

WHITE & CASE

Dated 1 June 2015

Intercreditor Agreement

EUR 196,602,040

between

ING Bank N.V., London Branch
as Agent

ING Bank N.V., pobočka zahraničnej banky
as Security Agent

ING Bank N.V.
as Coordinator

The Arrangers

The Senior Lenders

The Hedge Counterparties

The Original Debtors

The Subordinated Creditors

Cargo Wagon, a.s.
as Borrower

White & Case s.r.o.
Hlavné námestie 5
811 01 Bratislava
Slovak Republic

Table of Contents

	Page
1. Definitions and interpretation	2
2. Ranking and Priority	14
3. Senior Facility Creditors and Senior Facility Liabilities.....	14
4. Hedge Counterparties and Hedging Liabilities	15
5. Subordinated Creditors and Subordinated Liabilities	22
6. Effect of Insolvency Event.....	24
7. Turnover of Receipts.....	25
8. Redistribution.....	27
9. Enforcement of Transaction Security	28
10. Non-Distressed Disposals	30
11. Distressed Disposals and Appropriation	30
12. Non-Cash Recoveries.....	34
13. Acquisition and Insurance Claims	36
14. Further Assurance – Disposals and Releases	37
15. Application of Proceeds.....	38
16. Equalisation	40
17. The Security Agent	43
18. Changes to the Parties.....	56
19. Other Indemnities	59
20. Costs and Expenses.....	61
21. Information	62
22. Notices	63
23. Preservation	65
24. Consents, Amendments and Override.....	66
25. Counterparts.....	71
26. Governing law.....	72
27. Enforcement.....	72
Schedule 1 Original Debtors	74
Schedule 2 Form of Debtor Accession Deed.....	75
Schedule 3 Form of Creditor Accession Undertaking.....	79
Schedule 4 Form of Debtor Resignation Request	81

This Agreement is dated 1 June 2015 and made

Between:

- (1) **ING Bank N.V., London Branch** as Agent;
- (2) **The Financial Institutions** named on the signing pages as Senior Lenders;
- (3) **ING Bank, a Branch of ING-DiBa AG;**
HSBC Bank plc, acting through **HSBC Bank plc – pobočka Praha;**
Slovenská sporiteľňa, a.s., with its registered office at Tomášikova 48, 832 37 Bratislava, Slovak Republic, ID No.: 00 151 653, registered in the Bratislava I District Court, Section: Sa, File No.: 601/B
as Arrangers;
- (4) **ING Bank N.V.** as Coordinator;
- (5) **The Entities** named on the signing pages as Hedge Counterparties;
- (6) **The Companies** named on the signing pages as Subordinated Creditors;
- (7) **The Companies** listed in Schedule 1 (Original Debtors) as original debtors (such companies, including the Borrower, the “**Original Debtors**”);
- (8) **Cargo Wagon, a.s.** whose registered office is at Lúčna 2, Bratislava 821 05, ID No.: 47 523 441, registered in the Commercial Register of the District Court Bratislava I, Section: Sa, File No.: 5889/B (the “**Borrower**”); and
- (9) **ING Bank N.V.**, acting through **ING Bank N.V., pobočka zahraničnej banky**, with its registered seat at Jesenského 4/C, 811 02 Bratislava, Slovakia, ID No: 30 844 754, registered in the Commercial Register of the District Court Bratislava I., Section Po, Insert 130/B as Security Agent.

Section 1 Interpretation

It is agreed as follows:

1. Definitions and interpretation

1.1 Definitions

In this Agreement, words and expressions used but not defined have the meanings given to them in the Senior Term Facilities Agreement (as defined below). In this Agreement, the following words and expressions shall have the following meanings:

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

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

“Acceleration Event” means the Agent exercising any of its rights under clause 24.20 (*Acceleration*) of the Senior Term Facilities 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.

“Appropriation” means the appropriation (or similar process) of the shares in the capital of a Debtor (or its Subsidiary) 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.

“Borrowing Liabilities” means, in relation to the Borrower, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to an Arranger, Coordinator or the 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 liabilities).

“Cash Proceeds” means:

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

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

“Close-Out Netting” means:

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

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

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

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

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

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

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

“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 3 (*Form of Creditor Accession Undertaking*);
- (b) a Transfer Certificate or an Assignment Agreement (each as defined in the Senior Term Facilities Agreement) (**provided that** it contains an accession to this Agreement which is substantially in the form set out in Schedule 3 (*Form of Creditor Accession Undertaking*)); or

as the context may require, or

- (c) in the case of an acceding Debtor which is expressed to accede as a Subordinated Creditor in the relevant Debtor Accession Deed, that Debtor Accession Deed.

“Creditors” means the Senior Creditors and the Subordinated Creditors.

“Debt Disposal” means any disposal of any Liabilities pursuant to paragraphs (d) or (e) of Clause 11.1 (*Facilitation of Distressed Disposals and Appropriation*).

“Debt Document” means each of this Agreement, the Hedging Agreements, the Senior Finance Documents, the Security Documents, any agreement evidencing the terms of the Subordinated Liabilities and any other document designated as such by the Security Agent and the Borrower.

“Debtor” means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 18 (*Changes to the Parties*).

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

“Debtor Resignation Request” means a request substantially in the form set out in Schedule 4 (*Form of Debtor Resignation Request*).

“Defaulting Lender” means a Senior Lender which is a Defaulting Lender under, and as defined in, the Senior Term Facilities Agreement.

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

“Distress Event” means any of:

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

“Distressed Disposal” means a disposal of an asset of a Debtor which is:

- (a) being effected at the request of the Instructing Group in circumstances where the Transaction Security has become enforceable;
- (b) being effected by enforcement of the Transaction Security (including the disposal of any Property of a Debtor, 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 Facility 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 a Subordinated Creditor in relation to any 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 Subordinated Creditor and (B) that any resulting Payment would be a Permitted Intra-Group Payment);

- (iv) the making of any demand against any Debtor in relation to any Guarantee Liabilities of that Debtor;
- (v) the exercise of any right to require any Debtor to acquire any Liability (including exercising any put or call option against any Debtor for the redemption or purchase of any Liability;
- (vi) the exercise of any right of set-off, account combination or payment netting against any Debtor in respect of any Liabilities other than the exercise of any such right:
 - (A) as Close-Out Netting by a Hedge Counterparty;
 - (B) as Payment Netting by a Hedge Counterparty;
 - (C) as Inter-Hedging Agreement Netting by a Hedge Counterparty; or
 - (D) which is otherwise expressly permitted under the Senior Term 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 Debtor 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 Debtor which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 18 (*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 Debtor which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such Debtor's assets or any suspension of payments or moratorium of any indebtedness of any such Debtor, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraph (a)(vii) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (ii) Hedge Counterparty, 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.

“**Exposure**” has the meaning given to that term in Clause 16.1 (*Equalisation Definitions*).

“**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.

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

“**Hedge Counterparty**” means:

- (a) any entity which is named on the signing pages as a Hedge Counterparty; and
- (b) any entity which becomes a Party as a Hedge Counterparty pursuant to Clause 18.7 (*Creditor Accession Undertaking*),

which in each case, is or has become party to the Senior Term Facilities Agreement as a Hedge Counterparty.

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

“**Hedge Related Lending Group**” means, in relation to a Hedge Counterparty:

- (a) that Hedge Counterparty and its Affiliates in their respective capacities as Senior Lenders; and
- (b) their respective successors in title, assigns and transferees.

“**Hedging Agreement**” means any agreement entered into by a Hedge Counterparty and defined as such in the Senior Term Facilities Agreement.

“**Hedging Force Majeure**” means:

- (a) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
 - (i) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
 - (ii) an event similar in meaning and effect to a “Force Majeure Event” (as referred to in paragraph (b) below);

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

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

“Individual Term Outstandings” means, at any time in relation a person, the aggregate of the amounts of its participations in the principal (not including any capitalised or deferred interest) of the Loans then outstanding under Facility A.

“Instructing Group” means at any time, those Senior Creditors whose Senior Credit Participations at that time aggregate more than 66⅔ per cent. of the total Senior Credit Participations at that time.

“Intercreditor Amendment” means any amendment or waiver which is subject to Clause 24 (*Consents, Amendments and Override*).

“Interest Rate Hedge Excess” means, in relation to any Hedge Counterparty, the amount by which its Interest Rate Hedging exceeds the aggregate Individual Term Outstandings of its Hedge Related Lending Group.

“Interest Rate Hedging” means, in relation to a Hedge Counterparty, the aggregate of the notional amounts hedged by the relevant Debtors under each Hedging Agreement which is an interest rate hedge transaction and to which that Hedge Counterparty is party.

“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.

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

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

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

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

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

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

the rights in respect of those Liabilities.

“Liabilities Sale” means a Debt Disposal pursuant to paragraph (e) of Clause 11.1 (*Facilitation of Distressed Disposals and Appropriation*).

“Majority Senior Lenders” means the “Majority Lenders” under and as defined in the Senior Term Facilities Agreement after the application of:

- (a) clause 37.5 (*Excluded Commitments*); and
- (b) clause 37.6 (*Disenfranchisement of Defaulting Lenders*),

of the Senior Term Facilities Agreement.

“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 7.1 (*Turnover by the Creditors*),

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

“Non-Credit Related Close-Out” means a Permitted Hedge Close-Out described in any of paragraphs (a)(i), (a)(ii) or (a)(iii) of Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*).

“Non-Distressed Disposal” has the meaning given to that term in Clause 10 (*Non-Distressed Disposals*).

“Other Liabilities” means, in relation to a Debtor, any trading and other liabilities and obligations (not being Borrowing Liabilities or Guarantee Liabilities) it may have to a Subordinated Creditor or Debtor.

“Party” means a party to this Agreement.

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

“Payment Netting” means:

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

“Permitted Automatic Early Termination” means an Automatic Early Termination of a hedging transaction under a Hedging Agreement, the provision of which is permitted under Clause 4.11 (*Terms of Hedging Agreements*).

“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 Payments” means the Payments permitted by Clause 4.3 (*Permitted Payments: Hedging Liabilities*).

“Permitted Payment” means a Permitted Hedge Payment, a Permitted Senior Facility Payment or a Permitted Subordinated Liabilities Payment.

