
SENIOR FACILITIES AGREEMENT

dated [] 2014

APCOA Parking Holdings GmbH (formerly Perpetuum Beteiligungsgesellschaft mbH)

as Company

Deutsche Bank, Luxembourg S.A.

as Agent and Security Trustee

and

others

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THIS AGREEMENT is made on [] 2014 and made between:

- (1) **APCOA PARKING HOLDINGS GMBH (FORMERLY PERPETUUM BETEILIGUNGSGESELLSCHAFT MBH)**, a limited liability company incorporated under the laws of the Federal Republic of Germany and registered with the local court of Stuttgart under HRB 726108 (the "**Company**");
- (2) **THE COMPANIES** listed in part 1 of Schedule 1 (*The Original Parties*) as borrowers (the "**Original Borrowers**");
- (3) **THE COMPANIES** listed in part 1 of Schedule 1 (*The Original Parties*) as guarantors (the "**Original Guarantors**");
- (4) **THE FINANCIAL INSTITUTIONS** listed in part 2 of Schedule 1 (*The Original Parties*) as lenders (the "**Original Lenders**");
- (5) **DEUTSCHE BANK LUXEMBOURG S.A.** as agent of the other Finance Parties (the "**Agent**");
- (6) **DEUTSCHE BANK LUXEMBOURG S.A.** as security trustee for the Finance Parties (the "**Security Trustee**");
- (7) **DEUTSCHE BANK AG, FILIALE DEUTSCHLANDGESCHÄFT** as a new issuing bank in respect of Bank Guarantee Facility B (the "**New Issuing Bank 1**");
- (8) DNB BANK ASA as a new issuing bank in respect of Bank Guarantee Facility B (the "**New Issuing Bank 2**" and together with the New Issuing Bank 1, the "**New Issuing Banks**" and each a "**New Issuing Bank**").
- (9) **DEUTSCHE BANK AG, FILIALE DEUTSCHLANDGESCHÄFT**, as bank guarantee agent in respect of Bank Guarantee Facility B (the "**Bank Guarantee Agent**"); and
- (10) **MIZUHO BANK, LTD.** as the retiring issuing bank (the "**Retiring Issuing Bank**").

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Acceptable Bank" means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB+ or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa1 or higher by Moody's Investor Services Limited; or
- (b) any other bank or financial institution approved by the Majority Lenders.

"Accession Letter" means a document substantially in the form set out in Schedule 6 (*Form of Accession Letter*).

"Accounting Principles" means generally accepted accounting principles in the jurisdiction of incorporation of the relevant member of the Group and, in relation to the consolidated financial statements of the Company, generally accepted accounting principles in the Federal Republic of Germany, including IFRS.

"Accounting Reference Date" means 31 December.

"Accrued Amounts" has the meaning given to it in paragraph (a) of Clause 29.10 (*Pro Rata Interest Settlement*).

"Acquiring Company" has the meaning given to it in the definition of "Permitted Disposal".

"Acquisition Loans" has the meaning given to it in Clause 23.14 (*Guarantee Limitations for Italian Guarantors*).

"Additional Borrower" means a company which becomes a Borrower in accordance with Clause 31 (*Changes to the Obligors*).

"Additional Cash Margin" means, in relation to a Term Facility B Loan, 1.00 per cent. per annum.

"Additional Guarantor" means a company which becomes a Guarantor in accordance with Clause 31 (*Changes to the Obligors*).

"Additional Obligor" means an Additional Borrower or an Additional Guarantor.

"Adjusted Consolidated EBITDA" means, in relation to a Relevant Period, Consolidated EBITDA for that Relevant Period adjusted by:

- (a) including the operating profit before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA) of a member of the Group for the Relevant Period (or attributable to a business or assets acquired during the Relevant Period) prior to its becoming a member of the Group or (as the case may be) prior to the acquisition of the business or assets; and
- (b) excluding operating profit before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA) attributable to any member of the Group (or to any business or assets) disposed of during the Relevant Period.

"Adjusted Leverage" means, in respect of any Relevant Period, the ratio of Total Net Debt on the last day of that Relevant Period to Adjusted Consolidated EBITDA in respect of that Relevant Period.

"Adjustment" has the meaning given to it in paragraph (a)(i) of Clause 41.3 (*Structural Adjustment*).

"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.

"AG Guarantor" has the meaning given to it in paragraph (g)(i) of Clause 23.11 (*Guarantee Limitations for German Guarantors*).

"Agent's Spot Rate of Exchange" means the Agent's spot rate of exchange for the purchase of the relevant currency with the Base Currency in the London foreign exchange market at or about 11:00 a.m. on a particular day.

"Agreed Security Principles" means the principles set out in Schedule 14 (*Agreed Security Principles*).

"Ancillary Commencement Date" means, in relation to an Ancillary Facility, the date on which that Ancillary Facility is first made available, which date shall be a Business Day within the Availability Period for the Super Senior Revolving Facility.

"Ancillary Commitment" means, in relation to an Ancillary Lender and an Ancillary Facility, the maximum Base Currency Amount which that Ancillary Lender has agreed (whether or not subject to satisfaction of conditions precedent) to make available from time to time under an Ancillary Facility and which has been authorised as such under Clause 9 (*Ancillary Facilities and Fronted Ancillary Facilities*), to the

extent that amount is not cancelled or reduced under this Agreement or the Ancillary Documents relating to that Ancillary Facility.

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

"Ancillary Facility" means any ancillary facility (other than a Fronted Ancillary Facility) made available by an Ancillary Lender in accordance with Clause 9 (*Ancillary Facilities and Fronted Ancillary Facilities*).

"Ancillary Lender" means each Lender (or Affiliate of a Lender) which makes available an Ancillary Facility in accordance with Clause 9 (*Ancillary Facilities and Fronted Ancillary Facilities*).

"Ancillary Outstandings" means at any time:

(a) in relation to an Ancillary Lender and an Ancillary Facility then in force the aggregate of the equivalents (as calculated by that Ancillary Lender) in the Base Currency of the following amounts outstanding under that Ancillary Facility then in force:

- (i) the principal amount under each overdraft facility or other on-demand short term loan facility (net of any Available Credit Balance);
- (ii) the face amount of each guarantee, bond and letter of credit under that Ancillary Facility (to the extent not repaid or prepaid); and
- (iii) the amount fairly representing the aggregate exposure (excluding interest and similar charges) of that Ancillary Lender under each other type of accommodation provided under that Ancillary Facility,

in each case as determined by such Ancillary Lender acting reasonably in accordance with its normal banking practice and in accordance with the relevant Ancillary Document; and

(b) in relation to a Fronting Ancillary Lender and a Fronted Ancillary Facility then in force the aggregate of the equivalents (as calculated by that Fronting Ancillary Lender) in the Base Currency of the following amounts outstanding under that Fronted Ancillary Facility then in force:

- (i) the principal amount under each overdraft facility or other on-demand short term loan facility (net of any Available Credit Balance);
- (ii) the face amount of each guarantee, bond and letter of credit under that Fronted Ancillary Facility (to the extent not repaid or prepaid); and

- (iii) the amount fairly representing the aggregate exposure (excluding interest and similar charges) of that Fronting Ancillary Lender under each other type of accommodation provided under that Fronted Ancillary Facility (without taking into account any counter-indemnity to that Fronting Ancillary Lender from any Fronted Ancillary Lender under that Fronted Ancillary Facility pursuant to Clause 9.12 (*Fronted Ancillary Commitment Indemnities*); and

in each case as determined by such Fronting Ancillary Lender acting reasonably in accordance with its normal banking practice and in accordance with the relevant Fronted Ancillary Document.

"Annual Financial Statements" has the meaning given to it in Clause 25 (*Information Undertakings*).

"Assignment Agreement" means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor, assignee and the Company. If that other form does not contain the undertaking set out in the form set out in Schedule 5 (*Form of Assignment Agreement*) it shall not be a Creditor Accession Undertaking as defined in, and for the purposes of, the Intercreditor Agreement.

"Auditors" means one of PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte & Touche or any other firm of independent auditors of international standing having the relevant capabilities and expertise to perform a high quality audit of a group of companies such as the Group, or such other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).

"Auditor's Determination" has the meaning given to it in paragraph (d) of Clause 23.11 (*Guarantee Limitations for German Guarantors*).

"Austrian Borrower" has the meaning given to it in Clause 18.1 (*Definitions*) or Clause 27.35 (*Limitations on Undertakings*), as the case may be.

"Austrian Capital Maintenance Rules" has the meaning given to it in paragraph (b) of Clause 23.12 (*Interpretation of guarantee for Austrian tax purposes and limitations in respect of Austrian Obligors*).

"Austrian Obligor" has the meaning given to it in paragraph (a) of Clause 23.12 (*Interpretation of guarantee for Austrian tax purposes and limitations in respect of Austrian Obligors*).

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Availability Period" means:

- (a) in relation to the Super Senior Revolving Facility, the period from and including the date of this Agreement to and including the date falling one Month prior to the Termination Date applicable to the Super Senior Revolving Facility.
- (b) in relation to Term Facility A, the period from and including the date of this Agreement to and including the date falling five Business Days thereafter;
- (c) in relation to Term Facility B, the date of this Agreement;
- (d) in relation to Bank Guarantee Facility A, the period from and including the date of this Agreement to and including the date falling one Month prior to the Termination Date applicable to Bank Guarantee Facility A;
- (e) in relation to Bank Guarantee Facility B, the period from and including the date of this Agreement to and including the date falling one Month prior to the Termination Date applicable to Bank Guarantee Facility B; and
- (f) in relation to an Incremental Facility Tranche, the period specified as part of the Incremental Facility Terms for that Incremental Facility Tranche.

"Available Ancillary Commitment" means in relation to:

- (a) an Ancillary Facility, the Ancillary Commitment under that Ancillary Facility;
or
- (b) a Fronted Ancillary Facility, the aggregate of the Fronting Ancillary Commitment and the Fronted Ancillary Commitments under that Fronted Ancillary Facility,

less, in each case, the Ancillary Outstandings in relation to that Ancillary Facility or Fronted Ancillary Facility, as applicable.

"Available Bank Guarantee B Sublimit" means, with respect to an Issuing Bank under Bank Guarantee Facility B in relation to any proposed Utilisation, its Bank Guarantee B Sublimit less the Base Currency Amount of all Bank Guarantees issued by it under Bank Guarantee Facility B.

"Available Commitment" means, in relation to a Facility, a Lender's Commitment under that Facility minus (subject to Clause 9.8 (*Affiliates of Lenders as Ancillary Lenders*)) and as set out below):

- (a) the Base Currency Amount of its participation in any outstanding Utilisations under that Facility and, in the case of the Super Senior Revolving Facility

only, the Base Currency Amount of the aggregate of its Ancillary Commitments, Fronted Ancillary Commitments and Fronting Ancillary Commitments; and

- (b) in relation to any proposed Utilisation, the Base Currency Amount of its participation in any other Utilisations that are due to be made under that Facility on or before the proposed Utilisation Date and, in the case of the Super Senior Revolving Facility only, the Base Currency Amount of its Ancillary Commitment, Fronting Ancillary Commitment and Fronted Ancillary Commitments in relation to any new Ancillary Facility, Fronting Ancillary Commitment or Fronted Ancillary Facility that is due to be made available on or before the proposed Utilisation Date.

For the purposes of calculating a Lender's Available Commitment in relation to any proposed Utilisation under a Bank Guarantee Facility only, the amount of that Lender's participation in any Bank Guarantee Facility Utilisations under that Bank Guarantee Facility that are due to be repaid or prepaid on or before the proposed Utilisation Date shall not be deducted from a Lender's Commitment under that Facility.

For the purposes of calculating a Lender's Available Commitment in relation to any proposed Utilisation under the Super Senior Revolving Facility only, the following amounts shall not be deducted from a Lender's Super Senior Revolving Facility Commitment:

- (a) that Lender's participation in any Super Senior Revolving Facility Utilisations that are due to be repaid or prepaid on or before the proposed Utilisation Date; and
- (b) that Lender's (or its Affiliate's) Ancillary Commitments, Fronting Ancillary Commitments and Fronted Ancillary Commitments to the extent that they are due to be reduced or cancelled on or before the proposed Utilisation Date.

"Available Credit Balance" means, in relation to an Ancillary Facility or Fronted Ancillary Facility, credit balances on any account of any Borrower of that Ancillary Facility or Fronted Ancillary Facility with the Ancillary Lender or Fronting Ancillary Lender making available that Ancillary Facility or Fronted Ancillary Facility to the extent that those credit balances are freely available to be set off by that Ancillary Lender or Fronting Ancillary Lender against liabilities owed to it by that Borrower under that Ancillary Facility or Fronted Ancillary Facility.

"Available Facility" means, in relation to a Facility, the aggregate for the time being of each Lender's Available Commitment in respect of that Facility.

"Bank Guarantee" means:

- (a) a bank guarantee substantially in the form set out in Schedule 11 (*Form of Bank Guarantee*) or in any other form requested by the Company and agreed by the relevant Issuing Bank (acting reasonable and only applying principles that are applied generally to similarly structured borrowers or to similar situations); or
- (b) any guarantee, surety (*Bürgschaft*), surety on first demand (*Bürgschaft auf erstes Anfordern*), indemnity or other instrument in a form requested by a Borrower (or the Company on its behalf) and agreed by the relevant Issuing Bank.

"Bank Guarantee Agent's Spot Rate of Exchange" means the rate of exchange for the purchase of the relevant currency with the Base Currency that:

- (a) is published on the internet page "www.db-markets.com" as "Deutsche Bank Fixings EUR" (on the sub-page "Markets/ FX-Rates", further sub-page "DB Fixings") or on any other internet page replacing such internet page; or
- (b) if the conversion rate is not published on the internet page referenced above, the conversion shall be based on the previous month's foreign exchange rates published on the same internet page on the sub-page "historic rates", "end of month prices".

"Bank Guarantee B Sublimit" means a Bank Guarantee B Sublimit 1 and a Bank Guarantee B Sublimit 2 and, upon appointment of any additional Issuing Bank under Bank Guarantee Facility B in accordance with the terms of this Agreement, any additional Bank Guarantee B Sublimit that has been agreed with such Issuing Bank and has been notified to the Bank Guarantee Agent by the time such appointment takes effect.

"Bank Guarantee B Sublimit Adjustment Date" has the meaning given to it in paragraph (a) of Clause 6.13 (*Adjustments of Bank Guarantee B Sublimit*).

"Bank Guarantee B Sublimit 1" means with respect to New Issuing Bank 1, as at the date of this Agreement EUR [], as adjusted from time to time in accordance with Clause 6.13 (*Adjustment of Bank Guarantee B Sublimit*).

"Bank Guarantee B Sublimit 2" means with respect to New Issuing Bank 2, as at the date of this Agreement EUR [], as adjusted from time to time in accordance with Clause 6.13 (*Adjustment of Bank Guarantee B Sublimit*).

"Bank Guarantee Facility" means Bank Guarantee Facility A or Bank Guarantee Facility B.

"Bank Guarantee Facility A" means the guarantee facility made available under this Agreement as described in paragraph (a)(iv) of Clause 2.1 (*The Facilities*).

"Bank Guarantee Facility A Commitment" means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Bank Guarantee Facility A Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Bank Guarantee Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and
- (b) in relation to any other Lender, the amount in the Base Currency of any Bank Guarantee Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

to the extent not transferred by it, cancelled or reduced under this Agreement.

"Bank Guarantee Facility A Utilisation" means a Utilisation of Bank Guarantee Facility A made available under this Agreement as described in paragraph (a)(iv) of Clause 2.1 (*The Facilities*).

"Bank Guarantee Facility B" means the guarantee facility made available under this Agreement as described in paragraph (a)(v) of Clause 2.1 (*The Facilities*).

"Bank Guarantee Facility B Commitment" means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Bank Guarantee Facility B Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Bank Guarantee Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and
- (b) in relation to any other Lender, the amount in the Base Currency of any Bank Guarantee Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

to the extent not transferred by it, cancelled or reduced under this Agreement.

"Bank Guarantee Facility B Utilisation" means a Utilisation of the Bank Guarantee Facility B made available under this Agreement as described in paragraph (a)(v) of Clause 2.1 (*The Facilities*).

"Bank Guarantee Proportion" means in relation to a Lender under the relevant Bank Guarantee Facility or the Super Senior Revolving Facility in respect of any Bank Guarantee, the proportion (expressed as a percentage) borne by that Lender's Available Commitment to the relevant Available Facility immediately prior to the

issue of that Bank Guarantee, adjusted to reflect any assignment or transfer under this Agreement to or by that Lender.

"Bank Levy" has the meaning given to it in paragraph (b)(ii) of Clause 19.1 (*Increased costs*).

"Base Currency" means euro.

"Base Currency Amount" means:

- (a) in relation to a Utilisation, the amount specified in the Utilisation Request delivered by a Borrower for that Utilisation (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Relevant Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the date the Agent, or the relevant Lender (in relation to Bank Guarantee Facility A) or the Bank Guarantee Agent (as applicable) receives the Utilisation Request in accordance with the terms of this Agreement) and, in the case of a Bank Guarantee, as adjusted under Clause 6.9 (*Revaluation of Bank Guarantees*) at six-monthly intervals; and
- (b) in relation to an Ancillary Commitment, a Fronted Ancillary Commitment or a Fronting Ancillary Commitment, the amount specified as such in the notice delivered pursuant to Clause 9.2 (*Availability*) (or, if the amount specified is not denominated in the Base Currency, that amount converted into the Base Currency at the Relevant Spot Rate of Exchange on the date which is three Business Days before the Ancillary Commencement Date for that Ancillary Facility or the Fronted Ancillary Commencement Date for that Fronted Ancillary Facility or, if later, the date the Agent or Bank Guarantee Agent (as applicable) receives the notice of the Ancillary Commitment, any Fronted Ancillary Commitment or any Fronting Ancillary Commitment in accordance with the terms of this Agreement),

as adjusted to reflect any repayment, prepayment, consolidation or division of a Utilisation, or (as the case may be) cancellation or reduction of an Ancillary Facility or a Fronted Ancillary Facility.

"Basel III" has the meaning given to it in paragraph (b)(iii) of Clause 19.1 (*Increased costs*).

"Belgian Borrower" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"Belgian Capitalisation Notice" has the meaning given to it in paragraph (e) of Clause 14.3 (*Capitalised Interest/Cash Pay option for Term Facility B Loans*).

"Belgian Capitalised Interest" has the meaning given to it in paragraph (e) of Clause 14.3 (*Capitalised Interest/Cash Pay option for Term Facility B Loans*).

"Belgian Companies Code" means the Belgian *Wetboek van Vennootschappen/Code des Sociétés* as amended from time to time.

"Belgian Guarantor" has the meaning given to it in Clause 23.17 (*Guarantee Limitations for Belgian Guarantors*).

"Belgian Non-Cooperative Jurisdiction" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"BGB" means the German Civil Code (*Bürgerliches Gesetzbuch*).

"Borrower" means each Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 31 (*Changes to the Obligors*) and, with respect to an Ancillary Facility or a Fronted Ancillary Facility only, any Subsidiary of a Borrower that becomes a borrower of that Ancillary Facility or Fronted Ancillary Facility with the approval of the relevant Lender pursuant to Clause 9.9 (*Subsidiaries of Borrowers*).

"Borrower DTTP Filing" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"Borrowings" means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of members of the Group for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution (excluding any given in respect of trade credit arising in the ordinary course of business unless payment by the relevant issuing bank or financial institution is due under the relevant instrument);

- (g) any amount of any liability under an advance or deferred purchase agreement if:
 - (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question; or
 - (ii) the agreement is in respect of the supply of assets or services and payment is due more than 120 days after the date of supply (save where (A) the payment deferral results from non or delayed satisfaction of the contract terms by the relevant supplier or from contract terms establishing payment tied to the total or partial completion of the contract or (B) such agreement has been concluded on arm's length terms and is not treated as a borrowing under the Accounting Principles);
- (h) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; and
- (i) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

"Breach Period" has the meaning given to it in Clause 26.4 (*Cure*).

"Break Costs" means the amount (if any) by which:

- (a) the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:
- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"Budget" means in relation to any Financial Year of the Company, any budget delivered by the Company to the Agent in respect of that period pursuant to paragraph (a) of Clause 25.4 (*Budget*).

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in Frankfurt am Main, Düsseldorf, Stuttgart, London and Luxembourg and:

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

"Capital Expenditure" means any expenditure of the Group or obligation in respect of expenditure of the Group which, in accordance with the Accounting Principles, is treated as capital expenditure (and including, but not limited to, the capital element of any expenditure or obligation incurred in connection with a Finance Lease).

"Capitalised Interest" has the meaning given to that term in paragraph (a)(ii) of Clause 14.3 (*Capitalised Interest / Cash pay option for Term Facility B Loans*).

"Capitalised Interest Option" has the meaning given to it in paragraph (c) of Clause 14.3 (*Capitalised Interest/Cash pay option for Term Facility B Loans*).

"Capitalised Margin" means 2.00 per cent. per annum.

"Cash Equivalent Investments" means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, Norway, Sweden, Denmark, the United Kingdom or any other Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security:
 - (i) for which a recognised trading market exists;

- (ii) issued by an issuer incorporated in the United States of America, Norway, Sweden, Denmark, the United Kingdom or any other Participating Member State;
 - (iii) which matures within one year after the relevant date of calculation; and
 - (iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investor Services Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);
- (e) any investment in money market funds which (i) have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investor Services Limited, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above and (iii) can be turned into cash on not more than 30 days' notice; or
- (f) any other debt security approved by the Majority Lenders,

in each case, denominated in dollars, the Base Currency, Danish Krone, Norwegian Krone, Swedish Krona or sterling and to which any member of the Group is alone (or together with other members of the Group beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents or any Permitted Security)).

"Cash Management Services Agreement" means any agreement to be entered into or entered into between the Company and/or other members of the Group and the relevant Cash Management Services Provider in relation to the provision of cash management services (including cash pooling) to the Group.

"Cash Management Services Provider" has the meaning given to such term in the Intercreditor Agreement.

"CB Funds" means funds managed by Centerbridge Partners, L.P. or its Affiliates.

"Change of Control" means:

- (a) prior to a Qualifying IPO, Restructuring Shareholders each of which holds at least 5% of the shares in LuxCo as at the time of closing the restructuring as contemplated under the Restructuring Deed (in aggregate and in whatever combination) cease to control directly or indirectly the Company; or
- (b) following a Qualifying IPO, Restructuring Shareholders each of which holds at least 5% of the shares in LuxCo as at the time of closing the restructuring as contemplated under the Restructuring Deed (in aggregate and in whatever combination) cease to control directly or indirectly more than 30 per cent. of the voting shares of the Company or any person or group of persons acting in concert owns a greater percentage of voting shares of the Company than such Restructuring Shareholders (in aggregate and in whatever combination).

For the purposes of paragraph (a) of this definition, "**control**" of the Company means:

- (a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (i) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the Company;
 - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the Company; or
 - (iii) give directions with respect to the operating and financial policies of the Company with which the directors or other equivalent officers of the Company are obliged to comply; or
- (b) the holding of more than one half of the issued share capital of the Company.

For the purposes of paragraph (b) of this definition, "**acting in concert**" means a group of persons who, pursuant to an agreement or understanding (whether formal or informal) actively co-operate, through the acquisition of shares in the Company by any of them, either directly or indirectly, to obtain or consolidate control of the Company.

"**Charged Property**" means all of the assets of the Obligors and Luxco 3 which from time to time are, or are expressed to be, the subject of the Transaction Security.

"**CIBOR**" means in relation to any Loan in DKK:

- (a) the applicable Screen Rate;

- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:
 - (i) no Screen Rate is available for the Interest Period of that Loan; and
 - (ii) it is not possible to calculate an Interpolated Screen Rate for that Loan, the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for DKK and for a period equal in length to the Interest Period of that Loan and, in relation to the Term Facility B only, if that rate is less than zero, CIBOR shall be deemed to be zero.

"Code" means the US Internal Revenue Code of 1986.

"Commercial Lifetime" means in respect of a Bank Guarantee which does not provide for a specific fixed termination date, the expected maturity of the Bank Guarantee as indicated by the relevant Borrower (or the Company on its behalf) in the relevant Utilisation Request, determined on the basis of the lifetime of the underlying obligations and as adjusted from time to time (as the case may be) based on information provided by the Borrower (or the Company on its behalf).

"Commitment" means a Term Facility A Commitment, a Term Facility B Commitment, a Term Facility C Commitment, a Bank Guarantee Facility A Commitment, a Bank Guarantee Facility B Commitment or a Super Senior Revolving Facility Commitment.

"Competitor" has the meaning given to it in paragraph (d) of Clause 29.2 (*Conditions of Assignment or Transfer*).

"Compliance Certificate" means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*).

"Confidential Information" means all information relating to the Company, any Obligor, the Group, any Holding Company of the Company, any Restructuring Shareholder, the Finance Documents or a Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or a Facility from either:

- (a) any member of the Group, any Restructuring Shareholder or in each case any of its advisers; or

- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers;

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 42 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group, any Restructuring Shareholder or in each case any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Confidentiality Undertaking" means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 9 (*LMA form of Confidentiality Undertaking*) or in any other form agreed between the Company and the Agent.

"Confirmation" has the meaning given to it in paragraph (a)(iv) of Clause 28.17 (*Restructuring Opinion*).

"Consequential Amendment" has the meaning given to it in paragraph (a)(ii) of Clause 41.3 (*Structural Adjustment*).

"Consolidated EBITDA" has the meaning given to such term in Clause 26.1 (*Financial definitions*).

"Controlling Person" has the meaning given to it in Clause 23.14 (*Guarantee Limitations for Italian Guarantors*).

"Conversion Rate" has the meaning given to that term in paragraph (c) of Clause 4.5 (*Redenomination of Facility B Loans*).

"CRD IV" has the meaning given to it in paragraph (b)(iv) of Clause 19.1 (*Increased costs*).

"Cure" has the meaning given to it in Clause 26.4 (*Cure*).

"Current Net Worth" has the meaning given to it in Clause 23.14 (*Guarantee Limitations for Italian Guarantors*).

"Danish Borrower" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"Danish Guarantor" has the meaning given to it in Clause 23.13 (*Guarantee Limitations for Danish Guarantors*).

"Debt Purchase Transaction" means, in relating to a person, a transaction where such person purchases by way of assignment or transfer any Commitment or amount outstanding under this Agreement.

"Debt Service Reserve Account" means an account established in the name of LuxCo 2 to satisfy its obligations set forth in paragraph (a) of clause 17.1 (*Debt Service Reserve Account*) of the Holdco Facilities Agreement.

"Debt Service Reserve Amount" means EUR []¹.

"Declared Event of Default" means an Event of Default, which is continuing, of which either the Agent has notified the Company or the Company has notified the Agent.

"Default" means an Event of Default or any event or circumstance specified in Clause 28 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Defaulting Lender" means any Lender:

- (a) which has failed to make its participation in a Loan available or has notified the Agent or the Company (which has notified the Agent) that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with Clause 5.4 (*Lenders' participation*) or which has failed to provide cash collateral (or has notified the relevant Issuing Bank or the Company (which has notified the Agent) that it will not provide cash collateral) in accordance with Clause 7.4 (*Cash Collateral by Non-Acceptable B/G Lender and Borrower's Option to Provide Cash Cover*);
- (b) which has otherwise rescinded or repudiated a Finance Document;

¹ Final amount to be determined prior to signing.

- (c) which is an Issuing Bank which has failed to issue a Bank Guarantee (or has notified the Agent or the Company (which has notified the Agent) that it will not issue a Bank Guarantee) in accordance with Clause 6.5 (*Issue of Bank Guarantees*) or which has failed to pay a claim (or has notified the Agent or the Company (which has notified the Agent) that it will not pay a claim) in accordance with (and as defined in) Clause 7.2 (*Claims under a Bank Guarantee*) ; or
- (d) with respect to which an Insolvency Event has occurred and is continuing, unless, in the case of paragraphs (a) and (c) above:
 - (i) its failure to pay, or to issue a Bank Guarantee, is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made within five Business Days of its due date; or
 - (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

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

"Designated Gross Amount" means the amount notified by the Company to the Agent upon the establishment of a Multi-account Overdraft as being the maximum amount of Gross Outstandings that will, at any time, be outstanding under that Multi-account Overdraft.

"Designated Net Amount" means the amount notified by the Company to the Agent upon the establishment of a Multi-account Overdraft as being the maximum amount of Net Outstandings that will, at any time, be outstanding under that Multi-account Overdraft.

"Designated Website" has the meaning given to it in paragraph (a) of Clause 37.7 (*Use of websites*).

"Direction" has the meaning given to it in paragraph (d)(ii)(A) of Clause 18.2 (*Tax gross-up*).

"Disclosing Lender" has the meaning given to it in paragraph (a) of Clause 43.3 (*Supply of Lender Details to other Lenders*).

"Disposal" has the meaning given to it in paragraph (a) of Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*).

"Disposal Proceeds" has the meaning given to it in paragraph (a) of Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*).

"Disposing Company" has the meaning given to it in the definition of "Permitted Disposal".

"Dispute" has the meaning given to it in Clause 46.1 (*Jurisdiction of English Courts*).

"Distribution" means in respect of a member of the Group:

- (a) declaring, making or paying any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (b) repaying or distributing any dividend or share premium reserve;
- (c) paying any management, advisory or other fee or payment to or to the order of the directors of the Company, any of the Restructuring Shareholders or any Holding Company of the Company;
- (d) redeeming, repurchasing, defeasing, retiring or repaying any of its share capital or resolving to do so;
- (e) the making of any loan by the Company or any Subsidiary of the Company to Luxco 3, any Holding Company of Luxco 3 or any of the Restructuring Shareholders; or
- (f) purchasing, redeeming, defeasing or otherwise discharging by a member of the Group any amount payable in connection with the Holdco Facilities Agreement or any other document entered into in connection therewith or the Equity Documents but excluding any purchasing, redeeming, defeasing or otherwise discharging of any such amounts by any direct or indirect Holding Company of the Company with funds received by such Holding Company from any member of the Group.

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party;
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"Enforcement Notice" has the meaning given to it in paragraph (c) of Clause 23.11 (*Guarantee Limitations for German Guarantors*).

"Environmental Claim" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

"Environmental Law" means any applicable law or regulation which relates to:

- (a) the pollution or protection of the environment;
- (b) harm to or the protection of human health;
- (c) the conditions of the workplace; or
- (d) any emission or substance capable of causing harm to any living organism or the environment.

"Environmental Permits" means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.

"Equity Documents" means the constitutional documents of the Company and any subordinated debt instrument by which any New Shareholder Injection is made.

"EURIBOR" means in relation to any Loan in euro:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:

- (i) no Screen Rate is available for the Interest Period of that Loan; and
 - (ii) it is not possible to calculate an Interpolated Screen Rate for that Loan,
- the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for euro and for a period equal in length to the Interest Period of that Loan, and, in relation to the Term Facility B only, if that rate is less than zero, EURIBOR shall be deemed to be zero.

"European interbank market" has the meaning given to it in paragraph (a)(v) of Clause 1.2 (*Construction*).

"Event of Default" means any event or circumstance specified as such in Clause 28 (*Events of Default*).

"Excess Cashflow" means, in respect of a Sweep Calculation Date, Change in Actual Cash:

- (a) **less** the amount of all drawings under Free Facilities (at the time of the drawing) during the Relevant Period ending on that Sweep Calculation Date that have not been repaid or prepaid during that Relevant Period;
- (b) **less** any Relevant Proceeds received by any member of the Group during the Relevant Period ending on that Sweep Calculation Date;
- (c) **less** the amount of Capital Expenditure:
 - (i) budgeted in respect of the Financial Year ending on that Sweep Calculation Date, but not booked;
 - (ii) booked in the Financial Year ending on that Sweep Calculation Date but not yet paid; and
 - (iii) actually committed (but not yet booked) in respect of the Financial Year ending on the next Sweep Calculation Date;
- (d) **less** the amount of any New Shareholder Injections made during that the Relevant Period ending on the Sweep Calculation Date;
- (e) **less** the amount of Trapped Cash as at that Sweep Calculation Date; and
- (f) **less** any amount of cash cover provided by an Obligor in accordance with the terms of this Agreement during the Relevant Period.

"Excluded Insurance Proceeds" has the meaning given to it in paragraph (a) of Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*).

"Excluded Disposal Proceeds" has the meaning given to it in paragraph (a) of Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*).

"Existing Bank Guarantee" means each of the bank guarantees set out in Schedule 13 (*Existing Bank Guarantees*) that were issued under the Existing Facilities Agreement that are to be rolled under and deemed to be drawn under this Agreement.

"Existing Lender" has the meaning given to it in Clause 29.1 (*Assignment and Transfers by the Lenders*).

"Existing Facilities Agreement" means each of:

- (a) the super senior facilities agreement dated 29 November 2013 with, amongst others, Wilmington Trust (London) Limited as agent, APCOA PARKING Deutschland GmbH as borrower and the Company as guarantor; and
- (b) the facilities agreement originally dated 23 April 2007 made between the Company, the Lenders (as defined therein), the Retiring Issuing Bank and others dated as amended and/or amended and restated from time to time prior to the date of this agreement.

"Existing Tranche" has the meaning given to it in paragraph (a)(iii) of Clause 41.3 (*Structural Adjustment*).

"Expiry Date" means, for a Bank Guarantee, the last day of its Term.

"Facility" means a Term Facility, a Bank Guarantee Facility or the Super Senior Revolving Facility.

"Facility Office" means:

- (a) in respect of a Lender or an Issuing Bank, the office or offices notified by that Lender or that Issuing Bank to the Agent in writing on or before the date it becomes a Lender or that Issuing Bank (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

"FATCA" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the United States of America and any other jurisdiction, which (in either case) facilitates the implementation of any law, regulation or guidance referred to in paragraph (a) above; and
- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the United States Internal Revenue Service, the government of the United States of America or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the United States of America), 1 July 2014;
- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the United States of America), 1 January 2017; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2017,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

"FATCA Deduction" means a deduction or withholding from a payment under a Finance Document required by FATCA.

"FATCA Default" has the meaning given to it in paragraph (d) of Clause 32.10 (*Lenders' indemnity to the Agent*).

"FATCA Exempt Party" means a Party that is entitled to receive payments free from any FATCA Deduction.

"Fee Letter" means:

- (a) any letter or letters dated on or about the date of this Agreement between any Lender under the Super Senior Revolving Facility and/or Bank Guarantee Facility A and the Company (or the Agent and the Company, the Security

Trustee and the Company, the Bank Guarantee Agent and the Company or an Issuing Bank and the Company) setting out any of the fees referred to in Clause 17 (*Fees*); and

- (b) any agreement setting out fees payable to a Finance Party referred to in Clause 17.4 (*Fees payable in respect of Bank Guarantees*) or Clause 17.5 (*Interest, commission and fees on Ancillary Facilities*) of this Agreement or under any other Finance Document.

"Finance Document" means this Agreement, any Accession Letter, any Ancillary Document, any Fronted Ancillary Document, any Compliance Certificate, any Fee Letter, any Hedging Agreement, the Intercreditor Agreement, any Resignation Letter, any Selection Notice, any Transaction Security Document, any Utilisation Request and any other document designated as a "Finance Document" by the Agent and the Company **provided that** where the term "Finance Document" is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedging Agreement shall be a Finance Document only for the purposes of:

- (a) the definition of "Material Adverse Effect";
- (b) paragraph (a) of the definition of "Permitted Transaction";
- (c) the definition of "Transaction Security Document";
- (d) Clause 1.2(a)(i) (*Construction*);
- (e) Clause 23 (*Guarantee and Indemnity*); and
- (f) Clause 28 (*Events of Default*) (other than paragraph (b) of Clause 28.14 (*Repudiation and rescission of agreements*) and Clause 28.18 (*Acceleration*));

"Finance Lease" has the meaning given to that term in Clause 26.1 (*Financial definitions*).

"Finance Party" means the Agent, the Security Trustee, the Bank Guarantee Agent, a Lender, each Issuing Bank, a Hedge Counterparty, any Ancillary Lender, any Fronted Ancillary Lender and any Fronting Ancillary Lender, **provided that** where the term "Finance Party " is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedge Counterparty shall be a Finance Party only for the purposes of:

- (a) paragraph (a)(i) of Clause 1.2 (*Construction*);
- (b) paragraph (c) of the definition of "Material Adverse Effect";
- (c) Clause 23 (*Guarantee and Indemnity*); and

(d) Clause 33 (*Conduct of Business by the Finance Parties*).

"Financial Covenant" means each of the financial covenants set out in Clause 26.2 (*Financial condition*).

"Financial Indebtedness" means, without double counting, any indebtedness for or in respect of:

- (a) monies borrowed and debit balances at banks or other financial institutions;
- (b) any amount raised by any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of Finance Leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis) and meet any requirements for de-recognition under the Accounting Principles;
- (f) for the purposes of Clause 28.5 (*Cross default*) only, any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value as at the relevant date on which Financial Indebtedness is calculated (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability (but not Trade Instruments) of an entity which is not a member of the Group which liability would fall within one of the other paragraphs of this definition;
- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the latest Termination Date in respect of any of the Facilities (or are otherwise classified as borrowings under the Accounting Principles);
- (i) any amount of any liability under an advance or deferred purchase agreement if:
 - (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question; or

- (ii) the agreement is in respect of the supply of assets or services and payment is due more than 120 days after the date of supply (save where (A) the payment deferral results from non or delayed satisfaction of the contract terms by the relevant supplier or from contract terms establishing payment tied to the total or partial completion of the contract or (B) such agreement has been concluded on arm's length terms and is not treated as a borrowing under the Accounting Principles);
- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; and
- (k) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.

"Financial Quarter" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"Financial Year" has the meaning given to that term in Clause 26.1 (*Financial definitions*).

"First Currency" has the meaning given to it in paragraph (a) of Clause 20.1 (*Currency indemnity*).

"First Sharing Date" has the meaning given to it in paragraph (h) of Clause 7.3 (*Indemnities*).

"Flotation" means a listing of all or any part of the issued share capital of the Company (or any person specifically established to be the Holding Company of the Group but excluding the Restructuring Shareholders) on any recognised stock exchange.

"Fronted Ancillary Commencement Date" means, in relation to a Fronted Ancillary Facility, the date on which that Fronted Ancillary Facility is first made available, which date shall be a Business Day within the Availability Period for the Super Senior Revolving Facility.

"Fronted Ancillary Commitment" means, in relation to a Fronted Ancillary Lender and a Fronted Ancillary Facility, the maximum Base Currency Amount which that Fronted Ancillary Lender has agreed (whether or not subject to satisfaction of conditions precedent) to counter-indemnify the Fronting Ancillary Lender from time to time under a Fronted Ancillary Facility as notified by the Company to the Agent pursuant to Clause 9.2 (*Availability*), to the extent that amount is not cancelled or

reduced under this Agreement or the Fronted Ancillary Documents relating to that Fronted Ancillary Facility.

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

"Fronted Ancillary Facility" means any fronted ancillary facility made available by a Fronting Ancillary Lender and one or more Fronted Ancillary Lenders in accordance with Clause 9 (*Ancillary Facilities and Fronted Ancillary Facilities*).

"Fronted Ancillary Lender" means each Lender (or Affiliate of a Lender) which participates in a Fronted Ancillary Facility in accordance with Clause 9 (*Ancillary Facilities and Fronted Ancillary Facilities*) and which provides a counter-indemnity in favour of a Fronting Ancillary Lender in respect of that Fronted Ancillary Facility.

"Fronted Bank Guarantee" means any Bank Guarantee which is a 'Fronted Bank Guarantee' in accordance with Clause 6.6 (*Fronted Bank Guarantee*).

"Fronted Lender" means each Lender which participates in a Fronted Bank Guarantee in accordance with Clause 6.6 (*Fronted Bank Guarantee*) and which provides a counter-indemnity in favour of an Issuing Bank in respect of that Fronted Bank Guarantee.

"Fronting Ancillary Commitment" means, in relation to a Fronting Ancillary Lender and a Fronted Ancillary Facility, the maximum Base Currency Amount which that Fronting Ancillary Lender has agreed (whether or not subject to satisfaction of conditions precedent) to make available from time to time under a Fronted Ancillary Facility and which has been authorised as such under Clause 9 (*Ancillary Facilities and Fronted Ancillary Facilities*), to the extent that amount is not cancelled or reduced under this Agreement or the Fronted Ancillary Documents relating to that Fronted Ancillary Facility, and for which the Fronting Ancillary Lender is not counter-indemnified by Fronted Ancillary Lenders pursuant to paragraph (b) of Clause 9.12 (*Fronted Ancillary Commitment Indemnities*) (and therefore always without double-counting in respect of Fronted Ancillary Commitments).

"Fronting Ancillary Lender" means each Lender (or Affiliate of a Lender) which makes available a Fronted Ancillary Facility in accordance with Clause 9 (*Ancillary Facilities and Fronted Ancillary Facilities*) and which is counter-indemnified in respect of part of that Fronted Ancillary Facility by one or more Fronted Ancillary Lenders.

"German Borrower" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"German Group" has the meaning given to it in Clause 27.35 (*Limitations on Undertakings*).

"Gross Outstandings" means, in relation to a Multi-account Overdraft, the Ancillary Outstandings of that Multi-account Overdraft but calculated on the basis that the words "(net of any Available Credit Balance)" in paragraph (a)(i) or paragraph (b)(i) (as applicable) of the definition of "Ancillary Outstandings" were deleted.

"GP" means Park Luxco GP S.à r.l., a société à responsabilité limitée incorporated and existing under the laws of the Grand Duchy of Luxembourg, having its registered office at 25C, Boulevard Royal, L-2449 Luxembourg and in the process of being registered with the Luxembourg Trade and Companies Register.

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

"Group Structure Chart" means the group structure chart dated on or about the date of this Agreement to be delivered as condition precedent pursuant to Clause 4.1 (*Initial conditions precedent*).

"Guarantor" means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 31 (*Changes to the Obligors*).

"Hedge Counterparty" means a person which has become a party to the Intercreditor Agreement as a Hedge Counterparty in accordance with the provisions of the Intercreditor Agreement.

"Hedging Agreement" means any master agreement, confirmation, schedule or other agreement entered into or to be entered into on the basis of ISDA documentation or the *Deutscher Rahmenvertrag* by a Borrower and a Hedge Counterparty for the purpose of hedging the types of liabilities and/or risks in relation to the Facilities.

"Holdco Facilities Agreement" means the EUR [432,000,000] facilities agreement dated on or about the date of this Agreement between, *inter alia*, Park Luxco 2 S.à r.l. as borrower and Wilmington Trust (London) Limited as agent.

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

"IFRS" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"Impaired Agent" means the Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;

- (b) the Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a), (b) or (c) of the definition of "Defaulting Lender"; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent;

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

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made within five Business Days of its due date; or
- (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

"Increase Confirmation" means a confirmation substantially in the form set out in Schedule 12 (*Form of Increase Confirmation*).

"Increase Lender" has the meaning given to that term in paragraph (a)(iii) of Clause 2.2 (*Increase*).

"Increased Costs" has the meaning given to it in paragraph (b)(i) of Clause 19.1 (*Increased costs*).

"Incremental Facility Commitments" means in relation to an entity identified as an Incremental Facility Lender in an Incremental Facility Notice, the amount set opposite its name under the heading "Incremental Facility Commitment" in that Incremental Facility Notice.

"Incremental Facility Date" the date specified as such in an Incremental Facility Notice being the date upon which the relevant Incremental Facility Tranche is to take effect.

"Incremental Facility Lender" has the meaning given to it in paragraph (b) of Clause 2.5 (*Incremental Facility Commitments*).

"Incremental Facility Loan" means a loan made or to be made under an Incremental Facility Tranche or the principal amount outstanding for the time being of that loan.

"Incremental Facility Minimum Amount" means the minimum amount:

- (a) reasonably required to effect a Cure in accordance with Clause 26.4 (*Cure*); and
- (b) to ensure that the Group is able to operate as a going concern for the 12 month period following the date that that minimum amount is made available to the relevant Borrowers.

"Incremental Facility Notice" means a notice substantially in the form set out in Schedule 16 (*Incremental Facility Notice*) delivered by the Company to the Agent in accordance with Clause 2.5 (*Incremental Facility Commitments*).

"Incremental Facility Opinion" means an opinion prepared by any firm referred to in the definition of Auditors addressed to or capable of being relied upon (subject to limitations reasonably requested by the provider) the Finance Parties and provided in accordance with Clause 2.5 (*Incremental Facility Commitments*), reporting upon whether the amount of any Incremental Facility Tranche is equal to or greater than the Incremental Facility Minimum Amount.

"Incremental Facility Terms" has the meaning given to it in paragraph (d) of Clause 2.5 (*Incremental Facility Commitments*).

"Incremental Facility Tranche" means any Tranche of Term Facility B and/or Term Facility C made available under this Agreement pursuant to Clause 2.5 (*Incremental Facility Commitments*).

"Indirect letter of guarantee" has the meaning given to it in paragraph (g) of Clause 17.4 (*Fees payable in respect of Bank Guarantees and Fronted Bank Guarantees*).

"Information Package" means the Reports and the Restructuring Opinion.

"Insolvency Event" in relation to a Finance Party means that the Finance Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or

other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;

- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Insurance Proceeds" has the meaning given to it in paragraph (a) of Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*).

"Insurance Report" means an insurance report prepared by Südvers GmbH and dated May 2014.

"Intellectual Property" means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each member of the Group.

"Intercreditor Agreement" means the intercreditor agreement dated on or about the date of this Agreement and made between Luxco 3, the Company, Deutsche Bank, Luxembourg S.A. as Security Trustee and Agent, the Lenders, the Ancillary Lenders and certain others.

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 15 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 14.4 (*Default interest*).

"Interpolated Screen Rate" means, in relation to LIBOR, EURIBOR, NIBOR, STIBOR or CIBOR for any Loan, the rate which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the Specified Time on the Quotation Day for the currency of that Loan.

"Investment Grade Rating" has the meaning given to it in Clause 43.5 (*Lender Details Definitions*).

"Issuing Bank" means:

- (a) the Retiring Issuing Bank;
- (b) a New Issuing Bank;
- (c) with respect to Bank Guarantee Facility A, each person that is a Lender under Bank Guarantee Facility A; and
- (d) any other Lender which has notified the Agent that it has agreed to the Company's request to be an Issuing Bank pursuant to Clause 6.10 (*Issuing Bank*),

or, with the Company's prior consent, any of their Affiliates, unless, in each case, any such person has ceased to be an Issuing Bank under any Bank Guarantee Facility or the Super Senior Revolving Facility with the consent of the Company or otherwise in accordance with this Agreement.

"Italian Civil Code" has the meaning given to it in Clause 23.14 (*Guarantee Limitations for Italian Guarantors*).

"Italian Guarantor" has the meaning given to it in Clause 23.14 (*Guarantee Limitations for Italian Guarantors*).

"Italian Target Company" has the meaning given to it in Clause 23.14 (*Guarantee Limitations for Italian Guarantors*).

"Joint Venture" means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

"Joint Venture Investment" has the meaning given to it in the definition of "Permitted Joint Venture".

"Legal Opinion" means any legal opinion delivered to the Agent pursuant to Clause 4.1 (*Initial Conditions Precedent*), Clause 27.30 (*Conditions subsequent*) or Clause 31 (*Changes to the Obligors*).

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under applicable laws, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

"Lender" means:

- (a) any Original Lender;

- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 2.2 (*Increase*) or Clause 29 (*Changes to the Lenders*); and
- (c) any Incremental Facility Lender,

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"LIBOR" means, in relation to any Loan, in any relevant Optional Currency:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:
 - (i) no Screen Rate is available for the currency of that Loan; or
 - (ii) no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan,

the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for the currency of that Loan and for a period equal in length to the Interest Period of that Loan and, in relation to the Term Facility B only, if that rate is less than zero, LIBOR shall be deemed to be zero.

"LMA" means the Loan Market Association.

"Loan" means a Term Loan or a Super Senior Revolving Facility Loan.

"Local Guarantee Facility" means a bank guarantee or letter of credit facility made available to a member of the Group bilaterally and/or locally.

"Luxco" means Park Luxco S.C.A., a *société en commandite par actions*, incorporated and existing under the laws of the Grand Duchy of Luxembourg, having its registered office at 25C, Boulevard Royal, L-2449 Luxembourg, in the process of being registered with the Luxembourg Trade and Companies Register and having a share capital of EUR 31,000.

"LuxCo 2" means Park Luxco 2 S.à r.l., a *société à responsabilité limitée*, incorporated and existing under the laws of the Grand Duchy of Luxembourg, having its registered office at 25C, Boulevard Royal, L-2449 Luxembourg, in the process of

being registered with the Luxembourg Trade and Companies Register and having a share capital of EUR 12,500.

"Luxco 3" means Park Luxco 3 S.C.A., a *société en commandite par actions*, incorporated and existing under the laws of the Grand Duchy of Luxembourg, having its registered office at 25C, Boulevard Royal, L-2449 Luxembourg, in the process of being registered with the Luxembourg Trade and Companies Register Register and having a share capital of EUR 31,000.

"Majority Lenders" means:

- (a) (for the purposes of paragraph (a) of Clause 41.1 (*Required consents*) in the context of a waiver in relation to a proposed Utilisation of any Facility of the condition in Clause 4.2 (*Further conditions precedent*) or Clause 6.5 (*Issue of Bank Guarantees*) (as applicable)), a Lender or Lenders whose Commitments under the respective Facility aggregate more than 66 2/3 per cent. of the aggregate of all Commitments under the relevant Facility; and
- (b) (in any other case), a Lender or Lenders whose Commitments aggregate more than 66 2/3 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 2/3 per cent. of the Total Commitments immediately prior to that reduction) provided that if there are two or more Lenders who are Affiliates of each other, the Majority Lenders must comprise at least two Lenders who are not Affiliates of each other,

in each case excluding, for the purposes of the calculation, any Term Facility B Commitments and any Term Facility C Commitments which constitute Incremental Facility Commitments.

"Majority Super Senior Lenders" means a Lender or Lenders whose Commitments aggregate more than 66 2/3 per cent. of the Total Super Senior Commitments (or, if the Total Super Senior Commitments have been reduced to zero, aggregated more than 66 2/3 per cent. of the Total Super Senior Commitments immediately prior to that reduction).

"Majority Term A Lenders" means a Lender or Lenders whose Term Facility A Commitments aggregate more than 66 2/3 per cent. of the Total Term Facility A Commitments (or, if the Total Term Facility A Commitments have been reduced to zero, aggregated more than 66 2/3 per cent. of the Total Term Facility A Commitments immediately prior to that reduction).

"Margin" means:

- (a) in relation to any Super Senior Revolving Facility Loan 4.25 per cent. per annum;

- (b) in relation to any Term Facility A Loan, 5.25 per cent. per annum;
- (c) in relation to any Term Facility B Loan (except for a Term Facility B Loan under an Incremental Facility Tranche):
 - (i) from (and including) the date of this Agreement to (and including) the date falling two years after the date of this Agreement 0.50 per cent. per annum plus, subject to Clause 14.3 (*Capitalised Interest / Cash pay option for Term Facility B Loans*), the Additional Cash Margin or the Capitalised Margin (as the case may be); and
 - (ii) from (but excluding) the date falling two years after the date of this Agreement to (and including) the date falling four years after the date of this Agreement, 2.00 per cent. per annum;
 - (iii) thereafter, 2.50 per cent. per annum;
- (d) in relation to any Term Facility B Loan under an Incremental Facility Tranche, the margin specified as part of the Incremental Facility Terms for the relevant Tranche under Facility B;
- (e) in relation to any Term Facility C Loan, the margin specified as part of the Incremental Facility Terms for the relevant Tranche under Facility C;
- (f) in relation to any Unpaid Sum relating or referable to a Facility, the rate per annum specified above for that Facility; and
- (g) in relation to any other Unpaid Sum, the highest rate specified above.

"Margin Line Liabilities" has the meaning given to that term in the Intercreditor Agreement.

"Margin Line Provider" has the meaning given to such term in the Intercreditor Agreement.

"Market Disruption Event" has the meaning given to it in paragraph (b) of Clause 16.2 (*Market disruption*).

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, assets, financial performance or financial condition of the Borrowers or the Obligors, in each case taken as a whole, which is, or is reasonably likely to be, materially adverse to the interests of the Lenders, taken as a whole;

- (b) the ability of the Obligor, taken as a whole, to perform and comply with their payment obligations under any of the Finance Documents; or
- (c) (subject to the Legal Reservations and the Perfection Requirements) the validity or enforceability of any of the Finance Documents, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of the Finance Documents, which is, or is reasonably likely to be, materially adverse to the interests of the Lenders, taken as a whole.

"Material Company" means, at any time:

- (a) an Obligor;
- (b) a member of the Group that holds shares in an Obligor; or
- (c) a Subsidiary of the Company which has earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA), representing 5 per cent. or more of Consolidated EBITDA.

Compliance with the conditions set out in paragraph (c) shall be determined by reference to the most recent Compliance Certificate supplied by the Company in respect of its latest audited consolidated financial statements of the Group.

