

INTERCREDITOR AGREEMENT

Dated 20 August 2022

between

Íslandsbanki hf.

as Agent

THE ENTITIES LISTED HEREIN

as Senior Lenders

Íslandsbanki hf.

as Initial Bondholders Agent

Sunstone IV hf.

as Company, Original Debtor and Original Intra-Group Lender

Íslandsbanki hf.

acting as Security Agent

AND OTHERS

CONTENTS

CLAUSE	PAGE
1. Definitions and Interpretation.....	1
2. Ranking and Priority	23
3. Senior Facility Liabilities, Bond Liabilities and/or Cash Management Liabilities.....	24
4. Hedge Counterparties and Hedging Liabilities.....	27
5. Intra-Group Lenders and Intra-Group Liabilities.....	34
6. Subordinated Creditor and Subordinated Liabilities.....	37
7. Effect of Insolvency Event	41
8. Turnover of Receipts	42
9. Redistribution.....	45
10. Enforcement of Transaction Security	46
11. Non-Distressed Disposals	47
12. Distressed Disposals and Appropriation	48
13. Non-Cash Recoveries	52
14. Acquisition and Insurance Claims	54
15. Further Assurance – Disposals and Releases	55
16. Application of Proceeds.....	56
17. Equalisation	60
18. The Security Agent	63
19. Changes to the Parties	75
20. Costs and Expenses.....	81
21. Other Indemnities	82
22. Information.....	83
23. Notices	84
24. Preservation.....	86
25. Consents, Amendments and Override	88
26. Bondholders agent.....	93
27. Counterparts	98
28. Governing Law.....	99
29. Enforcement	99

THE SCHEDULES

SCHEDULE	PAGE
SCHEDULE 1 Form of Debtor Accession Agreement	100
SCHEDULE 2 Form of Creditor Accession Undertaking	102
SCHEDULE 3 Form of Debtor Resignation Request	104
SCHEDULE 4 Cash Management Providers' Guarantee and Indemnity.....	105
SCHEDULE 5 Hedge Counterparties' Guarantee and Indemnity	110
SCHEDULE 6 Bondholders' Guarantee and Indemnity.....	115

THIS AGREEMENT is dated 20 August 2022 and made between:

- (1) Íslandsbanki hf., a public limited company registered at Hagasmári 3, 201 Kópavogur, Iceland, and having the Icelandic ID number 491008-0160 as agent for the Senior Facility Creditors (the "**Agent**");
- (2) Íslandsbanki hf., a public limited company registered at Hagasmári 3, 201 Kópavogur, Iceland, and having the Icelandic ID number 491008-0160 as agent for the Bondholders (the "**Initial Bondholders Agent**");
- (3) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Senior Lenders;
- (4) Sunstone III ehf., a private limited company registered at Borgartún 27, 105 Reykjavík, Iceland and having the Icelandic ID number 561221-1380 (the "**Original Subordinated Creditor**");
- (5) Sunstone IV hf., a public limited company registered at Borgartún 27, 105 Reykjavík, Iceland and having the Icelandic ID number 620921-2540 (the "**Company**", the "**Original Debtor**" and the "**Original Intra-Group Lender**");
- (6) AB855 hf., a public limited company incorporated under the laws of Iceland with the registration number 620921-2620, having its registered offices at Borgartúni 27, 105 Reykjavík as a Debtor and an Intra-Group Lender; and
- (7) Íslandsbanki hf., a public limited company registered at Hagasmári 3, 201 Kópavogur, Iceland, and having the Icelandic ID number 491008-0160 as security agent for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"1992 ISDA Master Agreement" means the 1992 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) the Agent exercising any of its rights (excluding placing amounts on demand but including making a demand on amounts previously placed on demand) to accelerate amounts outstanding under the Senior Facilities Agreement pursuant to clause 21.12 (*Acceleration*) of the Senior Facilities Agreement;
- (b) the Agent exercising any of its rights (excluding placing amounts on demand but including making a demand on amounts previously placed on demand) to accelerate amounts outstanding under the Bond Documents pursuant to "Acceleration" of the Bond Terms; or
- (c) any Hedging Liabilities becoming due and payable by operation of any automatic acceleration provisions to accelerate amounts outstanding under the Hedging Agreement.

"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.

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

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

for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11:00 a.m. (Reykjavik time) on a particular day, which shall, in either case, be notified by the Agent in accordance with paragraph (c) of Clause 18.16 (*Information from the Creditors*).

"Ancillary Document" means each document relating to or evidencing the terms of an Ancillary Facility.

"Ancillary Facility" has the meaning given to that term in the Senior Facilities Agreement.

"Ancillary Lender" means each Senior Lender (or Affiliate of a Senior Lender) which makes available an Ancillary Facility.

"Appropriation" means the appropriation (or similar process) of the shares in the capital of a member of the Group (other than the Company) by the Security Agent (or any Receiver or Delegate) which is effected (to the extent permitted under the relevant Security Document and applicable law) by enforcement of the Transaction Security.

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

"Available Commitment" has the meaning given to the term *"Available Commitment"* in the Senior Facilities Agreement, or any substantially equivalent term in the Bond Terms, any Cash Management Agreement and any Hedging Agreement (as applicable).

"Bond Commitment" has the meaning given to the term *"Total aggregate nominal amount"* under the Bond Terms.

"Bond Creditors" means each Bondholder and the Bondholders Agent.

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

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

"Bond Documents" means the Bond Terms, the Bond Prospectus (once issued) and any other document designated as such by the Initial Bondholders' Agent and the Company (with the consent of the Security Agent).

"Bond Guarantor" means, at any time, each Debtor, provided that such Debtor is also a Guarantor of the Senior Facility Liabilities, in respect of the Bond Liabilities (if any) at that time.

"Bond Liabilities" means the Liabilities owed by the Debtors to the Bond Creditors under or in connection with the Bond Documents.

"Bond Prospectus" means the bond issuance prospectus to be issued upon listing of the bonds between, among others, the Bondholders Agent, the Bondholders and the Company as issuer.

"Bond Terms" means the terms constituting a "bond issue description" dated on or before Closing Date pursuant to which the Company issues or shall issue bonds that are administered by the Initial Bondholders Agent in a nominal amount up to ISK 8,000,000,000, or any other document designated as such by the Initial Bondholders Agent, the Company and (with the consent of or otherwise) the Security Agent.

"Bondholder" means, as at the relevant date, the holder of a Bond Commitment under the Bond Documents.

"Bondholders Agent" means the Initial Bondholders Agent or any other person that has become a Bondholders Agent in accordance with the Bond Documents.

"Bondholders Agent Amount" means, in relation to a Bondholders Agent, amounts payable to that Bondholders Agent or any adviser, receiver, delegate, attorney, agent or appointee thereof under the Bond Documents, any provisions (including indemnity provisions) for costs and expenses in favour of that Bondholders Agent or any adviser, receive, delegate, attorney, agent or appointee thereof contained in the Bond Documents, all compensation for services provided by that Bondholders Agent or any adviser, receive, delegate, attorney, agent or appointee thereof which is payable to that Bondholders Agent or any adviser, receiver, delegate, attorney, agent or appointee thereof pursuant to the terms of the Bond Documents and all out-of-pocket costs and expenses properly incurred by that Bondholders Agent or any adviser, receive, delegate, attorney, agent or appointee thereof in carrying out its duties or performing any service pursuant to the terms of the Bond Documents, including, without limitation:

- (a) compensation for the costs and expenses of the collection by that Bondholders Agent of any amount payable to that Bondholders Agent for the benefit of the Bondholders; and
- (b) costs and expenses of that Bondholders Agent advisers, receivers, delegates, attorneys, agents or appointees,

but excluding:

- (i) any payment in relation to any unpaid costs and expenses incurred in respect of any litigation initiated by that Bondholders Agent or any adviser, receiver, delegate, attorney, agent or appointee on behalf of that Bondholders Agent against any other Creditor; and
- (ii) any payment made, directly or indirectly, on or in respect of any amounts owing under any Bond Documents (including principal, interest, premium or any other amounts) to any of the Bondholders (and including VAT where applicable).

"Borrower" means:

- (a) in relation to the Senior Facility Liabilities, a '*Borrower*' under and as defined in the Senior Facilities Agreement; and

(b) in relation to the Bond Liabilities, an '*Issuer*' under and as defined in the Bond Terms, as the context requires.

"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 an Agent) or a Debtor in respect of Financial Indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a borrower under the Senior Finance Documents and/or the Bond Documents).

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are open for general business in Reykjavík.

"Cash Management Agreement" means any Cash Management Arrangement (as defined under the Senior Facilities Agreement) pursuant to which a Cash Management Provider provides to a Debtor or member of the Group a Cash Management Arrangement, and which is designated as a "*Cash Management Agreement*" for the purposes of this Agreement by the Company (acting in its sole discretion) in each case by written notice to the Security Agent.

"Cash Management Arrangement" means any cash pooling arrangement, cash management and/or treasury services permitted under the terms of the Senior Facilities Agreement.

"Cash Management Cover" means a Debtor or a member of the Group providing "*cash cover*" for a Cash Management Agreement, by paying an amount in the currency of the Cash Management Agreement to an interest-bearing account in the name of the Debtor or member of the Group and the following conditions being met:

- (a) the account is with the Agent or the Security Agent or with the relevant Cash Management Provider; and
- (b) until no amount is or may be outstanding under that Cash Management Agreement, withdrawals from the account may only be made to pay the relevant Cash Management Provider amounts due and payable to it under the Cash Management Agreement in respect of that Cash Management Arrangement; and
- (c) the aggregate amount of all Cash Management Cover provided by all members of the Group to all Cash Management Providers shall not exceed ISK 250,000,000 at any time.

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

"Cash Management Guarantor" means, at any time, each Debtor, provided that such Debtor is also a Guarantor of the Senior Facility Liabilities and the Bond Liabilities, in respect of the Cash Management Liabilities (if any) at that time.

"Cash Management Liabilities" means the Liabilities owed by any Debtor and/or member of the Group to any Cash Management Provider under or in connection with any Cash Management

Agreement, provided that the aggregate outstanding amount of all such Liabilities owing to all Cash Management Providers shall not (on a net basis) exceed ISK 250,000,000 at any time.

"Cash Management Provider" means any person which is a creditor of any Cash Management Liabilities under a Cash Management Arrangement (other than a Sponsor, Sponsor Affiliate, or member of the Group) and which (with the Company's consent (acting in its sole discretion)) becomes a Party pursuant to Clause 19 (*Changes to the Parties*) as a Cash Management Provider, which (in each case) has not ceased to be a Cash Management Provider in accordance with this Agreement.

"Cash Proceeds" means:

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

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

"Close-Out Netting" means:

- (a) in respect of a Hedging Agreement 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 (as the case may be).

"Closing Date" means the date on which first utilisation of "Facility B" (as defined in the Senior Facilities Agreement) occurs.

"Commitment" means:

- (a) a Senior Commitment; and
- (b) a Bond Commitment,

as the context requires.

"Common Assurance" means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible, given to all the Secured Parties in respect of their Liabilities.

"Common Currency" means Icelandic Krona.

"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 Agent's Spot Rate of Exchange on the Business Day prior to the relevant calculation.

"Common Transaction Security" means any Transaction Security which to the extent legally possible:

- (a) is created in favour of the Security Agent on behalf of the other Secured Parties in respect of their Liabilities; or
- (b) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent on behalf of the Secured Parties is created in favour of:
 - (i) all the Secured Parties in respect of their Liabilities; or
 - (ii) the Security Agent under a parallel debt structure for the benefit of all the Secured Parties,

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

"Completion Date" has the meaning given to that term in the Senior Facilities Agreement.

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

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

"Creditor Accession Undertaking" means:

- (a) an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*); or
- (b) a Transfer Certificate or Assignment Agreement (each as defined in the Senior Facilities Agreement) (provided that it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*)); or
- (c) an Additional Facility Accession Notice (as defined in the Senior Facilities Agreement) (*provided that it contains an accession to this Agreement which is, or contains the applicable provision, substantially in the form set out in Schedule 2 (Form of Creditor 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 Agreement, that Debtor Accession Agreement.

"Creditors" means the Senior Creditors, the Intra-Group Lenders and the Subordinated Creditor.

"Debt Disposal" means any disposal of any Liabilities or Debtors' Intra-Group Receivables pursuant to paragraph (a)(iv) or (v) of Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*).

"Debt Document" means each of this Agreement, the Hedging Agreements, the Senior Finance Documents, the Bond Documents, the Security Documents, the Cash Management Agreements, any agreement evidencing the terms of the Intra-Group Liabilities or the Subordinated Liabilities and any other document designated as such by the Security Agent and the Company.

"Debtor" means the Original Debtor and any other person Party as a Debtor on the date of this Agreement and any person which becomes a Party as a Debtor in accordance with the terms of Clause 19 (*Changes to the Parties*), which (in each case) has not ceased to be a Debtor in accordance with this Agreement.

"Debtor Accession Agreement" means:

- (a) an agreement substantially in the form set out in Schedule 1 (*Form of Debtor Accession Agreement*); or
- (b) (only in the case of a member of the Group which is acceding as a borrower or guarantor under the Senior Facilities Agreement) an accession document in the form required by the Senior Facilities Agreement (provided that it contains an accession to this Agreement which is, or contains the applicable provision, substantially in the form set out in Schedule 1 (*Form of Debtor Accession Agreement*)).

"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 a Default as defined in the Senior Facilities Agreement and/or the Bond Terms, as the context requires.

"Defaulting Lender" has the meaning given to that term in the Senior Facilities Agreement.

"Delegate" means any delegate, agent or attorney appointed by the Security Agent, to the extent permitted under applicable law.

"Distress Event" means any of:

- (a) an Acceleration Event; or
- (b) the enforcement of any Transaction Security, including disposal of Transaction Security by way of forced sale (Icel. *nauðungarsala*) under Act No. 90/1991 on Forced Sale.

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

- (a) being effected at the request of an Instructing Group in circumstances where the Transaction Security has become enforceable;

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

"Enforcement Action" means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior 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 (excluding Subordinated 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);
 - (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 Senior Facilities Agreement 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 19 (*Changes to the Parties*)); or
- (e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraph (a)(vii) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods;
- (ii) any discussions or consultations between, or proposals made by, any of the Secured Parties with respect to instructions to enforce any Transaction Security pursuant to Clause 10 (*Enforcement of Transaction Security*);
- (iii) an Ancillary Lender, Hedge Counterparty or Issuing Bank 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
- (iv) a demand made by a Subordinated Creditor or an Intra-Group Lender in relation to the Subordinated Liabilities or Intra-Group Liabilities to the extent it is applied to

make a Payment that would constitute a Permitted Subordinated Payment or a Permitted Intra-Group Payment.

"Event of Default" has the meaning given to that term in the Senior Facilities Agreement and the Bond Terms, in each case, after the expiry of any applicable grace period or, as the case may be, equity cure period, the giving of any applicable notice and/or the making of any applicable determination provided for in the relevant Event of Default thereunder.

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

"Fee Letter" has the meaning given to that term in the Senior Facilities Agreement.

"Financial Adviser" means any:

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

"Financial Indebtedness" has the meaning given to that term in the Senior Facilities Agreement.

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

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

"Guarantee Liabilities" means, in relation to a member of the Group, the liabilities and obligations (if any) 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 the Agent) or a Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Senior Finance Documents, Bond Documents, any Hedging Agreement and/or any Cash Management Agreement (as applicable)).

"Guarantor" means an entity which has provided an express guarantee in an applicable Debt Document and has signed such document in such capacity as a guarantor.

"Guarantee Limitations" means:

- (a) in relation to the Senior Facilities Liabilities, the guarantee limitations set out in the Senior Facilities Agreement;
- (b) in relation to the Bond Liabilities, the guarantee limitations set out in the Bond Terms;
- (c) in relation to the Cash Management Liabilities, the guarantee limitations set out in Schedule 4 (*Cash Management Providers' Guarantee and Indemnity*);
- (d) in relation to the Hedging Liabilities, the guarantee limitations set out in Schedule 5 (*Hedge Counterparties' Guarantee and Indemnity*); and
- (e) in relation to any other Liabilities, the applicable guarantee limitations set out in the relevant Debt Document,

or as otherwise documented in any accession agreement or supplemental documentation in respect of, or in connection with, any of the documents referred to above.

"Hedge Counterparty" means any entity which is party to a Hedging Agreement and which becomes a Party as a Hedge Counterparty pursuant to Clause 19.11 (*Creditor Accession Undertaking*), which, in each case, has not ceased to be a Hedge Counterparty.

"Hedging Agreement" means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by a member of the Group in relation solely to hedging as permitted under the Senior Facilities Agreement's definition of a "Permitted Treasury Transaction" and all other applicable terms under the Senior Facilities Agreement.

"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 to a Group member by way of a hedging facility pursuant to a Hedging Agreement and which meets the requirements set out in the Senior Facilities Agreement.

"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 Guarantor" means, at any time, each Debtor, provided that such Debtor is also a Guarantor of the Senior Facility Liabilities and/or the Bond Liabilities, in respect of the Hedging Liabilities (if any) at that time.

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

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

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

- (a) any resolution is passed or order made for the winding up, dissolution, administration, reorganisation or liquidation (*gjaldprotaskipti*) of that member of the Group, a moratorium (*greiðslustöðvun*) is declared or comes into force in relation to any indebtedness of that

- member of the Group or an administrator is appointed to that member of the Group (excluding any solvent winding up, dissolution, reorganisation or similar);
- (b) any composition (nauðasamningur), financial restructuring (greiðsluskjól), compromise, assignment or arrangement is made with any of its creditors;
 - (c) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that member of the Group or any of its assets; or
 - (d) any analogous procedure or step is taken in any jurisdiction.

"Instructing Group" means, at any time (and as the context requires):

- (a) the Bondholders whose Bond Commitments at that time are in aggregate more than (i) for an instruction to accelerate the Bond Liabilities following an Event of Default arising under paragraph (a) (*Failure to Pay*) of "Events of Default" of the Bond Terms, 10 per cent. or (ii) otherwise, 33¹/₃ per cent., in each case of the total Bond Commitments at that time; or
- (b) the Majority Senior Lenders.

"Intercreditor Amendment" means any amendment or waiver which is subject to Clause 25 (*Consents, Amendments and Override*).

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

"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 Senior Facility Liabilities and/or Bond Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

"Intra-Group Lenders" means the Original Intra-Group Lender and any other person Party as an Intra-Group Lender on the date of this Agreement and any other member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with any Debtor as an Intra-Group Lender or which becomes a Party as an Intra-Group Lender in accordance with the terms of Clause 19 (*Changes to the Parties*), which (in each case) has not ceased to be an Intra-Group Lender in accordance with this Agreement.

"Intra-Group Lending" means the loans, credit or other financial arrangements made available by any Intra-Group Lender to a Debtor.

"Intra-Group Liabilities" means the Liabilities owed by any Debtor who is a member of the Group to any of the Intra-Group Lenders.

"Investor" means (a) the Sponsor and/or any of its Affiliates; (b) any funds, partnerships and/or other entities advised, managed, owned or controlled by the Sponsor and/or its Affiliates; (c) any

investor in any person referred to in (a) and/or (b) above; and/or (d) any co-investor(s) designated by the Sponsor prior to the Closing Date.

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

"Issuing Bank" means any Creditor (other than an Intra-Group Lender or a Subordinated Creditor) which, at the Company's request, has agreed to act in its capacity as an issuing bank pursuant to the Senior Facilities Agreement.

"Letter of Credit" means any letter of credit issued under the Senior Facilities 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 or under any other Intra-Group Lending, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

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

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

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

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

the rights in respect of those Liabilities.

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

"Majority Instructing Creditors" means the Bondholders and Senior Facility Creditors whose Commitments at that time are aggregate at least 66 2/3 per cent. of the sum of the total Commitments at that time.

"Majority Senior Lenders" means, at any time, those Senior Facility Creditors whose Commitments at that time are in aggregate at least 66 2/3 per cent. of the total Commitments under the Senior Facilities Agreement.

"Multi-account Overdraft" means an Ancillary Facility or Cash Management Agreement which is, or documents, 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-Cash Consideration" means consideration in a form other than cash.