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

“Permitted Subordinated Liabilities Payments” means the Payments permitted by Clause 5.2 (*Permitted Payments: Subordinated Liabilities*).

“Property” of a Debtor means:

- (a) any asset of that Debtor;
- (b) any Subsidiary 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 15.1 (*Order of Application*).

“Relevant Liabilities” means:

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

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

“Secured Parties” means the Security Agent, any Receiver or Delegate and each of the Senior Creditors from time to time 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 18.7 (*Creditor Accession Undertaking*).

“Security Agent’s Spot Rate of Exchange” means, in respect of the conversion of one currency (the **“First Currency”**) into another currency (the **“Second Currency”**) the Security

Agent's spot rate of exchange for the purchase of the Second Currency with the First Currency in the foreign exchange market at or about 11:00 a.m. CET on a particular day, which shall be notified by the Security Agent in accordance with paragraph of Clause 17.4 (*Duties of the Security Agent*).

“Security Documents” means:

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

“Security Property” means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee or 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 trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as trustee for the Secured Parties;
- (c) the Security Agent's interest in any trust fund created pursuant to Clause 7 (*Turnover of Receipts*); and
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Secured Parties.

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

- (a) 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); and
- (c) after the Senior Facilities 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 date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or

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

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

“Senior Creditors” means the Senior Facility Creditors and the Hedge Counterparties.

“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) and each Hedge Counterparty (in the case of its Hedging 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 Discharge Date” means the first date on which:

- (a) all Senior Facility Liabilities have been fully and finally discharged to the satisfaction of the Agent, whether or not as the result of an enforcement; and
- (b) the 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” has the meaning given to the term “Facility” in the Senior Term Facilities Agreement.

“Senior Facility Creditors” means each Agent, Coordinator, Arranger and Senior Lenders.

“Senior Facility Liabilities” means the Liabilities owed by the Debtors to the Senior Facility Creditors under the Senior Finance Documents.

“Senior Finance Documents” has the meaning given to the term “Finance Documents” in the Senior Term Facilities Agreement.

“Senior Lender Liabilities” means the Senior Facility Liabilities owed by the Debtors to the Senior Lenders.

“Senior Lenders” means each Lender (as defined in the Senior Term Facilities Agreement).

“Senior Liabilities” means the Senior Facility Liabilities and the Hedging Liabilities.

“Senior Mandatory Prepayment” means a mandatory prepayment of any of the Senior Facility Liabilities pursuant to Clause 8.1 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*) of the Senior Term Facilities Agreement.

“Senior Mandatory Prepayment Waiver” means any amendment or waiver of the requirement to make a Senior Mandatory Prepayment (other than any waiver of amounts by a Senior Facility Creditor if the amounts waived can, pursuant to the terms of the Senior Term Facilities Agreement, be applied to reduce other Senior Facility Liabilities).

“Senior Payment Default” means a Default under clause 24.1 (*Non-payment*) of the Senior Term Facilities Agreement.

“Senior Term Facilities” means each term loan facility made available under the Senior Term Facilities Agreement.

“Senior Term Facilities Agreement” means the EUR 196,602,040 senior term facilities agreement made between the Borrower, the Senior Creditors, the Agent, the Security Agent and others dated on or about the date of this Agreement.

“Subordinated Creditors” means any Debtor or Affiliate of a Debtor which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with the Borrower and which becomes a Party as a Subordinated Creditor in accordance with the terms of Clause 18 (*Changes to the Parties*).

“Subordinated Liabilities” means the Liabilities owed by the Borrower to any of the Subordinated Creditors.

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

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) any **“Agent”**, **“Arranger”**, **“Borrower”**, **“Coordinator”**, **“Creditor”**, **“Debtor”**, **“Hedge Counterparty”**, **“Party”**, **“Senior Creditor”**, **“Security Agent”**, **“Senior Creditor”**, **“Senior Facility Creditor”**, **“Senior Lender”** or **“Subordinated Creditor”** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
 - (ii) any **“Agent”**, **“Arranger”**, **“Borrower”**, **“Coordinator”**, **“Creditor”**, **“Debtor”**, **“Hedge Counterparty”**, any **“Party”**, or the **“Security Agent”** or **“Subordinated Creditor”** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
 - (iii) an **“amount”** includes an amount of cash and an amount of Non-Cash Consideration;
 - (iv) **“assets”** includes present and future properties, revenues and rights of every description;
 - (v) a **“Debt Document”** or any other agreement or instrument is (other than a reference to a **“Debt Document”** or any other agreement or instrument in **“original form”**) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
 - (vi) a **“distribution”** of or out of the assets of a Debtor, includes a distribution of cash and a distribution of Non-Cash Consideration;
 - (vii) **“enforcing”** (or any derivation) the Transaction Security includes:
 - (A) the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor by the Security Agent; and
 - (B) the making of a demand under Clause 17.2 (*Parallel debt*) 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 and in Non-Cash Consideration;
- (xiii) “**including**” means “including, without limitation”;
- (xiv) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- (xv) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived.

1.3 Third Party Rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in paragraph (b) of Clause 17.11 (*Exclusion of liability*) may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

Section 2
Ranking and Senior Creditors

2. Ranking and Priority

2.1 Senior Liabilities

Each of the Parties agrees that the Senior Liabilities shall rank in right and priority of payment *pari passu* and without any preference between them.

2.2 Transaction Security

Each of the Parties agrees that the Transaction Security shall rank and secure Senior Liabilities *pari passu* and without any preference between them (but only to the extent that such Transaction Security is expressed to secure such Liabilities).

2.3 Subordinated Liabilities

- (a) Each of the Parties agrees that the Subordinated Liabilities are postponed and subordinated to the Senior Liabilities.
- (b) This Agreement does not purport to rank any of the Subordinated Liabilities, as between themselves.

3. Senior Facility Creditors and Senior Facility Liabilities

3.1 Payment of Senior Facility Liabilities

The Borrower may make Payments of the Senior Facility Liabilities at any time in accordance with the Senior Finance Documents.

3.2 Amendments and Waivers: Senior Facility Creditors

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

3.3 Security: Senior Facility Creditors

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

- (a) any Security in respect of the Senior Facility Liabilities from any Debtor or its Affiliate provided that the same constitutes Common Transaction Security; and
- (b) any guarantee, indemnity or other assurance against loss from any Debtor or its Affiliate in respect of the Senior Facility Liabilities in addition to those in:
 - (i) the Senior Term Facilities Agreement;
 - (ii) this Agreement; or
 - (iii) any Common Assurance,

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

4. Hedge Counterparties and Hedging Liabilities

4.1 Identity of Hedge Counterparties

No entity providing hedging arrangements to the Borrower 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) a Party to this Agreement as a Hedge Counterparty; and
- (b) a party to the Senior Term Facilities Agreement as a Hedge Counterparty.

4.2 Restriction on Payment: Hedging Liabilities

The Borrower shall not 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 (a) of Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*).

4.3 Permitted Payments: Hedging Liabilities

- (a) Subject to paragraph (b) below, the Borrower may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Agreement in accordance with the terms of that Hedging Agreement:
 - (i) if the Payment is a scheduled Payment arising under the relevant Hedging Agreement;
 - (ii) to the extent that the Borrower's obligation to make the Payment arises as a result of the operation of:
 - (A) any of sections 2(d) (*Deduction or Withholding for Tax*), 2(e) (*Default Interest; Other Amounts*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*) and 11 (*Expenses*) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);
 - (B) any of sections 2(d) (*Deduction or Withholding for Tax*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*), 9(h)(i) (*Prior to Early Termination*) and 11 (*Expenses*) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
 - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraph (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
 - (iii) to the extent that the Borrower's obligation to make the Payment arises from a Non-Credit Related Close-Out;
 - (iv) to the extent that:
 - (A) the Borrower's obligation to make the Payment arises from:

- (1) a Credit Related Close-Out in relation to that Hedging Agreement; or
 - (2) a Permitted Automatic Early Termination under that Hedging Agreement which arises as a result of an event relating to a Debtor; and
- (B) no Default is continuing at the time of that Payment or would result from that Payment;
- (v) to the extent that no Default is continuing or would result from that Payment and the Borrower's obligation to make the Payment arises as a result of a close-out or termination arising as a result of:
 - (A) section 5(a)(vii) (*Bankruptcy*) of the 1992 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 1992 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
 - (B) section 5(a)(vii) (*Bankruptcy*) of the 2002 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 2002 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
 - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement) and the equivalent event of default has occurred with respect to the relevant Hedge Counterparty; or
 - (D) the relevant Debtor terminating or closing-out the relevant Hedging Agreement as a result of a Hedging Force Majeure and the Termination Event (as defined in the relevant Hedging Agreement in the case of a Hedging Agreement based on an ISDA Master Agreement) or the equivalent termination event (in the case of a Hedging Agreement not based on an ISDA Master Agreement) has occurred with respect to the relevant Hedge Counterparty.
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid.
- (c) Failure by the Borrower 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 the Borrower under that Hedging Agreement.

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 none of their Affiliates 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 Instructing Group 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 may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if that amendment or waiver does not breach another term of this Agreement and has been approved by all Hedge Counterparties and:
 - (i) that amendment or waiver would not result in a breach of clause 21.28 (*Compliance with Hedging Letter*) of the Senior Term Facilities Agreement; or
 - (ii) that amendment or waiver is administrative and mechanical in nature.