However, if a Subsidiary has been acquired since the date as at which the latest audited consolidated financial statements of the Group were prepared, the financial statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary (that adjustment being certified by two directors of the Company as representing an accurate reflection of the revised Consolidated EBITDA).

A report by the Auditors of the Company that a Subsidiary is or is not a Material Company shall, in the absence of manifest error, be conclusive and binding on all Parties.

"Minimum EBITDA" has the meaning given to it in paragraph (a) of Clause 26.2 (*Financial condition*).

"Minimum Liquidity" has the meaning given to it in paragraph (b) of Clause 26.2 (*Financial condition*).

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period. **"Monthly"** shall be construed accordingly.

"Multi-account Overdraft" means an Ancillary Facility or Fronted Ancillary Facility which is an overdraft facility comprising more than one account.

"Net Outstandings" means, in relation to a Multi-account Overdraft, the Ancillary Outstandings of that Multi-account Overdraft.

"Net Worth" has the meaning given to it in Clause 23.14 (*Guarantee Limitations for Italian Guarantors*).

"New Lender" has the meaning given to it in Clause 29.1 (*Assignment and Transfers by the Lenders*).

"New SFA Utilisation Agreement" means the agreement in relation to the initial Utilisation of Term Facility B dated on or about the date of this Agreement and made between, among others, certain of the Original Borrowers and the Original Lenders.

"New Shareholder Injections" means the aggregate amount subscribed by any person (other than a member of the Group) for shares (including non-voting preference shares) in the Company or for subordinated loan notes or other subordinated debt instruments in the Company subordinated pursuant to the Intercreditor Agreement or by way of payment into the capital reserves (*Kapitalrücklage*) of the Company or otherwise on terms acceptable to the Majority Lenders.

"New Tranche" has the meaning given to it in paragraph (a)(iv) of Clause 41.3 (*Structural Adjustment*).

"NIBOR" means in relation to any Loan in NOK:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:

- (i) no Screen Rate is available for the Interest Period of that Loan; and
 - (ii) it is not possible to calculate an Interpolated Screen Rate for that Loan,
- the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for NOK and for a period equal in length to the Interest Period of that Loan and, in relation to the Term Facility B only, if that rate is less than zero, NIBOR shall be deemed to be zero.

"Non-Acceptable B/G Lender" means a Lender under the Super Senior Revolving Facility or a Bank Guarantee Facility which:

- (a) is neither an Acceptable Bank, nor a Permitted Bank nor a Lender which each Issuing Bank has agreed is acceptable to it;
- (b) is a Defaulting Lender; or
- (c) has failed to make (or has notified the Agent that it will not make) a payment to be made by it under Clause 7.3 (*Indemnities*) or Clause 32.10 (*Lenders' indemnity to the Agent*) or any other payment to be made by it under the Finance Documents to or for the account of any other Finance Party in its capacity as Lender by the due date for payment unless the failure to pay falls within the description of any of those items set out at paragraphs (i) and (ii) of the definition of "Defaulting Lender".

"Non-Acquisition Loans" has the meaning given to it in Clause 23.14 (*Guarantee Limitations for Italian Guarantors*).

"Non-Consenting Lender" has the meaning given to that term in paragraph (d) Clause 41.5 (*Replacement of Lender*).

"Norwegian Guarantor" has the meaning given to it in paragraph (a) of Clause 23.15 (*Guarantee Limitations for Norwegian Guarantors*).

"Obligor" means a Borrower or a Guarantor.

"Obligors' Agent" means the Company, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.4 (*Obligors' Agent*).

"Optional Currency" means a currency (other than the Base Currency) which complies with the conditions set out in Clause 4.3 (*Conditions relating to Optional Currencies*).

"Original Currency" means, in respect of a Redenominated Loan, the currency of that Loan as at the date of the Redenomination Notice in respect of the requested Redenomination of that Redenominated Loan.

"Original Financial Statements" means:

- (a) in relation to the Company, its consolidated audited financial statements for its Financial Year ended 31 December 2012; and
- (b) in relation to any other Obligor, its audited financial statements delivered to the Agent as required by Clause 31 (*Changes to the Obligors*).

"Original Obligors" means the Original Borrowers and Original Guarantors.

"Paper Form Lender" has the meaning given to it in paragraph (a) of Clause 37.7 (*Use of websites*).

"Participating Member State" means any member state of the European Union that adopts or has adopted, and in each case continues to adopt, the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"Party" means a party to this Agreement.

"Payables Reduction" has the meaning given to it in paragraph (a)(vi)(E) of Clause 41.3 (*Structural Adjustment*).

"Paying Party" has the meaning given to it in paragraph (a)(ii) of Clause 35.5 (*Impaired Agent*).

"Payment Default" means any default of any member of the Group to make a payment when due.

"Perfection Requirements" means the making of the appropriate registrations, filings or notifications in respect of the Transaction Security Documents as specifically contemplated by any Legal Opinion.

"Permitted Acquisition" means:

- (a) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;
- (b) an investment in a Permitted Joint Venture;
- (c) an acquisition of shares or securities pursuant to a Permitted Share Issue;

- (d) an acquisition of securities which are Cash Equivalent Investments so long as those Cash Equivalent Investments, if and to the extent acquired by an Obligor and subject to the Agreed Security Principles, become subject to the Transaction Security as soon as is reasonably practicable;
- (e) the incorporation of a limited liability company which on incorporation becomes a wholly-owned member of the Group, but only if:
 - (i) that company is incorporated or established with limited liability, and carries on its principal business and operations, in either a country which is a member state of the European Economic Area or the Organisation for Economic Co-operation and Development; and
 - (ii) if the shares in the company are owned by an Obligor, Security over the shares of that company, in form and substance satisfactory to the Agent, is created in favour of the Security Trustee within 30 days of the date of its incorporation;
- (f) an acquisition of (A) more than 50 per cent. of the issued share capital of a limited liability company or (B) (if the acquisition is made by a limited liability company whose sole purpose is to make the acquisition) a business or undertaking carried on as a going concern, but only if:
 - (i) no Event of Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;
 - (ii) the acquired company, business or undertaking is incorporated or established, and carries on its principal business in either a country which is a member state of the European Economic Area or the Organisation for Economic Co-operation and Development and is engaged in a business substantially the same as, or complementary to, that carried on by the Group;
 - (iii) the acquired company (on a consolidated basis if it has Subsidiaries) or business or undertaking has positive earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA) for a period of 12 months before the completion of the acquisition (on a pro forma basis);
 - (iv) the consideration for that acquisition (including any Joint Venture Investment made prior to the relevant acquisition in respect of the acquired company or business) and any Financial Indebtedness or other assumed actual or contingent liability in each case remaining in the acquired company (or any such business) at the date of acquisition (the "**Total Purchase Price**") exceeds EUR 15,000,000 (or its

equivalent), the Company has delivered to the Agent prior to signing of the relevant acquisition agreement a copy of a legal due diligence report in respect of such acquisition prepared by a reputable law firm, a copy of an accountant's due diligence report in respect of such acquisition prepared by a reputable auditor, a copy of an environmental due diligence report and a copy of any other external due diligence report obtained by the Company or any other member of the Group;

- (v) (without prejudice to sub-paragraph (iv)) in the event that the Total Purchase Price exceeds EUR 15,000,000 (or its equivalent), the Company delivers to the Agent prior to signing of the relevant acquisition agreement a certificate of the Company showing in reasonable detail that the Company will remain in compliance with its obligations under Clause 26.2 (*Financial condition*) for the 12 month period immediately following the acquisition in each case calculated on a pro forma basis and assuming completion of the acquisition on the first day of the Relevant Period (taking into account identified cost savings and other synergies that the Company believes (acting reasonably) can be achieved as a result of that acquisition in the 12 month period after the acquisition, in each case confirmed in writing by the Company);
- (vi) prior to making that acquisition the Company must deliver to the Agent not later than 7 Business Days (or, if the Total Purchase Price exceeds EUR 15,000,000 (or its equivalent), 12 Business Days) before legally committing to make such acquisition a certificate signed by two directors of the Company to which must be attached a copy of the latest audited accounts (or if not available, management accounts) of the target company or business. Such certificate must give calculations showing in reasonable detail that the Company would have remained in compliance with its obligations under Clause 26 (*Financial Covenants*) if the covenant tests were recalculated for the Relevant Period ending on the most recent Quarter Date consolidating the financial statements of the target company (consolidated if it has Subsidiaries) or business with the financial statements of the Group for such period on a pro forma basis and as if completion of the proposed acquisition had occurred at the start of that Relevant Period (taking into account identified cost savings and other synergies that the Company believes (acting reasonably) can be achieved as a result of that acquisition in the Relevant Period confirmed in writing by the Company); and

- (vii) the Total Purchase Price for all acquisitions made and permitted solely under this paragraph (f) after the date of this Agreement does not exceed the aggregate of (A) EUR 80,000,000 (or its equivalent) and (B) the portion of the Total Purchase Price of any acquisition which portion is funded with New Shareholder Injections, during the term of this Agreement;
- (g) an acquisition by a member of the Group of shares or loan notes (in each case issued by a member of the Group) or similar instruments of any director or employee whose appointment and/or service contract with the Group is terminated;
- (h) an acquisition of (A) all of the issued share capital of a limited liability company or (B) (if the acquisition is made by a limited liability company whose sole purpose is to make the acquisition) a business or undertaking carried on as a going concern, but only if:
 - (i) no Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition; and
 - (ii) the consideration (including associated costs and expenses) for that acquisition and any Financial Indebtedness or other assumed actual or contingent liability in each case remaining in the acquired company (or any such business) at the date of acquisition does not exceed EUR 1,000,000 (or its equivalent) and (when aggregated with the consideration (including associated costs and expenses) for any other Permitted Acquisition under this paragraph (h) made in the same Financial Year (including any Joint Venture Investment made after the date of this Agreement and prior to the acquisition in respect of the acquired company or business) and any Financial Indebtedness or other assumed actual or contingent liability in each case remaining in any such acquired companies or businesses at the time of acquisition) does not exceed EUR 4,000,000 (or its equivalent) in that Financial Year;
- (i) an acquisition of any business or assets where the purchase price is solely paid with New Shareholder Injections unless an Event of Default would occur as a result of the acquisition; or
- (j) an acquisition made with the prior written consent of the Majority Lenders.

"Permitted Bank" means The Governor and Company of the Bank of Ireland, provided that the rating for its long-term unsecured and non credit-enhanced debt

obligations does not fall below BB+ by Standard & Poor's Rating Services or Fitch Ratings Ltd or Ba3 by Moody's Investor Services Limited.

"Permitted Disposal" means any sale, lease, licence, transfer or other disposal which, except in the case of paragraph (b), is on arm's length terms:

- (a) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;
- (b) of any asset by a member of the Group (the **"Disposing Company"**) to another member of the Group (the **"Acquiring Company"**), but if:
 - (i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;
 - (ii) the Disposing Company had given Transaction Security over the asset, subject to the Agreed Security Principles, the Acquiring Company must give equivalent Transaction Security over that asset and if the asset is subject to Transaction Security created by a Transaction Security Document governed by Swedish law, the Disposing Company procures that the security interest is preserved and unaffected by the disposal;
 - (iii) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company (subject to any limitations set out in Clause 23 (*Guarantee and Indemnities*)); and
 - (iv) the Disposing Company is an Obligor and the Acquiring Company is not an Obligor, the aggregate amount transferred (net of any consideration given) shall not exceed EUR 500,000 (or its equivalent) in any Financial Year;
- (c) of assets (other than shares or businesses) in exchange for other assets comparable or superior as to type, value or quality;
- (d) of obsolete or redundant vehicles, plant and equipment for cash;
- (e) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;
- (f) constituted by a licence of intellectual property rights permitted by Clause 27.24 (*Intellectual Property*);
- (g) to a Joint Venture, to the extent permitted by Clause 27.9 (*Joint ventures*);

- (h) arising as a result of any Permitted Security;
- (i) of fixed assets where the proceeds of disposal are used within 3 months of that disposal to purchase replacement fixed assets comparable or superior as to type, value and quality;
- (j) of assets for cash to any person that is not a member of the Group, LuxCo 3, any of LuxCo 3's direct or indirect Holding Companies or any Restructuring Shareholder;
- (k) any termination, extinguishment or similar action of a lease, rental or other contract; or
- (l) of any asset with the prior written consent of the Majority Lenders.

"Permitted Financial Indebtedness" means Financial Indebtedness:

- (a) arising under any New Shareholder Injections;
- (b) to the extent covered by a Bank Guarantee or other letter of credit, guarantee or indemnity issued under an Ancillary Facility or a Fronted Ancillary Facility;
- (c) arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade or in respect of Utilisations made in Optional Currencies, but not a foreign exchange transaction for investment or speculative purposes;
- (d) arising under a Permitted Loan or a Permitted Guarantee or as permitted by Clause 27.26 (*Treasury Transactions*);
- (e) of any person acquired by a member of the Group which is incurred under arrangements in existence at the date of acquisition, but not incurred or increased or its maturity date extended in contemplation of, or since, that acquisition, and outstanding only for a period of three months following the date of acquisition and only if such acquisition is not funded by a Loan (whether fully or partly);
- (f) under Finance Leases of vehicles, plant, equipment or computers (but not rental contracts that constitute a Finance Lease), provided that the aggregate capital value of all such items so leased under outstanding leases by members of the Group does not exceed EUR 75,000,000 (or its equivalent) at any time;
- (g) arising under any rental contract that constitutes a Finance Lease;

- (h) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of rental obligations of any member of the Group provided that the aggregate outstanding amount of those counter-indemnity obligations does not exceed the aggregate of EUR 75,000,000 (or its equivalent) at any time;
- (i) any counter-indemnity obligation in respect of Local Guarantee Facilities provided that the aggregate outstanding amount of those counter-indemnity obligations, together with the aggregate outstanding amount of the counter-indemnity obligations described under paragraph (h) above, does not exceed in aggregate EUR 75,000,000 (or its equivalent) at any time;
- (j) any Financial Indebtedness entered into with the prior written consent of the Majority Lenders;
- (k) arising under any Cash Management Services Agreement;
- (l) arising under any Margin Line Liabilities; or
- (m) not permitted by the preceding paragraphs or as a Permitted Transaction and the outstanding amount of which does not exceed EUR 30,000,000 (or its equivalent) in aggregate for the Group at any time.

"Permitted Guarantee" means:

- (a) the endorsement of negotiable instruments in the ordinary course of trade;
- (b) any performance or similar bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;
- (c) any guarantee of a Joint Venture to the extent permitted by Clause 27.9 (*Joint ventures*);
- (d) any guarantee permitted under Clause 27.19 (*Financial Indebtedness*) or in respect of Financial Indebtedness permitted under Clause 27.19 (*Financial Indebtedness*);
- (e) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (b) of the definition of Permitted Security;
- (f) any guarantee existing as at the date of this Agreement; and
- (g) any guarantee entered into with the prior written consent of the Majority Lenders.

"Permitted Joint Venture" means any investment in any Joint Venture where:

- (a) the Joint Venture is incorporated, or established, and carries on its principal business and operations, in a country which is a member state of the European Economic Area or the Organisation for Economic Co-operation and Development;
- (b) the Joint Venture is engaged in a business substantially the same as, or complementary to, that carried on by the Group;
- (c) in any Financial Year of the Company, the aggregate (the **"Joint Venture Investment"**) of:
 - (i) all amounts subscribed for shares in, lent to, or invested in all such Joint Ventures by any member of the Group;
 - (ii) the contingent liabilities of any member of the Group under any guarantee given in respect of the liabilities of any such Joint Venture; and
 - (iii) the market value of any assets transferred by any member of the Group to any such Joint Venture,does not exceed EUR 5,000,000 (or its equivalent); and
- (d) a Joint Venture Investment that does not exceed EUR 25,000,000 (or its equivalent) in aggregate during the term of this Agreement;
- (e) a Joint Venture existing on or prior to the date of this Agreement; or
- (f) any other investment or a Joint Venture made with the prior written consent of the Majority Lenders.

"Permitted Loan" means:

- (a) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;
- (b) Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness (except under paragraph (d) of that definition);
- (c) a loan made to a Joint Venture to the extent permitted under Clause 27.9 (*Joint ventures*);
- (d) a loan made by an Obligor to another Obligor or made by a member of the Group which is not an Obligor to another member of the Group;

- (e) any loan made by an Obligor to a member of the Group which is not an Obligor so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed EUR 15,000,000 (or its equivalent) at any time;
- (f) a loan made by a member of the Group to an employee or director of any member of the Group if the amount of that loan when aggregated with the amount of all loans to employees and directors by members of the Group does not exceed EUR 2,500,000 (or its equivalent) at any time;
- (g) any loan (other than a loan made by a member of the Group to another member of the Group) so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed EUR 5,000,000 (or its equivalent) at any time;
- (h) any loan made by a member of the Group to effect or to fund a Permitted Payment and any loan that, if the funds disbursed under that loan were used for making a Distribution, such Distribution would constitute a Permitted Payment; or
- (i) any loan (except for any loan to any direct or indirect shareholder of the Company) made with the prior written consent of the Majority Lenders,

and so long as in the case of paragraphs (d) and (e) above:

- (i) the creditor of such Financial Indebtedness shall (if it is an Obligor and subject to the Agreed Security Principles) grant security over its rights in respect of such Financial Indebtedness in favour of the Lenders on terms acceptable to the Agent (acting on the instructions of the Majority Lenders); and
- (ii) to the extent required by the Intercreditor Agreement, the creditor and (if the debtor is a member of the Group) the debtor of such Financial Indebtedness shall be party to the Intercreditor Agreement as intercompany creditor and intercompany debtor respectively.

"Permitted Management Arrangement" means any equity arrangement (including any amendments, supplements, variations, extensions and/or replacements thereof) to be entered into after the date of this Agreement with present or future members of management as part of a management incentive plan provided that, subject to the Agreed Security Principles, any shares in any member of the Group transferred to such member of management or vehicle on any member's behalf is subject to Transaction Security, if and as long as the remaining shares in such entity are also subject to Transaction Security.

"Permitted Payment" means:

- (a) the payment of a Distribution by the Company to Luxco 3, or any of its direct or indirect Holding Companies (or the general partner of any of LuxCo 3 or any of its direct or indirect Holding Companies) but not to any of the Restructuring Shareholders, to the extent that such payment is required to fund any of their payment obligations with respect to any costs, expenses, taxes or fees (in the case of costs and expenses, administrative or operating only, taking into account that LuxCo, LuxCo 2 and LuxCo 3 (and the general partner of any of LuxCo, LuxCo 2 and LuxCo 3) are operating as holding companies);
- (b) the payment of a Distribution by the Company to Luxco 3 (or its general partner), or its immediate Holding Company, to enable Luxco 3's immediate Holding Company to pay interest under Facility A or fund the Debt Service Reserve Amount in accordance with paragraph (b) of clause 17.1 (*Debt Service Reserve Account*) of the Holdco Facilities Agreement, provided that any Distribution made with respect to a payment of interest under Facility A (but not, for the avoidance of doubt, the funding of the Debt Service Reserve Account in accordance with paragraph (b) of clause 17.1 (*Debt Service Reserve Account*) of the Holdco Facilities Agreement) may only be funded from Retained Excess Cashflow;
- (c) the payment of a dividend or other Distribution to a member of the Group;
- (d) the payment of a Distribution to fund or make any payment that arises under any management services agreement between any member of the Group (for the purposes of this paragraph (d) defined as LuxCo, its Subsidiaries and the GP) and any CB Fund or any advisory or management entity of any CB Fund ("**Centerbridge**") to the extent that such payment relates to a reimbursement of (i) reasonable out of pocket expenses incurred in the provision of such services to the Group, (ii) costs associated with Centerbridge's operations support personnel properly incurred, (iii) reasonable third-party advisor fees incurred in the provision of such services to the Group, (for (ii) and (iii), up to an amount of EUR 1,000,000 plus VAT (the "**Cap**") in aggregate during the term of this Agreement and up to an amount of EUR 250,000 plus VAT (the "**Annual Cap**") in aggregate in each Financial Year, unless the board of the GP unanimously has approved a higher amount for the Annual Cap and the Company has provided the Agent with a description of the purpose for which such higher amount is intended to be used), or to the extent such payment relates to an indemnity under such management services agreement;
- (e) the payment of compensation to or reimbursement of any out-of-pocket expenses of any member of the board of the Company or any of its Holding

Companies (or the general partner of any of the Company's direct or indirect Holding Companies) under clause [] of the Shareholders' Agreement (such compensation and out-of-pocket expenses to be reasonable in the case of the board of the Company's Holding Companies) as in force as at the date of this Agreement, or the making of any Distribution to fund any such payment;

- (f) a payment contemplated by paragraph (g) of the definition of Permitted Acquisition;
- (g) the payment of a Distribution by the Company provided that the Distribution is made from Retained Excess Cashflow;
- (h) any payment made under a PLTA; and
- (i) any other payment or Distribution made with the prior written consent of (i) (if the payment or Distribution is to a member of the Group) the Majority Lenders, or (ii) (if the payment or Distribution is to any person other than a member of the Group) the Super Majority Lenders,

provided that:

- (i) no payment may be made under paragraph (b), (d) or (g) if at the time of making such payment an Event of Default is continuing, further provided that if an Event of Default is continuing payments of up to EUR 500,000 in aggregate may be made under and for the purposes set out in paragraph (d) above while an Event of Default is continuing, which payments shall not be taken into account for determining the amount used under the Annual Cap or the Cap at any time; and
- (ii) no payment may be made under paragraph (a), (e) or (f) if (A) an Event of Default is continuing under Clause 28.1 (*Non-payment*), Clause 28.6 (*Insolvency*) or Clause 28.7 (*Insolvency proceedings*), or (B) the Agent has given notice of acceleration to the Company in accordance with Clause 28.18 (*Acceleration*), and such notice has not been withdrawn or otherwise terminated or cancelled or the effects of it have not been remedied or waived.

"Permitted Security" means:

- (a) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group;
- (b) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group (including Multi-account

Overdraft) but only so long as (i) such arrangement does not permit credit balances of Obligors to be netted or set off against debit balances of members of the Group which are not Obligors and (ii) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors, in each case in accordance with the cash pooling arrangements set up and maintained in accordance with Clause 27.33 (*Cash Pool*);

- (c) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
 - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
 - (iii) the Security or Quasi-Security is removed or discharged within 3 months of the date of acquisition of such asset;
- (d) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
 - (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
 - (iii) the Security or Quasi-Security is removed or discharged within 3 months of that company becoming a member of the Group;
- (e) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- (f) any Quasi-Security arising as a result of a disposal which is a Permitted Disposal;

- (g) any Security or Quasi-Security arising as a consequence of any finance or capital lease permitted pursuant to paragraph (e) of the definition of "Permitted Financial Indebtedness";
- (h) any Security or Quasi-Security arising under Condition 14 of the general business conditions of German banks or similar provisions of other banks or Sparkassen with whom any member of the Group maintains a banking relationship in the ordinary course of business; or
- (i) any Security securing indebtedness the outstanding principal amount of which does not exceed EUR 20,000,000 (or its equivalent) at any time;
- (j) any payment or close out netting or set-off arrangements pursuant to any Treasury Transaction or foreign exchange transaction entered into by a member of the Group which constitutes Permitted Financial Indebtedness, excluding any Security or Quasi-Security under a credit support arrangement;
- (k) any Security or Quasi-Security over ownership interests in Joint Ventures to secure obligations to other Joint Venture partners; and
- (l) any Security or Quasi Security entered into with the prior written consent of the Majority Lenders.

"Permitted Share Issue" means an issue of:

- (a) ordinary shares by the Company to Luxco 3, paid for in full in cash upon issue, subject to the Transaction Security (subject to the Agreed Security Principles) on the same terms as the existing shares, and which by their terms are not redeemable and where (i) such shares are of the same class and on the same terms as those initially issued by the Company and (ii) such issue does not lead to a Change of Control of the Company;
- (b) shares by a member of the Group which is a Subsidiary of the Company to its immediate Holding Company where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms (subject to the Agreed Security Principles); or
- (c) in connection with a New Shareholder Injection only, non-voting preference shares by the Company to Luxco 3 where such shares are (i) paid for in full in cash upon issue (ii) are the subject of Transaction Security on the same terms as the Transaction Security in respect of the Company's shares as at such time (subject to the Agreed Security Principles), (iii) are not redeemable, and (iv) such share issue does not lead to a Change of Control of the Company; or

- (d) any other issue of shares made with the prior written consent of the Majority Lenders.

"Permitted Transaction" means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under or in connection with the Finance Documents and any transaction arising under or in connection with the Secured Documents (as defined in the Intercreditor Agreement);
- (b) the solvent liquidation or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group;
- (c) transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading of the Group on arm's length terms;
- (d) any payments or other transactions (including any payments, loans, guarantees, acquisitions, incurrence of indebtedness or disposals) contemplated by the Structure Memorandum and/or envisaged in connection with the Restructuring, including in relation to the repayment of amounts under the Existing Facilities Agreements and release of security in relation thereto;
- (e) any payments or other transactions as part of the Group's cash management system including but not limited to the entry into any Cash Management Services Agreement;
- (f) any transaction with any Margin Line Provider in connection with any margin line;
- (g) any payments made or other transactions entered into in relation to the Permitted Management Arrangements;
- (h) any payments or other transactions not otherwise permitted by this Agreement the amount or value of which does not exceed EUR 10,000,000 in aggregate during the term of this Agreement; and
- (i) any transactions (including, but not limited to, any payments in relation thereto) made with the prior written consent of the Majority Lenders.

"PLTA" means a profit and loss transfer agreement (as defined in section 291 of the German Stock Corporation Act (*Aktiengesetz*)) provided that each party to such agreement is a member of the Group.

"Protected Party" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"Qualifying IPO" means a Flotation provided that immediately following such Flotation Adjusted Leverage is equal to or less than 4.0:1 (taking into account any voluntary prepayments) it being understood that Adjusted Leverage will be calculated on the basis of the latest available Quarterly Financial Statements of the Company delivered for the 12 month period ending on the last calendar quarter for which financial statements have been delivered.

"Qualifying Lender" has the meaning given to that term in Clause 18 (*Tax gross-up and indemnities*).

"Quarter Date" means each of 31 March, 30 June, 30 September and 31 December.

"Quarterly Financial Statements" has the meaning given to it in Clause 25.1 (*Financial Statements*).

"Quasi-Security" has the meaning given to that term in Clause 27.12 (*Negative pledge*).

"Quotation Day" means, in relation to any period for which an interest rate is to be determined:

- (a) (if the currency is sterling) the first day of that period;
- (b) (if the currency is euro) two TARGET Days before the first day of that period;
or
- (c) (for any other currency) two Business Days before the first day of that period,

unless market practice differs in the Relevant Interbank Market for a currency, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

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

"Recipient" has the meaning given to it in paragraph (b) of Clause 18.7 (*Value added tax*).

"Recipient Party" or **"Recipient Parties"** has the meaning given to it in paragraph (a)(ii) of Clause 35.5 (*Impaired Agent*).

"Recovered Amount" has the meaning given to it in paragraph (a) of Clause 34.1 (*Payment to Finance Parties*).

"Recovering Finance Party" has the meaning given to it in paragraph (a) of Clause 34.1 (*Payments to Finance Parties*).

"Recovery Amount" has the meaning given to it in paragraph (c) of Clause 23.11 (*Guarantee Limitations for German Guarantors*).

"Redenomination" has the meaning given to that term in paragraph (a) of Clause 4.5 (*Redenomination of Facility B Loans*).

"Redenominated Currency" means in respect of a Redenominated Loan the currency of that Loan after the relevant Redenomination, as specified in the applicable Redenomination Notice, which currency shall be one of the currencies foreseen as the currency of a redenominated loan in the Structure Memorandum.

"Redenomination Date" has the meaning given to that term in paragraph (b) of Clause 4.5 (*Redenomination of Facility B Loans*).

"Redenomination Loan" has the meaning given to that term in paragraph (a) of Clause 4.5 (*Redenomination of Facility B Loans*).

"Redenomination Notice" has the meaning given to that term in paragraph (b) of Clause 4.5 (*Redenomination of Facility B Loans*).

"Redistributed Amount" has the meaning given to it in paragraph (a) of Clause 34.4 (*Reversal of redistribution*).

"Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks:

- (a) in relation to LIBOR, as the rate at which the relevant Reference Bank could borrow funds in the London interbank market;
- (b) in relation to EURIBOR, as the rate at which the relevant Reference Bank could borrow funds in the European interbank market;
- (c) in relation to NIBOR, as the rate at which the relevant Reference Bank could borrow funds in the European interbank market;
- (d) in relation to STIBOR, as the rate at which the relevant Reference Bank could borrow funds in the European Interbank Market; or

- (e) in relation to CIBOR, as at the rate at which the relevant Reference Bank could borrow funds in the European Interbank Market,

in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

"Reference Banks" means the principal London offices of Unicredit Bank AG, Commerzbank AG, ING Bank N.V, Deutsche Bank AG or such other banks as may be appointed by the Agent in consultation with the Company.

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

"Regulation" has the meaning given to it in paragraph (a) of Clause 24.26 (*Centre of main interests and establishments*).

"Relevant Date" has the meaning given to it in paragraph (a) of Clause 26.4 (*Cure*).

"Relevant Interbank Market" means in relation to euro, the European interbank market and, in relation to any other currency, the London interbank market.

"Relevant Jurisdiction" means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated; and
- (c) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

"Relevant Obligations" has the meaning given to it in paragraph (c)(ii) of Clause 29.5 (*Procedure for Assignment or Assignment and Assumption*).

"Relevant Party" has the meaning given to it in paragraph (b) of Clause 18.7 (*Value added tax*).

"Relevant Period" has the meaning given to that term in Clause 26.1 (*Financial Definitions*).

"Relevant Restrictive Covenants" has the meaning given to it in Clause 27.35 (*Limitations on Undertakings*).

"Relevant Spot Rate of Exchange" means the Agent's Spot Rate of Exchange or the Bank Guarantee Agent's Spot Rate of Exchange (as applicable).

"Renewal Request" means a written notice delivered to the Agent or the Bank Guarantee Agent (as applicable) in accordance with Clause 6.6 (*Renewal of a Bank Guarantee*).

"Repeating Representations" means each of the representations set out in Clause 24.2 (*Status*) to Clause 24.7 (*Governing law and enforcement*), Clause 24.11 (*No default*), paragraph (g) of Clause 24.13 (*No misleading information*), paragraph (e) of Clause 24.14 (*Original Financial Statements*), Clause 24.20 (*Ranking*) to Clause 24.22 (*Legal and beneficial ownership*), Clause 24.23 (*Shares*) and Clause 24.26 (*Centre of main interests and establishments*).

"Replacement Lender" has the meaning given to it in paragraph (a) of Clause 41.5 (*Replacement of Lender*) and in Clause 41.7 (*Replacement of a Defaulting Lender*), as applicable.

"Reports" means the Structure Memorandum and the Insurance Report.

"Representative" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"Requisite Lenders" has the meaning given to it in Clause 43.5 (*Lender Details Definitions*).

"Resignation Letter" means a letter substantially in the form set out in Schedule 7 (*Form of Resignation Letter*).

"Restructuring" means the restructuring of the indebtedness of the Group that at least satisfies the recommendations and requirements of the Restructuring Opinion.

"Restructuring Deed" means the restructuring deed dated [] and entered into between, amongst others, the Original Lenders, the Agent and the Company and setting out, among other things, the steps for implementing the Restructuring.

"Restructuring Opinion" means a final restructuring opinion (*Sanierungsgutachten*) which:

- (a) reflects, inter alia, the Group's financing and liquidity needs and which complies with the standards set forth in IDW S 6 and established by the German Federal Court of Justice (*Bundesgerichtshof*), confirming that the Borrower and the Group can be sustainably restructured (*nachhaltig objektiv sanierungsfähig*);

- (b) is confirmed by the Agent (acting on the instructions of the Lenders in (i) and (ii)) to be in form and substance satisfactory to (i) a Lender or Lenders holding in aggregate 75% of the Term Facility B Commitments and Bank Guarantee Facility B Commitments (acting reasonably) and (ii) the Majority Lenders; and
- (c) addressed to, and/or capable of being relied upon (subject to limitations reasonably requested by the report provider) by the Finance Parties as at the date of this Agreement).

"Restructuring Shareholders" means the Securityholders (as defined in the Shareholders' Agreement) at the time of closing the restructuring as contemplated under the Restructuring Deed and any of their Affiliates (other than LuxCo and any of its direct or indirect Subsidiaries) and funds or persons managed or advised by the same person (or an Affiliate) or whose ultimate shareholder(s) is/are managed or advised by such person (or an Affiliate) as the Securityholders.

"Retained Excess Cashflow" means Excess Cashflow which is not required to be applied in making any prepayment under the Finance Documents.

"Revolving Outstandings" has the meaning given to it in paragraph (a)(i) of Clause 9.6 (*Adjustment for Ancillary Facilities and Fronted Ancillary Facilities upon Acceleration*).

"Rollover Loan" means one or more Super Senior Revolving Facility Loans:

- (a) made or to be made on the same day that a maturing Super Senior Revolving Facility Loan is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the maturing Super Senior Revolving Facility Loan;
- (c) in the same currency as the maturing Super Senior Revolving Facility Loan (unless it arose as a result of the operation of Clause 8.2 (*Unavailability of a currency*)); and
- (d) made or to be made to the same Borrower for the purpose of refinancing that maturing Super Senior Revolving Facility Loan:

"Screen Rate" means:

- (a) in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on

pages LIBOR01 or LIBOR02 of the Reuters Screen (or any replacement Reuters page which displays that rate);

- (b) in relation to EURIBOR, the euro interbank offered rate administered by the Banking Federation of the European Union (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Reuters screen (or any replacement Reuters page which displays that rate);
- (c) in relation to NIBOR, the NOK interbank offered rate administered by Finance Norway (*Finans Norge*) (or any other person which takes over the setting of that rate) for the relevant period displayed on page NIBR of the Reuters screen (or any replacement Reuters page which displays that rate);
- (d) in relation to STIBOR, the SEK interbank offered rate determined by the banks that at the relevant time are responsible for setting STIBOR (or any other person which takes over the setting of that rate) for the relevant period displayed on page SIOR of the Reuters screen (or any replacement Reuters page which displays that rate); and
- (e) in relation to CIBOR, the DKK interbank offered rate determined by the banks that at the relevant time are responsible for setting CIBOR (or any other person which takes over the setting of that rate) for the relevant period displayed on page CIBOR= of the Reuters screen (or any replacement Reuters page which displays that rate),

or in each case on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Company and the Lenders.

"Second Currency" has the meaning given to it in paragraph (a) of Clause 20.1 (*Currency indemnity*).

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

"Security Adjustment" has the meaning given to it in paragraph (a)(v) of Clause 41.3 (*Structural Adjustment*).

"Selection Notice" means a notice substantially in the form set out in Part II of Schedule 4 (*Requests*) given in accordance with Clause 15 (*Interest Periods*) in relation to a Term Facility.

"Separate Loans" has the meaning given to it in paragraph (c) of Clause 10.2 (*Repayment of Super Senior Revolving Facility Loans*).

"Set-Off Right" has the meaning given to it in Clause 23.14 (*Guarantee Limitations for Italian Guarantors*).

"Shareholders' Agreement" means the securityholders deed dated [] 2014 between, among others, the Restructuring Shareholders.

"Sharing Finance Parties" has the meaning given to it in Clause 34.2 (*Redistribution of payments*).

"Sharing Payment" has the meaning given to it in paragraph (a)(iii) of Clause 34.1 (*Payments to Finance Parties*).

"Specified Time" means a time determined in accordance with Schedule 10 (*Timetables*).

"STIBOR" means in relation to any Loan in SEK:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:
 - (i) no Screen Rate is available for the Interest Period of that Loan; and
 - (ii) it is not possible to calculate an Interpolated Screen Rate for that Loan,the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for SEK and for a period equal in length to the Interest Period of that Loan and, in relation to the Term Facility B only, if that rate is less than zero, STIBOR shall be deemed to be zero.

"Structural Adjustment" has the meaning given to it in paragraph (a)(vi) of Clause 41.3 (*Structural Adjustment*).

"Structure Memorandum" means the tax structure report entitled "Project Apfel – Recapitalisation of APCOA Group Tax Structure Paper" describing the Group and the Restructuring and prepared by PricewaterhouseCoopers AG in the agreed form and addressed to, and/or capable of being relied upon (subject to limitations reasonably requested by the report provider) by the Finance Parties as at the date of this Agreement.

"Sub-Participation" means a sub-participation of a Lender's rights and/or obligations under any Finance Document, on the basis of the form recommended by the LMA.

"Subsidiary" means in relation to any company or corporation, a company or corporation:

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

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

"Subsidiary Assets" has the meaning given to it in paragraph (f) of Clause 12.3 (*Application of prepayments*).

"Sum" has the meaning given to it in paragraph (a) of Clause 20.1 (*Currency indemnity*).

"Super Majority Lenders" means a Lender or Lenders whose Commitments (and for this purpose the amount of any Ancillary Lender's, Fronting Ancillary Lender's and Fronted Ancillary Lender's Super Senior Revolving Facility Commitment shall not be reduced by the amount of its Ancillary Commitment, Fronted Ancillary Commitments and Fronting Ancillary Commitments) aggregate 85 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated 85 per cent. of the Total Commitments immediately prior to that reduction) in each case excluding, for the purposes of the calculation, any Term Facility B Commitments and any Term Facility C Commitments which constitute Incremental Facility Commitments.

"Super Senior Facilities" means the Bank Guarantee Facility A, the Super Senior Revolving Facility and the Term Facility A.

"Super Senior Lender" means each Lender under the relevant Super Senior Facility.

"Super Senior Revolving Facility" means the revolving credit facility made available under this Agreement as described in paragraph (a)(vi) of Clause 2.1 (*The Facilities*).

"Super Senior Revolving Facility Commitment" means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Super Senior Revolving Facility Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Super Senior Revolving Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and
- (b) in relation to any other Lender, the amount in the Base Currency of any Super Senior Revolving Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

to the extent not transferred by it, cancelled or reduced under this Agreement.

"Super Senior Revolving Facility Loan" means a loan made or to be made under the Super Senior Revolving Facility or the principal amount outstanding for the time being of that loan.

"Super Senior Revolving Facility Utilisation" means a Super Senior Revolving Facility Loan or a Bank Guarantee issued under the Super Senior Revolving Facility.

"Supplier" has the meaning given to it in paragraph (b) of Clause 18.7 (*Value added tax*).

"Swedish Borrower" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"Sweep Calculation Date" means each 31 December from and including 31 December 2015.

"TARGET" means Trans-European Automated Real-time Gross Settlement Express Transfer payment system.

"TARGET Day" means any day on which TARGET is open for the settlement of payments in euro.

"Target Group" has the meaning given to it in Clause 23.14 (*Guarantee Limitations for Italian Guarantors*).

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

"Tax Confirmation" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"Tax Credit" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"Tax Deduction" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"Tax Payment" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"Term" means each period determined under this Agreement for which the relevant Issuing Bank is under a liability under a relevant Bank Guarantee.

"Term Facility" means Term Facility A, Term Facility B or Term Facility C.

"Term Facility A" means the term loan facility made available under this Agreement as described in paragraph (a)(i) of Clause 2.1 (*The Facilities*) and any Incremental Facility Tranche which is deemed to form part of Term Facility A in accordance with paragraph (a) of Clause 2.5 (*Incremental Facility Commitments*).

"Term Facility A Commitment" means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Term Facility A Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Term Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and
- (b) in relation to any other Lender, the amount in the Base Currency of any Term Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

to the extent not transferred by it, cancelled or reduced under this Agreement.

"Term Facility A Loan" means a loan made or to be made under Term Facility A or the principal amount outstanding for the time being of that loan and, for the avoidance of doubt, includes any Incremental Facility A Loan in accordance with Clause 2.5 (*Incremental Facility Commitments*).

"Term Facility B" means the term loan facility made available under this Agreement as described in paragraph (a)(ii) of Clause 2.1 (*The Facilities*) and any Incremental Facility Tranche which is deemed to form part of Term Facility B in accordance with Clause 2.5 (*Incremental Facility Commitments*).

"Term Facility B Commitment" means:

- (a) in relation to a Lender as at the date of this Agreement, the amount in the Base Currency set opposite its name under the heading "Term Facility B Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount

of any other Term Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*);

- (b) in relation to an Incremental Facility Lender, the amount (if any) of its Incremental Facility Commitments which are deemed to be Term Facility B Commitments under paragraph (a) of Clause 2.5 (*Incremental Facility Commitments*); and
- (c) in relation to any other Lender, the amount in the Base Currency of any Term Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

to the extent not cancelled, reduced or transferred by it under this Agreement.

"Term Facility B Lenders" means Lenders under Term Facility B.

"Term Facility B Loan" means a loan made or to be made under Term Facility B or the principal amount outstanding for the time being of that loan and, for the avoidance of doubt, includes any Incremental Facility Loan which is deemed to be a Term Facility B Loan in accordance with Clause 2.5 (*Incremental Facility Commitments*).

"Term Facility C" means the term loan facility made available under this Agreement as described in paragraph (a)(iii) of Clause 2.1 (*The Facilities*) and any Incremental Facility Tranche which is deemed to form part of Term Facility C in accordance with Clause 2.5 (*Incremental Facility Commitments*).

"Term Facility C Commitment" means:

- (a) in relation to a Lender as at the date of this Agreement, the amount in the Base Currency set opposite its name under the heading "Term Facility C Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Term Facility C Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*);
- (b) in relation to an Incremental Facility Lender, the amount of its Incremental Facility Commitments which are deemed to be Term Facility C Commitments under Clause 2.5 (*Incremental Facility Commitments*); and
- (c) in relation to any other Lender, the amount in the Base Currency of any Term Facility C Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

to the extent not transferred by it, cancelled or reduced under this Agreement.

"Term Facility C Lenders" means Lenders under Term Facility C.

"Term Facility C Loan" means a loan made or to be made under Term Facility C or the principal amount outstanding for the time being of that loan and, for the avoidance of doubt, includes any Incremental Facility C Loan made in accordance with Clause 2.5 (*Incremental Facility Commitments*).

"Term Loan" means a Term Facility A Loan, a Term Facility B Loan or a Term Facility C Loan.

"Termination Date" means:

- (a) in relation to the Super Senior Revolving Facility, the date falling five years and six months after the date of this Agreement;
- (b) in relation to Term Facility A, the date falling five years and six months after the date of this Agreement;
- (c) in relation to Term Facility B, the date falling six years after the date of this Agreement;
- (d) in relation to Term Facility C, the date falling six years after the date of this Agreement;
- (e) in relation to Bank Guarantee Facility A, the date falling five years and six months after the date of this Agreement; and
- (f) in relation to Bank Guarantee Facility B, the date falling six years after the date of this Agreement.

"Third Parties Act" has the meaning given to it in paragraph (a) of Clause 1.7 (*Third Party Rights*).

"Third Party Bank" has the meaning given to it in paragraph (g) of Clause 17.4 (*Fees payable in respect of Bank Guarantees and Fronted Bank Guarantees*).

"Third Party Disposal" has the meaning given to it in paragraph (a) of Clause 31.3 (*Resignation of a Borrower*).

"Total Bank Guarantee Facility A Commitments" means the aggregate of the Bank Guarantee Facility A Commitments, being EUR 25,000,000 on the date of this Agreement.

"Total Bank Guarantee Facility B Commitments" means the aggregate of the Bank Guarantee Facility B Commitments, being EUR 50,000,000 on the date of this Agreement.

"Total Commitments" means the aggregate of the Total Term Facility A Commitments, the Total Term Facility B Commitments, the Total Term Facility C Commitments, the Total Bank Guarantee Facility A Commitments, the Total Bank Guarantee Facility B Commitments and the Total Super Senior Revolving Facility Commitments.

"Total Net Debt" means, at any time, the aggregate amount of all obligations of members of the Group for or in respect of Borrowings at that time but:

- (a) excluding any such obligations to any other member of the Group;
- (b) excluding, to the extent they constitute Borrowings, any New Shareholder Injections;
- (c) including, in the case of Finance Leases only, their capitalised value; and
- (d) deducting the aggregate amount of Actual Cash held by any member of the Group at that time,

and so that no amount shall be included or excluded more than once.

"Total Purchase Price" has the meaning given to it in the definition of "Permitted Acquisition".

"Total Revolving Outstandings" has the meaning given to it in paragraph (a)(ii) of Clause 9.6 (*Adjustment for Ancillary Facilities and Fronted Ancillary Facilities upon Acceleration*).

"Total Super Senior Commitments" means the aggregate of the Total Term Facility A Commitments, the Total Bank Guarantee Facility A Commitments, and the Total Super Senior Revolving Facility Commitments.

"Total Super Senior Revolving Facility Commitments" means the aggregate of the Super Senior Revolving Facility Commitments, being EUR 35,000,000 at the date of this Agreement.

"Total Term Facility A Commitments" means EUR 56,000,000 at the date of this Agreement.

"Total Term Facility B Commitments" means the aggregate of the Term Facility B Commitments, being EUR 275,000,000 at the date of this Agreement.

"Total Term Facility C Commitments" means the aggregate of the Term Facility C Commitments, being zero at the date of this Agreement.

"Trade Instruments" means any performance bonds, or advance payment bonds or documentary letters of credit issued in respect of the obligations of any member of the Group arising in the ordinary course of trading of that member of the Group.

"Tranche" or **"tranche"** means a particular tranche of Term Facility B or Term Facility C as identified in an Incremental Facility Notice and a reference to a Term Facility B Loan or Term Facility C Loan will include a tranche thereof as the context requires.

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

"Transaction Security Documents" means each of the documents listed as being a Transaction Security Document in Part III of Schedule 2 (*Conditions Precedent*) together with any other document entered into by any member of the Group creating, evidencing or expressed to create or evidence any Security over all or any part of its assets in respect of the obligations of members of the Group under any of the Finance Documents.

"Transfer Date" means, in relation to a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement; and
- (b) the date on which the Agent executes the relevant Assignment Agreement.

"Treasury Transactions" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

"Treaty" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"Treaty Lender" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"Treaty State" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"UGB" has the meaning given to it in paragraph (c) of Clause 23.12 (*Interpretation of guarantee for Austrian tax purposes and limitations in respect of Austrian Obligors*).

"UK Borrower" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"UK CTA" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"UK ITA" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"UK-Non-Bank Lender" has the meaning given to it in paragraph (a) of Clause 18.1 (*Definitions*).

"UK Obligor" means an Obligor incorporated in England and Wales.

"Unpaid Sum" means any sum due and payable but unpaid by an Obligor under the Finance Documents.

"Up-Stream or Cross-Stream Guarantee" has the meaning given to it in paragraph (f) of Clause 23.11 (*Guarantee Limitations for German Guarantors*).

"US Tax Obligor" means:

- (a) a Borrower which is resident for tax purposes in the United States of America;
or
- (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the United States for US federal income tax purposes.

"Utilisation" means a Loan or a Bank Guarantee.

"Utilisation Date" means the date of a Utilisation, being the date on which the relevant Loan is to be made or the relevant Bank Guarantee is to be issued.

"Utilisation Request" means a Utilisation Request under and as defined in the New SFA Utilisation Agreement, a notice substantially in the relevant form set out in Schedule 4 (*Requests*), or for any Bank Guarantee issued pursuant to paragraph (g) of Clause 6.5 (*Issue of Bank Guarantees*) the form of such Bank Guarantee as at the date of this Agreement.

"VAT" means:

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

"Website Lenders" has the meaning given to it in paragraph (a) of Clause 37.7 (*Use of websites*).

"White List" means the list agreed between the Company and the Agent (acting on the instructions of the Majority Lenders) and provided as condition precedent pursuant to Schedule 2 (*Conditions Precedent*) paragraph 4 (h) as amended from time

to time in accordance with paragraph (c) of Clause 29.2 (*Conditions of Assignment or Transfer*).

1.2 Construction

- (a) Unless a contrary indication appears a reference in this Agreement to:
 - (i) the "**Agent**", the "**Bank Guarantee Agent**", any "**Finance Party**", any "**Issuing Bank**", any "**Lender**", any "**Obligor**", any "**Party**", the "**Security Trustee**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Trustee, any person for the time being appointed as Security Trustee or Security Trustees in accordance with the Finance Documents;
 - (ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Company and the Agent or, if not so agreed, is in the form specified by the Agent;
 - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
 - (iv) "**director**" includes any statutory legal representative(s) (*organschaftlicher Vertreter*) of a person pursuant to the laws of its jurisdiction of incorporation, including but not limited to, in relation to a person incorporated or established in Germany, a managing director (*Geschäftsführer*) or member of the board of directors (*Vorstand*);
 - (v) the "**European interbank market**" means the interbank market for euro operating in Participating Member States;
 - (vi) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, replaced or restated (in each case, however fundamentally);
 - (vii) "**guarantee**" means (other than in Clause 23 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

- (viii) **"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;
 - (ix) a Lender's **"participation"** in relation to a Bank Guarantee, shall be construed as a reference to the relevant amount that is or may be payable by a Lender in relation to that Bank Guarantee;
 - (x) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (xi) **"promptly"** means without undue delay;
 - (xii) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) but, if not having the force of law, with which compliance is customary) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (xiii) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xiv) a time of day is a reference to Luxembourg time.
- (b) Section, clause and schedule headings are for ease of reference only.
 - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (d) A Borrower providing **"cash cover"** for a Bank Guarantee, an Ancillary Facility or a Fronted Ancillary Facility means a Borrower paying an amount in the currency of the Bank Guarantee (or, as the case may be, Ancillary Facility or Fronted Ancillary Facility) to an interest-bearing account in the name of the Borrower and the following conditions being met:
 - (i) the account is with an Issuing Bank, Ancillary Lender, Fronting Ancillary Lender or Fronted Ancillary Lender (for which that cash cover is to be provided);

- (ii) subject to paragraph (b) of Clause 7.6 (*Regulation and Consequences of Cash Cover provided by Borrower*), until no amount is or may be outstanding under that Bank Guarantee, Ancillary Facility or Fronted Ancillary Facility, withdrawals from the account may only be made to pay a Finance Party amounts due and payable to it under this Agreement in respect of that Bank Guarantee, Ancillary Facility or Fronted Ancillary Facility; and
 - (iii) the Borrower has executed a security document over that account, in form and substance satisfactory to the Finance Party with which that account is held, creating a first ranking security interest over that account.
- (e) 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.
- (f) A Borrower "**repaying**" or "**prepaying**" a Bank Guarantee or Ancillary Outstandings means:
 - (i) that Borrower providing cash cover for that Bank Guarantee or in respect of the Ancillary Outstandings;
 - (ii) the maximum amount payable under the Bank Guarantee, Ancillary Facility or Fronted Ancillary Facility being reduced or cancelled in accordance with its terms; or
 - (iii) the relevant Issuing Bank, Ancillary Lender or Fronting Ancillary Lender being satisfied that it has no further liability under that Bank Guarantee, Ancillary Facility or Fronted Ancillary Facility or any other arrangement satisfactory to the relevant Issuing Bank, Ancillary Lender or Fronting Ancillary Lender pursuant to which it is satisfied such liabilities are covered,

and the amount by which a Bank Guarantee is, or Ancillary Outstandings are, repaid or prepaid under paragraphs (f)(i) and (f)(ii) above is the amount of the relevant cash cover, reduction or cancellation.
- (g) An amount borrowed includes any amount utilised by way of Bank Guarantee or under an Ancillary Facility or Fronted Ancillary Facility.
- (h) A Lender funding its participation in a Utilisation includes a Lender participating in a Bank Guarantee.

- (i) Amounts outstanding under this Agreement include amounts outstanding under or in respect of any Bank Guarantee.
- (j) An outstanding amount of a Bank Guarantee at any time is the maximum amount that is or may be payable by the relevant Borrower in respect of that Bank Guarantee at that time.

1.3 Austrian terms

- (a) In this Agreement, where it relates to (i) a person incorporated or established in Austria, or (ii) a Transaction Security Document governed by Austrian law, a reference to:
 - (i) a **"director"** includes any statutory legal representative(s) (*organschaftlicher Vertreter*) of such entity, including (but not limited to) a managing director (*Geschäftsführer*) or member of the board of directors (*Vorstand*);
 - (ii) a **"bankruptcy", "insolvency", "administration", "composition", "compromise", "moratorium", "restructuring", "reorganisation"** or the like includes, without limitation, an Insolvenzverfahren within the meaning of the Austrian Insolvency Code (*Insolvenzordnung*) and any situation where an Obligor is illiquid (*zahlungsunfähig*) within the meaning of section 66 of the Austrian Insolvency Code (*Insolvenzordnung*), over-indebted (*überschuldet*) within the meaning of section 67 of the Austrian Insolvency Code (*Insolvenzordnung*);
 - (iii) a **"winding-up", "dissolution"** or the like includes, without limitation, a *Liquidation* within the meaning of the Austrian Act on Limited Liability Companies (*GmbH-Gesetz*);
 - (iv) a **"receiver", "administrator", "administrative receiver" or "compulsory manager"** includes, without limitation, an insolvency administrator (*Insolvenzverwalter*) within the meaning of the Austrian Insolvency Code (*Insolvenzordnung*);
 - (v) a **"liquidator"** or the like includes, without limitation, a *Liquidator* within the meaning of the Austrian Act on Limited Liability Companies (*GmbH-Gesetz*); and
 - (vi) an **"expropriation", "attachment", "sequestration", "distress" or "execution"** or the like includes, without limitation, a *Pfändung* or *Vollstreckung* within the meaning of the Austrian Code on Enforcement Proceedings (*Exekutionsordnung*) or an *Enteignung* within the meaning of the Austrian General Civil Code (ABGB).

