Rate of Exchange”** means, in respect of the conversion of one currency (the **“First Currency”**) into another currency (the **“Second Currency”**) the Security Agent’s spot rate of exchange for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11:00 am (London time) on a particular day, which shall be notified by the Security Agent in accordance with paragraph (e) of Clause 20.4 (*Duties of the Security Agent*).

**“Security Documents”** means:

- (a) each “Security Document” as defined in (i) the Initial Revolving Facility Agreement in respect of the Initial Revolving Facility and (ii) if applicable, a Credit Facility Document in respect of

any other Credit Facility (or if not defined, any equivalent term for security documents provided in connection with that other Credit Facility);

- (b) any other document entered into by any Debtor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Debtors under any of the Debt Documents; and
- (c) any Security granted under any covenant for further assurance in any of the documents set out in paragraph (a) above,

which, in each case, to the extent legally possible,

- (i) is created in favour of the Security Agent as trustee or as agent (*mandatario con rappresentanza* or *apoderado*) on their behalf for the other Secured Parties in connection with 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, such Security is created in favour of all of the Secured Parties in respect of their Liabilities.

**“Security Property”** means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties or as agent (*mandatario con rappresentanza* or *apoderado*) on their behalf, or in favour of the Secured Parties themselves and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties or as agent (*mandatario con rappresentanza* or *apoderado*) on their behalf and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as trustee for the Secured Parties or as agent (*mandatario con rappresentanza* or *apoderado*) on their behalf;
- (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 or as agent (*mandatario con rappresentanza* or *apoderado*) on their behalf.

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

**“Senior Secured Note Documents”** mean the Senior Secured Note Indenture, the Senior Secured Notes, the Security Documents, the Senior Secured Note Guarantees (whether contained in the Senior Secured Note Indenture, as a notation of guarantee attached to the Senior Secured Notes or otherwise) and this Agreement.

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

**“Senior Secured Note Indenture”** means the indenture governing the Senior Secured Notes and made between, among others, the Senior Secured Note Trustee, the Security Agent and the Issuer.

**“Senior Secured Note Trustee”** means the note trustee in respect of the Senior Secured Notes.

“**Senior Secured Noteholders**” means the holders, from time to time, of the Senior Secured Notes, as determined in accordance with the Senior Secured Note Indenture.

“**Senior Secured Notes**” means:

- (a) the €500,000,000 6.75% Senior Secured Notes due November 2021 issued or to be issued by the pursuant to the Senior Secured Note Indenture;
- (b) the \$300,000,000 7.625% Senior Secured Notes due November 2021 issued or to be issued by the pursuant to the Senior Secured Note Indenture; and
- (c) any other senior secured notes issued by the Issuer pursuant to the Senior Secured Note Indenture **provided that** the Parent has confirmed in writing that the incurrence of those notes will not breach the terms of any of its existing Credit Facility Documents, the Surety Bond Facility Agreement or Pari Passu Debt Documents.

“**Spanish Borrower**” means any Borrower incorporated in Spain.

“**Spanish Security Documents**” means all Transaction Security Documents governed by Spanish law.

“**Spanish Security**” means all Security governed by Spanish law.

“**Spanish Companies Law**” means the Spanish Royal Legislative Decree 1/2010, of 2 July, approving the consolidated text of the stock companies law (*Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital*) as amended from time to time.

“**Spanish Guarantor**” means any Guarantor incorporated in Spain.

“**Spanish Insolvency Law**” means the Law 22/2003, of July 9, on Insolvency (*Ley 22/2003, de 9 de julio, Concursal*) as amended from time to time.

“**Spanish Obligor**” means a Spanish Borrower or a Spanish Guarantor.

“**Spanish Public Document**” means a documento público, being either an “*escritura pública*” or a “*póliza*” or any other document qualifying as a documento public pursuant to the Notarial Law of 28 May 1862 (*Ley del Notariado de 28 de mayo de 1862*) and related regulations.

“**Subordinated Creditors**” means each Investor and each Investor Affiliate which is a creditor of a member of the Group, and that has acceded to this Agreement pursuant to Clause 22.3 (*New Investor*).

“**Subordinated Liabilities**” means the Liabilities owed to the Subordinated Creditors by members of the Group.

“**Subsidiary**” means, in relation to any company or corporation (a “**holding company**”), a company or corporation:

- (a) which is controlled, directly or indirectly, by the holding company;
- (b) more than half the issued voting share capital of which is beneficially owned, directly or indirectly, by the holding company; or
- (c) which is a Subsidiary of another Subsidiary of the holding company,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to determine the composition of the majority of its board of directors or equivalent body.

**“Super Senior Credit Participation”** means, in relation to a Surety Bond Provider, Credit Facility Lender or a Super Senior Hedge Counterparty the aggregate of:

- (a) its aggregate Credit Facility Commitment, if any;
- (b) its aggregate Surety Bond Facility Commitment, if any;
- (c) in respect of any hedging transaction of that Super Senior Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Super Senior Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement) and to the extent it is a Super Senior Hedging Liability; and
- (d) after the later to occur of (A) the Credit Facility Lender Discharge Date and (B) the Surety Bond Provider Discharge Date only, in respect of any hedging transaction of that Super Senior Hedge Counterparty under any Hedging Agreement to the extent it constitutes a Super Senior Hedging Liability that has, as of the date the calculation is made, not been terminated or closed out:
  - (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
  - (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

**“Super Senior Creditors”** means the Surety Bond Provider, Credit Facility Creditors and the Super Senior Hedge Counterparties.

**“Super Senior Discharge Date”** means the first date on which all Super Senior Liabilities have been fully and finally discharged to the satisfaction of the relevant Creditor Representative(s) (in the case of the Credit Facility Liabilities, or the Surety Bond Provider in the case of the Surety Bond Facility Liabilities) and each Super Senior Hedge Counterparty (in the case of its Super 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 (in the case of Super Senior Hedge Counterparties, financial accommodation being Exchange Rate Hedging Transactions and Interest Rate Hedging Transactions) to any of the Debtors under the Debt Documents.

**“Super Senior Hedge Counterparty”** means each Hedge Counterparty to the extent it is owed Super Senior Hedging Liabilities.

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

“**Super Senior Hedging Liabilities**” means the aggregate of each Hedge Counterparty’s Hedging Liabilities in the Common Currency Amount, up to, in respect of each Hedge Counterparty, a maximum amount equal to the aggregate of such Hedge Counterparty’s Debt Related Hedging Liabilities.

“**Super Senior Hedging Amount**” means EUR 100,000,000.

“**Super Senior Hedging Certificate**” means a certificate substantially in the form set out in Schedule 6 (*Form of Super Senior Hedging Certificate*).

“**Super Senior Liabilities**” means the Surety Bond Facility Liabilities, the Credit Facility Liabilities and the Super Senior Hedging Liabilities.

“**Surety Bond Facility**” means each surety bond facility to be entered into by a Debtor which shares in the Transaction Security as provided for in this Agreement and, in respect of which, the provider of such facility has become a Party as a Surety Bond Provider in respect of that facility pursuant to Clause 22.11 (*Accession of Surety Bond Providers under a Surety Bond Facility*).

“**Surety Bond Facility Acceleration Event**” means, in relation to a Surety Bond Facility, on or prior to the Surety Bond Provider Discharge Date, the relevant Surety Bond Provider exercising any of its rights under (and in accordance with the terms of) of the relevant Surety Bond Facility Agreement to accelerate any amount outstanding under the relevant Surety Bond Facility Agreement or any acceleration provision being automatically invoked under the relevant Surety Bond Facility Agreement (in each case such that a principal amount outstanding in respect of that Surety Bond Facility Agreement has become immediately due and payable prior to its scheduled maturity, or cash cover has been required to be provided in respect of those amounts).

“**Surety Bond Facility Agreement**” means, in relation to any Surety Bond Facility, the facility agreement documenting that Surety Bond Facility.

“**Surety Bond Facility Borrower**” means, each borrower under the Surety Bond Facility Agreement.

“**Surety Bond Facility Commitment**” means, the commitment of a Surety Bond Provider under its Surety Bond Facility Agreement.

“**Surety Bond Facility Guarantor**” means, any guarantor of a Surety Bond Facility.

“**Surety Bond Facility Liabilities**” means the Liabilities owed by any Debtor to a Surety Bond Provider under or in connection with a relevant Surety Bond Facility Agreement.

“**Surety Bond Only Security**” means, any Security over a bank account in the name of a Surety Bond Facility Borrower created in favour of such Surety Bond Provider in respect of its Surety Bond Liabilities and which (subject to the terms of this Agreement) ranks in the order of priority contemplated in Clause 2.2 (*Transaction Security*), **provided that** the maximum aggregate amount of all such security for all Surety Bond Providers does not exceed (a) the Relevant Surety Bond Facility Priority Amount in respect of any Surety Bond Provider; or (b) the Aggregate Surety Bond Facility Priority Amount in respect of all Surety Bond Providers.

“**Surety Bond Provider**” means each creditor in respect of Surety Bond Facility Liabilities that has acceded to this Agreement pursuant to Clause 22.11 (*Accession of Surety Bond Providers under a Surety Bond Facility*).

“**Surety Bond Provider Discharge Date**” means the first date on which all Surety Bond Facility Liabilities have been fully and finally discharged to the satisfaction of the relevant Surety Bond

Provider, whether or not as the result of an enforcement, and the Surety Bond Providers are under no further obligation to provide financial accommodation to any of the Debtors under the Surety Bond Documents.

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

“**TARGET2**” means the Trans-European Automated Real-Time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on 19 November 2007.

“**TARGET Day**” means any day on which TARGET2 is open for the settlement of payment in euro.

“**Term Outstandings**” means, with respect to a Relevant Hedged Debt, an amount equal to the aggregate of the amounts of principal (not including any capitalized or deferred interest) then outstanding under that Relevant Hedged Debt.

“**Total Exchange Rate Hedging**” means, with respect to a Relevant Hedged Debt, at any time, the aggregate of each Hedge Counterparty’s Exchange Rate Hedging with respect to that Relevant Hedged Debt at that time.

“**Total Interest Rate Hedging**” means, with respect to a Relevant Hedged Debt, at any time, the aggregate of each Hedge Counterparty’s Interest Rate Hedging with respect to that Relevant Hedged Debt at that time.

“**Transaction Security**” means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Security Documents (excluding for the avoidance of doubt, the Surety Bonds Only Security).

“**Unrestricted Subsidiary**” means a Subsidiary of the Parent which has been designated an “Unrestricted Subsidiary” for the purpose of (and in accordance with) all of the Credit Facility Documents, the Surety Bond Facility Agreement and Pari Passu Debt Documents.

“**VAT**” means:

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

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
  - (i) any “**Credit Facility Arranger**”, “**Creditor Representative**”, “**Ancillary Lender**”, “**Arranger**”, “**Creditor**”, “**Debtor**”, “**Hedge Counterparty**”, “**Intra-Group Lender**”, “**Issuing Bank**”, “**Pari Passu Arranger**”, “**Pari Passu Note Trustee**”, “**Pari Passu Noteholder**”, “**Pari Passu Creditor**”, “**Pari Passu Debt Creditor**”, “**Pari Passu Hedge Counterparty**”, “**Senior Secured Note Trustee**”, “**Senior Secured Noteholder**”, “**Senior Secured Note Creditor**”, “**Parent**”, “**Party**”, “**Primary Creditor**”, “**Security Agent**”, “**Revolving Agent**”, “**Credit Facility Borrower**”, “**Super Senior Creditor**”, “**Super Senior Hedge Counterparty**”, “**Credit Facility Guarantor**”, “**Revolving Lender**”, “**Hedge Counterparty**”, “**Credit Facility Lender**”, “**Surety Bond Provider**”, “**Surety Bond Facility**

- Borrower**", **Surety Bond Facility Guarantor**", or **Subordinated Creditor**" shall be construed to be a reference to it in its capacity as such and not in any other capacity;
- (ii) any **Creditor Representative**", **Ancillary Lender**", **Arranger**", **Creditor**", **Debtor**", **Hedge Counterparty**", **Investor**", **Issuing Bank**", any **Party**", the **Security Agent**" or **Subordinated Creditor**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to,, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
  - (iii) **assets**" includes present and future properties, revenues and rights of every description;
  - (iv) a **Debt Document**" or any other agreement or instrument is (other than a reference to a **Debt Document**" or any other agreement or instrument in **original form**") a reference to that Debt Document, or other agreement or instrument, as amended, amended and restated, novated, supplemented, extended or restated as permitted by this Agreement;
  - (v) **enforcing**" (or any derivation) the Transaction Security includes the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor by the Security Agent;
  - (vi) a **group of Creditors**" includes all the Creditors and a **group of Primary Creditors**" includes all the Primary Creditors;
  - (vii) **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;
  - (viii) the **original form**" of a **Debt Document**" or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
  - (ix) a **person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (x) **proceeds**" of a Distressed Disposal or of a Debt Disposal includes proceeds in cash;
  - (xi) a **regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
  - (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) A Default is **continuing**" if it has not been remedied or waived and an Event of Default is **continuing**" if it has not been remedied or waived.
  - (d) A Pari Passu Lender or Pari Passu Noteholder providing **cash cover**" for a Letter of Credit means a Pari Passu Lender or Pari Passu Noteholder paying an amount in the currency of the

Letter of Credit to an interest-bearing account in the name of the Pari Passu Lender or Pari Passu Noteholder and the following conditions being met:

- (i) the account is with the Issuing Bank;
  - (ii) until no amount is or may be outstanding under that Letter of Credit withdrawals from the account may only be made to pay an Issuing Bank amounts due and payable to it under the Credit Facility Documents in respect of that Letter of Credit; and
  - (iii) the Pari Passu Lender or Pari Passu Noteholder has executed a security document over the account, in form and substance satisfactory to the Issuing Bank with which that account is held, creating a first ranking security interest over that account.
- (e) References to a Creditor Representative acting on behalf of the Pari Passu Debt Creditors of which it is the Creditor Representative means such Creditor Representative acting on behalf of the Pari Passu Debt Creditors of which it is the Creditor Representative with the consent of the proportion of such Pari Passu Debt Creditors required under and in accordance with the applicable Pari Passu Debt Documents (**provided that** if the relevant Pari Passu Debt Documents do not specify a voting threshold for a particular matter, the threshold will be a simple majority of the outstanding principal amount under those Pari Passu Debt Documents (excluding any Pari Passu Liabilities owned by a member of the Group or an Investor Affiliate)). A Creditor Representative will be entitled to seek instructions from the Pari Passu Debt Creditors of which it is the Creditor Representative to the extent required by the applicable Pari Passu Debt Documents, as the case may be, as to any action to be taken by it under this Agreement.

### 1.3 Italian terms

In this Agreement:

- (a) a winding up, administration or dissolution or the like includes, without limitation, any “*scioglimento*”, “*liquidazione*” and any other proceedings or legal concepts similar to the foregoing;
- (b) a receiver, administrative receiver, administrator or the like includes, without limitation, a “*curatore*”, “*commissario giudiziale*”, “*commissario straordinario*”, “*liquidatore*” or any other person performing the same function of each of the foregoing;
- (c) an attachment includes a “*pignoramento*”;
- (d) a matured obligation includes, without limitation, any “*credito liquido ed esigibile*”; and
- (e) security includes, without limitation, any “*pegno*”, “*ipoteca*”, “*trasferimento di bene immobile sospensivamente condizionato*” pursuant to Article 48-*bis* of the Italian Legislative Decree No. 385 of 1 September 1993, as amended, “*privilegio generale*”, “*privilegio speciale*” (including the “*privilegio speciale*” created pursuant to Article 46 of the Italian Legislative Decree No. 385 of 1 September 1993 as amended from time to time), “*cessione del credito in garanzia*” and any other “*diritto reale di garanzia reale*”.

### 1.4 Luxembourg terms

In this Agreement, a reference to:

- (a) a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrator receiver, administrator or similar officer includes, without limitation, any:

- (i) *juge-commissaire* or insolvency receiver (*curateur*) appointed under the Luxembourg Commercial Code;
  - (ii) *liquidateur* appointed under Articles 141 to 151 (inclusive) of the Luxembourg law of 10 August 1915 on commercial companies, as amended;
  - (iii) *juge-commissaire* or *liquidateur* appointed under Article 203 of the Luxembourg law of 10 August 1915 on commercial companies, as amended;
  - (iv) *commissaire* appointed under the Grand-Ducal decree of 24 May 1935 on the controlled management regime or under Articles 593 to 614 (inclusive) of the Luxembourg Commercial Code; and
  - (v) *juge délégué* appointed under the Luxembourg law of 14 April 1886 on the composition to avoid bankruptcy, as amended;
- (b) a winding-up, administration or dissolution includes, without limitation, bankruptcy (*faillite*) within the meaning of Articles 437 ff. of the Luxembourg Commercial Code or any other insolvency proceedings pursuant to the Council Regulation (EC) N° 1346/2000 of 29 May 2000 on insolvency proceedings, voluntary or judicial liquidation (*liquidation volontaire ou judiciaire*) pursuant to the law of 10 August 1915 on commercial companies, as amended, composition with creditors (*concordat préventif de la faillite*) within the meaning of the law of 14 April 1886 on arrangements to prevent insolvency, as amended, reprieve from payment (*sursis de paiement*) within the meaning of Articles 593 ff. of the Luxembourg Commercial Code, controlled management (*gestion contrôlée*) within the meaning of the grand ducal regulation of 24 May 1935 on controlled management, general settlement with creditors, reorganisation or similar laws affecting the rights of creditors generally;
- (c) a receiver, administrative receiver, administrator or the like includes, without limitation, a *juge délégué*, *commissaire*, *juge-commissaire*, *liquidateur* or *curateur*;
- (d) a security interest includes any *hypothèque*, *nantissement*, *gage*, *privilège*, *sûreté réelle*, *droit de rétention* and any type of real security (*sûreté réelle*) or agreement or arrangement having a similar effect and any transfer of title by way of security;
- (e) a person being unable to pay its debts includes that person being in a state of cessation of payments (*cessation de paiements*) or having lost or meeting the criteria to lose its commercial creditworthiness (*ébranlement de crédit*);
- (f) attachments or similar creditors process means an executory attachment (*saisie exécutoire*) or conservatory attachment (*saisie arrêt*); and
- (g) a “set-off” includes, for purposes of Luxembourg law, legal set-off.

## 1.5 Spanish terms

In this Agreement:

- (a) a winding-up, administration or dissolution includes a *liquidación*, *disolución*, *concurso* or any similar situation under the Spanish corporate, commercial and civil law regulation;
- (b) a composition, assignment or similar arrangement with any creditor includes a *convenio* for the purposes of Spanish Insolvency law;
- (c) a compulsory manager, receiver or administrator includes an *administrador concursal*, *liquidador* or any other person appointed as a result of any proceedings described in paragraphs (a) or (b) above;

- (d) a guarantee includes any *garantía*, *aval* or security or guarantee which is independent from the debt to which it relates;
- (e) a grant, creation or transfer of a security interest or a collateral includes any in *rem* or *garantía* real and any transfer by way of security;
- (f) a security includes any financial collateral or guarantee under Spanish law including Royal Decree 5/2005;
- (g) a person being unable to pay its debts includes that person being in a state of “*concurso*” as defined in Spanish Insolvency law;
- (h) trustee, fiduciary and fiduciary duty has in each case the meaning given to such term under any applicable law;
- (i) set off rights would include to the extent legally possible the rights to *compensante* under Royal Decree 5/2005; and
- (j) wilful misconduct means *dolo*.

#### 1.6 **Third party rights**

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in paragraph (b) of Clause 20.11 (*Exclusion of liability*) may, subject to this Clause 0 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.
- (d) The Third Parties Act shall apply to this Agreement in respect of any Pari Passu Noteholder. For the purposes of paragraph (b) above and this paragraph (d), upon any person becoming a Pari Passu Noteholder, such person shall be deemed to be a Party to this Agreement and shall be bound by the provisions of this Agreement and be deemed to receive the benefits of this Agreement, and be subject to the terms and conditions hereof, as if such person were a Party hereto.

## 2. **RANKING AND PRIORITY**

### 2.1 **Primary Creditor Liabilities**

Each of the Parties agrees that the Super Senior Liabilities, the Arranger Liabilities, the Credit Facility Liabilities, the Pari Passu Hedging Liabilities and the Pari Passu Debt Liabilities owed by the Debtors to the Primary Creditors shall rank in right and priority of payment *pari passu* and without any preference between them.

### 2.2 **Transaction Security**

Each of the Parties agrees that the Transaction Security shall rank and secure the Super Senior Liabilities, the Arranger Liabilities, the Credit Facility Liabilities, the Pari Passu Hedging Liabilities and the Pari Passu Debt Liabilities (subject to the terms of this Agreement) *pari passu* and without any preference between them (but only to the extent that such Transaction Security is expressed to secure those Liabilities).

### 2.3 Subordinated and Intra-Group Liabilities

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

### 2.4 Creditor Representative Amounts

Subject to Clause 17 (*Application of Proceeds*) where applicable, nothing in this Agreement will prevent payment by the Parent or any Debtor of the Creditor Representative Amounts or the receipt and retention of such Creditor Representative Amounts by the relevant Creditor Representative(s).