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 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 Senior Term Facilities Agreement;
 - (ii) this Agreement;
 - (iii) any Common Assurance; or
 - (iv) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (i) to (iii) above;
- (c) as otherwise contemplated by Clause 3.3 (*Security: Senior Facility Creditors*)); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

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 9.1 (*Enforcement Instructions*) and 9.2 (*Manner of Enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of

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

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) if, prior to a Distress Event, the Borrower has certified to that Hedge Counterparty that that termination or close-out would not result in a breach of clause 21.28 (*Compliance with Hedging Letter*) of the Senior Term Facilities Agreement;
- (ii) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;
- (iii) to the extent necessary to comply with paragraph (c) of Clause 4.12 (*Total Interest Rate Hedging*);

Credit Related Close-Outs

- (iv) if a Distress Event has occurred;
 - (v) if an Event of Default has occurred under clause 24.9 (*Creditor's Process*), 24.7 (*Insolvency*) or clause 24.8 (*Insolvency Proceedings*) of the Senior Term Facilities Agreement;
 - (vi) if the Instructing Group gives prior consent to the termination or close-out being made;
 - (vii) on or immediately following a prepayment or refinancing (or repayment) and cancellation in full of the Senior Facility Liabilities; and
 - (viii) if that Hedge Counterparty ceases to be a Lender under the Senior Term Facilities Agreement ("**Termination of Lending**"), and, in relation to Slovenská sporiteľňa, a.s. in its capacity as Hedge Counterparty only ("**SLSP**"), the Hedging Agreement and all transactions thereunder are not novated or transferred by SLSP to a third party within 15 days of the Termination of Lending having occurred (provided that SLSP shall be under no obligation to take any steps to facilitate, enter into negotiations in respect of, or enter into any such novation or transfer with any third party).
- (b) If the Borrower 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 three Business Days after notice of that default has been given to the Security Agent pursuant to paragraph (f) of Clause 21.3 (*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 the Borrower to recover any Hedging Liabilities due under that Hedging Agreement.

- (c) After the occurrence of an Insolvency Event in relation to the Borrower, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of the Borrower to:
 - (i) prematurely close-out or terminate any Hedging Liabilities of the Borrower;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by the Borrower 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 the Borrower; or
 - (iv) claim and prove in the liquidation of the Borrower 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 an Acceleration Event has occurred; and
 - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Instructing Group) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between the Borrower 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 paragraph) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Security Agent (acting on the instructions of the Instructing Group).

4.11 **Terms of Hedging Agreements**

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

- (a) each Hedging Agreement documents only hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of “**Hedging Agreement**” and that no other hedging arrangements are carried out under or pursuant to a Hedging Agreement;
- (b) each Hedging Agreement is based either:
 - (i) on an ISDA Master Agreement; or
 - (ii) on another framework agreement which is similar in effect to an ISDA Master Agreement;

- (c) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of:
 - (i) a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement); or
 - (ii) an event similar in meaning and effect to either of those described in paragraph (i) above (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),
 that Hedging Agreement will:
 - (A) if it is based on a 1992 ISDA Master Agreement, provide for payments under the “Second Method” and will make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement;
 - (B) if it is based on a 2002 ISDA Master Agreement, make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement; or
 - (C) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Agreement is in its favour;
- (d) each Hedging Agreement will not provide for Automatic Early Termination other than to the extent that:
 - (i) the provision of Automatic Early Termination is consistent with practice in the relevant derivatives market, taking into account the legal status and jurisdiction of incorporation of the parties to that Hedging Agreement; and
 - (ii) that Automatic Early Termination is:
 - (A) as provided for in section 6(a) (*Right to Terminate following Event of Default*) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);
 - (B) as provided for in section 6(a) (*Right to Terminate Following Event of Default*) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
 - (C) similar in effect to that described in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
- (e) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to Clause 4.10 (*Required Enforcement: Hedge Counterparties*); and
- (f) each Hedging Agreement will permit the relevant Hedge Counterparty and the Borrower to take such action as may be necessary to comply with Clause 4.12 (*Total Interest Rate Hedging*).

4.12 Total Interest Rate Hedging

- (a) The Borrower shall procure that, at all times the Interest Rate Hedging of any Hedge Counterparty does not exceed the aggregate Individual Term Outstandings of that Hedge Counterparty's Hedge Related Lending Group.
- (b) Subject to paragraph (a) above, if the Interest Rate Hedging of a Hedge Counterparty is less than the aggregate Individual Term Outstandings of that Hedge Counterparty's Hedge Related Lending Group, the Borrower may (but, subject to clause 21.28 (*Compliance with Hedging Letter*) of the Senior Term Facilities Agreement, shall be under no obligation to) enter into additional hedging arrangements to increase the Interest Rate Hedging of that Hedge Counterparty.
- (c) If any reduction in the Individual Term Outstandings of any member of that Hedge Counterparty's Hedge Related Lending Group results in an Interest Rate Hedge Excess of a Hedge Counterparty then, on the same day as that reduction becomes effective in accordance with the terms of the Senior Term Facilities Agreement, the Borrower shall (and that Hedge Counterparty shall be entitled to) reduce that Hedge Counterparty's Interest Rate Hedging by the amount of the Interest Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary.
- (d) The Borrower shall pay to that Hedge Counterparty (in accordance with the relevant Hedging Agreement) an amount equal to the sum of all payments (if any) that become due from the Borrower to a Hedge Counterparty under the relevant Hedging Agreement(s) as a result of any action described in paragraph (c) above.
- (e) Each Hedge Counterparty shall co-operate in any process described in paragraph (d) above and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging Agreement(s) to the Borrower as a result of any action described in paragraph (c) above.

Section 3
Other Creditors

5. Subordinated Creditors and Subordinated Liabilities

5.1 Restriction on Payment: Subordinated Liabilities

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

- (a) that Payment is permitted under Clause 5.2 (*Permitted Payments: Subordinated Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 5.7 (*Permitted Enforcement: Subordinated Creditors*).

5.2 Permitted Payments: Subordinated Liabilities

Payments in respect of the Subordinated Liabilities may not be made unless:

- (a) the Payment is a Payment expressly permitted under the Facilities Agreement;
- (b) that Payment is made to facilitate Payment of the Senior Liabilities; or
- (c) the Instructing Group consent to that Payment being made.

5.3 Payment Obligations Continue

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

5.4 No acquisition of Subordinated Liabilities

- (a) Subject to paragraphs (b) below, each Debtor may, and may permit any of its Affiliates 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 Subordinated Liabilities at any time.
- (b) Subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Subordinated Liabilities if:
 - (i) that action would result in a breach of the Facilities Agreement; or
 - (ii) at the time of that action an Acceleration Event has occurred and is continuing.
- (c) The restrictions in paragraph (b) above shall not apply if:
 - (i) the Instructing Group consent to that action; or
 - (ii) that action is taken to facilitate Payment of the Senior Liabilities.

5.5 Security: Subordinated Creditors

Prior to the Senior Discharge Date, the Subordinated Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from (or over the assets of or over the shares in) any Debtor in respect of the Subordinated Liabilities unless that Security, guarantee, indemnity or other assurance against loss is expressly permitted by the Senior Term Facilities Agreement or the consent of the Instructing Group is obtained.

5.6 Restriction on Enforcement: Subordinated Creditors

Subject to Clause 5.7 (*Permitted Enforcement: Subordinated Creditors*), none of the Subordinated Creditors shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Senior Discharge Date.

5.7 Permitted Enforcement: Subordinated Creditors

After the occurrence of an Insolvency Event in relation to a Debtor, each Subordinated Creditor may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Subordinated Creditor in accordance with Clause 6.4 (*Filing of Claims*)), exercise any right it may otherwise have against that Debtor to:

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

5.8 Representations: Subordinated Creditors

Each Subordinated Creditor represents and warrants to the Senior Creditors and the Security Agent that on the date of this Agreement (or in the case of a Subordinated Creditor which accedes to this Agreement (in such capacity), the date of that accession):

- (a) it is a corporation, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation; and
- (b) subject to the Legal Reservations, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of this Agreement does not and will not 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.

Section 4
Insolvency, Turnover and Enforcement

6. Effect of Insolvency Event

6.1 Distributions

- (a) After the occurrence of an Insolvency Event in relation to any Debtor, any Party entitled to receive a distribution out of the assets of that 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 that 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 15 (*Application of Proceeds*).

6.2 Set-Off

- (a) Subject to paragraph (b) below, to the extent that any Debtor's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that Debtor, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 15 (*Application of Proceeds*).
- (b) Paragraph (a) above shall not apply to any:
 - (i) Close-Out Netting by a Hedge Counterparty;
 - (ii) Payment Netting by a Hedge Counterparty; or
 - (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty.

6.3 Non-Cash Distributions

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

6.4 Filing of Claims

After the occurrence of an Insolvency Event in relation to a Debtor, 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 Debtor;
- (b) demand, sue, prove and give receipt for any or all of that Debtor's Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of that Debtor's Liabilities; and
- (d) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover that Debtor's Liabilities.

6.5 Further Assurance – Insolvency Event

Each Creditor will:

- (a) do all things that the Security Agent requests in order to give effect to this Clause 6; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 6 or if the Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action.

6.6 Security Agent instructions

For the purposes of Clause 6.1 (*Distributions*), Clause 6.4 (*Filing of Claims*) and Clause 6.5 (*Further assurance – Insolvency Event*) the Security Agent shall act:

- (a) on the instructions of the group of Senior Creditors entitled, at that time, to give instructions under Clause 9.1 (*Enforcement Instructions*) or Clause 9.2 (*Manner of Enforcement*); or
- (b) in the absence of any such instructions, as the Security Agent sees fit.

7. Turnover of Receipts

7.1 Turnover by the Creditors

Subject to Clause 7.2 (*Exclusions*) and to Clause 7.3 (*Permitted Assurance and Receipts*), 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 not either:
 - (i) a Permitted Payment; or
 - (ii) made in accordance with Clause 15 (*Application of Proceeds*);
- (b) other than where paragraph (a) of Clause 6.2 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- (c) notwithstanding paragraphs (a) and (b) above, and other than where paragraph (a) of Clause 6.2 (*Set-Off*) applies, any amount:
 - (i) on account of, or in relation to, any of the Liabilities:
 - (A) after the occurrence of a Distress Event; or
 - (B) as a result of any other litigation or proceedings against a Debtor (other than after the occurrence of an Insolvency Event in respect of that Debtor); or
 - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,other than, in each case, any amount received or recovered in accordance with Clause 15 (*Application of Proceeds*);

- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 15 (*Application of Proceeds*); or
- (e) other than where paragraph (a) of Clause 6.2 (*Set-Off*) applies, any distribution in cash or in kind or Payment of, or on account of or in relation to, any of the Liabilities owed by any Debtor which is not in accordance with Clause 15 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that Debtor, that Creditor will:
 - (i) in relation to receipts and recoveries not received or recovered by way of set-off:
 - (A) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and
 - (B) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and
 - (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement.