- (b) Where an Austrian term, or an Austrian translation of an English word or phrase, appears in the text of this Agreement, which in each case is not a German term, the Austrian translation shall prevail over the English word or phrase, and the Austrian term or translation of such word or phrase shall be construed in accordance with Austrian law.

1.4 German terms

- (a) In this Agreement, where it relates to a person incorporated or established in Germany, **"director"** includes any statutory legal representative(s) (*organschaftlicher Vertreter*) of such person, including (but not limited to) a managing director (*Geschäftsführer*) or member of the board of directors (*Vorstand*).
- (b) Where a German term, or a German translation of an English word or phrase, appears in the text of this Agreement, which in each case is not an Austrian term, the German translation shall prevail over the English word or phrase, and the German term or translation of such word or phrase shall be construed in accordance with German law.

1.5 Dutch Terms

Without prejudice to the generality of any provision of this Agreement, in this Agreement, where it relates to (i) an Obligor incorporated or established in the Netherlands, or (ii) a Transaction Security Document governed by Dutch law, a reference to:

- (a) **"security"** includes any mortgage (includes any mortgage (*hypotheek*), pledge (*pandrecht*), retention of title arrangement (*eigendomsvoorbehoud*), privilege (*voorrecht*), right of retention (*recht van retentie*), right to reclaim goods (*recht van reclame*), and in general, any right *in rem* (*beperkt recht*), created for the purpose of granting security (*goedenrechtelijk zekerheidsrecht*);
- (b) a **"subsidiary"** means a subsidiary (*dochtermaatschappij*) as defined in Article 2:24a of the Dutch Civil Code (*Burgerlijk Wetboek*);
- (c) an **"insolvency event"** includes any bankruptcy (*faillissement*), suspension of payments (*surseance van betaling*), debt rescheduling for natural persons (*schuldsanering natuurlijke personen*), administration (*onderbewindstelling*) and dissolution (*ontbinding*);
- (d) a **"winding-up"**, **"administration"** or **"dissolution"** includes a Dutch entity being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*);

- (e) a "**moratorium**" includes *surseance van betaling* and a moratorium is declared or occurs includes *surseance verleend*;
- (f) any step or procedure taken in connection with insolvency proceedings includes a Dutch entity having filed a notice under Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*) or Section 60 of the Social Insurance Financing Act of the Netherlands (*Wet Financiering Sociale Verzekeringen*) in conjunction with Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*);
- (g) a "**trustee**" in bankruptcy includes a *curator*;
- (h) an "**administrator**" includes a *bewindvoerder*; and
- (i) an "**attachment**" includes a *beslag*.

1.6 Currency Symbols and Definitions

"\$" and "**dollars**" denote lawful currency of the United States of America, "**CHF**" or "**Swiss Franc**" denote lawful currency of Switzerland, "**DKK**" and "**Danish Krone**" denote lawful currency of Denmark, "**NOK**" and "**Norwegian Krone**" denote lawful currency of Norway, "£" and "**sterling**" denote lawful currency of the United Kingdom, "**SEK**" or "**Swedish Krona**" denote lawful currency of Sweden and "**EUR**", "€" and "**euro**" means the single currency unit of the Participating Member States.

1.7 Third Party Rights

- (a) Unless expressly provided to the contrary in a Finance Document 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 enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

1.8 Trust Provisions

If any person incorporated in Sweden is required by this agreement to hold an amount of money on trust for another person (the "**Recipient**") then such requirement will be interpreted as an obligation on that person to act as agent for such recipient in respect of such amount and to pay such amount to the Recipient. If the Recipient is not a Finance Party it must make the payment immediately on receipt of the relevant monies and payment being made hold it in a separate account in accordance with the

Swedish Act of 1944 in respect of assets held on account (*Sw. Lag 1944:181 om redovisningsmedel*).

2 THE FACILITIES

2.1 The Facilities

- (a) Subject to the terms of this Agreement, the Lenders make available:
 - (i) a Base Currency term loan facility in an aggregate amount equal to the Total Term Facility A Commitments;
 - (ii) a Base Currency term loan facility in an aggregate amount the Base Currency of which is equal to the Total Term Facility B Commitments;
 - (iii) a Base Currency term loan facility in an aggregate amount the Base Currency of which is equal to the Total Term Facility C Commitments;
 - (iv) a multicurrency guarantee facility in an aggregate amount the Base Currency Amount of which is equal to the Total Bank Guarantee Facility A Commitments;
 - (v) a multicurrency guarantee facility in an aggregate amount the Base Currency Amount of which is equal to the Total Bank Guarantee Facility B Commitments; and
 - (vi) a multicurrency super senior revolving credit facility in an aggregate amount the Base Currency Amount of which is equal to the Total Super Senior Revolving Facility Commitments.
- (b) Term Facility A and Term Facility B will be available to the relevant Borrowers as specified in Part I of Schedule 1 (*The Original Parties*), Term Facility C will be available to the Borrowers specified in the relevant Incremental Facility Notice in accordance with Clause 2.5 (*Incremental Facility Commitment*), Bank Guarantee Facility A and Bank Guarantee Facility B will be available to all Borrowers and the Super Senior Revolving Facility will be available to all Borrowers.
- (c) Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender may make available an Ancillary Facility to any of the Borrowers in place of all or part of its Commitment under the Super Senior Revolving Facility.
- (d) Subject to the terms of this Agreement and the Fronted Ancillary Documents, a Fronting Ancillary Lender and each relevant Fronted Ancillary Lender may

make available a Fronted Ancillary Facility to any of the Borrowers in place of all or part of its Commitment under the Super Senior Revolving Facility.

2.2 Increase

- (a) The Company may, by giving prior notice to the Agent by no later than the date falling 20 Business Days after the effective date of a cancellation of:
 - (i) the Available Commitments of a Defaulting Lender in accordance with Clause 11.8 (*Right of Cancellation in Relation to a Defaulting Lender*); or
 - (ii) the Commitments of a Lender in accordance with:
 - (A) Clause 11.1 (*Illegality*); or
 - (B) Clause 11.7(a) (*Right of Replacement or Repayment and Cancellation in relation to a Single Lender or Issuing Bank*),

request that the Commitments relating to any Facility be increased (and the Commitments relating to that Facility shall be so increased) in an aggregate amount in the Base Currency of up to the amount of the Available Commitments or Commitments relating to that Facility so cancelled as follows:

- (iii) the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an "**Increase Lender**") selected by the Company (each of which shall not be a member of the Group) and each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been a Lender as at the date of this Agreement;
- (iv) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been a Lender as at the date of this Agreement;
- (v) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed

and/or acquired had the Increase Lender been a Lender as at the date of this Agreement;

- (vi) the Commitments of the other Lenders shall continue in full force and effect; and
 - (vii) any increase in the Commitments relating to a Facility shall take effect on the date specified by the Company in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
- (b) An increase in the Commitments relating to a Facility will only be effective on:
- (i) the execution by the Agent of an Increase Confirmation from the relevant Increase Lender;
 - (ii) the Agent being satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender, such satisfaction to be evidenced by its execution of the Increase Confirmation from the relevant Increase Lender;
 - (iii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase the Increase Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
 - (iv) in the case of an increase in the Total Super Senior Revolving Facility Commitments, the Total Bank Guarantee Facility A Commitments or the Total Bank Guarantee Facility B Commitments (as the case may be), the relevant Issuing Bank under the relevant Facility with respect to any Fronted Bank Guarantee consenting to that increase.
- (c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.
- (d) The Company shall promptly on demand pay the Agent and the Security Trustee the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Trustee, by any

Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.

- (e) The Increase Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 29.3 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 29.5 (*Procedure for Assignment or Assumption*) and if the Increase Lender was a New Lender.
- (f) The Company may pay to the Increase Lender a fee in the amount and at the times agreed in a Fee Letter with that Increase Lender.
- (g) Clause 29.4 (*Limitation of Responsibility of Existing Lenders*) shall apply mutatis mutandis in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
 - (i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
 - (ii) the "**New Lender**" were references to that "**Increase Lender**"; and
 - (iii) a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".

2.3 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

2.4 Obligors' Agent

- (a) Each Obligor (other than the Company) by its execution of this Agreement or an Accession Letter irrevocably appoints the Company to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

- (i) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests and Selection Notices), to execute on its behalf any Accession Letter, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
- (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Company,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including, without limitation, any Utilisation Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.
- (c) For the purpose of this Clause 2.4 (*Obligors' Agent*), each Obligor incorporated in Austria releases the Company from any restrictions (under §1009 of the Austrian Civil Code or otherwise) associated with self-contracting (*In-Sich-Geschäft*) and/or double representation (*Doppelvertretung*), both of which shall be expressly permitted.
- (d) For the purpose of acting as Obligors' Agent in accordance with this Clause 2.4, each Obligor (other than the Company) hereby releases the Company from the restrictions of section 181 of the BGB (and any equivalent restriction under any other applicable law) and the Obligors' Agent is authorised to delegate its power of attorney, including the release from section 181 of the BGB (and any equivalent restriction under other applicable laws).

2.5 Incremental Facility Commitments

- (a) If the Company reasonably expects to be or is in breach of a Financial Covenant or reasonably expects that a Payment Default may occur or a Payment Default has occurred, the Company may establish an Incremental Facility Tranche as contemplated by Clause 26.4 (*Cure*) if the remaining provisions of this Clause 2.5 are complied with.
- (b) The Company may confirm that one or more entity (each an "**Incremental Facility Lender**") has agreed to participate in an Incremental Facility Tranche and commit Incremental Facility Commitments by delivering to the Agent an Incremental Facility Notice duly signed by those parties that have agreed to participate in the relevant Incremental Facility Tranche.
- (c) Each Incremental Facility Tranche will have the following terms:
 - (i) the Incremental Facility Commitments and the Incremental Facility Loan shall be in the Base Currency;
 - (ii) the Availability Period shall be no longer than the period required to effect a Cure in accordance with Clause 26.4 (*Cure*);
 - (iii) the final repayment date shall be the Termination Date applicable to Term Facility B or Term Facility C (as the case may be) and there shall be no scheduled repayment dates prior to the relevant Termination Date;
 - (iv) the interest payable under the Incremental Facility Tranche shall be capitalised only; and
 - (v) the Margin shall be the rate agreed between the Company and the Incremental Facility Lenders with respect to the relevant Incremental Facility Tranche.
- (d) Each Incremental Facility Notice is irrevocable and will not be regarded as having been duly completed unless it specifies the following matters in respect of the relevant Incremental Facility Tranche (the "**Incremental Facility Terms**"):
 - (i) the Incremental Facility Date and the applicable Availability Period;
 - (ii) the identity(ies) of the Borrower(s) under the Incremental Facility Tranche;
 - (iii) the amount of the Incremental Facility Commitment allocated to each Incremental Facility Lender; and

- (iv) the Incremental Facility Minimum Amount in the reasonable opinion of the Company.
- (e) Each Incremental Facility Notice shall be countersigned by each entity to which Incremental Facility Commitments are allocated. Any entity to which Incremental Facility Commitments are allocated or transferred (as the case may be) shall comply with the provisions of Clause 29.1 (*Assignments and Transfers by the Lenders*) to the extent applicable. By countersigning the Incremental Facility Notice each such entity agrees to commit and provide the Incremental Facility Commitments set out against its name and in the case of an entity which is not already a Lender, to become a Lender and party to this Agreement and to the Intercreditor Agreement as a Lender in accordance with the relevant Incremental Facility Notice.
- (f) Upon receipt of a duly completed Incremental Facility Notice, the Agent and the Security Trustee shall acknowledge receipt of that notice and, if appropriate, the accession of the relevant Lenders to each of this Agreement and the Intercreditor Agreement and shall inform the Lenders of that receipt. The Agent and the Security Trustee are authorised to disclose details in the Incremental Facility Notice and in relation to any Incremental Facility Tranche to the Lenders on request. The Agent and the Security Trustee shall only be obliged to sign an Incremental Facility Notice upon its completion of all "know your customer" or other checks relating to any person that it is required to carry out in relation to the accession of any entity as a Lender.
- (g) The Agent shall notify the Company and the Lenders of the changed amounts of the Term Facility B Commitments and/or the Term Facility C Commitments promptly after receipt of each Incremental Facility Notice.
- (h) The terms and conditions relating to each Incremental Facility Tranche will be set out in a separate Incremental Facility Notice entered into by the Company and the relevant Incremental Facility Lenders providing the relevant Incremental Facility Commitments.
- (i) The Lenders hereby authorise and empower the Security Trustee to execute any necessary amendments to the Transaction Security Documents to ensure that (to the extent legally possible) the Incremental Facility Loans shall rank *pari passu* with the Facility to which they are allocated in accordance with this Clause 2.5.
- (j) If the other provisions of this Clause 2.5 are met, each Party:
 - (i) agrees that Incremental Facility Commitments may be and will be made available to the relevant Borrowers;

- (ii) agrees that any Incremental Facility Commitments and Incremental Facility Loans made available under the relevant Incremental Facility Tranche and the applicable amount of the Incremental Facility Tranche in each case up to the Incremental Facility Minimum Amount shall:
 - (A) in the case of the Incremental Facility Commitments, form part of the Term Facility C Commitments;
 - (B) in the case of the Incremental Facility Loans, constitute Term Facility C Loans and accordingly rank *pari passu* with all other Term Facility C Loans; and
 - (C) in the case of the relevant amount of the Incremental Facility Tranche, form part of Term Facility C;
 - (iii) agrees that any Incremental Facility Commitments and Incremental Facility Loans made available under the relevant Incremental Facility Tranche and the applicable amount of the Incremental Facility Tranche in each case in excess of the relevant Incremental Facility Minimum Amount shall:
 - (A) in the case of the Incremental Facility Commitments, form part of the Term Facility B Commitments;
 - (B) in the case of the Incremental Facility Loans, constitute Term Facility B Loans and accordingly rank *pari passu* with all other Term Facility B Loans; and
 - (C) in the case of the relevant amount of the Incremental Facility Tranche, form part of Term Facility B; and
 - (iv) authorises and instructs the Agent and the Security Trustee to countersign an Incremental Facility Notice to record the Incremental Facility Commitments as set out in the relevant Incremental Facility Notice and accordingly the establishment of an Incremental Facility Tranche.
- (k) Subject to the relevant Incremental Facility Notice being signed by the Agent, the Security Trustee, the Company and the relevant entities providing the relevant Incremental Facility Tranche, the relevant Incremental Facility Commitments, the relevant Incremental Facility Tranche and corresponding Incremental Facility Commitments will be established for the purpose of this Agreement and the other Finance Documents as from the relevant Incremental Facility Date.

- (l) An Incremental Facility Opinion is not required for any and all Incremental Facility Tranches established within the first twelve months after the date of this Agreement to if and to the extent that the aggregate original principal amount of all such Incremental Facility Tranches is equal to or less than €10,000,000. The Company undertakes to procure that for all other Incremental Facility Tranches, an Incremental Facility Opinion with respect to the relevant Incremental Facility Tranche is provided as soon as reasonably practicable after the relevant Incremental Facility Date. If the Incremental Facility Opinion confirms that the amount of the relevant Incremental Facility Tranche exceeds the Incremental Facility Minimum Amount as specified in the relevant Incremental Facility Notice then an amount of the Incremental Facility Tranche, an amount of the Incremental Facility Commitments (rateably in the case of the Incremental Facility Lenders under that Incremental Facility Tranche) and an amount of the Incremental Facility Loans in each case equal to the amount of that excess shall constitute and form part of Term Facility B, the Term Facility B Commitments and the Term Facility B Loans respectively and accordingly rank *pari passu* with the other Term Facility B Loans and to the extent treated as part of Term Facility C, the Term Facility C Commitments and the Term Facility C Loans for the purposes of this Agreement and the other Finance Documents, shall cease to be so treated.
- (m) Each Obligor confirms:
- (i) the authority of the Company to agree and implement the establishment of Incremental Facility Commitments and any Incremental Facility Tranche in accordance with the procedures and up to the amounts permitted by this Agreement; and
 - (ii) that all its guarantee and indemnity obligations set out in Clause 23 (*Guarantee and Indemnity*) and/or in any Accession Letter or other Finance Document and the Transaction Security that it has granted will extend to include the Incremental Facility Loans and other obligations arising under the Incremental Facility Tranche subject to any limits as specifically set out in Clause 23 (*Guarantee and Indemnity*), the relevant Accession Letter or elsewhere in the Finance Documents.

3 PURPOSE

3.1 Purpose

- (a) Each Borrower shall apply all amounts borrowed by it under Term Facility A on or about the date of this Agreement towards the refinancing of amounts

outstanding under the Existing Facilities Agreement or for general corporate purposes to the extent not required for such refinancing.

- (b) Each Borrower shall apply all amounts borrowed by it under Term Facility B towards the refinancing of amounts outstanding under the Existing Facilities Agreement.
- (c) Each Borrower shall apply all amounts borrowed by it under Term Facility C towards the refinancing of amounts outstanding under the Existing Facilities Agreement or the working capital and general corporate purposes of the Group to the extent not required for such refinancing.
- (d) Each Borrower shall apply all Bank Guarantees required by it under Bank Guarantee Facility A towards any obligation in connection with the Group's operational performance, including without limitation:
 - (i) rent obligations;
 - (ii) warranty obligations;
 - (iii) performance obligations;
 - (iv) advance payment obligations;
 - (v) any other type of guarantee which collateralises the obligations referred to above; and
 - (vi) back-to-back guarantees for guarantees under (i) to (v) (inclusive) above.

For the avoidance of doubt, the issuance of financial letters of guarantees (such as credit facility guarantees ("*Kreditbesicherungsgarantie*"), payment guarantees in respect of financial obligations without backing the performance of any contract in the ordinary course of business ("*Zahlungsaval ohne Bezug zu Grundgeschäften im gewöhnlichen Geschäftsverkehr*") or payment guarantees to cover partial retirement scheme or compensatory time credit for overtime work ("*Wertguthaben der Arbeitnehmer*")) are excluded.

- (e) Each Borrower shall apply all Bank Guarantees required by it under Bank Guarantee Facility B towards:
 - (i) rent obligations of members of the Group;
 - (ii) warranty obligations of members of the Group;
 - (iii) performance obligations of members of the Group;

- (iv) advance payment obligations of members of the Group;
 - (v) any other type of guarantee outstanding under the Existing Facilities Agreement and rolled-in pursuant to paragraph (g) of Clause 6.5 (*Issue of Bank Guarantees*) or any other guarantees which collateralises the obligations referred to in (i) to (iv) (inclusive) above;
 - (vi) back-to-back guarantees for cashpool limits, local guarantees, leasing obligations, foreign exchange obligations, direct debit and/or BACS obligations and other guarantees in respect of financial derivatives; or
 - (vii) any other purpose agreed to by all of the Lenders under Bank Guarantee Facility B.
- (f) Each Borrower shall apply all amounts borrowed by it under the Super Senior Revolving Facility and any utilisation of any Ancillary Facility or Fronted Ancillary Facility towards the general corporate and working capital purposes of the Group (but not towards repayment and prepayments in relation to the Facilities and shareholder distributions, unless such shareholder distributions are made to cover administrative expenses of the direct or indirect Holding Companies of the Company).

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4 CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

- (a) Subject to paragraph (c) below, the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent has received all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Company and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. Nothing in this paragraph (b) shall prevent the Agent from seeking Majority Lender instructions before taking any actions contemplated in paragraph (a) above or (c) below. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

- (c) The Agent may waive the provision of any Transaction Security Document listed in Transaction Security Documents set out in Part III of Schedule 2 (*Conditions precedent*) as a condition precedent, and require the same to be delivered as a condition subsequent.

4.2 Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Utilisation, if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) in the case of a Rollover Loan, no notice of acceleration has been issued by the Agent under Clause 28.18 (*Acceleration*) or,
- (b) in the case of any other Utilisation:
 - (i) no Default is continuing or would result from the proposed Utilisation; and
 - (ii) the Repeating Representations to be made by each Obligor are true in all material respects with respect to representations which according to their terms are not already subject to a materiality test.

4.3 Conditions relating to Optional Currencies

- (a) A currency will constitute an Optional Currency in relation to a Bank Guarantee Facility A Utilisation, a Bank Guarantee Facility B Utilisation or a Super Senior Revolving Facility Utilisation if:
 - (i) it is readily available in the amount required and freely convertible into the Base Currency in the Relevant Interbank Market at the Specified Time or, if later, on the date the Agent, the Bank Guarantee Agent or the relevant Issuing Bank (as applicable) receives the relevant Utilisation Request and the Utilisation Date for that Utilisation; and
 - (ii) either:
 - (A) in the case of a Super Senior Revolving Loan, it is sterling, Danish Krone, Norwegian Krone or Swedish Krona or has been approved by the Agent (acting on the instructions of the Majority Lenders) on or prior to receipt by the Agent of the relevant Utilisation Request for that Utilisation; or
 - (B) in the case of a Bank Guarantee, it is sterling, Danish Krone, Norwegian Krone, Swedish Krona, Swiss Francs or dollars or has been approved by the relevant Issuing Bank on or prior to

receipt by the Agent, Bank Guarantee Agent or the relevant Issuing Bank (as applicable) of the relevant Utilisation Request for that Utilisation

provided that the Bank Guarantee Agent shall not be obliged to enquire as to whether such approval has been obtained and may assume that such approval has been received unless expressly notified to the contrary.

- (b) If the Agent or Bank Guarantee Agent (as applicable) has received a written request from the Company for a currency to be approved by the Agent or the relevant Issuing Bank (as applicable) under paragraph (a)(ii) above, the Agent or Bank Guarantee Agent (as applicable) will confirm to the Company by the Specified Time:
 - (i) whether or not the Majority Lenders or the relevant Issuing Bank, as the case may be, under that Facility have granted their approval; and
 - (ii) if approval has been granted, the minimum amount for any subsequent Utilisation in that currency.
- (c) This Clause 4.3 does not apply to any Existing Bank Guarantee issued pursuant to paragraph (g) of Clause 6.5 (*Issue of Bank Guarantees*).

4.4 Maximum number of Utilisations

- (a) The relevant Borrower (or the Company) may not deliver a Utilisation Request if as a result of the proposed Utilisation:
 - (i) []² or more Term Facility A Loans would be outstanding; or
 - (ii) 15 or more Super Senior Revolving Facility Utilisations would be outstanding (excluding, for the avoidance of doubt, any utilisation of the Super Senior Revolving Facility by way of an Ancillary Facility or Fronted Ancillary Facility).
- (b) A Borrower (or the Company) may not request that a Term Facility A Loan be divided.
- (c) Any Loan made by a single Lender under Clause 8.2 below (*Unavailability of a currency*) shall not be taken into account in this Clause 4.4.

4.5 Redenomination of Facility B Loans

² Subject to closing process/mechanics and funds flow.

- (a) As contemplated by the Structure Memorandum, the Company may request that the currency of a Facility B Loan (a "**Redenomination Loan**") is converted from its Original Currency into such Redenominated Currency as is contemplated by the Structure Memorandum (a "**Redenomination**").
- (b) The Company may request a Redenomination by delivering to the Agent by not later than 5:00 p.m. five Business Days prior to the proposed date of Redenomination (the "**Redenomination Date**") a notice (the "**Redenomination Notice**") specifying the proposed Redenomination Date, proposed Redenominated Loan/s, the Original Currency of each Redenominated Loan and the Redenominated Currency of each Redenominated Loan.
- (c) Any amounts to be redenominated into a Redenominated Currency as a result of the Redenomination will be redenominated at the rate (the "**Conversion Rate**") calculated by the Agent at the Agent's Spot Rate of Exchange for the purchase of the Redenominated Currency on the date falling three Business Days before the Redenomination Date (or such other time and/or day as the Agent and Company may agree).
- (d) The Agent shall as soon as reasonably practicable notify the Company, the Borrower of each Redenominated Loan and each Facility B Lender with a participation in each Redenominated Loan of the applicable Conversion Rate.
- (e) The Company may advise the Agent that it does not wish to proceed with the Redenomination until 5:00 p.m. on the date falling one Business Day prior to the proposed Redenomination Date, in which case the Redenomination will not proceed.
- (f) On the Redenomination Date (provided the Agent and the Company may agree the Redenomination Date may occur at a later date), each Redenominated Loan shall be re-denominated into the relevant Redenominated Currency, and the Agent and/or the Security Trustee and Company may agree any amendments to any Finance Document required to reflect the same in accordance with paragraph (f) of Clause 41.2 (*Exceptions*).

5 UTILISATION - LOANS

5.1 Delivery of a Utilisation Request

- (a) Subject to Clauses 6 (*Utilisation – Bank Guarantees*) and paragraph (b) below, a Borrower (or the Company on its behalf) may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time (or in the case of an Optional Currency not specifically listed in paragraph (a)(ii)(A) of Clause 4.3 (*Conditions relating to Optional*

Currencies), not later than notified by the Agent to the Company prior to the delivery of a Utilisation Request).

- (b) Only an Original Borrower named in this Agreement as a Borrower under the Super Senior Revolving Facility and any Additional Borrower may utilise the Super Senior Revolving Facility. No Borrower incorporated in either Belgium or Italy (nor the Company on behalf of any Borrower incorporated in Belgium or Italy) may utilise the Super Senior Revolving Facility.

5.2 Completion of a Utilisation Request for Loans

- (a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it identifies the Facility to be utilised;
 - (ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
 - (iii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
 - (iv) the proposed Interest Period complies with Clause 15 (*Interest Periods*).
- (b) Multiple Utilisations may be requested in a Utilisation Request where the proposed Utilisation Date is the date of this Agreement. Only one Utilisation may be requested in each Utilisation Request but more than one Utilisation Request may be delivered on the same day.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be:
 - (i) in relation to the Super Senior Revolving Facility, the Base Currency or an Optional Currency; and
 - (ii) in relation to Term Facility A, the Base Currency.
- (b) The amount of the proposed Utilisation must be:
 - (i) for the initial Utilisation under Term Facility A on the date of this Agreement, an amount equal to the Total Term Facility A Commitments as at the date of this Agreement and for any other Utilisation under Term Facility A, such amount as complies with Clause 2.5 (*Incremental Facility Commitments*);

- (ii) for the Super Senior Revolving Facility:
 - (A) if the currency selected is euro, a minimum of EUR 1,000,000 or, if less, the Available Facility;
 - (B) if the currency selected is sterling, a minimum of £600,000 or, if less, the Available Facility;
 - (C) if the currency selected is Danish Krone, a minimum of DKK 7,500,000 or, if less, the Available Facility;
 - (D) if the currency selected is Norwegian Krone, a minimum of NOK 8,000,000 or, if less, the Available Facility;
 - (E) if the currency selected is Swedish Krona, a minimum of SEK 9,000,000 or, if less, the Available Facility; or
 - (F) if the currency selected is an Optional Currency other than sterling, Danish Krone, Norwegian Krone or Swedish Krona, the minimum amount specified by the Agent pursuant to paragraph (b)(ii) of Clause 4.3 (*Conditions relating to Optional Currencies*) or, if less, the Available Facility.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, and subject to Clause 10.2 (*Repayment of Super Senior Revolving Facility Loans*), each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) Unless otherwise stated, the amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Agent shall determine the Base Currency Amount of each Super Senior Revolving Facility Loan which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan and the amount of its participation in that Loan by the Specified Time.
- (d) Each Original Lender which is party to the New SFA Utilisation Agreement shall be deemed to have complied with its obligations under paragraph (a) above in accordance with the terms of and in relation to such Facility B Loans which are the subject of the Utilisation Request delivered as contemplated by the New SFA Utilisation Agreement.

6 UTILISATION – BANK GUARANTEES

6.1 The Super Senior Revolving Facility and the Bank Guarantee Facilities

- (a) The Super Senior Revolving Facility may be utilised by way of Bank Guarantees.
- (b) The Bank Guarantee Facilities may only be utilised by way of Bank Guarantees.
- (c) Clause 5 (*Utilisation - Loans*) does not apply to utilisations by way of Bank Guarantees.

6.2 Delivery of a Utilisation Request for Bank Guarantees

Subject to paragraph (g) of Clause 6.5 (*Issue of Bank Guarantees*), a Borrower (or the Company on its behalf) may utilise the Super Senior Revolving Facility or a Bank Guarantee Facility by requesting a Bank Guarantee to be issued:

- (a) under the Super Senior Revolving Facility, by delivery to the Agent;
- (b) under Bank Guarantee Facility A, by delivery to the Issuing Bank which (in respect of a Fronted Bank Guarantee) shall promptly forward such request to each Fronted Lender; or
- (c) under Bank Guarantee Facility B, by delivery to the Bank Guarantee Agent to the relevant Issuing Bank (which shall not be the Retiring Issuing Bank),

of a duly completed Utilisation Request not later than the Specified Time. In the case of a Utilisation Request that is submitted to the Bank Guarantee Agent, the Bank Guarantee Agent shall be under no obligation to enquire whether or not the conditions for utilisation have been satisfied and may assume that the conditions are met unless it is notified by the relevant Issuing Bank to the contrary.

6.3 Completion of a Utilisation Request for Bank Guarantees

Each Utilisation Request for a Bank Guarantee is irrevocable and will not be regarded as having been duly completed unless:

- (a) it identifies the relevant Facility to be utilised and confirms that the specified Facility may be utilised by way of Bank Guarantees;
- (b) it specifies that it is for a Bank Guarantee;
- (c) it specifies the type of Bank Guarantee;
- (d) it describes the purpose of the Bank Guarantee;

- (e) it identifies the Borrower of the Bank Guarantee;
- (f) it identifies the Issuing Bank (which shall not be the Retiring Issuing Bank) and such Issuing Bank has not notified the Company that it refuses to issue the Bank Guarantee for the reasons set out in Clause 6.11 (*Right of refusal*);
- (g) it identifies the beneficiary of the Bank Guarantee;
- (h) it specifies the date on which the Bank Guarantee terminates or, if there is no termination date, the expected Commercial Lifetime;
- (i) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
- (j) the Bank Guarantee is in English or German or any other language agreed between the Company and the relevant Issuing Bank (acting reasonably and only applying principles that are applied generally to similarly structured borrowers or to similar situations);
- (k) the Bank Guarantee is governed by German or English law or any other law agreed between the Company and the relevant Issuing Bank (acting reasonably and only applying principles that are applied generally to similarly structured borrowers or to similar situations);
- (l) the currency and amount of the Bank Guarantee comply with Clause 6.4 (*Currency and amount*); and
- (m) the delivery instructions for the Bank Guarantee are specified,

provided that the Bank Guarantee Agent shall not be obliged to enquire as to whether such conditions have been satisfied and may assume that such conditions have been satisfied unless expressly notified to the contrary. In case of any queries the respective Issuing Bank shall directly contact the Company and inform the Bank Guarantee Agent of any resulting changes.

6.4 Currency and amount

- (a) The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency.
- (b) In respect of a Fronted Bank Guarantee, the amount of the proposed Fronted Bank Guarantee must be a minimum amount in accordance with paragraph (e) below, and in a Base Currency Amount which is not more than the relevant Available Facility.

- (c) The amount of any proposed Bank Guarantee which is not a Fronted Bank Guarantee and which does not satisfy the requirements set out in paragraph (e) below must be at least the minimum amount agreed with the relevant Issuing Bank provided that the Bank Guarantee Agent shall not be obliged to enquire as to whether such minimum amount has been agreed with the relevant Issuing Bank and may assume that such minimum amount has been agreed unless expressly notified to the contrary.
- (d) The amount of any proposed Bank Guarantee which is not a Fronted Bank Guarantee must be an amount whose Base Currency Amount is not more than the relevant Issuing Bank's Available Commitment under the relevant Facility.
- (e) The amount of any proposed Bank Guarantee must be:
 - (i) a minimum of EUR 1,000 (or, subject to paragraph (ii) below, its equivalent in an Optional Currency); or
 - (ii) if the currency selected is an Optional Currency other than sterling, Danish Krone, Norwegian Krone, Swedish Krona or Swiss Francs, the minimum amount specified by the Agent or the Bank Guarantee Agent pursuant to paragraph (b)(ii) of Clause 4.3 (*Conditions relating to Optional Currencies*),

or, in each case, if less, the relevant Issuing Bank's Available Commitment under the relevant Bank Guarantee Facility or the Super Senior Revolving Facility, or in case of a Fronted Bank Guarantee, the Available Commitments of the participating Lenders.

6.5 Issue of Bank Guarantees

- (a) Subject to Clause 6.11 (*Right of refusal*) below, if the conditions set out in this Agreement have been met, the relevant Issuing Bank (which shall not be the Retiring Issuing Bank other than in accordance with paragraph (e) of Clause 6.10 (*Issuing Bank*)) shall issue the Bank Guarantee on the Utilisation Date.
- (b) The relevant Issuing Bank will only be obliged to comply with paragraph (a) above in relation to a Bank Guarantee, if on the date of the Utilisation Request or Renewal Request and on the proposed Utilisation Date:
 - (i) in the case of a Bank Guarantee to be renewed in accordance with Clause 6.7 (*Renewal of a Bank Guarantee*) no notice of acceleration has been issued by the Agent under Clause 28.18 (*Acceleration*); or
 - (ii) in the case of any other Utilisation:

- (A) no Default is continuing or would result from the proposed Utilisation; and
- (B) the Repeating Representations to be made by each Obligor are true in all material respects with respect to representations which according to their terms are not already subject to a materiality test, and
- (iii) in case of a Utilisation of Bank Guarantee Facility B, if the amount of the requested Bank Guarantee does not exceed the Available Bank Guarantee B Sublimit in respect of the relevant Issuing Bank.

provided that the Bank Guarantee Agent shall not be obliged to enquire as to whether either of the conditions at (i), (ii) or (iii) above have been satisfied and may assume that such conditions have been satisfied unless expressly notified to the contrary.

- (c) Subject to paragraph (i) Clause 32.5 (*Rights and discretions*), each of the Agent, the Bank Guarantee Agent and each Issuing Bank (where appropriate) shall provide the other with any information reasonably requested by the other that relates to a Bank Guarantee and its issue. If any Bank Guarantee is to be issued by an Issuing Bank which is not Deutsche Bank AG, Filiale Deutschlandgeschäft, such Issuing Bank and the Borrower (or the Company on its behalf) shall liaise directly with respect to any questions in relation to such utilisation or Utilisation Request and inform the Bank Guarantee Agent of any relevant details in relation to such Bank Guarantee.
- (d) An Issuing Bank may issue a Bank Guarantee in the form of a SWIFT message or other form of communication customary in the relevant market (unless it has been otherwise advised by the Company in the relevant Utilisation Request) but has no obligation to do so.
- (e) The Company and each Borrower shall use reasonable commercial endeavours to procure that, to the extent reasonably practicable, the Bank Guarantee Facility A Commitments of Lenders under Bank Guarantee Facility A are utilised on an equal and *pro rata* basis over the lifetime of the Bank Guarantee Facility A.
- (f) An Issuing Bank may instruct a third party bank to issue a Bank Guarantee upon the request and with the agreement of the Company. For the purposes of this Agreement and the relevant Facility, Ancillary Facility or Fronted Ancillary Facility (as the case may be) any Bank Guarantee issued by such third party shall be treated like a Bank Guarantee issued by the relevant Issuing Bank.

- (g) On the first Utilisation Date, each Existing Bank Guarantee is deemed to have been issued under Bank Guarantee Facility B as a Bank Guarantee, in each case in compliance with and subject to the terms of this Agreement.

6.6 Fronted Bank Guarantee

- (a) Any Bank Guarantee issued under the Super Senior Revolving Facility (other than, for the avoidance of doubt, under an Ancillary Facility or Fronted Ancillary Facility) and under Bank Guarantee Facility B is a Fronted Bank Guarantee.
- (b) If a Bank Guarantee cannot be issued by one of the Lenders under the Bank Guarantee Facility A, an Ancillary Facility or a Fronted Ancillary Facility by reason of that Lender's Available Commitments under Bank Guarantee Facility A or the Available Ancillary Commitment or the Available Fronted Ancillary Commitment under the relevant Ancillary Facility (if any) or Fronted Ancillary Facility (as relevant) being lower than the amount of the requested Bank Guarantee, the Company can agree with any Lender (acting in its sole discretion) under the Bank Guarantee Facility A or the Super Senior Revolving Facility that it becomes an Issuing Bank and issues a Bank Guarantee under the relevant Facility as a Fronted Bank Guarantee (subject to the provisions of this Agreement).
- (c) The Company shall inform the Agent of any agreement under paragraph (b) above and the Agent shall inform the other Lenders under the relevant Facility thereof and obtain the agreement of the relevant Lenders (acting reasonably and only applying principles that are applied generally to similarly structured borrowers or to similar situations) thereunder that shall participate in the relevant Fronted Bank Guarantee.
- (d) Except as agreed otherwise between the Company, the Agent and the participating Lenders, the amount of each Lender's participation under the relevant Fronted Bank Guarantee shall be *pro rata* to its share of the aggregate of the Available Commitments of the participating Lenders under the relevant Facility immediately prior to the issue of the Fronted Bank Guarantee.
- (e) The Agent (with respect to a Bank Guarantee under the Super Senior Revolving Facility), each Fronted Lender (with respect to a Fronted Bank Guarantee under Bank Guarantee Facility A) or the Bank Guarantee Agent (with respect to Bank Guarantee Facility B) shall determine the Base Currency Amount of each Fronted Bank Guarantee which is to be issued in an Optional Currency and shall notify the relevant Issuing Bank and each Fronted Lender of the details of the requested Fronted Bank Guarantee and its participation in that Fronted Bank Guarantee by the Specified Time.

6.7 Renewal of a Bank Guarantee

- (a) A Borrower (or the Company on its behalf) may request that any Bank Guarantee issued on behalf of that Borrower be renewed by delivery to the Agent, the Bank Guarantee Agent or the relevant Issuing Bank (as applicable pursuant to Clause 6.2 (*Delivery of a Utilisation Request for Bank Guarantees*)) of a Renewal Request in substantially similar form to a Utilisation Request for a Bank Guarantee by the Specified Time.
- (b) The Finance Parties shall treat any Renewal Request in the same way as a Utilisation Request for a Bank Guarantee except that the conditions set out in paragraphs (c), (d) and (m) of Clause 6.3 (*Completion of a Utilisation Request for Bank Guarantees*) shall not apply.
- (c) The terms of each renewed Bank Guarantee shall be the same as those of the relevant Bank Guarantee immediately prior to its renewal, except that:
 - (i) its amount may be less than the amount of the Bank Guarantee immediately prior to its renewal; and
 - (ii) its Term shall start on the date which was the Expiry Date of the Bank Guarantee immediately prior to its renewal, and shall end on the proposed Expiry Date (if any) specified in the Renewal Request.
- (d) Subject to paragraph (e) below, if the conditions set out in this Agreement have been met, the relevant Issuing Bank shall amend and re-issue any Bank Guarantee pursuant to a Renewal Request.
- (e) Where a new Bank Guarantee is to be issued to replace by way of renewal an existing Bank Guarantee, the relevant Issuing Bank is not required to issue that new Bank Guarantee until the Bank Guarantee being replaced has been returned to that Issuing Bank or the relevant Issuing Bank is satisfied either that it will be returned to it or otherwise that no liability can arise under it.

6.8 Reduction of a Bank Guarantee

- (a) If, on the proposed Utilisation Date of a Fronted Bank Guarantee, any Fronted Lender under the relevant Bank Guarantee Facility or the Super Senior Revolving Facility (as applicable) is a Non-Acceptable B/G Lender and:
 - (i) that Lender has failed to provide cash collateral to the relevant Issuing Bank in accordance with Clause 7.4 (*Cash Collateral by Non-Acceptable B/G Lender and Borrower's Option to Provide Cash Cover*); and

- (ii) the Borrower of that proposed Bank Guarantee has not exercised its right to provide cash cover pursuant to Clause 7.4 (*Cash Collateral by Non-Acceptable B/G Lender and Borrower's Option to Provide Cash Cover*),

the relevant Issuing Bank may reduce the amount of that Fronted Bank Guarantee by an amount equal to the amount of the participation of that Non-Acceptable B/G Lender in respect of that Fronted Bank Guarantee and that Non-Acceptable B/G Lender shall be deemed not to have any participation (or obligation to indemnify the relevant Issuing Bank) in respect of that Fronted Bank Guarantee for the purposes of the Finance Documents.

- (b) The relevant Issuing Bank shall notify the Agent or (with respect to Bank Guarantee Facility B) the Bank Guarantee Agent and the Company of each reduction made pursuant to this Clause 6.8.
- (c) This Clause 6.8 shall not affect the participation of each other Lender in that Bank Guarantee.

6.9 Revaluation of Bank Guarantees

- (a) If any Bank Guarantees are denominated in an Optional Currency:
 - (i) each Issuing Bank in respect of Bank Guarantees issued under Bank Guarantee Facility A;
 - (ii) the Bank Guarantee Agent in respect of Bank Guarantees issued under Bank Guarantee Facility B; and
 - (iii) the Agent in respect of Bank Guarantees issued under the Super Senior Revolving Facility,

shall, at such intervals as determined by the Agent in its sole discretion (but in each case being not less than six months) or as determined by the Bank Guarantee Agent or each respective Issuing Bank in case of Bank Guarantee Facility A on a daily basis, recalculate the Base Currency Amount of each Bank Guarantee by notionally converting into the Base Currency the outstanding amount of that Bank Guarantee on the basis of the Relevant Spot Rate of Exchange or, in case of a Lender, at the exchange rate reference rate agreed with the Company, on the date of calculation.

- (b) The Company shall, if requested by the Agent, the relevant Issuing Bank or the Bank Guarantee Agent (as applicable) (acting on the instruction of the relevant Issuing Bank) within three Business Days of any calculation as of 31 March and 30 September of each year, ensure that within three Business Days

sufficient Bank Guarantee Facility A Utilisations and/or Bank Guarantee Facility B Utilisations and/or Super Senior Revolving Facility Utilisations (as appropriate) are prepaid by providing cash cover to the relevant Issuing Bank in accordance with this Agreement to:

- (i) prevent the Base Currency Amount of the Bank Guarantee Facility A Utilisations exceeding the Total Bank Guarantee Facility A Commitments by 5% or more;
- (ii) prevent the Base Currency Amount of the Bank Guarantee Facility B Utilisations exceeding the Total Bank Guarantee Facility B Commitments by 5% or more; and
- (iii) prevent the Base Currency Amount of the Super Senior Revolving Facility Utilisations exceeding the Total Super Senior Revolving Facility Commitments (after deducting the total Ancillary Commitments, total Fronting Ancillary Commitments and total Fronted Ancillary Commitments) by 5% or more,

following any adjustment to a Base Currency Amount under paragraph (a) of this Clause 6.9.

- (c) If the Company has provided cash cover in accordance with this Clause 6.9, it may, by notice to the Agent or the Bank Guarantee Agent (as applicable) and the relevant Issuing Bank, request that an amount equal to the amount provided by it as cash cover in respect of the relevant Bank Guarantee (together with any accrued interest) be returned to it:
 - (i) to the extent that such cash cover has not been applied in satisfaction of any amount due and payable under this Agreement by the Company to the relevant Issuing Bank in respect of the relevant Bank Guarantee; and
 - (ii) if a subsequent revaluation of Bank Guarantees pursuant to paragraph (b) above results in the relevant Utilisations falling below the relevant threshold specified in paragraph (b) above (for that purpose not taking into account the cash cover already provided by the Company), and

the relevant Issuing Bank shall pay that amount to the Company within three Business Days of the Company's request (and shall cooperate with the Company in order to procure that the relevant security or collateral arrangement is released and discharged).

6.10 Issuing Bank

- (a) Each Lender under Bank Guarantee Facility A is an Issuing Bank (in relation to its own Bank Guarantee Facility A Commitment) under Bank Guarantee Facility A.
- (b) The Retiring Issuing Bank is an Issuing Bank under Bank Guarantee Facility B until its retirement as Issuing Bank becomes effective in accordance with paragraph (g) below. The Company shall use reasonable endeavours to procure that all Bank Guarantees issued by the Retiring Issuing Bank are repaid or prepaid within 12 months of the date of this Agreement.
- (c) Each New Issuing Bank is an Issuing Bank under Bank Guarantee Facility B.
- (d) Any Lender which has agreed to the Company's request to be an Issuing Bank pursuant to the terms of this Agreement shall become an Issuing Bank under the relevant Facility upon notifying the Agent and the Company that it has so agreed to be an Issuing Bank under the relevant Facility and on making that notification that Lender shall become bound by the terms of this Agreement as an Issuing Bank with respect to the relevant Facility.
- (e) Each New Issuing Bank or any Lender which is or becomes an Issuing Bank in accordance with paragraph (d) above shall issue or renew any Bank Guarantees under any of the Bank Guarantee Facilities or the Super Senior Revolving Facility (as applicable) in accordance with this Agreement. The Retiring Issuing Bank shall not be obliged to and shall not issue or renew any Bank Guarantee other than (i) any issue which is constituted by way of the roll-in set out in paragraph (g) of Clause 6.5 (*Issue of Bank Guarantees*) or (ii) agreed between the Retiring Issuing Bank and the Company.
- (f) The designation of a Lender as an Issuing Bank under Bank Guarantee Facility B shall be subject to the prior written consent (acting reasonable and only applying principles that are applied generally to similarly structured borrowers or to similar situations) of the Bank Guarantee Agent if, as a result of such designation, there would be more than two Issuing Banks in relation to Bank Guarantee Facility B. Upon the date on which the Retiring Issuing Bank notifies the Agent and the Company that it has been repaid or prepaid in full with respect to any Bank Guarantee for which it was the Issuing Bank, the Retiring Issuing Bank shall cease to be an Issuing Bank under any Finance Document and to be a party thereunder and shall be discharged from any further obligation in respect of the Finance Documents. The Agent shall forward such notification to all Lenders.
- (g) If any Lender which is an Issuing Bank under Bank Guarantee Facility A or the Super Senior Revolving Facility ceases to hold any Bank Guarantee Facility A Commitments or Super Senior Revolving Facility Commitments (as

applicable) that Lender shall continue to be an Issuing Bank under Bank Guarantee Facility A or the Super Senior Revolving Facility (as applicable) with respect to any Bank Guarantee issued by it under Bank Guarantee Facility A or the Super Senior Revolving Facility (as applicable) until the date on which it notifies the Agent and the Company that it has been repaid or prepaid in full with respect to any such Bank Guarantee for which it was the Issuing Bank under Bank Guarantee Facility A or the Super Senior Revolving Facility (as applicable). Upon such notification, the relevant Lender shall cease to be an Issuing Bank under Bank Guarantee Facility A or the Super Senior Revolving Facility (as applicable) and shall be discharged from any further obligation as an Issuing Bank under Bank Guarantee Facility A or the Super Senior Revolving Facility (as applicable) in respect of the Finance Documents and shall cease to be a party to any Finance Document in such capacity. The Agent shall forward each such notification to all Lenders. Any Lender which is an Issuing Bank under Bank Guarantee Facility A or the Super Senior Revolving Facility and ceases to hold any Bank Guarantee Facility A Commitment or Super Senior Revolving Facility Commitment shall not be obliged to issue or renew any Bank Guarantee under Bank Guarantee Facility A or the Super Senior Revolving Facility Commitment (as applicable) unless otherwise agreed between the relevant Lender and the Company.

- (h) The relevant Issuing Bank is solely responsible for the form of the Bank Guarantee that it issues. Neither the Agent, the Bank Guarantee Agent nor any other Lender under the relevant Facility has any duty to monitor the form of that document.

6.11 Right of refusal

- (a) Any Issuing Bank is entitled to refuse to issue a Bank Guarantee if it would be illegal for that Issuing Bank to do so, or if that Issuing Bank would be prohibited from doing so as a result of regulatory restrictions applicable to that Issuing Bank or for commercial reasons (*geschäftspolitische Entscheidung*) determined by that Issuing Bank in good faith related to similarly situated borrowers or in similar situations, including, but not limited to, if the issuance of such Bank Guarantee would contravene that Issuing Bank's internal policies or its business policy practice (*geschäftspolitische Praxis*) which have been implemented in good faith and apply generally to similarly situated borrowers or to similar situations.
- (b) For the avoidance of doubt, if the relevant Issuing Bank becomes uncomfortable with (i) the agreed pricing or other terms of the Super Senior Revolving Facility or a Bank Guarantee Facility, or (ii) the creditworthiness of the Borrowers or their Affiliates, this shall not constitute a commercial reason to refuse to issue a Bank Guarantee, subject to that Issuing Bank's rights as

otherwise agreed. The Issuing Bank shall not be obliged to state the reasons for any refusal to issue a Bank Guarantee or to disclose its internal policies or to provide any information or evidence regarding its decision to refuse the issuance of a Bank Guarantee.

6.12 Information upon request

Upon request of the Issuing Bank (acting reasonably and only applying principles that are applied generally to similarly structured borrowers or to similar situations) the Company shall provide such further information that is necessary in relation to the requested Bank Guarantee.

6.13 Adjustments of Bank Guarantee B Sublimit

- (a) The Borrower may adjust the Bank Guarantee B Sublimit of an Issuing Bank from time to time by giving the relevant Issuing Bank (with a copy to the Bank Guarantee Agent) at least 15 Business Days (in case of a proposed increase) or 10 Business Days (in case of a proposed decrease) prior notice in the form of Schedule 17 (*Bank Guarantee B Sublimit Adjustment*). Subject to paragraph (b) below, the new Bank Guarantee B Sublimit set out in such notice shall take effect as of the date specified therein provided that, in case of a requested increase of the Bank Guarantee B Sublimit, the respective Issuing Bank has consented to such increase by such date (or, if it consents later, such later date) (the "**Bank Guarantee B Sublimit Adjustment Date**").
- (b) If as a result of an adjustment of the Bank Guarantee B Sublimit in accordance with paragraph (a) above, the Base Currency Amount of Bank Guarantees issued by the relevant Issuing Bank as of the Bank Guarantee B Sublimit Adjustment Date would exceed the adjusted Bank Guarantee B Sublimit, the adjustment shall only take effect if the Company, or the relevant Borrower, has prepaid the Issuing Bank in an amount equal to such excess on or before the proposed Bank Guarantee B Adjustment Date.

7 BANK GUARANTEES

7.1 Immediately payable

If a Bank Guarantee or any amount outstanding under a Bank Guarantee is expressed to be immediately payable, the Borrower that requested (or on behalf of which the Company requested) the issue of that Bank Guarantee shall repay or prepay that amount immediately.

7.2 Claims under a Bank Guarantee

- (a) Each Borrower irrevocably and unconditionally authorises the relevant Issuing Bank to pay any claim made or purported to be made under a Bank Guarantee issued by that Issuing Bank requested by it (or requested by the Company on its behalf) and which appears on its face to be in order (in this Clause 7, a "**claim**").
- (b) Each Borrower shall immediately on demand or, if such payment is being funded by a Super Senior Revolving Facility Loan, shall within three Business Days of demand pay to the relevant Issuing Bank an amount equal to the amount of any claim.
- (c) Each Borrower and, with respect to a Fronted Bank Guarantee, each Fronted Lender acknowledges that each Issuing Bank:
 - (i) is not obliged to carry out any investigation or seek any confirmation from any other person before paying a claim; and
 - (ii) deals in documents only and will not be concerned with the legality of a claim or any underlying transaction or any available set-off, counterclaim or other defence of any person.
- (d) The obligations of a Borrower under this Clause will not be affected by:
 - (i) the sufficiency, accuracy or genuineness of any claim or any other document; or
 - (ii) any incapacity of, or limitation on the powers of, any person signing a claim or other document.

7.3 Indemnities

- (a) Each Borrower shall immediately within 3 Business Days of a written demand (in accordance with Clause 38.2 (*Certificates and determinations*)), indemnify each Issuing Bank against any cost, loss or liability incurred by that Issuing Bank (otherwise than by reason of that Issuing Bank's gross negligence or wilful misconduct) in acting as the Issuing Bank under any Bank Guarantee requested by (or on behalf of) that Borrower.
- (b) Each relevant Lender shall (according to its Bank Guarantee Proportion) immediately on demand indemnify each Issuing Bank against any cost, loss or liability incurred by that Issuing Bank (otherwise than by reason of that Issuing Bank's gross negligence or wilful misconduct) in acting as the Issuing Bank under any Fronted Bank Guarantee (unless that Issuing Bank has been reimbursed by an Obligor pursuant to a Finance Document).