### 2.5 Additional debt

- (a) The Creditors acknowledge that, to the extent permitted to do so under the terms of the Debt Documents at such time, the Debtors (or any of them) may wish to:
  - (i) incur incremental Borrowing Liabilities and/or Guarantee Liabilities in respect of incremental Borrowing Liabilities; or
  - (ii) refinance or replace Borrowing Liabilities and/or incur Guarantee Liabilities in respect of any such refinancing or replacement of Borrowing Liabilities, with, in each such case, new Liabilities ranking in the same order of priority and intended to rank and/or share *pari passu* in any Transaction Security in the same order of priority as the Liabilities that are being refinanced or replaced and to rank behind any other Liabilities and/or to share in any Transaction Security behind any such other Liabilities and otherwise be subject to the same benefits and restrictions under this Agreement as the Liabilities that are being refinanced or replaced.
- (b) The Creditors each confirm and undertake that, if and to the extent a financing, refinancing or replacement referred to in paragraph (a) above is contemplated by the Debtors and such ranking and such Security is not prohibited by the terms of the Debt Documents at such time, they will (at the cost of the Debtors) (without prejudice and subject to the right of any Hedge Counterparty under Clause 6.9(a)(v)) co-operate with the Parent and the Debtors with a view to enabling and facilitating such financing, refinancing or replacement and such sharing in the Transaction Security to take place in a timely manner. In particular, but without limitation, each of the Secured Parties hereby authorises and directs each of their respective Creditor Representatives and the Security Agent to execute any amendment to this Agreement and such other Debt Documents required by the Parent to reflect, enable and/or facilitate any such arrangements to the extent such financing, refinancing, replacement and/or sharing is not prohibited by the Debt Documents to which it is party and **provided that** such new amendment and/or documentation does not otherwise adversely affect the interests of any of the Secured Parties.

## 3. CREDIT FACILITY CREDITORS AND CREDIT FACILITY LIABILITIES

### 3.1 Payment of Credit Facility Liabilities

The Debtors may make Payments of the Credit Facility Liabilities at any time in accordance with, and subject to the provisions of, the relevant Credit Facility Documents.

### 3.2 Security: Credit Facility Creditors

Other than as set out in Clause 3.3 (*Security: Ancillary Lenders and Issuing Banks*), the Credit Facility Creditors may take, accept or receive the benefit of:

- (a) any Security in respect of the Credit Facility Liabilities from any member of the Group in addition to the Common Transaction Security which (except for any Security permitted under Clause 3.3 (*Security: Ancillary Lenders and Issuing Banks*)) to the extent legally possible and subject to any Agreed Security Principles is, at the same time, also offered either:
- (i) to the Security Agent as trustee 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 to the other Secured Parties in respect of their Liabilities,

and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*); and

- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Credit Facility Liabilities in addition to those in:
- (i) the original form of the Initial Revolving Facility Agreement or any Equivalent Provision in any other Credit Facility Agreement;
  - (ii) this Agreement; or
  - (iii) the original form of Mandate Letter (as defined in the Initial Revolving Facility Agreement) (or any equivalent provision in any mandate letter entered into in connection with any other Credit Facility Agreement which is similar in meaning and effect); or
  - (iv) any Common Assurance,

if (except for any guarantee, indemnity or other assurance against loss permitted under Clause 3.3 (*Security: Ancillary Lenders and Issuing Banks*)) and to the extent legally possible and subject to any Agreed Security Principles, at the same time it is also offered to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

### 3.3 Security: Ancillary Lenders and Issuing Banks

No Ancillary Lender or Issuing Bank will, unless the prior consent of the Required Super Senior Creditors and the Required Pari Passu Creditors 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 Common Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
  - (i) the original form of the Initial Revolving Facility Agreement (or any Equivalent Provision in a Credit Facility Agreement);
  - (ii) this Agreement; or
  - (iii) any Common 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.

#### 3.4 **Restriction on Enforcement: Ancillary Lenders and Issuing Banks**

Subject to Clause 3.5 (*Permitted Enforcement: Ancillary Lenders and Issuing Banks*), so long as any of the Super Senior Liabilities (other than any Liabilities owed to the Ancillary Lenders or Issuing Banks) are or may be outstanding, none of the Ancillary Lenders nor the Issuing Banks shall be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it.

#### 3.5 **Permitted Enforcement: Ancillary Lenders and Issuing Banks**

- (a) Each Ancillary Lender and Issuing Bank may take Enforcement Action which would be available to it but for Clause 3.4 (*Restriction on Enforcement: Ancillary Lenders and Issuing Banks*) if:
  - (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Credit Facility Liabilities (excluding the Liabilities owing to Ancillary Lenders and 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 Liabilities;
  - (ii) on or prior to the Revolving Lender Discharge Date, that action is contemplated by the Initial Revolving Facility Agreement or Clause 3.3 (*Security: Ancillary Lenders and Issuing Banks*);
  - (iii) after the Revolving Lender Discharge Date, that action is contemplated by the relevant Credit Facility Agreement or Clause 3.3 (*Security: Ancillary Lenders and Issuing Banks*);
  - (iv) that Enforcement Action is taken in respect of Credit Facility Cash Cover which has been provided in accordance with the Credit Facility Agreement;
  - (v) at the same time as or prior to, that action, the consent of the Required Super Senior Creditors is obtained; or
  - (vi) 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 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 Liabilities;

- (C) exercise any right of set-off or take or receive any Payment in respect of any Credit Facility 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 Liabilities owing to it.
- (b) Clause 3.4 (*Restriction on Enforcement: Ancillary Lenders and Issuing Banks*) shall not restrict any right of an Ancillary Lender:
- (i) to demand repayment or prepayment of any of the Liabilities owed to it prior to the expiry date of the relevant Ancillary Facility; or
  - (ii) to net or set off in relation to a Multi-account Overdraft,
- in accordance with the terms of the relevant Credit Facility Agreement and to the extent that the demand is required to reduce, or the netting or set-off represents a reduction from, the Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount.

#### 4. SURETY BOND PROVIDER AND SURETY BOND FACILITY LIABILITIES

##### 4.1 Payment of Surety Bond Facility Liabilities

The Debtors may make Payments of the Surety Bond Facility Liabilities at any time in accordance with, and subject to the provisions of, the Surety Bond Facility Agreement.

##### 4.2 Security: Surety Bond Provider

In addition to the Surety Bond Only Security and the Common Transaction Security, the Surety Bond Provider may take, accept or receive the benefit of:

- (a) any Security in respect of the Surety Bond Facility Liabilities from any member of the Group, which to the extent legally possible is, at the same time, also offered either:
  - (i) to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
  - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties, to the other Secured Parties in respect of their Liabilities,

and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*); and
- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Pari Passu Debt Liabilities in addition to those in:
  - (i) this Agreement; or
  - (ii) any Common Assurance,

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

## 5. PARI PASSU DEBT CREDITORS AND PARI PASSU DEBT LIABILITIES

### 5.1 Payment of Pari Passu Debt Liabilities

The Debtors may make Payments of the Pari Passu Debt Liabilities at any time in accordance with, and subject to the provisions of, the Pari Passu Debt Documents.

### 5.2 Security: Pari Passu Debt Creditors

The Pari Passu Debt Creditors may take, accept or receive the benefit of:

- (a) any Security in respect of the Pari Passu Debt Liabilities from any member of the Group in addition to the Common Transaction Security which to the extent legally possible is, at the same time, also offered either:
  - (i) to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
  - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties to the other Secured Parties in respect of their Liabilities,

and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*); and

- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Pari Passu Debt Liabilities in addition to those in:
  - (i) the original form of the Senior Secured Note Indenture and Senior Secured Note Guarantees or any Equivalent Provision in a Pari Passu Note Indenture or Pari Passu Facility Agreement; or
  - (ii) this Agreement; or
  - (iii) any Common Assurance,

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

## 6. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

### 6.1 Identity of Hedge Counterparties

- (a) Subject to paragraph (b) below, no entity 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 and obligations arising in relation to those hedging arrangements nor shall those liabilities and obligations be treated as Hedging Liabilities unless that entity is or becomes a Party as a Hedge Counterparty.
- (b) Paragraph (a) above shall not apply to a Hedging Ancillary Lender.

### 6.2 Restriction on Payments: Hedging Liabilities

The Debtors shall not, and the Parent 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 6.9 (*Permitted Enforcement: Hedge Counterparties*).

### 6.3 Permitted Payments: Hedging Liabilities

- (a) Subject to paragraph (b) below, the Debtors may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Agreement in accordance with the terms of that Hedging Agreement:
  - (i) if the Payment is a scheduled Payment arising under the relevant Hedging Agreement;
  - (ii) to the extent that the relevant Debtor's obligation to make the Payment arises as a result of the operation of:
    - (A) any of sections 2(d) (*Deduction or Withholding for Tax*), 2(e) (*Default Interest; Other Amounts*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*) and 11 (*Expenses*) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);
    - (B) any of sections 2(d) (*Deduction or Withholding for Tax*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*), 9(h)(i) (*Prior to Early Termination*) and 11 (*Expenses*) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
    - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
  - (iii) to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out;
  - (iv) to the extent that:
    - (A) the relevant Debtor's obligation to make the Payment arises from:
      - (1) a Credit Related Close-Out in relation to that Hedging Agreement; or
      - (2) a Permitted Automatic Early Termination under that Hedging Agreement which arises as a result of an event relating to a Debtor; and
    - (B) no Event of Default is continuing at the time of that Payment or would result from that Payment;
  - (v) to the extent that no Event of Default is continuing or would result from that Payment and the relevant Debtor's obligation to make the Payment arises as a result of a close-out or termination arising as a result of:
    - (A) section 5(a)(vii) (*Bankruptcy*) of the 1992 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 1992 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;

- (B) section 5(a)(vii) (*Bankruptcy*) of the 2002 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 2002 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
  - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement) and the equivalent event of default has occurred with respect to the relevant Hedge Counterparty; or
  - (D) the relevant Debtor terminating or closing-out the relevant Hedging Agreement as a result of a Hedging Force Majeure and the Termination Event (as defined in the relevant Hedging Agreement in the case of a Hedging Agreement based on an ISDA Master Agreement) or the equivalent termination event (in the case of a Hedging Agreement not based on an ISDA Master Agreement) has occurred with respect to the relevant Hedge Counterparty; or
- (vi) if the Required Super Senior Creditors and the Required Pari Passu Creditors (in each case excluding the Hedge Counterparty which is to receive the Payment) give prior consent to the Payment being made.
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid unless the prior consent of the Required Super Senior Creditors and the Required Pari Passu Creditors (in each case excluding the Hedge Counterparty party to the relevant Hedging Agreement) is obtained.
  - (c) For the avoidance of doubt, no payment will be due and unpaid if a Hedge Counterparty is entitled to withhold any payment pursuant to Section 2(a)(iii) of the ISDA Master Agreement, or if the Hedging Agreement is not based on an ISDA Master Agreement, any provision which is similar in meaning and effect to such provision.
  - (d) 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 Agreement.

#### 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 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**

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

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

in respect of any of the Hedging Liabilities, unless the prior consent of the Required Super Senior Creditors and the Required Pari Passu Creditors is obtained.

#### 6.6 Amendments and Waivers: Hedging Agreements

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

#### 6.7 Security: Hedge Counterparties

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

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
  - (i) the original form of the Initial Revolving Facility Agreement or the original form of Schedule 7 (*Hedge Counterparties' Guarantee and Indemnity*) or any other Credit Facility Agreement no greater in extent than the original form of the Initial Revolving Facility Agreement;
  - (ii) this Agreement (other than Schedule 7 (*Hedge Counterparties' Guarantee and Indemnity*));
  - (iii) any Common Assurance; or
  - (iv) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (i) to (iii) above;
- (c) as otherwise contemplated by Clauses 3.2 (*Security: Credit Facility Creditors*) and 5.2 (*Security: Pari Passu Debt Creditors*); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

#### 6.8 Restriction on Enforcement: Hedge Counterparties

Subject to Clause 6.9 (*Permitted Enforcement: Hedge Counterparties*) and Clause 6.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clauses 13.3 (*Enforcement Instructions*) and 13.4 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

#### 6.9 Permitted Enforcement: Hedge Counterparties

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

***Non-Credit Related Close-Outs***

- (i) if, prior to a Distress Event, the Parent has certified to that Hedge Counterparty that that termination or close-out would not result in a breach of any term of a Credit Facility Document, the Surety Bond Facility Agreement or a Pari Passu Debt Document;
- (ii) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;
- (iii) to the extent necessary to comply with paragraph (c) of Clause 6.13 (*Total Interest Rate Hedging and Total Exchange Rate Hedging*);
- (iv) to ensure that the Common Currency Amount of a Hedge Counterparty's Debt Related Hedging Liabilities does not exceed its Allocated Super Senior Hedging Amount;
- (v) on or immediately following:
  - (A) a refinancing (or repayment) and cancellation in full of the Credit Facility Liabilities and/or Pari Passu Debt Liabilities; or
  - (B) a refinancing (or repayment) and cancellation in part of the Credit Facility Liabilities and/or Pari Passu Debt Liabilities to the extent that:
    - (1) the relevant Hedging Agreement was entered into to hedge such Credit Facility Liabilities and/or Pari Passu Debt Liabilities (as applicable); or
    - (2) if the relevant Hedge Counterparty was also a Pari Passu Debt Creditor and/or a Credit Facility Creditor immediately prior to such refinancing (or repayment) and cancellation, as a result thereof it is neither a Pari Passu Debt Creditor nor a Credit Facility Creditor.

***Credit Related Close-Outs***

- (vi) if a Distress Event has occurred;
  - (vii) if an Event of Default has occurred under clause 28.7 (*Insolvency*) or clause 28.8 (*Insolvency proceedings*) of the Initial Revolving Facility Agreement (or any substantially equivalent provision of the Pari Passu Note Indenture (or, in each case, any Equivalent Provision of a Credit Facility Agreement, Surety Bond Facility Agreement, Pari Passu Facility Agreement or Pari Passu Note Indenture) in relation to a Debtor which is party to that Hedging Agreement;
  - (viii) if the Required Super Senior Creditors and the Required Pari Passu Creditors (in each case excluding the Hedge Counterparty that is party to the relevant Hedging Agreement) give prior consent to that termination or close-out being made.
- (b) If a Debtor has defaulted under a Hedging Agreement for failing to make any Payment due (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than five (5) Business Days after notice of that default has been given to the Security Agent pursuant to paragraph (g) of Clause 25.3 (*Notification of prescribed events*), with a copy to the relevant Debtor, the relevant Hedge Counterparty:
- (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part all hedging transactions under that Hedging Agreement; and

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

#### 6.10 **Required Enforcement: Hedge Counterparties**

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
  - (i) the occurrence of an Acceleration Event and delivery to it of a notice from the Security Agent that that Acceleration Event has occurred; and
  - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Instructing Group) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between any Debtor and any Primary Creditor with the purpose of bringing about that Acceleration Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under paragraph (b) of Clause 6.9 (*Permitted Enforcement: Hedge Counterparties*) (or would have been able to if that Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Security Agent (acting on the instructions of the Instructing Group).

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

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

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

## 6.12 Terms of Hedging Agreements

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

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

that Hedging Agreement will:

- (A) if it is based on a 1992 ISDA Master Agreement, provide for payments under the "Second Method" and will make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement;
  - (B) if it is based on a 2002 ISDA Master Agreement, make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement; or
  - (C) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Agreement is in its favour;
- (d) each Hedging Agreement will not provide for Automatic Early Termination other than to the extent that:
    - (i) the provision of Automatic Early Termination is consistent with practice in the relevant derivatives market, taking into account the legal status and jurisdiction of incorporation of the parties to that Hedging Agreement; and
    - (ii) that Automatic Early Termination is:

- (A) as provided for in section 6(a) (Right to Terminate following Event of Default) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);
  - (B) as provided for in section 6(a) (Right to Terminate Following Event of Default) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
  - (C) similar in effect to that described in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
- (e) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to Clause 6.10 (*Required Enforcement: Hedge Counterparties*); and
  - (f) each Hedging Agreement will permit the relevant Hedge Counterparty and each relevant Debtor to take such action as may be necessary to comply with Clause 6.13 (*Total Interest Rate Hedging and Total Exchange Rate Hedging*).

### 6.13 Total Interest Rate Hedging and Total Exchange Rate Hedging

- (a) The Parent shall procure that, at all times:
  - (i) the Total Interest Rate Hedging with respect to a Relevant Hedged Debt does not exceed the Term Outstandings with respect to that Relevant Hedged Debt; and
  - (ii) the Total Exchange Rate Hedging with respect to a Relevant Hedged Debt does not exceed the Term Outstandings with respect to that Relevant Hedged Debt.
- (b) Subject to paragraph (a) above, if:
  - (i) the Total Interest Rate Hedging with respect to a Relevant Hedged Debt is less than the Term Outstandings with respect to that Relevant Hedged Debt, a Debtor may (but, shall be under no obligation to) enter into additional hedging arrangements to increase the Total Interest Rate Hedging with respect to that Relevant Hedged Debt; or
  - (ii) the Total Exchange Rate Hedging with respect to a Relevant Hedged Debt is less than the Term Outstandings with respect to that Relevant Hedged Debt, a Debtor may (but, shall be under no obligation to) enter into additional hedging arrangements to increase the Total Exchange Rate Hedging with respect to that Relevant Hedged Debt.
- (c) If:
  - (i) transactions have been entered into under Hedging Agreements (the “**Relevant Hedging Transactions**”) to hedge currency or interest rate risk in respect of Credit Facility Liabilities and/or Pari Passu Debt Liabilities (the “**Relevant Hedged Debt**”);
  - (ii) the Relevant Hedged Debt relating to such Relevant Hedging Transactions is reduced (in whole or in part) in accordance with the Credit Facility Documents and the Pari Passu Debt Documents, as the case may be; and
  - (iii) the reduction in such Relevant Hedged Debt results in:

- (A) an Interest Rate Hedge Excess with respect to that Relevant Hedged Debt then, on the same day as that reduction becomes effective in accordance with the terms of the relevant Debt Document (save as otherwise expressly agreed between the relevant Debtor and the relevant Hedge Counterparty in the relevant Hedging Agreement), the relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, reduce each Hedge Counterparty's Interest Rate Hedging with respect to that Relevant Hedged Debt by that Hedge Counterparty's Interest Rate Hedging Proportion, with respect to that Relevant Hedged Debt, of that Interest Rate Hedge Excess by terminating or closing out all Relevant Hedging Transaction(s) in full or in part, as may be necessary; or
  - (B) an Exchange Rate Hedge Excess with respect to that Relevant Hedged Debt then, on the same day as that reduction becomes effective in accordance with the terms of the relevant Debt Document (save as otherwise expressly agreed between the relevant Debtor and the relevant Hedge Counterparty in the relevant Hedging Agreement), the relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, reduce each Hedge Counterparty's Exchange Rate Hedging with respect to that Relevant Hedged Debt by that Hedge Counterparty's Exchange Rate Hedging Proportion, with respect to that Relevant Hedged Debt, of that Exchange Rate Hedge Excess by terminating or closing out all Relevant Hedging Transaction(s) in full or in part, as may be necessary.
- (d) The relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) will, pay to that Hedge Counterparty (in accordance with the relevant Hedging Agreement) an amount equal to the sum of all payments (if any) that become due from each relevant Debtor to a Hedge Counterparty under the relevant Hedging Agreement(s) as a result of any action described in paragraph (c) above.
  - (e) Each Hedge Counterparty shall co-operate in any process described in paragraph (c) above and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging Agreement(s) to a Debtor as a result of any action described in paragraph (c) above.

#### 6.14 Allocation of Super Senior Hedging Liabilities

- (a) The Parent may from time to time allocate (or reallocate or effect the release of any previous allocation of) the Super Senior Hedging Amount in whole or in part to one or more Hedge Counterparties subject to this Clause 6.14 (*Allocation of Super Senior Hedging Liabilities*).
- (b) Any allocation or reallocation or release of any previous allocation of the Super Senior Hedging Amount (whether in whole or in part) by the Parent shall only take effect on receipt by the Security Agent (which receipt shall be acknowledged promptly) of a Super Senior Hedging Certificate which complies with the conditions set out in this Clause 6.14 (*Allocation of Super Senior Hedging Liabilities*).
- (c) The Security Agent shall only be required to recognise and give effect to any allocation, reallocation or release of the Super Senior Hedging Amount to a Hedge Counterparty requested by the Parent pursuant to any Super Senior Hedging Certificate to the extent such Super Senior Hedging Certificate:
  - (i) complies in form and substance with the form of Super Senior Hedging Certificate set out in Schedule 6 (*Form of Super Senior Hedging Certificate*);
  - (ii) has been duly executed by: (A) the Parent; (B) the Hedge Counterparty to whom any portion of the available Super Senior Hedging Amount is to be allocated and (C) if applicable, any Hedge Counterparty who is to release any portion of any Super

- Senior Hedging Amount previously allocated to it in accordance with this Clause 6.14 (*Allocation of Super Senior Hedging Liabilities*);
- (iii) has been delivered to the Security Agent on or prior to the later of (A) the date of this Agreement and (B) entry into the first Hedging Agreement with such Hedge Counterparty in respect of which an allocation of the Super Senior Hedging Amount is being requested;
  - (iv) identifies the portion of the Super Senior Hedging Amount (by reference to an amount in the Common Currency) that is to be allocated to the proposed new Super Senior Hedge Counterparty and/or released by an existing Super Senior Hedge Counterparty;
  - (v) identifies the relevant Hedging Agreement pursuant to which the relevant Hedging Liabilities arise; and
  - (vi) complies with paragraph (d) below and does not otherwise purport to allocate any part of the Super Senior Hedging Amount which is not available for allocation or which has previously been allocated and not released to any other Hedge Counterparty pursuant to this Clause 6.14 (*Allocation of Super Senior Hedging Liabilities*).
- (d) No Allocated Super Senior Hedging Amount may, whether on an individual basis or when aggregated with all previously Allocated Super Senior Hedging Amounts (to the extent not released pursuant to this Clause 6.14 (*Allocation of Super Senior Hedging Liabilities*)), exceed the lower of:
- (i) the Super Senior Hedging Amount; and
  - (ii) any hedging limit specified in any Credit Facility Agreement or any Pari Passu Debt Document or Surety Bond Facility Agreement entered into after the date of this Agreement and notified in writing to the Security Agent by the relevant Creditor Representative or Surety Bond Provider to the extent that such limit is not lower than the aggregate of all Allocated Super Senior Hedging Amounts existing as at the date of notification.
- (e) The Security Agent shall not accept or give effect to any Super Senior Hedging Certificate to the extent it allocates or purports to allocate any part of the Super Senior Hedging Amount in breach of paragraph (d) above and if, for any reason, the aggregate Allocated Super Senior Hedging Amount at any time exceeds the Super Senior Hedging Amount, only the amounts so notified to the Security Agent, which, taken in the order of being accepted by the Security Agent, add up to, but do not exceed, the Super Senior Hedging Amount shall be treated as Allocated Super Senior Hedging Amounts.
- (f) An Allocated Super Senior Hedging Amount may not be:
- (i) subject to paragraph (e) above, changed without the prior written consent of the relevant Hedge Counterparty to whom such Allocated Super Senior Hedging Amount has been allocated pursuant to this Clause 6.14 (*Allocation of Super Senior Hedging Liabilities*); or
  - (ii) allocated to another Hedge Counterparty or to any other Hedging Liabilities or Hedging Agreement other than through delivery of a Super Senior Hedging Certificate duly executed by the Parent and each Hedge Counterparty who agrees to release or reallocate any part of the Allocated Super Senior Hedging Amount.