7.2 Exclusions

Clause 7.1 (*Turnover by the Creditors*) shall not apply to any receipt or recovery:

- (a) by way of:
 - (i) Close-Out Netting by a Hedge Counterparty;
 - (ii) Payment Netting by a Hedge Counterparty;
 - (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
- (b) made in accordance with Clause 16 (*Equalisation*).

7.3 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 Debtor 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 similar financial instrument); or
- (b) make any assignment or transfer permitted by Clause 18 (*Changes to the Parties*), which is:
 - (i) permitted by the Senior Term Facilities Agreement; and
 - (ii) not in breach of Clause 4.5 (*No Acquisition of Hedging Liabilities*) or Clause 5.4 (*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.

7.4 Amounts Received by Debtors

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

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

7.5 Saving Provision

If, for any reason, any of the trusts expressed to be created in this Clause 7 should fail or be unenforceable, the affected Creditor or Debtor will promptly pay or distribute an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

7.6 Turnover of Non-Cash Consideration

For the purposes of this Clause 7, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to Clause 7.1 (*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 12.2 (*Cash value of Non-Cash Recoveries*).

8. Redistribution

8.1 Recovering Creditor's Rights

- (a) Any amount paid or distributed by a Creditor (a “**Recovering Creditor**”) to the Security Agent under Clause 6 (*Effect of Insolvency Event*) or Clause 7 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and distributed to the Security Agent and Senior Creditors (each a “**Sharing Creditor**”) in accordance with the terms of this Agreement.
- (b) On a distribution by the Security Agent under paragraph (a) above of a Payment 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 (the “**Shared Amount**”) will be treated as not having been paid or distributed by that Debtor.

8.2 Reversal of Redistribution

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

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

- (ii) as between the relevant Debtor and each relevant Sharing Creditor, 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 Creditor.

8.3 Deferral of Subrogation

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.

9. Enforcement of Transaction Security

9.1 Enforcement Instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by the Instructing Group.
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms, the Instructing Group may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 9.1.

9.2 Manner of Enforcement

If the Transaction Security is being enforced pursuant to Clause 9.1 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Security Agent) as instructed by the Instructing Group.

9.3 Exercise of Voting Rights

- (a) Each Creditor (other than the Agent) 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 Debtor as instructed by the Security Agent.
- (b) The Security Agent shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by the Instructing Group.

9.4 **Waiver of Rights**

To the extent permitted under applicable law and subject to Clause 9.1 (*Enforcement Instructions*), Clause 9.2 (*Manner of Enforcement*), Clause 11.4 (*Fair Value*) and Clause 15 (*Application of proceeds*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

9.5 **Duties Owed**

Each of the Secured Parties and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security prior to the Senior Discharge Date, the duties of the Security Agent and of any Receiver or Delegate in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to Clause 11.4 (*Fair Value*), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors under general law.

9.6 **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 (other than the Senior Term Facilities Agreements) except through the Security Agent.

Section 5
Non-Distressed Disposals, Distressed Disposals and Claims

10. Non-Distressed Disposals

10.1 Definitions

In this Clause 10:

- (a) “**Disposal Proceeds**” means the proceeds of a Non-Distressed Disposal; and
- (b) “**Non-Distressed Disposal**” means a disposal of:
 - (i) an asset of a Debtor; or
 - (ii) an asset which is subject to the Transaction Security,
to a person or persons other than a Debtor (or its Affiliates) where:
 - (A) (prior to the Senior Facilities Discharge Date) the Agent notifies the Security Agent that that disposal is permitted under the Senior Finance Documents; and
 - (B) that disposal is not a Distressed Disposal.

10.2 Facilitation of Non-Distressed Disposals

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

11. Distressed Disposals and Appropriation

11.1 Facilitation of Distressed Disposals and Appropriation

If a Distressed Disposal or an Appropriation is being effected, the Security Agent is irrevocably authorised (at the cost of the Borrower and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor):

- (a) ***release of Transaction Security/non-crystallisation certificates***: to release the Transaction Security or any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that

Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;

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

- (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
- (ii) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
- (iii) any other claim of a Subordinated Creditor or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

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

- (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
- (ii) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and
- (iii) any other claim of a Subordinated Creditor, or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtors;

- (d) ***facilitative disposal of liabilities on a share sale/Appropriation***: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of the Liabilities (other than Liabilities due to the Agent, Arranger or Coordinator) or Subordinated Liabilities 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 Subordinated Liabilities (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 Subordinated Liabilities on behalf of the relevant Creditors and Debtors provided that notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement;

- (e) ***sale of liabilities on a share sale/Appropriation:*** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of the Liabilities (other than Liabilities due to the Agent or the Arranger or Coordinator) or Subordinated Liabilities 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' Subordinated Liabilities 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:
 - (i) all (and not part only) of the Liabilities owed to the Senior Creditors (other than Liabilities due to the Agent or the Arranger or Coordinator); and
 - (ii) all or part of any other Liabilities (other than Liabilities owed to the Agent or the Arranger or Coordinator) and the Subordinated Liabilities,
 on behalf of, in each case, the relevant Creditors and Debtors;
- (f) ***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 Subordinated Liabilities to execute and deliver or enter into any agreement to:
 - (i) agree to the transfer of all or part of the obligations in respect of Subordinated Liabilities on behalf of the relevant Subordinated Creditors and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
 - (ii) to accept the transfer of all or part of the obligations in respect of Subordinated Liabilities on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Subordinated Liabilities are to be transferred.

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

Subject to Clause 12.5 (*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.

11.3 **Proceeds of Distressed Disposals and Debt Disposals**

The net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Security Agent for application in accordance with Clause 15 (*Application of Proceeds*) and, to the extent that:

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

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

11.4 **Fair Value**

- (a) In the case of:

- (i) a Distressed Disposal, or
- (ii) a Liabilities Sale,

effected by, or at the request of, the Security Agent, the Security Agent shall take reasonable care to obtain a price determined in accordance with the relevant Security Documents (though the Security Agent shall have no obligation to postpone (or request the postponement of) any Distressed Disposal or Liabilities Sale in order to achieve a higher price).

- (b) The requirement in paragraph (a) above shall be satisfied (and as between the Creditors and the Debtors shall be conclusively presumed to be satisfied) and the Security Agent will be taken to have discharged all its obligations also in this respect under this Agreement, the other Debt Documents and generally at law if:
 - (i) that Distressed Disposal or Liabilities Sale is made pursuant to any process or proceedings approved or supervised by or on behalf of any court of law; or
 - (ii) that Distressed Disposal or Liabilities Sale is made by, at the direction of or under the control of, a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer (or any analogous officer in any jurisdiction) appointed in respect of a Debtor or the assets of a Debtor.]

11.5 Appointment of Financial Adviser

- (a) Without prejudice to Clause 17.8 (*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 7.1 (*Turnover by the Creditors*).
- (b) For the purposes of paragraph (a) above, the Security Agent shall act:
 - (i) on the instructions of the Instructing Group if the Financial Adviser is providing a valuation for the purposes of Clause 12.2 (*Cash Value of Non-Cash Recoveries*); or
 - (ii) otherwise in accordance with Clause 11.6 (*Security Agent's Actions*).

11.6 Security Agent's Actions

For the purposes of Clause 11.1 (*Facilitation of Distressed Disposals and Appropriation*), Clause 11.2 (*Form of Consideration for Distressed Disposals and Debt Disposals*) and Clause 11.4 (*Fair Value*) 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 9.2 (*Manner of enforcement*); and
- (b) in any other case:

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

12. Non-Cash Recoveries

12.1 Security Agent and Non-Cash Recoveries

To the extent the Security Agent receives or recovers any Non-Cash Recoveries, it may (acting on the instructions of the Instructing Group) but without prejudice to its ability to exercise discretion under Clause 15.2 (*Prospective Liabilities*):

- (a) distribute those Non-Cash Recoveries pursuant to Clause 15 (*Application of Proceeds*) as if they were Cash Proceeds;
- (b) hold, manage, exploit, collect, realise and dispose of those Non-Cash Recoveries (on a professional basis with the aim of achieving the possible income therefrom in a reasonable time); and
- (c) hold, manage, exploit, collect, realise (on a professional basis with the aim of achieving the possible income therefrom in a reasonable time) and distribute any resulting Cash Proceeds.

12.2 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 11.4 (*Appointment of Financial Adviser*) taking into account any notional conversion made pursuant to Clause 15.4 (*Currency Conversion*).
- (b) If any Non-Cash Recoveries are distributed pursuant to Clause 15 (*Application of Proceeds*), the extent to which such distribution is treated as discharging the Liabilities shall be determined by reference to the cash value of those Non-Cash Recoveries determined pursuant to paragraph (a) above.

12.3 Agents and Non-Cash Recoveries

- (a) Subject to paragraph (b) below and to Clause 12.4 (*Alternative to Non-Cash Consideration*), if, pursuant to Clause 15.1 (*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 Senior Term Facilities Agreement 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 Senior Term 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.

12.4 Alternative to Non-Cash Consideration

- (a) If any Non-Cash Recoveries are to be distributed pursuant to Clause 15 (*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 12.5 (*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 (on a professional basis with the aim of achieving the possible income therefrom in a reasonable time) and shall distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 15 (*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 11.6 (*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.

12.5 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 7.1 (*Turnover by the Creditors*) the Security Agent may, at any time after notifying the Creditors entitled to that Non-Cash Consideration and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Non-Cash Consideration for cash consideration (and distribute any Cash Proceeds of that Non-Cash Consideration to the relevant Creditors in accordance with Clause 15 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.
- (c) If the Security Agent holds Retained Non-Cash for a Cash Only Creditor (each as defined in Clause 12.4 (*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 (on a professional basis with the aim of achieving the possible income therefrom in a reasonable time) (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 15 (*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.

13. Acquisition and Insurance Claims

13.1 Facilitation of Claims

So long as the requirements of Clause 13.2 (*Mandatory Prepayment of Proceeds*) are met, if any claim relating to the Acquisition 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 relevant Debtor or the Borrower and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) to:

- (a) 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 Term Facilities Agreement; and
- (b) execute and deliver or enter into any such consent under or release of that Transaction Security, or claim, that may, in the discretion of the Security Agent, be considered necessary or desirable.