- (c) The Borrower which requested (or on behalf of which the Company requested) a Fronted Bank Guarantee shall immediately on demand reimburse any Lender for any payment it makes to the relevant Issuing Bank under this Clause 7.3 in respect of that Fronted Bank Guarantee.
- (d) The obligations of each Lender and each Borrower under this Clause 7.3 are continuing obligations and will extend to the ultimate balance of sums payable by that Lender or that Borrower in respect of any Bank Guarantee, regardless of any intermediate payment or discharge in whole or in part.
- (e) If any discharge, release or arrangement (whether in respect of the obligations of each Lender and each Borrower under this Clause 7.3 or any security for those obligations or otherwise) is made by the beneficiary of those obligations in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the relevant Lender or Borrower under this Clause 7.3 will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- (f) If a Borrower has provided cash cover in respect of a Lender's participation in a Fronted Bank Guarantee, the relevant Issuing Bank shall seek reimbursement from that cash cover before making a demand of that Lender under paragraph (b) above. Any recovery made by an Issuing Bank pursuant to that cash cover will reduce that Lender's liability under paragraph (b) above.
- (g) The obligations of any Lender or Borrower under this Clause 7.3 will not be affected by any act, omission, matter or thing which, but for this Clause 7.3, would reduce, release or prejudice any of its obligations under this Clause 7.3 (without limitation and whether or not known to it or any other person) including:
 - (i) any time, waiver or consent granted to, or composition with, any Obligor, any beneficiary under a Bank Guarantee or any other person;
 - (ii) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor or any member of the Group;
 - (iii) 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 Obligor, any beneficiary under a Bank Guarantee 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;

- (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any beneficiary under a Bank Guarantee or any other person;
 - (v) any amendment (however fundamental) or replacement of a Finance Document, any Bank Guarantee or any other document or security;
 - (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, any Bank Guarantee or any other document or security; or
 - (vii) any insolvency or similar proceedings.
- (h) If a notice is served under Clause 28.18 (*Acceleration*) (other than a notice declaring Utilisations to be due on demand), the date of delivery of such notice being the "**First Sharing Date**", any payment made by an Issuing Bank prior to the First Sharing Date in relation to a claim under any Bank Guarantee issued under Bank Guarantee Facility A (and in respect of which the Issuing Bank has not yet been reimbursed) shall be treated as a loss and each relevant Lender shall (in the proportion (expressed as a percentage) borne by that Lender's Bank Guarantee Facility A Commitment to the Total Bank Guarantee Facility A Commitments) immediately on demand reimburse the Issuing Bank in respect of such loss. On each Quarter Date following the First Sharing Date, any payment made by the Issuing Bank prior to that Quarter Date in relation to a claim under any Bank Guarantee issued under Bank Guarantee Facility A (and in respect of which the Issuing Bank has not yet been reimbursed) shall be treated as a loss and each relevant Lender shall (in the proportion (expressed as a percentage) borne by that Lender's Bank Guarantee Facility A Commitment to the Total Bank Guarantee Facility A Commitments) immediately on demand reimburse the Issuing Bank in respect of such loss.

If the Issuing Bank subsequently receives or recovers any amount in respect of which it has been reimbursed by the Lenders pursuant to this paragraph (h), the Issuing Bank shall distribute such amount to the Lenders in proportion to the amounts provided by the Lenders at the time of such reimbursement.

7.4 Cash Collateral by Non-Acceptable B/G Lender and Borrower's Option to Provide Cash Cover

- (a) If, at any time, a Fronted Lender under the relevant Bank Guarantee Facility or with respect to a Bank Guarantee under the Super Senior Revolving Facility is a Non-Acceptable B/G Lender, the relevant Issuing Bank may, by notice to that Fronted Lender, request that Fronted Lender to pay and that Fronted

Lender shall pay, on or prior to the date falling three Business Days after the request by the relevant Issuing Bank, an amount equal to that Fronted Lender's Bank Guarantee Proportion of:

- (i) the outstanding amount of a Fronted Bank Guarantee; or
- (ii) in the case of a proposed Fronted Bank Guarantee, the amount of that proposed Bank Guarantee,

and in the currency of that Fronted Bank Guarantee to an interest-bearing account held in the name of that Lender with the relevant Issuing Bank.

- (b) The Non-Acceptable B/G Lender to whom a request has been made in accordance with paragraph (a) above shall enter into a security document or other form of collateral arrangement over the account, in form and substance satisfactory to the relevant Issuing Bank, as collateral for any amounts due and payable under this Agreement by that Fronted Lender to that Issuing Bank in respect of that Fronted Bank Guarantee.
- (c) Subject to paragraph (f) below, withdrawals from such an account may only be made to pay the relevant Issuing Bank amounts due and payable to it under this Agreement by the Non-Acceptable B/G Lender in respect of that Fronted Bank Guarantee until no amount is or may be outstanding under that Fronted Bank Guarantee.
- (d) Each Lender under a Bank Guarantee Facility or the Super Senior Revolving Facility shall notify the Agent and the Company:
 - (i) on the date of this Agreement or on any later date on which it becomes such a Lender in accordance with Clause 2.2 (*Increase*) or Clause 29 (*Changes to the Lenders*) whether it is a Non-Acceptable B/G Lender; and
 - (ii) as soon as practicable upon becoming aware of the same, that it has become a Non-Acceptable B/G Lender,

and an indication in Schedule 1 (*The Original Parties*), in an Assignment Agreement or in an Increase Confirmation to that effect will constitute a notice under paragraph (d)(i) above to the Agent and, upon delivery in accordance with Clause 29.6 (*Copy of Assignment Agreement or Increase Confirmation to Company*), to the Company.

- (e) Any notice received by the Agent pursuant to paragraph (d) above shall constitute notice to the relevant Issuing Bank of that Lender's status and the

Agent shall, upon receiving each such notice, promptly notify the relevant Issuing Bank of that Lender's status as specified in that notice.

- (f) Notwithstanding paragraph (c) above, a Lender which has provided cash collateral in accordance with this Clause 7.4 may, by notice to the relevant Issuing Bank, request that an amount equal to the amount provided by it as collateral in respect of the relevant Fronted Bank Guarantee (together with any accrued interest) be returned to it:
 - (i) to the extent that such cash collateral has not been applied in satisfaction of any amount due and payable under this Agreement by that Lender to the relevant Issuing Bank in respect of the relevant Fronted Bank Guarantee;
 - (ii) if:
 - (A) it ceases to be a Non-Acceptable B/G Lender;
 - (B) its obligations in respect of the relevant Fronted Bank Guarantee are transferred to a New Lender in accordance with the terms of this Agreement; or
 - (C) an Increase Lender has agreed to undertake that Lender's obligations in respect of the relevant Fronted Bank Guarantee in accordance with the terms of this Agreement; and
 - (iii) if no amount is due and payable by that Lender in respect of a Fronted Bank Guarantee,

and the relevant Issuing Bank shall pay that amount to the Lender within three Business Days of that Lender's request (and shall cooperate with the Lender in order to procure that the relevant security or collateral arrangement is released and discharged).

- (g) To the extent that a Non-Acceptable B/G Lender fails to provide cash collateral (or notifies the relevant Issuing Bank that it will not provide cash collateral) in accordance with this Clause 7.4 in respect of a proposed Fronted Bank Guarantee, the relevant Issuing Bank shall promptly notify the Company (with a copy to the Agent) and the Borrower (or the Company on its behalf) of that proposed Fronted Bank Guarantee may (in its sole discretion), at any time before the proposed Utilisation Date of that Fronted Bank Guarantee, provide cash cover to an account with the relevant Issuing Bank in an amount equal to that Lender's Bank Guarantee Proportion of the amount of that proposed Fronted Bank Guarantee.

7.5 Requirement for Cash Cover from Borrower

If:

- (a) a Non-Acceptable B/G Lender fails to provide cash collateral (or notifies the relevant Issuing Bank that it will not provide cash collateral) in accordance with Clause 7.4 (*Cash Collateral by Non-Acceptable B/G Lender and Borrower's Option to Provide Cash Cover*) in respect of a Fronted Bank Guarantee that has been issued;
- (b) the relevant Issuing Bank notifies the Company (with a copy to the Agent) that it requires the Borrower of the relevant Fronted Bank Guarantee to provide cash cover to an account with that Issuing Bank in an amount equal to that Lender's Bank Guarantee Proportion of the outstanding amount of that Fronted Bank Guarantee; and
- (c) that Borrower (or the Company on its behalf) has not already provided such cash cover which is continuing to stand as collateral,

then that Borrower (or the Company on its behalf) shall provide such cash cover within three Business Days of the notice referred to in paragraph (b) above.

7.6 Regulation and Consequences of Cash Cover Provided by Borrower

- (a) Any cash cover provided by a Borrower pursuant to Clause 7.4 (*Cash Collateral by Non-Acceptable B/G Lender and Borrower's Option to Provide Cash Cover*) or Clause 7.5 (*Requirement for Cash Cover from Borrower*) may be funded out of a Super Senior Revolving Facility Loan.
- (b) Notwithstanding paragraph (d) of Clause 1.2 (*Construction*), the relevant Borrower (or the Company on its behalf) may request that an amount equal to the cash cover (together with any accrued interest) provided by it pursuant to Clause 7.4 (*Cash Collateral by Non-Acceptable B/G Lender and Borrower's Option to Provide Cash Cover*) or Clause 7.5 (*Requirement for cash cover from Borrower*) be returned to it:
 - (i) to the extent that such cash cover has not been applied in satisfaction of any amount due and payable under this Agreement by that Borrower to the relevant Issuing Bank in respect of a Fronted Bank Guarantee;
 - (ii) if:
 - (A) the relevant Lender ceases to be a Non-Acceptable B/G Lender;
 - (B) the relevant Lender's obligations in respect of the relevant Fronted Bank Guarantee are transferred to a New Lender (that

is not a Non-Acceptable B/G Lender) in accordance with the terms of this Agreement; or

(C) an Increase Lender (that is not a Non-Acceptable B/G Lender) has agreed to undertake the relevant Lender's obligations in respect of the relevant Fronted Bank Guarantee in accordance with the terms of this Agreement; and

(iii) if no amount is due and payable by the relevant Lender in respect of the relevant Fronted Bank Guarantee,

and the relevant Issuing Bank shall pay that amount to that Borrower within three Business Days of that Borrower's request.

- (c) To the extent that a Borrower has provided cash cover pursuant to Clause 7.4 (*Cash Collateral by Non-Acceptable B/G Lender and Borrower's Option to Provide Cash Cover*) or Clause 7.5 (*Requirement for Cash Cover from Borrower*), the relevant Lender's Bank Guarantee Proportion in respect of that Fronted Bank Guarantee will remain (but that Lender's obligations in relation to that Fronted Bank Guarantee may be satisfied in accordance with paragraph (d)(ii) of Clause 1.2 (*Construction*)). However, the relevant Borrower's obligation to pay any Bank Guarantee fee in relation to the relevant Bank Guarantee to the Agent or the Bank Guarantee Agent (as applicable) (for the account of that Lender) in accordance with and subject to Clause 17.4 (*Fees Payable in Respect of Bank Guarantees and Fronted Bank Guarantees*) will be reduced proportionately as from the date on which it provides that cash cover (and for so long as the relevant amount of cash cover continues to stand as collateral).
- (d) The relevant Issuing Bank shall promptly notify the Agent or the Bank Guarantee Agent (as applicable) of the extent to which a Borrower provides cash cover pursuant to Clause 7.4 (*Cash Collateral by Non-Acceptable B/G Lender and Borrower's Option to Provide Cash Cover*) or Clause 7.5 (*Requirement for Cash Cover from Borrower*) and of any change in the amount of cash cover so provided.

7.7 Rights of contribution

No Obligor will be entitled to any right of contribution or indemnity from any Finance Party in respect of any payment it may make under this Clause 7.

8 OPTIONAL CURRENCIES

8.1 Selection of currency

A Borrower (or the Company on its behalf) shall select the currency of a Bank Guarantee Facility A Utilisation, a Bank Guarantee Facility B Utilisation and a Super Senior Revolving Facility Utilisation in a Utilisation Request.

8.2 Unavailability of a currency

If before the Specified Time on any Quotation Day:

- (a) a Lender notifies the Agent that the Optional Currency requested is not readily available to it in the amount required; or
- (b) a Lender notifies the Agent that compliance with its obligation to participate in a Loan in the proposed Optional Currency would contravene a law or regulation applicable to it,

the Agent will give notice to the relevant Borrower or the Company to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this Clause 8.2 will be required to participate in the Loan in the Base Currency (in an amount equal to that Lender's proportion of the Base Currency Amount, or in respect of a Rollover Loan, an amount equal to that Lender's proportion of the Base Currency Amount of the Rollover Loan that is due to be made) and its participation will be treated as a separate Loan denominated in the Base Currency during that Interest Period.

9 ANCILLARY FACILITIES AND FRONTED ANCILLARY FACILITIES

9.1 Type of Facility

An Ancillary Facility or Fronted Ancillary Facility may be by way of:

- (a) an overdraft facility;
- (b) a guarantee, bonding, documentary or stand-by letter of credit facility;
- (c) a short term loan facility;
- (d) a derivatives facility;
- (e) a foreign exchange facility; or
- (f) any other facility or accommodation required in connection with the business of the Group and which is agreed by the Company with an Ancillary Lender (in respect of an Ancillary Facility) or by the Company with a Fronting Ancillary Lender and each relevant Fronted Ancillary Lender (in respect of a Fronted Ancillary Facility).

9.2 Availability

- (a) If the Company and a Lender agree and except as otherwise provided in this Agreement, the Lender may provide all or part of its Super Senior Revolving Facility Commitment as an Ancillary Facility or as part of a Fronted Ancillary Facility.
- (b) An Ancillary Facility or a Fronted Ancillary Facility shall not be made available unless, not later than five Business Days prior to the Ancillary Commencement Date (in respect of an Ancillary Facility) or the Fronted Ancillary Commencement Date (in respect of a Fronted Ancillary Facility), the Agent has received from the Company:
 - (i) a notice in writing requesting the establishment of an Ancillary Facility or a Fronted Ancillary Facility (as the case may be) and specifying:
 - (A) the proposed Borrower(s) which may use the Ancillary Facility or Fronted Ancillary Facility;
 - (B) the proposed Ancillary Commencement Date or Fronted Ancillary Commencement Date (as the case may be), and expiry date of the Ancillary Facility or Fronted Ancillary Facility (as the case may be);
 - (C) the proposed type of Ancillary Facility or Fronted Ancillary Facility (as the case may be) to be provided;
 - (D) the proposed Ancillary Lender, or Fronting Ancillary Lender and each Fronted Ancillary Lender (as the case may be);
 - (E) (i) the proposed Ancillary Commitment to apply to the Ancillary Facility, or (ii) each Fronted Ancillary Lender's Fronted Ancillary Commitment and the Fronting Ancillary Commitment to apply to the Fronted Ancillary Facility, and (iii) in each case, the maximum amount of the Ancillary Facility or Fronted Ancillary Facility, and, (iv) in the case of a Multi-account Overdraft, its Designated Gross Amount and its Designated Net Amount; and
 - (F) the proposed currency of the Ancillary Facility or Fronted Ancillary Facility (in each case, if not denominated in the Base Currency);
 - (ii) a copy of the proposed Ancillary Document or Fronted Ancillary Document (as the case may be); and

- (iii) any other information which the Agent may reasonably request in connection with the Ancillary Facility or the Fronted Ancillary Facility (as the case may be).
- (c) The Agent shall promptly notify each Lender under the Super Senior Revolving Facility upon receipt of any notice under paragraph (b) above.
- (d) Subject to compliance with paragraph (b) above and the proposed Ancillary Lender having notified the Agent prior to the Ancillary Commencement Date that it agrees to make available that Ancillary Facility, the Ancillary Lender identified in the notice delivered pursuant to paragraph (b) above shall become an Ancillary Lender and authorised to make available the proposed Ancillary Facility available with effect from the Ancillary Commencement Date.
- (e) Subject to compliance with paragraph (b) above and the proposed Fronting Ancillary Lender and each proposed Fronted Ancillary Lender having notified the Agent prior to the Fronted Ancillary Commencement Date that they agree to make available that Fronted Ancillary Facility, the Fronting Ancillary Lender and each Fronted Ancillary Lender identified in the notice delivered pursuant to paragraph (b) above shall become a Fronting Ancillary Lender or a Fronted Ancillary Lender (as applicable) and authorised to make available the proposed Fronted Ancillary Facility available with effect from the Fronted Ancillary Commencement Date and each Fronted Ancillary Lender shall become a Fronted Ancillary Lender with effect from the Fronting Ancillary Commencement Date.
- (f) The Agent shall promptly notify the Company and any Lender of the establishment of an Ancillary Facility or a Fronted Ancillary Facility (as the case may be).

9.3 Terms of Ancillary Facilities and Fronted Ancillary Facilities

- (a) Except as provided below, the terms of any Ancillary Facility or Fronted Ancillary Facility will be those agreed by the Ancillary Lender and the Company (in the case of an Ancillary Facility), or by the Fronting Ancillary Lender and the Company (in the case of a Fronted Ancillary Facility).
- (b) However, those terms:
 - (i) must be based upon normal commercial terms at that time (except as varied by this Agreement);
 - (ii) may allow only Borrowers or any Subsidiary of a Borrower nominated pursuant Clause 9.9 (*Subsidiaries of Borrowers*), to use the Ancillary Facility or Fronted Ancillary Facility;

- (iii) may not allow the Ancillary Outstandings to exceed the Ancillary Commitment (in respect of an Ancillary Facility) or the aggregate of the Fronted Ancillary Commitments and the Fronting Ancillary Commitment (in respect of a Fronted Ancillary Facility);
 - (iv) may not allow the Ancillary Commitment of a Lender to exceed the Available Commitment with respect to the Super Senior Revolving Facility Commitment of that Lender;
 - (v) may not allow the aggregate of the Fronting Ancillary Commitment and Fronted Ancillary Commitment of a Lender to exceed the Available Commitment with respect to the Super Senior Revolving Facility Commitment of that Lender; and
 - (vi) must require that the Ancillary Commitment, Fronting Ancillary Commitment or Fronted Ancillary Commitment of a Lender is reduced to zero, and that all Ancillary Outstandings are repaid (or cash cover provided in respect of all the Ancillary Outstandings) not later than the Termination Date applicable to the Super Senior Revolving Facility (or such earlier date as the Super Senior Revolving Facility Commitment of the relevant Ancillary Lender (or its Affiliate) (in respect of Ancillary Commitments) or Fronting Ancillary Lender or Fronted Ancillary Lender (in respect of Fronted Ancillary Facilities) is reduced to zero).
- (c) If there is any inconsistency between any term of an Ancillary Facility or a Fronted Ancillary Facility, and any term of this Agreement, this Agreement shall prevail except for:
- (i) Clause 38.3 (*Day count convention*) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility or Fronted Ancillary Facility; and
 - (ii) an Ancillary Facility or Fronted Ancillary Facility (as the case may be) comprising more than one account where the terms of the Ancillary Documents or Fronted Ancillary Document (as the case may be) shall prevail; and
 - (iii) where the relevant term of this Agreement would be contrary to, or inconsistent with, the law governing the relevant Ancillary Document or Fronted Ancillary Document, in which case that term of this Agreement shall not prevail.

- (d) Interest, commission and fees on Ancillary Facilities and Fronted Ancillary Facilities are dealt with in Clause 17.5 (*Interest, commission and fees on Ancillary Facilities and Fronted Ancillary Facilities*).

9.4 Repayment of Ancillary Facility

- (a) An Ancillary Facility or Fronted Ancillary Facility (as the case may be) shall cease to be available on the Termination Date applicable to the Super Senior Revolving Facility or such earlier date on which its expiry date occurs or on which it is cancelled in accordance with the terms of this Agreement.
- (b) If an Ancillary Facility or Fronted Ancillary Facility (as the case may be) expires in accordance with its terms the Ancillary Commitment, Fronting Ancillary Commitment or Fronted Ancillary Commitment of the Ancillary Lender, Fronting Ancillary Lender or Fronted Ancillary Lender (as the case may be) shall be reduced to zero (and its Super Senior Revolving Facility Commitment shall be increased accordingly).
- (c) No Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender may demand repayment or prepayment of any Ancillary Outstandings prior to the expiry date of the relevant Ancillary Facility or Fronted Ancillary Facility unless:
 - (i) required to reduce the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings;
 - (ii) the Total Super Senior Revolving Facility Commitments have been cancelled in full or all outstanding Utilisations under the Super Senior Revolving Facility have become due and payable in accordance with the terms of this Agreement; or
 - (iii) it becomes unlawful in any applicable jurisdiction for the Ancillary Lender, Fronting Ancillary Lender or Fronted Ancillary Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in its Ancillary Facility or Fronted Ancillary Facility (or it becomes unlawful for any Affiliate of the Ancillary Lender, Fronting Ancillary Lender or Fronted Ancillary Lender to do so); or
 - (iv) both:
 - (A) the Available Commitments relating to the Super Senior Revolving Facility; and

- (B) the notice of the demand given by the Ancillary Lender, Fronting Ancillary Lender or Fronted Ancillary Lender,

would not prevent the relevant Borrower funding the repayment of those Ancillary Outstandings in full by way of a Utilisation under the Super Senior Revolving Facility.

- (d) For the purposes of determining whether or not the Ancillary Outstandings under an Ancillary Facility or Fronted Ancillary Facility mentioned in paragraph (c)(iv) above can be refinanced by a Utilisation of the Super Senior Revolving Facility:
- (i) the Super Senior Revolving Facility Commitment of the Ancillary Lender, or the Fronting Ancillary Lender and each Fronted Ancillary Lender will be increased by the amount of its Ancillary Commitment, Fronted Ancillary Commitment or Fronting Ancillary Commitment (as relevant); and
 - (ii) the Utilisation may (so long as paragraph (c)(ii) above does not apply) be made irrespective of whether a Default is outstanding or any other applicable condition precedent is not satisfied (but only to the extent that the proceeds are applied in refinancing those Ancillary Outstandings) and irrespective of whether Clause 4.4 (*Maximum number of Utilisations*) or paragraph (a)(iii) of Clause 5.2 (*Completion of a Utilisation Request for Loans*) applies.
- (e) On the making of a Utilisation of the Super Senior Revolving Facility to refinance Ancillary Outstandings:
- (i) each Lender will participate in that Utilisation in an amount (as determined by the Agent) which will result as nearly as possible in the aggregate amount of its participation in the Super Senior Revolving Facility Utilisations then outstanding bearing the same proportion to the aggregate amount of the Super Senior Revolving Facility Utilisations then outstanding as its Super Senior Revolving Facility Commitment bears to the Total Super Senior Revolving Facility Commitments; and
 - (ii) the relevant Ancillary Facility or Fronted Ancillary Facility shall be cancelled.
- (f) In relation to an Ancillary Facility or Fronted Ancillary Facility which comprises an overdraft facility where a Designated Net Amount has been established, the Ancillary Lender providing that Ancillary Facility or Fronting Ancillary Lender providing the Fronted Ancillary Facility shall only be

obliged to take into account for the purposes of calculating compliance with the Designated Net Amount those credit balances which it is permitted to take into account by the then current law and regulations in relation to its reporting of exposures to applicable regulatory authorities as netted for capital adequacy purposes.

9.5 Limitation on Ancillary Outstandings

Each Borrower shall procure that:

- (a) the Ancillary Outstandings:
 - (i) under any Ancillary Facility shall not exceed the Ancillary Commitment applicable to that Ancillary Facility; and
 - (ii) under any Fronted Ancillary Facility shall not exceed the aggregate of the Fronted Ancillary Commitments and Fronting Ancillary Commitment applicable to that Fronted Ancillary Facility; and
- (b) in relation to a Multi-account Overdraft:
 - (i) the Ancillary Outstandings shall not exceed the Designated Net Amount applicable to that Multi-account Overdraft; and
 - (ii) the Gross Outstandings shall not exceed the Designated Gross Amount applicable to that Multi-account Overdraft.

9.6 Adjustment for Ancillary Facilities and Fronted Ancillary Facilities upon Acceleration

- (a) In this Clause 9.6:
 - (i) **"Revolving Outstandings"** means, in relation to a Lender, the aggregate of the equivalent in the Base Currency of:
 - (A) its participation in each Super Senior Revolving Facility Utilisations then outstanding (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Lender under the Super Senior Revolving Facility); and
 - (B) if the Lender is also an Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender, the Ancillary Outstandings in respect of Ancillary Facilities and Fronted Ancillary Facilities provided by that Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender (or, in each case, by its Affiliate) (together with the aggregate amount of all

accrued interest, fees and commission owed to it (or to its Affiliate) as an Ancillary Lender, Fronted Ancillary Lender or Fronting Ancillary Lender in respect of the Ancillary Facility or Fronted Ancillary Facility); and

- (ii) **"Total Revolving Outstandings"** means the aggregate of all Revolving Outstandings.
- (b) If a notice is served under Clause 28.18 (*Acceleration*) (other than a notice declaring Utilisations to be due on demand), each Lender, each Ancillary Lender, each Fronting Ancillary Lender and each Fronted Ancillary Lender shall promptly adjust (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Finance Documents relating to Revolving Outstandings) their claims in respect of amounts outstanding to them under the Super Senior Revolving Facility, each Ancillary Facility and each Fronted Ancillary Facility to the extent necessary to ensure that after such transfers the Revolving Outstandings of each Lender bear the same proportion to the Total Revolving Outstandings as such Lender's Super Senior Revolving Facility Commitment bears to the Total Super Senior Revolving Facility Commitments, each as at the date the notice is served under Clause 28.18 (*Acceleration*).
- (c) If an amount outstanding under an Ancillary Facility or Fronted Ancillary Facility is a contingent liability and that contingent liability becomes an actual liability or is reduced to zero after the original adjustment is made under paragraph (b) above, then each Lender, Ancillary Lender, Fronting Ancillary Lender and Fronted Ancillary Lender will make a further adjustment (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Finance Documents relating to Revolving Outstandings to the extent necessary) to put themselves in the position they would have been in had the original adjustment been determined by reference to the actual liability or, as the case may be, zero liability and not the contingent liability.
- (d) Any transfer of rights and obligations relating to Revolving Outstandings made pursuant to this Clause 9.6 shall be made for a purchase price in cash, payable at the time of transfer, in an amount equal to those Revolving Outstandings (less any accrued interest, fees and commission to which the transferor will remain entitled to receive notwithstanding that transfer, pursuant to Clause 29.10 (*Pro Rata Interest Settlement*)).
- (e) Prior to the application of the provisions of paragraph (b) above, an Ancillary Lender or Fronting Ancillary Lender that has provided a Multi-account Overdraft shall set-off any Available Credit Balance on any account comprised in that Multi-account Overdraft.

- (f) All calculations to be made pursuant to this Clause 9.6 shall be made by the Agent based upon information provided to it by the Lenders, Ancillary Lenders, Fronting Ancillary Lenders and Fronted Ancillary Lenders, and the Agent's Spot Rate of Exchange.
- (g) This Clause 9.6 shall not oblige any Lender to accept the transfer of a claim relating to an amount outstanding under an Ancillary Facility or Fronted Ancillary Facility which is not denominated (pursuant to the relevant Finance Document) in either the Base Currency or a currency which has been an Optional Currency for the purpose of the Super Senior Revolving Facility or in another currency which is acceptable to that Lender.

9.7 Information

Each Borrower, each Ancillary Lender, each Fronting Ancillary Lender and each Fronted Ancillary Lender shall, promptly upon request by the Agent, supply the Agent with any information relating to the operation of an Ancillary Facility or Fronted Ancillary Facility (in each case including the Ancillary Outstandings) as the Agent may reasonably request from time to time. Each Borrower consents to all such information being released to the Agent and the other Finance Parties.

9.8 Affiliates of Lenders as Ancillary Lenders, Fronting Ancillary Lender or Fronted Ancillary Lender

- (a) Subject to the terms of this Agreement, an Affiliate of a Lender may become an Ancillary Lender, Fronting Ancillary Lender or Fronted Ancillary Lender. In such case, the Lender and its Affiliate shall be treated as a single Lender (other than for the purposes of calculating Fronting Ancillary Commitments and Fronted Ancillary Commitments) whose Super Senior Revolving Facility Commitment is the amount set out opposite the relevant Lender's name in Part II of Schedule 1 (*The Original Parties*) and/or the amount of any Super Senior Revolving Facility Commitment transferred to that Lender under this Agreement, to the extent (in each case) not cancelled, reduced or transferred by it under this Agreement. For the purposes of calculating the Lender's Available Commitment with respect to the Super Senior Revolving Facility, the Lender's Commitment shall be reduced to the extent of the aggregate of the Ancillary Commitments, Fronting Ancillary Commitments and Fronted Ancillary Commitments of its Affiliates.
- (b) The Company shall specify any relevant Affiliate of a Lender in any notice delivered by the Company to the Agent pursuant to paragraph (b)(i) of Clause 9.2 (*Availability*).

- (c) An Affiliate of a Lender which becomes an Ancillary Lender, Fronting Ancillary Lender, or Fronted Ancillary Lender shall accede to this Agreement and the Intercreditor Agreement by delivery to the Security Trustee of a duly completed accession undertaking in the form scheduled to the Intercreditor Agreement.
- (d) If a Lender assigns all of its rights and benefits or transfers all of its rights and obligations to a New Lender (as defined in Clause 29 (*Changes to the Lenders*)), its Affiliate shall cease to have any obligations under this Agreement or any Ancillary Document or Fronted Ancillary Document (as the case may be).
- (e) Where this Agreement or any other Finance Document imposes an obligation on an Ancillary Lender, Fronting Ancillary Lender or Fronted Ancillary Lender, and the relevant Ancillary Lender, Fronting Ancillary Lender or Fronted Ancillary Lender is an Affiliate of a Lender which is not a party to that document, the relevant Lender shall ensure that the obligation is performed by its Affiliate.

9.9 Subsidiaries of Borrowers

- (a) Subject to the terms of this Agreement, a Subsidiary of a Borrower under the Super Senior Revolving Facility may with the approval of the relevant Ancillary Lender or Fronted Ancillary Lender (as the case may be) become a borrower with respect to an Ancillary Facility or Fronted Ancillary Facility (as the case may be).
- (b) The Company shall specify any relevant Subsidiary of a Borrower under the Super Senior Revolving Facility in any notice delivered by the Company to the Agent pursuant to paragraph (b)(i) of Clause 9.2 (*Availability*).
- (c) If a Borrower under the Super Senior Revolving Facility ceases to be a Borrower under this Agreement in accordance with Clause 31.3 (*Resignation of a Borrower*), its Subsidiary shall cease to have any rights under this Agreement or any Ancillary Document or Fronted Ancillary Document (unless that Subsidiary is also the Subsidiary of another Borrower).
- (d) Where this Agreement or any other Finance Document imposes an obligation on a borrower under an Ancillary Facility or a Fronted Ancillary Facility and the relevant borrower is a Subsidiary of a Borrower under the Super Senior Revolving Facility which is not a party to that document, the relevant Borrower shall ensure that the obligation is performed by its Subsidiary. Any reference in this Agreement or any other Finance Document to a Borrower being under no obligations (whether actual or contingent) as a Borrower under

such Finance Document shall be construed to include a reference to any Subsidiary of a Borrower under the Super Senior Revolving Facility being under no obligations under any Finance Document, Ancillary Document or Fronted Ancillary Document (unless that Subsidiary is also the Subsidiary of another Borrower).

9.10 Super Senior Revolving Facility Commitment amounts

Notwithstanding any other term of this Agreement, each Lender shall ensure that at all times its Super Senior Revolving Facility Commitment is not less than the aggregate of:

- (a) its Ancillary Commitments, Fronting Ancillary Commitment and Fronted Ancillary Commitment; and
- (b) the Ancillary Commitments, Fronting Ancillary Commitment and Fronted Ancillary Commitment of its Affiliates.

9.11 Amendments and Waivers – Ancillary Facilities

No amendment or waiver of a term of any Ancillary Facility or Fronted Ancillary Facility shall require the consent of any Finance Party other than the relevant Ancillary Lender or the relevant Fronting Ancillary Lender unless such amendment or waiver itself relates to or gives rise to a matter which would require an amendment of or under this Agreement (including, for the avoidance of doubt, under this Clause 9). In such a case, Clause 41 (*Amendments and Waivers*) will apply.

9.12 Fronted Ancillary Commitment Indemnities

- (a) A Borrower under the Super Senior Revolving Facility must promptly and in any event not later than four Business Days following a written demand by any Fronting Ancillary Lender or Fronted Ancillary Lender indemnify such Fronting Ancillary Lender or Fronted Ancillary Lender against any cost, loss or liability which that Fronting Ancillary Lender or Fronted Ancillary Lender incurs in acting as the Fronting Ancillary Lender or Fronted Ancillary Lender under any Fronted Ancillary Facility requested by it, except to the extent that any loss or liability is caused by the gross negligence or wilful misconduct of, or material breach of the terms of this Agreement by, that Fronting Ancillary Lender or Fronted Ancillary Lender.
- (b) Each Fronted Ancillary Lender must promptly on demand indemnify the Fronting Ancillary Lender (according to the proportion of its Fronted Ancillary Commitment to the aggregate of the Fronting Ancillary Commitment and the Fronted Ancillary Commitments under the respective Fronted Ancillary Facility) against any cost, loss or liability which the

Fronting Ancillary Lender incurs in acting as the Fronting Ancillary Lender under any Fronted Ancillary Facility and which at the date of demand has not been paid for by an Obligor, except to the extent that any loss or liability is caused by the gross negligence or wilful misconduct of, or material breach of the terms of this Agreement by, the Fronting Ancillary Lender.

- (c) The relevant Borrower under the Super Senior Revolving Facility which requested the Fronted Ancillary Facility must promptly and in any event not later than four Business Days following a written demand reimburse any Fronted Ancillary Lender for any payment it makes to the Fronting Ancillary Lender under paragraph (b) above except as a direct result of the gross negligence or wilful misconduct of, or material breach of the terms of this Agreement by, such Fronted Ancillary Lender.
- (d) The obligations of each Borrower under the Super Senior Revolving Facility and each Fronted Ancillary Lender under this Clause 9.12 are continuing obligations and will extend to the ultimate balance of all sums payable by that Borrower or Fronted Ancillary Lender in respect of any Fronted Ancillary Facility, regardless of any intermediate payment or discharge in whole or in part.
- (e) The obligations of each Borrower under the Super Senior Revolving Facility and each Fronted Ancillary Lender under this Clause 9.12 will not be affected by any act, omission or thing which, but for this Clause 9.12, would reduce, release or prejudice any of its obligations under this Clause 9.12 (without limitation and whether or not known to it or any other person) including:
 - (i) any time or waiver granted to, or composition with, any person;
 - (ii) any release of any person under the terms of any composition or arrangement;
 - (iii) 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 person;
 - (iv) 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;
 - (v) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
 - (vi) any amendment (however fundamental) of a Finance Document or any other document or security; or

- (vii) the unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security.

9.13 Settlement Conditional

Any settlement or discharge between a Fronted Ancillary Lender and the Fronting Ancillary Lender shall be conditional upon no security or payment to the Fronting Ancillary Lender by a Fronted Ancillary Lender or any other person on behalf of the Fronted Ancillary Lender being avoided or reduced by virtue of any laws relating to bankruptcy, insolvency, liquidation or similar laws of general application and, if any such security or payment is so avoided or reduced, the relevant Fronting Ancillary Lender shall be entitled to recover the value or amount of such security or payment from such Fronted Ancillary Lender subsequently as if such settlement or discharge had not occurred.

9.14 Exercise of Rights

The Fronting Ancillary Lender shall not be obliged prior to exercising any of the rights, powers or remedies conferred upon it by this Agreement or by law:

- (a) to take any action or obtain judgment in any court against any Obligor;
- (b) to make or file any claim or proof in a winding-up or dissolution of any Obligor; or
- (c) to enforce or seek to enforce any other security taken in respect of any of the obligations of any Obligor under this Agreement.

9.15 Continuation of Ancillary Facilities or Fronted Ancillary Facilities

A Borrower and an Ancillary Lender and Fronting Ancillary Lender may agree, as between themselves only, that any Ancillary Facility or Fronted Ancillary Facility will continue to remain available following the Termination Date relating to the Super Senior Revolving Facility (or on any other earlier cancellation of the Super Senior Revolving Facility Commitments) on a bilateral basis between such parties and not pursuant to (or subject to the terms of) the Finance Documents (in which case such Ancillary Facility or Fronted Ancillary Facility shall be treated as repaid in full for all purposes under the Finance Documents).

10 REPAYMENT, PREPAYMENT AND CANCELLATION

10.1 Repayment of Term Loans

- (a) The Borrowers under Term Facility A shall repay the aggregate Term Facility A Loans in full on the applicable Termination Date.

- (b) The Borrowers under Term Facility B shall repay the aggregate Term Facility B Loans in full on the applicable Termination Date.
- (c) The Borrowers under Term Facility C shall repay the aggregate Term Facility C Loans in full on the applicable Termination Date.
- (d) The Borrowers may not reborrow any part of a Term Facility which is repaid.

10.2 Repayment of Super Senior Revolving Facility Loans

- (a) Subject to paragraph (c) below, each Borrower which has drawn a Super Senior Revolving Facility Loan shall repay that Loan on the last day of its Interest Period.
- (b) Without prejudice to each Borrower's obligation under paragraph (a) above, if:
 - (i) one or more Super Senior Revolving Facility Loans are to be made available to a Borrower:
 - (A) on the same day that a maturing Super Senior Revolving Facility Loan is due to be repaid by that Borrower;
 - (B) in the same currency as the maturing Revolving Facility Loan (unless it arose as a result of the operation of Clause 8.2 (*Unavailability of a Currency*)); and
 - (C) in whole or in part for the purpose of refinancing the maturing Super Senior Revolving Facility Loan; and
 - (ii) the proportion borne by each Lender's participation in the maturing Super Senior Revolving Facility Loan to the amount of that maturing Super Senior Revolving Facility Loan is the same as the proportion borne by that Lender's participation in the new Super Senior Revolving Facility Loans to the aggregate amount of those new Super Senior Revolving Facility Loans,

the aggregate amount of the new Super Senior Revolving Facility Loans shall, unless the relevant Borrower or the Company notifies the Agent to the contrary in the relevant Utilisation Request, be treated as if applied in or towards repayment of the maturing Super Senior Revolving Facility Loan so that:

- (A) if the amount of the maturing Super Senior Revolving Facility Loan exceeds the aggregate amount of the new Super Senior Revolving Facility Loans:

- (I) the relevant Borrower will only be required to make a payment under Clause 35.1 (*Payments to the Agent*) in an amount in the relevant currency equal to that excess; and
 - (II) each Lender's participation in the new Super Senior Revolving Facility Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Super Senior Revolving Facility Loan and that Lender will not be required to make a payment under Clause 35.1 (*Payments to the Agent*) in respect of its participation in the new Super Senior Revolving Facility Loans; and
- (B) if the amount of the maturing Super Senior Revolving Facility Loan is equal to or less than the aggregate amount of the new Super Senior Revolving Facility Loans:
 - (I) the relevant Borrower will not be required to make a payment under Clause 35.1 (*Payments to the Agent*); and
 - (II) each Lender will be required to make a payment under Clause 35.1 (*Payments to the Agent*) in respect of its participation in the new Super Senior Revolving Facility Loans only to the extent that its participation in the new Super Senior Revolving Facility Loans exceeds that Lender's participation in the maturing Super Senior Revolving Facility Loan and the remainder of that Lender's participation in the new Super Senior Revolving Facility Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Super Senior Revolving Facility Loan.
- (c) At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Super Senior Revolving Facility Loans then outstanding will be automatically extended to the Termination Date applicable to the Super Senior Revolving Facility and will be treated as separate Super Senior Revolving Facility Loans (the "**Separate Loans**") denominated in the currency in which the relevant participations are outstanding.

- (d) A Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving not less than five Business Days' prior notice to the Agent. The proportion borne by the amount of the prepayment of the Separate Loan to the amount of the Separate Loans shall not exceed the proportion borne by the amount of the prepayment of the Super Senior Revolving Facility Utilisation to the Super Senior Revolving Facility Utilisations. The Agent will forward a copy of a prepayment notice received in accordance with this paragraph (d) to the Defaulting Lender concerned as soon as practicable on receipt.
- (e) Interest in respect of a Separate Loan will accrue for successive Interest Periods selected by the Borrower by the time and date specified by the Agent (acting reasonably) and will be payable by that Borrower to the Agent (for the account of that Defaulting Lender) on the last day of each Interest Period of that Loan.
- (f) The terms of this Agreement relating to Super Senior Revolving Facility Loans generally shall continue to apply to Separate Loans other than to the extent inconsistent with paragraph (c) to (e) (inclusive) above, in which case those paragraphs shall prevail in respect of any Separate Loan.

10.3 Repayment of Bank Guarantees

- (a) Each Borrower which has utilised a Bank Guarantee under Bank Guarantee Facility A (and which is then outstanding) shall repay that Bank Guarantee in full on the applicable Termination Date.
- (b) Each Borrower which has utilised a Bank Guarantee under Bank Guarantee Facility B (and which is then outstanding) shall repay that Bank Guarantee in full on the applicable Termination Date.
- (c) Each Borrower which has utilised a Bank Guarantee under the Super Senior Revolving Facility (and which is then outstanding) shall repay that Bank Guarantee in full on the applicable Termination Date.

11 ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

11.1 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender, shall promptly notify the Agent upon becoming aware of that event;

- (b) upon the Agent notifying the Company, each Available Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to Clause 41.5 (*Replacement of Lender*), each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.

11.2 Illegality in relation to Issuing Bank

If it becomes unlawful for an Issuing Bank to issue or leave outstanding any Bank Guarantee or it becomes unlawful for any Affiliate of an Issuing Bank for that Issuing Bank to do so, then:

- (a) that Issuing Bank shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Company, that Issuing Bank shall not be obliged to issue any Bank Guarantee;
- (c) the Company shall procure that each Obligor shall use its best endeavours to procure the release of each Bank Guarantee issued by that Issuing Bank and outstanding at such time; and
- (d) unless any other Lender is or has become an Issuing Bank pursuant to the terms of this Agreement, the relevant Bank Guarantee Facility shall cease to be available for the issue of Bank Guarantees.

11.3 Voluntary cancellation

- (a) Subject to paragraph (b) below, the Company may, if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of EUR 1,000,000 and an integral multiple of EUR 1,000,000) of an Available Facility. Any cancellation under this Clause 11.3 shall reduce the Commitments of the Lenders rateably under that Facility.
- (b) Any notice of cancellation of the Available Commitments with respect to the Super Senior Revolving Facility delivered at any time while Loans under any other Facility remain outstanding and/or other Commitments remain uncanceled must be accompanied by evidence, in form and substance

satisfactory to the Majority Lenders, that the Group will have sufficient working capital facilities available to it following such cancellation.

11.4 Voluntary prepayment of Term Loans

- (a) Subject to paragraph (b) below and Clause 12.3 (*Application of prepayments*), a Borrower to which a Term Loan has been made may, if it or the Company gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of that Term Loan (but, if in part, being an amount that reduces the Base Currency Amount of that Term Loan by a minimum amount of EUR 1,000,000 and an integral multiple of EUR 1,000,000).
- (b) A Term Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the applicable Available Facility is zero).

11.5 Voluntary prepayment of Super Senior Revolving Facility Loans

Subject to Clause 12.3 (*Application of prepayments*) a Borrower to which a Super Senior Revolving Facility Loan has been made may, if it or the Company gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Super Senior Revolving Facility Loan (but if in part, being an amount that reduces the Base Currency Amount of the Super Senior Revolving Facility Loan by a minimum amount of EUR 1,000,000 and an integral multiple of EUR 1,000,000).

11.6 Voluntary prepayment of Bank Guarantees

Subject to Clause 12.3 (*Application of prepayments*) a Borrower which has utilised a Bank Guarantee may, if it or the Company gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Bank Guarantee (but if in part, being an amount that reduces the Base Currency Amount of the Bank Guarantee by a minimum amount of EUR 1,000,000 and an integral multiple of EUR 1,000,000).

11.7 Right of cancellation and repayment in relation to a single Lender or Issuing Bank

- (a) If:
 - (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 18.2 (*Tax gross-up*); or

- (ii) any Lender or Issuing Bank claims indemnification from the Company or an Obligor under Clause 18.3 (*Tax indemnity*) or Clause 19.1 (*Increased costs*),

the Company may, whilst the circumstance giving rise to the requirement for indemnification continues, give the Agent notice:

- (iii) (if such circumstances relate to a Lender) of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations; or
 - (iv) (if such circumstances relate to the relevant Issuing Bank) of repayment of any outstanding Bank Guarantee issued by it and cancellation of its appointment as an Issuing Bank under this Agreement in relation to any Bank Guarantees to be issued in the future.
- (b) On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the Commitment of that Lender shall immediately be reduced to zero.
 - (c) On the last day of each Interest Period which ends after the Company has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Company in that notice), each Borrower to which a Utilisation is outstanding shall repay that Lender's participation in that Utilisation together with all interest and other amounts accrued under the Finance Documents.

11.8 Right of Cancellation in Relation to a Defaulting Lender

- (a) If any Lender becomes a Defaulting Lender, the Company may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent five Business Days' notice of cancellation of each Available Commitment of that Lender.
- (b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

11.9 Automatic Cancellation

Any Available Commitment will be automatically cancelled at the close of business on the last day of any Availability Period applicable to the relevant Facility.

12 MANDATORY PREPAYMENT

12.1 Exit

Upon the occurrence of:

- (a) any Flotation (other than a Qualifying IPO);
- (b) a Change of Control; or
- (c) the sale of all or substantially all of the assets of the Group whether in a single transaction or a series of related transactions,

the Facilities will be cancelled and all outstanding Utilisations and Ancillary Outstandings, together with accrued interest, and all other amounts accrued under the Finance Documents shall become immediately due and payable.

12.2 Disposal and Insurance Proceeds and Excess Cashflow

- (a) For the purposes of this Clause 12.2 and Clause 12.3 (*Application of prepayments*):

"Disposal" means a sale, lease, licence, transfer, loan or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

"Disposal Proceeds" means the consideration receivable by any member of the Group (including any amount receivable in repayment of intercompany debt) for any Disposal made by any member of the Group except for Excluded Disposal Proceeds and after deducting:

- (i) any reasonable fees, costs and expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group; and
- (ii) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

"Excluded Disposal Proceeds" means:

- (i) the proceeds of any disposal referred to in paragraphs (a) to (c), (e), (g), (i) and (k) of the definition of Permitted Disposal;
- (ii) the proceeds of an individual Disposal (after deducting the amounts of any items referred to in paragraph (i) or (ii) of the definition of

Disposal Proceeds) which do not exceed EUR 1,000,000 (or its currency equivalent);

- (iii) the proceeds of any Disposal which are applied in the purchase of assets to be used in the business of the Group within 12 months after receipt or, if committed to be so applied within 12 months after receipt, are so applied within 18 months after receipt of such proceeds provided that only 50 per cent. of the proceeds of any individual Disposal may be reinvested in the business, assets and/or operations of the Group; and
- (iv) the proceeds of an individual Disposal (not taking into account the value of proceeds of such Disposals which are below the individual threshold of EUR 1,000,000) (after deducting the amounts of any items referred to in paragraph (i) or (ii) of the definition of Disposal Proceeds) which, when aggregated with the proceeds of other Disposals (not taking into account the value of proceeds of such Disposals which are below the individual threshold of EUR 1,000,000) arising in the same Financial Year, do not exceed EUR 5,000,000 (or its currency equivalent).

"Excluded Insurance Proceeds" means any proceeds of an insurance claim (after deducting the amounts of any items referred to in paragraph (i) or (ii) of the definition of Insurance Proceeds) which:

- (i) the Company notifies the Agent are applied:
 - (A) to meet a third party claim or to meet a claim in respect of directors' and officers' liability insurance, in each case in respect of the same matter in respect of which the relevant insurance claim was made;
 - (B) to cover operating losses in respect of which the relevant insurance claim was made; or
 - (C) to the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made;

in each case within a period of 12 months after receipt;

- (ii) do not exceed EUR 500,000 (or its currency equivalent) in respect of any single claim; or

- (iii) when aggregated with the proceeds of other insurance claims arising in the same Financial Year of the Company (not taking into account proceeds under paragraph (i) or (ii) above) do not exceed EUR 1,000,000 (or its currency equivalent).

"Insurance Proceeds" means the proceeds of any insurance claim received by any member of the Group except for Excluded Insurance Proceeds and after deducting any reasonable expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group.

- (b) Subject to clause 15.3 (*Adjustment of Mandatory Prepayments*) of the Intercreditor Agreement, the Company shall ensure that the Borrowers prepay Utilisations in the following amounts at the times and in the order of application contemplated by Clause 12.3 (*Application of prepayments*):
 - (i) the amount of Disposal Proceeds;
 - (ii) the amount of Insurance Proceeds; and
 - (iii) to the extent it is a positive amount, the amount equal to the 50% of the Excess Cashflow as at each Sweep Calculation Date less EUR 5,000,000.

12.3 Application of prepayments

- (a) A prepayment made under Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*) shall be applied in the following order:
 - (i) first, in prepayment of the Term Facility A Loans as contemplated in paragraphs (b) to (e) below;
 - (ii) secondly, in prepayment of the Term Facility C Loans as contemplated in paragraphs (b) to (e) below;
 - (iii) thirdly, in prepayment of the Term Facility B Loans as contemplated in paragraphs (b) to (e) below;
 - (iv) fourthly, in prepayment pro rata of Super Senior Revolving Facility Utilisations such that outstanding Super Senior Revolving Facility Utilisations shall be prepaid on a pro rata basis and cancellation, in each case, of the corresponding Super Senior Revolving Facility Commitments;
 - (v) fifthly, in prepayment of Bank Guarantee Facility A and in cancellation of Available Commitments under Bank Guarantee Facility

- A (and the Available Commitment of the Lenders under Bank Guarantee Facility A will be cancelled ratably);
- (vi) sixthly, in prepayment of Bank Guarantee Facility B and in cancellation of Available Commitments under Bank Guarantee Facility B (and the Available Commitment of the Lenders under Bank Guarantee Facility B will be cancelled ratably); and
 - (vii) seventhly, in:
 - (A) repayment of the Ancillary Outstandings (and cancellation of corresponding Ancillary Commitments, Fronting Ancillary Commitments and Fronted Ancillary Commitments); and
 - (B) cancellation of Ancillary Commitments, Fronting Ancillary Commitments and Fronted Ancillary Commitments (on a pro rata basis) and cancellation, in each case, of the corresponding Super Senior Revolving Facility Commitments.
- (b) Unless the Company makes an election under paragraph (d) below, the Borrowers shall prepay Term Loans at the following times:
- (i) in the case of any prepayment relating to the amounts of Disposal Proceeds or Insurance Proceeds, promptly upon receipt of those proceeds; and
 - (ii) in the case of any prepayment relating to an amount of Excess Cashflow, within 14 days of delivery pursuant to Clause 25.1 (*Financial statements*) of the Annual Financial Statements of the Company in respect of the Financial Year ending on each Sweep Calculation Date (and Excess Cashflow shall be calculated on the basis of those accounts).
- (c) Subject to paragraph (e) below, the Company may, by giving the Agent not less than five Business Days (or such shorter period as the Majority Lenders may agree) prior written notice, elect that any prepayment under Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*) be applied in prepayment of a Term Loan on the last day of the Interest Period relating to that Term Loan.
- (d) If the Company makes the election under paragraph (c) above then a proportion of the Term Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.

- (e) If the Company has made an election under paragraph (c) above but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Term Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Lenders otherwise agree in writing).
- (f) If a member of the Group disposes of one or more other members of the Group or all or substantially all of the assets (excluding, for the avoidance of doubt, the termination of any lease agreements) of one or more members of the Group (each a "**Subsidiary Asset**") (whether in a single transaction or a series of transactions) where the amount of Consolidated EBITDA directly attributable to such Subsidiary Assets in aggregate accounted for more than 25 per cent. of the Opening EBITDA, the order of prepayments set out in paragraph (a) above shall be modified such that any subsequent mandatory prepayment is first applied *pro rata* in prepayment and/or cancellation (as applicable) in respect of the Super Senior Revolving Facility, Bank Guarantee Facility A and Term Facility A. Such modification shall apply amounts in prepayment and/or cancellation (as applicable) of:
 - (i) Bank Guarantee Facility A until such time as the Total Bank Guarantee Facility A Commitments have been cancelled in proportion to the aggregate amount of Utilisations under Bank Guarantee Facility A that had been made by members of the Group no longer comprised in the Group as a result of such disposals (with such amount to be determined on the basis of outstanding Utilisations as at the time of disposal of each relevant member of the Group); and
 - (ii) to the Super Senior Revolving Facility until there has been a cancellation of 25 per cent. of the Total Super Senior Revolving Facility Commitments, and

once the relevant threshold in respect of prepayment and/or cancellation of each of Bank Guarantee Facility A and the Super Senior Revolving Facility has been met, the relevant Facility shall thereafter attract the same ranking and treatment that is set out as under the initial order of prepayments set out at paragraph (a) above.
- (g) If the Group subsequently disposes of additional Subsidiary Assets (whether by a single transaction or a series of transactions) where the amount of Consolidated EBITDA directly attributable to such Subsidiary Assets when aggregated with all previously disposed of Subsidiary Assets account for more than 50 per cent. of the Opening EBITDA, the order of prepayments set out at paragraph (a) above shall be modified as described in paragraph (f) save that the threshold referred to in sub-paragraph (ii) therein shall be 50 per cent.