- (g) The Security Agent shall maintain a register for the recording of the names and addresses of the Hedge Counterparties and the Allocated Super Senior Hedging Amounts of each such Hedge Counterparty (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and the Parent, the Security Agent and the Hedge Counterparties shall treat each person whose name is recorded in the Register as a Super Senior Hedge Counterparty for the purposes of this Agreement to the extent of its Super Senior Hedging Liabilities. The Register shall be available for inspection by the Parent and any Hedge Counterparty, at all reasonable times and on reasonable notice to the Security Agent.

#### 6.15 Hedge Counterparties’ Guarantee and Indemnity

Each Debtor agrees that it will be bound by the obligations set out in Schedule 7 (*Hedge Counterparties’ Guarantee and Indemnity*).

### 7. OPTION TO PURCHASE AND HEDGE TRANSFER

#### 7.1 Option to purchase: Pari Passu Debt Creditors

- (a) Subject to paragraphs (b) and (c) below some or all of the Pari Passu Noteholders and Pari Passu Lenders (the “**Purchasing Secured Creditors**”) may after a Distress Event, after having given all Pari Passu Noteholders and Pari Passu Lenders the opportunity to participate in such purchase, by giving not less than ten (10) days’ notice to the Security Agent, require the transfer to them (or to a nominee or nominees), in accordance with Clause 22.3 (*Change of Credit Facility Lender or Pari Passu Lender under an existing Credit Facility or Pari Passu Facility*), of all, but not part, of the rights, benefits and obligations in respect of the Credit Facility Liabilities if:
- (i) that transfer is lawful and, subject to paragraph (ii) below, otherwise permitted by the terms of the relevant Credit Facility Agreement;
  - (ii) any conditions relating to such a transfer contained in the relevant Credit Facility Agreement are complied with, other than:
    - (A) any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required; and
    - (B) to the extent to which the Purchasing Secured Creditors provide cash cover for any Letter of Credit, the consent of the relevant Issuing Bank relating to such transfer; and
    - (C) any condition more onerous than those contained in clause 29 (*Changes to the Lenders*) of the original form of the Initial Revolving Facility Agreement;
  - (iii) the relevant Creditor Representative, on behalf of the Credit Facility Lenders, is paid an amount by the Purchasing Secured Creditors equal to the aggregate of:
    - (A) any amounts provided as cash cover by the Purchasing Secured Creditors for any Letter of Credit (as envisaged in paragraph (ii)(B) above);
    - (B) all of the Credit Facility Liabilities at that time (whether or not due), including all amounts that would have been payable under the Credit Facility Documents if the Credit Facility Liabilities were being prepaid by the relevant Debtors on the date of that payment; and

- (C) all costs and expenses (including legal fees) incurred by the relevant Agent and/or the Credit Facility Lenders as a consequence of giving effect to that transfer;
  - (iv) as a result of that transfer the Credit Facility Lenders have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
  - (v) an indemnity is provided from the Purchasing Secured Creditors (or from another third party acceptable to all the Credit Facility Lenders) in a form satisfactory to each Credit Facility Lender in respect of all losses which may be sustained or incurred by any Credit Facility Lender in consequence of any sum received or recovered by any Credit Facility Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Credit Facility Lender for any reason; and
  - (vi) the transfer is made without recourse to, or representation or warranty from, the Credit Facility Lenders, except that each Credit Facility Lender shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) Subject to paragraph (b) of Clause 7.2 (*Hedge Transfer: Pari Passu Debt Creditors*), the Purchasing Secured Creditors may only require a Credit Facility Lender Liabilities Transfer if, at the same time, they require a Hedge Transfer in accordance with Clause 7.2 (*Hedge Transfer: Pari Passu Debt Creditors*) and if, for any reason, a Hedge Transfer cannot be made in accordance with Clause 7.2 (*Hedge Transfer: Pari Passu Debt Creditors*), no Credit Facility Lender Liabilities Transfer may be required to be made.
- (c) The Creditor Representatives in respect of the Credit Facilities shall, at the request of the Purchasing Secured Creditors notify the Pari Passu Noteholders and Pari Passu Lenders of:
- (i) the sum of the amounts described in paragraphs (a)(iii)(B) and (C) above; and
  - (ii) the amount of each Letter of Credit for which cash cover is to be provided by all the Purchasing Secured Creditors.
- (d) If more than one Purchasing Secured Creditor wishes to exercise the option to purchase the Credit Facility Liabilities in accordance with paragraph (a) above, each such Purchasing Secured Creditor shall:
- (i) acquire the Credit Facility Liabilities *pro rata*, in the proportion that its Pari Passu Credit Participation bears to the aggregate Pari Passu Credit Participations of all the Purchasing Secured Creditors; and
  - (ii) inform the Senior Secured Note Trustee in accordance with the terms of the Senior Secured Note Indenture or the relevant Creditor Representative(s) in accordance with the terms of the relevant Pari Passu Debt Documents, who will determine (consulting with each other as required) the appropriate share of the Credit Facility Liabilities to be acquired by each such Purchasing Secured Creditor and who shall inform each such Purchasing Secured Creditor accordingly,

and the Senior Secured Note Trustee or the relevant Creditor Representative(s) (as applicable) shall promptly inform the Creditor Representatives of the Credit Facility Lenders and the Hedge Counterparties of the Purchasing Secured Creditors intention to exercise the option to purchase the Credit Facility Liabilities.

## 7.2 Hedge Transfer: Pari Passu Debt Creditors

- (a) The Purchasing Secured Creditors may, by giving not less than ten (10) days' notice to the Security Agent, require a Hedge Transfer:
- (i) if either:
    - (A) the Purchasing Secured Creditors require, at the same time, a Credit Facility Lender Liabilities Transfer; or
    - (B) the Purchasing Secured Creditors require that Hedge Transfer at any time on or after the Credit Facility Lender Discharge Date; and
  - (ii) if:
    - (A) that transfer is lawful and otherwise permitted by the terms of the Hedging Agreements in which case no Debtor or other member of the Group shall be entitled to withhold its consent to that transfer;
    - (B) any conditions (other than the consent of, or any consultation with, any Debtor or other member of the Group) relating to that transfer contained in the Hedging Agreements are complied with;
    - (C) each Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of (i) the Hedging Purchase Amount in respect of the hedging transactions under the relevant Hedging Agreement at that time and (ii) all costs and expenses (including legal fees) incurred as a consequence of giving effect to that transfer;
    - (D) as a result of that transfer, the Hedge Counterparties have no further actual or contingent liability to any Debtor under the Hedging Agreements;
    - (E) an indemnity is provided from the Purchasing Secured Creditors which is receiving (or for which a nominee is receiving) that transfer (or from another third party acceptable to the relevant Hedge Counterparty) in a form satisfactory to the relevant Hedge Counterparty in respect of all losses which may be sustained or incurred by that Hedge Counterparty in consequence of any sum received or recovered by that Hedge Counterparty being required (or it being alleged that it is required) to be paid back by or clawed back from the Hedge Counterparty for any reason; and
    - (F) that transfer is made without recourse to, or representation or warranty from, the relevant Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) The Purchasing Secured Creditors and any Hedge Counterparty may agree (in respect of the Hedging Agreements (or one or more of them) to which that Hedge Counterparty is a party) that a Hedge Transfer required by the Purchasing Secured Creditors pursuant to paragraph (a) above shall not apply to that Hedging Agreement(s) or to the Hedging Liabilities and Hedge Counterparty Obligations under that Hedging Agreement(s).

## 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 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 (c) 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 unless:
  - (i) the Required Super Senior Creditors and the Required Pari Passu Creditors consent to that Payment being made; or
  - (ii) that Payment is made to facilitate the making of a Permitted Credit Facility Payment, a Permitted Surety Bond Payment, a Permitted Hedge Payment or a Permitted Pari Passu Debt Payment.

### 8.3 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 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 a Credit Facility Agreement, the Surety Bond Facility Agreement, a Pari Passu Note Indenture or a Pari Passu Facility Agreement; or
  - (ii) at the time of that action, an Acceleration Event has occurred.
- (c) The restrictions in paragraph (b) above shall not apply if:

- (i) the Required Super Senior Creditors, the Surety Bond Provider and the Required Pari Passu Creditors consent to that action; or
- (ii) that action is taken to facilitate the making of a Permitted Credit Facility Payment, a Permitted Hedge Payment or a Permitted Pari Passu Debt Payment.

#### 8.5 **Security: Intra-Group Lenders**

Prior to the Final Discharge Date, the Intra-Group Lenders may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Intra-Group Liabilities unless:

- (a) that Security, guarantee, indemnity or other assurance against loss is expressly permitted by the Credit Facility Agreement(s), the Surety Bond Facility, the Pari Passu Facility Agreement(s) and the Pari Passu Note Indenture(s); or
- (b) the prior consent of the Required Super Senior Creditors, the Surety Bond Provider and the Required Pari Passu Creditors is obtained.

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

Subject to Clause 8.7 (*Permitted Enforcement: Intra-Group Lenders*), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date.

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

After the occurrence of an Insolvency Event in relation to any member of the Group, each Intra-Group Lender may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Intra-Group Lender in accordance with Clause 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 Intra-Group Liabilities or declare them prematurely due and payable or payable on demand;
- (b) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Intra-Group Liabilities;
- (c) exercise any right of set-off or take or receive any Payment in respect of any Intra-Group Liabilities of that member of the Group; or
- (d) claim and prove in the liquidation of that member of the Group for the Intra-Group Liabilities owing to it.

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

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

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

- (c) the entry into and performance by it of 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;
  - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets; or
  - (iii) breach any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets to such an extent or in such a manner which gives rise to or would be reasonably be likely to give rise to a material adverse effect.

## 9. SUBORDINATED LIABILITIES

### 9.1 Restriction on Payment: Subordinated Liabilities

Prior to the Final Discharge Date, neither the Parent nor any other Debtor shall, and the Parent shall procure that no other member of the Group will, make any Payment of the Subordinated Liabilities at any time unless:

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

### 9.2 Permitted Payments: Subordinated Liabilities

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

- (a) the Payment is expressly permitted by the Credit Facility Agreement(s), the Surety Bond Facility Agreement, the Pari Passu Facility Agreement(s) and the Pari Passu Note Indenture(s); or
- (b) the Required Super Senior Creditors, the Surety Bond Provider and the Required Pari Passu Creditors each consent to that Payment being made.

### 9.3 Payment obligations continue

Neither the Parent nor any other Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 9.1 (*Restriction on Payment: Subordinated Liabilities*) and 9.2 (*Permitted Payments: Subordinated Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

### 9.4 No acquisition of Subordinated Liabilities

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

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

in respect of any of the Subordinated Liabilities, unless the prior consent of the Required Pari Passu Creditors is obtained.

#### 9.5 **Amendments and Waivers: Subordinated Creditors**

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

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

#### 9.6 **Security: Subordinated Creditors**

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

#### 9.7 **Restriction on Enforcement: Subordinated Creditors**

Subject to Clause 9.8 (*Permitted Enforcement: Subordinated Creditors*), no Subordinated Creditor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Final Discharge Date.

#### 9.8 **Permitted Enforcement: Subordinated Creditors**

After the occurrence of an Insolvency Event in relation to any member of the Group, each Subordinated Creditor may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Subordinated Creditor in accordance with Clause 10.5 (*Filing of claims*)) exercise any right it may otherwise have in respect of that member of the Group to:

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

#### 9.9 **Representations: Subordinated Creditors**

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

- (a) it is a corporation, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;

- (b) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of 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;
  - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets; or
  - (iii) breach any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets to such an extent or in such a manner which gives rise to or would be reasonably be likely to give rise to a material adverse effect.

## 10. EFFECT OF INSOLVENCY EVENT

### 10.1 Credit Facility Cash Cover

This Clause 10 is subject to Clause 17.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*) and Clause 21.5 (*Turnover obligations*).

### 10.2 Distributions

- (a) After the occurrence of an Insolvency Event in relation to any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group (in the case of a Primary Creditor, only to the extent that such amount constitutes Enforcement Proceeds but excluding, for the avoidance of doubt, in the case of any Surety Bond Provider any amounts received pursuant to the Surety Bond Only Security up to a maximum amount of the Relevant Surety Bond Facility Priority Amount) in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to make that distribution to the Security Agent (or to such other person as the Security Agent shall direct) until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Security Agent shall apply distributions made to it under paragraph (a) above in accordance with Clause 17 (*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 in relation to that member of the Group, any Creditor which benefited from that set-off shall (in the case of a Primary Creditor, only to the extent that such amount constitutes Enforcement Proceeds) 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 17 (*Application of Proceeds*).
- (b) Paragraph (a) above shall not apply to:
  - (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Permitted Gross Outstandings of a Multi-account Overdraft 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) in the case of any Surety Bond Provider, any netting pursuant to the Surety Bond Only Security up to a maximum amount of the Relevant Surety Bond Facility Priority Amount;
- (v) any Inter-Hedging Agreement Netting by a Hedge Counterparty; and
- (vi) 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 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

- (a) Without prejudice to any Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that the netting or set-off represents a reduction of the Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount), after the occurrence of an Insolvency Event in relation to any member of the Group, each Creditor irrevocably authorises the Security Agent, on its behalf, to:
  - (i) take any Enforcement Action (in accordance with the terms of this Agreement) against that member of the Group;
  - (ii) demand, sue, prove and give receipt for any or all of that member of the Group's Liabilities;
  - (iii) collect and receive all distributions on, or on account of, any or all of that member of the Group's Liabilities; and
  - (iv) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover that member of the Group's Liabilities.
- (b) Paragraph (a) above shall not apply to any Surety Bond Provider to the extent only that such claim may be satisfied from its Relevant Surety Bond Facility Priority Amount.

#### 10.6 Further assurance – Insolvency Event

Each Creditor will:

- (a) do all things that the Security Agent requests in order to give effect to this Clause 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 requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action.

#### 10.7 Security Agent instructions

For the purposes of Clause 10.2 (*Distributions*), Clause 10.5 (*Filing of claims*) and Clause 10.6 (*Further assurance – Insolvency Event*) the Security Agent shall act:

- (a) on the instructions of an 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 17.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*) and Clause 21.5 (*Turnover Obligations*).

### 11.2 **Turnover by the Primary Creditors**

Subject to Clause 11.4 (*Exclusions*) and to Clause 11.5 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Primary Creditor receives or recovers any Enforcement Proceeds except in accordance with Clause 17 (*Application of Proceeds*), that Primary Creditor will:

- (a) in relation to receipts and recoveries not received or recovered by way of set-off:
  - (i) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and
  - (ii) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and
- (b) 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 **Turnover by the other Creditors**

Subject to Clause 11.4 (*Exclusions*) and to Clause 11.5 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Creditor other than a Primary Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is neither:
  - (i) a Permitted Payment; nor
  - (ii) made in accordance with Clause 17 (*Application of Proceeds*);
- (b) other than where paragraph (a) of 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 paragraph (a) of 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 member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
  - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,
- other than, in each case, any amount received or recovered in accordance with Clause 17 (*Application of Proceeds*);
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 17 (*Application of Proceeds*); or
  - (e) other than where paragraph (a) of Clause 10.3 (*Set-Off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with Clause 17 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,

that Creditor will (other than a Primary Creditor):

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

#### 11.4 Exclusions

Clause 11.2 (*Turnover by the Primary Creditors*) and Clause 11.3 (*Turnover by other 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;
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that that netting or set-off represents a reduction of the Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount); or
- (c) made in accordance with Clause 18 (*Equalisation*).

### 11.5 Permitted assurance and receipts

Nothing in this Agreement shall restrict the ability of any Primary Creditor or Subordinated 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 22 (*Changes to the Parties*),

which:

- (i) is expressly permitted by:
  - (A) the Credit Facility Agreement(s);
  - (B) the Surety Bond Facility Agreement; and
  - (C) the Pari Passu Facility Agreement(s) and the Pari Passu Note Indenture(s); and
- (ii) is not in breach of:
  - (A) Clause 6.5 (*No acquisition of Hedging Liabilities*); or
  - (B) Clause 9.4 (*No acquisition of Subordinated Liabilities*),

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

### 11.6 Amounts received by Debtors

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

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

### 11.7 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 or distribute an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

## 12. REDISTRIBUTION

### 12.1 Recovering Creditor's rights

- (a) Any amount paid or distributed 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 or distributed by the relevant Debtor and shall be applied by the Security Agent in accordance with Clause 17 (*Application of Proceeds*).

- (b) On an application by the Security Agent pursuant to Clause 17 (*Application of Proceeds*) of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent by the Recovering Creditor (the “**Shared Amount**”) will be treated as not having been paid or distributed by that Debtor.

## 12.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returned by that Recovering Creditor to that Debtor, then:
  - (i) each Party that received any part of that Shared Amount pursuant to an application by the Security Agent of that Shared Amount under Clause 12.1 (*Recovering Creditor’s rights*) (a “**Sharing Party**”) shall (subject to Clause 21 (*Pari Passu Note Trustee Protections*)), upon request of the Security Agent, pay or distribute to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the “**Redistributed Amount**”); and
  - (ii) as between the relevant Debtor and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor.
- (b) The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Party.

## 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*) or the order of application in Clause 17 (*Application of Proceeds*) until such time as all of the Liabilities owing to each prior ranking Creditor (or, in the case of any Debtor, owing to each Creditor) have been irrevocably discharged in full.
- (b) No Subordinated Creditor will exercise any rights which it may have to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor until such time as all of the Liabilities owing to each Primary Creditor have been irrevocably discharged in full.

## 13. ENFORCEMENT OF TRANSACTION SECURITY

### 13.1 Credit Facility Cash Cover

This Clause 13 is subject to Clause 17.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*).

### 13.2 Instructions to enforce

- (a) If either the Majority Super Senior Creditors, the Surety Bond Provider (with respect to the Surety Bond Only Security in accordance with paragraph (f) below) or the Majority Pari Passu Creditors wish to issue Enforcement Instructions, the Creditor Representatives (and, if applicable, Hedge Counterparties) representing the Primary Creditors comprising the Majority Super Senior Creditors or Majority Pari Passu Creditors or the Surety Bond Provider (as the case may be) shall deliver a copy of those proposed Enforcement Instructions (an “**Initial Enforcement Notice**”) to the Security Agent and the Security Agent shall promptly forward such Initial Enforcement Notice to each Creditor Representative, Surety Bond Provider (if applicable) and each Hedge Counterparty which did not deliver such Initial Enforcement Notice.
- (b) Subject to paragraphs (c), (d), (e) and (f) below, the Security Agent will act in accordance with Enforcement Instructions received from the Majority Pari Passu Creditors.
- (c) If:
- (i) the Majority Pari Passu Creditors have not either:
    - (A) made a determination as to the method of Enforcement they wish to instruct the Security Agent to pursue (and notified the Security Agent of that determination in writing); or
    - (B) appointed a Financial Adviser to assist them in making such a determination,

within three (3) months of the date of the Initial Enforcement Notice; or
  - (ii) the Super Senior Discharge Date has not occurred within six (6) months of the date of the Initial Enforcement Notice,
- then the Security Agent will act in accordance with Enforcement Instructions received from the Majority Super Senior Creditors until the Super Senior Discharge Date has occurred.
- (d) If an Insolvency Event (other than an Insolvency Event directly caused by any Enforcement Action taken by or at the request or direction of the Required Pari Passu Creditors or any Super Senior Creditor) is continuing with respect to a Debtor then the Security Agent will, to the extent the Majority Super Senior Creditors elect to provide such Enforcement Instructions, act in accordance with Enforcement Instructions received from the Majority Super Senior Creditors until the Super Senior Discharge Date has occurred.
- (e) If the Majority Pari Passu Creditors have not either:
- (i) made a determination as to the method of Enforcement they wish to instruct the Security Agent to pursue (and notified the Security Agent of that determination in writing); or
  - (ii) appointed a Financial Adviser to assist them in making such a determination,
- and the Majority Super Senior Creditors:
- (A) determine in good faith (and notify the other Creditor Representatives, the Hedge Counterparties, the Surety Bond Provider and the Security Agent) that a delay in issuing Enforcement Instructions could reasonably be expected to have a material adverse effect on the ability to effect a

Distressed Disposal or on the expected realisation proceeds of any Enforcement; and

- (B) deliver Enforcement Instructions which they reasonably believe to be consistent with the Enforcement Principles and necessary or advisable to enhance the prospects of achieving the Enforcement Objective before the Security Agent has received any Enforcement Instructions from the Majority Pari Passu Creditors,

then the Security Agent will act in accordance with the Enforcement Instructions received from the Majority Super Senior Creditors until the Super Senior Discharge Date has occurred.

- (f) Each Surety Bond Provider may take Enforcement Action in relation to the Surety Bond Only Security provided to it in connection with the relevant Surety Bond Facility at any time in accordance with the terms of the relevant Surety Bond Facility Agreement.