"Non-Cash Recoveries" means:

- (a) any proceeds of a Distressed Disposal or a Debt Disposal; or
- (b) any amount distributed to the Security Agent pursuant to Clause 8.2 (*Turnover by the Creditors*),

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

"Non-Credit Related Close-Out" means any Permitted Hedge Close-Out described in paragraphs (a)(i) to (a)(vi) of Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*).

"Non-Distressed Disposal" has the meaning given to that term in Clause 11 (*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 the Subordinated Creditor, an Intra-Group Lender or a Debtor.

"Party" means a party to this Agreement.

"Payment" means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of 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 4.12 (*Terms of Hedging Agreements*).

"Permitted Cash Management Payment" means the Payments permitted (in respect of Cash Management Liabilities) by Clause 3.1 (*Payment of Senior Facility Liabilities, Bond Liabilities and/or Cash Management Liabilities*).

"Permitted Bond Payment" means the Payments permitted by Clause 3.1 (*Payment of Senior Facility Liabilities, Bond Liabilities and/or Cash Management Liabilities*).

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

"Permitted Hedge Payment" means the Payments permitted by Clause 4.3 (*Permitted Payments: Hedging Liabilities*).

"Permitted Intra-Group Payment" means the Payments permitted by Clause 5.2 (*Permitted Payments: Intra-Group Liabilities*).

"Permitted Payment" means a Permitted Hedge Payment, a Permitted Cash Management Payment, a Permitted Intra-Group Payment, a Permitted Senior Facility Payment, a Permitted Bond Payment or a Permitted Subordinated Payment.

"Permitted Senior Facility Payment" means the Payments permitted by Clause 3.1 (*Payment of Senior Facility Liabilities, Bond Liabilities and/or Cash Management Liabilities*).

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

"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 16.1 (*Order of application*).

"Related Fund" means, in relation to a fund (the first fund), a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

"Relevant Ancillary Lender" means, in respect of any SFA Cash Cover, the Ancillary Lender (if any) for which that SFA Cash Cover is provided.

"Relevant Cash Management Provider" means in respect of any Cash Management Cover, the Cash Management Provider (if any) for which that Cash Management Cover is provided.

"Relevant Issuing Bank" means, in respect of any SFA Cash Cover, the Issuing Bank (if any) for which that SFA 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.

"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, including under the Parallel Debt.

"Secured Parties" means the Security Agent, any Receiver or Delegate and each of the other Senior Creditors from time to time and any Receiver or Delegate but, in the case of each Senior Creditor, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 19.11 (*Creditor Accession Undertaking*) and has not ceased to be a party in that capacity in accordance with this Agreement.

"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 Documents" means:

- (a) each of the Transaction Security Documents;
- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured Obligations; and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) or (b) above.

"Security Property" means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as security agent for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Security Agent as security agent for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as security agent for the Secured Parties;
- (c) the Security Agent's interest in any amounts pursuant to Clause 8 (*Turnover of Receipts*);

- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as security agent for the Secured Parties.

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

"Senior Creditors" means the Senior Facility Creditors, the Bond Creditors, the Cash Management Providers and the Hedge Counterparties.

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

- (a) in respect of a Senior Lender or a Bondholder, its aggregate Commitments, if any;
- (b) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement);
- (c) after the Senior Facilities Discharge Date and Bond Discharge Date only, in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out:
- (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the time and date on which the calculation is made was deemed to be 11:00 a.m. (London time) on an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
- (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the time and date on which the calculation is made was deemed to be 11:00 a.m. (London time) on the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

"Senior Discharge Date" means the first date on which all Senior Liabilities have been fully and finally discharged to the satisfaction of the Agent (in the case of the Senior Facility Liabilities) or

the Bondholders Agent (in the case of the Bond Liabilities), each Hedge Counterparty (in the case of its Hedging Liabilities) and each Cash Management Provider (in the case of its Cash Management Liabilities), whether or not as the result of an enforcement, and the Senior Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

"Senior Facilities Agreement" means the senior facilities agreement dated on or about the date of this Agreement between the Company, the Agent, the Security Agent and others.

"Senior Facilities Discharge Date" means the first date on which:

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

"Senior Facility" means any "Facility" under and as defined in the Senior Facilities Agreement.

"Senior Facility Creditors" means each Senior Lender and the Agent.

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

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

"Senior Lender Cash Collateral" means any cash collateral provided by a Senior Lender to an Issuing Bank pursuant to a Debt Document.

"Senior Lenders" means each:

- (a) "Lender" (as defined in the Senior Facilities Agreement);
- (b) Issuing Bank; and
- (c) Ancillary Lender.

"Senior Liabilities" means the Senior Facility Liabilities, the Bond Liabilities, the Cash Management Liabilities and the Hedging Liabilities.

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

- (a) any amounts borrowed (including any amount utilised by way of Letter of Credit or Ancillary Facility) from a Senior Facility Creditor (to the extent not repaid or prepaid at that time); and
- (b) all committed (but undrawn) financial accommodation made available by a Senior Facility Creditor,

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

"Senior Principal Increase" means in relation to an amendment or waiver of the Senior Finance Documents which is permitted under such Senior Finance Document and the Senior Facilities Agreement, the extent to which the Senior Principal immediately after that amendment or waiver would (as a result of that amendment or waiver and after taking account of any repayment or cancellation to be effected at the same time as, or immediately after, that amendment or waiver) incrementally exceed the Senior Principal as at the Closing Date.

"SFA Cash Cover" means:

- (a) a Senior Lender paying an amount in the currency of the Letter of Credit to an interest-bearing account in the name of the Senior Lender and the following conditions being met:
 - (i) the account is with the Issuing Bank, Agent or Security Agent;
 - (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 in respect of that Letter of Credit; and
 - (iii) the Senior Lender has executed a security document over the account, in form and substance reasonably satisfactory to the Issuing Bank, Agent or Security Agent with which that account is held, creating a first-ranking security interest over that account; or
- (b) a Senior Lender entering into such other mutually satisfactory arrangements as they may agree from time to time with any relevant Issuing Bank.

"SFA Cash Cover Document" means, in relation to any SFA Cash Cover, any Senior Finance Document or any Cash Management Agreement which creates or evidences, or is expressed to create or evidence, the Security required to be provided over that SFA Cash Cover by the Senior Facilities Agreement.

"Sponsor" means any of (1) ARDIAN (2) Ardian Infrastructure Fund V S.C.A., SICAR, (3) Ardian Infrastructure Fund V B S.C.S., SICAV-RAIF, and (4) one or more invest funds advised, managed or controlled (directly or indirectly) by the foregoing or ARDIAN and, in each case (whether individually or as a group), any direct or indirect Subsidiaries or Affiliates or Related Funds of the foregoing, together with any funds, partnerships and/or other entities advised, managed, owned or controlled by any of the foregoing and/or its Affiliates or Related Funds.

"Sponsor Affiliate" means the Investors, each of their Affiliates (including, for the avoidance of doubt, the Company), any trust of which the Investors or any of their Affiliates is a trustee, any partnership of which the Investors or any of their Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, the Investors or any of its Affiliates.

"Subordinated Creditor" means:

- (a) the Original Subordinated Creditor; and
- (b) any other direct or indirect Holding Company of the Original Debtor that provides any financial accommodation to the Original Debtor which constitutes Financial Indebtedness, provided that it is a Party as Subordinated Creditor pursuant to Clause 19.11 (*Creditor Accession Undertaking*), it being understood and agreed that the Original Subordinated

Creditor has undertaken to procure that any direct or indirect Holding Company of the Original Debtor providing such Financial Indebtedness shall (if not already Party in that capacity) have acceded to this Intercreditor Agreement as a Subordinated Creditor and that any debtor thereof has (if not already Party in that capacity) acceded to this Agreement as a Debtor in accordance with Clause 19,

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

"Subordinated Liabilities" means the Liabilities owed by the Debtors to the Subordinated Creditors.

"Subsidiary" means, in relation to any company, corporation or other legal entity (a "*holding company*"), a company, corporation or other legal entity:

- (a) which is controlled, directly or indirectly, by the holding company;
- (b) in which a majority of the voting rights are held by the holding company, either alone or pursuant to an agreement with others;
- (c) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the holding company; or
- (d) which is a subsidiary of another Subsidiary of the holding company,

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

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

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

"Transaction Security Documents" means the "*Security Documents*" under and as defined in the Senior Facilities Agreement and Bond Terms.

"VAT" means:

- (a) any value added tax imposed pursuant to the Icelandic Act on Value Added Tax No. 50/1988;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (c) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to such tax, or imposed elsewhere.

1.2 Construction

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

- (i) any "**Agent**", "**Ancillary Lender**", "**Cash Management Provider**", "**Bondholder**", "**Bondholders Agent**", "**Bond Creditor**", "**Borrower**", "**Company**", "**Creditor**", "**Debtor**", "**Guarantor**", "**Hedge Counterparty**", "**Hedging Ancillary Lender**", "**Intra-Group Lender**", "**Issuing Bank**", "**Party**", "**Security Agent**", "**Senior Creditor**", "**Senior Facility Creditor**", "**Senior Lender**", "**Sponsor Affiliate**" 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 "**Agent**", "**Ancillary Lender**", "**Bondholders Agent**", "**Cash Management Provider**", "**Creditor**", "**Debtor**", "**Hedge Counterparty**", "**Issuing Bank**", "**Party**", "**Security Agent**" or "**Subordinated Creditor**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
- (iii) an "**amount**" includes an amount of cash and an amount of Non-Cash Consideration;
- (iv) "**assets**" includes present and future properties, revenues and rights of every description;
- (v) a "**Debt Document**" or any other agreement or instrument is (other than a reference to a "**Debt Document**" or any other agreement or instrument in "**original form**") a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility under that Debt Document or other agreement or instrument as permitted by this Agreement;
- (vi) a "**distribution**" of or out of the assets of a member of the Group, includes a distribution of cash and a distribution of Non-Cash Consideration;
- (vii) "**enforcing**" (or any derivation) the Transaction Security includes:
 - (A) the Security Agent appointing, or applying for or consenting in writing to the appointment of, an administrator (or any analogous officer or procedure in any jurisdiction) of a Debtor; and
 - (B) the making of a demand under Clause 18.3 (*Parallel Debt (Covenant to pay the Security Agent)*) by the Security Agent;
- (viii) a "**group of Creditors**" includes all the Creditors and a "**group of Senior Creditors**" includes all the Senior Creditors;
- (ix) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (x) the "**original form**" of a "**Debt Document**" or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
 - (xi) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (xii) "**proceeds**" of a Distressed Disposal or of a Debt Disposal includes proceeds in cash, cash equivalent investments and in Non-Cash Consideration;
 - (xiii) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (xiv) "**shares**" or "**share capital**" includes equivalent ownership interests and "**shareholder**" and similar expressions shall be construed accordingly;
 - (xv) a provision of law is a reference to that provision as amended or re-enacted from time to time;
 - (xvi) any reference to an item being 'permitted' under any relevant Debt Document referred to in this Agreement shall be deemed to include that item being not prohibited under that relevant Debt Document.
- (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 Cash Management Provider will cease to be a Party for all purposes upon the termination (in accordance with their terms) of all Cash Management Agreements in respect of which it is a Cash Management Provider.
 - (e) Where any defined term in this Agreement refers to the definition of such term in another document, that term as used in this Agreement shall include not only the definition but also any related interpretation of that term (including by reference to related terms and/or mechanics in such other documents, as the context requires).
 - (f) If there is a conflict between the terms of this Agreement and any other Debt Document, the terms of this Agreement will prevail (save to the extent provided in the Senior Facilities Agreement).
 - (g) If the Senior Facilities Agreement is replaced in its entirety and/or if the facilities thereunder are refinanced in full (in each case) by another facilities agreement, references in this Agreement to the "Senior Facilities Agreement" will be deemed to be a reference to the relevant facilities agreement.
 - (h) Any reference to any requirement for any person to accede to this Agreement shall be construed as a reference to such person executing and delivery to the Security Agent a Debtor Accession Agreement or as the case may be a Creditor Accession Undertaking.

- (i) References to any Creditors (or any class, group or percentage of any Creditors (including, for the avoidance of doubt, unanimity)) giving any Consent under this Agreement means (in each case) acting through the applicable Agent and/or Bondholders Agent, if any, or, as applicable, the Security Agent.
- (j) References to the Bondholders Agent acting on behalf of the Bondholders means such Bondholders Agent acting on behalf of the Bondholders which it represents or, if applicable, with the consent of the requisite number of Bondholders required under and in accordance with the applicable Bond Terms, provided that, if the relevant Bond Terms and this Agreement do not specify a voting threshold for a particular matter, the threshold will be a simple majority of the aggregate principal amount outstanding under the Bond Documents. A Bondholders Agent will be entitled to seek instructions from the Bondholders which it represents to the extent entitled or required by the applicable Bond Documents as to any action to be taken by it under this Agreement. For the avoidance of doubt, references to "the" Bondholders Agent include each Bondholders Agent then Party.
- (k) Unless a contrary indication appears, terms defined in the Senior Facilities Agreement have the same meaning in this Agreement.

2. **RANKING AND PRIORITY**

2.1 **Senior Creditor Liabilities**

Each of the Parties agrees that the Senior Facility Liabilities, the Bond Liabilities, the Cash Management Liabilities and the Hedging Liabilities shall rank in right and priority of payment *pari passu* and without any preference between the Senior Facility Liabilities, the Bond Liabilities, the Cash Management Liabilities and the Hedging Liabilities. The Senior Creditor Liabilities will rank as secured claims (Icel. *veðkröfur*) within the meaning of Article 111 of the Icelandic Bankruptcy Act No. 21/1991.

2.2 **Transaction Security**

Each of the Parties agrees that the Transaction Security shall rank and secure the Senior Facility Liabilities, the Bond Liabilities, the Cash Management Liabilities and the Hedging Liabilities *pari passu* and without any preference between them, but only to the extent that such Transaction Security is expressed to secure those Liabilities.

2.3 **Subordinated and Intra-Group Liabilities**

- (a) Each of the Parties agrees that the Subordinated Liabilities and the Intra-Group Liabilities are subordinated to the Liabilities owed by the Debtors to the Senior Creditors and will rank as a general unsecured claim (Icel. *almennar kröfur*) within the meaning of Article 114 of the Icelandic Bankruptcy Act No. 21/1991.
- (b) This Agreement does not purport to rank any of the Subordinated Liabilities or the Intra-Group Liabilities as between themselves.

3. **SENIOR FACILITY LIABILITIES, BOND LIABILITIES AND/OR CASH MANAGEMENT LIABILITIES**

3.1 **Payment of Senior Facility Liabilities, Bond Liabilities and/or Cash Management Liabilities**

The Debtors may make Payments of the Senior Facility Liabilities, Bond Liabilities and/or the Cash Management Liabilities at any time in accordance with the Senior Finance Documents, the Bond Documents or Cash Management Agreements (as applicable).

3.2 **Amendments and Waivers: Senior Facility Creditors, Bond Creditors and/or Cash Management Providers**

The Senior Facility Creditors, Bond Creditors and/or the Cash Management Providers (as applicable) may amend or waive the terms of the Senior Finance Documents, Bond Documents or Cash Management Agreements (as applicable) in accordance with their terms (and subject to any consent required under them) at any time provided that no such amendment or waiver shall result in a breach of any term of the Senior Facilities Agreement, the Bond Terms or this Agreement at any time.

3.3 **Increase of Principal: Senior Facility Creditors**

The Senior Facility Creditors may from time to time (subject to and in accordance with the terms of the relevant "Finance Document" (as defined in the Senior Facilities Agreement)) effect a Senior Principal Increase without the prior consent of any Party (except the relevant Debtor), and the amount of that Senior Principal Increase (together with interest, fees and commission on that amount) shall be treated as being part of the Senior Liabilities and the Senior Facility Liabilities.

3.4 **Security: Senior Facility Creditors and Bond Creditors**

Other than as set out in Clause 3.6 (*Security: Ancillary Lenders, Issuing Banks and/or Cash Management Providers*), and to the extent not prohibited by a provision of a Debt Document, the Senior Facility Creditors and/or the Bond Creditors (as applicable) may take, accept or receive the benefit of:

- (a) any Security in respect of the Senior Facility Liabilities or Bond Liabilities (as applicable) from any member of the Group in addition to the Common Transaction Security which (except for any Security permitted under Clause 3.6 (*Security: Ancillary Lenders, Issuing Banks and/or Cash Management Providers*)) to the extent legally possible, is, at the same time, also offered either:
 - (i) to the Security Agent on behalf of 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 on behalf of the Secured Parties:
 - (A) to the other Secured Parties in respect of their Liabilities; or
 - (B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties

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

- (b) any indemnity from any Debtor or any member of the Group in any engagement, mandate, commitment, syndication or fee letter entered into in connection with the Senior Facilities Agreement or the Bond Terms (as applicable).
- (c) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Senior Facility Liabilities, Bond Liabilities or Cash Management Liabilities (as applicable) from any member of the Group in addition to those in:
 - (i) the Senior Facilities Agreement, the Bond Terms or a Cash Management Agreement (as applicable);
 - (ii) this Agreement; or
 - (iii) any Common Assurance,
 if (except for any guarantee, indemnity or other assurance against loss permitted under Clause 3.6 (*Security: Ancillary Lenders, Issuing Banks and/or Cash Management Providers*)) and to the extent legally possible, at the same time it is also offered to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

3.5 **Guarantee: Cash Management Liabilities**

Each Cash Management Guarantor agrees it will be bound by the obligations set out in Schedule 4 (*Cash Management Providers' Guarantee and Indemnity*) unless otherwise elected by the Company by notice in writing to the Security Agent and the relevant Cash Management Provider in respect of the relevant Cash Management Arrangement.

3.6 **Security: Ancillary Lenders, Issuing Banks and/or Cash Management Providers**

No Ancillary Lender, Issuing Bank or Cash Management Provider will, unless the prior consent of an the Majority Instructing 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 Senior Facilities Agreement or the Bond Terms (as applicable);
 - (ii) this Agreement; or
 - (iii) any Common Assurance;
- (c) in the case of an Ancillary Lender or Cash Management Provider, 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) issued to an Issuing Bank (in its capacity as such) or any SFA Cash Cover or any Cash Management Cover, in each case, permitted under the Senior Facilities Agreement or, as applicable, Cash Management Agreement relating to any Ancillary Facility or any Cash Management Arrangement or for any Letter of Credit issued by the Issuing Bank;

- (e) in the case of a Hedging Ancillary Lender, the indemnities or any netting or set-off arrangement 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) in the case of an Ancillary Lender or any Cash Management Provider, 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 or the Cash Management Arrangements for the purpose of netting debit and credit balances arising under the Ancillary Facilities or, as applicable, the Cash Management Arrangements; or
- (g) any indemnity from any Debtor or any member of the Group in any engagement, mandate, commitment, syndication or fee letter entered into in connection with any Ancillary Facility or any Cash Management Arrangement or arising under any standard terms and terms conditions of any Ancillary Facility or any Cash Management Arrangement.

3.7 Restriction on Enforcement: Ancillary Lenders, and Cash Management Providers

Subject to Clause 3.8 (*Permitted Enforcement: Ancillary Lenders, Issuing Banks and Cash Management Providers*), so long as any of the Senior Liabilities (other than any Liabilities owed to any Ancillary Lender, and/or any Cash Management Provider) are or may be outstanding, none of the Ancillary Lenders, nor the Cash Management Providers shall be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it.