- (h) If the Group subsequently disposes of additional Subsidiary Assets (whether in a single transaction or a series of transactions) where the amount of Consolidated EBITDA directly attributable to such Subsidiary Assets when aggregated with all previously disposed of Subsidiary Assets account for more than 75 per cent. of the Opening EBITDA, the order of prepayments set out at paragraph (a) above shall be modified such that any subsequent mandatory prepayment is first applied *pro rata* in prepayment and/or cancellation (as applicable) in respect of the Super Senior Revolving Facility, Bank Guarantee Facility A and Term Facility A until each such Facility has been prepaid and/or cancelled in its entirety.

12.4 Excluded proceeds

Where Excluded Disposal Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definition of Excluded Disposal Proceeds or Excluded Insurance Proceeds), the Company shall ensure that those amounts are used for that purpose and, if requested to do so by the Agent, shall promptly deliver a certificate to the Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

12.5 Upstreaming Monies

If:

- (a) monies are required to be applied in prepayment or repayment of the Facilities under Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*) but in order to be so applied need to be upstreamed or otherwise transferred from one member of the Group to another member of the Group to effect that prepayment or repayment; and
- (b) such monies cannot be so upstreamed or transferred without breaching a financial assistance prohibition or without breaching some other legal restriction or breaching any fiduciary or statutory duties or exposing any of the directors to a potential personal (civil law or criminal law) liability or without the Group incurring a cost (whether as a result of paying additional Taxes or otherwise) equal to or greater than five per cent of the monies to be upstreamed or otherwise transferred,

there will be no obligation to make that payment or prepayment until that impediment no longer applies. Each Obligor will (and the Company will procure that each other member of the Group will) use all reasonable endeavours to overcome that impediment so as to enable the relevant prepayment or repayment to occur.

13 RESTRICTIONS

13.1 Notices of Cancellation or Prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 11 (*Illegality, Voluntary Prepayment and Cancellation*) or paragraph (d) of Clause 12.3 (*Application of prepayments*) shall (subject to the terms of those Clauses) be irrevocable and, unless a contrary indication appears in this Agreement, any such notice shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

13.2 Interest and other amounts

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty except for any prepayment fee under Clause 17.6 (*Prepayment fee*).

13.3 No reborrowing of Term Facilities

No Borrower may reborrow any part of a Term Facility which is prepaid.

13.4 Reborrowing of Bank Guarantee Facilities and Super Senior Revolving Facility

Unless a contrary indication appears in this Agreement, any part of a Bank Guarantee Facility or Super Senior Revolving Facility which is prepaid may be reborrowed in accordance with the terms of this Agreement. For the avoidance of doubt, the amount outstanding under Bank Guarantee Facility A, Bank Guarantee Facility B and the Super Senior Revolving Facility shall not at any time exceed the Total Bank Guarantee Facility A Commitments, the Total Bank Guarantee Facility B Commitments and the Total Super Senior Revolving Facility Commitments, respectively, except as otherwise provided for under paragraph (b) of Clause 6.9 (*Revaluation of Bank Guarantee*).

13.5 Prepayment in accordance with Agreement

No Borrower shall repay or prepay all or any part of the Utilisations or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

13.6 No reinstatement of Commitments

Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

13.7 Agent's receipt of Notices

If the Agent receives a notice under Clause 11 (*Illegality, voluntary prepayment and cancellation*) or an election under paragraph (d) of Clause 12.3 (*Application of prepayments*), it shall promptly forward a copy of that notice or election to either the Company or the affected Lender, as appropriate.

14 INTEREST

14.1 Calculation of interest

Subject to Clause 14.3 (*Capitalised Interest / Cash pay option for Term Facility B Loans*) below, the rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin (excluding, but without prejudice to Clause 14.3 (*Capitalised Interest / Cash pay option for Term Facility B Loans*), in the case of Term Facility B Loans, the Additional Cash Margin and the Capitalised Margin); and
- (b) EURIBOR in relation to any Loan in euro, NIBOR in relation to any Loan in NOK, STIBOR in relation to any Loan in SEK, CIBOR in relation to any Loan in DKK or, in relation to any Loan not in euro, NOK, SEK or DKK, LIBOR.

14.2 Payment of interest

Subject to Clause 14.3 below (*Capitalised Interest / Cash pay option for Term Facility B Loans*), the Borrower (or the Company on its behalf) to which a Loan has been made shall pay accrued interest on that Loan in cash on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period).

14.3 Capitalised Interest/Cash pay option for Term Facility B Loans

- (a) Subject to paragraphs (d) and (e) below, in addition to the interest referred to in Clause 14.1 (*Calculation of interest*), for the period from (and including) the date of this Agreement to (and including) the date falling two years thereafter, the Company on behalf of each Borrower under a Term Facility B Loan will have the option, by giving to the Agent a written notice in the form set out in Schedule 15 (*Capitalisation/Cash Pay Notice*) on or before 9.30 am 3 Business Days before the end of an Interest Period, to request that those Term Facility B Loans will bear interest at either:
 - (i) the Additional Cash Margin; or
 - (ii) the Capitalised Margin (the "**Capitalised Interest**").

- (b) If the Company elects the option referred to in paragraph (a)(i) above interest accrued during the relevant Interest Period shall be payable in cash in accordance with Clause 14.2 (*Payment of interest*).
- (c) If the Company elects the option referred to in paragraph (a)(ii) above (the "**Capitalised Interest Option**") on the last day of each Interest Period in respect of which the Capitalised Interest Option applies an amount equal to the Capitalised Interest which has accrued during that Interest Period shall be capitalised so as to form part of the relevant Term Facility B Loan and shall thereafter bear interest together with the rest of the Term Facility B Loan in accordance with this Clause 14.
- (d) For as long as there are any amounts outstanding under the Super Senior Facilities, any interest on a Term Facility B Loan which has been made under an Incremental Facility Tranche in accordance with Clause 2.5 (*Incremental Facility Commitment*) or on a Term Facility C Loan shall be capitalised so as to form part of the relevant Term Facility B Loan or Term Facility C Loan, as applicable, and shall thereafter bear interest together with the rest of the relevant Term Facility B Loan or Term Facility C Loan, as applicable, in accordance with this Clause 14.
- (e) With regard to a Borrower incorporated in Belgium and to the extent the Company has elected the Capitalised Interest Option for an Interest Period:
 - (i) subject to paragraph (ii) below, the Capitalised Interest becoming due at the end of such Interest Period remains outstanding (and is not payable), and will become payable on the anniversary of the last day of such Interest Period (each, a "**Payment Date**"); and
 - (ii) on or before 9.30 a.m. 3 Business Days before each Payment Date, the Company on behalf of each Borrower incorporated in Belgium will have the option to request that Capitalised Interest which has been due on a Term Loan for at least a period of twelve Months, be capitalised (without any novative effect), by giving to the Agent written notice substantially in the form set out in Schedule 15 (the "**Belgian Capitalisation Notice**") of the decision to capitalise, which the Agent shall countersign and accept. If a Belgian Capitalisation Notice is served and accepted according to this Clause, an amount equal to the interest to which that notice relates ("**Belgian Capitalised Interest**") shall be capitalised and added to the principal outstanding in respect of the relevant Term Loan with effect from the Payment Date and shall thereafter bear interest in accordance with Clause 14 (*Interest*).

14.4 Default interest

- (a) If an Obligor fails to pay any amount (other than interest) payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is one per cent higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 14.4 shall be immediately payable by that Obligor on demand by the Agent.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be one per cent. higher than the rate which would have applied if the overdue amount had not become due.

14.5 Notification of rates of interest

The Agent shall promptly notify the Lenders and the relevant Borrower (or the Company) of the determination of a rate of interest under this Agreement.

15 INTEREST PERIODS

15.1 Selection of Interest Periods and Terms

- (a) A Borrower (or the Company on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan is a Term Loan and has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Term Loan is irrevocable and must be delivered to the Agent by the Borrower (or the Company on behalf of the Borrower) to which that Term Loan was made not later than the Specified Time.
- (c) If a Borrower (or the Company) fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will be one Month.
- (d) Subject to this Clause 15:
 - (i) in respect of the Super Senior Revolving Facility, the Borrower (or the Company on its behalf) may select an Interest Period of one, two or

three Months or any other period agreed between the Company and the Agent (acting on the instructions of all the Lenders participating in the Super Senior Revolving Facility), provided that, in case of a Rollover Loan made whilst a Declared Event of Default is continuing, the Company may only select an Interest Period of not more than two weeks for such Rollover Loan.

- (ii) in respect of Term Facility A, the Borrower (or the Company on its behalf) may select an Interest Period of three Months or any other period agreed between the Company and the Agent (acting on the instructions of all of the Lenders participating in Term Facility A); and
 - (iii) in respect of Term Facility B and Term Facility C, respectively, the Company on behalf of a Borrower may select an initial Interest Period of no more than six Months in a Utilisation Request, and indicate thereafter whether the following Interest Period should be three or six Months and thereafter all Interest Periods in respect of Term Facility B or Term Facility C, respectively, shall be three or six months (as the case may be) or any other period agreed between the Company and the Agent (acting on the instructions of all the Lenders participating in the Term Facility B or Term Facility C, respectively).
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.
 - (f) Each Interest Period for a Term Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
 - (g) A Super Senior Revolving Facility Loan has one Interest Period only.

15.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

15.3 Consolidation and division of Term Loans

- (a) Subject to paragraph (b) below, if two or more Interest Periods:
 - (i) relate to Term Loans made under the same Term Facility and in the same currency;
 - (ii) end on the same date; and
 - (iii) relate to Term Loans which are made to the same Borrower,

those Term Loans will, unless that Borrower (or the Company on its behalf) specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Term Loan on the last day of the Interest Period.

- (b) Subject to Clause 4.4 (*Maximum number of Utilisations*), and Clause 5.3 (*Currency and amount*) if a Borrower (or the Company on its behalf) requests in a Selection Notice that an Term Facility B Loan or Term Facility C Loan be divided into two or more Term Facility B Loans, that Term Facility B Loan or Term Facility C Loan will, on the last day of its Interest Period, be so divided with Base Currency Amounts specified in that Selection Notice, having an aggregate Base Currency Amount equal to the Base Currency Amount of the Term Facility B Loan or Term Facility C Loan immediately before its division.

16 CHANGES TO THE CALCULATION OF INTEREST

16.1 Absence of quotations

Subject to Clause 16.2 (*Market disruption*), if EURIBOR or, if applicable, LIBOR, NIBOR, STIBOR or CIBOR is to be determined by reference to the Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable EURIBOR, LIBOR, NIBOR, STIBOR or CIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

16.2 Market disruption

- (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) In this Agreement "**Market Disruption Event**" means:
 - (i) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine EURIBOR or, if

applicable, LIBOR, NIBOR, STIBOR or CIBOR for the relevant currency and Interest Period; or

- (ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 35 per cent. of that Loan) that the cost to it of obtaining matching deposits in the Relevant Interbank Market would be in excess of EURIBOR or, if applicable, LIBOR, NIBOR, STIBOR or CIBOR.

16.3 Alternative basis of interest or funding

- (a) If a Market Disruption Event occurs and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.

16.4 Break Costs

- (a) Each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

17 FEES

17.1 Commitment fee

- (a) Subject to Clause 7.6 (*Regulation and Consequences of Cash Cover provided by Borrower*) and paragraph (d) below, the Company shall pay a fee in the Base Currency computed at the rate of:
 - (i) 1.70 per cent. per annum on that Lender's Available Commitment under Bank Guarantee Facility A for the Availability Period applicable to Bank Guarantee Facility A, payable to each Lender under the relevant Facility;
 - (ii) 1.75 per cent. per annum on each Lender's Available Commitment under Bank Guarantee Facility B for the Availability Period applicable

to Bank Guarantee Facility B, payable to the Agent (for the account of such Lender) (in accordance with a calculation thereof and break-down per Lender prepared by the Bank Guarantee Agent); and

- (iii) 2.125 per cent. per annum to the Agent (for the account of each Lender) on that Lender's Available Commitment under the Super Senior Revolving Facility for the Availability Period applicable to the Super Senior Revolving Facility.
- (b) The accrued commitment fee is payable within 3 Business Days of (i) the last day of each successive period of three Months which ends during the relevant Availability Period, (ii) the last day of the relevant Availability Period, (iii) the time a cancellation has become effective, on the cancelled amount of the relevant Lender's Commitment or (iv) with respect to Bank Guarantee Facility B, receiving an invoice from the Bank Guarantee Agent which shall be delivered to the Company no later than 5 Business Days after the relevant time specified in preceding paragraphs (i) - (iii).
- (c) No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.
- (d) Instead of receiving a commitment fee pursuant to paragraph (a)(i) above, each Lender may elect for itself to receive a facility fee in the same percentage amount as set out in paragraph (a)(i) above calculated on the entire amount of its Commitment under Bank Guarantee Facility A, provided that in that case the percentage amount of the Bank Guarantee fee payable to such Lender as set out in paragraphs (b)(i) and/or (ii) of Clause 17.4 (*Fees payable in respect of Bank Guarantees and Fronted Bank Guarantees*) shall be reduced by the percentage amount of the commitment fee set out in paragraph (a)(i) above.

17.2 Arrangement fee

The Company shall pay to the Agent an arrangement fee for distribution in accordance with the terms of the relevant Fee Letter.

17.3 Agency, bank guarantee agency and security trustee fee

The Company shall pay to the Agent, the Bank Guarantee Agent and the Security Trustee (for its own account) an agency, bank guarantee agency fee and security trustee fee in the amount and at the times agreed in one or more Fee Letters.

17.4 Fees payable in respect of Bank Guarantees and Fronted Bank Guarantees

- (a) Subject to paragraphs (d) and (e) below, with respect to a Fronted Bank Guarantee, the Company shall pay to each relevant Issuing Bank a fronting fee for the period from the date of issue of that Fronted Bank Guarantee until its Expiry Date and at the rate agreed between the Company and such Issuing Bank on the outstanding amount of such Fronted Bank Guarantee to the extent counter-indemnified by Fronted Lenders (other than the Issuing Bank itself or its Affiliates).
- (b) Subject to paragraph (a) above and (c) below, the Company shall pay a Bank Guarantee fee in the Base Currency computed at the rate equal to:
 - (i) 3.40 per cent. per annum in respect of any Bank Guarantee issued under Bank Guarantee Facility A, payable to each Lender under the relevant Facility at the time and in the manner as agreed between the Company and such Lender;
 - (ii) 3.50 per cent. per annum in respect of any Bank Guarantee issued under Bank Guarantee Facility B payable to the Agent (for the account of each Lender under that Facility) (in accordance with a calculation thereof and break-down per Lender provided by the Bank Guarantee Agent); and
 - (iii) 4.25 per cent. per annum in respect of any Bank Guarantee issued under the Super Senior Revolving Facility (but not, for the avoidance of doubt, in respect of any Bank Guarantee issued under any Ancillary Facility or any Fronted Ancillary Facility) payable to the Agent (for the account of each Lender under that Facility),

on the outstanding amount of each Bank Guarantee requested by it for the period from the issue of that Bank Guarantee until its Expiry Date.

- (c) Any accrued fronting fees in relation to the Fronted Bank Guarantees and Bank Guarantee fees pursuant to paragraphs (a) and (b) above shall be payable within 3 Business Days of (i) each Quarter Date, (ii) the time a cancellation has become effective, on the cancelled amount of any Lender's Bank Guarantee Facility A Commitments, Bank Guarantee Facility B Commitment and Super Senior Revolving Facility Commitment (as applicable) if that Commitment is cancelled in full and the Bank Guarantee is prepaid or repaid in full or (iii) with respect to Bank Guarantee Facility B, receiving an invoice from the Bank Guarantee Agent which shall be delivered to the Company no later than 5 Business Days after the relevant time specified in preceding paragraphs (i) or (ii).
- (d) If the Company or a Borrower cash covers any part of a Bank Guarantee then:

- (i) Subject to paragraph (e) below, any fronting fee payable to the Issuing Bank in relation to a Fronted Bank Guarantee shall continue to be payable until the expiry of the Fronted Bank Guarantee subject to paragraph (a) above;
 - (ii) each Borrower will be entitled to withdraw the interest accrued on the cash cover to pay the fees set out in sub-paragraph (i) above; and
 - (iii) no Bank Guarantee fee save for 0.75 per cent. per annum shall accrue with respect to that part of a Bank Guarantee.
- (e) If a Non-Acceptable B/G Lender, the Company or the Borrower provides cash cover to an Issuing Bank pursuant to Clauses 7.4 (*Cash Collateral by Non-Acceptable B/G Lender and Borrower's Option to Provide Cash Cover*) or 7.5 (*Requirement for Cash Cover from Borrower*), no fronting fee shall be payable to the relevant Issuing Bank in relation to the Non-Acceptable B/G Lender's Bank Guarantee Proportion as from the date on which cash cover is provided (and for so long as the relevant amount of cash cover continues to stand as collateral).
- (f) The Company shall pay to each Issuing Bank (for its own account) an issuance, administration, amendment and/or any other fee in the amount and at the times specified in a Fee Letter.
- (g) Subject to paragraph (h) below, if, following a request by a Borrower (or the Company on its behalf) an Issuing Bank instructs a third party bank or institution which is not a party to this Agreement (a "**Third Party Bank**") to issue a bank guarantee (an "**indirect letter of guarantee**") backed by a Bank Guarantee issued by such Issuing Bank, any additional fronting or guarantee fees required by such Third Party Bank shall be agreed with and borne by the relevant Borrower (or the Company on its behalf).
- (h) No additional fronting or guarantee fees shall be payable under paragraph (g) above if:
- (i) Deutsche Bank AG, Filiale Deutschlandgeschäft (acting in its capacity as an Issuing Bank) instructs Deutsche Bank AG, London Branch or *vice versa*; or
 - (ii) Deutsche Bank AG, Filiale Deutschlandgeschäft or Deutsche Bank AG, London Branch (in each case in their capacity as Issuing Bank) instruct any other branch or affiliate of Deutsche Bank AG,

to issue an indirect letter of guarantee, provided that, in respect of sub-paragraph (ii), additional fronting or guarantee fees shall continue to be

payable under paragraph (g) above insofar as it relates to a Fronted Bank Guarantee but solely to the extent that Fronted Lenders other than Deutsche Bank AG, Filiale Deutschlandgeschäft and Deutsche Bank AG , London Branch participate in such Fronted Bank Guarantee backing the relevant indirect letter of guarantee.

17.5 Interest, commission and fees on Ancillary Facilities and Fronted Ancillary Facilities

The rate and time of payment of interest, commission, fees and any other remuneration in respect of each Ancillary Facility and each Fronted Ancillary Facility shall be determined by agreement between the relevant Ancillary Lender and the Borrower of that Ancillary Facility or the relevant Fronting Ancillary Lender and the Borrower of that Fronted Ancillary Facility based upon normal market rates and terms.

17.6 Prepayment fee

Other than as contemplated by Clause 2.2 (*Increase*), Clause 11.1 (*Illegality*) or Clause 11.2 (*Illegality in relation to Issuing Bank*) or pursuant to Clause 12 (*Mandatory prepayment*), in case of a voluntary prepayment or refinancing of the principal outstanding, in whole or in part, under the Term Facility A or a cancellation of any commitments or refinancing of the principal outstanding, in each case in whole or in part, under the Super Senior Revolving Facility or the Bank Guarantee Facility A, the Company shall pay, or shall procure the payment of, a prepayment fee in an amount which is equal to:

- (a) 2.00 per cent. (if the voluntary prepayment, refinancing or cancellation (as applicable) is made in the period between the date of this Agreement and the first anniversary of the date of this Agreement); or
- (b) 1.00 per cent. (if the voluntary prepayment, refinancing or cancellation is made in the period between the date immediately after the first anniversary of the date of this Agreement and the second anniversary of the date of this Agreement),

in each case on the amount voluntarily prepaid, refinanced or cancelled (as applicable), provided that such prepayment fee shall only accrue once in case that with respect to the same principal amount outstanding and/or commitment (underlying the principal amount in case of a voluntarily prepayment or a refinancing) several actions are taken either concurrently or subsequently that have the effect of a voluntary prepayment, refinancing and/or cancellation.

18 TAX GROSS-UP AND INDEMNITIES

18.1 Definitions

(a) In this Agreement:

"Austrian Borrower" means in respect of this Clause 18 (*Tax gross-up and indemnities*) a Borrower which is incorporated in Austria.

"Belgian Borrower" means a Borrower which is incorporated in Belgium.

"Belgian Non-Cooperative Jurisdiction" means a jurisdiction that is listed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes as a jurisdiction not effectively and substantially implementing the OECD standard for exchange of information, or a jurisdiction listed in Article 179 of the Royal Decree implementing the Belgian Income Tax Code as a jurisdiction which does not impose any tax or having a nominal corporate income tax rate not exceeding ten per cent (10%) (as such list may be amended from time to time).

"Borrower DTTP Filing" means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the relevant UK Borrower, which:

- (i) where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in Part II of Schedule 1 (*The Original Parties*), and
 - (A) where the UK Borrower is an Original Borrower, is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or
 - (B) where the UK Borrower is an Additional Borrower, is filed with HM Revenue & Customs within 30 days of the date on which that UK Borrower becomes an Additional Borrower; or
- (ii) where it relates to a Treaty Lender that is a New Lender, an Increase Lender or an Incremental Facility Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Assignment Agreement, Increase Confirmation or Incremental Facility Notice, and
 - (A) where the UK Borrower is a Borrower as at the relevant Transfer Date (or the date on which the increase in Commitments as described in the relevant Increase

Confirmation or the relevant Incremental Facility Commitment takes effect), is filed with HM Revenue & Customs within 30 days of that Transfer Date (or the date on which the increase in Commitments as described in the relevant Increase Confirmation or the relevant Incremental Facility Commitment takes effect); or

- (B) where the UK Borrower is not a Borrower as at the relevant Transfer Date (or the date on which the increase in Commitments as described in the relevant Increase Confirmation or the relevant Incremental Facility Commitment takes effect), is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower.

"Danish Borrower" means a Borrower which is resident for tax purposes in Denmark.

"German Borrower" means a Borrower which is incorporated in the Federal Republic of Germany.

"Protected Party" means a Finance Party which is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

"Qualifying Lender" means:

- (i) in respect of interest payable by a German Borrower, a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and which is:
 - (A) lending through a Facility Office in Germany;
 - (B) a Treaty Lender; or
 - (C) able under German domestic law to receive interest free of a Tax Deduction (if any);
- (ii) in respect of interest payable by a Swedish Borrower, a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and which is:
 - (A) lending through a Facility Office in Sweden;
 - (B) a Treaty Lender; or

- (C) able under Swedish domestic law to receive interest free of a Tax Deduction (if any);
- (iii) in respect of interest payable by a UK Borrower, a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and which is:

(A) a Lender:

- (I) which is a bank (as defined for the purpose of section 879 of the UK ITA) making an advance under a Finance Document; or
- (II) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the UK ITA) at the time that that advance was made,

and which is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or, where that Lender is a bank (as defined for the purpose of section 879 of the UK ITA), which would be within such charge as respects such payments apart from section 18A of the UK CTA;

(B) a Lender which is:

- (I) a company resident in the United Kingdom for United Kingdom tax purposes;
- (II) a partnership each member of which is:
- a company resident in the United Kingdom for United Kingdom tax purposes; or
 - a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the UK CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the UK CTA; or

- (III) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing its chargeable profits (within the meaning of section 19 of the UK CTA); or
- (C) a Treaty Lender;
- (iv) in respect of interest payable by a Belgian Borrower, a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and which is:
 - (A) a credit institution with its head office in Belgium, or acting through an establishment located in Belgium, in another member state of the European Economic Area, or in a jurisdiction with which Belgium has a double taxation agreement in force at the date of payment; or
 - (B) a Treaty Lender;
- (v) in respect of interest payable by a Danish Borrower, a Lender which is beneficially entitled to interest payable to that Lender and which is:
 - (A) a company resident in Denmark for Danish tax purposes; or
 - (B) a company that is not affiliated with the relevant Obligor within the meaning of Section 3B of the Danish Tax Control Act; or
 - (C) a Treaty Lender;
- (vi) in respect of interest payable by any other Borrower, a Lender which is beneficially entitled to interest payable to that Lender and which is:
 - (A) lending through a Facility Office in the jurisdiction of incorporation of the relevant Borrower;
 - (B) a Treaty Lender; or
 - (C) able under the domestic law of its jurisdiction of incorporation to receive interest free of a Tax Deduction (if any); and
- (vii) in respect of interest payable by an Austrian Borrower, a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and which is:

- (A) lending through a Facility Office in Austria;
- (B) a Treaty Lender; or
- (C) able under Austrian domestic law to receive interest free of a Tax Deduction (if any).

(For the avoidance of doubt, a Lender that was a Qualifying Lender at the date it became a Lender under this Agreement shall not cease to be a Qualifying Lender solely as a result of a change of the domestic tax law applicable to it.)

"Swedish Borrower" means a Borrower which is resident for tax purposes in Sweden.

"Tax Confirmation" means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

- (i) a company resident in the United Kingdom for United Kingdom tax purposes;
- (ii) a partnership each member of which is:
 - (A) a company resident in the United Kingdom for United Kingdom tax purposes; or
 - (B) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the UK CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the UK CTA; or
- (iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing its chargeable profits (within the meaning of section 19 of the UK CTA).

"Tax Credit" means a credit against, relief or remission for, or repayment of, any Tax.

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

"Tax Payment" means either the increase in a payment made by an Obligor to a Finance Party under Clause 18.2 (*Tax gross-up*) or a payment under Clause 18.3 (*Tax indemnity*).

"Treaty Lender" means a Lender which:

- (i) is treated as a resident of a Treaty State for the purposes of the Treaty;
- (ii) does not carry on a business in the jurisdiction of incorporation of the relevant Borrower through a permanent establishment with which that Lender's participation in the Loan is effectively connected; and
- (iii) is entitled under the provisions of a Treaty to receive payments of interest from a person resident in such jurisdiction without a Tax Deduction (subject to the completion of any necessary procedural formalities).

"Treaty State" means a jurisdiction having a double taxation agreement (a **"Treaty"**) with the jurisdiction of incorporation of the relevant Borrower which makes provision for full exemption from tax imposed by the jurisdiction of incorporation of the relevant Borrower on interest.

"UK Borrower" means a Borrower which is incorporated in the United Kingdom.

"UK CTA" means the Corporation Act 2009.

"UK ITA" means the Income Tax Act 2007.

"UK Non-Bank Lender" means a Lender which gives a Tax Confirmation in the Assignment Agreement, Increase Confirmation or Incremental Facility Notice which it executes on becoming a Party to this Agreement.

Unless a contrary indication appears, in this Clause 18 a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination, acting in good faith.

18.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Company shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender or Issuing Bank shall notify the Agent on becoming so aware in respect of a payment

payable to that Lender or Issuing Bank. If the Agent receives any such notification from a Lender or Issuing Bank it shall promptly notify the Company and any relevant Obligor.

- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) An Obligor is not required to make an increased payment to a Lender under paragraph (c) above for a Tax Deduction in respect of tax imposed by the jurisdiction of incorporation of the relevant Borrower from a payment of interest on a Loan, if on the date on which the payment falls due:
 - (i) the payment could have been made to the relevant Lender without a Tax Deduction in respect of tax imposed by the jurisdiction of the incorporation of the relevant Borrower if the Lender was a Qualifying Lender, but on that date that Lender is not or has ceased to be such a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application by a governmental body or regulatory authority of) any law or Treaty, or any published practice or concession of any relevant taxing authority; or
 - (ii) (in respect of a Tax Deduction imposed under UK law) the relevant Lender is a Qualifying Lender solely by virtue of sub-paragraph (iii)(B) of the definition of Qualifying Lender and:
 - (A) an officer of HM Revenue & Customs has given (and not revoked) a direction under section 931 of the UK ITA which relates to the payment (a "**Direction**") and that Lender has received from the Obligor making the payment or from the Company a certified copy of that Direction; and
 - (B) the payment could have been made to the Lender without any Tax Deduction imposed under UK law if that Direction had not been made except that this paragraph (d)(ii)(B) of Clause 18.2 shall not apply where the relevant Lender has not given a Tax Confirmation to the Company; or
 - (iii) (in respect of a Tax Deduction imposed under UK law) the relevant Lender is a Qualifying Lender solely by virtue of sub-paragraph (iii)(B) of the definition of Qualifying Lender and:

- (A) the relevant Lender has not given a Tax Confirmation to the Company; and
 - (B) the payment could have been made to the Lender without any Tax Deduction imposed by UK law if the Lender had given a Tax Confirmation to the Company, on the basis that the Tax Confirmation would have enabled the relevant Obligor to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the UK ITA except that this paragraph (d)(iii)(B) of Clause 18.2 shall not apply where an officer of HM Revenue & Customs has given and not revoked a Direction and that Lender has received from the Obligor making the payment or from the Company a certified copy of that Direction; or
- (iv) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) or (h) (as applicable) below.
- (e) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment a statement under section 975 of the UK ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (g)
 - (i) Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall, subject to paragraph (i) of this Clause 18.2, co-operate in promptly completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
 - (ii) In respect of a UK Borrower:
 - (A) a Treaty Lender which becomes a Party on or before the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which

wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Part II of Schedule 1 (*The Original Parties*); and

- (B) a New Lender, Increase Lender or Incremental Facility Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Assignment Agreement, Increase Confirmation or Incremental Facility Notice which it executes,

and, having done so, that Lender shall be under no obligation pursuant to paragraph (g)(i) above in relation to any Obligor making a payment to that Lender.

- (h) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and a UK Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:
 - (i) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or
 - (ii) HM Revenue & Customs has not given the UK Borrower authority to make payments to that Lender without a Tax Deduction within 30 Business Days of the date of the Borrower DTTP Filing; or
 - (iii) HM Revenue & Customs gave but subsequently withdrew authority for the Borrower to make payments to that Lender without a Tax Deduction or such authority has otherwise terminated or expired,

and in each case, the UK Borrower has notified that Lender in writing, that Lender and the UK Borrower shall co-operate in completing any additional procedural formalities necessary for that UK Borrower to obtain authorisation to make that payment without a Tax Deduction.

- (i) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (g)(ii) above, no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Loan unless the Lender otherwise agrees.

- (j) A UK Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.
- (k) A UK Non-Bank Lender shall promptly notify the Company and the Agent if there is any change in the position from that set out in the Tax Confirmation.

18.3 Tax indemnity

- (a) The Company shall (or shall procure that an Obligor will) (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office or other permanent establishment is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 18.2 (*Tax gross-up*) or a payment under Clause 18.6 (*Stamp taxes*);
 - (B) would have been compensated for by an increased payment under Clause 18.2 (*Tax gross-up*) or a payment under Clause 18.6 (*Stamp taxes*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 18.2 (*Tax gross-up*) or Clause 18.6 (*Stamp taxes*) (as relevant) applied; or
 - (C) is attributable to a Bank Levy (as defined in paragraph (b) of Clause 19.1 (*Increased costs*)); or

- (D) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Company.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 18.3, notify the Agent.

18.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

18.5 Lender Status Confirmation

- (a) As at the date of this Agreement, each Finance Party confirms that it is not incorporated, having its place of effective management, or acting through a Facility Office, as the case may be, located in a Belgian Non-Cooperative Jurisdiction.
- (b) Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Assignment Agreement, the Increase Confirmation or Incremental Facility Notice which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in, in respect of each Borrower:
 - (i) not a Qualifying Lender;
 - (ii) a Qualifying Lender (other than a Treaty Lender); or
 - (iii) a Treaty Lender.
- (c) Upon written request of the Company to an Original Lender (such request to be given no later than 15 Business Days before the first interest payment date), that Original Lender shall indicate, before the first interest payment date and

without liability to any Obligor, in which of the following categories it falls, in respect of each Borrower:

- (i) not a Qualifying Lender;
 - (ii) a Qualifying Lender (other than a Treaty Lender); or
 - (iii) a Treaty Lender.
- (d) If an Original Lender, a New Lender, an Increase Lender or an Incremental Facility Lender fails to indicate its status in respect of any Borrower in accordance with paragraph (b) or (c) of this Clause 18.5 then such Original Lender, New Lender, Increase Lender or Incremental Facility Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender in respect of that Borrower until such time as it notifies the Agent or the Company in case of an Original Lender which category applies (and the Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, an Assignment Agreement, Increase Confirmation or Incremental Facility Notice shall not be invalidated by any failure of a Lender to comply with this Clause 18.5.
- (e) Each New Lender, Increase Lender or Incremental Facility Lender shall also specify, in the Assignment Agreement, Increase Confirmation or Incremental Facility Notice which it executes upon becoming a Party, whether it is incorporated, having its place of effective management, or acting through a Facility Office, as the case may be, situated in a Belgian Non-Cooperative Jurisdiction.
- (f) Each Lender shall promptly notify the Agent if the state or territory in which it is incorporated, resident or established or where its Facility Office is established becomes a Belgian Non-Cooperative Jurisdiction. If the Agent receives such notification from a Lender it shall promptly notify the Company.

18.6 Stamp taxes

The Company shall (or shall procure that an Obligor will) pay and, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document (except for any such stamp duty, registration and other similar Tax payable in respect of any assignment, transfer, sub-participation or sub-contract by a Finance Party (unless such assignment or transfer is entered into at the request of an Obligor (or the Company on its behalf) or occurs following an Event of Default which is continuing).

18.7 Value added tax

- (a) All amounts set out, or expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party shall pay to the Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party shall promptly provide an appropriate VAT invoice to such Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
 - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses, to the extent that the Finance Party reasonably determines that neither it nor any other member of any group of which it is a member for VAT purposes is entitled to credit or repayment from the relevant tax authority in respect of the VAT.

- (d) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.
- (e) Any reference in this Clause 18.7 (*Value added tax*) to any party shall, at any time when such party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated as making the supply or (as appropriate) receiving the supply under the grouping rules (as provided for in Article 11 of the Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union or any other similar provision in any jurisdiction which is not a member state of the European Union) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or head) of that group or unity (or fiscal unity) at the relevant time (as the case may be)).

18.8 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party; and
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA (including its applicable "passthru payment percentage" or other information required under the US Treasury Regulations or other official guidance including intergovernmental agreements) as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

- (c) Paragraph (a) above shall not oblige any Finance Party to do anything which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then:
 - (i) if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
 - (ii) if that Party failed to confirm its applicable "passthru payment percentage" then such Party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable "passthru payment percentage" is 100%,until (in each case) such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If a Borrower is a US Tax Obligor, or where the Agent reasonably believes that its obligations under FATCA require it, each Lender shall, within ten Business Days of:
 - (i) where a Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where a Borrower is a US Tax Obligor and the relevant Lender is a New Lender, the relevant Transfer Date;
 - (iii) the date a new US Tax Obligor accedes as a Borrower; or
 - (iv) where the Borrower is not a US Tax Obligor, the date of a request from the Agent,supply to the Agent:
 - (v) a withholding certificate on Form W-8 or Form W-9 (or any successor form) (as applicable); or

- (vi) any withholding statement and other documentation, authorisations and waivers as the Agent may require to certify or establish the status of such Lender under FATCA.

The Agent shall provide any withholding certificate, withholding statement, documentation, authorisations and waivers it receives from a Lender pursuant to this paragraph (e) to the Borrower and shall be entitled to rely on any such withholding certificate, withholding statement, documentation, authorisations and waivers provided without further verification. The Agent shall not be liable for any action taken by it under or in connection with this paragraph (e).

- (f) Each Lender agrees that if any withholding certificate, withholding statement, documentation, authorisations and waivers provided to the Agent pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, it shall promptly update such withholding certificate, withholding statement, documentation, authorisations and waivers or promptly notify the Agent in writing of its legal inability to do so. The Agent shall provide any such updated withholding certificate, withholding statement, documentation, authorisations and waivers to the Borrower. The Agent shall not be liable for any action taken by it under or in connection with this paragraph (f).

18.9 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the Party to whom it is making the payment and, in addition, shall notify the Company, the Agent and the other Finance Parties.

19 INCREASED COSTS

19.1 Increased costs

- (a) Subject to Clause 19.3 (*Exceptions*) the Company shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application by a governmental body or regulatory authority of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.

(b) In this Agreement:

(i) **"Increased Costs"** means:

- (A) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (B) an additional or increased cost; or
- (C) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment, an Ancillary Commitment, a Fronting Ancillary Commitment or a Fronted Ancillary Commitment or funding or performing its obligations under any Finance Document or Bank Guarantee; and

(ii) **"Bank Levy"** means:

- (A) the bank levy charged pursuant to section 73 and schedule 19 to the Finance Act 2011;
- (B) the bank levy imposed by the German Government under the Bank Restructuring Fund Regulation (*Restrukturierungsfondsverordnung*, Fed. Law Gazette 1 2011, p. 1406) which has been issued pursuant to the provisions of the Bank Restructuring Fund Act (*Restrukturierungsfondsgesetz*, Fed. Law Gazette 1 2010, p. 1900, 1921); and
- (C) any other Tax of a similar nature in any jurisdiction, which is imposed by reference to some or all assets, liabilities and/or equity of a financial institution in force at the date of this Agreement.

(iii) **"Basel III"** means:

- (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer"

published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

- (B) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
 - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".
- (iv) **"CRD IV"** means:
- (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
 - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and the prudential supervision of credit institutions and investment firms.

19.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 19.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Company.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

19.3 Exceptions

- (a) Clause 19.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) the implementation or application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV;

- (iv) compensated for by Clause 18.3 (*Tax indemnity*) (or would have been compensated for under Clause 18.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 18.3 (*Tax indemnity*) applied);
 - (v) attributable to a Bank Levy;
 - (vi) compensated for by Clause 18.6 (*Stamp taxes*) (or would have been so compensated for under that Clause but was not so compensated solely because any of the exceptions set out therein applied); or
 - (vii) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this Clause 19.3 reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 18.1 (*Definitions*).

20 OTHER INDEMNITIES

20.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
- (i) making or filing a claim or proof against that Obligor; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

20.2 Other indemnities

- (a) The Company shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by it as a result of:
 - (i) the occurrence of any Event of Default;
 - (ii) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 34 (*Sharing among the Finance Parties*);
 - (iii) funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone);
 - (iv) issuing or making arrangements to issue a Bank Guarantee requested by the Company or a Borrower in a Utilisation Request but not issued by reason of the operation of any one or more of the provisions of this Agreement; or
 - (v) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.

20.3 Indemnity to the Agent and Bank Guarantee Agent

The Company shall promptly indemnify the Agent and Bank Guarantee Agent against:

- (a) any cost, loss or liability incurred by the Agent or Bank Guarantee Agent (as applicable) (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes is a Default;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent or Bank Guarantee Agent (otherwise than by reason of the Agent's or Bank Guarantee

Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 35.11 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's or Bank Guarantee Agent's (as applicable) negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent or Bank Guarantee Agent (as applicable)) in acting in such capacity under the Finance Documents.

21 MITIGATION BY THE LENDERS

21.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 11.1 (*Illegality*) (or, in respect of an Issuing Bank, Clause 11.2 (*Illegality in relation to Issuing Bank*)), Clause 18 (*Tax Gross-Up and Indemnities*) or Clause 18.1 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

21.2 Limitation of liability

- (a) The Company shall (or shall procure that an Obligor will) indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 21.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 21.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

22 COSTS AND EXPENSES

22.1 Transaction expenses

The Company shall (or shall procure that an Obligor will) within three Business Days of demand pay the Agent, the Bank Guarantee Agent, any Issuing Bank and the Security Trustee the amount of all costs and expenses (including legal fees up to an agreed cap) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

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

22.2 Amendment costs

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 35.10 (*Change of currency*), the Company shall, within three Business Days of demand, reimburse each of the Agent, the Bank Guarantee Agent and the Security Trustee for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent, the Bank Guarantee Agent and the Security Trustee in responding to, evaluating, negotiating or complying with that request or requirement.

22.3 Enforcement and preservation costs

The Company shall, within three Business Days of demand, pay to each other Finance Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Trustee or any other Finance Party as a consequence of taking or holding the Transaction Security or enforcing these rights.

23 GUARANTEE AND INDEMNITY

23.1 Guarantee and Indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this

indemnity will not exceed the amount it would have had to pay under this Clause 23 if the amount claimed had been recoverable on the basis of a guarantee.

23.2 Continuing guarantee

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

23.3 Reinstatement

If any discharge, release arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause will continue or be reinstated as if the discharge, release or arrangement had not occurred.

23.4 Waiver of defences

The obligations of each Guarantor under this Clause 23 will not be affected by an act, omission, matter or thing which, but for this Clause 23, would reduce, release or prejudice any of its obligations under this Clause 23 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor 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 Obligor 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 an Obligor or any other person;
- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the

addition of any new facility under any Finance Document or other document or security;

(f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

(g) any insolvency or similar proceedings.

23.5 Guarantor intent

Without prejudice to the generality of Clause 23.4 (*Waiver of Defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

23.6 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 23. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

23.7 Appropriations

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

(a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and

(b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 23.

23.8 Deferral of Guarantors' Rights

Until all amounts which may be or become payable by the Obligor under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amounts being payable, or liability arising under this Clause 23:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 23.1 (*Guarantee and Indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution (to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligor under or in connection with the Finance Documents to be repaid in full) on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 35 (*Payment Mechanics*).

23.9 Release of Guarantors' right of contribution

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

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a

contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and

- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

23.10 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

23.11 Guarantee Limitations for German Guarantors

- (a) The Finance Parties agree, other than in accordance with the procedure set out in paragraphs (b) to (c) below, not to enforce any guarantee granted hereunder by a German Guarantor in the form of a GmbH or a GmbH & Co. KG if and to the extent that (i) such guarantee is an Up-Stream or Cross-Stream Guarantee (save for any guarantee for Loans to the extent they are on-lent to, or Bank Guarantees to the extent issued for the benefit of, that German Guarantor or its Subsidiaries (and/or in the case of a GmbH & Co. KG, its general partner or the general partner's Subsidiaries)) and (ii) the enforcement would otherwise lead to the situation that such German Guarantor (or, in the case of a GmbH & Co. KG, its general partner) did not have sufficient net assets (*Reinvermögen*) (calculated in accordance with the jurisprudence from time to time of the German Federal Supreme Court (*Bundesgerichtshof*) relating to the protection of liable capital under Sections 30 and 31 of the German Limited Liability Companies Act) to maintain its (or, in the case of a GmbH & Co. KG, its general partner's) stated share capital (*Stammkapital*) or increase an existing shortage of the stated share capital, provided that for the purposes of the calculation of the enforceable amount (if any) the following balance sheet items shall be adjusted as follows:
 - (i) the amount of any increase of the stated share capital (*Stammkapital*) of such German Guarantor (or, in the case of a GmbH & Co. KG, of its general partner) after the date of this Agreement that has been effected without the prior written consent of the Agent shall be deducted from the stated share capital (*Stammkapital*);

- (ii) loans provided after the date of this Agreement to such German Guarantor (and/or, in the case of a GmbH & Co. KG, its general partner) by the Company or its Subsidiaries, as far as such loans fall within the scope of to section 39 para. 1 no. 5 German Insolvency Code (*InsO*) or are subordinated by an agreement in the sense of section 39 para. 2 German Insolvency Code (*InsO*), shall be disregarded, unless a waiver of the repayment claim of the relevant member of the Group granting such loan, the contribution of such repayment claim in the capital reserves of the relevant German Guarantor, and any other way of extinguishing the loan (e.g. by assignment to the borrower under that loan) would violate (x) mandatory legal restrictions applicable to the relevant member of the Group or (y) any provisions of the Finance Documents and further provided that, if such member of the Group is a Guarantor and/or a grantor of Transaction Security, the corresponding amount of the payment claim of that member of the Group shall be disregarded when calculating the net assets (if applicable) of that member of the Group in connection with the enforcement of the Guarantee or Transaction Security created by that member of the Group. The first sentence of this paragraph (ii) shall not apply if the Agent notifies the respective German Guarantor that it elects to enforce the Guarantee and/or Transaction Security against that other member of the Group and the aforementioned payment claim is taken into account when calculating that other member of the Group's net assets (if applicable) available for such enforcement;
 - (iii) loans and other contractual liabilities incurred by such German Guarantor (and/or, in the case of a GmbH & Co. KG, its general partner) in violation of the provisions of any of the Finance Documents shall be disregarded.
- (b) A German Guarantor (and, in the case of a GmbH & Co. KG, its general partner) shall realise, to the extent legally permitted and commercially reasonable, in a situation where it (or, in the case of a GmbH & Co. KG, its general partner) does not have sufficient net assets to maintain its (or, in the case of a GmbH & Co. KG, its general partner's) stated share capital, any and all of its assets that are shown in the balance sheet with a book value (*Buchwert*) that is significantly lower than the market value of the assets if the relevant asset is not necessary for the relevant German Guarantor's (or, in the case of a GmbH & Co. KG, its general partner's) business (*betriebsnotwendig*).

- (c) Without prejudice to paragraph (a) above, no later than five Business Days after its receipt of notice from the Agent that it shall enforce the guarantees granted by a German Guarantor (the "**Enforcement Notice**"), such German Guarantor shall pay to the Agent the amount of any Up-Stream or Cross-Stream Guarantee which can be enforced without causing the net assets of such German Guarantor (or, if the relevant German Guarantor is a GmbH & Co. KG, the net assets of its general partner) to fall below its (or, if the relevant German Guarantor is a GmbH & Co. KG, its general partner's) stated share capital (the "**Recovery Amount**") and which is based on the registered share capital and the amount of net assets shown in the most recent balance sheet or interim balance sheet of such German Guarantor (or, in the case of a GmbH & Co. KG, of its general partner) (a copy of such balance sheet to be made available to the Agent within five Business Days of the German Guarantor's receipt of such Enforcement Notice), or such lower or higher amount as the managing directors on behalf of such German Guarantor have confirmed in writing to the Agent within five Business Days of its receipt of the Enforcement Notice as being (i) the Recovery Amount and/or (ii) enforceable pursuant to paragraph (a) above.
- (d) In addition, each German Guarantor shall, not later than twenty Business Days after its receipt of an Enforcement Notice, obtain a determination by auditors of international standing and reputation appointed by the German Guarantor (or, in the case of a GmbH & Co. KG, its general partner) (the "**Auditor's Determination**") of (i) the Recovery Amount (such determination to take into account the balance sheet adjustments set out in paragraph (a) above) and (ii) an estimate of the liabilities, damages, costs, fees and expenses reasonably expected to result from a liquidation of the relevant German Guarantor, and such German Guarantor shall, not later than five Business Days after receipt of such Auditor's Determination, pay to the Agent the additional amount (if any) by which the Recovery Amount determined in the Auditor's Determination exceeds the amount (if any) paid to the Agent pursuant to paragraph (b) above.
- (e) If the Agent (acting on behalf of the Majority Lenders) disagrees with the Auditor's Determination, the Finance Parties shall be entitled to further pursue in court their payment claims under the guarantees granted by the respective German Guarantor (if any) in excess of the amounts paid or payable pursuant to paragraphs (c) and/or (d) above, by claiming in court that demanding payment under the guarantee against the German Guarantor does not violate Sections 30 and 31 of the German Limited Liabilities Company Act (*GmbHG*). Notwithstanding the foregoing, and for the avoidance of doubt, no German Guarantor shall be obliged to pay any such amount on demand.

- (f) For the purpose of this Clause, "**Up-Stream or Cross-Stream Guarantee**" means, in relation to a German Guarantor, (i) any direct or indirect guarantee for the obligations or liabilities of a member of the Group that is not a direct or indirect subsidiary of such German Guarantor and (ii) any guarantee for the obligations or liabilities of a direct or indirect subsidiary of a German Guarantor if and to the extent such guarantee secures the obligations or liabilities (including guarantees) of such member of the Group in respect of obligations of a member of the Group (other than the relevant German Guarantor) that is not a direct or indirect subsidiary of the German Guarantor.
- (g) Limitations relating to an AG Guarantor
- (i) The guarantee granted hereunder by a German Guarantor in the form of a German stock corporation (*Aktiengesellschaft*) (an "**AG Guarantor**") or by any Guarantor that is a Subsidiary of that AG Guarantor shall not secure liabilities which are owed by direct or indirect shareholders of that AG Guarantor or Subsidiaries of such shareholders (such Subsidiaries not to include the AG Guarantor and the Subsidiaries of that AG Guarantor) if the relevant AG Guarantor is not party to a domination agreement (*Beherrschungsvertrag*) as the dominated party with a direct shareholder as the dominating party.
- (ii) If a domination agreement (*Beherrschungsvertrag*) is in force between the relevant AG Guarantor and a direct shareholder (with the direct shareholder as dominating party) the guarantee granted hereunder by such AG Guarantor or by any Subsidiary of that AG Guarantor under this Agreement shall be enforceable except that it shall not be enforceable (*vollstreckbar*) if and to the extent:
- (A) the payment by the AG Guarantor or by a Subsidiary of that AG Guarantor in respect of the guarantee granted hereunder, if and to the extent it secures liabilities which are owed by direct or indirect shareholders of that AG Guarantor or Subsidiaries of such shareholders (such Subsidiaries not to include the AG Guarantor and the Subsidiaries which are also Subsidiaries of that AG Guarantor), will, or must be expected to, result in an annual loss to that AG Guarantor; and
- (B) such annual loss would not be, or cannot be expected to be, compensated for by a compensation claim under the relevant domination agreement (*Beherrschungsvertrag*) that can be accounted for in the balance sheet of that AG Guarantor at full value (*vollwertig*).

23.12 Interpretation of guarantee for Austrian tax purposes and limitations in respect of Austrian Obligors

- (a) Notwithstanding any term or provision of this Clause 23 (*Guarantee and Indemnity*) or any other term in this Agreement or any other Finance Document, any guarantee or indemnity given by a member of the Group incorporated in Austria (an "**Austrian Obligor**") under or in connection with any Finance Document is meant as and is to be interpreted as an abstract guarantee agreement in accordance with art 880a of the (Austrian) General Civil Code (*abstrakter Garantievertrag gemäß § 880a ABGB*) and not as a surety (*Bürgschaft*) or joint obligation as a borrower (*Mitschuldnerschaft*) and the Austrian Obligor undertakes to pay the amounts due under or pursuant to such guarantee or indemnity unconditionally, irrevocably, upon first demand and without raising any defences (*unbedingt, unwiderruflich, über erste Anforderung und unter Verzicht auf alle Einwendungen*).
- (b) Any and all liabilities (*Haftungen*) and obligations (*Verpflichtungen*) of an Austrian Obligor under this Clause 23 (*Guarantee and Indemnity*) or any other term in this Agreement or any other of the Finance Documents shall at all times be limited so that at no time shall the assumption of a liability (*Haftung*) or obligation (*Verpflichtung*) under the Finance Documents be required if this would cause an Austrian Obligor to violate mandatory Austrian capital maintenance rules (*Kapitalerhaltungsvorschriften*) pursuant to Austrian company law, in particular Sections 82 et seq. of the Austrian Act on Limited Liability Companies (*Gesetz über Gesellschaften mit beschränkter Haftung - GmbHG*) and/or Sections 52 and 65 et seq. of the Austrian Stock Corporation Act (*Aktiengesetz - AktG*) (the "**Austrian Capital Maintenance Rules**"). If any liability (*Haftung*) or obligation (*Verpflichtung*) of an Austrian Obligor under any Finance Document violates or contradicts Austrian Capital Maintenance Rules and would therefore be held to be invalid or unenforceable or should the assumption or enforcement of such obligation (*Verpflichtung*) or liability (*Haftung*) expose a director of an Austrian Obligor to personal or criminal liability, such obligation (*Verpflichtung*) or liability (*Haftung*) shall be deemed to be replaced by an obligation (*Verpflichtung*) or liability (*Haftung*) of a similar nature (i) which is in compliance with Austrian Capital Maintenance Rules, (ii) which does not expose the managing directors or members of the supervisory board of an Austrian Obligor to any personal liability or criminal responsibility; and (iii) which provides equivalent security in favour of the Finance Parties. By way of example, should it be held that any Transaction Security created under any Finance Document contradicts Austrian Capital Maintenance Rules in relation to any amount of the secured obligations; such amount will be reduced to an amount which is permitted

under Austrian Capital Maintenance Rules without exposing a director of an Austrian Obligor to personal or criminal liability.