### 13.3 Enforcement Instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security or taking any other action as to Enforcement unless instructed otherwise by an Instructing Group in accordance with Clause 13.2 (*Instructions to enforce*).
- (b) Subject to Clause 13.2 (*Instructions to enforce*), an Instructing Group may give or refrain from giving instructions to the Security Agent to take action as to Enforcement in accordance with the Enforcement Principles as they see fit by way of the issuance of Enforcement Instructions.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 13.3.

### 13.4 Manner of enforcement

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 (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Security Agent) as an Instructing Group shall instruct (**provided that** such instructions are consistent with the Enforcement Principles) or, in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate and consistent with the Enforcement Principles.

### 13.5 Exercise of voting rights

- (a) Subject to paragraph (c) below, each Creditor (other than each Creditor Representative and each Arranger) will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent.
- (b) Subject to paragraph (c) below, the Security Agent shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by an Instructing Group **provided that** any such instructions have been given in accordance with Clause 13.3 (*Enforcement Instructions*).
- (c) Nothing in this Clause 13.5 entitles any party to exercise or require any other Primary Creditor to exercise such power of voting or representation to waive, reduce, discharge, extend the due date for (or change the basis for accrual of any) payment of or reschedule any of the Liabilities owed to that Primary Creditor.

### 13.6 **Waiver of rights**

To the extent permitted under applicable law and subject to Clause 13.3 (*Enforcement Instructions*), Clause 13.4 (*Manner of enforcement*), Clause 15.2 (*Proceeds of Distressed Disposals and Debt Disposals*), Clause 15.3 (*Fair value*) and Clause 17 (*Application of Proceeds*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

### 13.7 **Duties owed**

Each of the Secured Parties and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security, the duties of the Security Agent and of any Receiver or Delegate owed to them in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to Clause 15.2 (*Proceeds of Distressed Disposals and Debt Disposals*) and Clause 15.3 (*Fair value*), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors under general law.

### 13.8 **Enforcement through Security Agent only**

- (a) The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.
- (b) For all Mexican law purposes, each of the Secured Parties hereby grants a *comisión mercantil con representación* to the Security Agent pursuant to Articles 273, 274 and other correlative articles of the Mexican Commerce Code (*Código de Comercio*) so that the Security Agent may on its behalf enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents, pursuant to the terms set forth herein, and the Security Agent hereby accepts such *comisión mercantil*.

### 13.9 **Alternative Enforcement Actions**

After the Security Agent has commenced Enforcement, it shall not accept any subsequent instructions as to Enforcement (save in the case where paragraph (c) of Clause 13.2 (*Instructions to enforce*) applies) from anyone other than an Instructing Group that instructed it to commence such enforcement of the Transaction Security, regarding any other enforcement of the Transaction Security over or relating to shares or assets directly or indirectly the subject of the enforcement of the Transaction Security which has been commenced (and, for the avoidance of doubt, during any enforcement of the Transaction Security only paragraph (b) of the definition of Instructing Group shall be applicable in relation to any instructions given to the Security Agent by an Instructing Group under this Agreement).

## 14. **NON-DISTRESSED DISPOSALS**

### 14.1 **Definitions**

In this Clause 14:

- (a) “**Disposal Proceeds**” means the proceeds of a Non-Distressed Disposal;
- (b) “**Intra-Group Disposal**” means a disposal of an asset which is subject to the Transaction Security, by one member of the Restricted Group to another member of the Restricted Group other than pursuant to a Permitted Reorganisation, where:

- (i) two (2) directors of the Parent certify for the benefit of the Security Agent that the disposal and the release of relevant Transaction Security is permitted under the Credit Facility Documents and the Pari Passu Debt Documents (**provided that** such certificate has been provided to the relevant Creditor Representative(s) and the relevant Creditor Representative(s) have not objected to such certificate within five (5) Business Days of receipt of such certificate) or the Creditor Representative in respect of each Credit Facility and the Creditor Representative in respect of each Pari Passu Debt Creditor authorises the release; and
  - (ii) that disposal is not a Distressed Disposal; and
- (c) **“Non-Distressed Disposal”** means a disposal:
- (i) to a person or persons outside the Group of:
    - (A) an asset of a member of the Group; or
    - (B) an asset which is subject to the Transaction Security,
 where:
    - (1) the Creditor Representative in respect of each Credit Facility notifies the Security Agent that that disposal is not prohibited under its Credit Facility Documents;
    - (2) the Surety Bond Provider notifies the Security Agent that that disposal is not prohibited under the Surety Bond Facility Agreement;
    - (3) two directors of the Parent certify for the benefit of the Security Agent that the disposal and, if the disposal is of Charged Property, the release of Transaction Security is expressly permitted under the Pari Passu Debt Documents (**provided that** such certificate has been provided to the relevant Creditor Representative(s) and the relevant Creditor Representative(s) have not objected to such certificate within five (5) Business Days of receipt of such certificate) or the Creditor Representative in respect of each Pari Passu Facility Agreement and Pari Passu Note Indenture authorises the release; and
    - (4) that disposal is not a Distressed Disposal; or
  - (ii) to a member of the Restricted Group other than the Parent pursuant to a Permitted Reorganisation.

#### 14.2 Facilitation of Non-Distressed Disposals, Intra-Group Disposals and Permitted Releases

- (a) If:
  - (i) a disposal of an asset is a Non-Distressed Disposal; or
  - (ii) the Parent has confirmed a release to effect a Permitted Reorganisation; or
  - (iii) the Parent has confirmed a release to effect a Local Debt Financing,

the Security Agent is irrevocably authorised (**provided that** it is satisfied it has adequate coverage for all costs, fees and expenses in relation to such action from the Parent and without

any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) but subject to paragraphs (b) and (c) below:

- (A) to release the Transaction Security or any other claim (relating to a Debt Document) over the relevant asset;
  - (B) where the relevant asset consists of shares in the capital of a member of the Group, to release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group's Property; and
  - (C) 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; or
- (iv) a disposal of an asset is an Intra-Group Disposal, the Security Agent is irrevocably authorised and required (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) but subject to paragraph (b) below:
- (A) to release (or procure the release of) the Transaction Security or any other claim (relating to a Debt Document) over that asset;
  - (B) where that asset consists of shares in the capital of a member of the Restricted Group, to release (or procure the release of) the Transaction Security or any other claim (relating to a Debt Document) over that member of the Restricted Group's Property (including, without limitation, any Guarantee Liability or Other Liabilities); and
  - (C) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraphs (A) and (B) 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 an asset which is subject to Transaction Security:

- (1) to the extent legally possible, such Intra-Group Disposal is made subject to the existing Transaction Security; or
- (2) to the extent that it is not legally possible for the Intra-Group Disposal to be made subject to the existing Transaction Security, on or before the date of which any release referred to above is effected, (at the cost of the Parent or any other Debtor), Transaction Security of at least equivalent ranking is retaken over the assets which are the subject of that Intra-Group Disposal and the Parent delivers to the Security Agent:
  - (aa) a solvency opinion, in form and substance satisfactory to the Security Agent, from an investment banking firm, appraisal firm or accounting firm of international standing confirming the solvency of the Parent and its Subsidiaries, taken as a whole, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or replacement;

- (bb) an Officer's Certificate (in the form appended to the Senior Secured Notes Indenture, *mutatis mutandis*) from the Parent (acting in good faith), that confirms the solvency of the Parent and its subsidiaries after giving effect to any transaction related to such amendment, extension, renewal, restatement, replacement, supplement, modification or release; or
  - (cc) an opinion of counsel acceptable to the Security Agent, in form and substance satisfactory to the Security Agent, confirming that, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or replacement, the Transaction Security securing the Liabilities created under the Security Documents, as so amended, extended, renewed, restated, supplemented, modified or replaced, is valid and perfected Transaction Security not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, that such Transaction Security was not otherwise subject to immediately prior to such amendment, extension, renewal, restatement, supplement, modification or replacement.
- (b) Each release of Transaction Security or any claim described in paragraph (a) above shall become effective only on the making of the relevant Non-Distressed Disposal, the taking of a step in connection with the relevant Permitted Reorganisation or the obtaining of the Local Debt Financing (as applicable).
  - (c) With respect to a Permitted Reorganisation, each release of Transaction Security or any claim described in paragraph (a) above shall be permitted **provided that** the Parent complies with the proviso in such definition (to the extent applicable), including in relation to the giving of guarantees or the granting of Transaction Security.

#### 14.3 Disposal Proceeds

If any Disposal Proceeds are required to be applied in mandatory prepayment of the Credit Facility Liabilities or the Pari Passu Debt Liabilities then those Disposal Proceeds shall be applied in accordance with the Debt Documents and the consent of any other Party shall not be required for that application.

#### 14.4 Release of Unrestricted Subsidiaries

If a member of the Group is designated as an Unrestricted Subsidiary in accordance with the terms of each of the Credit Facility Documents, the Surety Bond Facility Agreement and the Pari Passu Debt Documents, the Security Agent is irrevocably authorised and obliged (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor or Debtor):

- (a) to release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group's assets; and
- (b) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraph (a) 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 or as requested by the Parent.

## 15. DISTRESSED DISPOSALS

### 15.1 Facilitation of Distressed Disposals

Subject to Clause 15.4 (*Restriction on enforcement*), if a Distressed Disposal is being effected the Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor):

- (a) ***release of Transaction Security/non-crystallisation certificates***: to release the Transaction Security or any other claim over the asset subject to the Distressed Disposal 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 subject to the Distressed Disposal consists of shares in the capital of a Debtor, to release:
  - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
    - (A) its Borrowing Liabilities;
    - (B) its Guarantee Liabilities; and
    - (C) its Other Liabilities;
  - (ii) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
  - (iii) any other claim of a Subordinated Creditor, an Intra-Group Lender, or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;
- (c) ***release of liabilities and Transaction Security on a share sale (Holding Company)***: if the asset subject to the Distressed Disposal consists of shares in the capital of any Holding Company of a Debtor, to release:
  - (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
    - (A) its Borrowing Liabilities;
    - (B) its Guarantee Liabilities; and
    - (C) its Other Liabilities;
  - (ii) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and
  - (iii) any other claim of a Subordinated Creditor, an Intra-Group Lender or another Debtor over the assets of any Subsidiary of that Holding Company,

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

- (i) the Liabilities (other than Liabilities due to any Creditor Representative or Credit Facility Arranger); or
- (ii) the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables (the "**Transferee**") will not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Creditors and Debtors **provided that** notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement;

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

- (i) the Liabilities (other than Liabilities due to any Creditor Representative or Credit Facility Arranger); or
- (ii) the Debtors' Intra-Group Receivables,

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

- (A) all (and not part only) of the Liabilities owed to the Primary Creditors (other than to any Creditor Representative or Credit Facility Arranger); and
- (B) all or part of any other Liabilities (other than Liabilities owed to any Creditor Representative or Credit Facility Arranger) and the Debtors' Intra-Group Receivables,

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

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

- (i) the Intra-Group Liabilities; or
- (ii) the Debtors' Intra-Group Receivables,

to execute and deliver or enter into any agreement to:

- (iii) agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Intra-Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
- (iv) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the Receiving Entity or

Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables are to be transferred.

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

The net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Security Agent for application in accordance with Clause 17 (*Application of Proceeds*) and, to the extent that any Liabilities Sale has occurred, as if that Liabilities Sale had not occurred.

#### 15.3 **Fair value**

In the case of:

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

effected by, or at the request of, the Security Agent, the Security Agent shall act in accordance with this Agreement.

#### 15.4 **Restriction on enforcement**

If a Distressed Disposal or a Liabilities Sale is being effected:

- (a) the Security Agent is not authorised to release any Debtor, Subsidiary or Holding Company from any Borrowing Liabilities or Guarantee Liabilities owed to any Primary Creditor except in accordance with this Clause 15 (*Distressed Disposals*);
- (b) no Distressed Disposal or Liabilities Sale may be made for consideration in a form other than cash except to the extent contemplated by Schedule 4 (*Enforcement Principles*); and
- (c) the relevant Primary Creditors shall simultaneously effect the unconditional release (or unconditional transfer to the purchaser of the relevant member of the Group) of all Borrowing Liabilities, Guarantee Liabilities and Other Liabilities owing to the Primary Creditors by the relevant Debtor and each of its direct and indirect Subsidiaries.

#### 15.5 **Appointment of Financial Adviser**

Without prejudice to Clause 20.8 (*Rights and discretions*), the Security Agent may engage, or approve the engagement of, pay for and rely on the services of a Financial Adviser in accordance with Schedule 4 (*Enforcement Principles*).

#### 15.6 **Security Agent's actions**

For the purposes of Clause 15.1 (*Facilitation of Distressed Disposals*) and Clause 15.3 (*Fair Value*) the Security Agent shall act:

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

### 16. **FURTHER ASSURANCE – DISPOSALS AND RELEASES**

- (a) Each Creditor and Debtor will:
  - (i) do all things that the Security Agent requests in order to give effect to Clause 14 (*Non-Distressed Disposals*) and Clause 15 (*Distressed 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 those Clauses); and

- (ii) if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests that any Creditor or 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 (*Non-Distressed Disposals*) or Clause 15 (*Distressed Disposals*) as the case may be.

- (b) Without prejudice to paragraph (a) above, the Security Agent shall (at the cost and expense of the relevant Debtor or the Parent but without the need for any further consent, sanction, authority or further confirmation from any Creditor or Debtor) promptly enter into (or procure that any relevant person enters into) and deliver such documentation and/or take such other action as the Parent (acting reasonably) shall require to give effect to any release or other matter contemplated by Clause 14 (*Non-Distressed Disposals*) and Clause 15 (*Distressed Disposals*).
- (c) Notwithstanding anything to the contrary in any Debt Document, nothing in any Security Document shall operate or be construed so as to prevent any transaction, matter or other step not prohibited by the terms of this Agreement and the other Debt Documents (a “**Permitted Transaction**”). The Security Agent (on behalf of the Secured Parties) hereby agrees (and is irrevocably authorised and instructed by the Secured Parties to do so without any consent, sanction, authority or further confirmation from any Party) that it shall (at the request and cost of the Parent) promptly execute any release or other document and/or take such other action under or in relation to any Debt Document (or any asset subject or expressed to be subject to any Security Document) as is requested by the Parent in order to complete, implement or facilitate a Permitted Transaction.

## 17. APPLICATION OF PROCEEDS

### 17.1 Order of application

Subject to Clause 17.2 (*Prospective liabilities*), Clause 17.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*) and Clause 17.4 (*Surety Bond Only Security*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 17, 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 17), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent, any Receiver or any Delegate and in payment to the Creditor Representatives of the Creditor Representative Amounts;
- (b) in discharging all costs and expenses incurred by any Primary Creditor in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 10.6 (*Further assurance – Insolvency Event*);
- (c) in payment or distribution to:
  - (i) each Creditor Representative in respect of a Credit Facility on its own behalf and on behalf of the Credit Facility Creditors for which it is the Creditor Representative;
  - (ii) the Surety Bond Provider; and

(iii) the Super Senior Hedge Counterparties,

for application towards the discharge of:

- (A) the Credit Facility Liabilities (in accordance with the terms of the Credit Facility Documents) on a *pro rata* basis between Credit Facility Liabilities incurred under separate Credit Facility Agreements;
- (B) the Surety Bond Facility Liabilities (in accordance with the terms of the Surety Bond Facility Agreement); and
- (C) the Super Senior Hedging Liabilities (on a *pro rata* basis between the Super Senior Hedging Liabilities of each Super Senior Hedge Counterparty),

on a *pro rata* and *pari passu* basis as between paragraph (A), paragraph (B) and paragraph (C) above;

(d) in payment or distribution to:

- (i) the Creditor Representatives in respect of any Pari Passu Debt Liabilities on its own behalf and on behalf of the Pari Passu Debt Creditors for which it is the Creditor Representative; and
- (ii) the Pari Passu Hedge Counterparties,

for application towards the discharge of:

- (A) the Pari Passu Debt Liabilities (in accordance with the terms of the relevant Pari Passu Debt Documents) on a *pro rata* basis between Pari Passu Debt Liabilities under separate Pari Passu Facility Agreements;
- (B) the Pari Passu Debt Liabilities (in accordance with the terms of the relevant Pari Passu Debt Documents) on a *pro rata* basis between Pari Passu Debt Liabilities under separate Pari Passu Note Indentures; and
- (C) the Pari Passu Hedging Liabilities on a *pro rata* basis between the Pari Passu Hedging Liabilities of each Pari Passu Hedge Counterparty,

on a *pro rata* basis between paragraph (A), paragraph (B) and paragraph (C) above;

- (e) if none of the Debtors is under any further actual or contingent liability under any Credit Facility Document, the Surety Bond Facility Agreement, any Hedging Agreement or Pari Passu Debt Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and
- (f) the balance, if any, in payment or distribution to the relevant Debtor.

## 17.2 Prospective liabilities

Following a Distress Event the Security Agent may, in its discretion hold any amount of the Recoveries in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) as the Security Agent shall think fit (the interest being credited to the relevant account for so long as the Security Agent shall think fit for later application under Clause 17.1 (*Order of application*)) in respect of:

- (a) any sum to any Security Agent, any Receiver or any Delegate; and

- (b) any part of the Liabilities,

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

### 17.3 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 relevant Credit Facility Agreement.
- (b) To the extent that any Credit Facility Cash Cover is not held with the Relevant Issuing Bank or 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 or Relevant Ancillary Lender towards the discharge of the Credit Facility Liabilities for which that Credit Facility Cash Cover was provided; and
  - (ii) the balance, if any, in accordance with Clause 17.1 (*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 relevant Credit Facility Agreement.

### 17.4 Surety Bond Only Security

All amounts from time to time received or recovered by a Surety Bond Provider in connection with the realisation or enforcement of all or any part of the relevant Surety Bond Only Security shall be applied, to the extent permitted by applicable law (and subject to the provisions of this Clause 17), in the following order of priority:

- (a) first, for application towards the relevant Surety Bond Facility Liabilities (in accordance with the terms of the relevant Surety Bond Facility Agreement) up to an aggregate maximum amount equal to the Relevant Surety Bond Facility Priority Amount; and
- (b) the balance, if any, in accordance with Clause 17.1 (*Order of application*).

### 17.5 Investment of cash proceeds

Prior to the application of the proceeds of the Security Property in accordance with Clause 17.1 (*Order of Application*) the Security Agent may, in its discretion, hold all or part of any cash proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this Clause 17.

**17.6 Currency conversion**

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may:
  - (i) convert any moneys received or recovered by the Security Agent (including, without limitation, any cash proceeds) from one currency to another, at the Security Agent's Spot Rate of Exchange; and
  - (ii) notionally convert the valuation provided in any opinion or valuation from one currency to another, at the Security Agent's Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied:
  - (i) in the case of paragraph (a)(i) above, to the extent of the amount of the due currency purchased after deducting the costs of conversion; and
  - (ii) in the case of paragraph (a)(ii) above, to the extent of the amount of the due currency which results from the notional conversion referred to in that paragraph.

**17.7 Permitted Deductions**

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

**17.8 Good Discharge**

- (a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent:
  - (i) may be made to the relevant Creditor Representative on behalf of its Primary Creditors;
  - (ii) may be made to the Relevant Issuing Bank or Relevant Ancillary Lender in accordance with paragraph (b)(i) of Clause 17.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*); or
  - (iii) shall be made directly to the Hedge Counterparties.
- (b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Security Agent.
- (c) The Security Agent is under no obligation to make the payments to the Creditor Representatives or the Hedge Counterparties under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Primary Creditor are denominated pursuant to the relevant Debt Document.

**17.9 Calculation of Amounts**

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

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

## 18. EQUALISATION

### 18.1 Equalisation Definitions

For the purposes of this Clause 18:

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

**“Exposure”** means:

- (a) in relation to a Credit Facility Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations outstanding under the Credit Facility Agreements at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims between Credit Facility Lenders pursuant to any loss-sharing arrangement in the Credit Facility Agreements which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Credit Facility Agreement and amounts owed to it by a Debtor in respect of any Ancillary Facility but excluding:
  - (i) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that Credit Facility Cash Cover has been provided by a Debtor in respect of that amount and is available to that Credit Facility Lender pursuant to the relevant Credit Facility Cash Cover Document; and
  - (ii) any amount outstanding in respect of a Letter of Credit to the extent (and in the amount) that Credit Facility Cash Cover has been provided by a Debtor in respect of that amount and is available to the party it has been provided for pursuant to the relevant Credit Facility Cash Cover Document; and
- (b) in relation to a Hedge Counterparty:
  - (i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement in accordance with the terms of this Agreement on or prior to the Enforcement Date, the amount, if any, payable to it under that Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement) and to the extent that amount constitutes Super Senior Hedging Liabilities; and

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

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

“**Utilisation**” means a “Utilisation” under and as defined in the Initial Revolving Facility Agreement or the relevant Credit Facility Document.

#### 18.2 **Implementation of equalisation**

- (a) The provisions of this Clause 18 shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate.
- (b) Without prejudice to the generality of paragraph (a) above, if the provisions of this Clause 18 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the relevant Creditors shall make appropriate adjustment payments amongst themselves.

#### 18.3 **Equalisation**

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

#### 18.4 **Turnover of enforcement proceeds**

If:

- (a) the Security Agent or a Creditor Representative is not entitled, for reasons of applicable law, to pay or distribute amounts received pursuant to the making of a demand under any guarantee, indemnity or other assurance against loss or the enforcement of the Transaction Security to the relevant Super Senior Creditors but is entitled to pay or distribute those amounts to Creditors (such Creditors, the “**Receiving Creditors**”) who, in accordance with

the terms of this Agreement, are subordinated in right and priority of payment to the relevant 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 or distributions to the relevant Super Senior Creditors as the Security Agent shall require to place the relevant Super Senior Creditors in the position they would have been in had such amounts been available for application against the Super Senior Liabilities.