3.8 Permitted Enforcement: Ancillary Lenders, and/or Cash Management Providers

- (a) Each Ancillary Lender, Issuing Bank and/or Cash Management Provider may take Enforcement Action which would be available to it but for Clause 3.7 (*Restriction on Enforcement: Ancillary Lenders, Issuing Banks and Cash Management Providers*) if:
 - (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Senior Facility Liabilities (excluding the Liabilities owing to Ancillary Lenders) and the Bond Liabilities, in which case the Ancillary Lenders, and/or the Cash Management Providers (as applicable) may take the same Enforcement Action as has been taken in respect of those Senior Facility Liabilities;
 - (ii) that action is contemplated by the Senior Facilities Agreement or Bond Terms;
 - (iii) that Enforcement Action is taken in respect of SFA Cash Cover or any Cash Management Cover which has been provided in accordance with the Senior Facilities Agreement or a Cash Management Agreement (as applicable);
 - (iv) at the same time as or prior to, that action, the consent of an Instructing Group to that Enforcement Action is obtained; or
 - (v) an Insolvency Event has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event, each Ancillary Lender, and/or each Cash Management Provider 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 Senior Facility Liabilities, Bond Liabilities or (as applicable) Cash Management 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 Senior Facility Liabilities, Bond Liabilities or (as applicable) Cash Management Liabilities;
 - (C) exercise any right of set-off or take or receive any Payment in respect of any Senior Facility Liabilities, Bond Liabilities or (as applicable) Cash Management Liabilities of that member of the Group; or
 - (D) claim and prove in the liquidation of that member of the Group for the Senior Facility Liabilities, Bond Liabilities or (as applicable) Cash Management Liabilities owing to it.
- (b) Clause 3.7 (*Restriction on Enforcement: Ancillary Lenders, Issuing Banks and Cash Management Provider*) shall not restrict any right of an Ancillary Lender or Cash Management Provider:
- (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 Senior Facilities Agreement, Bond Terms or a Cash Management Agreement (as applicable) and to the extent that the demand is required to reduce, or the netting or set-off represents a reduction from the Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings.

3.9 **Guarantee: Bond Liabilities**

Each Bond Guarantor agrees it will be bound by the obligations set out in Schedule 6 (Bondholders' Guarantee and Indemnity) unless otherwise elected by the Company by notice in writing to the Security Agent and the relevant Bondholder in respect of the relevant Bond Document.

3.10 **Guarantee Limitations: Target**

Notwithstanding anything to the contrary in any Debt Document, except as otherwise agreed in writing by each Party, the amount guaranteed by the Target shall not exceed, at any time, and in aggregate in respect of all Bond Liabilities and Liabilities in respect of "Facility B" (as defined in the Senior Facilities Agreement), the amount of ISK 19,200,000,000 and shall not extend to include any liability to the extent that it would result in this guarantee being illegal, in breach of law or regulation, or constituting unlawful financial assistance in any relevant jurisdiction concerning the financial assistance by that company for the acquisition of, or subscription for, shares or concerning the protection of shareholders' capital.

4. **HEDGE COUNTERPARTIES AND HEDGING LIABILITIES**

4.1 **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.

4.2 **Restriction on Payment: Hedging Liabilities**

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

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

4.3 **Permitted Payments: Hedging Liabilities**

(a) Subject to paragraph (b) below, the Debtors and any member of the Group may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging 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) in connection with any discontinuation of Icelandic IBOR or any other applicable base rate;
- (iii) to the extent that the relevant 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);
- (iv) to the extent that the relevant obligation to make the Payment arises from a Non-Credit Related Close-Out;
- (v) to the extent that:
 - (A) the relevant 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 the relevant Debtor or member of the Group; and

- (B) no Event of Default under the Senior Facilities Agreement and/or Bond Terms is continuing at the time of that Payment or would result from that Payment; or
- (vi) to the extent that no Default or Event of Default under the Senior Facilities Agreement and/or Bond Terms is continuing or would result from that Payment and the relevant 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 or member of the Group 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
- (vii) if the Majority Instructing Creditors give prior consent to the Payment being made.
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor or member of the Group under a Hedging Agreement to which they are both party is due and unpaid unless the prior consent of the Majority Instructing Creditors is obtained.
- (c) Failure by a Debtor or member of the Group to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to Clause 4.4 (*Payment obligations continue*), not result in a default (however described) in respect of that Debtor or member of the Group under that Hedging Agreement, Cash Management Agreement, Senior Finance Document or Bond Document.

4.4 **Payment obligations continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 4.2 (*Restriction on Payment: Hedging Liabilities*) and 4.3 (*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.

4.5 **No acquisition of Hedging Liabilities**

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

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

in respect of any of the Hedging Liabilities unless the prior consent of the Majority Senior Lenders is obtained.

4.6 **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 (with the consent of the Company) may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if that amendment or waiver does not breach in any material respect paragraph (a) of Clause 4.12 (*Terms of Hedging Agreements*) or any other term of this Agreement or the requirements of Clause 21.24 (*Permitted Treasury Transaction*) of the Senior Facilities Agreement.

4.7 **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 Debtor or 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 Senior Facilities Agreement;
 - (ii) the Bond Documents;
 - (iii) this Agreement;
 - (iv) any Common Assurance; or
 - (v) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (i) to (iv) above;
- (c) as otherwise contemplated by Clause 3.3 (*Security: Senior Facility Creditors*); or
- (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).

4.8 **Restriction on Enforcement: Hedge Counterparties**

Subject to Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) and Clause 4.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clauses 10.2 (*Enforcement Instructions*) and 10.3 (*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.

4.9 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) subject to paragraph (ii) below, at any time prior to the occurrence of a Distress Event provided that the Company has certified to the Hedge Counterparty that that termination or close out would not result in a breach of the Senior Facilities Agreement or the Bond Terms;
- (ii) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;
- (iii) in connection with any discontinuation of any other applicable base rate;
- (iv) if the Majority Instructing Creditors and the Company give prior consent to that termination of close-out being made;
- (v) on or promptly following a refinancing, repayment, prepayment and/or cancellation in full of all or any part of the Senior Liabilities, to the extent that the relevant Hedging Agreement was entered into to hedge all or any part of such indebtedness or any rate or other exposure in connection therewith; or
- (vi) for the purpose of ensuring that the aggregate outstanding notional amount of all hedging entered into by the Debtors with one or more Hedge Counterparties in respect of any specific indebtedness or exposure does not exceed the aggregate amount of that indebtedness or other exposure from time to time.

Credit Related Close-Outs

- (vii) if a Distress Event has occurred;
 - (viii) if an Event of Default has occurred under clause 22.6 (*Insolvency*) or clause 22.7 (*Insolvency proceedings*) of the Senior Facilities Agreement (or the equivalent provisions of the Bond Terms) in relation to a Debtor which is party to that Hedging Agreement; or
 - (ix) if the Majority Instructing Creditors and the Company give prior consent to that termination or close-out being made.
- (b) If a Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than 30 days after notice of that default has been given to the Security Agent pursuant to paragraph (g) of Clause 22.3 (*Notification of prescribed events*), the relevant Hedge Counterparty:
- (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and
 - (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), shall be entitled to exercise any right it might otherwise have to

sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.

- (c) After the occurrence of an Insolvency Event in relation to any Debtor or member of the Group, *provided that* such Insolvency Event also constitutes an Event of Default, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that Debtor or member of the Group to:
- (i) prematurely close-out or terminate any Hedging Liabilities of that Debtor or member of the Group;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that Debtor or 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 Debtor or member of the Group; or
 - (iv) claim and prove in the liquidation of that Debtor or member of the Group for the Hedging Liabilities owing to it.

4.10 **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 an 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 or member of the Group and any Senior 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 4.9 (*Permitted Enforcement: Hedge Counterparties*) (or would have been able to if that Hedge Counterparty had given the notice referred to in that Clause) 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 an Instructing Group).

4.11 **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.

4.12 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 in respect of any Hedging Agreement other than a Hedging Agreement in the form of a cap documented by a long form confirmation for which the premium is paid in full upfront (which shall not contain any trigger or termination events vis-à-vis any Debtor), 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 4.10 (*Required Enforcement: Hedge Counterparties*); and
- (f) each Hedging Agreement may (notwithstanding any term of this Agreement to the contrary) provide for the termination or close-out (whether as an Automatic Early Termination, a Termination Event, an Event of Default or otherwise) of all or any part of such Hedging Agreement in connection with any discontinuation of Icelandic IBOR or any other applicable base rate.

4.13 **Guarantee: Hedging Liabilities**

Each Hedging Guarantor agrees it will be bound by the obligations set out in Schedule 5 (*Hedge Counterparties' Guarantee and Indemnity*) unless otherwise elected by the Company by notice in writing to the Security Agent and the relevant Hedge Counterparty in respect of the relevant Hedging Agreement.

5. **INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES**

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

Prior to the Senior Discharge Date, the Debtors shall not make any Payments of the Intra-Group Liabilities at any time unless:

- (a) that Payment is permitted under Clause 5.2 (*Permitted Payments: Intra-Group Liabilities*);
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 5.8 (*Permitted Enforcement: Intra-Group Lenders*);
- (c) prior to the Senior Discharge Date, the Majority Instructing Creditors has consented to that Payment;
- (d) that Payment is made to the Security Agent pursuant to Clause 7.5 (*Filing of claims*); or

- (e) otherwise directed by, or consented to by, the Security Agent or (prior to the Senior Discharge Date) the Majority Senior Lenders.

5.2 Permitted Payments: Intra-Group Liabilities

- (a) Subject to paragraph (b) below, the Debtors (who are members of the Group) may make Payments in respect of the Intra-Group Liabilities (of whatsoever type, including payments of principal and/or interest, and of whatsoever nature, including by way of set-off, netting and/or account combination) from time to time, provided that no such payment would breach the terms of the Senior Facilities Agreement or the Bond Terms.
- (b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred unless:
 - (i) prior to the Senior Discharge Date, the Majority Instructing Creditors consent to that Payment being made;
 - (ii) that Payment is made to facilitate Payment of the Senior Liabilities;
 - (iii) that Payment is made to facilitate , or is otherwise an intermediary step to the making of, any Permitted Payment (excluding any Permitted Intra-Group Payment); or
 - (iv) otherwise directed by, or consented to by, the Security Agent or (prior to the Senior Discharge Date) the Majority Instructing Creditors.
- (c) Notwithstanding anything in this Agreement or any Debt Document to the contrary, nothing in this Agreement or any Debt Document shall prohibit or restrict:
 - (i) the roll-up or capitalisation of interest on, or other amounts in respect of, the Intra-Group Liabilities or the payment of interest on Intra-Group Liabilities by the issue of payment-in-kind instruments, an issue of shares, an incurrence of indebtedness constituting Intra-Group Liabilities, or (other than in the case of the “NewCo Loan” (as defined in the Senior Facilities Agreement)) any forgiveness, write-off or capitalisation of any Intra-Group Liabilities or the release or other discharge of any such Intra-Group Liabilities, provided that no capitalisation of an amount of principal of an Intra-Group Liability (excluding, for the avoidance of any doubt, the capitalisation of interest into principal) may be undertaken at any time that any Default or Event of Default is continuing, and provided further that no such issuance of shares may occur if it would result in (A) any Change of Control (as defined in the Senior Facilities Agreement) or (B) a direct or indirect wholly owned subsidiary of the Target no longer being directly or indirectly wholly owned by the Target;
 - (ii) any Intra-Group Liability of a Debtor (who is a member of the Group) being released or discharged in consideration for the issue of shares in that Debtor or any other member of the Group, provided that no such release or discharge may occur if it would result in (A) any Change of Control (as defined in the Senior Facilities Agreement) or (B) a direct or indirect wholly owned subsidiary of the Target no longer being directly or indirectly wholly owned by the Target;
 - (iii) any Payment to an Intra-Group Lender pursuant to the terms of any Senior Finance Document which is a Payment other than in respect of Intra-Group Liabilities and which is expressly permitted under the Senior Finance Documents; and

- (iv) any repayment of any Intra-Group Liabilities made to fund any Payment in respect of the Senior Liabilities (in each case to the extent that such Payment or other matter is not prohibited by this Clause 5),

and none of the foregoing shall constitute Enforcement Action.

5.3 **Payment obligations continue**

No Debtor (which is a member of the Group) shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 5.1 (*Restriction on Payment: Intra-Group Liabilities*) and 5.2 (*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.

5.4 **Acquisition of Intra-Group Liabilities**

(a) 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, unless such action would result in a breach of the Senior Facilities Agreement or the Bond Documents, or at the time of the relevant Liabilities Acquisition an Acceleration Event has occurred (unless, prior to the Senior Discharge Date, the Majority Senior Lenders consent to that action has been obtained or that action is taken to fund Payment in respect of the Senior Liabilities), *provided that* any member of the Group who enters into such a Liabilities Acquisition and is not an Intra-Group Lender accedes to this Agreement as an Intra-Group Lender at the time of such action.

5.5 **Amendments and waivers: Intra-Group Liabilities**

The Intra-Group Lenders and the Debtors (which are members of the Group) may amend or waive the terms of any document under which Intra-Group Lending is made available in accordance with its terms (but subject to any consent required under it) at any time, provided that no such amendment or waiver shall result in or permit any breach of the Senior Facilities Agreement, the Bond Terms or this Agreement.

5.6 **Security: Intra-Group Lenders**

Prior to the Senior Discharge Date, the Intra-Group Lenders may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Intra-Group Liabilities unless that Security, guarantee, indemnity or other assurance against loss is expressly permitted under the terms of the Senior Facilities Agreement or (to the extent not permitted) prior to the Senior Discharge Date, the prior consent of the Majority Instructing Creditors is obtained.

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

Subject to Clause 5.8 (*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 Senior Discharge Date, unless:

- (a) such Enforcement Action is solely a demand for payment, set-off, account combination or payment netting (but not any other Enforcement Action) in respect of a Permitted Intra-Group Payment; or
- (b) otherwise directed by, or consented to by, the Security Agent or (prior to the Senior Discharge Date) an Instructing Group.

5.8 **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 7.5 (*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 any insolvency process of that member of the Group for the Intra-Group Liabilities owing to it.

5.9 **Representations: Intra-Group Lenders**

Each Intra-Group Lender which is not a Debtor represents and warrants to the Senior 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; or
 - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

6. **SUBORDINATED CREDITOR AND SUBORDINATED LIABILITIES**

6.1 **Restriction on Payment: Subordinated Liabilities**

Prior to the Senior Discharge Date, neither the Company nor any other Debtor (who is a member of the Group) shall, and the Company shall procure that no other member of the Group will, make any Payment of the Subordinated Liabilities at any time unless:

- (a) that Payment is permitted under Clause 6.2 (*Permitted Payments: Subordinated Liabilities*);
- (b) the taking or receipt of that Payment is permitted under Clause 6.8 (*Permitted Enforcement: Subordinated Creditor*);
- (c) that Payment is made to the Security Agent pursuant to Clause 7.5 (*Filing of claims*); or
- (d) otherwise directed by, or consented to by, the Security Agent or (prior to the Senior Discharge Date) the Majority Instructing Creditors,

provided that this Clause 6.1 shall not prevent the capitalisation of interest on any Subordinated Liabilities.

6.2 **Permitted Payments: Subordinated Liabilities**

- (a) The Company or any other Debtor may make Payments (of whatsoever type, including payments of principal and/or interest, and of whatsoever nature, including by way of set-off, netting and/or account combination) in respect of the Subordinated Liabilities then due if the Payment is expressly permitted under the terms of the Senior Facilities Agreement or (to the extent not so permitted, and prior to the Senior Discharge Date) the Majority Instructing Creditors consent to that Payment being made.
- (b) Notwithstanding anything in this Agreement or any Debt Document to the contrary, nothing in this Agreement or any Debt Document shall prohibit or restrict:
 - (i) the roll-up or capitalisation of interest on, or other amounts in respect of, the Subordinated Liabilities or the payment of interest on Subordinated Liabilities by the issue of payment-in-kind instruments, an issue of shares, an incurrence of indebtedness (*provided that* such indebtedness constitutes Subordinated Liabilities) in satisfaction of any amount constituting Subordinated Liabilities, or any forgiveness, write-off or capitalisation of any Subordinated Liabilities or the release or other discharge of any such Subordinated Liabilities (or any step, action or arrangement which is similar or equivalent to any of the foregoing), provided that no capitalisation of an amount of principal of a Subordinated Liability (excluding, for the avoidance of any doubt, the capitalisation of interest into principal) may be undertaken at any time that any Default or Event of Default is continuing, and provided further that no such issue of shares may occur if it would result in any Change of Control (as defined in the Senior Facilities Agreement);
 - (ii) any Subordinated Liability of a Debtor or a member of the Group being released or discharged in consideration for the issue of shares in that Debtor or any other member of the Group, provided that no such release or discharge may occur if it would result in any Change of Control as defined in the Senior Facilities Agreement;
 - (iii) any Payment to a Subordinated Creditor pursuant to the terms of any Senior Finance Document which is a Payment other than in respect of Subordinated Liabilities and which is expressly permitted under the terms of any Senior Finance Document; and

- (iv) any repayment of any Subordinated Liabilities made to fund any Payment in respect of any Senior Liabilities (in each case to the extent that such Payment or other matter is not prohibited by this Clause 6),

and none of the foregoing shall constitute Enforcement Action.

6.3 **Payment obligations continue**

Neither the Company nor any other Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 6.1 (*Restriction on Payment: Subordinated Liabilities*) and 6.2 (*Permitted Payments: Subordinated Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

6.4 **No acquisition of Subordinated Liabilities**

Prior to the Senior 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 that action is expressly permitted by the terms of the Senior Facilities Agreement or (to the extent not so permitted, and prior to the Senior Discharge Date) the prior consent of the Majority Instructing Creditors is obtained, or which is otherwise directed by, or consented to by, the Security Agent or that action is taken to fund Payment in respect of the Liabilities (other than Subordinated Liabilities and/or the Intra-Group Liabilities), *provided that* any members of the Group who enters into such a Liabilities Acquisition and is not a Subordinated Creditor accedes to this Agreement as a Subordinated Creditor at the time of such action.

6.5 **Amendments and Waivers: Subordinated Creditor**

- (a) Prior to the Senior Discharge Date, the Subordinated Creditor may, subject to paragraph (b) below, amend or waive the terms of any documents or instruments pursuant to which the Subordinated Liabilities are constituted in accordance with its terms (but subject to any consent required under it) at any time.
- (b) A Subordinated Creditor may not amend or waive any term of any document or instrument pursuant to which the Subordinated Liabilities are constituted if that amendment or waiver would be a breach of another term of this Agreement, the Bond Terms, or the Senior Facilities Agreement, (or otherwise make that document or instrument inconsistent in any material respect with the requirements of the relevant agreement applicable to the terms governing liabilities of the type arising under the relevant document or instrument that is to be so amended or waived), or would be materially adverse to the interests of the Senior Creditors.

6.6 **Security: Subordinated Creditor**

Prior to the Senior Discharge Date, no Subordinated Creditor may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss (other than any customary tax gross up provision) in respect of Subordinated Liabilities unless that Security,

guarantee, indemnity or other assurance against loss is expressly permitted under the terms of the Senior Facilities Agreement (or, to the extent so prohibited, the Majority Instructing Creditors' consent has been obtained).

6.7 Restriction on Enforcement: Subordinated Creditor

Subject to Clause 6.8 (*Permitted Enforcement: Subordinated Creditor*), the Subordinated Creditor shall not be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Senior Discharge Date, unless

- (a) such Enforcement Action is solely a demand for payment, set-off, account combination or payment netting (but not any other Enforcement Action) in respect of a Permitted Subordinated Payment; or
- (b) otherwise directed by, or consented to by, the Security Agent or (prior to the Senior Discharge Date), the Majority Instructing Creditors.

6.8 Permitted Enforcement: Subordinated Creditor

After the occurrence of an Insolvency Event in relation to any member of the Group, the Subordinated Creditor may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of the Subordinated Creditor in accordance with Clause 7.5 (*Filing of claims*)) exercise any right it may otherwise have in respect of that Debtor or member of the Group to:

- (a) accelerate any of that Debtor's or 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 Debtor or 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 Debtor or that member of the Group; or
- (d) claim and prove in the liquidation of that Debtor or member of the Group for the Subordinated Liabilities owing to it.

6.9 Representations: Subordinated Creditors

Each Subordinated Creditor represents and warrants to the Senior 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; or

- (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

7. EFFECT OF INSOLVENCY EVENT

7.1 SFA Cash Cover

This Clause 7 is subject to Clause 16.3 (*Treatment of SFA Cash Cover, Cash Management Cover and Senior Lender Cash Collateral*) and, in the case of the Bondholders Agent, to paragraphs (a) and (c) of Clause 26.1 (*Liability*).