- (c) If and to the extent the payment obligations of an Austrian Obligor under this Clause 23 (*Guarantee and Indemnity*) and/or under any other provision in a Finance Document would not be permitted under Austrian Capital Maintenance Rules, then such payment obligations shall be limited to the maximum amount permitted to be paid under Austrian Capital Maintenance Rules, provided that the amount payable shall not be less than the aggregate of (i) that Austrian Obligor's distributable balance sheet profit (including retained earnings) (*Bilanzgewinn*) as defined in § 224 (3) lit A no. IV of the Austrian Enterprise Code (*Unternehmensgesetzbuch – UGB*) as calculated by reference to the most recent (audited, if applicable) financial statements of that Austrian Obligor then available and always provided that the shareholders of that Austrian Obligor have passed the relevant distribution resolution (*Ausschüttungsbeschluss*); plus (ii) any other amounts which are freely available or can be converted into amounts freely available for distribution to the shareholder(s) under the GmbHG or AktG (as the case may be) and the UGB (such as, for instance, unrestricted reserves (*freie Rücklagen*)) at the time or times payment under or pursuant to this Clause 23 (*Guarantee and Indemnity*) and/or under any other Finance Document is requested from an Austrian Obligor and always provided that the shareholders of that Austrian Obligor have passed the relevant distribution resolution (*Ausschüttungsbeschluss*); plus, (iii) to the extent applicable, the equivalent of the aggregate amount of all loans or other financial accommodation (plus any accrued interest, commission and fees thereon) borrowed by that Austrian Obligor in its capacity as Borrower; plus (iv) (subject to paragraph (b)) the equivalent of the aggregate loans or other financial accommodation (plus any accrued interest, commission and fees thereon) borrowed by any other Obligor under this Agreement and made available to such Austrian Obligor in form of intercompany financing arrangements (on-lending) provided that the amount to be repaid by such Austrian Obligor under such financing arrangement may be freely set-off against any reimbursement claims that such Austrian Obligor has against such on-lending Obligor.
- (d) The Company shall ensure that the shareholders of a relevant Austrian Obligor resolve, promptly upon a payment request under or pursuant to this Clause 23 (*Guarantee and Indemnity*) and/or any other Finance Document in respect of an Austrian Obligor having been made and provided that an Event of Default has occurred and is continuing, (i) that the Austrian Obligor's distributable balance sheet profit (including retained earnings) (*Bilanzgewinn*) is distributed to the shareholders, and (ii) that any other amounts which can be converted into amounts freely available for distribution to the shareholders under the

GmbHG or AktG (as the case may be) and the UGB (such as, for instance, unrestricted reserves (*freie Rücklagen*)) are so converted and distributed to the shareholders.

- (e) No reduction of an amount enforceable hereunder pursuant to these limitations will prejudice the rights of the Finance Parties or the Agent acting for and on behalf of the Finance Parties to continue enforcing their or its rights under this guarantee (subject always to the limitations set out in this Clause 23 (*Guarantee and Indemnity*)) until full satisfaction of the Obligors' obligations under the Finance Documents.

23.13 Guarantee Limitations for Danish Guarantors

The obligations and liabilities of any Guarantor (in its capacity as such) which is incorporated in Denmark (each a "**Danish Guarantor**") under or pursuant to the guarantee and indemnity in this Clause 23:

- (a) shall be limited if and to the extent required to comply with Danish statutory provisions on unlawful financial assistance including, without limitation, within the meaning of (i) Section 206 of the Danish Companies Act (2009) (in Danish: *selskabsloven*), and (ii) Section 210 of the Danish Companies Act (2009) and, accordingly, shall not include, and shall not be or be construed as, any indemnity, guarantee or security in respect of any obligations incurred or undertaken in relation to the financing of an acquisition of shares issued or to become issued by the Danish Guarantor or by a direct or indirect parent company which is incorporated under the laws of any member state of the EU or the EEA and which is an entity to which the First Company Law Council Directive 61/151/EEC of 9 March 1968 applies, or a direct or indirect parent company incorporated under the laws of any of Australia, Canada, Hong Kong, Japan, New Zealand, Singapore, South Korea, Switzerland, Taiwan or the United States of America; and
- (b) shall further be limited to an amount equivalent to the equity (*egenkapital*) of such Danish Guarantor at the time or times payment is requested from it calculated in accordance with applicable Accounting Principles save that these limitations in this paragraph (b) shall not apply to any obligations and liabilities of such Danish Guarantor in respect of amounts relating to the Facilities (a) borrowed by such Danish Guarantor or any of its Subsidiaries and/or (b) put at the disposal of such Danish Guarantor or any of its Subsidiaries by a Borrower by way of a loan or otherwise (other than as share capital).

23.14 Guarantee Limitations for Italian Guarantors

In this Clause 23.14 (*Guarantee Limitations for Italian Guarantors*):

"Acquisition Loans" means any loan advanced under the Term Facility B whose purpose and actual use was, directly or indirectly, the refinancing of a loan borrowed to fund the acquisition of the Target Group or the subscription of the equity interest of any member thereof;

"Controlling Person" means, in respect of an Italian Target Company, any person (which is not a member of the Target Group) directly or indirectly controlling such Italian Target Company;

"Current Net Worth" means, in relation to any Italian Guarantor, the Net Worth of such Italian Guarantor from time to time, as stated in its latest financial statements (*bilancio di esercizio*) duly approved by its shareholders meeting;

"Italian Civil Code" means the Italian civil code, enacted by Royal Decree No. 262 of 16 March 1942, as subsequently amended and supplemented;

"Italian Guarantor" means a Guarantor incorporated in Italy

"Italian Target Company" means any Subsidiary of the Company incorporated in Italy

"Net Worth" means, in relation to any Italian Guarantor, the "*Patrimonio Netto*", as defined under Article 2424 of the Italian Civil Code.

"Non-Acquisition Loans" means any loan advanced under this Agreement whose actual use is different from the refinancing of a loan borrowed to fund the acquisition of the Target Group or the subscription of the equity interest of any member thereof.

"Target Group" means the Company and its Subsidiaries.

- (a) Notwithstanding any contrary provision of this Agreement or of any of the Finance Documents, the obligations of each Italian Guarantor under this Clause 23 (*Guarantee and Indemnity*) in respect of the obligations of any Obligor which is not a subsidiary of such Italian Guarantor, shall at no time and under no circumstances exceed an amount equal to to 150% of the aggregate of:
- (i) the aggregate maximum amount of any Facility at any time made available directly to such Italian Guarantor (or any of its direct or indirect subsidiaries pursuant to article 2359 of the Italian Civil Code) as Borrower under this Agreement; and
 - (ii) the aggregate maximum amount of any intercompany loans (or any other form of financial support which qualifies as Financial

Indebtedness and/or any hybrid financing schemes which have the commercial effect of a borrowing) advanced or made available to such Italian Guarantor (or any of its direct or indirect subsidiaries pursuant to article 2359 of the Italian Civil Code) by any Obligor as from time to time resulting from its latest financial statements (*bilancio di esercizio*) duly approved by its shareholders meeting;

- (b) Within (and without prejudice to) the limits set out in paragraph (a) above, in order to comply with the provisions of Italian law in relation to financial assistance (namely, article 2358 and/or article 2474, as the case may be, of the Italian Civil Code), no Italian Target Company shall be liable as a Guarantor under this Agreement in relation to:
 - (i) the obligations of any Obligor as Borrower or as Guarantor in respect of any Acquisition Loans;
 - (ii) the obligations of any Controlling Person as Borrower or as Guarantor in respect of any Non-Acquisition Loan in excess of the amount which at any time, is drawn and outstanding in aggregate under any intercompany loans granted to such Italian Target Company (as borrower) by such Controlling Person (as lender) and which the Italian Target Company is entitled to set-off against its claims of recourse or subrogation ("*regresso*" or "*surrogazione*") arising as a result of any payment made by such Italian Target Company under the guarantee given pursuant to this Clause 23 (*Guarantee and Indemnity*) (the "**Set-Off Right**"); and
 - (iii) the obligations of any Obligor arising under this Clause 23 (*Guarantee and Indemnity*) in respect of the obligations referred to in sub-paragraph (ii) above.

For the purposes of sub-paragraph (ii) above, any provision establishing a deferral of Guarantors' rights in any Finance Documents, including in Clause 23.8 (*Deferral of Guarantors' rights*) of this Agreement, shall not prejudice, and will not apply to, the Set-Off Right.

- (c) for the purposes of Article 1938 of the Italian Civil Code it shall not exceed, in any case, the overall amount of EUR []³ (or the equivalent in any other currency).

23.15 Guarantee Limitations for Norwegian Guarantors

³ Amount equal to 150% of the total initial amount of the Facilities to be included.

- (a) In relation to each Guarantor which is incorporated in Norway (each a "**Norwegian Guarantor**") its obligations and liabilities under this Clause 23 shall be limited if and to the extent that is required to comply with the mandatory provisions of Sections 8-7, 8-10 and 8-11, cf. Sections 1-3 and 1-4 of the Norwegian Private Limited Liability Companies Act of 13 June 1997 no. 44 (*Aksjeloven*) (or its equivalent from time to time) regarding unlawful financial assistance and restrictions on a Norwegian limited liability company's ability to provide or grant loans, guarantees or securities in favour of other group companies or its shareholder and their closely related parties. The obligations of each Norwegian Guarantor under this Clause 23 shall always be interpreted so as to make each Norwegian Guarantor liable to the fullest extent permitted by the Norwegian Limited Liability Companies Act.
- (b) Sections 62 and 64-74 of the Norwegian Financial Agreements Act 1999 shall not apply to this guarantee.
- (c) In relation to each Norwegian Guarantor, its obligations and liabilities under this Clause 23 shall be limited to EUR [],⁴ with the addition of interest, default interest and enforcement expenses.
- (d) As required by Section 61(2) of the Norwegian Financial Agreements Act 1999, the following information is given to each Norwegian Guarantor:
 - (i) this Agreement contains a list of all Transaction Security Documents created at the date hereof pursuant to this Agreement, in addition to the guarantee created under this Clause 23;
 - (ii) as of the date of this Agreement, no notice under Clause 28.18 (*Acceleration*) has been issued pursuant to this Agreement; and
 - (iii) this guarantee and indemnity is created in respect of obligations which have not been incurred prior to the creation of this guarantee and indemnity.
- (e) In relation to the LLC Act Section 8-10 the obligations of the Norwegian Guarantor to provide financial assistance shall be limited to the extent that the Norwegian Guarantor will receive adequate security as provided for in the LLC Act Section 8-10 (1) third sentence, and only in so far as the provision of such adequate security is not contrary to the terms of this Agreement. The Norwegian Guarantors shall be required to assess whether the above condition and those of the LLC Act section 8-10 are fulfilled within 45 days of any written request by the Security Trustee (acting on the instructions of the

⁴ Amount equal to 120% of the total initial amount of the Facilities to be included.

Majority Lenders). At this time it will not be required for the Norwegian Guarantors to provide documentation in accordance with Section 8-10 of the LLC Act for the purpose of providing any lawful financial assistance.

23.16 Guarantee Limitations for UK Guarantors

- (a) In this Clause 23.16 "**Guarantee Obligations**" means the obligations and liabilities of a UK Obligor under Clause 23.1 (*Guarantee and Indemnity*).
- (b)
 - (i) No UK Obligor's Guarantee Obligations will extend to include any obligation or liability; and
 - (ii) no Security granted by an Obligor will secure any Guarantee Obligation,

if to do so would be unlawful financial assistance in respect of the acquisition of shares in itself or its Holding Company or any equivalent and applicable provisions under the laws of England and Wales.

23.17 Guarantee Limitations for Belgian Guarantors

In relation to each Guarantor which is incorporated under the laws of Belgium (each a "**Belgian Guarantor**") its obligations and liabilities under this Clause 23 shall be limited to a maximum aggregate amount equal to the sum of:

- (a) the aggregate amount, either directly or through one or more other members of the Group, made available to, or otherwise benefited by, the Belgian Guarantor and its subsidiaries pursuant to this Agreement (increased by all interests, commissions, costs, fees, expenses and other sums accruing or payable in connection with such amount); and
- (b) an amount equal to 80% of the greater of:
 - (i) the net assets (as defined in Article 617 of the Belgian Companies Code) of that Belgian Guarantor calculated on the basis of the most recent audited financial statements available on the date hereof; and
 - (ii) the net assets (as defined in Article 617 of the Belgian Companies Code) of that Belgian Guarantor calculated on the basis of the most recent audited financial statements available on the date of the demand for payment.

Each Belgian Guarantor undertakes to provide the Agent, only upon the Agent's prior written request received by that Belgian Guarantor, in any form allowed by this

Agreement, with a semi-annual overview of the amounts due under any loan granted by another company of the Group.

23.18 Guarantee Limitations for Swedish Guarantors

In relation to each Guarantor which is incorporated under the laws of Sweden its obligations and liabilities under this Clause 23 shall be limited, if (and only if) required by the provisions of the Swedish Companies Act (Sw. *Aktiebolagslagen* (2005:511)) regulating distribution of assets (Chapter 17, Sections 1-4) (or their equivalents from time to time) and it is understood that the liability of the Guarantor which is incorporated under the laws of Sweden only applies to the extent permitted by the above mentioned provisions of the Swedish Companies Act.

24 REPRESENTATIONS

24.1 General

Each Obligor makes the representations and warranties set out in this Clause 24 to each Finance Party.

Status, authorisations and governing law

24.2 Status

- (a) It and each of its Subsidiaries is a limited liability company, stock corporation or limited partnership (as the case may be), duly incorporated or established (as the case may be) and validly existing under the law of its jurisdiction of incorporation or establishment (as the case may be).
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.
- (c) It and each of its Subsidiaries is not subject to any immunity from any proceedings.

24.3 Binding obligations

Subject to the Legal Reservations and, in the case of the Transaction Security Documents, the Perfection Requirements:

- (a) the obligations expressed to be assumed by it in each Finance Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which

that Transaction Security Document purports to create and those security interests are valid and effective.

24.4 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents and the granting of the Transaction Security do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any member of the Group; or
- (c) any agreement or instrument binding upon it or any member of the Group or any of its or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument to the extent it has, or is reasonably likely to have, a Material Adverse Effect.

24.5 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

24.6 Validity and admissibility in evidence

- (a) All Authorisations required or desirable:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
 - (ii) to make the Finance Documents to which it is a party admissible in evidence in its Relevant Jurisdictions (subject to the Legal Reservations and, in the case of the Transaction Security Documents, the Perfection Requirements),have been obtained or effected and are in full force and effect.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected

and are in full force and effect, if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

24.7 Governing law and enforcement

Subject to Legal Reservations:

- (a) the choice of governing law of the Finance Documents will be recognised and, subject to the Perfection Requirements in respect of the Transaction Security Documents, enforced in its Relevant Jurisdictions; and
- (b) any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and, subject to the Perfection Requirements in respect of the Transaction Security Documents, enforced in its Relevant Jurisdictions.

No insolvency, default or tax liability

24.8 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 28.7 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 28.8 (*Creditors' process and non-compliance with final judgment*),

has been taken or, to the knowledge of the Company, threatened in relation to a member of the Group and none of the circumstances described in Clause 28.6 (*Insolvency*) applies to a member of the Group.

24.9 No filing or stamp taxes

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes (except for any Perfection Requirements in respect of any of the Transaction Security Documents) or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except for (i) a EUR 0,15 stamp duty for each original copy of the Finance Documents that contain a debt obligation or indebtedness for the benefit of a bank and that is signed and/or drafted in Belgium or, as the case may be, a EUR 95 stamp duty for any Belgian notarial deed, and (ii) any filing, recording or enrolling or any tax or fee payable in relation to any Finance Document which is referred to in any Legal Opinion and which will be made or paid promptly after the date of the relevant Finance Document, and provided that for the

avoidance of doubt this Clause 24.9 shall not apply in respect of any stamp duty, registration or similar tax payable in respect of an assignment or transfer by a Finance Party of any of its rights or obligations under a Finance Document.

24.10 Deduction of Tax

- (a) In the case of a UK Borrower, it is not required to make any deduction for or on account of Tax imposed by the UK from any payment it may make under any Finance Document to a Lender which is a Qualifying Lender:
 - (i) falling within paragraph (iii)(A) of the definition of Qualifying Lender; or
 - (ii) except where a direction has been given under section 931 of the UK ITA in relation to the payment concerned, falling within paragraph (iii)(B) of the definition of Qualifying Lender; or
 - (iii) falling within paragraph (iii)(C) of the definition of Qualifying Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).
- (b) In any other case, it is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to a Lender which is a Qualifying Lender.

24.11 No default

- (a) No Event of Default and, on the date of this Agreement, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Finance Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

24.12 Taxation

- (a) It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax of EUR 500,000 (or its equivalent in any other currency) or more.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, any member of the Group of EUR 500,000 (or its equivalent in any other currency) or more is reasonably likely to arise.
- (c) It is resident for Tax purposes only in the jurisdiction of its incorporation.

Provision of information - general

24.13 No misleading information

Save as disclosed in writing to the Agent prior to the date of this Agreement (or, in relation to the Information Package, prior to the date of the Information Package) and to the best of its knowledge and belief having made all due and careful enquiry:

- (a) any factual information contained in the Information Package was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given;
- (b) the profit and loss, balance sheet and cash flow statement contained in the Restructuring Opinion has been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements, and any financial projection or forecast contained in the Information Package has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;
- (c) the expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Package to the extent such expressions of opinion or intention were made by it after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;
- (d) no event or circumstance has occurred or arisen and no information has been omitted from the Information Package taken as a whole and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Package being untrue or misleading in any material respect;

- (e) all material information provided to a Finance Party by or on behalf of the Company in connection with the Restructuring on or before the date of this Agreement and not superseded before that date (whether or not contained in the Information Package) is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied;
- (f) all material information provided to a Finance Party by or on behalf of the Company in connection with the Restructuring on or before the date of this Agreement and not superseded before that date (whether or not contained in the Information Package) is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied; and
- (g) all other written information provided by any member of the Group (including its advisers) to a Finance Party or the provider of any Report was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any material respect.

24.14 Original Financial Statements

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
- (b) Its unaudited Original Financial Statements fairly present its financial condition and results of operations for the period to which they relate.
- (c) Its audited Original Financial Statements give a true and fair view of its financial condition and results of operations during the relevant financial year.
- (d) In relation to any Additional Obligor only, there has been no material adverse change in its assets, business or financial condition since the date of the Original Financial Statements of such Additional Obligor.
- (e) Its most recent financial statements delivered pursuant to Clause 25.1 (*Financial statements*):
 - (i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements except for any changes made in accordance with paragraph (b) of Clause 25.3 (*Requirements as to financial statements*); and

- (ii) give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- (f) The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

24.15 Accounting reference date

The Accounting Reference Date of each member of the Group is 31 December.

No proceedings or breach of laws

24.16 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry) been started or threatened against it or any of its Subsidiaries.

24.17 No breach of laws

- (a) It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or is reasonably likely to have a Material Adverse Effect.

24.18 Environmental laws

- (a) Each member of the Group is in compliance with Clause 27.3 (*Environmental compliance*) and to the best of its knowledge and belief no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

Security and ownership of assets

24.19 Security and Financial Indebtedness

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.
- (b) No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.

24.20 Ranking

- (a) Subject to the Legal Reservations and Perfection Requirements, the Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or *pari passu* ranking Security.
- (b) Under the laws of its jurisdiction of incorporation the claims of the Finance Parties against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except for all obligations mandatorily preferred by law applying to companies generally.

24.21 Good title to assets

It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the material assets necessary to carry on its business as presently conducted.

24.22 Legal and beneficial ownership

It and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security, other than as a result of any Transaction Security or any Permitted Security, or as expressly set out in the relevant Transaction Security Document.

24.23 Shares

The shares of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security. There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any member of the Group (including any option or right of pre-emption or conversion).

24.24 Intellectual Property

- (a) It and each of its Subsidiaries:
 - (i) is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted;
 - (ii) does not (nor does any of its Subsidiaries), in carrying on its businesses, infringe any Intellectual Property of any third party in any material respect; and
 - (iii) has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it.
- (b) It is not aware of any adverse circumstances relating to the validity, subsistence or use of any of its or its Subsidiaries' Intellectual Property which has or is reasonably to have a Material Adverse Effect.

Provision of information - Group

24.25 Group Structure Chart

The Group Structure Chart delivered to the Agent pursuant to Clause 4.1 (*Initial Conditions precedent*) is true, complete and accurate in all material respects and shows, unless otherwise agreed by the Majority Lenders, the following information:

- (a) each member of the Group, including current name and its jurisdiction of incorporation and/or establishment; and
- (b) all minority interests in any member of the Group and any person in which any member of the Group holds shares in its issued share capital or equivalent ownership interest of such person.

Miscellaneous

24.26 Centre of main interests and establishments

- (a) It has its "centre of main interests" (as that term is used in Article 3(1) of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**") in its jurisdiction of incorporation.
- (b) It has no "establishment" (as that term is used in Article 2(h) of the Regulation) in any jurisdiction other than its jurisdiction of incorporation within the European Union except for car-parking businesses established in the ordinary course of the Group's business.

24.27 Restructuring Opinion

- (a) At the date of the Restructuring Opinion:
 - (i) all expressions of opinion or intention given by or on behalf of the Company to any firm which prepared the Restructuring Opinion were made in good faith, after careful consideration and were reasonable at the date they were supplied;
 - (ii) all written forecasts and projections furnished by the Company to any such firm were made after careful consideration and prepared on the basis of recent historical information and assumptions which were reasonable at the date such forecasts and projections were supplied;
 - (iii) all written factual information provided by or on behalf of the Company to any such firm was true in all material respects at its date or (if appropriate) as at the date (if any) at which it is stated to be given; and
 - (iv) the Restructuring Opinion does not omit as at its date any information which, if disclosed, would make that Restructuring Opinion untrue or misleading in any material respect.
- (b) No event or circumstance has occurred or arisen since the date of the Restructuring Opinion which, if included in the Restructuring Opinion, would result in the Restructuring Opinion taken as a whole presenting a position worse in any material respect than that actually presented in it.
- (c) No event or circumstance has occurred or arisen that results in any assumption on which the Restructuring Opinion is based being untrue or misleading in any material respect (or in any respect where such circumstance could reasonably be expected to materially adversely the interest of the Finance Parties) and the restructuring as contemplated in the Restructuring Opinion is still achievable.

24.28 Times when representations made

- (a) All the representations and warranties in this Clause 24 are made by each Obligor on the date of this Agreement, to the extent not inconsistent with the Restructuring and in particular the schemes of arrangement in relation thereto.
- (b) The Repeating Representations are to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period.

- (c) All the representations and warranties in this Clause 24 except Clause 24.13 (*No misleading information*), Clause 24.25 (*Group Structure Chart*) and Clause 24.27 (*Restructuring Opinion*) are to be made by each Additional Obligor on the day on which it becomes (or it is proposed that it becomes) an Additional Obligor.
- (d) Each representation or warranty to be made after the date of this Agreement shall be made by reference to the facts and circumstances existing at the date the representation or warranty is to be made.

25 INFORMATION UNDERTAKINGS

The undertakings in this Clause 25 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 25:

"Annual Financial Statements" means the financial statements for a Financial Year delivered pursuant to paragraphs (a) and (b) of Clause 25.1 (*Financial statements*).

"Quarterly Financial Statements" means the financial statements delivered pursuant to paragraph (c) of Clause 25.1 (*Financial statements*) with respect to a Month that is the end of a Financial Quarter.

25.1 Financial statements

The Company shall supply to the Agent in sufficient copies for all the Lenders:

- (a) as soon as they are available, but in any event within 120 days after the end of each Financial Year, its audited consolidated financial statements for that Financial Year;
- (b) within any statutory time period allowed for the preparation thereof, the audited (if available or required by law) financial statements of any other Obligors with respect for that Financial Year if requested by the Agent;
- (c) as soon as they are available, but in any event within 30 days after the end of each Month (or within 45 days in case of the last Month of a Financial Year), its financial statements on a consolidated basis for that month (to include cumulative management accounts for the Financial Year to date), and with respect to a Month that is the end of a Financial Quarter, supplemented by a summary description for that Financial Quarter.

25.2 Provision and contents of Compliance Certificate

- (a) The Company shall supply a Compliance Certificate to the Agent with each set of its audited consolidated Annual Financial Statements and each set of its unaudited consolidated Quarterly Financial Statements.
- (b) Each Compliance Certificate shall, amongst other things,
 - (i) set out (in reasonable detail) computations as to compliance with Clause 26 (*Financial Covenants*), and prepayments to be made from Excess Cashflow under Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*) as at the date as at which those financial statements were drawn up; and
 - (ii) if delivered together with the Annual Financial Statements of the Company and the Agent so requests, enclose a report stating which of its Subsidiaries are Material Companies and confirming that the Company is in compliance with its obligations under Clause 27.27 (*Guarantors*).
- (c) Each Compliance Certificate shall be signed by two directors or authorised officers (*Prokuristen*) of the Company (one of them being the chief financial officer of the Company) and, if required to be delivered with the consolidated Annual Financial Statements of the Company, shall be reported on by the Company's Auditors in the form agreed by the Company and the Majority Lenders on the proper extraction of the numbers used in the financial covenant calculations in such manner (if any) on such conditions as the Auditors of the Group specify (unless all the internationally recognised firms of accountants have adopted a general policy of not providing such reports).

25.3 Requirements as to financial statements

- (a) The Company shall procure that each set of Annual Financial Statements and Quarterly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Company shall procure that:
 - (i) each set of its Annual Financial Statements shall be audited by the Auditors; and
 - (ii) each set of Quarterly Financial Statements is accompanied by a statement by the directors of the Company commenting on the performance of the Group for the period to which the financial statements relate and the Financial Year to date and any material developments or proposals affecting the Group or its business;
 - (iii) each set of monthly financial statements is accompanied by a consolidated profit and loss statement for the Financial Year to date, a

cash flow statement for the Financial Year to date, a summary commentary for the Financial Year to date, a balance sheet for the Financial Year to date, the Capital Expenditure incurred for the Financial Year to date and a comparison of the actual performance against the performance projected by the Budget and the performance of the prior year.

(b) Each set of financial statements delivered pursuant to Clause 25.1 (*Financial statements*):

- (i) shall be certified by a director of the relevant company as giving a true and fair view of (in the case of audited Annual Financial Statements for any Financial Year), or fairly presenting (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of audited Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the Auditors and accompanying those Annual Financial Statements;
- (ii) in the case of Annual Financial Statements of the Group, shall be accompanied by a statement by the directors of the Company comparing actual performance for the period to which the financial statements relate to:
 - (A) the projected performance for that period set out in the Budget; and
 - (B) the actual performance for the corresponding period in the preceding Financial Year of the Group; and
- (iii) shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied:
 - (A) in the case of the Company, in the preparation of the Restructuring Opinion; and
 - (B) in the case of any Obligor, in the preparation of the Original Financial Statements for that Obligor,

unless, in relation to any set of financial statements, the Company notifies the Agent that there has been a material change in the Accounting Principles, or the accounting practices and its Auditors (or, if appropriate, the Auditors of the Obligor) deliver to the Agent;

- (iv) a description of any change necessary for those financial statements to reflect the Accounting Principles, or accounting practices upon which the Original Financial Statements were prepared; and
 - (v) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 26 (*Financial Covenants*) has been complied with, to determine the amount of any prepayments to be made from Excess Cashflow under Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*) or to make an accurate comparison between the financial position indicated in those financial statements or the Original Financial Statements.
- (c) If the Company notifies the Agent of a change in accordance with paragraph (b)(iii) above, then the Company and Agent shall enter into negotiations in good faith with a view to agreeing:
- (i) whether or not the change might result in any material alteration in the commercial effect of any of the terms of this Agreement (including, without limitation, the headroom for the Financial Covenants); and
 - (ii) if so, any amendments to this Agreement which may be necessary to ensure that the change does not result in any material alteration in the commercial effect of those terms,

and if any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms.

If no such agreement is reached within 30 days of that notification of change, the Agent shall (if so requested by the Majority Lenders) instruct the Auditors of the Company or independent accountants (approved by the Company or, in the absence of such approval within 5 days of request by the Agent of such approval, a firm with recognised expertise) to determine any amendment to Clause 26.2 (*Financial condition*), the amount of any prepayments to be made from Excess Cashflow under Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*) and any other terms of this Agreement which the Auditors or, as the case may be, accountants (acting as experts and not arbitrators) consider appropriate to ensure the change does not result in any material alteration in the commercial effect of the terms of this Agreement. Those amendments shall take effect when so determined by the Auditors, or as the case may be, accountants. The cost and expense of the Auditors or accountants shall be for the account of the Company.

Any reference in this agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

- (d) If the Agent wishes to discuss the financial position of any member of the Group with the Auditors, the Agent may notify the Company, stating the questions or issues which the Agent wishes to discuss with the Auditors. In this event, the Company must ensure that the Auditors are authorised (at the expense of the Company):
 - (i) to discuss the financial position of each member of the Group with the Agent on request from the Agent; and
 - (ii) to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request.

25.4 Budget

- (a) The Company shall supply to the Agent a copy (or, upon request by the Agent additional copies) of the annual Budget for each of its Financial Years, as soon as the same become available but in any event within 60 days after the start of that Financial Year.
- (b) The Company shall ensure that each Budget:
 - (i) is in a form reasonably acceptable to the Agent and includes a projected consolidated profit and loss, balance sheet and cashflow statement for the Group, projected disposals and projected capital expenditure for the Group, projected financial covenant calculations and descriptions of the proposed activities of the Group for the financial year to which the Budget relates. The projections shall relate to the 12 month period comprising, and each month in, that Financial Year;
 - (ii) is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under Clause 25.1 (*Financial statements*);
 - (iii) has been approved by the directors of the Company; and
 - (iv) is accompanied by a statement by the directors of the Company comparing the information and projections in that Budget with the information and projections for the same period in the Restructuring Opinion (without any obligation of the Company to reconcile the Restructuring Opinion with the Budget).

- (c) If the Budget is updated or changed, the Company shall promptly deliver to the Agent, in sufficient copies for each of the Lenders, such updated or changed Budget together with a written explanation of the main changes in that Budget.

25.5 Group companies

The Company shall, at the request of the Agent, supply to the Agent a report issued by its Auditors stating which of its Subsidiaries are Material Companies and confirming that the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA) of the Guarantors (calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) exceeds 85 per cent. of Consolidated EBITDA.

25.6 Presentations

- (a) Once in every Financial Year following the delivery of the Annual Financial Statements, or more frequently if requested to do so by the Agent if the Agent reasonably suspects a Default is continuing, at least two directors of the Company (one of whom shall be the chief financial officer) must give a presentation or attend a telephone conference at a mutually convenient time and (if in form of a meeting) venue to the Finance Parties about the on-going business and financial performance of the Group (including but not limited to the full year performance of the Group).
- (b) Subject to paragraph (c) below, upon the request of the Agent (acting on the instructions of the Majority Lenders and such request to be made no later than 15 Business Days following the delivery of the Quarterly Financial Statements pursuant to paragraph (c) of Clause 25.1 (*Financial statements*)) the Company will host a telephone conference for the Agent and the Lenders, in which at least the chief financial officer of the Company will comment on the on-going business and financial performance of the Group. Any telephone conference for the Quarterly Financial Statements in respect of the quarter ending 31 December shall also include comments on the annual Budget for the next Financial Year.
- (c) A presentation in accordance with paragraph (a) shall be in substitution for a telephone conference for the Quarterly Financial Statement pursuant to paragraph (b) in respect of the Financial Quarter ending 31 December if such presentation has been given by the end of March in the following Financial Year.

25.7 Year-end

The Company shall procure that each Financial Year-end of each member of the Group falls on 31 December.

25.8 Information: miscellaneous

The Company shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) on a monthly basis, a report listing the outstanding guarantees under Bank Guarantee Facility A and, in respect of each such Bank Guarantee, the amount of that Bank Guarantee, the issue date, the Issuing Bank, the termination date (or commercial life-time), the type of Bank Guarantee and the identity of the beneficiary;
- (b) at the same time as they are dispatched, copies of all documents dispatched by the Company to its creditors generally (or any class of them) or dispatched by any Material Company to its creditors (other than members of the Group) generally (or any class of them);
- (c) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened in writing or pending against any member of the Group, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect or which would involve a liability, or a potential or alleged liability, exceeding EUR 5,000,000 (or its equivalent in other currencies);
- (d) promptly upon becoming aware of them the details of any disposal or insurance claim in each case which will require a prepayment under Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*);
- (e) promptly, such information as the Security Trustee may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents;
- (f) promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this Agreement, any changes to the managing directors, the chief executive officer and the chief financial officer of the Company or APCOA PARKING Deutschland GmbH, and the head of management of any other member of the Group, and an up to date copy of its shareholders' register (or equivalent in its

jurisdiction of incorporation) as any Finance Party through the Agent may reasonably request;

- (g) promptly upon becoming aware of them, the details of any Environmental Claim which is current, threatened in writing or pending against any member of the Group which is referred to in Clause 27.4 (*Environmental claims*) or which would involve a potential liability or expenditure exceeding EUR 5,000,000 (or its equivalent in other currencies);
- (h) promptly, details of an issue or allocation of or, promptly upon becoming aware of the same, a transfer of the legal or beneficial ownership of or change of control of, any share of any member of the Group;
- (i) promptly upon becoming aware, details of any event or circumstances that has or is reasonably likely to have a Material Adverse Effect;
- (j) each Borrower shall use reasonable endeavours to promptly provide each Issuing Bank with all information that it may request (acting reasonably) in respect of a claim made or purported to be made under a Bank Guarantee issued by that Issuing Bank; and
- (k) once a year, which may be with the annual Budget provided pursuant to paragraph (a) of Clause 25.4 (*Budget*), an update in relation to the 20 contracts of the Group with the highest GOPBD (as the same is set out in the monthly management accounts), setting out an overview on revenue, profitability and end date of such contracts, and whether any material changes to such contracts are expected within the next twelve (12) Months, such update and information subject always to any duty of confidentiality and/or non-disclosure obligation and which may be delivered in an anonymised form.

25.9 Notification of default

- (a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor) or the Default is no longer continuing.
- (b) Promptly upon a request by the Agent, the Company shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

25.10 "Know your customer" checks

- (a) If:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of an Obligor or the composition of the direct shareholders of an Obligor after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied with the results of all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied with the results of all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (c) The Company shall, by not less than 10 Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 31 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it,

the Company shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

26 FINANCIAL COVENANTS

26.1 Financial Definitions

In this Agreement:

"Actual Cash" means the actual cash position of the Group as at a Quarter Date, as evidenced by:

- (a) in respect of the calculation of Change in Actual Cash or Excess Cashflow, the Annual Financial Statements delivered in respect of that Quarter Date; or
- (b) in respect of Minimum Liquidity, the Quarterly Financial Statements delivered in respect of that Quarter Date.

"Change in Actual Cash" means, in respect of a Sweep Calculation Date, the amount of Actual Cash as at that Sweep Calculation Date less the amount of Actual Cash as at the Previous Sweep Calculation Date.

"Consolidated EBITDA" means, in respect of any Relevant Period, the consolidated operating profit of the Group before taxation for that Relevant Period (excluding the results from discontinued operations):

- (a) **before deducting** any Consolidated Finance Charges;
- (b) **not including** any accrued interest owing to any member of the Group;
- (c) **before taking into account** any Exceptional Items;
- (d) **before taking into account** any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);
- (e) **before taking into account** any gain or loss arising from an upward or downward revaluation of any other asset during that Relevant Period, including, but not limited to, any related effects resulting from foreign currency exposure;

- (f) **before taking into account** any Pension Items;
- (g) **after adding back** the proceeds of any business interruption insurance received during that Relevant Period to the extent not already taken into account in determining operating profits of the Group before taxation;
- (h) **after adding back** the amount of Permitted Payments that constitute expenses within any of paragraphs (a), (b), (d) and/or (e) of the definition of that term;
- (i) **after adding back** any amount attributable to the amortisation or depreciation of assets of members of the Group,

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the Group before taxation.

"Consolidated Finance Charges" means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of indebtedness (including for the avoidance of doubt, Finance Leases) in each case whether paid, payable or capitalised by any member of the Group (calculated on a consolidated basis) in respect of that Relevant Period.

"Exceptional Items" means any exceptional, one off, non-recurring or extraordinary items which represent gains or losses including those arising on:

- (a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;
- (b) disposals, revaluations, write downs or impairment of non-current assets, or any reversal of any write down or impairment;
- (c) disposals of assets associated with discontinued operations and profit and losses arising from deconsolidation of entities;
- (d) fluctuations in currency exchange rates; and
- (e) the amount of any Transaction Costs.

"Finance Lease" means any lease or hire purchase contract which would, in accordance with IFRS, be treated as borrowings.

"Free Facilities" means the aggregate of (without double counting):

- (a) any Available Facility;
- (b) the amount of any available but undrawn facility under any Ancillary Facility; and

- (c) the amount of any available but undrawn commitment for indebtedness made available to any member of the Group.

"Minimum Liquidity" means, at the relevant Quarter Date, the amount of Actual Cash:

- (a) **adding** the amount of all Free Facilities;
- (b) **less** the amount of such Actual Cash that is Trapped Cash; and
- (c) **less** any amount actually due and payable by any member of the Group to any of its trade creditors, the payment of which has been materially extended beyond the Group's customary working capital management practices.

"Opening EBITDA" means the Consolidated EBITDA for the Relevant Period ending on 30 September 2014⁵.

"Pension Items" means any income or charge attributable to a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme.

"Previous Sweep Calculation Date" in respect of a Sweep Calculation Date means:

- (a) in respect of the first Sweep Calculation Date, 31 December 2014; and
- (b) in respect of each other Sweep Calculation Date, the previous Sweep Calculation Date to have occurred.

"Quarter Date" means each of 31 March, 30 June, 30 September and 31 December.

"Relevant Period" means each period of twelve months ending on or about the last day of each Financial Quarter.

"Relevant Proceeds" means Disposal Proceeds or Insurance Proceeds.

"Sweep Calculation Date" means each 31 December from and including 31 December 2015.

"Transaction Costs" means:

- (a) all fees, costs, expenses, stamp registration and other Taxes incurred by the Company or any member of the Group in connection with the Restructuring; and

⁵ Amount to be included if available at signing.

- (b) costs incurred in connection with any amendment, waiver or consent requested under any Finance Document.

"Trapped Cash" means, as at the relevant Quarter Date, cash held by a member of the Group that is:

- (a) held in pre-cash pool accounts to settle cash pooling balances;
- (b) held (to the extent contractually or legally required) on account management contracts;
- (c) held on deposit and committed to settlement of contractual obligations with landlords (other than rental payments then due); and/or
- (d) cash in physical form, including cash in transit and in parking pay machines.

26.2 Financial condition

The Company shall ensure that:

- (a) **Minimum EBITDA:** commencing with the first Quarter Date to fall at least nine Months after the date of the first Utilisation, Consolidated EBITDA for the Relevant Period ending on that Quarter Date and the Relevant Period ending on each subsequent Quarter Date, shall not be less than 75 per cent. of the Opening EBITDA.
- (b) **Minimum Liquidity:** the Minimum Liquidity at each Quarter Date shall not be less than EUR 15,000,000.

26.3 Financial testing

- (a) The financial covenants set out in Clause 26.2 (*Financial condition*) shall be calculated in accordance with the Accounting Principles.
- (b) The financial covenants set out at Clause 26.2 (*Financial condition*) shall be tested by reference to the most recent Quarterly Financial Statements and/or the Compliance Certificate delivered with such Quarterly Financial Statements pursuant to paragraph (c) of Clause 25.1 (*Financial statements*) and paragraph (a) of Clause 25.2 (*Provision and contents of Compliance Certificate*) respectively.

26.4 Cure

- (a) If the Company is not, or does not reasonably expect to be, in compliance with any Financial Covenant tested or to be tested at the current or next Quarter Date (the "**Relevant Date**") then the Company may, prior to or within 20

Business Days of the earlier of the due date for the delivery of the Compliance Certificate in respect of that Relevant Date or the date of actual delivery of such Compliance Certificate:

- (i) establish an Incremental Facility Tranche in accordance with Clause 2.5 (*Incremental Facility Commitments*); or
- (ii) procure (without any obligation) that, prior to or within 20 Business Days of the earlier of the due date for the delivery of the Compliance Certificate in respect of that Relevant Date or the date of actual delivery of such Compliance Certificate, proceeds from New Shareholder Injections are received by it,

which, shall have the effect that each Financial Covenant is recalculated giving effect to the following adjustments:

- (A) for the purpose of calculating Consolidated EBITDA, the proceeds actually received by the Company of the relevant Incremental Facility Tranche and of the New Shareholder Injection (as applicable) shall be added to the calculation of Consolidated EBITDA for the Relevant Period ending on the Relevant Date (the "**Breach Period**") and the Relevant Periods ending on the three Quarter Dates immediately following the Relevant Date; and
- (B) for the purpose of calculating Minimum Liquidity, the proceeds actually received by the Company of the relevant Incremental Facility Tranche and of the New Shareholder Injection (as applicable) shall be added to the calculation of Minimum Liquidity for the Breach Period,

in each case making any further adjustment needed to ensure that, besides the effects described in (A) and (B) above, no double counting or accumulation of cure benefit occurs, and compliance with Clause 26.2 (*Financial condition*) will be determined by reference to the relevant recalculation. For the avoidance of doubt, during the 20 Business Day period in which the Company is entitled to procure a Cure, no Default or Event of Default shall have occurred or be deemed to have occurred due to the (expected) non-compliance with the Financial Covenants that is or could be subject to such Cure.

- (b) If following the recalculation under paragraph (a) above, the Company would have been in compliance with the requirements of the Financial Covenants at the Relevant Date, then the Financial Covenants shall be deemed to have been satisfied as at the Relevant Date as though there had been no failure to comply

with such requirements and any breach or any Default or Event of Default arising as a result of the original breach shall be deemed to have not occurred.

- (c) Any recalculation made under this Clause (a) will be solely for the purpose of curing a breach of Clause 26.2 (*Financial condition*) and not for any other purpose such as calculation of Excess Cashflow.
- (d) With respect to any breach of the Minimum EBITDA test in paragraph (a) of Clause 26.2 (*Financial condition*) the Company may only apply the provisions of this Clause 26.4 no more than three times before the latest Termination Date applicable to any Super Senior Facility, and not with respect to consecutive Quarter Dates. For the avoidance of doubt, no such limit shall apply to the Minimum Liquidity test in paragraph (b) of Clause 26.2 (*Financial condition*) at any time.

27 GENERAL UNDERTAKINGS

The undertakings in this Clause 27 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

Authorisations and compliance with laws

27.1 Authorisations

Each Obligor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect and, if and when requested by the Agent, supply certified copies to the Agent of any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

- (a) enable it to perform its obligations under the Finance Documents;
- (b) subject to the Legal Reservations and, in the case of the Transaction Security Documents, the Perfection Requirements, ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and
- (c) enable it to own its assets and to carry on its business, trade and ordinary activities as currently conducted where failure to obtain or comply with those Authorisations is reasonably likely to have a Material Adverse Effect.

27.2 Compliance with laws

Each Obligor shall (and the Company shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

27.3 Environmental compliance

Each Obligor shall (and the Company shall ensure that each member of the Group will):

- (a) comply with all Environmental Law;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits;
- (c) comply with all other covenants, conditions, restrictions or agreements directly or indirectly concerned with any contamination, pollution or waste or the release or discharge of any toxic or hazardous substance in connection with any real property which is or was at any time owned, leased or occupied by any member of the Group or on which any member of the Group has conducted any activity; and
- (d) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

27.4 Environmental claims

Each Obligor shall (through the Company), promptly upon becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental Claim against any member of the Group which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

27.5 Taxation

- (a) Each Obligor shall (and the Company shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within

the time period allowed without incurring penalties unless and only to the extent that:

- (i) such payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes in accordance with the applicable Accounting Principles, and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Agent under Clause 25.1 (*Financial statements*);
 - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect; or
 - (iv) such payment is not in excess of EUR 500,000.
- (b) No member of the Group will change its residence for Tax purposes.

Restrictions on business focus

27.6 Merger

No Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than a Permitted Transaction, Permitted Acquisition or Permitted Disposal.

27.7 Change of business

The Company shall procure that no substantial change is made to the general nature of the business of the Company, the Obligors or the Group taken as a whole from that carried on by the Group on the date of this Agreement.

27.8 Acquisitions

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will):
 - (i) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
 - (ii) incorporate a company.
- (b) Paragraph (a) above does not apply to an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is:

- (i) a Permitted Acquisition; or
- (ii) a Permitted Transaction.

27.9 Joint ventures

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no member of the Group will):
 - (i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
 - (ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).
- (b) Paragraph (a) above does not apply to any acquisition of (or agreement to acquire) any interest in a Joint Venture or transfer of assets (or agreement to transfer assets) to a Joint Venture or loan made to or guarantee given in respect of the obligations of a Joint Venture if such transaction is a Permitted Acquisition, a Permitted Disposal, a Permitted Loan, a Permitted Joint Venture or a Permitted Transaction.

Restrictions on dealing with assets and Security

27.10 Preservation of assets

Each Obligor shall (and the Company shall ensure that each member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

27.11 Pari passu ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

27.12 Negative pledge

In this Clause 27.12, "**Quasi-Security**" means a transaction described in paragraph (b) below.

Except as permitted under paragraph (c) below:

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Company shall ensure that no other member of the Group will):
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is:
 - (i) Permitted Security; or
 - (ii) a Permitted Transaction.

27.13 Disposals

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is:
 - (i) a Permitted Disposal;
 - (ii) a Permitted Transaction; or
 - (iii) a disposal giving effect to a Liabilities Acquisition which is permitted by, and as defined in, the Intercreditor Agreement.

27.14 Arm's length basis

- (a) Except as permitted by paragraph (b) below, no Obligor shall (and the Company shall ensure no member of the Group will) enter into any transaction with any person except on arm's length terms and for full market value.
- (b) The following transactions shall not be a breach of this Clause 27.14:
 - (i) intra-Group loans permitted under Clause 27.15 (*Loans or credit*);
 - (ii) fees, costs and expenses payable under the Finance Documents in the amounts set out in the Finance Documents ; and
 - (iii) a Permitted Transaction (other than one referred to in paragraph (c) or (d) of the definition of that term), Permitted Payment or any Liabilities Acquisition which is a disposal giving effect to a Liabilities Acquisition which is permitted by, and as defined in, the Intercreditor Agreement.

Restrictions on movement of cash - cash out

27.15 Loans or credit

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no member of the Group will) be a creditor in respect of any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to:
 - (i) a Permitted Loan;
 - (ii) a Permitted Payment;
 - (iii) a Permitted Transaction.

27.16 No Guarantees or indemnities

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
- (b) Paragraph (a) does not apply to a guarantee which is:
 - (i) a Permitted Guarantee;
 - (ii) a Permitted Transaction; or

- (iii) a Permitted Payment.

27.17 Dividends and share redemption

- (a) Except as permitted under paragraph (b) below, the Company shall not (and will ensure that no other member of the Group will) pay or otherwise make a Distribution.
- (b) Paragraph (a) above does not apply to:
 - (i) a Permitted Payment;
 - (ii) a Permitted Loan under paragraph (h) of that definition; or
 - (iii) a Permitted Transaction (other than one referred to in paragraph (c) of the definition of that term).

27.18 Holdco Facilities Agreement

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no member of the Group will) pay or otherwise make a Distribution in respect of amounts under the Holdco Facilities Agreement or any other document entered into in direct connection therewith or in respect of amounts outstanding under New Shareholder Injections.
- (b) Paragraph (a) does not apply to a payment, repayment, prepayment, purchase, redemption, defeasance or discharge which is:
 - (i) a Permitted Payment; or
 - (ii) a Permitted Transaction.

Restrictions on movement of cash - cash in

27.19 Financial Indebtedness

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is:
 - (i) Permitted Financial Indebtedness; or
 - (ii) a Permitted Transaction.

27.20 Share capital

No Obligor shall (and the Company shall ensure that no member of the Group will) issue any shares except pursuant to:

- (a) a Permitted Share Issue; or
- (b) a Permitted Transaction.

Miscellaneous

27.21 Insurance

Each Obligor shall (and the Company shall ensure that each member of the Group will) maintain insurances:

- (a) on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business; and
- (b) with reputable independent insurance companies or underwriters.
- (c) where insurances and risks have been identified in the Insurance Report, the Company shall ensure the insurances maintained are at least in respect of the business and assets and against the risks and to the extent recommended in the Insurance Report,

provided that an appropriate insurance is commercially available and to the extent as is usual for companies carrying on the same or substantially similar business.

27.22 Pensions

- (a) The Company shall ensure that all pension schemes operated by or maintained for the benefit of members of the Group and/or any of their employees are fully funded, are based on reasonable actions and assumptions and recommendations and are operated and maintained as required by law and that no action or omission is taken by any member of the Group in relation to such a pension scheme which has or could reasonably be expected to have a Material Adverse Effect.
- (b) The Company shall deliver to the Agent upon request by the Agent, actuarial reports in relation to all pension schemes mentioned in (a) above which have been prepared.

27.23 Access

If a Default is continuing or the Agent reasonably suspects a Default is continuing or may occur, each Obligor shall, and the Company shall ensure that each member of the

Group will, permit the Agent and/or the Security Trustee and/or accountants or other professional advisers and contractors of the Agent or Security Trustee free access at all reasonable times and on reasonable notice at the risk and cost of the Obligor or Company to (a) the premises, assets, books, accounts and records of each member of the Group and (b) meet and discuss matters with the managing directors (*Geschäftsführung*) of the Company.

27.24 Intellectual Property

Each Obligor shall (and the Company shall procure that each Group member will):

- (a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant member of the Group;
- (b) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
- (c) make registrations and pay all registration fees and taxes necessary to maintain in full force and effect the Intellectual Property necessary for the business of any member of the Group and record its interest in that Intellectual Property;
- (d) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and
- (e) not discontinue the use of the Intellectual Property,

where failure to do so, in the case of paragraphs (a) and (b) above, or, in the case of paragraphs (d) and (e) above, such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

27.25 Amendments

No Obligor shall (and the Company shall ensure that no member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Finance Document or any other document delivered by or on behalf of any member of the Group to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*) or Clause 31 (*Changes to the Obligors*) or enter into any agreement with any shareholders of the Company or any of their Affiliates which is not a member of the Group except in writing:

- (a) in accordance with the provisions of Clause 41 (*Amendments and Waivers*) or the Intercreditor Agreement; or

- (b) in a way which could not be reasonably expected to materially adversely affect the interests of the Lenders.

The Company shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs (a) to (b) above that amends, varies, novates, supplements, supersedes, waives or terminates any term of a Finance Document or any other document delivered by or on behalf of any member of the Group to the Agent.

27.26 Treasury Transactions

No Obligor shall (and the Company shall procure that no member of the Group will) enter into any Treasury Transaction, other than:

- (a) non-speculative currency and interest hedging arrangements in relation to the Facilities with a Hedging Counterparty provided that the hedging is for a duration no longer than the term of the relevant Facility;
- (b) spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes; and
- (c) any Treasury Transaction entered into for the hedging of actual or projected real exposures arising in the ordinary course of trading activities of a member of the Group not for speculative purposes.

27.27 Guarantors

- (a) The Company shall ensure that, subject to the Agreed Security Principles, at all times the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA) of the Guarantors (in each case calculated on an unconsolidated basis and excluding all intra-group items) represents not less than 85 per cent of Consolidated EBITDA of the Group (where for these purposes any member of the Group with negative EBITDA is deemed to have EBITDA of zero).
- (b) The Company need only perform its obligations under paragraph (a) above if it is not unlawful for the relevant person to become a Guarantor and that person becoming a Guarantor would not result in personal liability for that person's directors or other management. Each Obligor must use, and must procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any such unlawfulness or personal liability. This includes agreeing to a limit on the amount guaranteed. The Agent may (but shall not be obliged to) agree to such a limit if, in its opinion, to do so would avoid the relevant unlawfulness or personal liability.

27.28 Further assurance

- (a) Each Obligor shall (and the Company shall procure that each member of the Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s)):
 - (i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights powers and remedies of the Security Trustee or the Finance Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Trustee or the Finance Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
 - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Each Obligor shall (and the Company shall procure that each member of the Group will) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Trustee or the Finance Parties by or pursuant to the Finance Documents.

27.29 Centre of main interest and establishment

No Obligor whose jurisdiction of incorporation is in a member state of the European Union shall change its "centre of main interest" (as that term is used in Article 3(1) of the Regulation) or establish any "establishment" (as that term is used in Article 2(h) of the Regulation) in any jurisdiction (within the European Union) except for any car-parking business established in the ordinary course of the Group's business.