#### 18.5 **Notification of Exposure**

Before each occasion on which it intends to implement the provisions of this Clause 18, the Security Agent shall send notice to each Hedge Counterparty and the relevant Creditor Representative (on behalf of the Credit Facility Lenders) requesting that it notify it of, respectively, its Exposure and that of each Credit Facility Lender (if any).

#### 18.6 **Default in payment**

If a Super Senior Creditor fails to make a payment due from it under this Clause 18, 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) or any other Primary Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

### 19. **ADDITIONAL DEBT**

#### 19.1 **Debt Refinancing**

- (a) Notwithstanding anything to the contrary in this Agreement or any Security Document, any of the Borrowing Liabilities or the Guarantee Liabilities may be refinanced, replaced or increased in whole or in part from time to time (each a “**Debt Refinancing**”) **provided that** the terms of that Debt Refinancing are not otherwise prohibited by the Debt Documents.
- (b) Notwithstanding anything to the contrary in any Debt Document, no Transaction Security Document may be amended, extended, renewed, restated, supplemented or otherwise modified, replaced or released (followed by an immediate retaking of Security of at least equivalent ranking over the same assets) pursuant to such Debt Refinancing unless contemporaneously with such amendment, extension, replacement, restatement, supplement, modification, renewal or release (followed by an immediate retaking of Security of at least equivalent ranking over the same assets) , the Parent delivers to the Security Agent one of the following:
  - (i) a solvency opinion, in form and substance satisfactory to the Security Agent, from an investment banking firm, appraisal firm or accounting firm of international standing confirming the solvency of the Parent and its Subsidiaries, taken as a whole, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or replacement;
  - (ii) an Officer’s Certificate (in the form appended to the Senior Secured Notes Indenture, *mutatis mutandis*) from the Parent (acting in good faith), that confirms the solvency of the Parent and its subsidiaries after giving effect to any transaction related to such amendment, extension, renewal, restatement, replacement, supplement, modification or release; or

- (iii) an opinion of counsel acceptable to the Security Agent, in form and substance satisfactory to the Security Agent, confirming that, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or replacement, the Transaction Security securing the Liabilities created under the Security Documents, as so amended, extended, renewed, restated, supplemented, modified or replaced, is valid and perfected Transaction Security not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, that such Transaction Security was not otherwise subject to immediately prior to such amendment, extension, renewal, restatement, supplement, modification or replacement.
- (c) At the direction of the Parent and without the consent of any Secured Party, the Security Agent may from time to time enter into one or more amendments to the Transaction Security Documents or enter into any additional or supplemental transaction security documents to: (i) cure any ambiguity, omission, defect or inconsistency therein; (ii) provide for Security permitted under the terms of the Debt Documents (subject to compliance with paragraph (b) above); (iii) add to the Transaction Security or guarantees of the Liabilities (subject to compliance with paragraph (b) above); (iv) ensure that any Debt Refinancing can be secured with the ranking contemplated under paragraph (a) above (subject to compliance with paragraph (b) above); and (v) make any other change thereto that does not adversely affect the rights of any of the Secured Parties **provided that** any amendment to a Transaction Security Document that prejudices the validity, enforceability or priority of any Security created or purported to be created thereunder shall be an amendment that adversely affects the Secured Parties.

## 19.2 Debt Refinancing terms

For the avoidance of doubt:

- (a) a Debt Refinancing may be made available on a basis which is *pari passu* with those Liabilities which it is refinancing, replacing or increasing;
- (b) a Debt Refinancing shall be entitled to benefit from all or any of the Transaction Security;
- (c) a Debt Refinancing may be made available on a secured or unsecured basis; and
- (d) a Debt Refinancing may be effected in whole or in part by way of a debt exchange, non-cash rollover or other similar or equivalent transaction,

in each case unless otherwise prohibited by the Debt Documents.

## 20. THE SECURITY AGENT

### 20.1 Security Agent as trustee

- (a) The Security Agent declares that it holds the Security Property (other than any created or expressed to be created under or pursuant to any Italian Security Document or Spanish Security Document) on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Each of the Primary Creditors authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under this Agreement, the Initial Revolving Facility Agreement or in the Security Documents to which it is expressed to be a party (and no others shall be implied).
- (c) Each of the Secured Parties (other than the Security Agent), for the purposes of the Italian Security Documents, hereby:

- (i) appoints, with the express consent pursuant to article 1395 of the Italian Civil Code, the Security Agent to be its *mandatario con rappresentanza* for the purpose of executing, in the name and on behalf of the Secured Parties, any Italian Security Document, and the Security Agent hereby accepts such appointment;
- (ii) grants the Security Agent the power to negotiate and approve the terms and conditions of such Italian Security Document, execute any other agreement or instrument, give or receive any notice or declaration, identify and specify to third parties the names of the Secured Parties at any given date, and take any other action in relation to the creation, perfection, maintenance, enforcement and release of the security created thereunder in the name and on behalf of the Secured Parties;
- (iii) confirms that in the event that any security created under the Italian Security Documents remains registered in the name of a Secured Party after it has ceased to be a Secured Party, then the Security Agent shall remain empowered to execute a release of such security in its name and on its behalf; and
- (iv) undertakes to ratify and approve any such action taken in the name and on behalf of the Secured Parties by the Security Agent acting in its appointed capacity.

**20.2 Appointment of the Security Agent as agent (*apoderado*) and administrator in relation to Spanish Security**

- (a) In relation to the Spanish Security Documents, the Security Agent shall:
  - (i) accept, hold, administer and (subject to the same having become enforceable and to the terms of this Agreement) realise any such Spanish Security which is Security granted transferred or assigned or otherwise granted under a non-accessory security right to the Secured Parties or to the Security Agent in its own name as trustee or security agent for the benefit of the Secured Parties or on behalf of the Secured Parties; and
  - (ii) administer, enforce and (subject to the same having become enforceable and to the terms of this Agreement) realise in the name of and on behalf of the Secured Parties any Spanish Security which is pledged or otherwise transferred to any Secured Party under an accessory security right in the name and on behalf of the Secured Parties.
- (b) Each Secured Party (other than the Security Agent) hereby authorises the Security Agent to accept as its representative any pledge or other creation of any accessory security right made to such Secured Party in relation to the Spanish Security Documents and to act and execute on its behalf as its representative, subject to the terms of the Spanish Security Documents, amendments or releases of, accessions and alterations to, and to carry out similar dealings with regard to any Spanish Security Document which creates a pledge or any other accessory security right.
- (c) Each Secured Party which becomes a party to any Spanish Security Documents ratifies and approves all acts and declarations previously done by the Security Agent on such Secured Party's behalf.
- (d) Each relevant Secured Party agrees that the Spanish Security Documents entered into between them in addition to this Agreement shall be subject to the relevant terms of this Agreement.
- (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 where relevant without the need for any further referral to, or authority from, any other person all necessary releases or confirmations of any security created under

the Spanish Security Documents in relation to the disposal of any asset which is permitted under the Spanish Security Documents or consented or agreed upon in accordance with the Spanish 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 on its behalf in connection with the acceptance, preparation, execution, amendment, enforcement and delivery of the Spanish Security and the Spanish Security Documents and the perfection and monitoring of the Spanish Security and the Spanish Security Documents, including but not limited to, any share pledge, mortgage, assignment or transfer of title for security purposes and each Secured Party shall grant in favour of the Security Agent (and maintain in force at all times) such power of attorney as the Security Agent may require for such purpose. The Security Agent is authorised to make all statements necessary or appropriate in connection with the foregoing sentence and collect all amounts payable to any Secured Party in respect of any Transaction Security Document in one or more accounts opened by the Security Agent for such purpose, and the Security Agent shall thereafter distribute any such amounts due to the Secured Parties in accordance with the provisions of this Agreement.
- (g) It is hereby agreed that, in relation to any jurisdiction the courts of which would not recognise or give effect to the trust expressed to be created by this Clause 20, the relationship of the Secured Parties to the Security Agent in relation to any Spanish Security 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 20 shall have full force and effect
- (h) This Agreement has been executed in a private document. Each Party shall be entitled to request to the others the formalisation of this Agreement as a Spanish Public Document before a Spanish Notary Public at any moment. The public deed by which this Agreement is raised to the status of public document will confirm in Spain the appointment of the Security Agent under this Clause 20.

### 20.3 Instructions

- (a) The Security Agent shall act in accordance with any instructions given to it by an Instructing Group or, if so instructed by an 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 Creditors or group of Creditors are duly given in accordance with the terms of the Debt Documents; and
  - (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any direction or instruction, from an Instructing Group (or, from the Majority Super Senior Creditors or the Surety Bond Provider (as applicable) to the extent they are entitled to give instructions to the Security Agent) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save as provided in Clause 13 (*Enforcement of Transaction Security*), any instructions given to the Security Agent by an 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, Clauses 20.6 (*No duty to account*) to Clause 20.11 (*Exclusion of liability*), Clause 20.14 (*Confidentiality*) to Clause 20.20 (*Custodians and nominees*) and Clause 20.23 (*Acceptance of title*) to Clause 20.26 (*Disapplication of Trustee Acts*);
- (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
  - (A) Clause 14 (*Non-Distressed Disposals*);
  - (B) Clause 17.1 (*Order of application*);
  - (C) Clause 17.2 (*Prospective liabilities*);
  - (D) Clause 17.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*); and
  - (E) Clause 17.7 (*Permitted Deductions*).
- (e) If giving effect to instructions given by an Instructing Group would (in the Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.
- (f) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:
  - (i) it has not received any instructions as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,
 the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the provisions of Clause 13 (*Enforcement of Transaction Security*) and the remainder of this Clause 20.3, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

#### 20.4 Duties of the Security Agent

- (a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:

- (i) forward to each Creditor Representative, each Surety Bond Provider and to each Hedge Counterparty a copy of any notice or document received by the Security Agent from any Debtor under any Debt Document; and
  - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Debt Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) Without prejudice to Clause 25.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Primary Creditors.
- (e) To the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, the Security Agent shall upon a request by that Party, promptly notify that Party of the relevant Security Agent's Spot Rate of Exchange.
- (f) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied).

#### 20.5 **No fiduciary duties to Debtors or Subordinated Creditors**

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

#### 20.6 **No duty to account**

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

#### 20.7 **Business with the Group**

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

#### 20.8 **Rights and discretions**

- (a) The Security Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from an Instructing Group, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents;
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
    - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Debt Documents for so acting have been satisfied; and

- (iii) rely on a certificate from any person:
  - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as Security Agent for the Secured Parties) that:
  - (i) no Default has occurred;
  - (ii) any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and
  - (iii) any notice made by the Parent is made on behalf of and with the consent and knowledge of all the Debtors.
- (c) The Security Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Primary Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as Security Agent under this Agreement.
- (h) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

- (i) Notwithstanding any provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

#### 20.9 **Responsibility for documentation**

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

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

#### 20.10 **No duty to monitor**

The Security Agent shall not be bound to enquire:

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

#### 20.11 **Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
  - (i) any damages, costs or losses to any person arising as a result of taking or refraining from taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising or the failure to exercise any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document or the Security Property;
  - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:

- (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction.
- (b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.6 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Primary Creditor,

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

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

#### 20.12 Primary Creditors’ indemnity to the Security Agent

- (a) Each Primary Creditor (other than any Creditor Representative) shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Primary Creditors (other than any Creditor Representative) for the time being (or, if the Liabilities due to the Primary Creditors (other than any Creditor Representative) are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three (3) Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent’s, Receiver’s or Delegate’s gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).
- (b) For the purposes only of paragraph (a) above, to the extent that any hedging transaction under a Hedging Agreement has not been terminated or closed-out, the Hedging Liabilities due to any Hedge Counterparty in respect of that hedging transaction will be deemed to be:

- (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of those hedging transactions, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
- (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

that amount, in each case as calculated in accordance with the relevant Hedging Agreement.

- (c) Subject to paragraph (d) below, the Parent shall immediately on demand reimburse any Primary Creditor for any payment that Primary Creditor makes to the Security Agent pursuant to paragraph (a) above.
- (d) Paragraph (c) above shall not apply to the extent that the indemnity payment in respect of which the Primary Creditor claims reimbursement relates to a liability of the Security Agent to a Debtor.

#### 20.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Primary Creditors and the Parent.
- (b) Alternatively the Security Agent may resign by giving thirty (30) days' notice to the Primary Creditors and the Parent, in which case the Required Super Senior Creditors, the Surety Bond Providers and the Required Pari Passu Creditors may appoint a successor Security Agent.
- (c) If the Required Super Senior Creditors, the Surety Bond Providers and the Required Pari Passu Creditors have not appointed a successor Security Agent in accordance with paragraph (b) above within twenty (20) days after notice of resignation was given, the retiring Security Agent (after consultation with the Creditor Representatives, the Surety Bond Providers and the Hedge Counterparties) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall:
  - (i) make available to the successor Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents; and
  - (ii) enter into and deliver to the successor Security Agent those documents and effect any registrations as may be required for the transfer or assignment of all rights and benefits under the Debt Documents to the successor Security Agent; and
  - (iii) 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 the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 20.24 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 20 and Clause 24.1 (*Indemnity to the Security Agent*). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Required Super Senior Creditors and the Required Pari Passu Creditors may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Parent or any other Debtor.

#### 20.14 Confidentiality

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

#### 20.15 Information from the Creditors

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

#### 20.16 Credit appraisal by the Secured Parties

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

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Security Property, the transactions contemplated by the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;

- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

#### 20.17 **Reliance and engagement letters**

The Security Agent may obtain and rely on any certificate or report from any Debtor's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report on such terms as it may consider appropriate (including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

#### 20.18 **No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Debtor to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Debt Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Debt Document or of the Transaction Security;
- (d) take, or to require any Debtor to take, any step to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Security Document.

#### 20.19 **Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:
  - (i) to insure any of the Charged Property;
  - (ii) to require any other person to maintain any insurance; or
  - (iii) to verify any obligation to arrange or maintain insurance contained in any Debt Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless an Instructing Group requests it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

**20.20 Custodians and nominees**

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

**20.21 Delegation by the Security Agent**

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it 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.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

**20.22 Additional Security Agents**

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
  - (i) if it considers that appointment to be in the interests of the Secured Parties;
  - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,
 and the Security Agent shall give prior notice to the Parent and the Primary Creditors of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Debt Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses reasonably incurred by the Security Agent.

**20.23 Acceptance of title**

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

**20.24 Winding up of trust**

If the Security Agent, with the approval of each Creditor Representative, each Surety Bond Provider 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) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor pursuant to the Debt Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 20.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

**20.25 Powers supplemental to Trustee Acts**

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Debt Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

**20.26 Disapplication of Trustee Acts**

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

**20.27 Intra-Group Lenders and Debtors: Power of Attorney**

Each Intra-Group Lender and Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Intra-Group Lender or Debtor has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Security Agent may delegate that power on such terms as it sees fit).

**21. PARI PASSU NOTE TRUSTEE PROTECTIONS****21.1 Limitation of Pari Passu Note Trustee Liability**

- (a) It is expressly understood and agreed by the Parties that this Agreement is executed and delivered by each Pari Passu Note Trustee not individually or personally but solely in its capacity as a Pari Passu Note Trustee and representative also pursuant to, and for the purposes of, article 2414-*bis* paragraph 3 of the Italian Civil Code in the exercise of the powers and authority conferred and vested in it under the relevant Pari Passu Debt Documents for and on behalf of the Pari Passu Noteholders only for which the Pari Passu Note Trustee acts as trustee and representative and nothing in this Agreement shall impose on it any obligations to pay any amount out of its personal assets.

- (b) It is further understood and agreed by the Parties that in no case shall a Pari Passu 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 it in good faith in accordance with this Agreement and in a manner that the relevant Pari Passu Note Trustee believed to be within the scope of the authority conferred on the Pari Passu Note Trustee by this Agreement and the relevant Pari Passu Debt 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 a Pari Passu Note Trustee shall be personally liable under this Agreement for its own gross negligence or wilful misconduct. It is also acknowledged that a Pari Passu Note Trustee shall not have any responsibility for the actions of any individual Pari Passu Noteholder.

#### 21.2 **Note Trustee not fiduciary for other Creditors**

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

#### 21.3 **Reliance on certificates**

A Pari Passu Note Trustee may rely without enquiry on any notice, consent or certificate of the Security Agent, any other Creditor Representative or any Hedge Counterparty as to the matters certified therein.

#### 21.4 **Pari Passu Note Trustee**

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

#### 21.5 **Turnover obligations**

Notwithstanding any provision in this Agreement to the contrary, a Pari Passu 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 Pari Passu Noteholders for which it is the Creditor Representative in accordance with the provisions of the relevant Pari Passu Note Indenture. For the purpose of this Clause 21.5, (i) “actual knowledge” of the Pari Passu Note Trustee shall be construed to mean the Pari Passu Note Trustee shall not be charged with knowledge (actual or otherwise) of the existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless a responsible officer of such Pari Passu Note Trustee has received, not less than two Business Days’ prior to the date of such payment, a written notice that such payments are required or prohibited by this Agreement; and (ii) “responsible officer” when used in relation to the Pari Passu Note Trustee means any person who is an officer within the corporate trust and agency department of the Pari Passu Note Trustee, including any director, associate director, vice president, assistance vice president, senior associate, assistant treasurer, trust officer, or any other officer of the Pari Passu Note Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement.

#### 21.6 **Creditors and the Pari Passu Note Trustee**

In acting pursuant to this Agreement and the relevant Pari Passu Note Indenture, the Pari Passu Note Trustee is not required to have any regard to the interests of the Creditors (other than the Pari Passu Noteholders for which it is the Creditor Representative Creditors) or any Subordinated Creditor.

#### 21.7 **Pari Passu Note Trustee; reliance and information**

- (a) The Pari Passu 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 Debt Document, each Primary Creditor (other than the Pari Passu Noteholders for which it is the Creditor Representative) confirms that it has not relied exclusively on any information provided to it by a Pari Passu Note Trustee in connection with any Debt Document. A Pari Passu Note Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another party.
- (c) A Pari Passu 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) any Security granted in respect of the Pari Passu Debt Liabilities is in accordance with Clause 5.2 (*Security: Pari Passu Debt Creditors*);
  - (iii) no Default has occurred; and
  - (iv) the Pari Passu Debt Discharge Date has not occurred,

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

#### 21.8 **No action**

A Pari Passu Note Trustee shall not have any obligation to take any action under this Agreement unless it is indemnified or secured to its satisfaction (whether by way of pre-funding or otherwise) in respect of all costs, expenses and liabilities which would, in its opinion, thereby incur (including legal fees and

together with any associated VAT). A Pari Passu Note Trustee is not required to indemnify any other person, whether or not a Party in respect of the transactions contemplated by this Agreement.

#### 21.9 **Departmentalisation**

In acting as a Pari Passu Note Trustee, a Pari Passu 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 a Pari Passu Note Trustee which is received or acquired by some other division or department or otherwise than in its capacity as Pari Passu Note Trustee may be treated as confidential by that Pari Passu Note Trustee and will not be treated as information possessed by that Pari Passu Note Trustee in its capacity as such.

#### 21.10 **Other parties not affected**

This Clause 21 is intended to afford protection to each Pari Passu Note Trustee only and no provision of this Clause 21 shall alter or change the rights and obligations as between the other parties in respect of each other.

#### 21.11 **Security Agent and the Pari Passu Note Trustees**

- (a) A Pari Passu Note Trustee is not responsible for the appointment or for monitoring the performance of the Security Agent.
- (b) A Pari Passu 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 Pari Passu Noteholders for which it is the Creditor Representative and indemnified and/or secured to its satisfaction.
- (c) The Security Agent acknowledges and agrees that it has no claims for any fees, costs or expenses from, or indemnification against, a Pari Passu Note Trustee.

#### 21.12 **Provision of information**

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

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

#### 21.13 **Disclosure of information**

Each Debtor irrevocably authorises a Pari Passu Note Trustee to disclose to any other Debtor any information that is received by that Pari Passu Note Trustee in its capacity as Pari Passu Note Trustee.

#### 21.14 **Illegality**

A Pari Passu 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.

### 21.15 **Resignation of Pari Passu Note Trustee**

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

### 21.16 **Agents**

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

### 21.17 **No Requirement for Bond or Security**

A Pari Passu Note Trustee shall not be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Agreement.

### 21.18 **Provisions Survive Termination**

The provisions of this Clause 21 shall survive any termination or discharge of this Agreement.

## 22. **CHANGES TO THE PARTIES**

### 22.1 **Assignments and transfers**

No Party may:

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

in respect of any Debt Documents or the Liabilities except as permitted by this Clause 22.

### 22.2 **Change of Investor**

Subject to Clause 9.4 (*No acquisition of Subordinated Liabilities*), an Investor may:

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

in respect of the Subordinated Liabilities owed to it if any assignee or transferee has (if not already party to this Agreement as an Investor) acceded to this Agreement, as an Investor, pursuant to Clause 22.14 (*Creditor/Creditor Representative Accession Undertaking*).

### 22.3 **New Investor**

If any Investor or Investor Affiliate makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Investor) accedes to this Agreement as an Investor pursuant to Clause 22.14 (*Creditor/Creditor Representative Accession Undertaking*).

**22.4 Change of Credit Facility Lender, Pari Passu Lender or Surety Bond Provider under an existing Credit Facility, Pari Passu Facility or Surety Bond Facility**

- (a) A Credit Facility Lender, Pari Passu Lender or Surety Bond Provider under an existing Credit Facility, Pari Passu Facility or Surety Bond Facility (as applicable) may:
- (i) assign any of its rights; or
  - (ii) transfer by novation any of its rights and obligations,
- in respect of any Debt Documents or the Liabilities if:
- (A) that assignment or transfer is in accordance with the terms of the Credit Facility Agreement, Pari Passu Facility Agreement or Surety Bond Facility Agreement to which it is a party; and
  - (B) subject to paragraph (b) below, any assignee or transferee has (if not already a Party as a Credit Facility Lender, Pari Passu Lender or Surety Bond Provider, as applicable) acceded to this Agreement, as a Credit Facility Lender, Pari Passu Lender or Surety Bond Provider, as applicable, pursuant to Clause 22.14 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) Paragraph (a)(B) above shall not apply in respect of any Liabilities Acquisition of the Credit Facility Liabilities, Pari Passu Debt Liabilities or Surety Bond Facility Liabilities by a member of the Group permitted under the relevant Credit Facility Agreement, Pari Passu Facility Agreement or Surety Bond Facility Agreement and pursuant to which the relevant Liabilities are discharged effected in accordance with the terms of the Debt Documents.