7.2 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 a member of the Group or Debtor in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of a member of the Group or Debtor 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 16 (*Application of Proceeds*).

7.3 Set-Off

- (a) Subject to paragraph (b) below, to the extent that any Debtor or member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 16 (*Application of Proceeds*).
- (b) Paragraph (a) above shall not apply to:
 - (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings;
 - (ii) any Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iii) any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty;
 - (v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; and
 - (vi) any payment, transaction, arrangement, step, matter or thing equivalent to any of those listed in paragraphs (ii) to (v) above, which is taken by a Cash Management Provider pursuant to the terms of any Cash Management Agreement.

7.4 Non-cash distributions

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

7.5 Filing of claims

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

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

7.6 Further assurance – Insolvency Event

Each Creditor will:

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

7.7 Security Agent instructions

For the purposes of Clause 7.2 (*Distributions*), Clause 7.5 (*Filing of claims*) and Clause 7.6 (*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 it considers in its discretion to be appropriate.

8. TURNOVER OF RECEIPTS

8.1 SFA Cash Cover and/or Cash Management Cover

This Clause 8 is subject to Clause 16.3 (*Treatment of SFA Cash Cover, Cash Management Cover and Senior Lender Cash Collateral*) and, in the case of the Bondholders Agent, to paragraphs (a) and (c) of Clause 26.1 (*Liability*).

8.2 Turnover by the Creditors

Subject to Clause 8.3 (*Exclusions*) and to Clause 8.4 (*Permitted assurance and receipts*) and, in the case of the Bondholders Agent Amounts, paragraphs (a) and (c) of Clause 26.1 (*Liability*), if at any time prior to the Senior Discharge Date, any Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is neither:

- (i) a Permitted Payment; nor
- (ii) made in accordance with Clause 16 (*Application of Proceeds*);
- (b) other than where paragraph (a) of Clause 7.3 (*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 7.3 (*Set-Off*) applies, any amount:
 - (i) on account of, or in relation to, any of the Liabilities:
 - (A) after the occurrence of a Distress Event; or
 - (B) as a result of any other litigation or proceedings against a Debtor or a member of the Group (other than after the occurrence of an Insolvency Event in respect of that Debtor or member of the Group); or
 - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,

other than, in each case, any amount received or recovered in accordance with Clause 16 (*Application of Proceeds*);
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 16 (*Application of Proceeds*); or
- (e) other than where paragraph (a) of Clause 7.3 (*Set-Off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any Debtor or member of the Group which is not in accordance with Clause 16 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that Debtor or member of the Group,

that Creditor will:

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

8.3 Exclusions

Clause 8.2 (*Turnover by the Creditors*) shall not apply to any receipt or recovery:

- (a) by way of:
 - (i) Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (ii) Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
 - (iv) Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; or
 - (v) any payment, transaction, arrangement, step, matter or thing equivalent to any of those listed in paragraphs (i) to (iv) above, which is taken by a Cash Management Provider pursuant to the terms of any Cash Management Agreement;
- (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 Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings);
- (c) by a Cash Management Provider by way of that Cash Management Provider'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 from the Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings;
- (d) made in accordance with Clause 17 (*Equalisation*);
- (e) that has been distributed by the Bondholders Agent in accordance with the applicable Bond Documents unless that Bondholders Agent, as applicable, had received at least two Business Days' prior notice that an Acceleration Event or an Insolvency Event has occurred or that the receipt or recovery falls within Clause 8.2 (*Turnover by the Creditors*).

8.4 Permitted assurance and receipts

Nothing in this Agreement shall restrict the ability of any Senior 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 19 (*Changes to the Parties*),

which:

- (i) is expressly permitted by the Senior Facilities Agreement; and
- (ii) is not in breach of:
 - (A) Clause 4.5 (*No acquisition of Hedging Liabilities*); or
 - (B) Clause 6.4 (*No acquisition of Subordinated Liabilities*),

and that Senior 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.

8.5 **Amounts received by Debtors**

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

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

8.6 **Turnover of Non-Cash Consideration**

For the purposes of this Clause 8, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to Clause 8.2 (*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 13.2 (*Cash value of Non-Cash Recoveries*).

9. **REDISTRIBUTION**

9.1 **Recovering Creditor's rights**

- (a) Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 7 (*Effect of Insolvency Event*) or Clause 8 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and shall be applied by the Security Agent in accordance with Clause 16 (*Application of Proceeds*).
- (b) On an application by the Security Agent pursuant to Clause 16 (*Application of Proceeds*) of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent by the Recovering Creditor (the "**Shared Amount**") will be treated as not having been paid or distributed by that Debtor.

9.2 **Reversal of redistribution**

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returnable by that Recovering Creditor to that Debtor, then:
 - (i) each Party that received any part of that Shared Amount pursuant to an application by the Security Agent of that Shared Amount under Clause 9.1 (*Recovering Creditor's rights*) (a "**Sharing Party**") shall (subject in the case of Bondholders Agent Amounts to paragraphs (a) and (c) of Clause 26.1 (*Liability*)), upon request of the Security Agent, pay or distribute to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the

Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and

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

9.3 **Deferral of subrogation**

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

10. **ENFORCEMENT OF TRANSACTION SECURITY**

10.1 **SFA Cash Cover and/or Cash Management Cover**

This Clause 10 is subject to Clause 16.3 (*Treatment of SFA Cash Cover, Cash Management Cover Senior Lender Cash Collateral*).

10.2 **Enforcement Instructions**

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by an Instructing Group.
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms, an Instructing Group may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 10.2.

10.3 **Manner of enforcement**

If the Transaction Security is being enforced pursuant to Clause 10.2 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Security Agent) the Majority Instructing Creditors shall instruct or, in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate.

10.4 **Exercise of voting rights**

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

10.5 **Waiver of rights**

To the extent permitted under applicable law and subject to Clause 10.2 (*Enforcement Instructions*), Clause 10.3 (*Manner of enforcement*), Clause 12.4 (*Fair value*) and Clause 16 (*Application of Proceeds*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

10.6 **Enforcement through Security Agent only**

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

11. **NON-DISTRESSED DISPOSALS**

11.1 **Definitions**

In this Clause 11:

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

(b) **"Non-Distressed Disposal"** means:

(i) a disposal of:

(A) an asset of a member of the Group; or

(B) an asset which is subject to the Transaction Security,

to a person or persons where:

(A) (prior to the Senior Facilities Discharge Date and the Bond Discharge Date) the Agent or Bondholders Agent notifies the Security Agent that that disposal is permitted under the Senior Finance Documents or Bond Documents (as applicable); and

(B) that disposal is not a Distressed Disposal; or

(ii) any transaction expressly permitted under the Senior Finance Documents which requires release of security over an asset in order to give effect to such transaction, the Agent is authorised to release such security.

11.2 Facilitation of Non-Distressed Disposals

- (a) In connection with a Non-Distressed Disposal, the Security Agent is irrevocably authorised (at the cost of the Company and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or any Debtor) but subject to paragraph (b) below:
- (i) to release the Transaction Security and/or any other claim (relating to a Debt Document) over that asset;
 - (ii) where that asset consists of shares (or equivalent) in the capital of a member of the Group, to release the Transaction Security and (as applicable) any other claim over (relating to a Debt Document) that member of the Group's (and, for the avoidance of doubt, over each of its member of the Group's Subsidiaries' subject to the share sale) Property or over the shares (or relevant equivalent) in the capital of that Debtor or, as the case may be, member of the Group (and, for the avoidance of doubt, over each of its member of the Group's Subsidiaries' subject to the share sale);
 - (iii) to execute and deliver or enter into any release of the Transaction Security and (as applicable) 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 (or any similar or equivalent document) and/or enter into any other documentation or take any other reasonable action required (including in respect of any official or public registers and/or with respect to any notices of Transaction Security sent to any persons) in order to give effect to or evidence that release) that (in each case) may, in the discretion of the Company (acting reasonably and in good faith), be considered necessary.
- (b) Each release of Transaction Security and/or any claim described in paragraph (a) above shall become effective only on the making of the relevant Non-Distressed Disposals.

11.3 Disposal Proceeds

If any Disposal Proceeds are required to be applied in mandatory prepayment of the Senior Facility Liabilities and/or Bond Liabilities then those Disposal Proceeds shall be applied in or towards Payment of the Senior Facility Liabilities and/or Bond Liabilities in accordance with the terms of the Senior Facilities Agreement, and/or Bond Terms (as applicable) and the consent of any other Party shall not be required for that application.

12. DISTRESSED DISPOSALS AND APPROPRIATION

12.1 Facilitation of Distressed Disposals and Appropriation

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

(ii) *release of liabilities and Transaction Security on a share sale/Appropriation (Debtor)*: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:

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

on behalf of the relevant Creditors and the relevant Debtors;

(iii) *release of liabilities and Transaction Security on a share sale/Appropriation (Holding Company)*: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of any Holding Company of a Debtor, to release:

- (A) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - (1) its Borrowing Liabilities;
 - (2) its Guarantee Liabilities; and
 - (3) its Other Liabilities;
- (B) any Transaction Security granted by that Holding Company or any Subsidiary of that Holding Company over any of its assets; and
- (C) any other claim of the Subordinated Creditor, an Intra-Group Lender or another Debtor over that Holding Company's assets or over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and the relevant Debtors;

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

- (A) the Liabilities (other than Liabilities due to any Agent); or
- (B) the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables (the "**Transferee**") will not be treated as a Senior 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 Senior Creditor or a Secured Party for the purposes of this Agreement;

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

- (A) the Liabilities (other than Liabilities due to any Agent); or
- (B) the Debtors' Intra-Group Receivables,

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

- (1) all (and not part only) of the Liabilities owed to the Senior Creditors (other than to any Agent); and
- (2) all or part of any Liabilities (other than Liabilities owed to any Agent) and the Debtors' Intra-Group Receivables,

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

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

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

to execute and deliver or enter into any agreement to:

- (C) 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
- (D) 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.

(b) If any Transaction Security proposed to be released under this Clause 12.1 includes SFA Cash Cover or Cash Management Cover, the Security created or evidenced or expressed to be created

or evidenced under or pursuant to the relevant document in relation to such cash cover shall not be released without the consent of the Relevant Issuing Bank, the Relevant Ancillary Lender or, as applicable, the Relevant Cash Management Provider.

12.2 **Form of consideration for Distressed Disposals and Debt Disposals**

Subject to Clause 13.5 (*Security Agent protection*), a Distressed Disposal or a Debt Disposal may be made in whole or in part for consideration in the form of cash or, if not for cash, for Non-Cash Consideration which is acceptable to the Security Agent.

12.3 **Proceeds of Distressed Disposals and Debt Disposals**

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

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

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

12.4 **Fair value**

In the case of:

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

effected by, or at the request of, the Security Agent, the Security Agent shall take reasonable care to obtain a fair market value having regard to the prevailing market conditions (though the Security Agent shall have no obligation to postpone (or request the postponement of) any Distressed Disposal or Liabilities Sale in order to achieve a higher value).

12.5 **Fair value – safe harbours**

The Security Agent may seek to satisfy the requirement in Clause 12.4 (*Fair value*) in any manner.

12.6 **Appointment of Financial Adviser**

- (a) Without prejudice to Clause 18.9 (*Rights and discretions*), the Security Agent may engage, or approve the engagement of, (in each case on such terms as it may consider appropriate (including, without limitation, restrictions on that Financial Adviser's liability and the extent to which any advice, valuation or opinion may be relied on or disclosed)), pay for and rely on the services of a Financial Adviser to provide advice, a valuation or an opinion in connection with:
 - (i) a Distressed Disposal or a Debt Disposal;
 - (ii) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal; or
 - (iii) any amount of Non-Cash Consideration which is subject to Clause 8.2 (*Turnover by the Creditors*).

- (b) For the purposes of paragraph (a) above, the Security Agent shall act:
 - (i) on the instructions of an Instructing Group if the Financial Adviser is providing a valuation for the purposes of Clause 13.2 (*Cash value of Non-Cash Recoveries*); or
 - (ii) otherwise in accordance with Clause 12.7 (*Security Agent's actions*).

12.7 **Security Agent's actions**

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

- (a) in the case of an Appropriation or if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 10.3 (*Manner of enforcement*); and
- (b) in any other case:
 - (i) on the instructions of an Instructing Group; or
 - (ii) in the absence of any such instructions, as it considers in its discretion to be appropriate.

13. **NON-CASH RECOVERIES**

13.1 **Security Agent and Non-Cash Recoveries**

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

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

13.2 **Cash value of Non-Cash Recoveries**

- (a) The cash value of any Non-Cash Recoveries shall be determined by reference to a valuation obtained by the Security Agent from a Financial Adviser appointed by the Security Agent pursuant to Clause 12.6 (*Appointment of Financial Adviser*) taking into account any notional conversion made pursuant to Clause 16.5 (*Currency conversion*).
- (b) If any Non-Cash Recoveries are distributed pursuant to Clause 16 (*Application of proceeds*), the extent to which such distribution is treated as discharging the Liabilities shall be determined by reference to the cash value of those Non-Cash Recoveries determined pursuant to paragraph (a) above.

13.3 **Agent and Non-Cash Recoveries**

- (a) Subject to paragraph (b) below and to Clause 13.4 (*Alternative to Non-Cash Consideration*), if, pursuant to Clause 16.1 (*Order of application*), the Agent receives Non-Cash Recoveries for application towards the discharge of any Liabilities, the Agent shall apply those Non-Cash

Recoveries in accordance with the relevant Senior Facilities Agreement and/or Bond Terms as if they were Cash Proceeds.

- (b) The Agent may:
 - (i) use any reasonably suitable method of distribution, as it may determine in its discretion, to distribute those Non-Cash Recoveries in the order of priority that would apply under the relevant Senior Facilities Agreement if those Non-Cash Recoveries were Cash Proceeds;
 - (ii) hold any Non-Cash Recoveries through another person; and
 - (iii) hold any amount of Non-Cash Recoveries for so long as the Agent shall think fit for later application pursuant to paragraph (a) above.

13.4 **Alternative to Non-Cash Consideration**

- (a) If any Non-Cash Recoveries are to be distributed pursuant to Clause 16 (*Application of proceeds*), the Security Agent shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify the Senior Creditors entitled to receive those Non-Cash Recoveries pursuant to that distribution (the "**Entitled Creditors**").
- (b) If:
 - (i) it would be unlawful for an Entitled Creditor to receive such Non-Cash Recoveries (or it would otherwise conflict with that Entitled Creditor's constitutional documents for it to do so); and
 - (ii) that Entitled Creditor promptly so notifies the Security Agent and supplies such supporting evidence as the Security Agent may reasonably require,that Senior Creditor shall be a "**Cash Only Creditor**" and the Non-Cash Recoveries to which it is entitled shall be "**Retained Non-Cash**".
- (c) To the extent that, in relation to any distribution of Non-Cash Recoveries, there is a Cash Only Creditor:
 - (i) the Security Agent shall not distribute any Retained Non-Cash to that Cash Only Creditor (or to the Agent on behalf of that Cash Only Creditor) but shall otherwise treat the Non-Cash Recoveries in accordance with this Agreement;
 - (ii) if that Cash Only Creditor is a Senior Facility Creditor, the Security Agent shall notify the Agent of that Cash Only Creditor's identity and its status as a Cash Only Creditor; and
 - (iii) to the extent notified pursuant to paragraph (ii) above, the Agent shall not distribute any of those Non-Cash Recoveries to that Cash Only Creditor.
- (d) Subject to Clause 13.5 (*Security Agent protection*), the Security Agent shall hold any Retained Non-Cash and shall, acting on the instructions of the Cash Only Creditor entitled to it, manage, exploit, collect, realise and dispose of that Retained Non-Cash for cash consideration and shall distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of Proceeds*).

- (e) On any such distribution of Cash Proceeds which are attributable to a disposal of any Retained Non-Cash, the extent to which such distribution is treated as discharging the Liabilities due to the relevant Cash Only Creditor shall be determined by reference to:
 - (i) the valuation which determined the extent to which the distribution of the Non-Cash Recoveries to the other Entitled Creditors discharged the Liabilities due to those Entitled Creditors; and
 - (ii) the Retained Non-Cash to which those Cash Proceeds are attributable.
- (f) Each Senior Creditor shall, following a request by the Security Agent (acting in accordance with Clause 12.7 (*Security Agent's actions*)), notify the Security Agent of the extent to which paragraph (b)(i) above would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries.

13.5 **Security Agent protection**

- (a) No Distressed Disposal or Debt Disposal may be made in whole or part for Non-Cash Consideration if the Security Agent has reasonable grounds for believing that its receiving, distributing, holding, managing, exploiting, collecting, realising or disposing of that Non-Cash Consideration would have an adverse effect on it.
- (b) If Non-Cash Consideration is distributed to the Security Agent pursuant to Clause 8.2 (*Turnover by the Creditors*) the Security Agent may, at any time after notifying the Creditors entitled to that Non-Cash Consideration and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Non-Cash Consideration for cash consideration (and distribute any Cash Proceeds of that Non-Cash Consideration to the relevant Creditors in accordance with Clause 16 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.
- (c) If the Security Agent holds Retained Non-Cash for a Cash Only Creditor (each as defined in Clause 13.4 (*Alternative to Non-Cash Consideration*)) the Security Agent may at any time, after notifying that Cash Only Creditor and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Retained Non-Cash for cash consideration (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Retained Non-Cash would have an adverse effect on it.

14. **ACQUISITION AND INSURANCE CLAIMS**

14.1 **Facilitation of claims**

- (a) So long as the requirements of Clause 14.2 (*Mandatory prepayment of Proceeds*) are met, if any claim relating to any acquisition or investment permitted by the terms of any Debt Document or insurance claim is to be made, or is made, by a Debtor prior to a Distress Event and that claim or that insurance claim (or any proceeds of that claim or insurance claim (the "**Proceeds**")) is or are expressed to be subject to the Transaction Security, the Security Agent is irrevocably authorised

(at the cost of the Company and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or any Debtor) to:

- (i) give a consent under or release the Transaction Security, or any other claim, over the relevant document or insurance policy solely to the extent necessary to allow that Debtor to make that claim or that insurance claim and to comply with that Debtor's obligations in respect of that claim or that insurance claim and any Proceeds under the Senior Facilities Agreement and/or Bond Terms (as applicable); and
- (ii) execute and deliver or enter into any such consent under or release of that Transaction Security, or claim, and/or enter into any other documentation or take any other reasonable action required (including in respect of any official or public registers and/or with respect to any notices of Transaction Security sent to any persons) in order to give effect to or evidence that release that (in each case) may, in the discretion of the Company, be considered necessary or desirable.

14.2 **Mandatory prepayment of Proceeds**

If any Proceeds are required to be applied in mandatory prepayment of the Senior Facility Liabilities and/or Bond Liabilities (as applicable) then, those Proceeds shall be applied in or towards Payment of the Senior Facility Liabilities and/or Bond Liabilities (as applicable) in accordance with the terms of the Senior Facilities Agreement and/or Bond Terms (as applicable) and the consent of any other Party shall not be required for that application.

14.3 **Adjustment of mandatory prepayments**

For the avoidance of doubt, each Senior Creditor agrees that, notwithstanding any other provision of this Agreement, in relation to any mandatory prepayment (other than as a result of a Change of Control (defined in the Senior Facilities Agreement) (or any similar or equivalent term in the Bond Terms), illegality (or any similar or equivalent mandatory prepayment obligation) or any other mandatory prepayment which, by its terms, requires repayment, prepayment or other discharge of a single creditor only) and/or any prepayment, redemption, reduction or discharge (or any similar or equivalent transaction) of any Senior Liabilities from any Proceeds, no default or event of default under any Senior Finance Document and/or Bond Document will occur (or be deemed to have occurred) if the relevant proceeds are applied (without prejudice to or in any way limiting any other application that is permitted to be made under any such Senior Finance Document and/or Bond Document) to the Senior Creditors (excluding any Hedge Counterparty or and any Cash Management Provider) on a *pro rata* basis in accordance with the Senior Facilities Agreement (and any requirement in any Senior Finance Document to make such mandatory prepayment and/or prepayment, redemption, reduction or discharge (or any similar or equivalent transaction) shall be deemed to have been discharged to the extent so applied.