27.30 Conditions subsequent

- (a) Each Obligor must use, and must procure that any other member of the Group that is a potential provider of Transaction Security uses, all reasonable

endeavours lawfully available to avoid or mitigate the constraints on the provision of Security provided for in the Agreed Security Principles.

- (b) The Company shall ensure that any rights restricting the transfer of the shares in an Austrian Obligor will be removed from the articles of association of the respective Austrian Obligor promptly following the closing date and that any such removal is filed with the Austrian companies register (*Firmenbuch*) within 30 days of the date of this Agreement. The Company shall supply the Agent with copies of any corporate resolutions, registry application documentation and updated companies register extracts in connection with the foregoing promptly upon receipt.
- (c) The Company shall procure that each member of the Group identified in Part I of Schedule 3 (*Conditions Subsequent*) grants, subject to the Agreed Security Principles, the Transaction Security by the specified date identified opposite the name of that member of the Group in Part I of Schedule 3 (*Conditions Subsequent*). The condition subsequent set out in this paragraph (c) will be satisfied upon the Agent having received all of the documents and other evidence listed in Schedule 3 (*Conditions Subsequent*) in form and substance satisfactory to it. The Agent shall notify the Company and the Lenders promptly upon being so satisfied.
- (d) The Belgian Borrower undertakes to provide to the Agent, within fifteen Business Days after the date of this Agreement, evidence that an extract of the resolutions of the shareholders approving certain provisions of, and the transactions contemplated by, this Agreement and the Finance Documents to which the Belgian Borrower is a party has been filed with the clerk of the relevant commercial court for the purposes of article 556 of the Belgian Companies Code.

27.31 Assets

The Company shall upon written request of the Agent advise the whereabouts of all assets subject to security and shall keep proper books of account.

27.32 Restructuring

The Company shall (and shall procure that any member of the Group will) comply with the recommendations, and implement a restructuring that at least satisfies the requirements and recommendations, set forth in the Restructuring Opinion.

27.33 Cash Pool

The Company shall use reasonable endeavours to implement cash pooling arrangements between members of the Group operated by an external cash pool provider.

27.34 Anti-corruption Law

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.
- (b) Each Obligor shall (and the Company shall ensure that each other member of the Group will):
 - (i) conduct its businesses in compliance with applicable anti-corruption laws; and
 - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

27.35 Limitations on Undertakings

- (a) Notwithstanding Clause 27 (*General Undertakings*) above, the provisions of Clause 27.6 (*Merger*), Clause 27.7 (*Change of business*), Clause 27.8 (*Acquisitions*), Clause 27.9 (*Joint ventures*), Clause 27.14 (*Arm's length basis*), Clause 27.17 (*Dividends and share redemption*), and Clause 27.20 (*Share capital*) (the "**Relevant Restrictive Covenants**") shall not restrict any such act or step by any member of the Group whose Relevant Jurisdiction is Germany (together the "**German Group**") or any Borrower whose Relevant Jurisdiction is Austria (for the purpose of this Clause 27.35 an "**Austrian Borrower**").
- (b) The Company shall give the Agent no less than 20 Business Days' prior written notice of the intention of it, any other member of the German Group or any Austrian Borrower to carry out any of the acts or take any of the steps referred to in the Relevant Restrictive Covenants.
- (c) The Agent shall be entitled within 20 Business Days of receipt of the Company notice under paragraph (b) above to request the relevant member of the German Group or relevant Austrian Borrower to supply to the Agent in sufficient copies for the Lenders any relevant information in connection with the proposed action or steps referred to in such notice.
- (d) The Agent shall notify the Company, within 10 Business Days of receipt of the notice by the Company under paragraph (b) above or if additional

information has been requested by the Agent within the prescribed time, within 10 Business Days of receipt of such information, whether the proposed action or steps under paragraph (a) above is or is, in the reasonable opinion of the Agent, acting on the instructions of the Majority Lenders, likely to have a Material Adverse Effect.

- (e) If the proposed action or step under paragraph (a) above is so considered by the Agent to have a Material Adverse Effect and the relevant member of the German Group or relevant Austrian Borrower nevertheless takes such action or steps under paragraph (a) above, the Agent shall be entitled to make (and, if so instructed by the Majority Lenders shall make) the declaration, request and/or instruction set out in Clause 28.18 (*Acceleration*).

28 EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 28 is an Event of Default (save for Clause 28.18 (*Acceleration*)).

28.1 Non-payment

Subject to Clause 26.4 (*Cure*), an Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) in respect of any amount of principal or interest, payment is made within 3 Business Days of its due date; or
- (b) in respect of any other amount, payment is made within 5 Business Days of its due date.

28.2 Financial covenants

Any requirement of Clause 26 (*Financial Covenants*) is not satisfied, subject to Clause 26.4 (*Cure*).

28.3 Other obligations

- (a) An Obligor or Luxco 3 does not comply with any provision of the Finance Documents (other than those referred to in Clause 28.1 (*Non-payment*) and Clause 28.2 (*Financial covenants*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 20 Business Days of the earlier of (i) the Agent giving notice to the Company or relevant Obligor (or Luxco 3) and (ii) the Company or an Obligor (or Luxco 3) becoming aware of the failure to comply, **provided that** a failure to comply by the relevant

Obligor or Luxco 3 (or the procurement of such failure to comply by the Company or an Obligor) may only be remedied 7 times during the term of this Agreement.

28.4 Misrepresentation

- (a) Any representation or statement made or to be made by an Obligor or Luxco 3 in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or to be made.
- (b) No Event of Default under paragraph (a) above will occur if the circumstances giving rise to the misrepresentation or incorrect statement are capable of remedy and are remedied within 20 Business Days of the earlier of (i) the Agent giving notice to the Company or relevant Obligor or (ii) the Company or the relevant Obligor becoming aware of that misrepresentation or incorrect statement.

28.5 Cross default

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 28.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than EUR 2,500,000 (or its equivalent in any other currency or currencies) or relates to Financial Indebtedness under paragraph (g) of the definition of "Permitted Financial Indebtedness".

28.6 Insolvency

- (a) A member of the Group is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness and in particular a member of the Group incorporated in Germany is unable to pay its debts as they fall due (*zahlungsunfähig*) within the meaning of section 17 of the German Insolvency Code (*Insolvenzordnung*).
- (b) A member of the Group incorporated in Germany is overindebted within the meaning of section 19 of the German Insolvency Code (*Insolvenzordnung*) or, with respect to any other member of the Group, the value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A member of the Group incorporated in Austria is illiquid (*zahlungsunfähig*) within the meaning of section 66 of the Austrian Insolvency Code (*Insolvenzordnung*), over-indebted (*überschuldet*) within the meaning of section 67 of the Austrian Insolvency Code (*Insolvenzordnung*), or meets the preconditions for the opening of an Austrian business reorganisation, i.e. the quota of own funds (*Eigenmittelquote*) of that member of the Group is less than 8% and the fictitious duration of debt redemption (*fiktive Schuldentilgungsdauer*) of that member of the Group is more than 15 years.
- (d) A moratorium is declared in respect of any indebtedness of any member of the Group. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

28.7 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any member of the Group for reasons of actual or anticipated financial difficulties of that member of the Group;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any member of the Group or any of its assets; or

- (iv) enforcement of any Security over any assets of any member of the Group having an aggregate value of EUR 2,500,000,

or any analogous procedure or step is taken in any jurisdiction.

- (b) Paragraph (a) shall not apply to:

- (i) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 20 Business Days of commencement or, if earlier, the date on which it is advertised; or
- (ii) any step or procedure contemplated by paragraph (b) of the definition of Permitted Transaction.

28.8 Creditors' process and non-compliance with final judgment

- (a) Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a member of the Group having an aggregate value of EUR 2,500,000 and is not discharged within 10 days.
- (b) Any member of the Group fails to comply with any final judgment where this could reasonably be expected to have a Material Adverse Effect.

28.9 Unlawfulness and invalidity

- (a) It is or becomes unlawful for an Obligor or any other member of the Group that is a party to the Intercreditor Agreement to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be (subject to the Legal Reservations and in the case of the Transaction Security Documents, the Perfection Requirements) effective or any subordination created under the Intercreditor Agreement is or becomes unlawful.
- (b) Any obligation or obligations of any Obligor under any Finance Documents or any other member of the Group under the Intercreditor Agreement are not (subject to the Legal Reservations and in the case of the Transaction Security Documents, the Perfection Requirements) or cease to be (subject to Legal Reservations and in the case of the Transaction Security Documents, the Perfection Requirements) legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

- (c) Subject to the Legal Reservations and, in the case of the Transaction Security Documents, any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective and such cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

28.10 Intercreditor Agreement

- (a) A member of the Group (other than an Obligor) fails to comply with the provisions of, or does not perform its obligations under, the Intercreditor Agreement; or
- (b) a representation or warranty given by that party in the Intercreditor Agreement is incorrect in any material respect,

and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within 20 days of the earlier of (i) the Agent giving notice to that party and (ii) that party becoming aware of the non-compliance or misrepresentation.

28.11 Cessation of business

Any Material Company suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of a Permitted Disposal or a Permitted Transaction.

28.12 Audit qualification

The Auditors of the Group qualify the audited annual consolidated financial statements of the Company.

28.13 Expropriation

The authority or ability of any Material Company to conduct its business is materially limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Material Company or any of its assets.

28.14 Repudiation and rescission of agreements

- (a) An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document to which it is a party or any of the Transaction Security or evidences an intention to rescind or

repudiate a Finance Document to which it is a party or any Transaction Security.

- (b) Any party to the Intercreditor Agreement rescinds or purports to rescind or repudiates or purports to repudiate any of those agreements or instruments in whole or in part where to do so has or is, in the reasonable opinion of the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.

28.15 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against any member of the Group or its assets which (except in each case in the context of the Restructuring or any step in connection therewith) is reasonably likely to be adversely determined and which if adversely determined (taking into account the outcome of such dispute) has or is reasonably likely to have a Material Adverse Effect.

28.16 Material Adverse Effect

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

28.17 Restructuring Opinion

- (a) The Agent (acting on the instructions of the Majority Lenders) has:
 - (i) certified in writing to the Company that in the reasonable opinion of the Majority Lenders, the Restructuring can no longer be achieved;
 - (ii) provided in writing an explanation for the opinion provided under paragraph (i) above;
 - (iii) consulted with the Company for not less than 14 days prior to issuing the certificate referred to in paragraph (i) above; and
 - (iv) the Company has failed to provide to the Agent a written confirmation (the "**Confirmation**") from Ernst & Young (or any of the other "Big Four" accounting firms) addressed to and capable of being relied upon by all the Lenders, within two months of the date on which the Agent notifies the Company under paragraph (a)(i) above that the Restructuring can still be achieved, such confirmation being in form and substance satisfactory to the Majority Lenders.

- (b) Notwithstanding the consultation period in paragraph (a)(iii) above and the period for providing the Confirmation in accordance with paragraph (a)(iv) above, an Event of Default shall immediately occur if the Majority Lenders determine that in their reasonable opinion a Confirmation cannot be obtained.

28.18 Acceleration

- (a) Subject to the Intercreditor Agreement, on and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Super Majority Lenders, by notice to the Company:
 - (i) cancel the Total Commitments and/or Ancillary Commitments and/or Fronting Ancillary Commitments and/or Fronted Ancillary Commitments at which time they shall immediately be cancelled;
 - (ii) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
 - (iii) declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders;
 - (iv) declare that cash cover in respect of each Bank Guarantee is immediately due and payable at which time it shall become immediately due and payable;
 - (v) declare that cash cover in respect of each Bank Guarantee is payable on demand at which time it shall immediately become due and payable on demand by the Agent on the instructions of the Majority Lenders;
 - (vi) declare all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities and/or Fronted Ancillary Facilities to be immediately due and payable at which time they shall become immediately due and payable;
 - (vii) declare that all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities and/or Fronted Ancillary Facilities be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
 - (viii) exercise or direct the Security Trustee to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

- (b) Subject to the Intercreditor Agreement, on and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Super Senior Lenders, by notice to the Company:
- (i) cancel the Total Super Senior Commitments and/or Ancillary Commitments and/or Fronting Ancillary Commitments and/or Fronted Ancillary Commitments at which time they shall immediately be cancelled;
 - (ii) declare that all or part of the Utilisations under the Super Senior Facilities, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents with respect to the Super Senior Facilities be immediately due and payable, at which time they shall become immediately due and payable;
 - (iii) declare that all or part of the Utilisations under the Super Senior Facilities be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Super Senior Lenders;
 - (iv) declare that cash cover in respect of each Bank Guarantee issued under Bank Guarantee Facility A or an Ancillary Facility or a Fronted Ancillary Facility is immediately due and payable at which time it shall become immediately due and payable;
 - (v) declare that cash cover in respect of each Bank Guarantee issued under Bank Guarantee Facility A or an Ancillary Facility or a Fronted Ancillary Facility is payable on demand at which time it shall immediately become due and payable on demand by the Agent on the instructions of the Majority Super Senior Lenders;
 - (vi) declare all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities and/or Fronted Ancillary Facilities to be immediately due and payable at which time they shall become immediately due and payable;
 - (vii) declare that all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities and/or Fronted Ancillary Facilities be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Super Senior Lenders; and/or
 - (viii) exercise or direct the Security Trustee to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents with respect to the Super Senior Facilities.

29 CHANGES TO THE LENDERS

29.1 Assignments and Transfers by the Lenders

Subject to this Clause 29, a Lender (the "**Existing Lender**") may assign any of its rights or transfer by way of assignment and assumption any of its rights and obligations under any Finance Document (or enter into Sub-Participations in respect of its rights and/or obligations) to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the "**New Lender**").

29.2 Conditions of Assignment or Transfer

- (a) The prior written consent of the Company is required for an assignment or transfer or Sub-Participation (provided that, in the case of a Sub-Participation, this paragraph (a) shall only apply to a Sub-Participation where the relevant Lender has agreed to vote in accordance with the participant's directions and shall not apply to any Sub-Participation in relation to Term Facility B or Bank Guarantee Facility B) by an Existing Lender, unless the assignment or transfer or Sub-Participation is:
 - (i) to another Lender or an Affiliate of a Lender (provided that with respect to an assignment or transfer in relation to the Super Senior Revolving Facility or the Bank Guarantee Facility A, that other Lender or Affiliate of another Lender must be a Lender under the Super Senior Revolving Facility or the Bank Guarantee Facility A (as applicable));
 - (ii) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender;
 - (iii) (in the case of Term Facility A only) to a person which is listed on the White List; or
 - (iv) made at a time when an Event of Default is continuing.
- (b) The consent of the Company to an assignment or transfer must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Company within that time.
- (c) The White List may be amended from time to time by the Company only with prior written consent of the Agent (acting on the instructions of the Majority Lenders). The Company shall consider (acting reasonably) but shall not be obliged to consent to any reasonable request from the Agent from time to time

to amend the White List. The Company may at any time remove from the White List any entity which has been acquired by, has merged with or has otherwise combined its operations with, a person who is not included in the White List, in notifying the Agent and the removal shall take effect on the date of receipt by the Agent of that notification.

- (d) No assignment, transfer or sub-participation may be made to any person whose business includes operations in the car parking industry provided that such operations generate annual revenues in excess of EUR 100,000,000 worldwide, or more than EUR 30,000,000 in any one jurisdiction (such person being a "**Competitor**"), any Affiliate of a Competitor, or any person that directly or indirectly controls more than 25% of a Competitor.
- (e) Other than in respect of any assignment or transfer made by exercising the option to purchase under and as set out in clause 11.6 of the Intercreditor Agreement, the consent of:
 - (i) each Issuing Bank which has issued any Fronted Bank Guarantee at the time of any assignment or transfer is required for such assignment or transfer by an Existing Lender of any of its rights and/or obligations under Bank Guarantee Facility A or the Super Senior Revolving Facility but only if a Fronted Bank Guarantee is outstanding under the relevant Facility; and
 - (ii) each Issuing Bank under Bank Guarantee Facility B is required for any assignment or transfer by an Existing Lender of any of its rights and/or obligations under Bank Guarantee Facility B if at the time of the assignment or transfer a Bank Guarantee is outstanding under Bank Guarantee Facility B.
- (f) Each assignment or transfer of any Existing Lender's participation in any Facility must be in a minimum aggregate amount of EUR 5,000,000 (or its equivalent) and so that the assigning or transferring Lender retains a Commitment of at least EUR 2,500,000 (or its equivalent) in each Facility unless:
 - (i) the Company and the Agent agree otherwise;
 - (ii) such assignment or transfer is made by an Existing Lender to an Affiliate or Related Fund; or
 - (iii) the assignment or transfer is of the whole of that Lender's participation under this Agreement.
- (g) An assignment will only be effective:

- (i) if the requirements contained in this Clause 29.2 are complied with;
 - (ii) on receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender;
 - (iii) on the New Lender entering into the documentation required for it to accede to the Intercreditor Agreement (which requirement will be satisfied on completion of an assignment using the form of Assignment Agreement attached as Schedule 5 (*Form of Assignment Agreement*)); and
 - (iv) on performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (h) Any assignment or transfer by a Lender of rights and/or obligations (by whatever method) will be deemed to be subject to the rights and restrictions contained in the Intercreditor Agreement applicable to the Lenders (as defined in the Intercreditor Agreement). If the New Lender is not already a party to the Intercreditor Agreement as a Lender, then (for the benefit of the Finance Parties) the New Lender agrees to become, with effect from the Transfer Date, a party to and agrees to be bound by the terms of the Intercreditor Agreement as if it had originally been party to the Intercreditor Agreement as a Lender.
- (i) A transfer will only be effective if:
- (i) the requirements contained in this Clause 29.2 are complied with;
 - (ii) the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement (which requirement will be satisfied on completion of a transfer using the form of Assignment Agreement attached as Schedule 5 (*Form of Assignment Agreement*)); and
 - (iii) the procedure set out in Clause 29.5 (*Procedure for Assignment and Assumption*) is complied with.
- (j) If:

- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
- (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 18 (*Tax gross-up and indemnities*) or Clause 19.1 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (j) shall not apply in relation to Clause 18.2 (*Tax gross-up*) to a Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii)(B) of Clause 18.2 (*Tax gross-up*) if the Obligor making the payment is a UK Borrower and has not made a Borrower DTTP Filing in respect of that Treaty Lender.

- (k) Each New Lender, by executing the relevant Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

29.3 Assignment or transfer fee

Unless the Agent otherwise agrees and excluding an assignment or transfer:

- (a) to an Affiliate of a Lender;
- (b) to a Related Fund; or
- (c) made in connection with primary syndication of the Facilities,

the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of EUR 3,500.

29.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by Luxco 3, any Obligor or any other member of the Group of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,
- and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
 - (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 29; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

29.5 Procedure for Assignment or Assignment and Assumption

- (a) Subject to the conditions set out in Clause 29.2 (*Conditions of Assignment or Transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an Assignment Agreement delivered to it and executed by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt

by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this agreement, execute that Assignment Agreement. For the avoidance of doubt, an Assignment Agreement will be treated as duly completed notwithstanding that the Company may not have executed that Assignment Agreement to formally acknowledge the transfer of obligations.

- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar other checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 29.10 (*Pro Rata Interest Settlement*), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released from the obligations (the "**Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 29.5 to assign or transfer their rights and obligations under the Finance Documents provided that they comply with the conditions set out in Clause 29.2 (*Conditions of Assignment or Transfer*).

29.6 Copy of Assignment Agreement or Increase Confirmation to Company

The Agent shall, as soon as reasonably practicable after it has executed an Assignment Agreement or an Increase Confirmation, send to the Company a copy of that Assignment Agreement or Increase Confirmation.

29.7 Affiliates of Lenders as Hedge Counterparties

- (a) An Affiliate of a Lender which becomes a Hedge Counterparty shall accede to this Agreement and to the Intercreditor Agreement by delivery to the Security Trustee of a duly completed accession undertaking in the form required under the Intercreditor Agreement.

- (b) Where this Agreement or any other Finance Document imposes an obligation on a Hedge Counterparty and the relevant Hedge Counterparty is an Affiliate of a Lender and is not a party to that document, the relevant Lender shall ensure that the obligation is performed by its Affiliate.

29.8 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 29, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

29.9 Continuation of Security

- (a) Each Obligor consents to the assignments and transfers of rights and obligations permitted under and made in accordance with this Clause 29. Each Obligor agrees and confirms that its guarantee and indemnity obligations under the Finance Documents and any Transaction Security granted by it in support of its own borrowing obligations or its guarantee or indemnity obligations under the Finance Documents will continue notwithstanding any assignment or transfer under this Clause 29 and will extend to cover and support obligations owed to New Lenders and to continuing Finance Parties.
- (b) The Company (for itself and as agent for the Obligors) will (at its own cost) promptly execute such documents and take such other actions as are necessary

to effect or perfect an assignment or a transfer of rights and/or obligations to a New Lender under the Finance Documents. Such action will include:

- (i) promptly countersigning Assignment Agreements (although any delay or failure by the Company to so countersign an Assignment Agreement will not invalidate its operation); and
- (ii) taking such steps as the Agent or the Security Trustee may request (including re-execution of Transaction Security Documents) for the purpose of ensuring that the New Lender has (and the other Finance Parties continue to have) the benefit of the same security interests under the Transaction Security Documents as existed immediately before the relevant transfer.

29.10 Pro Rata Interest Settlement

If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any assignment pursuant to Clause 29.5 (*Procedure for Assignment or Assignment and Assumption*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six-Monthly intervals after the first day of that Interest Period); and
- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
 - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 29.10, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (c) In this Clause 29.10 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.

30 DEBT PURCHASE TRANSACTIONS

The Company shall not, and shall procure that each other member of the Group shall not:

- (a) enter into any Debt Purchase Transaction; or
- (b) beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction.

31 CHANGES TO THE OBLIGORS

31.1 Assignment and transfers by Obligors

No Obligor or any other member of the Group may assign any of its rights or transfer any of its rights or obligations under the Finance Documents, other than (subject to compliance with the provisions of paragraphs (c) and (d) of Clause 25.10 (*"Know your customer" checks*) as expressly set out in the Structure Memorandum.

31.2 Additional Borrowers

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 25.10 (*"Know your customer" checks*), the Company may request that any of its wholly owned Subsidiaries becomes an Additional Borrower. That Subsidiary shall become an Additional Borrower if:
 - (i)
 - (A) it is incorporated in the same jurisdiction as an existing Borrower; or
 - (B) all the Lenders under the relevant Facility approve the addition of that Subsidiary;
 - (ii) the Company and that Subsidiary deliver to the Agent a duly completed and executed Accession Letter;
 - (iii) the Subsidiary is (or becomes) a Guarantor prior to, or concurrently with, becoming a Borrower;
 - (iv) the Company confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
 - (v) the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.

- (b) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*).
- (c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) above, the Lenders authorise (but do not require) the Agent to give the notification described in paragraph (b) above. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

31.3 Resignation of a Borrower

- (a) In this Clause 31.3, Clause 31.5 (*Resignation of a Guarantor*) and Clause 31.7 (*Resignation and release of Security on disposal*), "**Third Party Disposal**" means the disposal of an Obligor to a person which is not a member of the Group where that disposal is permitted under Clause 27.13 (*Disposals*) or made with the approval of the Majority Lenders (and the Company has confirmed this is the case).
- (b) If (i) a Borrower is the subject of a Third Party Disposal or (ii) pursuant to a Permitted Transaction, the Company may request that the relevant Borrower (other than the Company) ceases to be a Borrower by delivering to the Agent a Resignation Letter.
- (c) The Agent shall accept a Resignation Letter and notify the Company and the other Finance Parties of its acceptance if:
 - (i) the Company has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
 - (ii) the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents;
 - (iii) where the Borrower is also a Guarantor (unless its resignation has been accepted in accordance with Clause 31.5 (*Resignation of a Guarantor*)), its obligations in its capacity as Guarantor continue to be legal, valid, binding and enforceable and in full force and effect (subject to the Legal Reservations and, in the case of the Transaction Security Documents, the Perfection Requirements) and the amount guaranteed by it as a Guarantor is not decreased (and the Company has confirmed this is the case); and

- (iv) the Company has confirmed that it will ensure that any relevant Disposal Proceeds will be applied in accordance with Clause 12.3 (*Application of prepayments*).
- (d) Upon notification by the Agent to the Company of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the date on which the Third Party Disposal takes effect.
- (e) The Agent may, at the cost and expense of the Company, require a legal opinion from counsel to the Agent confirming the matters set out in paragraph (c)(iii) above and the Agent shall be under no obligation to accept a Resignation Letter until it has obtained such opinion in form and substance satisfactory to it.

31.4 Additional Guarantors

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 25.10 (*"Know your customer" checks*), the Company may request that any of its wholly owned Subsidiaries become an Additional Guarantor.
- (b) The Company shall procure that, subject to the Agreed Security Principles, any other member of the Group which is a Material Company will, as soon as possible after becoming a member of the Group or becoming a Material Company, become an Additional Guarantor and, subject to the Agreed Security Principles, grant Security as the Agent may require and shall accede to the Intercreditor Agreement.
- (c) A member of the Group shall become an Additional Guarantor if:
 - (i) the Company and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Letter; and
 - (ii) the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.
- (d) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*).

- (e) The Lenders authorise (but do not require) the Agent to give the notification described in paragraph (e) above. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

31.5 Resignation of a Guarantor

- (a) The Company may request that a Guarantor (other than the Company) ceases to be a Guarantor by delivering to the Agent a Resignation Letter if:
 - (i) that Guarantor is being disposed of by way of a Third Party Disposal (as defined in Clause 31.3 (*Resignation of a Borrower*)) and the Company has confirmed this is the case;
 - (ii) the resignation is specifically contemplated in the Structure Memorandum; or
 - (iii) all the Lenders have consented to the resignation of that Guarantor.
- (b) The Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:
 - (i) the Company has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
 - (ii) no payment is due from the Guarantor under Clause 23 (*Guarantee and Indemnity*);
 - (iii) where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower and has resigned and ceased to be a Borrower under Clause 31.3 (*Resignation of a Borrower*); and
 - (iv) the Company has confirmed that it will ensure that the Disposal Proceeds will be applied, in accordance with Clause 12.3 (*Application of prepayments*).
- (c) The resignation of that Guarantor shall not be effective until the date of the relevant Third Party Disposal at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

31.6 Repetition of Representations

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in paragraph (b) of Clause 24.28 (*Times when representations made*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

31.7 Resignation and release of Security on disposal

- (a) If a Borrower or Guarantor is or is proposed to be the subject of a Third Party Disposal then:
 - (i) where that Borrower or Guarantor created Transaction Security over any of its assets or business in favour of the Security Trustee, or Transaction Security in favour of the Security Trustee was created over the shares (or equivalent) of that Borrower or Guarantor, the Security Trustee may, at the cost and request of the Company, release those assets, business or shares (or equivalent);
 - (ii) the resignation of that Borrower or Guarantor and related release of Transaction Security referred to in paragraph (i) above shall not become effective until the date of that disposal; and
 - (iii) if the disposal of that Borrower or Guarantor is not made, the Resignation Letter of that Borrower or Guarantor and the related release of Transaction Security referred to in paragraph (i) above shall have no effect and the obligations of the Borrower or Guarantor and the Transaction Security created or intended to be created by or over that Borrower or Guarantor shall continue in full force and effect.
- (b) The release of any Transaction Security created by a Transaction Security Document governed by Swedish law will always be subject to the prior written consent of the Security Trustee, acting in its absolute discretion or as provided for in the relevant Security Document.

32 ROLE OF THE AGENT, THE BANK GUARANTEE AGENT, THE ISSUING BANKS AND OTHERS

32.1 Appointment of the Agent and the Bank Guarantee Agent

- (a) Each of the Finance Parties appoints the Agent to act as its facility agent under and in connection with the Finance Documents.
- (b) The Company appoints the Bank Guarantee Agent to act as bank guarantee agent for the Lenders under Bank Guarantee Facility B in connection with the Finance Documents.
- (c) Each of the Finance Parties authorises the Agent and the Bank Guarantee Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent or the Bank Guarantee Agent (as applicable) under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

- (d) Each of the Finance Parties hereby relieves the Agent and the Bank Guarantee Agent from the restrictions pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) to the extent legally possible. A Finance Party which is barred by its constitutional documents or by-laws from granting such exemption shall notify the Agent or the Bank Guarantee Agent (as applicable) accordingly.

32.2 Duties of the Agent and the Bank Guarantee Agent

- (a) Subject to paragraph (b) below, each of the Agent and the Bank Guarantee Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent or the Bank Guarantee Agent (as applicable) for that Party by any other Party.
- (b) Without prejudice to Clause 29.6 (*Copy of Assignment Agreement or Increase Confirmation to Company*), and paragraph (e) of Clause 7.4 (*Cash Collateral by Non-Acceptable B/G Lender and Borrower's Option to Provide Cash Cover*), paragraph (a) above shall not apply to any, Fee Letter, Assignment Agreement or any Increase Confirmation.
- (c) Except where a Finance Document specifically provides otherwise, neither the Agent nor the Bank Guarantee Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Security Trustee) under this Agreement it shall promptly notify the other Finance Parties.
- (f) The Agent's and the Bank Guarantee Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (g) The Agent and the Bank Guarantee Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).
- (h) The Bank Guarantee Agent shall keep the Company, the Issuing Banks under Bank Guarantee Facility B and all Lenders under Bank Guarantee Facility B informed (i) by way of a daily activity report, about any change in relation to

Bank Guarantee Facility B and (ii) by way of a quarterly inventory report, about all then outstanding Bank Guarantees under Bank Guarantee Facility B.

32.3 No fiduciary duties

- (a) Nothing in this Agreement constitutes the Agent and/or the Bank Guarantee Agent and/or any Issuing Bank as a trustee or fiduciary of any other person.
- (b) None of the Agent, the Bank Guarantee Agent, any Issuing Bank, any Ancillary Lender, any Fronting Ancillary Lender or any Fronted Ancillary Lender shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

32.4 Business with the Group

The Agent, the Bank Guarantee Agent, each Issuing Bank, each Ancillary Lender, each Fronting Ancillary Lender and each Fronted Ancillary Lender may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

32.5 Rights and discretions

- (a) The Agent, the Bank Guarantee Agent and each Issuing Bank may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; 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 Agent and the Bank Guarantee Agent may assume (unless it has received notice to the contrary in its capacity as Agent for the Lenders) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 28.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised;
 - (iii) any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) Each of the Agent and the Bank Guarantee Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, each of the Agent and the Bank Guarantee Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent or the Bank Guarantee Agent (as applicable) (and so separate from any lawyers instructed by the Lenders) if the Agent or the Bank Guarantee Agent (as applicable) in its reasonable opinion deems this to be desirable.
- (e) Each of the Agent and the Bank Guarantee 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 Agent, the Bank Guarantee Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) Each of the Agent and the Bank Guarantee Agent may act in relation to the Finance Documents through its officers, employees and agents and neither the Agent nor the Bank Guarantee Agent shall:
- (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 loss was directly caused by the Agent's or the Bank Guarantee Agent's gross negligence or wilful misconduct (as applicable).

- (g) Unless a Finance Document expressly provides otherwise each of the Agent and the Bank Guarantee Agent may disclose to any other Party any information it reasonably believes it has received as Agent or Bank Guarantee Agent (as applicable) under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
 - (i) may disclose; and
 - (ii) on the written request of the Company or the Majority Lenders shall, as soon as reasonably practicable, disclose,

the identity of a Defaulting Lender to the Company and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent, the Bank Guarantee Agent nor any Issuing Bank is 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.
- (j) The Agent is not obliged to disclose to any Finance Party any details of the rate notified to the Agent by any Lender or the identity of any such Lender for the purpose of paragraph (a)(ii) of Clause 16.2 (*Market disruption*).
- (k) Notwithstanding any provision of any Finance Document to the contrary, neither the Agent nor the Bank Guarantee Agent is 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.

32.6 Instructions

- (a) The Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document provides that the matter is an all Lender decision;

- (B) the Super Majority Lenders if the relevant Finance Document provides that the matter is a Super Majority Lender decision; and
 - (C) in all other cases, the Majority Lenders; and
- (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document provides that the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save in the case of decisions which are stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Trustee.
- (d) Each of the Agent and the Bank Guarantee Agent may refrain from acting in accordance with any instructions from the Lenders until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (e) In the absence of instructions, each of the Agent and the Bank Guarantee Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

32.7 Responsibility for documentation

None of the Agent, the Bank Guarantee Agent any Issuing Bank, any Ancillary Lender, any Fronting Ancillary Lender or any Fronted Ancillary Lender:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Bank Guarantee Agent, an Issuing Bank, an Ancillary Lender, a Fronting Ancillary Lender, a Fronted Ancillary Lender, an Obligor or any other person given in or in connection with any Finance Document, the Reports or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document;
- (b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security; or
- (c) is responsible for any determination as to whether any information provided or to be provided to any Finance 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.

32.8 No duty to monitor

The 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 Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

32.9 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Bank Guarantee Agent, the Issuing Bank, any Ancillary Lender, any Fronting Ancillary Lender or any Fronted Ancillary Lender), none of the Agent, the Bank Guarantee Agent, any Issuing Bank, any Ancillary Lender, any Fronting Ancillary Lender nor any Fronted Ancillary Lender will be liable (including, without limitation, for negligence or any other category of liability whatsoever) 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 Finance Document or the

Transaction Security, unless directly caused by its gross negligence or wilful misconduct;

- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security; or
- (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, 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 (including any Disruption Event); 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 Agent, the Bank Guarantee Agent, an Issuing Bank, an Ancillary Lender a Fronting Ancillary Lender or a Fronted Ancillary Lender (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, the Bank Guarantee Agent, any Issuing Bank, any Ancillary Lender, any Fronting Ancillary Lender or any Fronted Ancillary Lender, in respect of any claim it might have against the Agent, the Bank Guarantee Agent, an Issuing Bank or an Ancillary Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent, the Bank Guarantee Agent, any Issuing Bank, any Ancillary Lender, any Fronting Ancillary Lender or any Fronted Ancillary Lender may rely on this Clause subject to Clause 1.7 (*Third Party Rights*) and the provisions of the Third Parties Act.

- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender.

on behalf of any Lender and each Lender confirms to the 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 Agent.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's or the Bank Guarantee Agent's liability, any liability of the Agent or the Bank Guarantee Agent arising under or in connection with any Finance Document or the Transaction Security 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 Agent or the Bank Guarantee Agent (as applicable) 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 Agent at any time which increase the amount of that loss. In no event shall the Agent or the Bank Guarantee Agent 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 Agent or the Bank Guarantee Agent (as applicable) has been advised of the possibility of such loss or damages.

32.10 Lenders' indemnity to the Agent

- (a) Subject to paragraph (d) below, each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 35.11 (*Disruption to Payment*

Systems etc.) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

- (b) Subject to paragraph (c) below, the Company shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to an Obligor.
- (d) In the event that a Lender fails to comply with a request made by the Agent pursuant to Clause 18.8 (*FATCA Information*), or information provided by that Lender in response to such a request is incomplete or incorrect by the Lender pursuant to its obligation under paragraph (e) of Clause 18.8 (*FATCA Information*) or otherwise, or a Lender which has confirmed that it is a FATCA Exempt Party fails to comply with its obligation under paragraph (b) of Clause 18.8 (*FATCA Information*) (each a "**FATCA Default**"), the relevant Lender shall indemnify the Agent, within three Business Days of demand, against any cost, loss or liability incurred (exclusive of any penalties and interest solely resulting from the errors and omissions of the Agent) by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) as a consequence of non-compliance with FATCA by the Agent as a result of such Lender's FATCA Default. Each Lender shall also indemnify the Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) with respect to any Tax imposed by reason of FATCA in relation to the Finance Documents attributable to such Lender. In the event that the relevant Lender fails to make the relevant payment and the Agent cannot recover such payment from such Lender, the Borrower shall indemnify the Agent accordingly (other than with respect to a payment owed by a Lender which is an Affiliate of the Agent) and in such case the Borrower may reclaim payment from the relevant Lender that failed to make the relevant payment to the Agent.

32.11 Lenders' indemnity to the Bank Guarantee Agent

- (a) Each relevant Lender shall (in proportion to its share of the Total Bank Guarantee Facility B Commitments or, if the Total Bank Guarantee Facility B Commitments are then zero, to its share of the Total Bank Guarantee Facility B Commitments immediately prior to their reduction to zero) indemnify the

Bank Guarantee Agent within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Bank Guarantee Agent (otherwise than by reason of the Bank Guarantee Agent's gross negligence or wilful misconduct) notwithstanding the Bank Guarantee Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Bank Guarantee Agent in acting as Bank Guarantee Agent under the Finance Documents (unless the Bank Guarantee Agent has been reimbursed by an Obligor pursuant to a Finance Document).

- (b) Subject to paragraph (c) below, the Company shall immediately on demand reimburse any Lender for any payment that Lender makes to the Bank Guarantee Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Bank Guarantee Agent to an Obligor.

32.12 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates acting through an office in the European Union as successor by giving notice to the Lenders and the Company.
- (b) Alternatively the Agent may resign by giving notice to the Lenders and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the retiring Agent (after consultation with the Company) may appoint a successor Agent (acting through an office in the European Union).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent:
 - (i) amendments to this Clause 32.12 and any other term of this Agreement dealing with the rights or obligations of the Agent , consistent with then current market practice for the appointment and protection of corporate trustees; and/or

- (ii) any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties,

provided that in relation to any amendment made in accordance with paragraphs (i) and/or (ii) above, the Company (acting reasonably) has provided its prior written consent.

- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. The Company shall, within three Business Days of demand, reimburse the retiring 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.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (d) above) but shall remain entitled to the benefit of Clause 20.3 (*Indemnity to the Agent*) and this Clause 32 (and any agency fees for the account of the retiring 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 such successor had been an original Party.
- (h) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
 - (i) the Agent fails to respond to a request under Clause 18.8(*FATCA Information*) and the Company or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Agent pursuant to Clause 18.8 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or

- (iii) the Agent notifies the Company and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) the Company or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and the Company or that Lender, by notice to the Agent, requires it to resign.

- (i) The provisions of this Clause 32.12 (except for paragraph (h) above) shall also apply as regards any replacement of the Bank Guarantee Agent, save that references to "Agent" shall be construed as references to "Bank Guarantee Agent".

32.13 Replacement of the Agent

- (a) After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent (acting through an office in the European Union or such other office as agreed by the Majority Lenders and the Company).
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 20.3 (*Indemnity to the Agent*) and this Clause 32 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (e) The provisions of this Clause 32.13 shall also apply as regards any replacement of the Bank Guarantee Agent, save that references to "Agent" shall be construed as references to "Bank Guarantee Agent".

32.14 Confidentiality

- (a) In acting as agent for the Finance Parties or as bank guarantee agent in respect of Bank Guarantee Facility B, the Agent or the Bank Guarantee Agent (as applicable) shall be regarded as acting through its agency 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 Agent or the Bank Guarantee Agent, it may be treated as confidential to that division or department and the Agent or the Bank Guarantee Agent (as applicable) shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Bank Guarantee Agent is 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 a breach of a fiduciary duty.

32.15 Relationship with the Lenders

- (a) Subject to Clause 29.10 (*Pro Rata Interest Settlement*), the Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 37.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 37.2 (*Addresses*) and paragraph (a)(i) of Clause 37.6 (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

32.16 Credit appraisal by the Lenders, Issuing Bank, Ancillary Lenders, Fronting Ancillary Lenders and Fronted Ancillary Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender, Issuing Bank, Ancillary Lender, Fronting Ancillary Lender and Fronted Ancillary Lender confirms to the Agent, the Bank Guarantee Agent, each Issuing Bank, each Ancillary Lender, each Fronting Ancillary Lender and each Fronted Ancillary Lender 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 Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) whether that Lender, Issuing Bank, Ancillary Lender, Fronting Ancillary Lender and Fronted Ancillary Lender 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 Finance Document, the Transaction Security or the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) the adequacy, accuracy and/or completeness of the Reports and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance 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.

32.17 Reference Banks

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Agent shall (in consultation with the Company) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

32.18 Agent's management time

Any amount payable to the Agent under Clause 20.3 (*Indemnity to the Agent*), Clause 22.2 (*Amendment costs*) (but only to the extent the relevant amount is incurred while a Default is continuing), Clause 22.3 (*Enforcement and preservation costs*) and Clause 32.10 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 17 (*Fees*), provided that the Agent has notified the Company of its intention to claim such management time together with a notification of hourly rates, and together with the invoice for such costs, has provided a breakdown of the costs and hourly rates in reasonable detail.

32.19 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

32.20 Reliance and engagement letters

Each Finance Party confirms that the Agent has authority to accept on its behalf and ratifies the acceptance on its behalf of any letters or reports already accepted by the Agent the terms of any reliance letter or engagement letters relating to the Reports or any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those Reports, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

33 CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

34 SHARING AMONG THE FINANCE PARTIES

34.1 Payments to Finance Parties

- (a) Subject to paragraph (b) below, if a Finance Party (a **"Recovering Finance Party"**) receives or recovers any amount from an Obligor other than in accordance with Clause 35 (*Payment mechanics*) (a **"Recovered Amount"**) and applies that amount to a payment due under the Finance Documents then:
 - (i) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
 - (ii) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 35 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
 - (iii) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the **"Sharing Payment"**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 35.6 (*Partial payments*).
- (b) Paragraph (a) above shall not apply to any amount received or recovered by an Issuing Bank, an Ancillary Lender, a Fronting Ancillary Lender or a Fronted Ancillary Lender in respect of any cash cover provided for the benefit of that Issuing Bank, that Ancillary Lender, that Fronting Ancillary Lender or that Fronted Ancillary Lender.

34.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the **"Sharing Finance Parties"**) in accordance with Clause 35.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

34.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 34.2 (*Redistribution of payments*) of a payment received by, the Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party an amount of the Recovered

Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor Bank, that Ancillary Lender, that Fronting Ancillary Lender or that Fronted Ancillary Lender.

34.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

34.5 Exceptions

- (a) This Clause 34 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified the other Finance Party of the legal or arbitration proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

34.6 Ancillary Lenders

- (a) This Clause 34 shall not apply to any receipt or recovery by a Lender in its capacity as an Ancillary Lender, Fronting Ancillary Lender or Fronted Ancillary Lender at any time prior to service of notice under Clause 28.18 (*Acceleration*).

- (b) Following service of notice under Clause 28.18 (*Acceleration*), this Clause 34.6 shall apply to all receipts or recoveries by Ancillary Lenders, Fronting Ancillary Lenders or Fronted Ancillary Lenders except to the extent that the receipt or recovery represents a reduction from the Designated Gross Amount for an Ancillary Facility or Fronted Ancillary Facility to its Designated Net Amount.

35 PAYMENT MECHANICS

35.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, excluding a payment under the terms of an Ancillary Document or a Fronted Ancillary Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment, provided that no Lender will be required to make a payment under this Clause 35.1 in respect of the initial utilisation of Term Facility B Loans which are the subject of a Utilisation Request delivered as contemplated by the New SFA Utilisation Agreement.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.

35.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 35.3 (*Distributions to an Obligor*) and Clause 35.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London).

35.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 36 (*Set-Off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor

under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

35.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
- (c) If the Agent has notified the Lenders that it is willing to make available amounts for the account of a Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to a Borrower:
 - (i) the Agent shall notify the Company of that Lender's identity and the Borrower to whom that sum was made available shall on demand refund it to the Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower to whom that sum was made available, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

35.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 35.1 (*Payments to the Agent*) may instead either:
 - (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay

that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the "**Recipient Party**" or "**Recipient Parties**").

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 35.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 32.13 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 35.2 (*Distributions by the Agent*).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
 - (i) that it has not given an instruction pursuant to paragraph (d) above; and
 - (ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

35.6 Partial payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts

then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:

- (i) first, in or towards payment pro rata of any unpaid amount owing to the Agent, the Bank Guarantee Agent, each Issuing Bank and the Security Trustee under those Finance Documents;
- (ii) second, in or towards payment pro rata of any accrued interest, fee or commission relating to the Super Senior Revolving Facility and Bank Guarantee Facility A due but unpaid under those Finance Documents;
- (iii) third, in or towards payment pro rata of any principal relating to the Super Senior Revolving Facility and Bank Guarantee Facility A due but unpaid under those Finance Documents and any amount due but unpaid under Clause 7.2 (*Claims under a Bank Guarantee*) in relation to Bank Guarantee Facility A;
- (iv) fourth, in or towards payment pro rata of any accrued interest, fee or commission relating to Term Facility A due but unpaid under those Finance Documents;
- (v) fifth, in or towards payment pro rata of any principal relating to Term Facility A due but unpaid under those Finance Documents;
- (vi) sixth, in or towards payment pro rata of any accrued interest, fee or commission relating to Term Facility C, due but unpaid under those Finance Documents;
- (vii) seventh, in or towards payment pro rata of any principal relating to Term Facility C due but unpaid under those Finance Documents;
- (viii) eighth, in or towards payment pro rata of any accrued interest, fee or commission relating to Term Facility B and Bank Guarantee Facility B, due but unpaid under those Finance Documents;
- (ix) ninth, in or towards payment pro rata of any principal relating to Term Facility B and Bank Guarantee Facility B due but unpaid under those Finance Documents and any amount due but unpaid under Clause 7.2 (*Claims under a Bank Guarantee*) in relation to Bank Guarantee Facility B, and Clause 7.3 (*Indemnities*);
- (x) tenth, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (x) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

35.7 No set-off by Obligors

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim unless the counterclaim is undisputed or has been confirmed in a final non-appealable judgement.

35.8 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

35.9 Currency of account

- (a) Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

35.10 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Company); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

35.11 Disruption to Payment Systems etc.

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Company that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the

terms of the Finance Documents notwithstanding the provisions of Clause 41 (*Amendments and Waivers*);

- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 35.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

36 SET-OFF

- (a) Following an Event of Default which is continuing a Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (b) Any credit balances taken into account by an Ancillary Lender, Fronting Ancillary Lender or Fronted Ancillary Lender when operating a net limit in respect of any overdraft under an Ancillary Facility or Fronted Ancillary Facility shall on enforcement of the Finance Documents be applied first in reduction of the overdraft provided under that Ancillary Facility or Fronted Ancillary Facility in accordance with its terms.

37 NOTICES

37.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be:

- (a) made in person, by fax, by letter or by email or any other electronic communication approved by the Agent; and
- (b) in respect of any such communication between the Agent and a Lender, and the Agent and the Lender so agree, by email or any other electronic communication. Subject to Clause 37.6 (*Electronic communication*), for the

purposes of this Agreement, an electronic communication will be treated as being in writing.

37.2 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 the Finance Documents is:

- (a) in the case of the Company, that identified with its name below;
- (b) in the case of each Lender, each Issuing Bank, each Ancillary Lender, each Fronting Ancillary Lender, each Fronted Ancillary Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent or the Security Trustee, that identified with its name below,

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

37.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of email, in accordance with Clause 37.6 (*Electronic communication*);
 - (ii) if by way of fax, when received in legible form; or
 - (iii) 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 37.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent or the Security Trustee will be effective only when actually received by the Agent or Security Trustee and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Trustee's

signature below (or any substitute department or officer as the Agent or Security Trustee shall specify for this purpose).

- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Company in accordance with this Clause 37.3 will be deemed to have been made or delivered to each of the Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraph (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

37.4 Notification of address and fax number

Promptly upon receipt of notification of a change in contact details of a Party or changing its own contact details, the Agent shall notify the other Parties.

37.5 Communication when Agent is Impaired Agent

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

37.6 Electronic communication

Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means:

- (a) 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 Lender to the Agent or the Security Trustee only if it is addressed in such a manner as the Agent or Security Trustee 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.

37.7 Use of websites

- (a) The Company may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Company and the Agent (the "**Designated Website**") if:
 - (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the Company and the Agent are aware of the address of and any relevant password specifications which Lenders might require when setting up their account for the Designated Website (it being understood that the Company will not receive a password for the Designated Website and will not be able to access the Designated Website); and
 - (iii) the information is in a format previously agreed between the Company and the Agent.

If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Agent shall notify the Company accordingly and the Company shall at its own cost, supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Company shall at its own cost, supply the Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Company and the Agent.
- (c) The Company shall promptly upon becoming aware of its occurrence notify the Agent if:

- (i) the Designated Website cannot be accessed due to technical failure;
- (ii) the password specifications for the Designated Website change;
- (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
- (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
- (v) the Company becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Company notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Company under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Company shall at its own cost comply with any such request within ten Business Days.

37.8 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and, other than the relevant documents required to be delivered pursuant to Clause 4.1 (*Initial conditions precedent*), if so required by the 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.

38 CALCULATIONS AND CERTIFICATES

38.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

38.2 Certificates and determinations

Any certification by a Finance Party of a rate or amount under any Finance Document shall set out in reasonable detail the basis of calculation of that rate or amount and is in the absence of manifest error, conclusive evidence of the matters to which it relates.

38.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

38.4 Personal liability

If a director or similar officer signs a certificate required under the Finance Documents on behalf of any member of the Group and the certificate proves to be incorrect, that director will incur no personal liability as a result and no Party (other than the relevant member of the Group) may take any proceedings against that director or officer unless the individual acted fraudulently, recklessly or with an intention to mislead in giving that certificate. A director or similar officer may rely on this Clause.

39 PARTIAL INVALIDITY

In, at any time, any provision of a Finance 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 such provision under the law of any other jurisdiction will in any way be affected or impaired.

40 REMEDIES AND WAIVERS

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

41 AMENDMENTS AND WAIVERS

41.1 Required consents

- (a) Subject to Clause 41.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Company and any such amendment or waiver will be binding on all Parties.
- (b) Except for the consent of the Company and any Incremental Facility Lender, no consent shall be required with respect to any amendment required in connection with the establishment of any Incremental Facility Tranche pursuant to Clause 2.5 (*Incremental Facility Commitments*) and any such amendment will be binding on all Parties.
- (c) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 41.
- (d) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 32.5 (*Rights and discretions*), the 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 the Agreement.
- (e) Each Obligor agrees to any such amendment or waiver permitted by this Clause 41 (*Amendments and Waivers*) which is agreed to by the Company; this includes any amendment or waiver which would, but for this paragraph (e), require the consent of all of the Guarantors.
- (f) No consent shall be required with respect to any amendment that is requested by the Company (acting reasonably) as necessary in order to implement any redenomination pursuant to Clause 4.5 (*Redenomination of Facility B Loans*) and/or changes to the Borrowers pursuant to the Structure Memorandum, as set out in Clause 31.1 (*Assignment and transfers by Obligors*) and any such amendment will be binding on all Parties. Each Lender instructs and authorises the Agent and the Security Trustee to give any such amendment, waiver or consent and to enter into any document or take any such action in connection thereto.

41.2 Exceptions

- (a) Subject to Clause 41.3 (*Structural Adjustment*) and paragraphs (b), (c), (f) and (g) below, an amendment, waiver or consent in relation to any term of any Finance Document that has the effect of changing or which relates to:
 - (i) the definition of "Majority Lenders", "Majority Super Senior Lenders" or "Majority Term A Lenders" or "Super Majority Lenders" in Clause 1.1 (*Definitions*);
 - (ii) an extension to the date of payment of any amount under the Finance Documents (other than mandatory prepayments not resulting from a Change of Control or Flotation) and subject to Clause 41.3 (*Structural Adjustments*) below;
 - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest or Bank Guarantee fee payable;
 - (iv) a change in currency of payment of any amount under the Finance Documents except for any redenomination pursuant to Clause 4.5 (*Redenomination of Facility B Loans*);
 - (v) an increase in or an extension of any Commitment or the Total Commitments other than pursuant to the terms of this Agreement as at the date of this Agreement;
 - (vi) a change to the Borrowers or Guarantors other than in accordance with or permitted pursuant to Clause 31 (*Changes to the Obligors*);
 - (vii) any provision which expressly requires the consent of all the Lenders;
 - (viii) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 29 (*Changes to the Lenders*) or this Clause 41;
 - (ix) any amendment to the order of priority or subordination under the Intercreditor Agreement;

shall not be made without the prior consent of all the Lenders.

- (b) An amendment or waiver which:
 - (i) amends or contradicts:
 - (A) Clause 27.33 (*Cash Pool*);
 - (B) the definition of "Material Adverse Effect";

- (C) the definition of "Permitted Loan" with respect to any loan to be provided to a direct or indirect shareholder of the Company by any member of the Group;
 - (D) the definition of "Permitted Payment";
 - (E) paragraph (b)(iii) of Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*); or
- (ii) which relates to:

(A) (other than as expressly permitted by the provision of any Finance Document) the nature or scope of:

- (I) the guarantee and indemnity granted under Clause 23 (*Guarantee and Indemnity*);
- (II) the Charged Property; or
- (III) the manner in which the proceeds of enforcement of the Transaction Security are distributed,

(except in the case of paragraphs (II) and (III) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document, in which case no consent shall be required); or

(B) the release of any guarantee and indemnity granted under Clause 23 (*Guarantee and Indemnity*) or of any Transaction Security unless relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document, in which case no consent shall be required;

shall not be made without the prior consent of the Super Majority Lenders.