**22.5 Change of Pari Passu Noteholder**

Any Pari Passu Noteholder may assign, transfer or novate any of its rights and obligations to any person without the need for such person to execute and deliver to the Security Agent a Creditor / Creditor Representative Accession Undertaking.

**22.6 Change of Hedge Counterparty**

A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already a Party as a Hedge Counterparty) acceded to this Agreement pursuant to Clause 22.14 (*Creditor/Creditor Representative Accession Undertaking*) as a Hedge Counterparty.

**22.7 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 22.14 (*Creditor/Creditor Representative Accession Undertaking*).

**22.8 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:

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

in respect of the Intra-Group Liabilities to another member of the Group if, after the Guarantor Accession Date, that member of the Group has (if not already a Party as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 22.14 (*Creditor/Creditor Representative Accession Undertaking*).

#### 22.9 **New Intra-Group Lender**

At any time after the Guarantor Accession Date, if any member of the Group (other than Impulsora de Centros de Entretenimiento de Las Américas, S.A.P.I. de C.V. or any other member of the Group which has a restriction in the relevant shareholders' agreement (in the form as at the date of this Agreement) preventing it from acceding to this Agreement as an Intra-Group Lender) has made or makes any loan to or has granted or grants any credit to or has made or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount of EUR 5,000,000 or more, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Intra-Group Lender) accedes to this Agreement as an Intra-Group Lender, pursuant to Clause 22.14 (*Creditor/Creditor Representative Accession Undertaking*).

#### 22.10 **Accession of Credit Facility Creditors under new Credit Facilities**

At any time on or following the Revolving Lender Discharge Date, in order for any credit facility (other than the Initial Revolving Facility) to be a "Credit Facility" for the purposes of this Agreement:

- (a) the Parent shall designate that credit facility as a Credit Facility and confirm in writing to the Primary Creditors that the establishment of that credit facility as a Credit Facility under this Agreement will not breach the terms of any of its existing Credit Facility Documents, the Surety Bond Facility Agreement or Pari Passu Debt Documents;
- (b) each creditor in respect of that credit facility shall accede to this Agreement as a Credit Facility Lender;
- (c) each arranger in respect of that credit facility shall accede to this Agreement as a Credit Facility Arranger; and
- (d) 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 22.14 (*Creditor/Creditor Representative Accession Undertaking*).

#### 22.11 **Accession of Surety Bond Providers under a Surety Bond Facility**

In order for any surety bond facility to be a "Surety Bond Facility" for the purposes of this Agreement:

- (a) the Parent shall designate that surety bond facility as a Surety Bond Facility and confirm in writing to the Primary Creditors that the establishment of that surety bond facility as a Surety Bond Facility under this Agreement will not breach the terms of any of its existing Credit Facility Documents, the Surety Bond Facility Agreement or Pari Passu Debt Documents; and
- (b) each creditor in respect of that credit facility shall accede to this Agreement as a Surety Bond Provider pursuant to Clause 22.14 (*Creditor/Creditor Representative Accession Undertaking*).

#### 22.12 **Accession of Pari Passu Debt Creditors under new Pari Passu Notes or Pari Passu Facilities**

- (a) In order for indebtedness in respect of any issuance of debt securities to constitute "Pari Passu Debt Liabilities" for the purposes of this Agreement:
  - (i) the Parent shall designate that issuance of debt securities as Pari Passu Notes and confirm in writing to the Primary Creditors that the incurrence of those debt

securities as Pari Passu Debt Liabilities under this Agreement will not breach the terms of any of its existing Credit Facility Documents, the Surety Bond Facility Agreement or Pari Passu Debt Documents; and

- (ii) the trustee in respect of those debt securities shall accede to this Agreement as the Creditor Representative in relation to those Pari Passu Debt Liabilities pursuant to Clause 22.14 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) In order for indebtedness under any credit facility to constitute “Pari Passu Debt Liabilities” for the purposes of this Agreement the instrument constituting or evidencing such Pari Passu Debt Liabilities must be governed by English law or New York law and state that the document and the Pari Passu Facility constituted by or evidenced thereby is subject to the terms of this Agreement, and the Primary Creditors in respect of such Pari Passu Debt Liabilities must be given (or have as a matter of law) third party beneficiary rights in respect of such statement.
- (c) In order for indebtedness under any credit facility to constitute “Pari Passu Debt Liabilities” for the purposes of this Agreement:
  - (i) the Parent shall designate that credit facility as a Pari Passu Facility and confirm in writing to the Primary Creditors that the establishment of that Pari Passu Facility as Pari Passu Debt Liabilities under this Agreement will not breach the terms of any of its existing Credit Facility Documents, the Surety Bond Facility Agreement or Pari Passu Debt Documents;
  - (ii) each creditor in respect of that credit facility shall accede to this Agreement as a Pari Passu Debt Creditor;
  - (iii) each arranger in respect of that credit facility shall accede to this Agreement as a Pari Passu Arranger;
  - (iv) 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 22.14 (*Creditor/Creditor Representative Accession Undertaking*); and
  - (v) 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 Pari Passu Creditor unless such creditor (or, as the case may be, the trustee or the agent in relation to the indebtedness held by such creditor) has acceded to this Agreement in accordance with paragraphs (a), (b) or (c) above (as applicable).

#### 22.13 **New Ancillary Lender**

If any Affiliate of a Credit Facility Lender becomes an Ancillary Lender in accordance with the relevant Credit Facility Agreement, 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 a Party as a Credit Facility Lender) acceded to this Agreement as a Credit Facility Lender pursuant to Clause 22.14 (*Creditor/Creditor Representative Accession Undertaking*) and, to the extent required by the Credit Facility Agreement, to the Credit Facility Agreement as an Ancillary Lender.

#### 22.14 **Creditor/Creditor Representative Accession Undertaking**

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

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

#### 22.15 New Debtor

- (a) If, at any time after the Guarantor Accession Date, any member of the Group:
  - (i) incurs any Liabilities under the Credit Facility Documents, the Surety Bond Facility Agreement, the Pari Passu Debt Documents or the Hedging Agreements; or
  - (ii) gives any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities under the Credit Facility Documents, the Surety Bond Facility Agreement, the Pari Passu Debt Documents or the Hedging Agreements,

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

- (b) If any Affiliate of a Credit Facility Borrower becomes a borrower of an Ancillary Facility in accordance with the relevant Credit Facility Agreement, the relevant Credit Facility Borrower shall procure that such Affiliate accedes to this Agreement as a Debtor no later than contemporaneously with the date on which it becomes a borrower.
- (c) With effect from the date of acceptance by the Security Agent of a Debtor Accession Deed duly executed and delivered to the Security Agent by the new Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Debtor.

#### 22.16 Additional parties

- (a) Each of the Parties appoints 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, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Debt Document.
- (b) 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.

#### 22.17 Resignation of a Debtor

- (a) No relevant Debtor may cease to be party to a Credit Facility Agreement or a Pari Passu Debt Document in accordance with those agreements unless each Hedge Counterparty has notified the Security Agent:
  - (i) that no payment is due from that Debtor to that Hedge Counterparty under those agreements; or
  - (ii) that it otherwise consents to that Debtor ceasing to be a Debtor under those agreements.

The Security Agent shall, upon receiving that notification, notify the Creditor Representative in respect of that Credit Facility or that Pari Passu Debt Document (as applicable).

- (b) The Parent may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (c) 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 Credit Facility Lender Discharge Date has not occurred, each relevant Creditor Representative notifies the Security Agent that that Debtor is not, or has ceased to be, a Credit Facility Borrower, a Credit Facility Guarantor, a Surety Bond Facility Borrower, or a Surety Bond Facility Guarantor;
  - (iii) each Hedge Counterparty notifies the Security Agent 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 Pari Passu Debt Discharge Date has not occurred, each Pari Passu Note Trustee notifies the Security Agent that the Debtor is not, or has ceased to be, an issuer or guarantor of the Pari Passu Debt Liabilities for which it is the Creditor Representative; and
  - (v) the Parent confirms that that Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities.

No Party may unreasonably withhold or delay any such notification. If a Party does not provide the required confirmation to the Security Agent (or notify the Security Agent that the required confirmation cannot be given due to the fact that the relevant conditions set out above are not satisfied) within three (3) Business Days of request by the Parent, such notification shall be deemed given to the Security Agent.

- (d) Upon notification by the Security Agent to the Parent of its acceptance of the resignation of a Debtor (which such notification to be given within one (1) Business Day of the date on which all required confirmations have been delivered or deemed given under paragraph (c) above), 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.

## 23. COSTS AND EXPENSES

### 23.1 Transaction expenses

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

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

### 23.2 Amendment costs

If a Debtor requests an amendment, waiver or consent, the Parent shall, within three (3) Business Days of demand, reimburse the Security Agent for the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

### 23.3 Enforcement and preservation costs

The Parent shall, within three (3) Business Days of demand, pay to the Security Agent the amount of all costs and expenses (including legal fees and together with any applicable VAT) incurred by it in connection with the enforcement of or the preservation of any rights under any Debt Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

### 23.4 Stamp taxes

The Parent shall pay and, within three (3) Business Days of demand, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document.

### 23.5 Interest on demand

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is one per cent. (1%) per annum over the rate at which the Security Agent would be able to obtain by placing on deposit with a leading bank an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select **provided that** if any such rate is below zero, that rate will be deemed to be zero.

## 24. OTHER INDEMNITIES

### 24.1 Indemnity to the Security Agent

- (a) Each Debtor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them as a result of:
  - (i) any failure by the Parent to comply with its obligations under Clause 23 (*Costs and expenses*);

- (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Transaction Security;
  - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;
  - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
  - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
  - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 24.1 will not be prejudiced by any release or disposal under Clause 15 (*Distressed Disposals*) taking into account the operation of that Clause 15.
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 24.1 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

#### 24.2 Security Agent's Management time and additional remuneration

- (a) Any amount payable to the Security Agent under Clause 23 (*Costs and Expenses*), Clause 24.1 (*Indemnity to the Security Agent*) or Clause 20.12 (*Primary Creditors' Indemnity to the Security Agent*), shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Parent, and is in addition to any other fee paid or payable to the Security Agent.
- (b) In the event of:
- (i) a Default;
  - (ii) 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 or outside the scope of the normal duties of the Security Agent under the Credit Facility Documents or the Pari Passu Debt Documents; or
  - (iii) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (a) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank

(acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the 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.

#### 24.3 **Parent's indemnity to Primary Creditors**

The Parent shall promptly and as principal obligor indemnify each Primary Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 15 (*Distressed Disposals*).

### 25. **INFORMATION**

#### 25.1 **Dealings with Security Agent and Creditor Representatives**

- (a) The Creditors shall provide the Security Agent from time to time (through their respective Creditor Representatives where applicable) any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as trustee.
- (b) Subject to clause 37.5 (*Communication when Agent is Impaired Agent*) of the Initial Revolving Facility Agreement and to any Equivalent Provision of any other Credit Facility Agreement or any Pari Passu Facility Agreement, each Credit Facility Lender, Pari Passu Noteholder and Pari Passu Lender shall deal with the Security Agent exclusively through its Creditor Representative and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through any Creditor Representative.
- (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.

#### 25.2 **Disclosure between Primary Creditors and Security Agent**

Notwithstanding any agreement to the contrary, each of the Debtors and Subordinated Creditors consents, until the Final Discharge Date, to the disclosure by any Primary Creditor and the Security Agent to each other (whether or not through a Creditor Representative or the Security Agent) of such information concerning the Debtors and the Subordinated Creditors as any Primary Creditor or the Security Agent shall see fit.

#### 25.3 **Notification of prescribed events**

- (a) If an Event of Default or Default under a Credit Facility Document, the Surety Bond Facility Agreement or Pari Passu Debt Document either occurs or ceases to be continuing the relevant Creditor Representative shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Primary Creditor.
- (b) If a Credit Facility Acceleration Event occurs the relevant Credit Facility Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (c) If a Surety Bond Facility Acceleration Event occurs the Surety Bond Provider shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.

- (d) If a *Pari Passu Debt Acceleration Event* occurs the relevant *Creditor Representative(s)* shall notify the *Security Agent* and the *Security Agent* shall, upon receiving that notification, notify each other *Party*.
- (e) If the *Security Agent* enforces, or takes formal steps to enforce, any of the *Transaction Security* it shall notify each *Party* of that action.
- (f) If any *Primary Creditor* exercises any right it may have to enforce, or to take formal steps to enforce, any of the *Transaction Security* it shall notify the *Security Agent* and the *Security Agent* shall, upon receiving that notification, notify each *Party* of that action.
- (g) If a *Debtor* defaults on any *Payment* due under a *Hedging Agreement*, the *Hedge Counterparty* which is party to that *Hedging Agreement* shall, upon becoming aware of that default, notify the *Security Agent* and the *Security Agent* shall, upon receiving that notification, notify the *Creditor Representatives* and each other *Hedge Counterparty*.
- (h) If a *Hedge Counterparty* terminates or closes-out, in whole or in part, any hedging transaction under any *Hedging Agreement* under *Clause 6.9 (Permitted Enforcement: Hedge Counterparties)* it shall notify the *Security Agent* and the *Security Agent* shall, upon receiving that notification, notify each *Creditor Representative* and each other *Hedge Counterparty*.
- (i) If any of the *Term Outstanding* are to be reduced (whether by way of repayment, prepayments, cancellation or otherwise) the *Parent* shall notify each *Hedge Counterparty* of;
  - (i) The date and amount of that proposed reduction;
  - (ii) any *Interest Rate Hedge* excess that would result from that proposed reduction and that *Hedge Counterparty's Interest Rate Hedging Proportion* (if any) of that *Interest Rate Hedge Excess*; and
  - (iii) any *Exchange Rate Hedge Excess* that would result from that proposed reduction and that *Hedge Counterparty's Exchange Rate Hedging Proportion* (if any) of that *Exchange Rate Hedge Excess*
- (j) If the *Security Agent* receives a notice under paragraph (a) of *Clause 7.1 (Option to purchase: Pari Passu Debt Creditors)* it shall upon receiving that notice, notify, and send a copy of that notice to, each *Credit Facility Agent*.
- (k) If the *Security Agent* receives a notice under paragraph (a) of *Clause 7.2 (Hedge Transfer: Pari Passu Debt Creditors)* it shall upon receiving that notice, notify, and send a copy of that notice to, each *Hedge Counterparty*.

## 26. NOTICES

### 26.1 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.

### 26.2 Security Agent's communications with Primary Creditors

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

- (a) with the *Credit Facility Lenders*, *Pari Passu Noteholders* and *Pari Passu Lenders* through their respective *Creditor Representatives* and may give to the *Creditor Representatives*, as applicable, any notice or other communication required to be given by the *Security Agent* to a *Credit Facility Lender*, *Pari Passu Noteholder* or *Pari Passu Lender*; and

- (b) with each Hedge Counterparty directly with that Hedge Counterparty.

### 26.3 Addresses

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

- (a) in the case of the Parent or the 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 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.

### 26.4 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five (5) 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 26.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Parent in accordance with this Clause 26.4 will be deemed to have been made or delivered to each of the Debtors.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### 26.5 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 26.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

### 26.6 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:

- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between a Subordinated Creditor, a Debtor or an Intra-Group Lender and the Security Agent or a Primary Creditor may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
  - (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
  - (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
  - (e) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 26.6

#### 26.7 **English language**

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

#### 27. **PRESERVATION**

##### 27.1 **Partial invalidity**

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

##### 27.2 **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.

##### 27.3 **Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Debt Document shall operate as a waiver of any such right or remedy or constitute an election to affirm

any Debt Document. No election to affirm any Debt Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Debt Document are cumulative and not exclusive of any rights or remedies provided by law.

#### 27.4 **Waiver of defences**

The provisions of this Agreement, the Surety Bond Only Security or any Transaction Security will not be affected by an act, omission, matter or thing which, but for this Clause 27.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

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

#### 27.5 **Priorities not affected**

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

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

## 28. CONSENTS, AMENDMENTS AND OVERRIDE

### 28.1 Required consents

- (a) Subject to paragraphs (b) and (c) below, to Clause 19 (*Additional Debt*), to Clause 28.4 (*Exceptions*), to Clause 28.5 (*Excluded Super Senior Credit Participations*) and to Clause 28.6 (*Disenfranchisement of Investor Affiliates*):
- (i) Clause 18.1 (*Equalisation Definitions*) to Clause 18.3 (*Equalisation*) may be amended or waived with the consent of the Creditor Representatives in respect of any Credit Facility, the Super Senior Creditors and the Security Agent to the extent that that amendment or waiver does not affect the Pari Passu Creditors and/or by the Creditor Representatives in respect of any Pari Passu Liabilities, the Pari Passu Lenders, each Pari Passu Note Trustee, the Pari Passu Hedge Counterparties and the Security Agent to the extent that that amendment or waiver does not affect the Super Senior Creditors;
  - (ii) Schedule 4 (*Enforcement Principles*) may be amended or waived with the consent of the Required Super Senior Creditors and the Required Pari Passu Creditors and the Security Agent and without the consent of the Parent, any Debtor, any Intra-Group Lender or any Subordinated Creditor to the extent that that amendment or waiver does not impose obligations on the Parent, any Debtor, any Intra-Group Lender or any Subordinated Creditor;
  - (iii) Schedule 7 (*Hedge Counterparties' Guarantee and Indemnity*) may be amended or waived with the consent of each Hedge Counterparty to the extent that that amendment or waiver does not affect the Pari Passu Debt Creditors or the Credit Facility Lenders; and
  - (iv) subject to paragraphs (i) to (iii) above, this Agreement may be amended or waived only with the consent of the Creditor Representatives, the Required Super Senior Creditors and the Required Pari Passu Creditors and the Security Agent.
- (b) An amendment or waiver that has the effect of changing or which relates to:
- (i) Clause 12 (*Redistribution*), Clause 13 (*Enforcement of Transaction Security*), Clause 17 (*Application of Proceeds*) or this Clause 28 (*Consents, Amendments and Override*);
  - (ii) paragraphs (d)(iii), (e) and (f) of Clause 20.3 (*Instructions*);
  - (iii) the order of priority or subordination under this Agreement,
- shall not be made without the consent of:
- (A) the Creditor Representatives;
  - (B) the Credit Facility Lenders;
  - (C) each Surety Bond Provider;
  - (D) each Pari Passu Note Trustee on behalf of the Pari Passu Noteholders in respect of which it is the Creditor Representative;
  - (E) the Pari Passu Lenders;

- (F) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty); and
  - (G) the Security Agent.
- (c) Any term of this Agreement or a Security Document may be amended or waived by the Security Agent and the Parent without the consent of any other Party if that amendment or waiver is:
- (i) to cure defects or omissions, resolve ambiguities or inconsistencies or to reflect changes of a minor technical or administrative nature; or
  - (ii) otherwise for the benefit of all Secured Parties.

## 28.2 Amendments and Waivers: Security Documents

- (a) Subject to paragraphs (b) and (c) below, to Clause 19 (*Additional Debt*) and to Clause 28.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Required Super Senior Creditors and the Required Pari Passu Creditors, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Security Documents which shall be binding on each Party.
- (b) Subject to paragraph (c) of Clause 28.4 (*Exceptions*), any amendment or waiver of, or consent under, any Security Document which has the effect of changing or which relates to:
  - (i) the nature or scope of the Charged Property;
  - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
  - (iii) the release of any Transaction Security,

shall not be made without the prior consent of the requisite Credit Facility Lenders, each Surety Bond Provider, each Pari Passu Note Trustee on behalf of the requisite Pari Passu Noteholders in respect of which it is the Creditor Representative, the requisite Pari Passu Lenders (in each case to the extent such consent is required by the terms of the relevant Debt Document) and the Hedge Counterparties.
- (c) Subject to paragraph (c) of Clause 28.4 (*Exceptions*), any amendment or waiver of, or consent under, any Security Document which has the effect of changing or which relates to solely to the Surety Bond Only Security shall not be made without the consent of each Surety Bond Provider.

## 28.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this Clause 28 will be binding on all Parties and the Security Agent may effect, on behalf of any Primary Creditor, any amendment, waiver or consent permitted by this Clause 28.
- (b) Without prejudice to the generality of Clause 20.8 (*Rights and discretions*) the Security Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

## 28.4 Exceptions

- (a) Subject to paragraphs (c) and (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 (other than any Creditor Representative or any Arranger), in a way which affects or would affect Primary Creditors of that Party's class generally; or
  - (ii) in the case of a Debtor, to the extent consented to by the Parent under paragraph (a) of Clause 28.2 (*Amendments and Waivers: Security Documents*),
- the consent of that 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, that Arranger, the Security Agent or that Hedge Counterparty.
- (c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 28.2 (*Amendments and Waivers: 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 (*Non-Distressed Disposals*) or Clause 15 (*Distressed Disposals*).
- (d) Paragraphs (a) and (b) above shall apply to an Arranger only to the extent that Liabilities are then owed to that Arranger.