13.2 Mandatory Prepayment of Proceeds

If any Proceeds are required to be applied in mandatory prepayment of the Senior Facility Liabilities then, subject to Clause 13.3 (*Adjustment of Mandatory Prepayments*), those Proceeds shall be applied in or towards Payment of the Senior Facility Liabilities in

accordance with the terms of the Senior Term Facilities Agreement and the consent of any other Party shall not be required for that application.

13.3 Adjustment of Mandatory Prepayments

If the making of any Senior Mandatory Prepayment (an “**Original Mandatory Prepayment**”) would result in a payment (a “**Hedge Reduction Payment**”) becoming due to any Hedge Counterparty pursuant to paragraph (d) of Clause 4.12 (*Total Interest Rate Hedging*), the amount of that Senior Mandatory Prepayment will be reduced so that the aggregate of:

- (a) the reduced Senior Mandatory Prepayment; and
- (b) each Hedge Reduction Payment which would result from that reduced Senior Mandatory Payment,

is equal to the amount of the Original Mandatory Prepayment.

14. Further Assurance – Disposals and Releases

Each Creditor and Debtor will:

- (a) do all things that the Security Agent requests (acting reasonably) in order to give effect to Clause 10 (*Non-Distressed Disposals*), Clause 11 (*Distressed Disposals and Appropriation*) and Clause 13 (*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
- (b) if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests (acting reasonably) that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

provided that the proceeds of those disposals are applied in accordance with Clause 10 (*Non-Distressed Disposals*) or Clause 11 (*Distressed Disposals and Appropriation*) as the case may be.

Section 6 Proceeds

15. Application of Proceeds

15.1 Order of Application

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

- (a) in discharging any sums owing to the Security Agent, (other than pursuant to Clause 17.2 (*Parallel Debt*)), any Receiver or any Delegate;
- (b) in discharging all costs and expenses incurred by any Senior Creditor in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 6.5 (*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; and
 - (ii) the Hedge Counterpartiesfor application towards the discharge of:
 - (A) the Senior Facility Liabilities (in accordance with the terms of the Senior Finance Documents); and
 - (B) the Hedging Liabilities (on a *pro rata* basis between the Hedging Liabilities of each Hedge Counterparty),on a *pro rata* basis between paragraphs (A) and (B) above;
- (d) if none of the Debtors is under any further actual or contingent liability under any Senior Finance Document or Hedging 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
- (e) the balance, if any, in payment or distribution to the relevant Debtor.

15.2 Prospective Liabilities

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

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

in each case for so long as the Security Agent shall think fit for later application under Clause 15.1 (*Order of Application*) in respect of:

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

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

15.3 Investment of Cash Proceeds

Prior to the application of the proceeds of the Security Property in accordance with Clause 15.1 (*Order of Application*) the Security Agent may, in its discretion, hold all or part of any Cash Proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the market standard interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this Clause 15.

15.4 Currency Conversion

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

15.5 Permitted Deductions

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

15.6 Good Discharge

- (a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent:
 - (i) may be made to the Agent on behalf of the Senior Facility Creditors; or

- (ii) shall be made directly to the Hedge Counterparties.
- (b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Security Agent:
 - (i) in the case of a payment made in cash, to the extent of that payment; and
 - (ii) in the case of a distribution of Non-Cash Recoveries, as determined by Clause 12.2 (*Cash value of Non-Cash Recoveries*).
- (c) The Security Agent is under no obligation to make the payments to the Agent 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.

15.7 Calculation of Amounts

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

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

16. Equalisation

16.1 Equalisation Definitions

For the purposes of this Clause 16:

"Enforcement Date" means the first date (if any) on which a Senior Creditor takes enforcement action of the type described in paragraphs (a)(i), (iii), (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 Term 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 Term 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 Term Facilities Agreement; and

- (b) in relation to a Hedge Counterparty:
- (i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement in accordance with the terms of this Agreement on or prior to the Enforcement Date, the amount, if any, payable to it under that Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Hedging 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 Hedging Counterparty and as calculated in accordance with the relevant Hedging Agreement.

16.2 Implementation of Equalisation

- (a) The provisions of this Clause 16 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 16 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the Senior Creditors shall make appropriate adjustment payments amongst themselves.

16.3 Equalisation

If, for any reason, any Senior Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the Senior Lenders 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 and the Hedge Counterparties at the Enforcement Date, the Senior Lenders and the Hedge Counterparties will make such payments amongst themselves as the Security Agent shall require to put the Senior Lenders and the Hedge

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

16.4 Notification of Exposure

Before each occasion on which it intends to implement the provisions of this Clause 16, the Security Agent shall send notice to each Hedge Counterparty and the Agent (on behalf of the Senior Lenders) requesting that it notify it of, respectively, its Exposure and that of each Senior Lender (if any).

Section 7
The Parties

17. The Security Agent

17.1 Appointment by Secured Parties

- (a) Each Secured Party (other than the Security Agent) irrevocably appoints the Security Agent in accordance with the following provisions of this Clause 17 to act as its agent, trustee, joint and several creditor or beneficiary of a parallel debt (as the case may be) (including the parallel debt under Clause 17.2 (*Parallel debt*)) under this Agreement and with respect to the Transaction Security Documents, and irrevocably authorises the Security Agent on its behalf to:
 - (i) execute each Transaction Security Document expressed to be executed by the Security Agent; and
 - (ii) perform such duties and exercise such rights and powers under this Agreement and the Transaction Security Documents as are specifically delegated to the Security Agent by the terms thereof, together with such rights, powers and discretions as are reasonably incidental thereto.
- (b) Each Secured Party confirms that:
 - (i) the Security Agent has authority to accept on its behalf the terms of any reliance letter or engagement letter relating to any reports or letters provided in connection with the Debt Documents or the transactions contemplated by the Debt Documents, to bind it in respect of those reports or letters and to sign that reliance letter or engagement letter on its behalf and to the extent that reliance letter or engagement letter has already been entered into ratifies those actions; and
 - (ii) it accepts the terms and qualifications set out in that reliance letter or engagement letter.
- (c) To the extent possible under applicable law, the Security Agent is released from any applicable restrictions on entering into any transaction as a representative of:
 - (i) two or more principals contracting with each other; and
 - (ii) one or more principals with whom it is contracting in its own name.

Any Secured Party which is barred by its constitutional documents or by-laws from granting such exemption shall notify the Security Agent accordingly.
- (d) Each of the Secured Parties (other than the Security Agent) hereby ratifies and approves all acts and declarations previously done or made by the Security Agent on such Secured Party's behalf.
- (e) The Security Agent will be the sole secured creditor in respect of any Transaction Security created by a Transaction Security Document which is governed by the laws of:
 - (i) the Slovak Republic; or

- (ii) any other jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties,

and which secures any claim of the Security Agent under Clause 17.2 (*Parallel debt*).

17.2 **Parallel Debt**

- (a) For the purpose of taking and ensuring the continuing validity of any Transaction Security governed by the laws of (or to the extent affecting assets situated in) the Slovak Republic, or any other jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties, notwithstanding any contrary provision in any Finance Document:
 - (i) each of the Debtors hereby separately and independently of any other agreement on its part referred to or contained in this Agreement or any other Debt Documents irrevocably and unconditionally agrees and undertakes with the Security Agent (by way of an abstract acknowledgement of debt) to pay to the Security Agent, and each Secured Party (other than the Security Agent solely by operation of this provision) acknowledges that each of the Debtors shall pay to the Security Agent sums equal to, and in the currency of, any sums owing by it to a Secured Party (other than the Security Agent) under any Debt Documents (the “**Principal Obligations**”) as and when the same fall due for payment under the relevant secured Debt Document (the “**Parallel Debt Obligations**”), which payment undertakings the Security Agent hereby accepts;
 - (ii) each of the Debtors and each Secured Party (other than the Security Agent) acknowledges that the right of the Security Agent to demand payment of the Parallel Debt Obligations shall be independent and several from the rights of the other Secured Parties to demand payment of the Principal Obligations, and shall not in any way limit or affect (unless otherwise provided in this Clause 17.2) the Principal Obligations of any Debtor and/or a Secured Party, provided that the payment by a Debtor of all or part of its Parallel Debt Obligations to the Security Agent in accordance with this Clause 17.2 shall also discharge (in the amount of the relevant payment) the corresponding Principal Obligations (or part thereof) and the payment by a Debtor of all or part of its Principal Obligations in accordance with the provisions of the Debt Documents shall also discharge (in the amount of the relevant payment) the corresponding Parallel Debt Obligations (or part thereof) but further provided that no Principal Obligation shall be discharged by a discharge of the Parallel Debt Obligations if such discharge of the Parallel Debt Obligations is effected by virtue of any set-off, counterclaim or similar defence invoked by a Debtor vis-à-vis the Security Agent other than in accordance with the terms of the Debt Documents. For the avoidance of any doubt, save as provided in this paragraph (b), the Parallel Debt Obligations of any Debtor shall at all times be equal to the amount of its respective Principal Obligations;
 - (iii) despite the foregoing, any payment under the Debt Documents shall be made to the Security Agent unless expressly stated otherwise in any Debt Document or unless the Security Agent directs such payment to be made to a person other than the Security Agent;
 - (iv) without limiting or affecting the Security Agent’s rights against any Debtor (whether under this Clause 17.2 or under any other provision of the Debt Documents), the Security Agent agrees with each other Secured Party (on a several and divided basis) that it will not exercise its rights under the Parallel Debt Obligations in respect of the Principal Obligations owing to a Secured

Party except with the consent of the relevant Secured Party. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Security Agent's right to act in the protection or preservation of rights under any Transaction Security Document or to enforce any Transaction Security as contemplated by this Agreement, the relevant Transaction Security Document or any other Debt Document (or to do any act reasonably incidental to the foregoing);

- (v) in the event of a resignation of the Security Agent or the appointment of a new Security Agent, the retiring Security Agent shall assign the Parallel Debt Obligations owed to it to the successor Security Agent. Each Debtor hereby expressly gives its prior consent to any such assignment and the Parties agree that the Security created under the Transaction Security Documents securing the Parallel Debt Obligations shall be preserved and remain in full force and effect following any such assignment;
 - (vi) each Debtor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)) to preserve, protect and maintain the Parallel Debt Obligations provided for in this Clause 17.2.
- (b) For the purposes of this Clause 17.2 (but without prejudice to Clause 15 (*Application of Proceeds*)), the Security Agent acts in its own name and not as a trustee, and claims in respect of the Parallel Debt Obligations shall be owed to it as an individual creditor. The Security granted under the Debt Documents to the Security Agent to secure the Parallel Debt Obligations is granted to the Security Agent in its capacity as creditor of the Parallel Debt Obligations and not as trustee. All moneys received or recovered by the Security Agent under this Clause 17.2 or on the enforcement of any Transaction Security shall be applied in accordance with Clause 15.1 (*Order of application*).