15. **FURTHER ASSURANCE – DISPOSALS AND RELEASES**

(a) Each Creditor and each Debtor will:

- (i) do all things that the Security Agent requests in order to give effect to Clause 11 (*Non-Distressed Disposals*), Clause 12 (*Distressed Disposals and Appropriation*) and Clause 15 (*Acquisition and insurance claims*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may

consider to be necessary to give effect to the releases or disposals contemplated by those Clauses); and

- (ii) if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests that any Creditor or any Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

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

- (b) Each Creditor and each Debtor irrevocably authorises and instructs the Security Agent (at the cost of the relevant Creditor or Debtor and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) to be its agent to do anything which that Creditor or that Debtor has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by Clauses 11, 12 and 15).

16. APPLICATION OF PROCEEDS

16.1 Order of application

Subject to Clause 16.2 (*Prospective liabilities*) and Clause 16.3 (*Treatment of SFA Cash Cover, Cash Management Cover and Senior Lender Cash Collateral*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document, under Clause 18.3 (*Parallel Debt (Covenant to pay the Security Agent)*) and/or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 16, the "**Recoveries**") shall be held by the Security Agent on behalf of others 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 16), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (other than pursuant to Clause 18.3 (*Parallel Debt (Covenant to pay the Security Agent)*)), any Receiver or any Delegate;
- (b) in discharging all costs and expenses incurred by any Secured Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 7.6 (*Further assurance – Insolvency Event*);
- (c) in payment or distribution to:
 - (i) the Agent on its own behalf and on behalf of the other Senior Facility Creditors;
 - (ii) the Bondholders Agent on its own behalf and on behalf of the other Bond Creditors;
 - (iii) the Hedge Counterparties; and
 - (iv) the Cash Management Providers,

for application towards the discharge of:

- (A) the Senior Facility Liabilities (in accordance with the terms of the Senior Finance Documents);
- (B) the Bond Liabilities (in accordance with the terms of the Bond Documents);
- (C) the Hedging Liabilities (in accordance with the terms of the relevant Hedging Agreements) (on a *pro rata* basis between the Hedging Liabilities of each Hedge Counterparty);
- (D) the Cash Management Liabilities (on a *pro rata* basis between the Cash Management Liabilities of each Cash Management Provider),

on a *pro rata* basis between paragraphs (A), (C), (C) and (D) above;

- (d) if none of the Debtors is under any further actual or contingent liability under any Senior Finance Document, Bond Document, or Hedging Agreement, in payment or distribution to the Cash Management Providers for application towards the discharge of the Cash Management Liabilities (in accordance with the terms of the relevant Cash Management Agreements) (on a *pro rata* basis between the Cash Management Liabilities of each Cash Management Provider);
- (e) if none of the Debtors is under any further actual or contingent liability under any Cash Management Agreement, 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.

16.2 **Prospective liabilities**

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

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

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

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

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

16.3 **Treatment of SFA Cash Cover, Cash Management Cover and Senior Lender Cash Collateral**

- (a) Nothing in this Agreement shall prevent any Issuing Bank, Ancillary Lender or Cash Management Provider taking any Enforcement Action in respect of any SFA Cash Cover or Cash Management

Cover (as applicable) which has been provided for it in accordance with the Senior Facilities Agreement or Cash Management Agreement (as applicable).

- (b) To the extent that any SFA Cash Cover or, as the case may be, Cash Management Cover is not held with the Relevant Issuing Bank or Relevant Ancillary Lender or, as the case may be, the Relevant Cash Management Provider, all amounts from time to time received or recovered in connection with the realisation or enforcement of that SFA Cash Cover or, as the case may be, Cash Management Cover shall be paid to the Security Agent and shall be held by the Security Agent on behalf of others 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 or the Relevant Cash Management Provider towards the discharge of the Senior Facility Liabilities, Bond Liabilities or Cash Management Liabilities (as applicable) for which that SFA Cash Cover or, as the case may be, Cash Management Cover was provided; and
 - (ii) the balance, if any, in accordance with Clause 16.1 (*Order of application*).
- (c) To the extent that any SFA Cash Cover or, as the case may be, Cash Management Cover is held with the Relevant Issuing Bank, the Relevant Ancillary Lender or, as applicable, the Relevant Cash Management Provider, nothing in this Agreement shall prevent that Relevant Issuing Bank, the Relevant Ancillary Lender or, as the case may be, the Relevant Cash Management Provider receiving and retaining any amount in respect of that SFA Cash Cover or, as applicable, that Cash Management Cover.
- (d) Nothing in this Agreement shall prevent any Issuing Bank receiving and retaining any amount in respect of any Senior Lender Cash Collateral provided for it in accordance with the Senior Facilities Agreement.

16.4 **Investment of Cash Proceeds**

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

16.5 **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 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 Agent's Spot Rate of Exchange.

- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied:
- (i) in the case of paragraph (a)(i) above, to the extent of the amount of the due currency purchased after deducting the costs of conversion; and
 - (ii) in the case of paragraph (a)(ii) above, to the extent of the amount of the due currency which results from the notional conversion referred to in that paragraph.

16.6 Permitted Deductions

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

16.7 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 Agent on behalf of the Senior Facility Creditors;
 - (ii) may be made to the Bondholders Agent on behalf of the Bond Creditors;
 - (iii) may be made to the Relevant Issuing Bank, Relevant Ancillary Lender or Relevant Cash Management Provider in accordance with paragraph (b)(i) of Clause 16.3 (*Treatment of SFA Cash Cover, Cash Management Cover and Senior Lender Cash Collateral*);
 - (iv) shall be made directly to the Hedge Counterparties; or
 - (v) shall be made directly to the Cash Management Providers.
- (b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Security Agent:
- (i) in the case of a payment made in cash, to the extent of that payment; and
 - (ii) in the case of a distribution of Non-Cash Recoveries, as determined by Clause 13.2 (*Cash value of Non-Cash Recoveries*).
- (c) The Security Agent is under no obligation to make the payments to the Agent, the Relevant Issuing Bank, the Relevant Ancillary Lender, the Relevant Cash Management Provider or the Hedge Counterparties under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Senior Creditor are denominated pursuant to the relevant Debt Document.

16.8 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 Agent's Spot Rate of Exchange in respect of the conversion of the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made into the notional base currency; and

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

17. EQUALISATION

17.1 Equalisation Definitions

For the purposes of this Clause 17:

"Enforcement Date" means the first date (if any) on which a 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 Senior Lender, the aggregate amount of its participation (if any, and without double counting) in all utilisations outstanding under the Senior Facilities Agreement 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 Senior Lenders pursuant to any loss-sharing arrangement in the Senior Facilities Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Senior Facilities Agreement 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 SFA Cash Cover has been provided by a Debtor in respect of that amount and is available to that Senior Lender pursuant to the relevant SFA Cash Cover Document; and
 - (ii) any amount outstanding in respect of a Letter of Credit to the extent (and in the amount) that SFA 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 SFA Cash Cover Document; and
- (b) in relation to a Bondholder, the aggregate amount of its participation (if any, and without double counting) in all subscriptions outstanding under the Bond Terms 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 and other adjustments relating to CPI indexation 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

Bondholders pursuant to any loss-sharing arrangement in the Bond Terms 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 and other adjustments relating to CPI indexation, fees and commission owed to it under the Bond Terms;

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

that amount, in each case, to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement; and
- (d) in relation to a Cash Management Provider, the Cash Management Liabilities owed by the Debtors to that Cash Management Provider (that amount to be certified by the relevant Cash Management Provider (that amount to be certified by the relevant Cash Management Provider and as calculated in accordance with the relevant Cash Management Agreement), but excluding:
- (i) any amount owed to it by a Debtor in respect of any Cash Management Arrangement to the extent (and in the amount) that Cash Management Cover has been provided by a Debtor in respect of that amount and is available to that Cash

Management Provider pursuant to the relevant Cash Management Agreement;
and

- (ii) any amount outstanding in respect of a Cash Management Arrangement to the extent (and in the amount) that Cash Management Cover has been provided by a Debtor in respect of that amount and is available to the relevant Cash Management Provider pursuant to the relevant Cash Management Agreement.

17.2 **Implementation of equalisation**

- (a) The provisions of this Clause 17 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 17 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the Senior Creditors shall make appropriate adjustment payments amongst themselves.

17.3 **Equalisation**

If, for any reason, any Senior Liabilities, Bond Liabilities, Cash Management Liabilities and/or Hedging Liabilities (as applicable) remain unpaid after the Enforcement Date and the resulting losses are not borne by the Senior Lenders, Bondholders, Cash Management Providers and the Hedge Counterparties in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures of all the Senior Lenders, Bondholders, Cash Management Providers and the Hedge Counterparties at the Enforcement Date, the Senior Lenders, Bondholders, Cash Management Providers and the Hedge Counterparties (as applicable) will make such payments amongst themselves as the Security Agent shall require to put the Senior Lenders, Bondholders, Cash Management Providers and the Hedge Counterparties (as applicable) in such a position that (after taking into account such payments) those losses are borne in those proportions, provided that, in exercising its rights under this Clause 17.3, the Security Agent may only require such payments between relevant Creditors to the extent such payments are consistent with the cap on Recoveries in Clause 16.1(c)(iv)(D) (*Order of application*) (except to the extent Clause 16.1(d) (*Order of application*) applies).

17.4 **Notification of Exposure**

Before each occasion on which it intends to implement the provisions of this Clause 17, the Security Agent shall send a notice to each Hedge Counterparty, each Cash Management Provider and the Agent (on behalf of the Senior Lenders) and Bondholders Agent (on behalf of the Bondholders) requesting that it notify it of, respectively, its Exposure and that of each Senior Lender and/or Bondholder (if any).

17.5 **Default in payment**

If a Creditor fails to make a payment due from it under this Clause 17, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Senior Creditor(s) in respect of costs) but shall have no liability or obligation towards such Senior Creditor(s), any other Senior Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

18. THE SECURITY AGENT

18.1 Appointment of the Security Agent

- (a) Each other Secured Party appoints the Security Agent to act on behalf of, under and in connection with the relevant Debt Documents in relation to any security interest which is expressed to be or is construed to be governed by Icelandic law, or any other law from time to time designated by the Security Agent and the Company.
- (b) Except as expressly provided in paragraph (a) above, and without limiting or affecting Clause 18.3 (*Parallel Debt (Covenant to pay the Security Agent)*), each other Secured Party appoints the Security Agent to act as security agent under and in connection with the relevant Debt Documents.
- (c) Each other Secured Party authorises the Security Agent to exercise the rights, powers, authorities and discretions specifically given to it under or in connection with the relevant Debt Documents.

18.2 Security Agent on behalf of the Secured Parties

- (a) The Security Agent declares that it holds the Security Property on behalf of the Secured Parties on the terms contained in this Agreement.
- (b) Subject to paragraph (c) below, paragraph (a) above shall not apply to any Security Document which is expressed to be or is construed to be governed by any law other than Icelandic law or any other law from time to time designated by the Security Agent and a Debtor or any Security Property arising under any such Security Document.
- (c) Paragraph (b) above shall not affect or limit paragraph (c) of Clause 18.3 (*Parallel Debt (Covenant to pay the Security Agent)*) nor the applicability of the provisions of this Clause 18 (*The Security Agent*) with respect to any Security Document which is expressed to be or is construed to be governed by any law other than Icelandic law or any other law from time to time designated by the Security Agent and a Debtor or any Security Property arising under any such Security Document.
- (d) Each of the Senior Creditors authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions.

18.3 Parallel Debt (Covenant to pay the Security Agent)

- (a) Each Debtor hereby irrevocably and unconditionally undertakes to pay to the Security Agent amounts equal to any amounts owing from time to time by that Debtor to any Secured Party under any Debt Document as and when those amounts are due.
- (b) Each Debtor and the Security Agent acknowledge that the obligations of each Debtor under paragraph (a) above are several and are separate and independent from, and shall not in any way limit or affect, the corresponding obligations of that Debtor to any Secured Party under any Debt Document (its "**Corresponding Debt**") nor shall the amounts for which each Debtor is liable under paragraph (a) above (its "**Parallel Debt**") be limited or affected in any way by its Corresponding Debt provided that:
 - (i) the Parallel Debt of each Debtor shall be decreased to the extent that its Corresponding Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and

- (ii) the Corresponding Debt of each Debtor shall be decreased to the extent that its Parallel Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and
 - (iii) the amount of the Parallel Debt of a Debtor shall at all times be equal to the amount of its Corresponding Debt.
- (c) For the purpose of this Clause 18.3, the Security Agent acts in its own name, and its claims in respect of the Parallel Debt shall not be held on behalf of others. The Security granted under the Security Documents to the Security Agent to secure the Parallel Debt is granted to the Security Agent in its capacity as creditor of the Parallel Debt and shall not be held on behalf of others.
- (d) All monies received or recovered by the Security Agent pursuant to this Clause 18.3, and all amounts received or recovered by the Security Agent from or by the enforcement of any Security granted to secure the Parallel Debt, shall be applied in accordance with Clause 16.1 (*Order of application*).
- (e) Without limiting or affecting the Security Agent's rights against the Debtors (whether under this Clause 18.3 or under any other provision of the Debt Documents), each Debtor acknowledges that:
 - (i) nothing in this Clause 18.3 shall impose any obligation on the Security Agent to advance any sum to any Debtor or otherwise under any Debt Document, except in its capacity as a Senior Lender, Bondholder, Cash Management Provider or Hedge Counterparty; and
 - (ii) for the purpose of any vote taken under any Debt Document, the Security Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Senior Lender, Bondholder, Cash Management Provider or Hedge Counterparty.
- (f) For the purposes of paragraph (a) of Clause 16.1 (*Order of application*), the Parallel Debt of each Debtor shall be deemed to be owing to the Agent, the Senior Lenders, the Bondholders, Cash Management Provider or the Hedge Counterparties (as applicable).

18.4 **Instructions**

- (a) The Security Agent shall:
 - (i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Instructing Group; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in accordance with instructions given to it by that Creditor or group of Creditors).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction from the Majority Instructing Creditors or an Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power,

authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.

- (c) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Majority Senior Lenders or an Instructing Group shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.
- (d) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clauses 18.7 (*No duty to account*) to Clause 18.12 (*Exclusion of liability*), Clause 18.15 (*Confidentiality*) to Clause 18.21 (*Custodians and nominees*) and Clause 18.24 (*Acceptance of title*);
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 11 (*Non-Distressed Disposals*);
 - (B) Clause 16.1 (*Order of application*);
 - (C) Clause 16.2 (*Prospective liabilities*);
 - (D) Clause 16.3 (*Treatment of SFA Cash Cover and Senior Lender Cash Collateral*); and
 - (E) Clause 16.6 (*Permitted Deductions*).
- (e) If giving effect to instructions given by the Majority Senior Lenders, Majority Instructing Creditors or 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 10 (*Enforcement of Transaction Security*) in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

18.5 **Duties of the Security Agent**

- (a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:
 - (i) forward to the Agent and to each Hedge Counterparty and Cash Management Provider a copy of any document received by the Security Agent from any Debtor under any Debt Document; and
 - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Debt Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) Without prejudice to Clause 22.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a default under that Debt Document and stating that the circumstance described is a default under that Debt Document, it shall promptly notify the Senior 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 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).

18.6 **No fiduciary duties to Debtors**

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

18.7 **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.

18.8 **Business with the Group**

The Security Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group, but shall have no regard to any such role in acting as Security Agent hereunder.

18.9 Rights and discretions

- (a) The Security Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Senior Lenders, Majority Instructing Creditors, any 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 on behalf of the Secured Parties) that:
- (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and
 - (iii) any notice made by the Company is made on behalf of and with the consent and knowledge of all the Debtors.
- (c) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Senior Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

- (f) The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- (h) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

18.10 Responsibility for documentation

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

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

18.11 No duty to monitor

The Security Agent shall not be bound to enquire:

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

18.12 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document or the Security Property;
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this paragraph (b).
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
- (i) any "*know your customer*" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Senior Creditor,
- on behalf of any Senior Creditor and each Senior 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.

18.13 Senior Creditors' indemnity to the Security Agent

- (a) Each Senior Creditor shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Senior Creditors for the time being (or, if the Liabilities due to the Senior Creditors are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within ten Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).
- (b) For the purposes only of paragraph (a) above, to the extent that any hedging transaction under a Hedging Agreement has not been terminated or closed-out, the Hedging Liabilities due to any Hedge Counterparty in respect of that hedging transaction will be deemed to be:
- (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of those hedging transactions, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
 - (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),
- that amount, in each case as calculated in accordance with the relevant Hedging Agreement.
- (c) Subject to paragraph (d) below, the Company shall immediately on demand reimburse any Senior Creditor for any payment that Senior Creditor makes to the Security Agent pursuant to paragraph (a) above.

- (d) Paragraph (c) above shall not apply to the extent that the indemnity payment in respect of which the Senior Creditor claims reimbursement relates to a liability of the Security Agent to a Debtor.

18.14 **Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Senior Creditors and the Company.
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the Senior Creditors and the Company, in which case the Majority Instructing Creditors (after consultation with the Company) may appoint a successor Security Agent.
- (c) If the Majority Instructing Creditors have not appointed a successor Security Agent in accordance with paragraph (b) above within 40 days after notice of resignation was given, the retiring Security Agent (after consultation with the Agent) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents. The Company shall, within three Business Days of demand, reimburse the retiring Security Agent for all costs and expenses (including legal fees) properly incurred by it in making available such records and documents and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 18.25 (*Release of Transaction Security and the Security Agent's rights*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 18 and Clause 21.1 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Instructing 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 Company.

18.15 **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 if 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.

18.16 Information from the Creditors

- (a) Each Creditor shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.
- (b) Each Hedge Counterparty shall promptly provide to the Security Agent copies of all Hedging Agreements to which that Hedge Counterparty is a party.
- (c) The Agent shall, promptly upon request by the Security Agent, notify the Security Agent of the relevant Agent's Spot Rate of Exchange.

18.17 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.

18.18 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).

18.19 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 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.

18.20 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.

18.21 Custodians and nominees

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

18.22 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (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.

18.23 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate agent or as a co-agent 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 Company and the Senior Creditors of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Debt Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

18.24 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.

18.25 Release of Transaction Security and the Security Agent's rights

If the Security Agent, with the approval of the Agent, each Cash Management Provider, 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 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 18.14 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

18.26 Subordinated Creditors, Intra-Group Lenders and Debtors: Power of Attorney

- (a) Each Subordinated Creditor, each Intra-Group Lender and each Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent (at the cost of that Subordinated Creditor, Intra-Group Lender or Debtor, as applicable, and without consent, sanction, authority or further confirmation from that Subordinated Creditor, Intra-Group Lender or Debtor, as applicable) to be its attorney to do anything which that Subordinated Creditor, 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).
- (b) Any protection given to the Security Agent under this Clause 18 shall apply to any action taken by or instructions given to the Security Agent under any other provision of this Agreement.
- (c) The power of attorney given under this Clause 18.26 shall only be exercised by the Security Agent upon the occurrence of a Distress Event which is continuing.

19. CHANGES TO THE PARTIES

19.1 Assignments and transfers

No Party may:

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

in respect of any Debt Documents or the Liabilities except as permitted by Clause 18 (*The Security Agent*) or this Clause 19 *provided that* any Debtor (other than the Original Debtor) may assign any of its rights and benefits or transfer any of its rights, benefits and obligations pursuant to any reorganisation, consolidation, merger or other transaction that is expressly permitted by the terms of the Senior Facilities Agreement or the Bond Terms (as applicable), provided that such transferee or assignee accedes to this Agreement as a Debtor simultaneously with any such transfer or assignment.

19.2 Change of Subordinated Creditor

- (a) The Company and each other Debtor shall procure that any direct or indirect Holding Company of the Original Debtor who has advanced funds to the Company shall (on or before the making of such advance) accede to this Agreement in the capacity of a Subordinated Creditor by executing and delivering to the Security Agent a Creditor Accession Undertaking agreeing to be bound by all the terms of this deed as if it had originally been party to this Agreement as a Subordinated Creditor.