## 28.5 Excluded Super Senior Credit Participations

- (a) Subject to paragraph (b) below, if in relation to:
- (i) a request for a Consent in relation to any of the terms of this Agreement;
  - (ii) a request to participate in any other vote of Super Senior Creditors under the terms of this Agreement;
  - (iii) a request to approve any other action under this Agreement;
  - (iv) a request to provide any confirmation or notification under this Agreement; or
  - (v) a request to provide details of an Exposure,
- any Super Senior Creditor:
- (A) fails to respond to that request within ten (10) Business Days of that request being made; or
  - (B) (in the case of paragraphs (i) to (iii) above), fails to provide details of its Super Senior Credit Participation to the Security Agent within the timescale specified by the Security Agent;

- (vi) in the case of paragraphs (i) to (iii) above, that Super Senior Creditor's Super Senior Credit Participation (as the case may be) shall be deemed to be zero for the purpose of calculating the Super Senior Credit Participations when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations has been obtained to give that Consent, carry that vote or approve that action;
  - (vii) in the case of paragraphs (i) to (iii) above, that Super Senior Creditor's status as a Super Senior Creditor shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of Super Senior Creditors has been obtained to give that Consent, carry that vote or approve that action;
  - (viii) in the case of paragraph (iv) above, that confirmation or notification shall be deemed to have been given; and
  - (ix) in the case of paragraph (v) above, that Super Senior Creditor's Exposure shall be deemed to be zero.
- (b) Paragraph (a)(A) above shall not apply to an amendment or waiver referred to in paragraphs (b)(i), (b)(ii) or (b)(iii) of Clause 28.1 (*Required Consents*).

#### 28.6 Disfranchisement of Investor Affiliates

- (a) For so long as an Investor Affiliate (i) beneficially owns a Super Senior Credit Participation or Pari Passu Credit Participation or (ii) has entered into a sub-participation agreement relating to a Super Senior Credit Participation or Pari Passu Credit Participation 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;
    - (B) the Majority Pari Passu Creditors; or
    - (C) whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participation or Pari Passu Credit Participation, or 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 Super Senior Credit Participation or Pari Passu Credit Participation shall be deemed to be zero and, subject to paragraph (b) below, that Investor Affiliate (or the person with whom it has entered into that sub-participation, other agreement or arrangement (a "**Counterparty**")) shall be deemed not to be a Credit Facility Lender or Pari Passu Creditor.
- (b) Each Investor Affiliate that is a Credit Facility Lender or Pari Passu Creditor agrees that:
- (i) in relation to any meeting or conference call to which all the Super Senior Creditors, all the Pari Passu Creditors, all the Primary Creditors, 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 Security Agent or, unless the Security Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and

- (ii) it shall not, unless the Security Agent otherwise agrees, be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Security Agent or one or more of the Primary Creditors.

## 28.7 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment:
  - (i) in ascertaining:
    - (A) the Required Super Senior Creditors or Majority Pari Passu Creditors; or
    - (B) whether:
      - (1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations or Pari Passu 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 or Pari Passu Creditor.

- (b) For the purposes of this Clause 28.7, the Security Agent may assume that the following Primary Creditors are Defaulting Lenders:
  - (i) any Credit Facility Lender or Pari Passu Lender which has notified the Security Agent that it has become a Defaulting Lender;
  - (ii) any Credit Facility Lender or Pari Passu Lender to the extent that the relevant Creditor Representative has notified the Security Agent that that Credit Facility Lender or Pari Passu Lender is a Defaulting Lender; and
  - (iii) any Credit Facility Lender or Pari Passu 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 relevant Credit Facility Agreement or Pari Passu Facility Agreement has occurred,

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

## 28.8 Calculation of Super Senior Credit Participations and Pari Passu Credit Participations

For the purpose of ascertaining whether any relevant percentage of Super Senior Credit Participations or Pari Passu Credit Participations has been obtained under this Agreement, the Security Agent may notionally convert the Super Senior Credit Participations and/or Pari Passu Creditor Participations into their Common Currency Amounts.

**28.9 Deemed consent**

If, at any time prior to the Super Senior Discharge Date, the Credit Facility Lenders, the Pari Passu Note Trustees (to the extent required under the Senior Secured Note Documents) and the Pari Passu Debt Creditors (to the extent required under the Pari Passu Debt Documents) give a Consent in respect of their respective Debt Documents then, if that action was permitted by the terms of this Agreement, the Intra-Group Lenders, the Parent and the Subordinated Creditors will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
- (b) do anything (including executing any document) that the Primary Creditors may reasonably require to give effect to this Clause 28.9.

**28.10 Excluded consents**

Clause 28.9 (*Deemed consent*) does not apply to any Consent which has the effect of:

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

**28.11 No liability**

None of the Primary Creditors will be liable to any other Creditor, or Debtor for any Consent given or deemed to be given under this Clause 28.

**28.12 Agreement to override**

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

**29. 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.

**30. GOVERNING LAW**

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

**31. ENFORCEMENT****31.1 Jurisdiction**

- (a) The parties hereto hereby submit to the exclusive jurisdiction of the courts of England with respect to 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**”), and expressly waive their right to any other jurisdiction that may apply by virtue of their present or any other future domicile or for any other reason.

- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

### 31.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law:
- (i) each Debtor (unless incorporated in England and Wales):
- (A) irrevocably appoints The Law Debenture Trust Corporation p.l.c., Fifth Floor, 100 Wood Street, London EC2V 7EX as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
- (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned;
- (ii) each Investor (unless incorporated in England and Wales):
- (A) irrevocably appoints its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement in the relevant Creditor/Creditor Representative Accession Undertaking; and
- (B) agrees that failure by a process agent to notify the relevant Investor 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) or the relevant Investor must immediately (and in any event within three (3) days of such event taking place) appoint another agent on terms acceptable to each Creditor Representative and each Hedge Counterparty. Failing this, the relevant Creditor Representative or Hedge Counterparty (as the case may be) may appoint another agent for this purpose.
- (c) Each Mexican Guarantor shall grant a special irrevocable power of attorney for lawsuits and collections (*pleitos y cobranzas*) notarized by a Mexican Notary Public in favour of the Process Agent in form and substance satisfactory to the Facility Agent, and the parties hereto hereby agree that the granting of such power of attorney shall be irrevocable considering it shall be granted as a means to satisfy the obligation of such Mexican Guarantor contained herein.<sup>1</sup>

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

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<sup>1</sup> The same instrument will contain the POA for this Agreement, the Credit Agreement and the NPA

## SCHEDULE 1

### FORM OF DEBTOR ACCESSION DEED

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

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

This agreement is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] 2016 between, amongst others, Codere S.A. as parent, Codere Newco S.A.U. as company, GLAS Trust Corporation Limited as security agent, Bank of America Merrill Lynch International Limited as revolving agent, GLAS Trust Corporation Limited as senior secured note trustee, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

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

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

the “Relevant Documents”.

**IT IS AGREED** as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
2. The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
  - (a) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
  - (b) all proceeds of that Security; and]<sup>\*</sup>
  - (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.

**[Italian Debtor – guarantees non-cumulative**

4. *The obligations of any Italian Debtor as guarantor under any Debt Document shall not be deemed to be cumulative and shall be considered without duplication and, therefore, the guarantees granted by*

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

*the relevant Italian Debtor under the Debt Documents in respect of the obligations of any Obligor which is not a Subsidiary of such Italian Debtor shall not exceed and cannot be enforced for an amount - globally considered - higher than the aggregate of:*

- (a) *the aggregate principal amount of the indebtedness of such Italian Debtor (and/or any of its direct or indirect subsidiaries pursuant to article 2359 paragraph 1, numbers 1 and/or 2 of the Italian Civil Code) as Borrower under the Credit Facility Agreement; and*
- (b) *the aggregate principal amount of any intercompany loans advanced to such Italian Debtor (or any of its direct or indirect subsidiaries pursuant to article 2359 paragraph 1, numbers 1 and/or 2 of the Italian Civil Code) by a Borrower, the Issuer and/or any other Obligor,*
- (c) *in each case as resulting from time to time from the latest financial statements (bilancio di esercizio) or, as applicable, semi-annual financial statements (relazione semestrale) or quarterly financial statements (relazione trimestrale) duly approved by the competent body of that Italian Guarantor and/or any of its direct or indirect subsidiaries pursuant to article 2359 paragraph 1, numbers 1 and/or 2 of the Italian Civil Code, as the case may be.]<sup>2</sup>*

5. *[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].<sup>\*\*</sup>*

[4]/[5] This Agreement and any non-contractual obligations arising out of or in connection with it are is governed by, English law.

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

**The Acceding Debtor**

**[EXECUTED as a DEED** )  
 By: [Full Name of Acceding Debtor] )

\_\_\_\_\_ Director

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

<sup>2</sup> Include only for Italian Debtors

<sup>\*\*</sup> Include this paragraph in the relevant Debtor Accession Deed if the Acceding Debtor is also to accede as an Intra-Group Lender to the Intercreditor Agreement.

**OR**

**EXECUTED AS A DEED**

By: *[Full name of Acceding Debtor]*

\_\_\_\_\_

*Signature of Director*

\_\_\_\_\_

*Name of Director*

*in the presence of*

\_\_\_\_\_

*Signature of witness*

\_\_\_\_\_

*Name of witness*

\_\_\_\_\_

*Address of witness*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Occupation of witness]*

Address for notices:

Address:

Fax:

**The Security Agent**

*[Full Name of Current Security Agent]*

By:

Date:

## SCHEDULE 2

## FORM OF CREDITOR/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]

THIS UNDERTAKING is made on [date] by [insert full name of new Credit Facility Lender/Surety Bond Provider/Pari Passu Debt Creditor/Hedge Counterparty/Creditor Representative/ Arranger/Intra-Group Lender/Investor] (the “**Acceding Credit Facility Lender/Pari Passu Debt Creditor/Hedge Counterparty/Creditor Representative/ Arranger/Intra-Group Lender/Investor**”) in relation to the intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] 2016 between, amongst others, Codere S.A. as parent, Codere Newco S.A.U. as company, GLAS Trust Corporation Limited as security agent, Bank of America Merrill Lynch International Limited as revolving agent, GLAS Trust Corporation Limited as senior secured note trustee, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

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

*[The Acceding Lender is an Affiliate of a Credit Facility Lender and has become a provider of an Ancillary Facility. In consideration of the Acceding Lender being accepted as an Ancillary Lender for the purposes of the relevant Credit Facility Agreement, the Acceding Lender confirms, for the benefit of the parties to the Credit Facility Agreement, that, as from [date], it intends to be party to the Credit Facility Agreement as an Ancillary Lender, and undertakes to perform all the obligations expressed in the Credit Facility Agreement to be assumed by a Finance Party (as defined in the Credit Facility Agreement) and agrees that it shall be bound by all the provisions of the Credit Facility Agreement, as if it had been an original party to the Credit Facility Agreement as an Ancillary Lender.]\*\**

*[The Acceding Hedge Counterparty has become a provider of hedging arrangements to the [Company]. In consideration of the Acceding Hedge Counterparty being accepted as a Hedge Counterparty for the purposes of the relevant Credit Facility Agreement, the Acceding Hedge Counterparty confirms, for the benefit of the parties to the Credit Facility Agreement, that, as from [date], it intends to be party to the Credit Facility Agreement as a Hedge Counterparty, and undertakes to perform all the obligations expressed in the Credit Facility Agreement to be assumed by a Hedge Counterparty and agrees that it shall be bound by all the provisions of the Credit Facility Agreement, as if it had been an original party to the Credit Facility Agreement as a Hedge Counterparty.]\*\*\**

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\*\* Include only in the case of an Ancillary Lender which is an Affiliate of a Credit Facility Lender which is using this undertaking to accede to the relevant Credit Facility Agreement in accordance with paragraph (c) of Clause 22.14 (Creditor/Creditor Representative Accession Undertaking).

\*\*\* Include only in the case of a Hedge Counterparty which is using this undertaking to accede to the Credit Facility Agreement in accordance with paragraph (c) of Clause 22.14 (Creditor/Creditor Representative Accession Undertaking).

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

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

Acceding [*Creditor*]

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

By:

Address:

Fax:

Accepted by the Security Agent

[*Accepted by the relevant Credit Facility Agent*]

\_\_\_\_\_

\_\_\_\_\_

for and on behalf of

for and on behalf of

[*Insert full name of current Security Agent*]

[*Insert full name of relevant Credit Facility Agent*]

Date:

*Date:]\*\*\*\**

\*\*\*\* Include only in the case of (i) a Hedge Counterparty or (ii) an Ancillary Lender which is an Affiliate of a Credit Facility Lender which is using this undertaking to accede to the relevant Credit Facility Agreement.

## SCHEDULE 3

## FORM OF DEBTOR RESIGNATION REQUEST

To: [●] as Security Agent  
 From: [*resigning Debtor*] and [*Parent*]  
 Dated:

Dear Sirs

**[*Parent*] - [●] Intercreditor Agreement  
 dated [●] (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 22.17 (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [*resigning Debtor*] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
  - (a) no Default is continuing or would result from the acceptance of this request; and
  - (b) [*resigning Debtor*] is under no actual or contingent obligations in respect of the Intra-Group Liabilities and the Parent Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[*Parent*]

[*resigning Debtor*]

By:

By:

## SCHEDULE 4

### ENFORCEMENT PRINCIPLES

1. In this Schedule 4:
 

“**Enforcement Objective**” means maximising, to the extent consistent with a prompt and expeditious realisation of value, the value realised from Enforcement.

“**Fairness Opinion**” means, in respect of any Enforcement, an opinion from a Financial Adviser that the proceeds received or recovered in connection with that Enforcement are fair from a financial point of view taking into account all relevant circumstances.

“**Financial Adviser**” means any:

  - (a) independent internationally recognised investment bank;
  - (b) independent internationally recognised accountancy firm; or
  - (c) other independent internationally recognised professional services firm which is regularly engaged in providing valuations of businesses or financial assets or, where applicable, advising on competitive sales processes.
  
2. It shall be the primary and over-riding aim of any Enforcement to achieve the Enforcement Objective.
  
3. The Transaction Security will be enforced and other action as to Enforcement will be taken such that either:
  - (a) to the extent an Instructing Group is the Majority Super Senior Creditors, all proceeds of Enforcement are received by the Security Agent in cash for distribution in accordance with Clause 17 (*Application of Proceeds*); or
  - (b) to the extent an Instructing Group is the Majority Pari Passu Creditors, either:
    - (i) all proceeds of enforcement are received by the Security Agent in cash for distribution in accordance with Clause 17 (*Application of Proceeds*); or
    - (ii) sufficient proceeds from Enforcement will be received by the Security Agent in cash to ensure that, when the proceeds are applied in accordance with Clause 17 (*Application of Proceeds*), the Super Senior Discharge Date will occur (unless the Majority Super Senior Creditors agree otherwise).
  
4. On a proposed Enforcement in relation to Charged Property comprising some or all of the shares in a member of the Group over which Transaction Security exists, which is not being effected through a public auction, the Security Agent shall, if requested by the Majority Super Senior Creditors or the Majority Pari Passu Creditors, appoint a Financial Adviser to provide a Fairness Opinion in relation to that Enforcement, **provided that** the Security Agent shall not be required to appoint a Financial Adviser nor obtain a Fairness Opinion if a proposed Enforcement:
  - (i) would result in the receipt of sufficient Enforcement Proceeds in cash by the Security Agent to ensure that, after application in accordance with Clause 17 (*Application of Proceeds*):
    - (A) in the case of an Enforcement requested by the Majority Super Senior Creditors, the Final Discharge Date would occur; or

- (B) in the case of an Enforcement requested by the Majority Pari Passu Creditors, the Super Senior Discharge Date would occur,
    - (ii) is in accordance with any applicable law; and
    - (iii) complies with Clause 15 (*Distressed Disposals*).
- 5. The Security Agent shall be under no obligation to appoint a Financial Adviser or to seek the advice of a Financial Adviser unless expressly required to do so by this Schedule 4 or any other provision of this Agreement.
- 6. The Fairness Opinion will be conclusive evidence that the Enforcement Objective has been met.

## SCHEDULE 5

### AGREED SECURITY PRINCIPLES

Defined terms used in this Schedule shall have the meanings assigned to them in this Schedule unless the context requires otherwise or otherwise shall have the meaning ascribed to them in the Initial Revolving Facility Agreement.

#### 1. **Agreed Security Principles**

- 1.1 The guarantees and Security Interests to be provided will be given in accordance with the Agreed Security Principles. This Schedule addresses the manner in which the Agreed Security Principles will impact on the guarantees and Security Interests that are proposed to be taken in relation to this transaction.
- 1.2 The Agreed Security Principles embody a recognition by all parties that there may be certain legal and practical difficulties in obtaining effective guarantees and Security Interests from members of the Group in jurisdictions in which it has been agreed that guarantees and Security Interests will be granted. In particular:
- (a) general statutory limitations, financial assistance, corporate benefit, fraudulent preference, “thin capitalisation” rules, tax restrictions, retention of title claims and similar principles may limit the ability of a member of the Group to provide a guarantee or Security Interest or may require that the guarantee or Security Interest be limited by an amount or otherwise. If any such limit applies, the guarantees and Security Interests provided will be limited to the maximum amount which the relevant member of the Group may provide having regard to applicable law (including any jurisprudence) and subject to fiduciary duties of management (a Security Interest will not be required if taking such a Security Interest would be reasonably likely to expose the directors of the relevant company to a risk of personal liability);
  - (b) a key factor in determining whether or not a guarantee or Security Interest shall be granted is the applicable cost (including adverse effects on interest deductibility and stamp duty, notarisation and registration fees) which shall not be disproportionate to the benefit to the Secured Parties of obtaining such guarantee or security;
  - (c) the maximum guaranteed or secured amount may be limited to minimise stamp duty, notarisation, registration or other applicable fees, taxes and duties where the benefit of increasing the granted or secured amount is disproportionate to the level of such fee, taxes and duties;
  - (d) where there is material incremental cost involved in creating a Security Interest over all assets owned by an Obligor in a particular category the principle stated at paragraph (b) above shall apply and, subject to the Agreed Security Principles, only the material assets in that category shall be subject to security;
  - (e) any assets subject to third party arrangements which may prevent those assets from being charged will be excluded from any relevant Security Document provided that reasonable endeavours to obtain consent to charging any such assets shall be used by the Group if the Security Agent determines the relevant asset to be material;
  - (f) members of the Group will not be required to give guarantees or enter into Security Documents if it is not within the legal capacity of the relevant members of the Group or if the same would conflict with the fiduciary duties of those directors or contravene any legal prohibition (including, without limitation, capital maintenance rules) or would be reasonably likely to result in personal or criminal liability on the part of any officer provided that the relevant member of the Group shall use reasonable endeavours to overcome any such obstacle;

- (g) for the avoidance of doubt, the parties acknowledge that any guarantees or Security Interests that will (if customary in the relevant jurisdiction) be granted as up-stream or cross-stream guarantee / Security Interests will be subject to agreed limitation language which applies equally when granting such guarantee / Security Interest as well as during the lifetime of such guarantee / Security Interest (subject to the provisions made therein);
- (h) the giving of a guarantee, the granting of a Security Interest or the perfection of the Security Interest granted will not be required if it would have a material adverse effect on the ability of the relevant Obligor to conduct its operations and business in its ordinary course of trading as otherwise permitted by the Finance Documents, **provided that** the relevant member of the Group shall use reasonable endeavours to overcome any such obstacle;
- (i) to the extent possible, all Security Interests shall be granted in favour of the Security Agent and not the Secured Parties individually; “parallel debt” provisions will be used where necessary and such provisions will be contained in the Intercreditor Agreement and not the individual Security Documents unless required under local laws;
- (j) to the extent possible, there should be no action required to be taken in relation to the guarantees or Security Interests when any Existing Lender assigns or transfers any of its rights and obligations under any Finance Document to an acceding New Lender; and
- (k) the costs of any re-execution, notarisation, re-registration, amendment or other perfection requirement for any Security Interest on any assignment or transfer of any rights and obligations under any Finance Document from an Existing Lender to an acceding New Lender shall be for the account of the acceding New Lender.

## 2. **Terms of Security Documents**

The following principles will be reflected in the terms of any Security Interest taken as part of this transaction:

- (a) Security Interests will not be enforceable until an Event of Default has occurred which is continuing and any notice of acceleration in connection therewith has been given by the Facility Agent in accordance with the terms of the Initial Revolving Facility Agreement;
- (b) the Security Documents should only operate to create Security Interests rather than to impose new commercial obligations. Accordingly, they should not contain any additional representations or undertakings unless these are covenants required for the creation, perfection, protection or preservation of the Security Interest and are no more onerous than any equivalent representation or undertaking in the Finance Documents;
- (c) in respect of the share pledges, until an Event of Default has occurred which is continuing and any notice of acceleration in connection therewith has been given by the Facility Agent in accordance with the terms of the Initial Revolving Facility Agreement, the pledgors shall be permitted to retain and to exercise voting rights to any shares pledged by them in a manner which does not adversely affect the validity or enforceability of the Security Interest or cause an Event of Default to occur, and the pledgors should be permitted to pay dividends upstream on pledged shares to the extent permitted under the Finance Documents;
- (d) the Finance Parties should only be able to exercise a power of attorney granted to them under a Security Document if an Event of Default has occurred which is continuing and any notice of acceleration in connection therewith has been given by the Facility Agent in accordance with the terms of the Initial Revolving Facility Agreement or after a failure to comply with a further assurance or perfection obligation or in order to remedy a breach of covenant by the relevant Obligor in the Initial Revolving Facility Agreement or in the relevant Security Document;

- (e) no Security Interest will be created over the shares in Alta Cordillera S.A. or Codematica S.R.L.; and
- (f) notwithstanding the foregoing in no event will any member of the Restricted Group be required to (i) create any Security Interests over any assets other than shares in Material Companies (save where guarantees from other members of the Restricted Group are required in order for the Parent to comply with clause 27.8 (*Guarantors*) of the Initial Revolving Facility Agreement, in which case security over the shares of the relevant Guarantor(s) shall also be required) or (ii) enter into any control agreements or other control arrangements.

3. **Obligations to be secured**

Subject to the Agreed Security Principles, the obligations to be secured are the Secured Obligations (as defined in the relevant Security Document. The Security Interests are to be granted in favour of the Security Agent on behalf of the Secured Parties.