17.3 Instructions

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

Groupshall 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 17.6 (*No Duty to Account*) to Clause 17.11 (*Exclusion of Liability*), Clause 17.14 (*Confidentiality*) to Clause 17.21 (*Custodians and Nominees*) and Clause 17.24 (*Acceptance of Title*) to Clause 17.27 (*Disapplication of Trustee Acts*);
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 10 (*Non-Distressed Disposals*);
 - (B) Clause 15.1 (*Order of Application*);
 - (C) Clause 15.2 (*Prospective Liabilities*); and
 - (D) Clause 15.5 (*Permitted Deductions*).
- (e) If giving effect to instructions given by the Instructing Groupwould (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 9 (*Enforcement of Transaction Security*) and the remainder of this Clause 17.2, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

17.4 Duties of the Security Agent

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

- (b) The Security Agent shall promptly:
 - (i) forward to the Agent and to each Hedge Counterparty a copy of any document received by the Security Agent from any Debtor under any Debt Document; and
 - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) 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 21.3 (*Notification of Prescribed Events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Senior Creditors.
- (e) 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).

17.5 No Fiduciary Duties to Debtors or Subordinated Creditors

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

17.6 No Duty to Account

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

17.7 Business with the Group

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

17.8 Rights and Discretions

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

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

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee or agent for the Secured Parties) that:
 - (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and
 - (iii) any notice made by the Borrower is made on behalf of and with the consent and knowledge of all the Debtors.
- (c) The Security Agent may:
 - (i) engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
 - (ii) Without prejudice to the generality of paragraph (i) above or paragraph (d) below, 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.

and the Borrower shall reimburse the Security Agent within 5 Business Days of the Security Agent's first written demand the fees, costs and expenses of the same **provided that** such fees, costs and expenses are subject to caps agreed with the Borrower in advance.

- (d) 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.
- (e) 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, wilful misconduct or fraud.
- (f) 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.

- (g) 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.
- (h) 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.

17.9 Responsibility for Documentation

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

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, a Debtor or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; or
- (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.

17.10 No Duty to Monitor

The Security Agent shall not be bound to enquire:

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

17.11 Exclusion of Liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
 - (i) any damages, costs or losses to any person, 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, wilful misconduct or fraud;
 - (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 Clause subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Act.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out any:
 - (i) “know your customer” or other checks in relation to any person; or
 - (ii) 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.

17.12 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 three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence, wilful misconduct or fraud) 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 Borrower 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.¹

17.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Senior Creditors and the Borrower.
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the Senior Creditors and the Borrower, in which case the Instructing Group may appoint a successor Security Agent.

¹ In line with Clause 28.12 of the SFA.

- (c) If the Instructing Group has not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Borrower, the Agent and the Hedge Counterparties) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, make available to the successor Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.²
- (e) The Security Agent's resignation notice shall only take effect upon the:
 - (i) appointment of a successor; and
 - (ii) 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 17.25 (*Winding up of Trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 17 and Clause 19.1 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Instructing Group may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrower.

17.14 Confidentiality

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

17.15 Information from the Creditors

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

² In line with Clause 28.13 of the SFA.

17.16 Credit Appraisal by the Secured Parties

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

- (a) the financial condition, status and nature of each Debtor and 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 and/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.

17.17 Security Agent's Additional Remuneration

- (a) In the event of:
 - (i) A Default³; or
 - (ii) the Security Agent being requested by a Debtor or the Instructing Group to undertake duties which the Security Agent and the Borrower agree in writing and in advance to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Debt Documents; or
 - (iii) the Security Agent and the Borrower agreeing that it is otherwise appropriate in the circumstances,

the Borrower shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them in writing and in advance or determined pursuant to paragraph (b) below.
- (b) If the Security Agent and the Borrower fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (a) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator)

³ Standard clause in line with Clause 15.3 of the SFA. As agreed, the only acceptable qualification is reasonableness of the Security Agent.

selected by the Security Agent and approved by the Borrower or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrower) and the determination of any investment bank shall be final and binding upon the Parties.

17.18 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).

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

17.20 Insurance by Security Agent

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

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

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

17.21 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 asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement.

17.22 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.

17.23 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it reasonably considers that appointment to be in the best interests of the Secured Parties which cannot be sufficiently achieved by the Security Agent acting on its own;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall in advance consult such appointment with the Borrower and the Senior Creditors (for the avoidance of doubt, no consent of the Borrower and the Senior Creditors is required).
- (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.

17.24 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.

17.25 Winding up of Trust

If the Security Agent, with the approval of the Agent and each Hedge Counterparty, determines that:

- (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and

- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor pursuant to the Debt Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 17.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

17.26 Powers Supplemental to Trustee Acts

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

17.27 Disapplication of Trustee Acts

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

18. Changes to the Parties

18.1 Assignments and Transfers

No Party may:

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

in respect of any Debt Documents or the Liabilities except as permitted by this Clause 18.

18.2 Change of Senior Lender

- (a) 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 Term Facilities Agreement; and
- (B) any assignee or transferee has (if not already a Party as a Senior Lender) acceded to this Agreement, as a Senior Lender, pursuant to Clause 18.7 (*Creditor Accession Undertaking*).

- (b) Paragraph (a)(B) above shall not apply in respect of on and after the completion of any Liabilities Acquisition of the Senior Facility Liabilities by a Debtor or its Affiliate permitted under the Senior Term Facilities Agreement and pursuant to which the relevant Liabilities are discharged.

18.3 **Change of Hedge Counterparty**

A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already a Party as a Hedge Counterparty and a party to the Senior Term Facilities Agreement as a Hedge Counterparty) acceded to:

- (a) this Agreement pursuant to Clause 18.7 (*Creditor Accession Undertaking*); and
 - (b) the Senior Term Facilities Agreement,
- as a Hedge Counterparty.

18.4 **Change of Agent**

No person shall become an Agent unless at the same time, it accedes to this Agreement as the Agent, pursuant to Clause 18.7 (*Creditor Accession Undertaking*).

18.5 **Change of Subordinated Creditor**

Subject to Clause 5.4 (*No acquisition of Subordinated Liabilities*) and to the terms of the other Debt Documents, any Subordinated Creditor may

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

in respect of the Subordinated Liabilities to a Debtor or its Affiliate if that Debtor or Affiliate has (if not already a Party as a Subordinated Creditor) acceded to this Agreement as a Subordinated Creditor, pursuant to Clause 18.7 (*Creditor Accession Undertaking*).

18.6 **New Subordinated Creditor**

If a Debtor or any of its Affiliates makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with the Borrower, in an aggregate amount of EUR 1,000,000 or more, the Borrower shall procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as a Subordinated Creditor) accedes to this Agreement, as a Subordinated Creditor, pursuant to Clause 18.7 (*Creditor Accession Undertaking*).

18.7 **Creditor Accession Undertaking**

With effect from the date of acceptance by the Security Agent (and in the case of a Hedge Counterparty or any Affiliate of a Senior Facility Creditor) and 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 Term Facilities Agreement, any new party acceding to this Agreement as a Hedge Counterparty shall also become party to the Senior Term Facilities Agreement as a Hedge Counterparty and shall assume the same obligations and become entitled to the same rights as if it had been an original party to the Senior Term Facilities Agreement as a Hedge Counterparty.

18.8 New Debtor

- (a) If
 - any Affiliate of a Debtor:
 - (i) incurs any Senior Liabilities; or
 - (ii) gives any security, guarantee, indemnity or other assurance against loss in respect of any of the Senior Liabilities,

the Debtors will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor, in accordance with paragraph (b) below, no later than contemporaneously with the incurrence of those Liabilities or the giving of that assurance.
- (b) With effect from the date of acceptance by the Security Agent of a Debtor Accession Deed duly executed and delivered to the Security Agent by the new Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Debtor.

18.9 Additional Parties

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor Accession Undertaking delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the Senior Term Facilities Agreement.
- (b) In the case of a Creditor Accession Undertaking delivered to the Security Agent by any party acceding to this Agreement as a Hedge Counterparty:
 - (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.

18.10 Resignation of a Debtor

- (a) The Borrower may request that a Debtor (other than the Borrower) ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.

- (b) The Security Agent shall accept a Debtor Resignation Request and notify the Borrower and each other Party of its acceptance if:
 - (i) the Borrower has confirmed that no Default is continuing or would result from the acceptance of the Debtor Resignation Request;
 - (ii) to the extent that the Senior Facilities Discharge Date has not occurred, the Senior Agent notifies the Security Agent that that Debtor is not, or has ceased to be, a person granting security, guarantee, indemnity or other assurance against loss in respect of any of the Senior Facility Liabilities;
 - (iii) each Hedge Counterparty notifies the Security Agent that that Debtor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities; and
 - (iv) the Borrower confirms that that Debtor is under no actual or contingent obligations in respect of the Subordinated Liabilities.
- (c) Upon notification by the Security Agent to the Borrower of its acceptance of the resignation of a Debtor, that Debtor shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.

19. Other Indemnities

19.1 Indemnity to the Security Agent

- (a) The Borrower 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 Borrower 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 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) The Borrower expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 19.1 will not be prejudiced by any release or disposal under and in accordance with Clause 11 (*Distressed Disposals and Appropriation*).

- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 19.1 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

19.2 Borrower's indemnity to Senior Creditors

The Borrower 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 11 (*Distressed Disposals and Appropriation*).

Section 8
Additional Payment Obligations

20. Costs and Expenses

20.1 Transaction Expenses

The Borrower shall within 7 Business Days of first demand, pay the Security Agent (who shall provide to the Borrower reasonable details of the relevant cost or expense) the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent and by any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement (other than a Debtor Accession Deed or Creditor Accession Undertaking) and the Transaction Security; and
- (b) any other Debt Documents (other than a Transfer Certificate) executed after the date of this Agreement.

20.2 Amendment Costs

If a Debtor requests an amendment, waiver or consent, the Borrower shall, within 7 Business Days of demand, reimburse the Security Agent for the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

20.3 Enforcement and Preservation Costs

The Borrower shall, within 7 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 Borrower shall pay and, within three Business Days of demand, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document.

20.5 Interest on Demand

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is 2.5 per cent. per annum over the rate at which the Security Agent was being offered, by leading banks in the London interbank market, deposits in an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select **provided that** if any such rate is below zero, that rate will be deemed to be zero.

Section 9
Administration

21. Information

21.1 Dealings with Security Agent and Agent

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

21.2 Disclosure between Senior Creditors and Security Agent

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

21.3 Notification of Prescribed Events

- (a) If a Default either occurs or ceases to be continuing the Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty.
- (b) If a Senior Payment Default either occurs or ceases to be continuing the Agent shall notify the Security Agent.
- (c) 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.
- (d) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Senior Creditor of that action.
- (e) If any Senior Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Senior Creditor of that action.
- (f) If the Borrower 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.
- (g) 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*) or Clause 4.10 (*Required Enforcement: Hedge Counterparties*) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Agent and each other Hedge Counterparty.
- (h) If a Senior Mandatory Prepayment is waived the Agent shall notify the Security Agent of the amount of the Senior Mandatory Prepayment waived and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty.

- (i) If any of the Individual Term Outstandings of a member of a Hedge Counterparty's Hedge Related Lending Group are to be reduced (whether by way of repayment, prepayment, cancellation or otherwise) the Borrower shall notify that Hedge Counterparty of:
 - (i) the date and amount of that proposed reduction; and
 - (ii) any Interest Rate Hedge Excess that would result from that proposed reduction.

22. Notices

22.1 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.

22.2 Security Agent's Communications with Senior Creditors

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

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

22.3 Addresses

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

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

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

22.4 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 22.3 (*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 Borrower in accordance with this Clause 22.4 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.

22.5 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 22.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

22.6 Electronic Communication

- (a) Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means 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 and if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (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 electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

22.7 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.

23. Preservation

23.1 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.

23.2 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.

23.3 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 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.

23.4 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 23.4, 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.

23.5 **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.

24. **Consents, Amendments and Override**

24.1 **Required Consents**

- (a) Subject to paragraph (b) below, to Clause 24.4 (*Exceptions*), to Clause 24.6 (*Excluded Senior Credit Participations*) and to Clause 24.7 (*Disenfranchisement of Sponsor Affiliates*):
 - (i) Clause 16.1 (*Equalisation Definitions*) to Clause 16.3 (*Equalisation*) may be amended or waived with the consent of the Agent, the Majority Senior Lenders and the Security Agent; and
 - (ii) subject to paragraph (i) above, this Agreement may be amended or waived only with the consent of the Agent, the Majority Senior Lenders and the Security Agent.
- (b) An amendment or waiver that has the effect of changing or which relates to:
 - (i) Clause 8 (*Redistribution*), Clause 15 (*Application of Proceeds*) or this Clause 24 (*Consents, Amendments and Override*);
 - (ii) paragraphs (d)(iii), (e) and (f) of Clause 17.2 (*Instructions*);
 - (iii) the order of priority or subordination under this Agreement;
 - (iv) other, transaction specific unanimous matters,shall not be made without the consent of:
 - (A) the Agent;
 - (B) the Senior Lenders;
 - (C) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty); and
 - (D) the Security Agent.

24.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to paragraph (b) below and to Clause 24.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Instructing Group, and if the Borrower 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 24.4 (*Exceptions*), any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:
 - (i) the nature or scope of the Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
 - (iii) the release of any Transaction Security,

shall not be made without the prior consent of the Senior Facility Creditors whose consent to that amendment, waiver or consent is required under the Senior Term Facilities Agreement and the Hedge Counterparties.

24.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this Clause 24 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 24.
- (b) Without prejudice to the generality of Clause 17.8 (*Rights and Discretions*) the Security Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

24.4 Exceptions

- (a) Subject to paragraphs (c) and (d) below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:
 - (i) in the case of a Senior Creditor (other than the Agent or any Arranger), in a way which affects or would affect Senior Creditors of that Party's class generally; or
 - (ii) in the case of a Debtor, to the extent consented to by the Borrower under paragraph (a) of Clause 24.2 (*Amendments and Waivers: Transaction Security Documents*),

the consent of that Party is required.

- (b) Subject to paragraphs (c) and (d) below, an amendment, waiver or consent which relates to the rights or obligations of the Agent, an Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the consent of the Agent or, as the case may be, that Arranger, the Security Agent or that Hedge Counterparty.
- (c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 24.2 (*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 0 (*Non-Distressed Disposals*), Clause 11 (*Distressed Disposals and Appropriation*), Clause 13 (*Acquisition and Insurance Claims*).

- (d) Paragraphs (a) and (b) above shall apply to an Arranger only to the extent that Liabilities are then owed to that Arranger.

24.5 **Excluded Senior Credit Participations**

- (a) Subject to paragraph (b) below, if in relation to:
 - (i) a request for a Consent in relation to any of the terms of this Agreement;
 - (ii) a request to participate in any other vote of Senior Creditors under the terms of this Agreement;
 - (iii) a request to approve any other action under this Agreement;
 - (iv) a request to provide any confirmation or notification under this Agreement; or
 - (v) a request to provide details of an Exposure,
 - any Senior Creditor:
 - (A) fails to respond to that request within 15 Business Days of that request being made; or
 - (B) (in the case of a Senior Creditor and paragraphs (i) to (iii) above), fails to provide details of its Senior Credit Participation to the Security Agent within the timescale specified by the Security Agent;
 - (vi) in the case of paragraphs (i) to (iii) above, that Senior Creditor's Senior Credit Participation shall be deemed to be zero for the purpose of calculating the Senior Credit Participations when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations has been obtained to give that Consent, carry that vote or approve that action;
 - (vii) in the case of paragraphs (i) to (iii) above, that Senior Creditor's status as a Senior Creditor shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of Senior Creditors has been obtained to give that Consent, carry that vote or approve that action; and
 - (viii) in the case of paragraph (iv) above, that confirmation or notification shall be deemed to have been given; and
 - (ix) in the case of paragraph (v) above, that Senior Creditor's Exposure shall be deemed to be zero.

- (b) Paragraph 24.5(v)(A) above shall not apply to an amendment or waiver referred to in paragraphs (b)(i), (ii), (iii) or (iv) of Clause 24.1 (*Required Consents*).

24.6 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 and such agreement or arrangement has not been terminated:
 - (i) in ascertaining:
 - (A) the 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 Creditorshas been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,
that Commitment 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 Lender (in the case of a Commitment).
 - (ii) Paragraphs (i) above shall not apply to the extent that a Counterparty is a Senior Lender, (as the case may be) by virtue otherwise than by beneficially owning the relevant Commitment.
- (b) Each Sponsor Affiliate that is a Senior Lender agrees that:
 - (i) in relation to any meeting or conference call to which all the Senior Creditors, all the Senior Creditors, or any combination of those groups of 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.

24.7 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment:
 - (i) in ascertaining:
 - (A) the 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 24.7, 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 paragraph (a), (b) or (c) of the definition of "Defaulting Lender" in the Senior Term Facilities Agreement 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.

24.8 Calculation of Senior Credit Participations

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.

24.9 Deemed Consent

If, at any time prior to the Senior Discharge Date, the Senior Facility Creditors give a Consent in respect of the Senior Finance Documents then, if that action was permitted by the terms of this Agreement, the Borrower and the Subordinated Creditors will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
- (b) do anything (including executing any document) that the Senior Facility Creditors may reasonably require to give effect to this Clause 24.9.

24.10 Excluded Consents

Clause 24.9 (*Deemed Consent*) does not apply to any Consent which has the effect of:

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

24.11 No Liability

None of the Senior Facility Creditors will be liable to any other Creditor, or Debtor for any Consent given or deemed to be given under this Clause 24.

24.12 Agreement to Override

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

25. Counterparts

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

Section 10

Governing Law and Enforcement

26. Governing law

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

27. Enforcement

27.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 27.1 is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with Relevant Jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of Relevant Jurisdictions.

27.2 Service of Process

- (a) Without prejudice to any other mode of service allowed under any relevant law:
 - (i) each Debtor and each Subordinated Creditor (unless incorporated in England and Wales):
 - (A) irrevocably appoints Law Debenture Corporate Services Limited, Fifth Floor, 100 Wood Street, London EC2V 7EX, United Kingdom as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
 - (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned;
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower must immediately after obtaining knowledge thereof (and in any event within fifteen days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose; in such case the Agent shall inform each Debtor and each Subordinated Creditor thereof immediately.
- (c) Each Debtor and each Subordinated Creditor expressly agrees and consents to the provisions of this Clause 27 and Clause 26 (*Governing Law*).

27.3 Confirmation for the purpose of the Slovak Banking Act

Each Debtor and each Subordinated Creditor confirms that Slovenská sporiteľňa, a.s. have proposed to the Debtors and Subordinated Creditors to resolve disputes arising from or in connection with this Agreement by arbitration before the Permanent Arbitration Court of the Slovak Bank Association pursuant to section 93b of the Banking Act, and each Debtor and each Subordinated Creditor has unanimously rejected such proposal.

This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Debtors and Subordinated Creditors and is intended to be and is delivered by them as a deed on the date specified above. This Agreement shall enter into force and effect upon its publication in the Central Register of Contracts maintained by the Government Office of the Slovak Republic.