- (b) The Company and each other Debtor shall procure that no Subordinated Creditor shall assign any of its rights or transfer any of its obligations in respect of the Subordinated Creditor Liabilities until after the Senior Discharge Date, other than as envisaged by Clause 6.4 (*No acquisition of Subordinated Creditor Liabilities*).

19.3 **Change of Senior Lender**

A Senior Lender may:

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

in respect of any Debt Documents or the Liabilities if:

- (A) that assignment or transfer is in accordance with the terms of the Senior Facilities Agreement ; and
- (B) any assignee or transferee (if not already Party as a Senior Lender) accedes to this Agreement, as a Senior Lender, pursuant to Clause 19.11 (*Creditor Accession Undertaking*).

Any person may accede to this Agreement as a Senior Lender pursuant to Clause 19.11 (*Creditor Accession Undertaking*), other than in respect of any “Debt Purchase Transaction” permitted by clause 30 (*Restriction on Debt Purchase Transactions*) of (and as defined in) the Senior Facilities Agreement entered into by a “Sponsor Affiliate” or a “Borrower” under such Senior Finance Document.

19.4 **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, benefits 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 and a party to the Senior Facilities Agreement as a Hedge Counterparty) acceded to this Agreement, pursuant to Clause 19.11 (*Creditor Accession Undertaking*) as a Hedge Counterparty.

19.5 **Change of Agent**

No person shall become an Agent unless at the same time, it accedes to this Agreement as an Agent, pursuant to Clause 19.11 (*Creditor Accession Undertaking*).

19.6 **Change of Bondholders Agent**

No person shall become a Bondholders Agent unless at the same time, it accedes to this Agreement as an Agent, pursuant to Clause 19.11 (*Creditor Accession Undertaking*).

19.7 **Change of Cash Management Provider**

- (a) No person shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity from any Debtor in respect of any Cash Management Liabilities unless the Company has consented to such person becoming a Cash Management Provider and that person (being a person who fulfils the requirements set out in paragraph (b) below) has acceded to this Agreement as a Cash Management Provider pursuant to Clause 19.11 (*Creditor Accession Undertaking*).

- (b) Subject to paragraph (a) above, any person who provides a Cash Management Arrangement (as defined in the Senior Facilities Agreement) may accede to this Agreement as a Cash Management Provider pursuant to Clause 19.11 (*Creditor Accession Undertaking*).
- (c) A Cash Management Provider may (in accordance with the terms of the relevant Cash Management Agreement and subject to any consent required under that Cash Management Agreement) assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Cash Management Agreements to which it is a party if any transferee has (if not already party as a Cash Management Provider) acceded to this Agreement as a Cash Management Provider pursuant to Clause 19.11 (*Creditor Accession Undertaking*), provided that such transferee complies with the restrictions applicable to a Cash Management Provider set out in the Senior Facilities Agreement.

19.8 **Change of Intra-Group Lender**

Subject to Clause 5.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may:

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

in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already Party as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, on or prior to the date of such transfer pursuant to Clause 19.11 (*Creditor Accession Undertaking*).

19.9 **New Intra-Group Lender**

If any Intra-Group Lender or any member of the Group makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount of ISK25,000,000 or more (whether in a single loan or aggregated with all other such outstanding loans) the Company and each other Debtor will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already Party as an Intra-Group Lender) accedes to this Agreement as an Intra-Group Lender, on or prior to the making or granting of such loan, credit or financial arrangement pursuant to Clause 19.11 (*Creditor Accession Undertaking*). If any member of the Group has acceded to this Agreement in any capacity other than as an Intra-Group Lender, it shall be deemed also to have acceded to this Agreement as an Intra-Group Lender.

19.10 **New Ancillary Lender**

If any Affiliate of a Senior Facility Creditor becomes an Ancillary Lender in accordance with the Senior Facilities 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 Senior Facility Creditor) acceded to this Agreement as a Senior Facility Creditor, pursuant to Clause 19.11 (*Creditor Accession Undertaking*) and, to the extent required by the Senior Facilities Agreement, to that Senior Facilities Agreement as an Ancillary Lender.

19.11 **Creditor Accession Undertaking**

With effect from the date of acceptance by the Security Agent and (in the case of a Hedge Counterparty, Cash Management Provider or any Affiliate of a Senior Facility Creditor), by the Agent of a Creditor Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor Accession Undertaking:

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

19.12 **New Debtor**

- (a) If any member of the Group:
 - (i) incurs any Liabilities under the Hedging Agreements, the Senior Finance Documents, the Bond Documents or the Cash Management Agreements; or
 - (ii) gives any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities under the Hedging Agreements, the Senior Finance Documents, the Debt Documents or the Cash Management Agreement in accordance with the terms of this Agreement and/or the Senior Facilities Agreement,

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

- (b) If any Affiliate of a Borrower becomes a borrower of an Ancillary Facility in accordance with the Senior Facilities Agreement, the relevant 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) If any member of the Group becomes a borrower of (or is otherwise granted any credit or benefits from any other financial arrangement having similar effect (howsoever termed) under) a Cash Management Arrangement in accordance with the terms of the relevant Cash Management Agreement, the Company 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.
- (d) With effect from the date of acceptance by the Security Agent of a Debtor Accession Agreement duly executed and delivered to the Security Agent by the new Debtor or, if later, the date specified

in the Debtor Accession Agreement, 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.

19.13 **Additional parties**

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Agreement and Creditor Accession Undertaking delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the Senior Facilities Agreement .
- (b) In the case of a Creditor Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Senior Facility Creditor) or any party acceding to this Agreement as a Hedge Counterparty or a Cash Management Provider:
 - (i) the Security Agent shall, as soon as practicable after signing and accepting that Creditor Accession Undertaking in accordance with paragraph (a) above, deliver that Creditor Accession Undertaking to the Agent; and
 - (ii) the Agent shall, as soon as practicable after receipt by it, sign and accept that Creditor Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.
- (c) The Security Agent shall only be obliged to sign and accept a Debtor Accession Agreement or Creditor Accession Undertaking delivered to it once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the accession by the prospective party to this Agreement.
- (d) Each Party shall promptly upon the request of the Security Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Security Agent (for itself) in order for the Security Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Debt Documents.

19.14 **Resignation of a Debtor**

- (a) Subject always to the terms of the Senior Facilities Agreement, including limitations that apply to the resignation of any "Obligor" (as defined therein) thereunder, and to paragraph (e) below, the Company may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (b) The Security Agent shall accept a Debtor Resignation Request that has been delivered in compliance with paragraph (a) above if no Default has occurred or would result from the acceptance of such Debtor Resignation Request and:
 - (i) subject to, and in accordance with, Clause 11 (*Non-Distressed Disposals*) and the terms of the Senior Facilities Agreement it has ceased to be a member of the Group;
 - (ii) the Senior Discharge Date has occurred; or
 - (iii)

- (A) to the extent that the Senior Facilities Discharge Date has not occurred, the Agent notifies the Security Agent that that Debtor is not, or has ceased to be (or will cease to be, substantially contemporaneously with such resignation), a Borrower or a Guarantor in accordance with the terms of the Senior Facilities Agreement; and
 - (B) the Bondholders Agent notifies the Security Agent that that Debtor is not, or has ceased to be (or will cease to be, substantially contemporaneously with such resignation), an "Issuer" in accordance with the terms of the Bond Documents, *provided that* no amounts are owing from that Debtor pursuant to the Bond Documents at that time; and
 - (C) each Hedge Counterparty notifies the Security Agent that that Debtor is (or will be, substantially contemporaneously with such resignation) under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities (excluding any contingent obligations arising under Clause 4.13 (*Guarantee: Hedging Liabilities*)), *provided that* no amounts are owing from that Debtor pursuant to that Clause at that time; and
 - (D) to the extent that the Cash Management Discharge Date has not occurred, each Cash Management Provider notifies the Security Agent that that Debtor is (or will be, substantially contemporaneously with such resignation) under no actual or contingent obligations to that Cash Management Provider in respect of the Cash Management Liabilities (excluding any contingent obligations arising under Clause 3.5 (*Guarantee: Cash Management Liabilities*)), *provided that* no amounts are owing from that Debtor pursuant to that Clause at that time; and
 - (E) the Company has confirmed that that debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities or the Subordinated Liabilities.
- (c) Immediately upon acceptance by the Security Agent of the relevant Debtor Resignation Request, the relevant Debtor shall cease to be a Debtor under this Agreement and shall have no further rights or obligations under this Agreement as a Debtor.
 - (d) Without prejudice to paragraphs (b) and (c) above, the Security Agent will promptly notify the Company and each other Party of its acceptance of any Debtor Resignation Request.
 - (e) For the avoidance of doubt, notwithstanding any other provision of this Agreement or any other Debt Document, no person may at any time be a Guarantor in respect of the (i) Cash Management Liabilities and/or the Hedging Liabilities unless such person is also a Guarantor of the Senior Facility Liabilities and the Bond Liabilities, or (ii) the Senior Facility Liabilities unless such person is also a Guarantor of the Bond Liabilities, and vice versa.

19.15 Cessation of Hedge Counterparties, Cash Management Providers and/or Subordinated Creditors

- (a) In the event that a person which is a Party to this Agreement as a Hedge Counterparty is no longer providing any hedging under a Hedging Agreement, that person may resign (and will resign if required by the Company) as a Hedge Counterparty by giving notice to the Security Agent and the Company. From the date of receipt by the Security Agent and the Company of any such notice of

resignation that person shall cease to be a Party to this Agreement as a Hedge Counterparty and shall have no further rights or obligations under this Agreement as a Hedge Counterparty.

- (b) In the event that a person which is a Party to this Agreement as a Cash Management Provider is no longer providing any facility, financial accommodation or other services under a Cash Management Agreement, that person may resign (and will resign if required by the Company) as a Cash Management Provider by giving notice to the Security Agent and the Company. From the date of receipt by the Security Agent and the Company of any such notice of resignation that person shall cease to be a Party to this Agreement as a Cash Management Provider and shall have no further rights or obligations under this Agreement as a Cash Management Provider.
- (c) In the event that a person which is a Party to this Agreement as a Subordinated Creditor is no longer a creditor in respect of any Subordinated Liabilities, that person may resign (and will resign if required by the Company) as a Subordinated Creditor by giving notice to the Security Agent and the Company. From the date of receipt by the Security Agent and the Company of any such notice of resignation that person shall cease to be a Party to this Agreement as a Subordinated Creditor and shall have no further rights or obligations under this Agreement as a Subordinated Creditor.

19.16 Limitation of certain obligations

- (a) Any guarantee or indemnity or hold harmless obligation provided by a Subordinated Creditor, Intra-Group Lender or Debtor under this Agreement shall be provided on the same terms and subject to the same limitations as the Guarantee Limitations. Without prejudice to the foregoing, no guarantee or indemnity or hold harmless obligation shall be required to be provided to the extent that it would result in any Subordinated Creditor, Intra-Group Lender, Debtor, or member of the Group entering into or assuming an obligation which is unlawful under any law or regulation applicable to such Subordinated Creditor, Intra-Group Lender, Debtor, or member of the Group and shall be deemed to be limited accordingly.

20. COSTS AND EXPENSES

20.1 Transaction expenses

The Company shall, promptly on demand, pay the Security Agent the amount of all costs and expenses (including agreed legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent and by any Receiver or Delegate (evidence of which shall be provided to the Company) in connection with the negotiation, preparation, printing, execution and perfection of this Agreement and any other Debt Document that may be entered into after the date of this Agreement, *provided that* no such fees, costs and expenses (other than pre-agreed reasonable and properly incurred legal fees and expenses in connection with the drafting and negotiation of this Agreement) shall be payable if either the Closing Date does not occur or the Completion Date does not occur (and, if both the Closing Date and the Completion Date occurs, shall not be payable before receipt of the corresponding invoice), subject always to the Fee Letter.

20.2 Amendment costs

If a Debtor requests an amendment, waiver or consent, the Company shall, within ten Business Days of demand, reimburse the Security Agent for the amount of all costs and expenses (including agreed and capped 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.

20.3 **Enforcement and preservation costs**

The Company shall, within ten 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.

20.4 **Stamp taxes**

The Company shall pay and, within ten 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.

20.5 **Interest on demand**

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

20.6 **No deal / no fees**

Notwithstanding anything to the contrary, but subject to the Fee Letter, other than in respect of pre-agreed reasonable and properly incurred legal fees, no fees, costs or expenses shall be chargeable to, or payable by, the Company or any other member of the Group unless both the Closing Date and the Completion Date occur.

21. **OTHER INDEMNITIES**

21.1 **Indemnity to the Security Agent**

- (a) Each Debtor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them as a result of:
- (i) any failure by the Company to comply with its obligations under Clause 20 (*Costs and Expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise or purported exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;

- (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
 - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
 - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 21.1 will not be prejudiced by any release or disposal under Clause 12 (*Distressed Disposals and Appropriation*) taking into account the operation of that Clause 12.
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 21.1 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.

21.2 Company's indemnity to Senior Creditors

The Company shall promptly and as principal obligor indemnify each Senior Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 12 (*Distressed Disposals and Appropriation*).

22. INFORMATION

22.1 Dealings with Security Agent and Agent

- (a) Subject to clause 29.5 (*Impaired Agent*) of the Senior Facilities Agreement, each Senior Facility Creditor shall deal with the Security Agent exclusively through the Agent, the Cash Management Providers and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through the Agent.
- (b) The Agent shall not be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty or Cash Management Provider except as expressly provided for in, and for the purposes of, this Agreement.

22.2 Disclosure between Senior Creditors and Security Agent

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

22.3 Notification of prescribed events

- (a) If an Event of Default either occurs or ceases to be continuing the Agent shall, upon becoming aware of that occurrence or cessation, notify the Bondholders Agent and Security Agent and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty and each Cash Management Provider.

- (b) If an Acceleration Event occurs the Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (c) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Secured Party of that action.
- (d) If any Senior Creditor intends to exercise any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall give reasonable prior notice to the Security Agent and the Security Agent shall, upon receiving that notification, notify each Secured Party of that action.
- (e) If any Intra-Group Lender intends to exercise any right it may have to take action in accordance with Clause 5.8 (*Permitted Enforcement: Intra-Group Lenders*) it shall give reasonable prior notice to the Security Agent and the Security Agent shall, upon receiving that notification, notify each Secured Party of that action.
- (f) If the Subordinated Creditor intends to exercise any right it may have to take action in accordance with Clause 6.8 (*Permitted Enforcement: Subordinated Creditor*) it shall give reasonable prior notice to the Security Agent and the Security Agent shall, upon receiving that notification, notify each Secured Party 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 Agent and each other Hedge Counterparty.
- (h) If a Debtor defaults on any Payment due under a Cash Management Arrangement (such that the relevant Cash Management Provider is able to exercise rights of acceleration under that Cash Management Arrangement), the relevant Cash Management Provider shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Agent and each other Cash Management Provider
- (i) If, prior to a Distress Event, the Company has certified to a Hedge Counterparty under paragraph (a)(i) of Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*), that a proposed termination or close-out, in whole or in part, of any hedging transaction under any Hedging Agreement would not result in a breach of the Senior Facilities Agreement and/or Bond Terms, the Company shall deliver a copy of that certificate to the Security Agent and the Security Agent shall, upon receiving that certificate, notify the Agent and each other Hedge Counterparty.
- (j) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Agent, each Cash Management Provider and each other Hedge Counterparty.

23. NOTICES

23.1 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.

23.2 **Security Agent's communications with Senior Creditors**

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

- (a) with the Senior Facility Creditors and Bond Creditors through the Agent or Bondholders Agent (as applicable) and may give to the Agent any notice, document or other communication required to be given by the Security Agent to a Senior Facility Creditor and/or a Bond Creditor;
- (b) with each Cash Management Provider directly with that Cash Management Provider; and
- (c) with each Hedge Counterparty directly with that Hedge Counterparty.

23.3 **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 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.

23.4 **Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address, and, if a particular department or officer is specified as part of its address details provided under Clause 23.3 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Company in accordance with this Clause 23.4 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.

23.5 **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 23.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

23.6 **Electronic communication**

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with this Agreement may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between a Subordinated Creditor, a Debtor or an Intra-Group Lender and the Security Agent or a Senior Creditor may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
- (c) Any such electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in this Agreement to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 23.6.

23.7 **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.

24. **PRESERVATION**

24.1 **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.

24.2 **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.

24.3 **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.

24.4 **Waiver of defences**

The provisions of this Agreement or any Transaction Security will not be affected by an act, omission, matter or thing which, but for this Clause 24.4, 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 Senior Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

24.5 **Priorities not affected**

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

- (a) not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities owing to the Senior 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 Senior 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.

25. **CONSENTS, AMENDMENTS AND OVERRIDE**

25.1 **Required consents**

- (a) Subject to paragraph (b) below, Clause 25.4 (*Exceptions*), and Clause 25.5 (*Disenfranchisement of Sponsor Affiliates*), this Agreement may be amended and/or waived only with the consent of the Security Agent, the Company and the Agent and/or Bondholders Agent (acting in accordance with the terms of the Senior Facilities Agreement or any Bond Documents), *provided that*, to the extent that an amendment, waiver or consent only affects one class (including, for the avoidance of any doubt, any sub-class) of Creditors, and such amendment, waiver or consent could not reasonably be expected to materially and adversely affect the interests of the other classes of Creditors, only written agreement from the Agent and/or Bondholders Agent acting on behalf of the affected Creditor class (or sub-class).
- (b) Subject paragraphs (c) to (e) below and Clause 11 (*Non-Distressed Disposals*), an amendment or waiver that has the effect of changing or which relates to:
 - (i) Clause 9 (*Redistribution*), Clause 10 (*Enforcement of Transaction Security*) Clause 16 (*Application of Proceeds*) or this Clause 25 (*Consents, amendments and override*);
 - (ii) paragraphs (d)(iii), (e) and (f) of Clause 18.4 (*Instructions*) or Clause 10.2 (*Enforcement Instructions*);
 - (iii) the order of priority or subordination under this Agreement (other than where consequential to a structural adjustment contemplated in the Senior Facilities Agreement and/or the Bond Terms);
 - (iv) Clause 8 (*Turnover of receipts*) or Clause 17 (*Equalisation*),

shall not be made without the consent of:

- (A) the Agent;
- (B) the Bondholders' Agent;

- (C) the Senior Lenders (or the relevant class of Senior Lenders, as provided under paragraph (c) of clause 35.3 (*Other exceptions*) of the Senior Facilities Agreement) and/or the substantially equivalent provision under the Bond Terms ;
 - (D) each Cash Management Provider which is party to this Agreement (but only to the extent that such amendment or waiver would materially and adversely affect the rights and obligations of that Cash Management Provider under this Agreement);
 - (E) each Hedge Counterparty (but only to the extent that such amendment or waiver would materially and adversely affect the rights and obligations of that Hedge Counterparty under this Agreement);
 - (F) the Security Agent; and
 - (G) the Company.
- (c) Notwithstanding anything to the contrary in this Agreement or any other Debt Document, any Party may irrevocably unilaterally waive, relinquish, or otherwise release or decline the right to receive or benefit from, any right in relation to Transaction Security or any guarantee, indemnity or other assurance against loss in respect of any Liabilities owed to it by a Debtor or member of the Group with the prior consent of the Company, provided that it does so explicitly.
- (d) This Agreement may be amended by the Security Agent and the Company without the consent of any other Party:
- (i) to cure defects, manifest errors or omissions, or reflect changes in each case of a minor technical or administrative nature or as otherwise prescribed by the Senior Facilities Agreement and the Bond Documents; or
 - (ii) if that amendment is (in the opinion of the Security Agent, in its sole discretion) for the equal benefit of all of the Secured Parties.

25.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to paragraph (b) below and to Clause 25.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised the Majority Instructing Creditors, and if the Company consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.
- (b) Subject to paragraph (c) of Clause 25.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:
- (i) the nature or scope of the Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
 - (iii) the release of any Transaction Security,

shall not be made without the prior consent of the Senior Facility Creditors, the Bondholders and the Hedge Counterparties.