4. **Intercreditor Agreement**

Each Security Document shall state that in the event of a conflict between the terms of that Security Document and this Agreement, the terms of this Agreement shall prevail. Where appropriate, defined terms in the Security Documents should mirror those in this Agreement.

## SCHEDULE 6

## FORM OF SUPER SENIOR HEDGING CERTIFICATE

To: [●] as Security Agent

From: [new Super Senior Hedge Counterparty]/[existing Super Senior Hedge Counterparty] and [Parent]

Dated:

Dear Sirs

**[Parent] - [●] Intercreditor Agreement  
dated [●] (the "Intercreditor Agreement")**

1. We refer to the Intercreditor Agreement. This is a Super Senior Hedging Certificate. Terms defined in the Intercreditor Agreement have the same meaning in this Super Senior Hedging Certificate.
2. Pursuant to Clause 6.14 (*Allocation of Super Senior Hedging Liabilities*) of the Intercreditor Agreement we request that with effect from the date of your acknowledgement of this Super Senior Hedging Certificate:
  - (a) *the Hedging Liabilities owed to [name of new Super Senior Hedge Counterparty] under [details of Hedging Agreement and/or trade confirmation or other equivalent documentation to be inserted] shall be designated and treated as Super Senior Hedging Liabilities with an Allocated Super Senior Hedging Amount equal to [insert amount in Common Currency][.]; and/or*
  - (b) *the Hedging Liabilities owed to [name of existing Super Senior Hedge Counterparty] under [details of Hedging Agreement and/or trade confirmation or other equivalent documentation to be inserted] shall no longer be designated as Super Senior Hedging Liabilities and the corresponding Allocated Super Senior Hedging Amount of [insert amount in Common Currency] shall be released and be available for designation towards other Hedging Liabilities as Super Senior Hedging Liabilities under the Intercreditor Agreement.]*
3. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Parent]

By:

[existing Super Senior Hedge Counterparty]

By:

[new Super Senior Hedge Counterparty]

By:

Acknowledged and accepted on [insert date]:

[Security Agent]

By:

## SCHEDULE 7

### HEDGE COUNTERPARTIES' GUARANTEE AND INDEMNITY

#### 1. **Guarantee**

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 the Hedging Agreements;
- (b) undertakes with each Hedge Counterparty that whenever another Debtor does not pay any amount when due under or in connection with any Hedging Agreement, that Debtor shall immediately on demand 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 Agreement 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 Schedule 7 if the amount claimed had been recoverable on the basis of a guarantee.

#### 2. **Continuing guarantee**

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

#### 3. **Reinstatement**

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 in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Debtor under this Schedule 7 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### 4. **Waiver of defences**

The obligations of each Debtor under this Schedule 7 will not be affected by an act, omission, matter or thing which, but for this Schedule 7, would reduce, release or prejudice any of its obligations under this Schedule 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 Agreement or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any hedging arrangements or the addition of any new hedging arrangements under any Hedging Agreement or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Hedging Agreement or any other document or security; or
- (g) any insolvency or similar proceedings.

5. **Debtor intent**

Without prejudice to the generality of paragraph 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 of the Hedging Agreements and/or any hedging made available for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

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 Schedule 7. This waiver applies irrespective of any law or any provision of a Hedging Agreement to the contrary.

7. **Appropriations**

Until all amounts which may be or become payable by the Debtors under or in connection with the Hedging Agreements 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 any moneys received from any Debtor or on account of any Debtor's liability under this Schedule 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 Agreements have been irrevocably paid in full, no Debtor will exercise any rights which it may have by reason of performance by it of its obligations under the Hedging Agreements or by reason of any amount being payable, or liability arising, under this Schedule 7:

- (a) to be indemnified by a Debtor;
- (b) to claim any contribution from any other guarantor of any Debtor's obligations under the Hedging Agreements;

- (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 Agreements or of any other guarantee or security taken pursuant to, or in connection with, the Hedging Agreements 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 paragraph 1 (*Guarantee*);
- (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 Agreements to be repaid in full on trust for the Hedge Counterparties and shall promptly pay or transfer the same to the Relevant Hedge Counterparty.

#### 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 Hedging Agreements 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 the Hedging Agreements; and
- (b) each other Debtor waives any rights it may have by reason of the performance of its obligations under the Hedging Agreements 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 Hedging Agreement or of any other security taken pursuant to, or in connection with, any Hedging Agreement where such rights or security are granted by or in relation to the assets of the Retiring Debtor.

#### 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.

#### 11. **Guarantee Limitations**

##### *Guarantee Limitations for Argentine Guarantors*

This guarantee does not apply to any liability of any Argentine Guarantor to the extent that it would result in this guarantee:

- (a) breaching or contravening any provisions of the Argentine Insolvency and Bankruptcy Act No. 24,522, as amended; or
- (b) breaching or contravening sections 338 through 342 of the Argentine Civil and Commercial Code.

##### *Guarantee Limitations for Colombian Guarantors*

- (a) This guarantee is subject to any limitation set forth by applicable bankruptcy, insolvency, reorganisation, restructuring, liquidation, moratorium, administrative intervention, or similar Colombian laws affecting creditors' rights generally (including Law 1116 of 2006), and is subject to statute of limitations limiting the period for commencement for actions in Colombia, and to statutory preferences granted under the laws of Colombia.
- (b) For the purposes of the collection, sale, enforcement or other realisation of any Guarantee granted by a Colombian Guarantor, each Colombian Guarantor undertakes to make any filings to be made before the Colombian foreign exchange authorities and provide written notifications, if required under applicable law, to the Colombian Central Bank (*Banco de la República*) of its Guarantee of the liabilities and, to the extent applicable, any Transaction Security and/or any channelling, to the extent applicable, through the foreign exchange market resulting from the enforcement of such Guarantee or Transaction Security (as the case may be). For such purposes, each Colombian Guarantor specifically undertakes to carry out the following activities in respect of the enforcement of its Guarantee, to the extent required under applicable law:
  - (i) complete and file with the Colombian Central Bank, the foreign exchange declaration (and any amendments thereof) required to inform the Colombian Central Bank of the granting of the Guarantee (Form 7 – “*Reporting of External Indebtedness granted to Nonresidents*” or any successor form thereto) and to execute all related documentation which may be required to effect such filing; and
  - (ii) complete and file with the Colombian Central Bank, the foreign exchange declaration (and any amendments thereof) required to channel foreign currency resulting from the enforcement of the Guarantee (Form 3 – “*Foreign Exchange Declaration for Foreign Indebtedness and Avals and/or Guarantees*” or any successor form thereto).

#### ***Republic of Italy Guarantee Limitations***

- (c) This guarantee does not apply to any liability to the extent that it would result in this guarantee being illegal or contravening any applicable law or regulation in any relevant jurisdiction concerning financial assistance by a company for the acquisition of, or subscription for, shares or concerning the protection of shareholders' capital. Any guarantee, indemnity, obligations and liability granted or assumed pursuant to this Schedule 7 by any Italian Debtor shall not include and shall not extend, directly or indirectly, to any amount lent to acquire or subscribe, directly or indirectly, shares or quotas in the relevant Italian Debtor or any direct or indirect controlling entity of such Italian Debtor (or the refinancing of any indebtedness incurred for that purpose).
- (d) The obligations of each Italian Debtor under this Schedule 8 in respect of the obligations of any other Debtor which is not a subsidiary of that Italian Guarantor shall not exceed, at any time, an amount equal to the aggregate principal amount of any intercompany loan or other financial support by way of any form of cash contribution advanced to such Italian Debtor (or any of its direct or indirect Subsidiaries) after 31 December 2015 by the other Debtors, as resulting from time to time from the latest financial statements (*bilancio di esercizio*) or, as applicable, semi-annual financial statements (*relazione semestrale*) or quarterly financial statements (*relazione trimestrale*) duly approved by the competent body of that Italian Debtor and/or any of its direct or indirect Subsidiaries, as the case may be.
- (e) In any event, pursuant to article 1938 of the Italian Civil Code, the maximum amount that any Italian Debtor may be required to pay in respect of its obligations as guarantor of the other Debtors' obligations under the Hedging Agreements shall not exceed one hundred and twenty per cent. (120%) of the amount of the relevant Hedging Agreements.

#### ***Luxembourg Guarantee Limitation***

The guarantee granted by any Debtor which is incorporated and established in the Grand-Duchy of Luxembourg (a “**Luxembourg Guarantor**”) shall be limited at any time to an aggregate amount not exceeding the higher of:

- (a) ninety-nine per cent. (99%) of such Luxembourg Guarantor’s *capitaux propres* (as referred to in article 34 of the Luxembourg law dated 19 December 2002 on the commercial register and annual accounts, as amended (the “**2002 Law**”), and as implemented by the Grand-Ducal regulation dated 18 December 2015 setting out the form and the content of the presentation of the balance sheet and profit and loss account (the “**Regulation**”)) determined as at the date on which a demand is made under the guarantee, increased by the amount of any Intra-Group Liabilities; and
- (b) ninety-nine per cent. (99%) of such Luxembourg Guarantor’s *capitaux propres* (as referred to in article 34 of the 2002 Law) determined as at the date of this Agreement, increased by the amount of any Intra-Group Liabilities.

The amount of the *capitaux propres* shall be determined by the Security Agent acting in its sole commercially reasonable discretion and shall be adjusted (by derogation to the rules contained in the 2002 Law and the Regulation) to take into account the fair value rather than book value of the assets of the Luxembourg Guarantor.

For the purpose of this Clause, “**Intra-Group Liabilities**” shall mean any amounts owed by the Luxembourg Guarantor to any other member of the group and that have not been financed (directly or indirectly) by a borrowing under the Debt Documents.

The above limitation shall not apply:

- (i) in respect of any amounts due under the Debt Documents by the Luxembourg Guarantor and by a Debtor which is a direct or indirect subsidiary of that Luxembourg Guarantor;
- (ii) in respect of any amounts due under the Debt Documents by the Luxembourg Guarantor and by a Debtor which is not a direct or indirect subsidiary of that Luxembourg Guarantor and which have been on-lent to or made available by whatever means, directly or indirectly, to that Luxembourg Guarantor or any of its direct or indirect subsidiaries.

If a demand has been made under a guarantee given by a Luxembourg Guarantor under another Debt Document (excluding for the avoidance of doubt any payments made under a Security Document), then the amount determined under (b) above shall be reduced by the amount paid under such other guarantee by such Luxembourg Guarantor (it being understood that the amount determined under (a) above does reflect the demand made under such guarantee) even where such payment is made after the demand under this Guarantee.

#### ***Panamanian Guarantee Limitation***

Pursuant to Panamanian public policy provisions, a guarantee given by a Panamanian Guarantor:

- (a) would be unenforceable against the Panamanian Guarantor if the main obligation is unenforceable against the primary obligor (the Borrower or the Issuer) as a guarantee is accessory to the main obligation and cannot exist without a validly existing main obligation;
- (b) may not extend to encompass more than the main obligation in the amount, terms or conditions of said main obligation notwithstanding any agreement to the contrary which may be given by a Panamanian Guarantor; and

- (c) may be reduced to the aggregate amount of the main obligation by a court in such circumstances.

***Guarantee Limitations for Spanish Guarantors***

- (a) The guarantee granted by any Spanish Guarantor does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of articles 143 or 150 of the Spanish Companies Law, or any equivalent and applicable provisions under the laws of the Original Jurisdiction of the relevant Guarantor and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.
- (b) The limitation set out in paragraph (a) above shall apply *mutatis mutandis* to any Transaction Security created by any Spanish Obligors under the Transaction Security Documents and to any guarantee, undertaking, obligation, indemnity and payment, including (but not limited to) distributions, cash sweeps, credits, loans and set-offs, pursuant to or permitted by the Finance Documents and made by a Spanish Obligor.

**12. Additional Debtor limitations**

The guarantee of any Additional Debtor is subject to any limitations relating to that Additional Debtor set out in any relevant Debtor Accession Deed.

**13. Keepwell**

Each Qualified Keepwell Provider hereby jointly and severally, absolutely, unconditionally and irrevocably, undertakes to provide (subject to any limitations set out in paragraph 11 (*Guarantee limitations*) of this Schedule 7 that are applicable to the Qualified Keepwell Provider or in any Debtor Accession Deed pursuant to which such Qualified Keepwell Provider acceded to this Agreement as a Debtor) such funds or other support as may be needed from time to time by any Non-Qualified ECP Guarantor to honour all of such Non-Qualified ECP Guarantor's obligations under this guarantee in respect of Swap Obligations (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering the Qualified Keepwell Provider's obligations hereunder voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of the Qualified Keepwell Provider under this paragraph 13 shall remain in full force and effect until all Swap Obligations in respect of which a Non-Qualified ECP Guarantor has provided a guarantee have been fully and finally discharged. The Parties intend this provision to constitute, and this provision shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of, each Non-Qualified ECP Guarantor for all purposes of Section 1a (18)(A)(v)(II) of the Commodity Exchange Act.

**14. Excluded Swap Obligations**

If, notwithstanding paragraph 13 above, there exists at any time any Non-Qualified ECP Guarantor that is providing a guarantee or granting security with respect to any Swap Obligation, any guarantee or security provided by such Non-Qualified ECP Guarantor shall not constitute a guarantee or security for Excluded Swap Obligations, and any provision in any Debt Document with respect to such Non-Qualified ECP Guarantor providing a guarantee or security for Swap Obligations shall be deemed to be a guarantee or security for all Swap Obligations other than the Excluded Swap Obligations (and each Party hereto hereby relinquishes, waives and releases any rights to enforce such guarantee or security in respect of such Excluded Swap Obligations and its right to (directly or indirectly) share in any recoveries from a Non-Qualified ECP Guarantor, whether under Clause 17 (*Application of Proceeds*) or otherwise).

**15. Definitions**

For the purposes of paragraphs 13 and 14 above, the following terms have the following meanings:

“**CFTC**” means the Commodity Futures Trading Commission.

“**Commodity Exchange Act**” means the US Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**ECP**” means an “eligible contract participant” as defined in the Commodity Exchange Act or any regulations thereunder.

“**Excluded Swap Obligation**” means, with respect to any Hedge Guarantor, any Swap Obligation if, and only to the extent that, all or a portion of the guarantee given by such Hedge Guarantor of, or the grant by such Hedge Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the US CFTC (or the application or official interpretation of any thereof) by virtue of the fact that such Hedge Guarantor is a Non-Qualified ECP Guarantor at the time the guarantee by such Hedge Guarantor, or a grant by such Hedge Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guarantee or security interest is or becomes illegal.

“**Hedge Guarantor**” means, in respect of any Swap Obligation, a Debtor that has given a guarantee pursuant to paragraph 1 of this Schedule 7;

“**Non-Qualified ECP Guarantor**” means, in respect of any Swap Obligation, a Hedge Guarantor that is not a Qualified ECP Guarantor at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation.

“**Qualified ECP Guarantor**” means, in respect of any Swap Obligation, each Hedge Guarantor that has total assets exceeding USD 10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation.

“**Qualified Keepwell Provider**” means, in respect of any Swap Obligation, any Hedge Guarantor that is, at the time the guarantee becomes effective with respect to such Swap Obligation, (i) a corporation, partnership, proprietorship, organisation, trust or other entity other than a “commodity pool” as defined in Section 1a(10) of the Commodity Exchange Act and CFTC regulations thereunder that has total assets exceeding USD 10,000,000 or (ii) an ECP that can cause another person to qualify as an ECP under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act by entering into a keepwell.

“**Swap**” means any “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

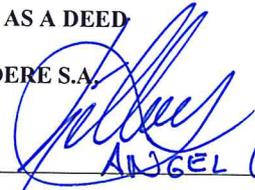
“**Swap Obligation**” means, with respect to any person, any obligation to pay or perform under any agreement, contract, or transaction that constitutes a Swap.

SIGNATURES

The Parent

EXECUTED AS A DEED

By: CODERE S.A.

Acting by:  ANGEL CORZO-CFO

in the presence of



Signature of witness

Oscar Iglesias

Name of witness

Auda de Bruselas, 26

Address of witness

28108 Alcobendas

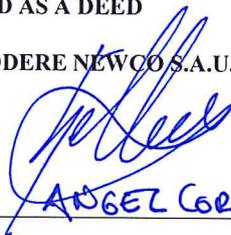
Deputy CFO

Occupation of witness

**The Company**

**EXECUTED AS A DEED**

By: **CODERE NEWCO S.A.U.**

Acting by:  ANGEL CORZO - CFO

*in the presence of*



*Signature of witness*

Oscar Iglesias

*Name of witness*

Auda. de Bruselas, 26

*Address of witness*

28108 Alcobendas

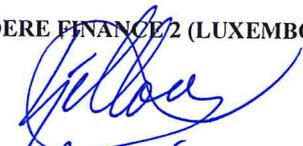
Deputy CFO

*Occupation of witness*

**The Issuer**

**EXECUTED AS A DEED**

By: **CODERE FINANCE 2 (LUXEMBOURG) S.A.**

Acting by:   
ANGEL CORZO - CFO

*in the presence of*



*Signature of witness*

Oscar Iglesias

*Name of witness*

Auda de Bruselas, 26

*Address of witness*

28108 Alcobendas

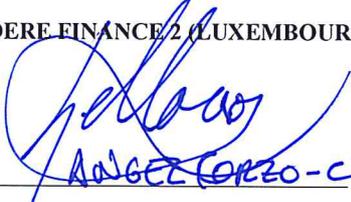
Deputy CFO

*Occupation of witness*

**Debtor**

**EXECUTED AS A DEED**

By: **CODERE FINANCE 2 (LUXEMBOURG) S.A.**

Acting by:  ANGEL CORZO - CFO

in the presence of



*Signature of witness*

Oscar Iglesias

*Name of witness*

Auda. de Bruselas, 76

*Address of witness*

28108 Alcobendas

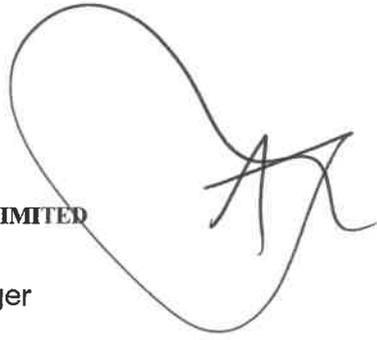
Deputy CFO

*Occupation of witness*

**The Security Agent**

**GLAS TRUST CORPORATION LIMITED**

By: Anthony Stanford  
Transaction Manager  
Address: 45 Ludgate Hill  
London EC4M 7JU  
Fax: +44 (0)203 070 0113  
Attention: TMG

A large, stylized handwritten signature in black ink, consisting of a large loop on the left and several intersecting lines on the right, positioned to the right of the contact information.

**The Revolving Agent**

**BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED**

By:

A handwritten signature in blue ink, appearing to read 'Mark Harrison', with a stylized flourish at the end.

**Mark Harrison**  
Vice President

**The Revolving Lenders**

**BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED**

By:

A handwritten signature in black ink, appearing to be 'S. Ewing', written over a horizontal line.

Scott Ewing

**The Revolving Lenders**

**BARCLAYS BANK PLC**

By: 

**The Revolving Lenders**

**JEFFERIES FINANCE LLC**

By: 

**The Revolving Lenders**

**MORGAN STANLEY BANK INTERNATIONAL LIMITED**

By:

A handwritten signature in black ink, appearing to read "Alysia", with a long, sweeping horizontal flourish extending to the right.

**The Revolving Arrangers**

**BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED**

By:

A handwritten signature in black ink, appearing to be 'S. Ewing', written over a faint, larger signature.

Scott Ewing

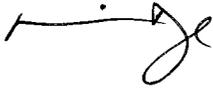
**The Revolving Arrangers**

**BARCLAYS BANK PLC**

By: 

**The Revolving Arrangers**

**JEFFERIES FINANCE LLC**

By: 

**The Revolving Arrangers**

**MORGAN STANLEY BANK INTERNATIONAL LIMITED**

By:

A handwritten signature in black ink, appearing to read "Hysra", with a long horizontal flourish extending to the right.

**The Senior Secured Note Trustee**  
**GLAS TRUST CORPORATION LIMITED**

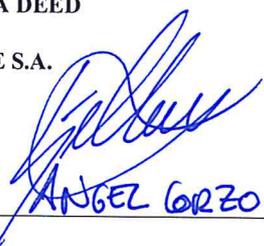
By: Anthony Stanford  
Transaction Manager

A handwritten signature in black ink, appearing to be 'AS', enclosed within a large, irregular, hand-drawn oval shape.

**The Original Intra-Group Lenders**

**EXECUTED AS A DEED**

By: **CODERE S.A.**

Acting by:   
ANGEL GORZO - CFO

in the presence of

  
\_\_\_\_\_  
*Signature of witness*

Oscar Iglesias  
\_\_\_\_\_  
*Name of witness*

Auda de Bruselas, 26  
\_\_\_\_\_  
*Address of witness*

28108 Alcobendas  
\_\_\_\_\_

Deputy CFO  
\_\_\_\_\_  
*Occupation of witness*

**The Original Intra-Group Lenders**

**EXECUTED AS A DEED**

By: **CODERE NEWCO S.A.U.**

Acting by:  ANGEL GORZO - CFO

in the presence of

 *Signature of witness*

Oscar Iglesias *Name of witness*

Auda. de Bruselas, 26 *Address of witness*

28108 Alcobenda

Deputy CFO *Occupation of witness*

**The Original Intra-Group Lenders**

**EXECUTED AS A DEED**

By: **CODERE FINANCE 2 (LUXEMBOURG) S.A.**

Acting by:   
ANGEL CORZO CFO

in the presence of

 *Signature of witness*

Oscar Iglesias *Name of witness*

Auda. de Bruselas, 26 *Address of witness*

28108 Alcobendas

Deputy CFO *Occupation of witness*