Schedule 1
Original Debtors

Name of Original Debtor	Address of seat	Registration number (or equivalent, if any)	Jurisdiction of incorporation
Železničná spoločnosť Cargo Slovakia, a.s.	Drieňová 24, Bratislava 820 09	ID No.: 35 914 921, registered in the Commercial Register of the District Court Bratislava I, Section: Sa, File No.: 3496/B	Slovak Republic
AAE Wagon a. s.	Karadžičova 8/A, 821 08 Bratislava	ID No.: 47 882 921, registered in the Commercial Register of the District Court Bratislava I, Section: Sa, File No.: 6020/B	Slovak Republic

Schedule 2

Form of Debtor Accession Deed

This Agreement is made on [●] and made

Between:

- (1) [Insert Full Name of New Debtor] (the “**Acceding Debtor**”); and
- (2) [Insert Full Name of 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 the EUR 196,602,040 intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] between, amongst others, [insert full name of the Borrower] as Borrower, [insert full name of the Security Agent] as Security Agent, [insert full name of the 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 trustee or 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 trustee or agent for the Secured Parties,on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.
3. The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.

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

4. [In consideration of the Acceding Debtor being accepted as a Subordinated Creditor for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as Subordinated Creditor, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a 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].**
5. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by, English law.

** Include this paragraph in the relevant Debtor Accession Deed if the Acceding Debtor is also to accede as a Subordinated Creditor to the Intercreditor Agreement.

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

The Acceding Debtor

[Executed as a Deed

By: *[Full Name of Acceding Debtor]*

}

.....
Director

}

.....
Director/Secretary

Or

[Executed as a Deed

By: *[Full Name of Acceding Debtor]*

}

.....
Signature of Director

}

.....
Name of the Director

in the presence of

}

.....
Signature of witness:

Name of witness:

Address of witness:

Occupation of witness:

Address for notices:

Address:

Fax:

The Security Agent

[Full Name of Current Security Agent]

By:

Date:

Schedule 3

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]

This Undertaking is made on [date] by [insert full name of new Senior Lender/Hedge Counterparty/Agent/the Arranger/Coordinator/Subordinated Creditor] (the “**Acceding [Senior Lender/Hedge Counterparty/Agent/Arranger/Coordinator/Subordinated Creditor]**”) in relation to the EUR 196,602,040 intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] between, among others, [insert name of Borrower] as Borrower, [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/Hedge Counterparty/Agent/Arranger/Coordinator/Subordinated Creditor] being accepted as a [Senior Lender/Hedge Counterparty/Subordinated Creditor/Agent/Arranger/Coordinator] for the purposes of the Intercreditor Agreement, the Acceding [Senior Lender/Hedge Counterparty/Agent/ Subordinated Creditor] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Senior Lender/Hedge Counterparty/Agent/Arranger/Coordinator/Subordinated Creditor] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Senior Lender/Hedge Counterparty/Agent/ /Arranger/Coordinator/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 Hedge Counterparty has become a provider of hedging arrangements to the [Borrower]. In consideration of the Acceding Hedge Counterparty being accepted as a Hedge Counterparty for the purposes of the Senior Term Facilities Agreement, the Acceding Hedge Counterparty confirms, for the benefit of the parties to the Senior Term Facilities Agreement, that, as from [date], it intends to be party to the Senior Term Facilities Agreement as a Hedge Counterparty, and undertakes to perform all the obligations expressed in the Senior Term Facilities Agreement to be assumed by a Hedge Counterparty and agrees that it shall be bound by all the provisions of the Senior Term Facilities Agreement, as if it had been an original party to the Senior Term Facilities Agreement as a Hedge Counterparty.]**

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

This Undertaking has been entered into on the date stated above [and is executed as a deed by the Acceding Creditor, if it is acceding as a Subordinated Creditor] and is delivered on the date stated above].

* Include only in the case of a Hedge Counterparty which is using this undertaking to accede to the Senior Term Facilities Agreement in accordance with Clause 18.7(c) (*Creditor Accession Undertaking*).

** Include only in the case of a Hedge Counterparty which is using this undertaking to accede to the Senior Term Facilities Agreement in accordance with Clause 18.7(c) (*Creditor Accession Undertaking*).

Acceding [Creditor]

[Executed as a Deed
[insert full name of Acceding
Creditor]

}

.....
By:
Address:
Fax:

Accepted by the Security Agent

[Accepted by the Agent]

for and on behalf of
[Insert full name of current Security
Agent]
Date:

for and on behalf of
[Insert full name of Agent]
Date:]***

*** Include only in the case of a Hedge Counterparty which is using this undertaking to accede to the Senior Term Facilities Agreement.

Schedule 4 Form of Debtor Resignation Request

To: [●] as Security Agent

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

Dated: [●]

Dear Sirs

Cargo Wagon, a.s. - 196,602,040 EUR 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 [18.10] (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [*resigning Debtor*] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) [*resigning Debtor*] is under no actual or contingent obligations in respect of Subordinated Liabilities.
4. This request and any non-contractual obligations arising out of or in connection with it are governed by English law.

[*Borrower*]
By:

[*resigning Debtor*]
By:

Signatures

The Borrower

Executed as a Deed

By: Cargo Wagon, a.s.

}



By: Ing. Libor Briška

Chairman of the Board of Directors

}



By: Ing. Pavel Holomek

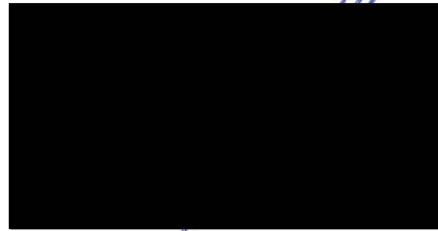
Member of the Board of Directors

Address: Lúčna 2, Bratislava 821 05, Slovak Republic
Attention: Libor Briška

Other Original Debtor

Executed as a Deed

By: Železničná spoločnosť Cargo Slovakia, a.s.



By: **Ing. Vladimír Čupák**
Chairman of the Board of Directors
And the General Director



By: **Ing. Jaroslav Daniška**
Deputy Chairman of the Board of
Directors

Address: Drieňová 24, 820 09 Bratislava, the Slovak Republic
Attention: the General Director

Other Original Debtor

Executed as a Deed

By: AAE Wagon a. s.

}



.....
By: Andrea Dobišová
Chair of the Board of Directors

}



.....
By: Ivan Heczko
Member of the Board of Directors

The Security Agent

**ING Bank N.V. acting through ING Bank
N.V., pobočka zahraničnej banky**

}



By: **Darina Gallasová**
Chief Financial Officer

ING Bank N.V. pobočka zahraničnej banky

}





By: **Jozef Horňáček**
Head of Legal and Compliance

Address: Jesenského 4/C, 811 02 Bratislava, Slovak Republic
Fax: +421 2 5293 1244
Attention: Beatrix Šidová, Corporate Clients Slovakia
Branislav Mikovíny, Structured Finance Slovakia

The Agent

ING Bank N.V., London Branch


By:  Craig Baker
Authorised Signatory
ING Bank N.V., London Branch


By: Stuart Ormston
Authorised Signatory
ING Bank N.V., London Branch

The Senior Lender

**HSBC Bank plc acting through HSBC Bank
plc - pobočka Praha**

}

[Redacted Signature]

By: **Michael Hordley**
CEO and Head of Corporate Banking

}

[Redacted Signature]

By: **Peter Korbas**
Team Head, Senior Relationship
Manager

The Senior Lender

ING Bank, a Branch of ING-DiBa AG

By:

Floris Helming

By:

Dana Vogt
Vice President
Natural Resources

The Senior Lender

Slovenská sporiteľňa, a.s.

} 
.....

By:

Dušan Devera
Relationship Manager
Large corporate clients

} 
.....

By:

Slavomír Salát
Head of Group Large Corporate
Clients Department I

The Arranger

ING Bank, a Branch of ING-DiBa AG

By:

Floris Helming

By:

Dana Vogt
Vice President
Natural Resources

The Arranger

**HSBC Bank plc acting through HSBC Bank
plc - pobočka Praha**

}

[Redacted Signature]

By: **Michael Hordley**
CEO and Head of Corporate Banking

}

[Redacted Signature]

By: **Peter Korbas**
Team Head, Senior Relationship
Manager

The Arranger

Slovenská sporiteľňa, a.s.

} [Redacted Signature]

By:

Dušan Devera
Relationship Manager
Large corporate client

} [Redacted Signature]

By:

Slavomír Salát
Head of Group Large Corporate
Clients Department I

The Coordinator
ING Bank N.V.

}  Ad M. van den Broek
Director


By: 

} 

By:  Ben Dijkhuizen
Director

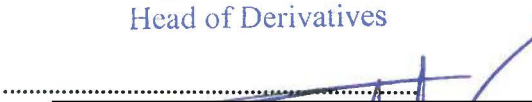

The Hedge Counterparty

ING Bank N.V.

} 

By:

K.K. van der Pol
Legal FM & Equities
Head of Derivatives

} 
By: 

Gunter Fluyt
Head of Financial Markets NL

The Hedge Counterparty

HSBC Bank plc acting through **HSBC Bank plc - pobočka Praha**

}

[Redacted Signature]

By: **Michael Hordley**
CEO and Head of Corporate Banking

}

[Redacted Signature]

By: **Peter Korbas**
Team Head, Senior Relationship
Manager

The Hedge Counterparty

Slovenská sporiteľňa, a.s.

}

[Redacted signature block]

By:

Dušan Devela
Relationship Manager
Large corporate client

}

[Redacted signature block]

By:

Slavomír Salát
Head of Group Large Corporate
Clients Department I

The Subordinated Creditor

Executed as a Deed

By: AAE Wagon a. s.

}



.....
By: Andrea Dobišová
Chair of the Board of Directors

}



.....
By: Ivan Heczko
Member of the Board of Directors

The Subordinated Creditor

Executed as a Deed

By: Železničná spoločnosť Cargo Slovakia, a.s.

By: Ing. Vladimír Ľupták
Chairman of the Board of Directors
And the General Director

By: Ing. Jaroslav Daniška
Deputy Chairman of the Board of
Directors

Address: Drieňová 24, 820 09 Bratislava, the Slovak Republic
Attention: the General Director