- (c) The Company and the Security Agent shall enter into (and the Security Agent is authorised, empowered and instructed by the Secured Parties (without any requirement for any further consents to be granted under the Debt Documents) to enter into) any amendment to this Agreement which the Company and the Security Agent reasonably consider (in the case of the Security Agent only having received legal advice to such effect) is necessary as a result of the laws or regulations of the jurisdiction of incorporation of any Debtor in connection with the creation of any Transaction Security or the giving of any guarantee, indemnity or other assurance against loss in favour of any Creditor by that Debtor.

25.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this Clause 25 will be binding on all Parties and the Security Agent may effect, on behalf of any Senior Creditor, any amendment, waiver or consent permitted by this Clause 25.
- (b) Without prejudice to the generality of Clause 18.9 (*Rights and discretions*) the Security Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

25.4 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 Senior Creditor other than in a way which affects or would affect the Senior Creditors (other than the Agent, the Bondholders Agent and the Security Agent) generally, the consent of such Senior Creditor is required.
- (b) Subject to paragraphs (c) and **Error! Reference source not found.** below, an amendment, waiver or consent which relates to the rights or obligations of the Agent, the Bondholders Agent, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty (to the extent that the amendment, waiver or consent would adversely affect that Hedge Counterparty) may not be effected without the consent of the Agent or, as the case may be, the Security Agent or that Hedge Counterparty.
- (c) Neither paragraph (a) or (b) above nor paragraph (b) of Clause 25.2 (*Amendments and Waivers: Transaction Security Documents*) shall apply:
- (i) to any release of Transaction Security, claim or Liabilities; or
 - (ii) to any consent,

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

25.5 Disenfranchisement of Sponsor Affiliates

- (a) For so long as a Sponsor Affiliate (i) beneficially owns a Commitment or (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect in relation to a Commitment and such agreement or arrangement has not been terminated, in ascertaining:
- (a) the Majority Senior Lenders, the Majority Instructing Creditors, any required portion of Bondholders or any Instructing Group; or

(b) whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participation, or the agreement of any specified group of 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 Commitment, as applicable, shall be deemed to be zero and, subject to paragraph (ii) below, that Sponsor 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 Senior Creditor.

(b) Each Sponsor Affiliate that is a Senior Lender or Bondholder agrees that, and the Company shall procure that:

(i) in relation to any meeting or conference call to which all the Senior 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 Senior Creditors.

(c) For purposes of this Clause 25.5, "**Sponsor Affiliate**" shall, to the extent it relates to any bond issued under the Bond Documents or Bondholder, include any person who constitutes a "closely related" person of any Group company as defined in Article 3 of Law No. 21/1991 on insolvency etc.

25.6 **Disenfranchisement of Defaulting Lenders**

(a) For so long as a Defaulting Lender has any Available Commitment:

(i) in ascertaining:

(A) the Majority Senior Lenders or any Instructing Group; or

(B) whether:

(1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations; or

(2) the agreement of any specified group of Senior 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 Senior Lender.

(b) For the purposes of this Clause 25.5, the Security Agent may assume that the following Senior Creditors are Defaulting Lenders:

(i) any Senior Lender which has notified the Security Agent that it has become a Defaulting Lender;

- (ii) any Senior Lender to the extent that the Agent has notified the Security Agent that that Senior Lender is a Defaulting Lender; and
- (iii) any Senior 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 Senior Facilities Agreement (in each case to which it is party) has occurred,

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

Paragraph (c) of Clause 23.7 (*Pro rata interest rate settlement*) of the Senior Facilities Agreement shall apply to any request for a Consent, to carry any vote or approve any action under this Agreement.

25.7 **Calculation of Senior Credit Participations**

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

25.8 **Deemed consent**

If, at any time prior to the Senior Discharge Date, the Senior Facility Creditors, Bond Creditors, Cash Management Providers or Hedge Counterparties give a Consent in respect of the Senior Finance Documents, Bond Documents, Cash Management Agreements or Hedging Agreements (as applicable) then, if that action was permitted by the terms of this Agreement, the Intra-Group Lenders, the Company and the Subordinated Creditor will (or will be deemed to):

- (i) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
- (ii) do anything (including executing any document) that the Senior Facility Creditors, Bond Creditors, Hedge Counterparties or Cash Management Providers (as applicable) may reasonably require to give effect to this Clause 25.8.

25.9 **Excluded consents**

Clause 25.8 (*Deemed consent*) does not apply to any Consent which has the effect of:

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

25.10 **No liability**

None of the Senior Facility Creditors will be liable to any other Creditor or any other Debtor for any Consent given or deemed to be given under this Clause 25.

25.11 **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 (howsoever described) under any Debt Document as between any Creditor and any Debtor that are party to that Debt Document.

26. **BONDHOLDERS AGENT**

26.1 **Liability**

- (a) It is expressly understood and agreed by the Parties that this Agreement is executed and delivered by the Bondholders Agent not individually or personally but solely in its capacity as agent in the exercise of the powers and authority conferred and vested in it under the relevant Bond Documents for and on behalf of the Bondholders only for which such Bondholders Agent acts as agent (and it shall have no liability for acting for itself or in any capacity other than as agent), and nothing in this Agreement shall impose on it any obligation to pay any amount out of its personal assets. Notwithstanding any other provision of this Agreement, its obligations hereunder (if any) to make any payment of any amount or to hold any amount on behalf of another (or otherwise, including trust) shall be only to make payment of such amount to or hold any such amount on behalf of another (or otherwise, including trust) to the extent that (i) it has actual knowledge that such obligation has arisen and (ii) it has received and, on the date on which it acquires such actual knowledge, has not distributed to the Bondholders for which it acts as agent in accordance with the Bond Terms any such amount.
- (b) It is further understood and agreed by the Parties that in no case shall the Bondholders Agent be (i) personally responsible or accountable in damages or otherwise to any other Party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by that Bondholders Agent in good faith in accordance with this Agreement or any of the Bond Documents in a manner that such Bondholders Agent believed to be within the scope of the authority conferred on it by this Agreement or any of the Bond Documents or by law, or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party; provided, however, that the Bondholders Agent

shall be personally liable under this Agreement for its own gross negligence or wilful misconduct. It is also acknowledged and agreed that no Bondholders Agent shall have any responsibility for the actions of any individual Creditor or Bondholder (save in respect of its own actions).

- (c) The Parties acknowledge and agree that no Bondholders Agent shall be charged with knowledge or existence of facts that would impose an obligation on it hereunder to make any payment or prohibit it from making any payment unless, not less than two Business Days prior to the date of such payment, an authorised officer of the applicable Bondholders Agent receives written notice from the Security Agent satisfactory to it that such payments are required or prohibited by this Agreement.
- (d) Notwithstanding anything contained in this Agreement, no provision of this Agreement shall alter or otherwise affect the rights and obligations of the Borrower (in respect of paragraph (b) of the definition thereof) or Debtor to make payments in respect of Bondholders Agent Amounts as and when the same are due and payable pursuant to the applicable Bond Documents or the receipt and retention by a Bondholders Agent of the same or the taking of any step or action by a Bondholders Agent in respect of its rights under the Bond Documents to the same.
- (e) The Bondholders Agent is not responsible for the appointment or for monitoring the performance of the Security Agent.
- (f) The Security Agent agrees and acknowledges that it shall have no claim against any Bondholders Agent in respect of any fees, costs, expenses and liabilities due and payable to, or incurred by, the Security Agent.
- (g) The Bondholders Agent shall not be under any obligation to instruct or direct the Security Agent to take any Enforcement Action unless it shall have been instructed to do so by the Bondholders and if it shall have been indemnified and/or secured to its satisfaction, in accordance with the Bond Documents.

26.2 **No action**

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

26.3 **Reliance on certificates**

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

26.4 **No fiduciary duty**

The Bondholders Agent shall not be deemed to owe any fiduciary duty to any Creditor (save in respect of such persons for whom it acts as trustee) and shall not be personally liable to any Creditor if it shall in good faith mistakenly pay over or distribute to any Creditor or to any other person cash, property or securities to which any other Creditor shall be entitled by virtue of this Agreement or otherwise. With respect to the Creditors, the Bondholders Agent undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in the Bond Documents pursuant to which it acts as trustee, and this Agreement and no implied agreement, covenants or obligations with respect to the other Creditors shall be read into this Agreement against a Bondholders Agent.

26.5 **Debt assumptions**

(a) The Bondholders Agent is entitled to assume that:

- (i) no Default, Event of Default or termination event (however described) has occurred; and
- (ii) the Senior Discharge Date has not occurred,

unless an authorised officer of the Bondholders Agent has actual knowledge to the contrary.

(b) The Bondholders Agent is not obliged to monitor or enquire whether any Default or Event of Default has occurred.

26.6 **Senior Lenders, Cash Management Providers or Hedge Counterparties**

In acting pursuant to this Agreement and the relevant Bond Documents, no Bondholders Agent is required to have any regard to the interests of any other Creditors (other than the relevant Bondholders for which it is the Bondholders Agent).

26.7 **Claims of Security Agent**

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

26.8 **Reliance and advice**

Each Bondholders Agent may:

- (a) rely on any notice or document believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person;
- (b) rely on any statement made by any person regarding any matters which may be assumed to be within its knowledge or within its powers to verify; and
- (c) engage, pay for and rely on professional advisers selected by it (including those representing a person other than the Bondholders Agent), at the expense of the Company.

26.9 Provisions survive termination

The provisions of this Clause 26.9 shall survive any termination of this Agreement.

26.10 Other Parties not affected

No provision of this Clause 26.10 shall alter or change the rights and obligations as between the other Parties in respect of each other. This Clause 26.10 is intended to afford protection to the Bondholders Agent only.

26.11 Instructions

In acting under this Agreement, the Bondholders Agent is acting on behalf of the Bondholders and are entitled to seek instructions from the Bondholders for which it acts as Bondholders Agent at any time and, where it acts on the instructions of such Bondholders, such Bondholders Agent shall not incur any liability to any person for so acting. No Bondholders Agent shall be liable to any person for any loss suffered as a result of any delay caused as a result of it seeking instructions from the Bondholders for which it acts as a Bondholders Agent.

26.12 Responsibility of Bondholders Agent

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

26.13 Confirmation

Without affecting the responsibility of any Debtor or the Company for information supplied by it or on its behalf in connection with any Senior Finance Document, Cash Management Agreement, Bond Document, Hedging Agreement, Debt Document or any other document, each Finance Party, Senior Lender, Cash Management Provider, Hedge Counterparty and/or Bondholder confirms that it:

- (a) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Senior Finance Document, Cash Management Agreement, Bond Document, Hedging Agreement, Debt Document or any other document (including the financial condition and affairs of each Debtor or their related entities and the nature and extent of any recourse against any Party or its assets); and
- (b) has not relied on any information provided to it by the Bondholders Agent in connection with any Senior Finance Document, Cash Management Agreement, Bond Document, Hedging Agreement, Debt Document or any other document.

26.14 **Provision of information**

The Bondholders Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party. No Bondholders Agent is responsible for:

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

26.15 **Departmentalism**

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

26.16 **Disclosure of information**

Each Debtor irrevocably authorises any Bondholders Agent to disclose to any Senior Creditor any information that is received by such Bondholders Agent in its capacity as a Bondholders Agent.

26.17 **Illegality**

- (a) The Bondholders Agent 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.
- (b) Furthermore, the Bondholders Agent may also refrain from taking such action if it would otherwise render it liable to any person in that jurisdiction or if, in its opinion based upon such legal advice, it would not have the power to do the relevant thing in that jurisdiction by virtue of any applicable law in that jurisdiction or if it is determined by any court or other competent authority in that jurisdiction that it does not have such power.

26.18 **Resignation of Bondholders Agent**

The Bondholders Agent may resign or be removed in accordance with the terms of the applicable Bond Documents, provided that a replacement Bondholders Agent agrees with the Parties to become the replacement bondholders agent under this Agreement.

26.19 **Bondholders Agent assumptions**

- (a) The Bondholders Agent is entitled to assume that:
 - (i) any payment or other distribution made pursuant to this Agreement in respect of the Senior Liabilities (as the case may be) has been made in accordance with the ranking in Clause 2 (*Ranking and Priority*) and is not prohibited by any provisions of this Agreement and is made in accordance with these provisions;
 - (ii) the proceeds of enforcement of any Security conferred by the Security Documents have been applied in the order set out in Clause 16 (*Application of Proceeds*);

- (iii) any Security, collateral, guarantee or indemnity or other assurance granted to it has been done so in compliance with Clause 3.3 (*Security: Senior Facility Creditors, Bond Creditors and/or Cash Management Provider*); and
 - (iv) any bond issued under the Bond Terms complies with the provisions of this Agreement.
- (b) Each Bondholders Agent is entitled to assume that any payment or distribution made in respect of the Senior Liabilities (as the case may be) is not prohibited by this Agreement, unless it has actual knowledge to the contrary provided, however, that a Bondholders Agent shall be liable under this Agreement for its own gross negligence or wilful misconduct.
- (c) A Bondholders Agent shall not have any obligation under Clause 7 (*Effect of Insolvency Event*) or Clause 9 (*Redistribution*) in respect of amounts received or recovered by it unless:
 - (i) it has actual knowledge that the receipt or recovery falls within paragraph (a) or (b) above;
 - (ii) it has not distributed to the relevant Bondholders in accordance with the Bond Documents any amount so received or recovered.
- (d) A Bondholders Agent shall not be obliged to monitor performance by the Debtors, the Security Agent or any other Party to this Agreement or the Bondholders of their respective obligations under, or compliance by them with, the terms of this Agreement.

26.20 Agents

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

26.21 No requirement for bond or surety

No Bondholders Agent shall be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Agreement.

26.22 Bondholders Agent Liabilities and payments

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

26.23 Business with Debtors

Any Bondholders Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with any of the Debtors.

26.24 Bond Terms

The parties hereto acknowledge and agree to the rights of the Bondholders Agent set out in the Bond Terms.

27. COUNTERPARTS

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

28. **GOVERNING LAW**

This Agreement is governed by Icelandic law.

29. **ENFORCEMENT**

29.1 **Jurisdiction**

- (a) The courts of Iceland, with the District Court of Reykjavík being the applicable court in the first instance, have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of Iceland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraphs (a) and (b) above, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
FORM OF DEBTOR ACCESSION AGREEMENT

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

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

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

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

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

the "**Relevant Documents**".

IT IS AGREED as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
2. The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
 - (a) any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
 - (b) all proceeds of that Security; and
 - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as security agent 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 security agent for the Secured Parties,

as security agent for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

3. The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
4. [Add applicable guarantee limitation language to the extent such guarantee limitation language in Schedule 4 (*Cash Management Providers' Guarantee and Indemnity*) and/or Schedule 5 (*Hedge Counterparties' Guarantee and Indemnity*) is insufficient where the relevant Acceding Debtor is also a Cash Management Guarantor and/or Hedging Guarantor.]

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].**

[4]/[5] This Agreement is governed by Icelandic law.

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

The Acceding Debtor

[Name of **Company**]

By _____

Name:

Title:

The Security Agent

[*Full Name of Current Security Agent*]

By:

Date:

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

SCHEDULE 2
FORM OF CREDITOR ACCESSION UNDERTAKING

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

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

From: [Acceding Creditor/Agent]

THIS UNDERTAKING is made on [date] by [insert full name of new Senior Lender/Bondholders Agent/Cash Management Provider/Hedge Counterparty/Agent/Intra-Group Lender/Subordinated Creditor] (the "**Acceding [Senior Lender/Bondholders Agent/Cash Management Provider/Hedge Counterparty/Agent/Intra-Group Lender/Subordinated Creditor]**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated [_____] between, among others, [INSERT NAME OF COMPANY] as Company, [INSERT NAME OF COMPANY] as company, [INSERT NAME OF SECURITY AGENT] as security agent, [INSERT NAME OF AGENT] as agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

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

[The Acceding Senior Lender is an Affiliate of a Senior Facility Creditor and has become a provider of an Ancillary Facility. In consideration of the Acceding Senior Lender being accepted as an Ancillary Lender for the purposes of the Senior Facilities Agreement, the Acceding Senior Lender confirms, for the benefit of the parties to the Senior Facilities Agreement, that, as from [date], it intends to be party to the Senior Facilities Agreement as an Ancillary Lender, and undertakes to perform all the obligations expressed in the Senior Facilities Agreement to be assumed by a Finance Party (as defined in the Senior Facilities

* Include only in the case of (i) a Hedge Counterparty or (ii) an Ancillary Lender which is an Affiliate of a Senior Lender which is using this undertaking to accede to the Senior Facilities Agreement in accordance with paragraph (c) of Clause 20.11 (*Creditor Accession Undertaking*).

Agreement) and agrees that it shall be bound by all the provisions of the Senior Facilities Agreement, as if it had been an original party to the Senior Facilities 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 Senior Facilities Agreement, the Acceding Hedge Counterparty confirms, for the benefit of the parties to the Senior Facilities Agreement, that, as from [date], it intends to be party to the Senior Facilities Agreement as a Hedge Counterparty, and undertakes to perform all the obligations expressed in the Senior Facilities Agreement to be assumed by a Hedge Counterparty and agrees that it shall be bound by all the provisions of the Senior Facilities Agreement, as if it had been an original party to the Senior Facilities Agreement as a Hedge Counterparty.]***

This Undertaking is governed by Icelandic law.

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

Acceding [Creditor]

[insert full name of Acceding Creditor]

By:

Address:

Fax:

Accepted by the Security Agent

[Accepted by the Agent]

for and on behalf of

for and on behalf of

[Insert full name of current Security Agent]

[Insert full name of Agent]

Date:

Date:]****

** Include only in the case of an Ancillary Lender which is an Affiliate of a Senior Lender which is using this undertaking to accede to the Senior Facilities Agreement in accordance with paragraph (c) of Clause 20.11 (*Creditor Accession Undertaking*).

*** Include only in the case of a Hedge Counterparty which is using this undertaking to accede to the Senior Facilities Agreement in accordance with paragraph (c) of Clause 18.11 (*Creditor Accession Undertaking*).

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

SCHEDULE 3
FORM OF DEBTOR RESIGNATION REQUEST

To: [] as Security Agent

From: [*resigning Debtor*] and [Company]

Dated:

[Company] - [] 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 [19.14] (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [*resigning Debtor*] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. This letter and any non-contractual obligations arising out of or in connection with it are governed by Icelandic law.

[Company]

By:

[*resigning Debtor*]

By:

SCHEDULE 4

CASH MANAGEMENT PROVIDERS' GUARANTEE AND INDEMNITY

1. **Guarantee and indemnity**

Each Cash Management Guarantor irrevocably and unconditionally jointly and severally by way of an independent guarantee:

- (a) guarantees to each Cash Management Provider punctual performance by each Debtor to a Cash Management Provider (each a "**Cash Management Arrangement Debtor**") of all that Cash Management Arrangement Debtor's obligations under the Cash Management Agreements;
- (b) undertakes with each Cash Management Provider that whenever a Cash Management Arrangement Debtor does not pay any amount when due (allowing for any applicable grace period) under or in connection with any Cash Management Agreement, that Cash Management Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Cash Management Provider that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Cash Management Provider immediately on demand against any cost, loss or liability it incurs as a result of a Cash Management Arrangement Debtor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Cash Management Agreement on the date when it would have been due. The amount payable by a Cash Management Guarantor under this indemnity will not exceed the amount it would have had to pay under this Schedule 4 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 Cash Management Arrangement Debtor under the Cash Management 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 Cash Management Arrangement Debtor or any security for those obligations or otherwise) is made by a Cash Management Provider 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 Cash Management Guarantor under this Schedule 4 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

4. **Waiver of defences**

The obligations of each Cash Management Guarantor under this Schedule 4 will not be affected by an act, omission, matter or thing which, but for this Schedule 4, would reduce, release or

prejudice any of its obligations under this Schedule 4 (without limitation and whether or not known to it or any Cash Management Provider) including:

- (a) any time, waiver or consent granted to, or composition with, any Cash Management Arrangement Debtor or other person;
- (b) the release of any other Cash Management Arrangement 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 Cash Management Arrangement 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 Cash Management Arrangement Debtor or any other person;
- (e) any assignment or transfer by any person of any claim under any Cash Management Agreement;
- (f) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Cash Management Agreement or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Cash Management Agreement or other document or security;
- (g) any unenforceability, illegality or invalidity of any obligation of any person under any Cash Management Agreement or any other document or security; or
- (h) any insolvency or similar proceedings.

5. Cash Management Guarantor Intent

Without prejudice to the generality of paragraph 4 (*Waiver of defences*) above, each Cash Management Guarantor 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 Cash Management Agreements.

6. Immediate recourse

Each Cash Management Guarantor waives any right it may have of first requiring any Cash Management Provider (or any agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Cash Management Guarantor under this Schedule 4. This waiver applies irrespective of any law or any provision of a Cash Management Agreement to the contrary.

7. Appropriations

Without prejudice to the other provisions of the Intercreditor Agreement, until all amounts which may be or become payable by the Cash Management Arrangement Debtors under or in

connection with the Cash Management Agreements have been irrevocably paid in full, each Cash Management Provider (or any agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Cash Management Provider (or any 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 Cash Management Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest bearing suspense account any moneys received from any Cash Management Guarantor on account of any Cash Management Guarantor's liability under this Schedule 4.

8. Deferral of Cash Management Guarantors' rights

Until all amounts which may be or become payable by the Cash Management Arrangement Debtors under or in connection with the Cash Management Agreements have been irrevocably paid in full and unless the Security Agent otherwise directs, no Cash Management Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Cash Management Agreements or by reason of any amount being payable, or liability arising, under this Schedule 4:

- (a) to be indemnified by a Cash Management Arrangement Debtor;
- (b) to claim any contribution from any other guarantor of any Cash Management Arrangement Debtor's obligations under the Cash Management Agreements;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Cash Management Providers under the Cash Management Agreements or of any other guarantee or security taken pursuant to, or in connection with, the Cash Management Agreements by any Cash Management Provider;
- (d) to bring legal or other proceedings for an order requiring any Cash Management Arrangement Debtor to make any payment, or perform any obligation, in respect of which any Cash Management Guarantor has given a guarantee, undertaking or indemnity under paragraph 1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Cash Management Arrangement Debtor; and/or
- (f) to claim or prove as a creditor of any Cash Management Arrangement Debtor in competition with any Cash Management Provider.

If a Cash Management Guarantor 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 Cash Management Providers by the Cash Management Arrangement Debtors under or in connection with the Cash Management Agreements to be repaid in full for or on behalf of (as applicable) the Cash Management Providers and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 16 (*Application of Proceeds*).

9. Release of Cash Management Guarantors' right of contribution

If any Cash Management Guarantor (a "**Retiring Cash Management Guarantor**") ceases to be a Cash Management Guarantor in accordance with the terms of the Cash Management Agreements and/or this Agreement for the purpose of any sale or other disposal (including by way of enforcement of Transaction Security) of that Retiring Cash Management Guarantor or any of its Holding Companies (other than the Company) then on the date such Retiring Cash Management Guarantor ceases to be a Cash Management Guarantor:

- (g) that Retiring Cash Management Guarantor is released by each other Cash Management Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Cash Management Guarantor arising by reason of the performance by any other Cash Management Guarantor of its obligations under the Cash Management Agreements; and
- (h) each other Cash Management Guarantor waives any rights it may have by reason of the performance of its obligations under the Cash Management Agreements to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Cash Management Providers under any Cash Management Agreement or of any other security taken pursuant to, or in connection with, any Cash Management Agreement where such rights or security are granted by or in relation to the assets of the Retiring Cash Management Guarantor.

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 Cash Management Provider.

11. Guarantee Limitations

This guarantee and the obligations and liabilities of each Cash Management Guarantor under and in connection with the Cash Management Agreements (including, without limitation, this Schedule 4):

- (a) shall not extend to include any liability to the extent that it would result in this guarantee being illegal, in breach of law or regulation, or constituting unlawful financial assistance in any relevant jurisdiction concerning the financial assistance by that company for the acquisition of, or subscription for, shares or concerning the protection of shareholders' capital; and
- (b) is and shall be subject to any limitations or restrictions set out in this Agreement (including pursuant to paragraph 13 (*Additional Guarantee Limitations*)) or in a Debtor Accession Agreement applicable to such Cash Management Guarantor or which as a matter of law or regulations, applies to such Cash Management Guarantor,

and any guarantee, indemnity, obligations and liabilities of each Cash Management Guarantor shall be construed accordingly.

12. Excluded Swap Obligations

Notwithstanding anything to the contrary in any Debt Document, the guarantee contained in this Schedule 4 does not apply to any Excluded Swap Obligation of any Cash Management Guarantor.

(d) In this paragraph 12:

"**CEA**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute;

"**Excluded Swap Obligation**" means, with respect to any Cash Management Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee and/or indemnity of such Cash Management Guarantor in respect of such Swap Obligation (or any guarantee and/or indemnity in respect of that Swap Obligation) is or becomes illegal under the CEA or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of the CEA or any rule, regulation or order of the Commodity Futures Trading Commission) by virtue of such Cash Management Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the CEA and the regulations thereunder at the time the guarantee and/or indemnity of such Cash Management Guarantor in respect of such Swap Obligation becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Cash Management 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 the guarantee and/or indemnity of such Cash Management Guarantor in respect of such Swap Obligation or security interest is or becomes illegal;

"**Swap**" has the meaning given to that term in section 1a(47) of the CEA; and

"**Swap Obligation**" means, with respect to any Cash Management Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap.

13. **Additional guarantee limitations**

The guarantee of any acceding Cash Management Guarantor (an "**Additional Cash Management Guarantor**") is subject to any limitations relating to that Additional Cash Management Guarantor on the amount guaranteed or to the extent of the recourse of the beneficiaries of the guarantee which is set out in the relevant Debtor applicable to such Additional Cash Management Guarantor and agreed with the Security Agent (acting reasonably).

SCHEDULE 5
HEDGE COUNTERPARTIES' GUARANTEE AND INDEMNITY

1. Guarantee and indemnity

Each Hedging Guarantor irrevocably and unconditionally jointly and severally by way of an independent guarantee:

- (a) guarantees to each Hedge Counterparty punctual performance by each Debtor to a Hedge Counterparty (each a "**Hedging Debtor**") of all that Hedging Debtor's obligations under the Hedging Agreements;
- (b) undertakes with each Hedge Counterparty that whenever a Hedging Debtor does not pay any amount when due (allowing for any applicable grace period) under or in connection with any Hedging Agreement, that Hedging Guarantor shall immediately on demand pay that amount as if it was the principal obligor; 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 Hedging 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 Hedging Guarantor under this indemnity will not exceed the amount it would have had to pay under this Schedule 5 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 Hedging 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 Hedging 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 Hedging Guarantor under this Schedule 5 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

4. Waiver of defences

The obligations of each Hedging Guarantor under this Schedule 5 will not be affected by an act, omission, matter or thing which, but for this Schedule 5, would reduce, release or prejudice any of its obligations under this Schedule 5 (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 Hedging Debtor or other person;

- (b) the release of any other Hedging 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 Hedging 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 Hedging Debtor or any other person;
- (e) any assignment or transfer by any person of any claim under any Hedging Agreement;
- (f) 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 facility or the addition of any new facility under any Hedging Agreement or other document or security;
- (g) any unenforceability, illegality or invalidity of any obligation of any person under any Hedging Agreement or any other document or security; or
- (h) any insolvency or similar proceedings.

5. Hedging Guarantor Intent

Without prejudice to the generality of paragraph 4 (*Waiver of defences*) above, each Hedging Guarantor 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.

6. Immediate recourse

Each Hedging Guarantor waives any right it may have of first requiring any Hedge Counterparty (or any agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Hedging Guarantor under this Schedule 5. This waiver applies irrespective of any law or any provision of a Hedging Agreement to the contrary.

7. Appropriations

Without prejudice to the other provisions of the Intercreditor Agreement, until all amounts which may be or become payable by the Hedging Debtors under or in connection with the Hedging Agreements have been irrevocably paid in full, each Hedge Counterparty (or any 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 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 Hedging Guarantor shall be entitled to the benefit of the same; and

- (b) hold in an interest bearing suspense account any moneys received from any Hedging Guarantor on account of any Hedging Guarantor's liability under this Schedule 5.

8. Deferral of Hedging Guarantors' rights

Until all amounts which may be or become payable by the Hedging Debtors under or in connection with the Hedging Agreements have been irrevocably paid in full and unless the Security Agent otherwise directs, no Hedging Guarantor 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 5:

- (a) to be indemnified by a Hedging Debtor;
- (b) to claim any contribution from any other guarantor of any Hedging 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 Hedging Debtor to make any payment, or perform any obligation, in respect of which any Hedging Guarantor has given a guarantee, undertaking or indemnity under paragraph 1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Hedging Debtor; and/or
- (f) to claim or prove as a creditor of any Hedging Debtor in competition with any Hedge Counterparty.

If a Hedging Guarantor 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 Hedging Debtors under or in connection with the Hedging Agreements to be repaid in full for or on behalf of (as applicable) the Hedge Counterparties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 16 (*Application of Proceeds*).

9. Release of Hedging Guarantors' right of contribution

If any Hedging Guarantor (a "**Retiring Hedging Guarantor**") ceases to be a Hedging Guarantor in accordance with the terms of the Hedging Agreements and/or this Agreement for the purpose of any sale or other disposal (including by way of enforcement of Transaction Security) of that Retiring Hedging Guarantor or any of its Holding Companies (other than the Company) then on the date such Retiring Hedging Guarantor ceases to be a Hedging Guarantor:

- (a) that Retiring Hedging Guarantor is released by each other Hedging Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Hedging Guarantor arising by reason of the performance by any other Hedging Guarantor of its obligations under the Hedging Agreements; and
- (b) each other Hedging Guarantor 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 Hedging Guarantor.

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**

This guarantee and the obligations and liabilities of each Hedging Guarantor under and in connection with the Hedging Agreements (including, without limitation, this Schedule 5):

- (a) shall not extend to include any liability to the extent that it would result in this guarantee being illegal, in breach of law or regulation, or constituting unlawful financial assistance in any relevant jurisdiction concerning the financial assistance by that company for the acquisition of, or subscription for, shares or concerning the protection of shareholders' capital; and
- (b) is and shall be subject to any limitations or restrictions set out in this Agreement (including pursuant to paragraph 13 (*Additional Guarantee Limitations*)) or in a Debtor Accession Agreement applicable to such Hedging Guarantor or which as a matter of law or regulations, applies to such Hedging Guarantor,

and any guarantee, indemnity, obligations and liabilities of each Hedging Guarantor shall be construed accordingly.

12. **Excluded Swap Obligations**

- (e) Notwithstanding anything to the contrary in any Debt Document, the guarantee contained in this Schedule 5 does not apply to any Excluded Swap Obligation of any Hedging Guarantor.
- (f) In this paragraph 12:

"**CEA**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute;

"**Excluded Swap Obligation**" means, with respect to any Hedging Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee and/or indemnity of such Hedging Guarantor in respect of such Swap Obligation (or any guarantee and/or indemnity in respect of that Swap Obligation) is or becomes illegal under the CEA or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of the CEA or any rule, regulation or order of the Commodity Futures Trading Commission) by virtue of such Hedging Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the CEA and the regulations thereunder at the time the guarantee and/or indemnity of such Hedging Guarantor in respect of such Swap Obligation becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Hedging 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 the guarantee and/or indemnity of such Hedging Guarantor in respect of such Swap Obligation or security interest is or becomes illegal;

"**Swap**" has the meaning given to that term in section 1a(47) of the CEA; and

"**Swap Obligation**" means, with respect to any Hedging Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap.

13. **Additional guarantee limitations**

The guarantee of any acceding Hedging Guarantor (an "**Additional Hedging Guarantor**") is subject to any limitations relating to that Additional Hedging Guarantor on the amount guaranteed or to the extent of the recourse of the beneficiaries of the guarantee which is set out in the relevant Debtor Accession Agreement applicable to such Additional Hedging Guarantor and agreed with the Security Agent (acting reasonably).

SCHEDULE 6
BONDHOLDERS' GUARANTEE AND INDEMNITY

1. Guarantee and indemnity

Each Bond Guarantor irrevocably and unconditionally jointly and severally by way of an independent guarantee:

- (a) guarantees to each Bondholder punctual performance by each Debtor to a Bondholder (each a "**Bond Debtor**") of all that Bond Debtor's obligations under the Bond Documents;
- (b) undertakes with each Bondholder that whenever a Bond Debtor does not pay any amount when due (allowing for any applicable grace period) under or in connection with any Bond Document, that Bond Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Bondholder that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Bondholder immediately on demand against any cost, loss or liability it incurs as a result of a Bond Debtor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Bond Document on the date when it would have been due. The amount payable by a Bond Guarantor under this indemnity will not exceed the amount it would have had to pay under this Schedule 4 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 Bond Debtor under the Bond Documents, 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 Bond Debtor or any security for those obligations or otherwise) is made by a Bondholder 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 Bond Guarantor under this Schedule 6 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

4. Waiver of defences

The obligations of each Bond Guarantor under this Schedule 6 will not be affected by an act, omission, matter or thing which, but for this Schedule 6, would reduce, release or prejudice any of its obligations under this Schedule 6 (without limitation and whether or not known to it or any Bondholder) including:

- (d) any time, waiver or consent granted to, or composition with, any Bond Debtor or other person;

- (e) the release of any other Bond Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (f) 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 Bond 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;
- (g) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Bond Debtor or any other person;
- (h) any assignment or transfer by any person of any claim under any Bond Document;
- (i) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Bond Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Bond Document or other document or security;
- (j) any unenforceability, illegality or invalidity of any obligation of any person under any Bond Document or any other document or security; or
- (k) any insolvency or similar proceedings.

5. Bond Guarantor Intent

Without prejudice to the generality of paragraph 4 (*Waiver of defences*) above, each Bond Guarantor 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 Bond Documents.

6. Immediate recourse

Each Bond Guarantor waives any right it may have of first requiring any Bondholder (or any agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Bond Guarantor under this Schedule 6. This waiver applies irrespective of any law or any provision of a Bond Document to the contrary.

7. Appropriations

Without prejudice to the other provisions of the Intercreditor Agreement, until all amounts which may be or become payable by the Bond Debtors under or in connection with the Bond Documents have been irrevocably paid in full, each Bond Document (or any agent on its behalf) may:

- (l) refrain from applying or enforcing any other moneys, security or rights held or received by that Bond Document (or any 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 Bond Guarantor shall be entitled to the benefit of the same; and
- (m) hold in an interest bearing suspense account any moneys received from any Bond Guarantor on account of any Bond Guarantor's liability under this Schedule 6.

8. **Deferral of Bond Guarantors' rights**

Until all amounts which may be or become payable by the Bond Debtors under or in connection with the Bond Documents have been irrevocably paid in full and unless the Security Agent otherwise directs, no Bond Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Bond Documents or by reason of any amount being payable, or liability arising, under this Schedule 6:

- (n) to be indemnified by a Bond Debtor;
- (o) to claim any contribution from any other guarantor of any Bond Debtor's obligations under the Bond Documents;
- (p) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Bondholders under the Bond Documents or of any other guarantee or security taken pursuant to, or in connection with, the Bond Documents by any Bondholder;
- (q) to bring legal or other proceedings for an order requiring any Bond Debtor to make any payment, or perform any obligation, in respect of which any Bond Guarantor has given a guarantee, undertaking or indemnity under paragraph 1 (*Guarantee and indemnity*);
- (r) to exercise any right of set-off against any Bond Debtor; and/or
- (s) to claim or prove as a creditor of any Bond Debtor in competition with any Bondholder.

If a Bond Guarantor 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 Bondholders by the Bond Debtors under or in connection with the Bond Documents to be repaid in full for or on behalf of (as applicable) the Bondholders and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 16 (*Application of Proceeds*).

9. **Release of Bond Guarantors' right of contribution**

If any Bond Guarantor (a "**Retiring Bond Guarantor**") ceases to be a Bond Guarantor in accordance with the terms of the Bond Documents and/or this Agreement for the purpose of any sale or other disposal (including by way of enforcement of Transaction Security) of that Retiring Bond Guarantor or any of its Holding Companies (other than the Company) then on the date such Bond Guarantor ceases to be a Bond Guarantor:

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

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 Bondholder.

11. **Guarantee Limitations**

This guarantee and the obligations and liabilities of each Bond Guarantor under and in connection with the Bond Documents (including, without limitation, this Schedule 6):

- (v) shall not extend to include any liability to the extent that it would result in this guarantee being illegal, in breach of law or regulation, or constituting unlawful financial assistance in any relevant jurisdiction concerning the financial assistance by that company for the acquisition of, or subscription for, shares or concerning the protection of shareholders' capital; and
- (w) is and shall be subject to any limitations or restrictions set out in this Agreement (including pursuant to paragraph 13 (*Additional Guarantee Limitations*)) or in a Debtor Accession Agreement applicable to such Bond Guarantor or which as a matter of law or regulations, applies to such Bond Guarantor,

and any guarantee, indemnity, obligations and liabilities of each Bond Guarantor shall be construed accordingly.

12. **Excluded Swap Obligations**

Notwithstanding anything to the contrary in any Debt Document, the guarantee contained in this Schedule 6 does not apply to any Excluded Swap Obligation of any Bond Guarantor.

In this paragraph 12:

"**CEA**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute;

"**Excluded Swap Obligation**" means, with respect to any Bond Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee and/or indemnity of such Bond Guarantor in respect of such Swap Obligation (or any guarantee and/or indemnity in respect of that Swap Obligation) is or becomes illegal under the CEA or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of the CEA or any rule, regulation or order of the Commodity Futures Trading Commission) by virtue of such Bond Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the CEA and the regulations thereunder at the time the guarantee and/or indemnity of such Bond Guarantor in respect of such Swap Obligation becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Bond Document 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 the guarantee and/or indemnity of such Bond Guarantor in respect of such Swap Obligation or security interest is or becomes illegal;

"**Swap**" has the meaning given to that term in section 1a(47) of the CEA; and

"**Swap Obligation**" means, with respect to any Bond Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap.

13. **Additional guarantee limitations**

The guarantee of any acceding Bond Guarantor (an "**Additional Bond Guarantor**") is subject to any limitations relating to that Additional Bond Guarantor on the amount guaranteed or to the extent of the recourse of the beneficiaries of the guarantee which is set out in the relevant Debtor applicable to such Additional Bond Guarantor and agreed with the Security Agent (acting reasonably).


[Signature pages to follow]

SIGNATURES

THE COMPANY

SUNSTONE IV HF.

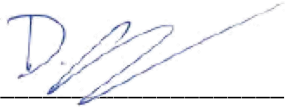
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**THE ORIGINAL SUBORDINATED
CREDITOR**

SUNSTONE III EHF.

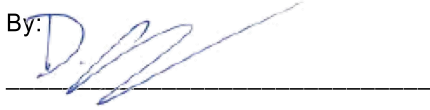
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AB 855 HF.

AB 855 HF.

By:

A handwritten signature in blue ink is written over a solid horizontal line. The signature is stylized and appears to be a first name followed by a last name.

SENIOR LENDER

ÍSLANDBANKI HF.

By:  **Íslandsbanki**
Asmundur Tryggvason
Managing Director

By: 

SENIOR LENDER

ÍS FYRIRTÆKJALÁNASJÓÐUR HS.

By:



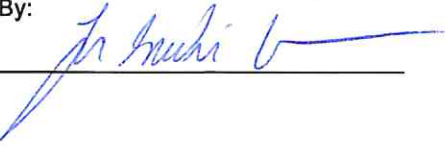
By:


GÍSLI ELVAR HALLDÖRSSON
FUND MANAGER

AGENT

ÍSLANDBANKI HF.

By:  Íslandsbanki
Asmundur Tryggvason
Managing Director

By: 


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SECURITY AGENT

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Managing Director

By: 