(c) Subject to paragraph (f) and (g) below, an amendment or waiver which amends:

- (i) paragraph (a), (b)(i) or (b)(ii), of Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*);

- (ii) paragraph (a), (f), (g) or (h) of Clause 12.3 (*Application of proceeds*);
or
- (iii) Clause 27.15 (*Loans or credit*) to Clause 27.18 (*Holdco Facilities Agreement*),

shall not be made without the consent of both the Majority Lenders and the Majority Super Senior Lenders.

- (d) Any asset subject to a Transaction Security Document governed by Swedish law may only be disposed of and released if the Security Trustee in its sole discretion consents to such disposal and release.
- (e) Subject to paragraph (f) below, an amendment or waiver which relates to the rights or obligations of the Agent, the Bank Guarantee Agent, any Issuing Bank, the Security Trustee, any Ancillary Lender, any Fronting Ancillary Lender, any Fronted Ancillary Lender or a Hedge Counterparty may not be effected without the consent of the Agent, the Bank Guarantee Agent, that Issuing Bank, the Security Trustee, that Ancillary Lender, that Fronting Ancillary Lender, that Fronted Ancillary Lender or that Hedge Counterparty.
- (f) Notwithstanding anything else in this Clause 41, but subject to paragraph (b) of Clause 31.7 (*Resignation and release of Security on disposal*) any transaction in relation to the Restructuring that is referred to in the Structure Memorandum, including any change in currency, transfer of debt or shares and any release or amendment of Transaction Security in relation thereto that would, but for this paragraph (f) require an amendment, waiver or consent under any Finance Document may be made without the consent of the Lenders and effected by the Agent and/or the Security Trustee and the Company. Each Lender instructs and authorises the Agent and Security Trustee to give any such amendment, waiver or consent and to enter into any document or take any such action in connection thereto.
- (g) An amendment, waiver or consent that has the effect of changing or which relates to paragraph (d) of the definition of "Permitted Payment" shall only require the consent of the Company and the Majority Super Senior Lenders.

41.3 Structural Adjustment

- (a) In this Agreement:
 - (i) "**Adjustment**" means:
 - (A) the introduction of a New Tranche into the Finance Documents;

- (B) an increase in any Existing Tranche; or
 - (C) an extension of the Availability Period applicable to the Super Senior Revolving Facility or any Bank Guarantee Facility.
- (ii) **"Consequential Amendment"** means, in relation to a Structural Adjustment, any amendment, waiver or consent (including, but not limited to, any Security Adjustment) of, or in relation to, any Finance Document consequential on, or required to implement or reflect, that Structural Adjustment.
 - (iii) **"Existing Tranche"** means any Commitment in respect of, and any Loan made under, an existing Facility.
 - (iv) **"New Tranche"** means any additional tranche, loan, facility or commitment.
 - (v) **"Security Adjustment"** means any amendment, waiver or consent which results in changes to, the taking of, or the release coupled with the immediate retaking of, any Transaction Security or any guarantee and indemnity granted under Clause 23 (*Guarantee and Indemnity*).
 - (vi) **"Structural Adjustment"** means an amendment, waiver or consent that results in, or is intended to result in:
 - (A) an Adjustment where the indebtedness in respect of any New Tranche (if any) introduced into the Finance Documents ranks *pari passu* or junior to any other Facility existing as at the date of this Agreement;
 - (B) the transfer of an Existing Tranche (or any participation in an Existing Tranche) into any New Tranche described in paragraph (A) above;
 - (C) a change in currency of any Existing Tranche or of any amount payable under any Finance Document;
 - (D) an extension to the date of payment of any amount under the Finance Documents; or
 - (E) a reduction in the Margin, the Additional Cash Margin or the Capitalised Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable (including, but not limited to, by way of converting any part of

the respective claim into equity of the respective debtor) (a **"Payables Reduction"**),

in each case other than any amendment, waiver or consent referred to in paragraph (f) of Clause 41.2 (*Exceptions*) above.

- (b) If any amendment, waiver or consent is a Structural Adjustment (or any Consequential Amendment relating to it) and would otherwise require the prior consent of all the Lenders pursuant to Clause 41.2 (*Exceptions*), that amendment, waiver or consent may be made with the consent of the Company and the Super Majority Lenders provided that:
 - (i) subject to paragraph (ii) below, any Structural Adjustment (or any Consequential Amendment relating to it) which is implemented for the purpose of a refinancing of any Facility in full or in part and where any New Tranche is implemented for the purpose of such refinancing has (A) (except in the case of a refinancing of Bank Guarantee Facility B) no higher ranking as, (B) a margin that is no higher than the Margin applicable to, and (C) a termination date that is no earlier than the Termination Date for, the Facility which is refinanced in full or in part, may be made with the consent of the Company and the Majority Lenders;
 - (ii) any Structural Adjustment (i) in relation to any of the Super Senior Facilities or (ii) the implementation of any New Tranche with the same ranking as any of the Super Senior Facilities (except for any such New Tranche for the purpose of the refinancing in whole or in part of any of the Super Senior Facilities or Bank Guarantee Facility B), shall require (A) (in case of any Structural Adjustment falling under paragraphs (A) or (B) of that definition) the consent of the Majority Lenders and each Super Senior Lender, or (B) (in case of any Structural Adjustment falling under any of paragraphs (C) to (E) of that definition) the consent of the Majority Lenders and each Lender under the Super Senior Facility in relation to which the Structural Adjustment is made;
 - (iii) any Structural Adjustment falling under paragraphs (D) or (E) of that definition shall require the consent of the Majority Lenders and each Lender under the Facility in relation to which the Structural Adjustment is made; and
 - (iv) without prejudice to paragraph (b)(ii)(B) above, any Payables Reduction that is made by way of converting any part of the respective claim into equity of the respective debtor shall require at least the consent of two Lenders who are neither Affiliates nor Related Funds.

- (c) If any Structural Adjustment (or any Consequential Amendment relating to it) is made (among other things) in the context of a refinancing of any Facility in full or in part, it shall be permissible for the relevant Borrowers to repay or prepay the Facility to be refinanced and any amount outstanding under or in connection with such Facility, and any provisions contained in the Finance Documents which would require the application of any proceeds of that repayment or prepayment to any other Facility or any other amount outstanding shall not apply.

41.4 Excluded Commitments

If:

- (a) any Defaulting Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this agreement within ten Business Days of that request being made; or
- (b) any Lender which is not a Defaulting Lender fails to respond to such a request (other than an amendment, waiver or consent referred to in paragraphs (a)(v), (a)(vi) and (a)(viii) of Clause 41.2 (*Exceptions*)) or such a vote within 10 Business Days of that request being made,

(unless, in either case, the Company and the Agent agree to a longer time period in relation to any request):

- (i) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Facility/ies when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and
- (ii) its status as a Lender or Issuing Bank shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders or that Issuing Bank has been obtained to approve that request.

41.5 Replacement of Lender

- (a) If at any time:
 - (i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (d) below);

- (ii) any Lender refuses or fails to fund an advance in violation of the provisions of this Agreement; or
- (iii) an Obligor becomes obliged to repay any amount in accordance with Clause 11.1 (*Illegality*) or to pay additional amounts pursuant to Clause 19.1 (*Increased costs*) or Clause 18.2 (*Tax gross-up*) or Clause 18.3 (*Tax indemnity*) to any Lender in excess of amounts payable to the other Lenders generally,

then the Company may, on five Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Company, and which is acceptable to the Agent (acting reasonably) and (in the case of any transfer of a Bank Guarantee Facility Commitment, or Super Senior Revolving Facility Commitment which relates to any Fronted Bank Guarantee Facility), each Issuing Bank under the respective Facility, which confirms its willingness to assume and does assume all the obligations of the transferring Lender (including the assumption of the transferring Lender's participations on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or Bank Guarantee fees (to the extent that the Agent has not given a notification under Clause 29.10 (*Pro Rata Interest Settlement*)), on the Transfer Date, Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (b) The replacement of a Lender pursuant to this Clause shall be subject to the following conditions:
 - (i) the Company shall have no right to replace the Agent or Security Trustee;
 - (ii) neither the Agent nor the Lender shall have any obligation to the Company to find a Replacement Lender;
 - (iii) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than ten days after the date the Non-Consenting Lender notifies the Company and the Agent of its failure or refusal to agree to any consent, waiver or amendment to the Finance Documents requested by the Company;

- (iv) in no event shall the Lender replaced under this paragraph (b) be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (v) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) A Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.
- (d) In the event that:
- (i) the Company or the Agent (at the request of the Company) has requested the Lenders to consent to a waiver or amendment of any provisions of the Finance Documents;
 - (ii) the waiver or amendment in question requires the consent of all the Lenders; and
 - (iii) Lenders whose Commitments aggregate more than 85 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 85 per cent. of the Total Commitments prior to that reduction) have consented to such waiver or amendment,

then any Lender who does not and continues not to agree to such waiver or amendment shall be deemed a "**Non-Consenting Lender**".

41.6 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
- (i) the Majority Lenders or the Super Majority Lenders; or
 - (ii) whether:
 - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the relevant Facility/ies; or
 - (B) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents, that Defaulting Lender's Commitments under the relevant Facility/ies will be reduced by the amount of its Available Commitments under the relevant Facility/ies and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.

- (b) For the purposes of this Clause 41.6, the Agent may assume that the following Lenders are Defaulting Lenders:
 - (i) any Lender which has notified the Agent that it has become a Defaulting Lender;
 - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b), (c) or (d) of the definition of "Defaulting Lender" has occurred,

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

41.7 Replacement of a Defaulting Lender

- (a) The Company may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 15 Business Days' prior written notice to the Agent and such Lender:
 - (i) replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement;
 - (ii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of the undrawn Super Senior Revolving Facility Commitment of the Lender; or
 - (iii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations in respect of the Super Senior Revolving Facility,

to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Company, which is acceptable (in the case of any transfer of a Bank Guarantee Facility B Commitment or Super Senior Revolving Facility Commitment which relates to any Fronted Bank Guarantee Facility), to each Issuing Bank under the respective Facility and which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender in accordance with Clause 29 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

- (A) equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or Bank Guarantee fees (to the extent that the Agent has not given a notification under Clause 29.10 (*Pro Rata Interest Settlement*)), on the Transfer Date, Break Costs and other amounts payable in relation thereto under the Finance Documents; or
 - (B) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Company and which does not exceed the amount referred to in paragraph (A) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 41.7 shall be subject to the following conditions:
 - (i) the Company shall have no right to replace the Agent or Security Trustee;
 - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Company to find a Replacement Lender;
 - (iii) the transfer must take place no later than five days after the notice referred to in paragraph (a) above or if later, immediately after completion of the checks contemplated in paragraph (v) below;
 - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
 - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.

- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.

42 CONFIDENTIALITY

42.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 42.2 (*Disclosure of Confidential Information*) and Clause 42.3 (*Disclosure to Numbering Service Providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

42.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent, Bank Guarantee Agent or Security Trustee and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

- (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 32.15 (*Relationship with the Lenders*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 29.8 (*Security over Lenders' rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Company,

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of

such Confidential Information may be price-sensitive information;

- (C) in relation to paragraphs (b)(v), (b)(vi) and (vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; and
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use with Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party;
- (d) to the International Swaps and Derivatives Association, Inc. or any relevant committee thereof, for the purpose of determining the settlement procedures applicable to the obligations under the Finance Documents which are the subject of a credit derivative transaction or other credit linked transaction;
- (e) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom such Confidential Information is to be given is informed of the confidential nature and that some or all of such Confidential Information may be price sensitive information; and
- (f) to any companies or commercial registry (or similar) where disclosure is made for the purpose of protecting the Finance Parties' interests under the Finance Documents.

42.3 Disclosure to Numbering Service Providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this agreement, the Facilities and/or one or more Obligor the following information:
- (i) names of Obligor;
 - (ii) country of domicile of Obligor;
 - (iii) place of incorporation of Obligor;
 - (iv) date of this Agreement;
 - (v) Clause 45 (*Governing Law*);
 - (vi) the names of the Agent;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facilities (and any tranches);
 - (ix) amount of Total Commitments;
 - (x) currencies of the Facilities;
 - (xi) type of Facilities;
 - (xii) ranking of Facilities;
 - (xiii) Termination Date for Facilities;
 - (xiv) changes to any of the information previously supplied pursuant to (i) to (xiii) (inclusive) above; and
 - (xv) such other information agreed between such Finance Party and the Company,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or one or more Obligor by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

- (c) The Company represents that none of the information set out in paragraph (a)(i) to (xv) (inclusive) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Company and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facilities and/or one or more Obligors; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facilities and/or one or more Obligors by such numbering service provider.

42.4 Entire Agreement

This Clause 42 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

42.5 Inside Information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

42.6 Notification of Disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Company:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 42.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 42 (*Confidentiality*).

42.7 Continuing Obligations

The obligations in Clause 42 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which that Finance Party otherwise ceases to be a Finance Party.

43 DISCLOSURE OF LENDER DETAILS BY AGENT

43.1 Supply of Lender Details to Company

The Agent shall provide to the Company within five Business Days of a request by the Company (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments. If requested by the Company (but no more frequently than once per calendar month), the Agent shall within five Business Days of such request provide to the Company the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending of information by electronic mail or other electronic means to each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents. The Agent may, in its sole discretion, agree (i) to deliver such lists more frequently than once per calendar month and (ii) to provide further information and details as might be requested by the Company from time to time.

43.2 Supply of Lender Details at Company's direction

- (a) The Agent shall, at the request of the Company, disclose the identity of the Lenders and the details of the Lenders' Commitments to any:
 - (i) other Party or any other person if that disclosure is made to facilitate, in each case, a refinancing of the Financial Indebtedness arising under the Finance Documents or a material waiver or amendment of any term of any Finance Document and each Lender expressly consents to such disclosure; and

- (ii) member of the Group.
- (b) Subject to paragraph (c) below, the Company shall procure that the recipient of information disclosed pursuant to paragraph (a) above shall keep such information confidential and shall not disclose it to anyone and shall ensure that all such information is protected with security measures and a degree of care that would apply to the recipient's own confidential information.
- (c) The recipient may disclose such information to any of its officers, directors, employees, professional advisers, auditors and partners as it shall consider appropriate if any such person is informed in writing of its confidential nature, except that there shall be no such requirement to so inform if that person is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by duties of confidentiality in relation to the information.

43.3 Supply of Lender Details to other Lenders

- (a) If a Lender (a "**Disclosing Lender**") indicates to the Agent that the Agent may do so, the Agent shall disclose that Lender's name and Commitment to any other Lender that is, or becomes, a Disclosing Lender.
- (b) The Agent shall, if so directed by the Requisite Lenders, request each Lender to indicate to it whether it is a Disclosing Lender.

43.4 Lender Enquiry

If any Lender believes that any entity is, or may be, a Lender and:

- (a) that entity ceases to have an Investment Grade Rating; or
- (b) an Insolvency Event occurs in relation to that entity,

the Agent shall, at the request of that Lender, indicate to that Lender the extent to which that entity has a Commitment.

43.5 Lender Details Definitions

In this Clause 43:

"Investment Grade Rating" means, in relation to an entity, a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency;

"Requisite Lenders" means a Lender or Lenders whose Commitments aggregate 15 per cent. (or more) of the Total Commitments (or if the Total Commitments have been reduced to zero, aggregated 15 per cent (or more) of the Total Commitments immediately prior to that reduction).

44 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.

45 GOVERNING LAW

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

46 ENFORCEMENT

46.1 Jurisdiction of English Courts

- (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 46.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

46.2 Service of Process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
 - (i) irrevocably appoints Apcoa UK Parking Holdings UK Limited as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document and APCOA Parking Holdings UK Limited by its execution of this Agreement, accepts that appointment;

- (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (on behalf of all Obligors) must immediately (and in any event within five 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.
- (c) Apcoa Parking Holdings (UK) Limited expressly agrees and consents to the provisions of this Clause 46 and Clause 45 (*Governing law*).

IN WITNESS whereof this Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1

The Original Parties ⁶

PART I

The Original Obligors

| Name of Original Borrower | Jurisdiction of incorporation | Registration number (or equivalent, if any) | Facilities it is a Borrower under |
|--|--------------------------------------|---|---|
| APCOA Parking Holdings GmbH (formerly Perpetuum Beteiligungsgesellschaft mbH) | Germany | HRB 726108 Stuttgart | Term Facility B Super Senior Revolving Facility Bank Guarantee Facility A Bank Guarantee Facility B |
| APCOA PARKING Deutschland GmbH (formerly APCOA Autoparking GmbH) | Germany | HRB 221831, Stuttgart | Term Facility A Term Facility B Super Senior Revolving Facility Bank Guarantee Facility A Bank Guarantee Facility B |
| APCOA PARKING Belgium NV (formerly APCOA Belgium NV) | Belgium | Register of Legal Entities Antwerpen, Division Antwerpen 0433.872.288 | Term Facility B Bank Guarantee Facility A Bank Guarantee Facility B |
| APCOA Parking Holdings (UK) Limited | England | 05163792 | Term Facility B Super Senior Revolving Facility Bank Guarantee Facility A Bank Guarantee |

⁶ To be updated in accordance with final structure prior to signing.

| | | | |
|--|---------|-------------------------|---|
| | | | Facility B |
| APCOA Parking (UK) Limited | England | 02572947 | Super Senior Revolving Facility Bank Guarantee Facility A Bank Guarantee Facility B |
| APCOA Parking Austria GmbH | Austria | FN 249499 k HG Wien | Super Senior Revolving Facility Bank Guarantee Facility A Bank Guarantee Facility B |
| APCOA Parking Holding Danmark ApS | Denmark | CVR. No. 29 31 73 48 | Term Facility B Super Senior Revolving Facility Bank Guarantee Facility A Bank Guarantee Facility B |
| APCOA PARKING Sverige AB (formerly EuroPark Svenska AB) | Sweden | 556439-7478 | Term Facility B Super Senior Revolving Facility Bank Guarantee Facility A Bank Guarantee Facility B |
| Europark Holding AS | Norway | 991 126 090 | Term Facility B Super Senior Revolving Facility Bank Guarantee Facility A Bank Guarantee Facility B |
| Europark Scandinavia AS | Norway | 881 459 442 | Term Facility B Super Senior Revolving Facility Bank Guarantee Facility A Bank Guarantee Facility B |

| Name of Guarantor | Jurisdiction of incorporation | Registration number (or equivalent, if any) |
|---|--------------------------------------|--|
| APCOA Parking Holdings GmbH (formerly Perpetuum Beteiligungsgesellschaft mbH) | Germany | HRB 726108 Stuttgart |
| APCOA Parking Aktiengesellschaft (formerly AE Holding GmbH and converted into AE Holding Aktiengesellschaft and renamed into APCOA Parking Aktiengesellschaft) | Germany | HRB 724288, Stuttgart |
| APCOA PARKING Deutschland GmbH (formerly APCOA Autoparking GmbH) | Germany | HRB 221831, Stuttgart |
| Europark Holding AS | Norway | 991 126 090 |
| Europark Scandinavia AS | Norway | 881 459 442 |
| EuroPark AS | Norway | 929 292 065 |
| APCOA Parking Holding Danmark ApS | Denmark | CVR. No. 29 31 73 48 |
| APCOA Parking Danmark A/S | Denmark | CVR. No. 19 05 51 08 |
| APCOA Holding Italia S.r.l. | Italy | Companies register of Mantova 04735650964 |
| APCOA Parking Italia S.p.A. | Italy | Companies register of Mantova 01176050217 |
| APCOA PARKING Belgium NV (formerly APCOA Belgium NV) | Belgium | Register of Legal Entities Antwerpen, Division Antwerpen 0433.872.288 |
| APCOA Parking Austria GmbH | Austria | FN 249499 k HG Wien |
| APCOA Parking Holdings (UK) Limited | England | 05163792 |
| APCOA Parking (UK) Limited | England | 02572947 |
| APCOA PARKING Sverige AB (formerly EuroPark Svenska AB) | Sweden | 556439-7478 |
| APCOA Parking Nederland B.V. | Netherlands | 24192999 |

PART II

The Original Lenders

| Name of Lender | Term Facility A Commitment | Term Facility B Commitment | Term Facility C Commitment | Bank Guarantee Facility A Commitment | Bank Guarantee Facility B Commitment | Super Senior Revolving Facility Commitment | Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable) |
|----------------|-------------------------------|-------------------------------|-------------------------------|---|---|---|---|
| [●] | €[●] | €[●] | €0 | €[●] | €[●] | €[●] | |
| [●] | €[●] | €[●] | €0 | €[●] | €[●] | €[●] | |
| Total | €[●] | €[●] | €0 | €[●] | €[●] | €[●] | |

SCHEDULE 2

Conditions Precedent

Part I - Conditions precedent to initial Utilisation

1 Original Obligors

1.1 German Obligors

- (a) In relation to each Original Obligor incorporated in Germany (each a "**German Obligor**") a copy of the commercial register extract (*Handelsregisterauszug*), of its articles of association (*Satzung*), as well as a copy of the list of shareholders (*Gesellschafterliste*) (other than in respect of APCOA Parking Aktiengesellschaft).
- (b) A copy of:
 - (i) a resolution by the advisory board (*Beirat*) of APCOA Parking Holdings GmbH;
 - (ii) a resolution by the supervisory board (*Aufsichtsrat*) of APCOA Parking Aktiengesellschaft; and
 - (iii) a resolution signed by all the holders of the issued shares of APCOA PARKING Deutschland GmbH as at the date of such resolution,in each case:
 - (A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (B) instructing the managing director(s) of each German Obligor to execute the Finance Documents to which it is a party; and
 - (C) instructing the managing director(s) of each German Obligor to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A certificate of an authorised signatory of each German Obligor certifying that each copy document relating to it specified in this paragraph **Error! Reference source not found.** of Part I of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above which has signed the Finance Documents and related documents delivered pursuant to this Part I of Schedule 2.

1.2 Austrian Obligor

- (a) In relation to any Austrian Obligor, a copy of an up-to-date commercial register extract (*Firmenbuchauszug*) and copy of its articles of association (*Gesellschaftsvertrag*).
- (b) A copy of a resolution signed by all the shareholders of each Austrian Obligor approving the terms of, and the transactions contemplated by, the Finance Documents to which the Austrian Obligor is a party and resolving that the management board of directors (*Geschäftsführer*) of the Austrian Obligor are entitled to execute, deliver and perform the Finance Documents to which the Austrian Obligor is a party, as well as to approve:
 - (i) that the management board of directors (*Geschäftsführer*) are entitled to appoint a specified person or persons to execute the Finance Documents to which the Austrian Obligor is a party on behalf of the Austrian Obligor; and
 - (ii) that the management board of directors (*Geschäftsführer*) are entitled to authorise a specified person or persons, on behalf of the Austrian Obligor, to sign and/or despatch all documents and notices to be signed and/or despatched by the Austrian Obligor under or in connection with the Finance Documents to which the Austrian Obligor is a party.
- (c) A copy of a resolution signed by management board of directors (*Geschäftsführer*) of each Austrian Obligor:
 - (i) passing the resolution by the management board of directors (*Geschäftsführer*) based on the shareholders resolution (as specified in (b) above) by which they approve the terms of, and the transactions contemplated by, the Finance Documents to which the Austrian Obligor is a party and resolving that it execute, deliver and perform the Finance Documents to which the Austrian Obligor is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which the Austrian Obligor is a party on its behalf; and
 - (iii) authorising a specified person or persons, on behalf of the Austrian Obligor, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (d) A certificate of an authorised signatory of each Austrian Obligor certifying that each copy document relating to it specified in this paragraph 1.2 of Part I of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded.
- (e) A specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above which has signed the Finance Documents and related documents delivered pursuant to this Part I of Schedule 2.

1.3 Belgian Obligor

- (a) In relation to the Original Obligor incorporated or established in Belgium (the "**Belgian Obligor**"), the following documents:
 - (i) an up-to-date copy of its articles of association certified by the clerk of the relevant court of commerce;
 - (ii) an extract from the Crossroad Bank for Enterprises "Banque Carrefour des Entreprises/Kruispuntbank van Ondernemingen" dated no earlier than 5 Business Days prior to the date of the Belgian Security Documents (as defined in the Intercreditor Agreement); and
 - (iii) a certificate of non-bankruptcy dated no earlier than 5 Business Days prior to the date of the Belgian Security Documents (as defined in the Intercreditor Agreement) confirming that (i) such Belgian Obligor has not been declared bankrupt and (ii) no request for judicial reorganisation has been filed in respect of such Belgian Obligor.
- (b) A copy of a resolution of the board of directors of the Belgian Obligor:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A copy of a resolution of the shareholders' meeting of the Belgian Obligor approving any change of control provisions in the Finance Documents to which it is a party in accordance with Article 556 of the Belgian Companies Code.
- (d) A certificate of an authorised signatory of the Belgian Obligor certifying that each copy document relating to it specified in this paragraph 1.3 of Part I of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded.
- (e) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above which has signed the Finance Documents and related documents delivered pursuant to this Part I of Schedule 2.

1.4 Danish Obligors

- (a) In relation to an Original Obligor incorporated or established in Denmark (a "**Danish Obligor**"), an up-to date transcript from the Danish Business Authority, its articles of association, certified p.v.c. by Borrowers counsel as of a recent date, copy of the shareholders' register.

- (b) A copy of a resolution signed by all the holders of the issued shares and the members of the board of directors of each Danish Obligor:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A certificate of an authorised signatory of each Danish Obligor certifying that each copy document relating to it specified in this paragraph 1.4 of Part I of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded.
- (d) A certificate of each Danish Obligor confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Danish Obligor to be exceeded.
- (e) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above which has signed the Finance Documents and related documents delivered pursuant to this Part I of Schedule 2.

1.5 English Obligors

- (a) In relation to an Original Obligor incorporated or established in England (an "**English Obligor**"), a copy of its certificate of incorporation, a copy of each certificate of incorporation on change of name, a copy of its memorandum of association and a copy of its articles of association.
- (b) A copy of a resolution:
 - (i) of the board of directors of each English Obligor; and
 - (ii) signed by all the holders of the issued shares of each English Obligor,
 in each case:
 - (A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (B) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (C) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it

under or in connection with the Finance Documents to which it is a party.

- (c) A certificate of an authorised signatory of each English Obligor:
 - (i) certifying that each copy document relating to it specified in this paragraph 1.5 of Part I of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded; and
 - (ii) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on the English Obligor to be exceeded.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above which has signed the Finance Documents and related documents delivered pursuant to this Part I of Schedule 2.

1.6 Italian Obligors

- (a) In relation to an Original Obligor incorporated or established in Italy (an "**Italian Obligor**"), its deed of incorporation (*Atto costitutivo*) and by-laws (*Statuto*), a certificate from the Companies' Register (*certificato di vigenza*) dated not earlier than 5 Business Days from the date of this Agreement confirming that no insolvency proceedings have been started in relation to that Italian Obligor.
- (b) A copy of:
 - (i) a resolution of the board of directors ("*Consiglio di Amministrazione*") of each Italian Obligor;
 - (ii) if applicable, a copy of the resolution of the shareholders' meeting of the Italian Obligor,

in each case:

- (A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (B) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (C) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A certificate of an authorised signatory of each Italian Obligor certifying that each copy document relating to it specified in this paragraph 1.6 of Part of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded.

- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b)(i) above which has signed the Finance Documents and related documents delivered pursuant to this Part I of Schedule 2.

1.7 Norwegian Obligors

- (a) In relation to an Original Obligor incorporated or established in Norway (a "**Norwegian Obligor**"), a certified true copy of an up-to-date extract from the Norwegian Companies Register (*NO: Brønnøysundregisteret*), a certified true copy of its articles of association, as well as copy of the entity's shareholders' register (if applicable). In accordance with Clause 23.15 (*Guarantee Limitations for Norwegian Guarantors*) of this Agreement, on the date of this Agreement the Norwegian Guarantors will not be required to provide documentation in accordance with Section 8-10 of the LLC Act for the purpose of providing any lawful financial assistance.
- (b) A copy of a resolution signed by the members of the board of the Norwegian Obligor:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A certificate of an authorised signatory of each Norwegian Obligor certifying that each copy document relating to it specified in this paragraph 1.7 of Part I of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above which has signed the Finance Documents and related documents delivered pursuant to this Part I of Schedule 2.

1.8 Swedish Obligors

- (a) In relation to the Original Obligor incorporated or established in Sweden (the "**Swedish Obligor**"), up-to-date copies of the certificate of registration and articles of association of the Swedish Obligor.
- (b) A copy of a resolution of the board of directors of the Swedish Obligor:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and

- (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A certificate of an authorised signatory of the Swedish Obligor certifying that each copy document relating to it specified in this paragraph 1.8 of Part I of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above which has signed the Finance Documents and related documents delivered pursuant to this Part I of Schedule 2.
- (e) A certificate of each Swedish Obligor confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Swedish Obligor to be exceeded.

1.9 Dutch Obligors

- (a) A copy of the constitutional documents of the Original Obligor incorporated or established in the Netherlands (the "**Dutch Obligor**").
- (b) A copy of a resolution of the board of directors of the Dutch Obligor:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A certificate of an authorised signatory of the Dutch Obligor certifying that each copy document relating to it specified in this paragraph 1.9 of Part I of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above which has signed the Finance Documents and related documents delivered pursuant to this Part I of Schedule 2.
- (e) A copy of a resolution signed by all the holders of the issued shares in the Dutch Obligor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Dutch Obligor is a party.
- (f) A certificate of the Dutch Obligor confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on the Dutch Obligor to be exceeded.

2 FINANCE DOCUMENTS

- (a) This Agreement, executed by the members of the Group party to this Agreement.
- (b) The Intercreditor Agreement, executed by the members of the Group party to that agreement.
- (c) The following Fee Letters, executed by the Company:
 - (i) arrangement fee letter;
 - (ii) bank guarantee agent fee letter;
 - (iii) issuing bank fee letter;
 - (iv) security trustee fee letter; and
 - (v) agency fee letter.
- (d) The Transaction Security Documents set out in Part III of this Schedule 2, duly executed or notarised (as relevant) by the parties to them.

3 LEGAL OPINIONS

The following legal opinions in relation to the Transaction Security Documents set out in Part III of this Schedule 2, each addressed to the Agent, the Security Trustee, the Bank Guarantee Agent, each Original Lender and each New Issuing Bank originally party to this Agreement in such capacity:

- (a) a legal opinion of Wolf Theiss Rechtsanwälte GmbH & Co KG on the validity and enforceability of the Austrian law Transaction Security Documents;
- (b) a legal opinion of monlaw Rechtsanwälte on matters of Austrian law (as to capacity) in relation to matters customary for the legal advisers to the Company to give an opinion on in relation to the Austrian Obligor's entry into the Transaction Security Documents;
- (c) a legal opinion of Ashurst LLP (Belgium) on the validity and enforceability of the Belgian law Transaction Security Documents;
- (d) a legal opinion of Linklaters LLP on matters of Belgian law (as to capacity) in relation to matters customary for the legal advisers to the Company to give an opinion on in relation to the Belgian Obligors' entry into the Transaction Security Documents;
- (e) a legal opinion of LETT Law Firm P/S on the validity and enforceability of the Danish law Transaction Security Documents;
- (f) a legal opinion of Mazanti-Andersen Korsø Jensen on matters of Danish law (as to capacity) in relation to matters customary for the legal advisers to the Company to give an opinion on in relation to the Danish Obligors' entry into the Transaction Security Documents;
- (g) a legal opinion of NautaDutilh N.V. on the validity and enforceability of the Dutch law Transaction Security Documents;

- (h) a legal opinion of Linklaters LLP on matters of Dutch law (as to capacity) in relation to matters customary for the legal advisers to the Company to give an opinion on in relation to the Dutch Obligor's entry into the Transaction Security Documents;
- (i) a legal opinion of Advokatfirmaet BA-HR DA on the validity and enforceability of the Norwegian law Transaction Security Documents and (as to capacity) in relation to the Norwegian Obligor's entry into the Transaction Security Documents;
- (j) a legal opinion of Ashurst Advokatbyrå AB on matters of Swedish law (as to capacity) in relation to the Swedish Obligor's entry into the Transaction Security Documents;
- (k) a legal opinion of Studio Legale Associato in association with Linklaters LLP on matters of Italian law (as to capacity) in relation to matters customary for the legal advisers to the Company to give an opinion on in relation to the Italian Obligor's entry into the Transaction Security Documents;
- (l) a legal opinion of Arendt & Medernach SA on matters of Luxembourg law (as to capacity) in relation to matters customary to give an opinion on (including, where applicable, as to valid choice of law, choice of forum and enforcement of foreign judgments) in relation to Luxco 2 and Luxco 3's entry into the Transaction Security Documents;
- (m) a legal opinion of Ashurst LLP on the validity and enforceability of the English law Transaction Security Documents and (as to capacity) in relation to the English Obligor's entry into the Transaction Security Documents;
- (n) a legal opinion of Ashurst LLP (Germany) on the validity and enforceability of the German law Transaction Security Documents; and
- (o) a legal opinion of Linklaters LLP on matters of German law (as to capacity) in relation to matters customary for the legal advisers to the Company to give an opinion on in relation to the German Obligor's entry into the Transaction Security Documents.

4 OTHER EVIDENCE

- (a) Group Structure Chart.
- (b) Restructuring Opinion (which includes the business plan).
- (c) Structure Memorandum.
- (d) The Original Financial Statements of the Company.
- (e) Funds flow.
- (f) The New SFA Utilisation Agreement signed by the members of the Group party to that agreement.
- (g) Utilisation requests, being:
 - (i) the Utilisation Request under the SFA Utilisation Agreement;

- (ii) the form of the bank guarantees rolled from the existing bank guarantee facility to the Bank Guarantee Facility B; and
 - (iii) any utilisation request for Utilisation of Term Facility A requested on or immediately following the date of this Agreement.
- (h) White List.
- (i) Confirmation by the Company that it has received a binding ruling from the relevant German tax authorities confirming the tax neutral effect under German tax law of the debt hive-ups contemplated as part of the Restructuring.
- (j) The order of the High Court of Justice of England and Wales sanctioning the schemes of arrangement (made pursuant to Part 26 of the Companies Act 2006 and proposed by, inter alia, the Company) under section 899 of the Companies Act 2006 relating to the Restructuring and a confirmation by the Company that the relevant order has been delivered to the Registrar of Companies.
- (k) Evidence that all security granted under or in connection with the Existing Facilities Agreement has been or will be released upon the first Utilisation other than any Italian or Swedish law governed security.
- (l) In relation to each Original Obligor, customary and reasonable "know your customer" information reasonably requested by or on behalf of any Finance Party on or prior to the date of the Restructuring Deed.

**Part II - Conditions Precedent Required to be
Delivered by an Additional Obligor**

1. An Accession Letter executed by the Additional Obligor and the Company.
2. In relation to an Additional Obligor incorporated or established in Germany a copy of the commercial register extract (*Handelsregistrauszug*), of its articles of association (*Satzung*) or partnership agreement (*Gesellschaftsvertrag*) as well as a copy of the list of shareholders (*Gesellschafterliste*) (if applicable). In relation to an Additional Obligor incorporated or established in a jurisdiction other than Germany a certified copy of its constitutional documents.
3. In relation to an Additional Obligor incorporated in the Netherlands, (i) a copy of the deed of incorporation (*oprichtingsakte*), (ii) the articles of association (*statuten*) and (iii) extract (*uittreksel*) of the Dutch commercial register (*handelsregister*).
4. In relation to an Additional Obligor incorporated in Denmark, (i) a copy of its deed of incorporation (*in Danish: stiftelsesdokument*), of its articles of association (*in Danish: Vedtægter*), and (iii) an extract from the Danish Business Authority.
5. As applicable, a copy of a resolution of the holders of the issued shares of the Additional Obligor, of the supervisory board, of the advisory board and/or of any other competent corporate body of such Additional Obligor, approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents.
6. (If the Additional Obligor is incorporated in Belgium as a *naamloze vennootschap/société anonyme*) A copy of a resolution of the shareholders' meeting, or of a written resolution of all shareholders, approving any change of control provisions in the Finance Documents to which it is a party in accordance with Article 556 of the Belgian Companies Code (evidence of filing thereof with the clerk of the competent commercial court in accordance with Article 556 of the Belgian Companies Code shall be delivered within 15 Business Days from the date of the Accession Letter).
7. A copy of a resolution of the board of directors of the Additional Obligor (if applicable):
 - 7.1 approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents to which it is a party and resolving that it execute the Accession Letter and the Finance Documents to which it is a party;
 - 7.2 (if the Additional Obligor is incorporated in Belgium) setting out the reasons why the board of directors of that Additional Obligor considered that the accession to this

Agreement, and in particular the assumptions of its guarantee and indemnity obligations in accordance with Clause 23 (*Guarantee and Indemnity*), is to the benefit of that Additional Obligor;

- 7.3 authorising a specified person or persons to execute the Accession Letter and the Finance Documents to which it is a party on its behalf; and
- 7.4 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
8. A specimen of the signature of each person authorised to execute any Finance Document and other documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by the Additional Obligor under or in connection with the Finance Documents to which the Additional Obligor is a party.
9. In relation to an Additional Obligor incorporated in the Netherlands, if applicable, an unconditional or otherwise acceptable positive advice from the works' council, including the request for advice.
10. A certificate of the Additional Obligor (if applicable) (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
11. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Letter.
12. If available, the latest audited financial statements of the Additional Obligor.
13. The following legal opinions, each addressed to the Agent, the Security Trustee and the Lenders:
 - (a) a legal opinion of the legal advisers to the Agent in England as to English law in the form distributed to the Lenders prior to signing the Accession Letter.
 - (b) if the Additional Obligor is incorporated in or has its "centre of main interest" (or "establishment") (as referred to in Clause 24.26 (*Centre of main interests and establishments*)) in a jurisdiction other than the Federal Republic of Germany or is executing a Finance Document which is governed by a law other than German law, a legal opinion of the legal advisers to the Agent in the

jurisdiction of its incorporation; "centre of main interest" or "establishment" (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Letter.

14. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the agent for service of process specified in Clause 46.2 (*Service of Process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
15. Any security documents which, subject to the Agreed Security Principles, are required by the Agent to be executed by the proposed Additional Obligor (and/or in respect of its shares).
16. An accession memorandum to the Intercreditor Agreement executed by the Additional Obligor.
17. Evidence that the Additional Obligor has done all that is necessary under any relevant laws relating to relating to financial assistance or analogous processes (including without limitation for Additional Obligors incorporated in England and Wales or Scotland re-registering as a private company) in order to enable the Additional Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents.
18. In relation to any Additional Obligor incorporated in Italy, a certificate (*certificato di vigenza*) issued by the competent companies register, dated not earlier than 5 Business Days from the date of the Accession Letter, confirming that no insolvency proceedings (*procedura concorsuale*) have been initiated in relation to that Additional Obligor.
19. In relation to any Additional Obligor incorporated in Belgium, an extract from the Crossroad Bank for Enterprises "*Banque Carrefour des Entreprises/Kruispuntbank van Ondernemingen*" and a certificate of non-bankruptcy confirming that (i) such Additional Obligor has not been declared bankrupt and (ii) no request for judicial reorganisation has been filed in respect of such Additional Obligor, each dated not more than five Business Days prior to the date of the Accession Letter.
20. A copy of any other authorisation or other document, opinion or assurance which the Agent notifies the Company is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, the Obligor Accession Letter or for the validity and enforceability of any Finance Document.

**Part III - Transaction Security Documents
to be delivered as conditions precedent**

| Name of Obligor or Transaction Security grantor | Description of Transaction Security Document and Transaction Security | Governing law |
|--|---|---------------|
| Luxco 2 and Luxco 3 | <input type="checkbox"/> pledge over shares in APCOA Parking Holdings GmbH | German |
| | | |
| APCOA Parking Holdings GmbH | <input type="checkbox"/> pledge over German bank accounts | German |
| | <input type="checkbox"/> undisclosed assignment of receivables (save for inter-company receivables) | German |
| | <input type="checkbox"/> pledge over stock in APCOA Parking Aktiengesellschaft | German |
| | <input type="checkbox"/> pledge over shares in APCOA Parking Holdings (UK) Limited | English |
| | | |
| APCOA Parking Holdings GmbH and APCOA Parking Aktiengesellschaft | <input type="checkbox"/> pledge over shares in APCOA PARKING Belgium NV | Belgian |
| | | |
| APCOA Parking Aktiengesellschaft | <input type="checkbox"/> pledge over German bank accounts | German |
| | <input type="checkbox"/> undisclosed assignment of receivables (save for inter-company receivables) | German |
| | <input type="checkbox"/> pledge over shares in APCOA PARKING Deutschland GmbH | German |
| | | |
| APCOA PARKING | <input type="checkbox"/> pledge over German bank | German |

| | | |
|---|---|-----------|
| Deutschland GmbH | accounts | |
| | <input type="checkbox"/> undisclosed assignment of receivables (save for inter-company receivables) | German |
| | <input type="checkbox"/> pledge over shares in APCOA Parking Austria GmbH | Austrian |
| | | |
| APCOA Parking Holdings (UK) Limited APCOA Parking UK Limited | <input type="checkbox"/> debenture | English |
| | | |
| EuroPark Scandinavia AS | <input type="checkbox"/> pledge over Norwegian bank accounts | Norwegian |
| | <input type="checkbox"/> undisclosed pledge of receivables | Norwegian |
| | <input type="checkbox"/> pledge over shares in EuroPark AS | Norwegian |
| | | |
| EuroPark AS | <input type="checkbox"/> pledge over Norwegian bank accounts | Norwegian |
| | <input type="checkbox"/> undisclosed pledge of receivables | Norwegian |
| | | |
| EuroPark Holding AS | <input type="checkbox"/> pledge over Norwegian bank accounts | Norwegian |
| | <input type="checkbox"/> share pledge over EuroPark Scandinavia AS | Norwegian |

| | | |
|--|---|-----------|
| | <input type="checkbox"/> undisclosed pledge of receivables | Norwegian |
| | | |
| APCOA PARKING Belgium NV | <input type="checkbox"/> pledge of receivables | Belgian |
| | | |
| APCOA PARKING Belgium NV and APCOA Parking Holdings GmbH | <input type="checkbox"/> pledge over shares in APCOA Parking Nederland B.V. | Dutch |
| | | |
| APCOA Parking Austria GmbH | <input type="checkbox"/> pledge over bank accounts | Austrian |
| | | |
| APCOA Parking Holding Danmark ApS | <input type="checkbox"/> pledge over Danish bank accounts | Danish |
| | <input type="checkbox"/> share pledge over APCOA Parking Danmark A/S | Danish |
| | <input type="checkbox"/> receivables pledge (excluding intercompany receivables governed by German law) | Danish |
| APCOA Parking Danmark A/S | <input type="checkbox"/> pledge over Danish bank accounts | Danish |
| | <input type="checkbox"/> receivables pledge (excluding intercompany receivables governed by German law) | Danish |
| | | |
| APCOA Parking Nederland B.V. | <input type="checkbox"/> pledge over Dutch bank accounts | Dutch |

| | | |
|--|--|--------|
| | <input type="checkbox"/> undisclosed pledge over receivables | Dutch |
| | | |
| EuroPark Holding AS and APCOA Parking Sverige AB | <input type="checkbox"/> share pledge over APCOA Parking Holding Danmark ApS | Danish |
| | | |
| All Obligors | <input type="checkbox"/> German law receivables assignment agreement relating to intra-Group receivables | German |

SCHEDULE 3

Conditions Subsequent

Part I - Transaction Documents

| Name of Obligor or Transaction Security grantor | Description of Transaction Security Document and Transaction Security | Governing law | Date by which Transaction Security Documents to be executed and delivered to the Agent by the relevant member of the Group |
|---|--|---------------|--|
| APCOA Parking Holdings GmbH | <input type="checkbox"/> pledge over quotas in APCOA Holding Italia S.r.l. | Italian | Date of this Agreement + 5 Business Days |
| | | | |
| APCOA Holding Italia S.r.l. | <input type="checkbox"/> pledge over Italian bank accounts | Italian | Date of this Agreement + 5 Business Days |
| | <input type="checkbox"/> pledge of intra-group loan receivables | Italian | Date of this Agreement + 5 Business Days |
| | <input type="checkbox"/> pledge over shares in APCOA Parking Italia S.p.A. | Italian | Date of this Agreement + 5 Business Days |
| | | | |
| APCOA Parking Italia S.p.A. | <input type="checkbox"/> pledge over Italian bank accounts | Italian | Date of this Agreement + 5 Business Days |
| | | | |
| EuroPark Scandinavia AS | <input type="checkbox"/> pledge over shares in APCOA Parking Sverige AB | Swedish | Date of this Agreement + 5 Business Days |
| | | | |
| APCOA Parking | <input type="checkbox"/> pledge over Swedish bank | Swedish | Date of this Agreement + |

| | | | |
|------------|---|---------|---|
| Sverige AB | accounts | | 5 Business Days |
| | <input type="checkbox"/> undisclosed floating charge pledge | Swedish | Date of this Agreement + 5 Business Days |

Part II - Legal Opinions

In relation to the Transaction Security Documents set out in Part I of this Schedule 3

| Legal Opinion (Scope and relevant issuer) | Delivery by no later than |
|---|--|
| A legal opinion of Ashurst LLP (Italy) on the validity and enforceability of the Italian law Transaction Security Documents. | Date of this Agreement + 5 Business Days |
| A legal opinion of Studio Legale Associato in association with Linklaters LLP on matters of Italian law (as to capacity) in relation to the Italian Obligors' entry into the Transaction Security Documents. | Date of this Agreement + 5 Business Days |
| A legal opinion of Ashurst Advokatbyrå AB on the validity and enforceability of the Swedish law Transaction Security Documents and (as to capacity) in relation to the Swedish Obligor's entry into the Transaction Security Documents. | Date of this Agreement + 5 Business Days |
| A legal opinion of Advokatfirmaet BA-HR DA on matters of Norwegian law (as to capacity) in relation to the Norwegian Obligors' entry into the Transaction Security Documents. | Date of this Agreement + 5 Business Days |
| A legal opinion of Linklaters LLP on matters of German law (as to capacity) in relation to the German Obligors' entry into the Transaction Security Documents. | Date of this Agreement + 5 Business Days |

SCHEDULE 4

Requests

Part 1A - Utilisation Request Loans

From: [Borrower] [Company]*

To: [Agent]

Dated:

Dear Sirs

[Company] – [●] Facilities Agreement

dated [●] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. [We wish to borrow a Loan on the following terms:
 - 2.1 Borrower: [●]
 - 2.2 Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)
 - 2.3 Facility to be utilised: [●]**
 - 2.4 Currency of Loan: [●]
 - 2.5 Amount: [●] or, if less, the Available Facility
 - 2.6 Interest Period: [●]
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. [The proceeds of this Loan should be credited to [account]].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for

[the Company on behalf of [insert name of relevant Borrower]]/ [insert name of Borrower]*

NOTES:

* Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Company.

** Insert Facility to be utilised.

Part 1B - Utilisation Request Bank Guarantees

From: [Borrower] [Company]*

To: [Agent][Bank Guarantee Agent][Bank Guarantee Facility A Lender]

Dated:

Dear Sirs

[Company] - [●] Facilities Agreement

dated [●] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to arrange for a Bank Guarantee to be [issued]/[renewed] by the Issuing Bank specified below (which has agreed to do so) on the following terms:
 - 2.1 Borrower: [●]
 - 2.2 Issuing Bank: [●]
 - 2.3 Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)
 - 2.4 Facility to be utilised: [Bank Guarantee Facility A] / [Bank Guarantee Facility B] / [Super Senior Revolving Facility]**
 - 2.5 Currency of Bank Guarantee: [●]
 - 2.6 Amount: [●] or, if less, the Available Facility in relation to the [relevant Bank Guarantee Facility] / [Super Senior Revolving Facility]***
 - 2.7 Term: [●]
 - 2.8 Beneficiary and delivery details: [●]
 - 2.9 Purpose / underlying [●]

transaction:

| | | |
|------|------------------------|---|
| 2.10 | Type of Bank Guarantee | Bank Guarantee for [rent obligations / warranty obligations / performance obligations / advance payment obligations / other type of guarantee] [Please specify as applicable] |
|------|------------------------|---|

3. We confirm that the facility specified in paragraph 2.4 above may be utilised by way of Bank Guarantee.
4. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
5. We attach a copy of the proposed Bank Guarantee.
6. The Bank Guarantee [is]/[is not] a Fronted Bank Guarantee.****
7. This Utilisation Request is irrevocable.

Yours faithfully,

.....

authorised signatory for

[the Company on behalf of] [insert name of relevant Borrower]]/[insert name of Relevant Borrower]*

NOTES:

- * Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Company.
- ** Select Facility to be utilised and delete references to other Facilities.
- *** Select as appropriate and delete other reference.
- **** Select as appropriate and delete other option.

Part 2 - Selection Notice

Applicable to a Term Loan

From: [Borrower] [Company]*

To: [Agent]

Dated:

Dear Sirs

[Company] - [●] Facilities Agreement

dated [●] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. [We refer to the following [Term Facility A/Term Facility B/Term Facility C Loan[s] with an Interest Period ending on [●]]**.
3. [We request that the next Interest Period for the above [Term Facility A Loan[s]/Term Facility B Loan[s]/Term Facility C Loan[s] is [●]].
4. This Selection Notice is irrevocable.

Yours faithfully

.....

authorised signatory for

[the Company on behalf of] [insert name of relevant Borrower] *

NOTES:

- * Amend as appropriate. The Selection Notice can be given by the Borrower or the Company.
- ** Insert details of all Term Loans for the relevant Facility which have an Interest Period ending on the same date.

SCHEDULE 5

Form of Assignment Agreement

To: [●] as Agent and [●] as Security Trustee

From: [The Existing Lender] (the "**Existing Lender**") and [The New Lender] (the "**New Lender**")

Dated:

[Company] – [●] Facilities Agreement

dated [●] (the "**Facilities Agreement**")

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This is an Assignment Agreement. This agreement (the "**Agreement**") shall take effect as an Assignment Agreement for the purpose of the Facilities Agreement [and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement)]. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 29.5 (*Procedure for Assignment or Assignment and Assumption*) of the Facilities Agreement:
 - a. The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facilities Agreement as specified in the schedule.
 - b. The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facilities Agreement specified in the schedule.
 - c. The New Lender becomes a Party as a Lender, assumes and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [●].
4. On the Transfer Date the New Lender becomes:

- a. Party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
 - b. [Party to the Intercreditor Agreement as a [Senior Lender], (as defined in the Intercreditor Agreement).]
5. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of clause 29.4 (*Limitation of Responsibility of Existing Lenders*) of the Facilities Agreement.
6. The New Lender confirms that to the extent that this certificate operates to transfer Super Senior Revolving Facility Commitments, each Issuing Bank has consented to that transfer in accordance with clause 29.2 (*Conditions of Assignment or Transfer*) of the Facilities Agreement.
7. The Existing Lender represents and warrants that:
 - a. the rights assigned hereunder are assigned free of any rights of set-off in favour of any Obligor and free of any lien, security interest or other encumbrance; and
 - b. immediately prior to the Transfer Date, the Existing Lender is the beneficial owner of the rights to be assigned hereunder.
8. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 37.2 (*Addresses*) of the Facilities Agreement are set out in the schedule.
9. Swedish Security: The transfer under paragraph 2(a) above shall include a transfer of a proportional interest under the Transaction Security Documents governed by Swedish law.
10. [The New Lender confirms, for the benefit of the Agent Trustee and without liability to any Obligor, with respect to Borrowers incorporated in [●], that it is:
 - a. [a Qualifying Lender (other than a Treaty Lender);]
 - b. [a Treaty Lender;]
 - c. [not a Qualifying Lender].*]

and that it is [not] incorporated, having its place of effective management or acting through a Facility Office situated in a Belgian Non-Cooperative Jurisdiction.
11. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

- a. a company resident in the United Kingdom for United Kingdom tax purposes;
 - b. a partnership each member of which is
 - i. a company resident in the United Kingdom for United Kingdom tax purposes; or
 - ii. company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the UK CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the UK CTA; or
 - iii. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing its chargeable profits (within the meaning of section 19 of the UK CTA).
12. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [●]) and is tax resident in [●], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Company notify:
- a. each Borrower which is a Party as a Borrower as at the Transfer Date; and
 - b. each Additional Borrower which becomes an Additional Borrower after the Transfer Date
- that it wishes the scheme to apply to the Facilities Agreement.] **
13. [[The New Lender confirms that it [is]/[is not]*** a Non-Acceptable B/G Lender.]****]
14. [We refer to clause [20] [(*Change to the Parties*) of the Intercreditor Agreement. In consideration of the New Lender being accepted as a [Priority Senior Lender] for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a [Priority Senior Lender], and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Priority Senior Lender] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.]

15. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with clause 29.6 (*Copy of Assignment Agreement or Increase Confirmation to Company*) of the Facilities Agreement, to the Company (on behalf of each Obligor) of the assignment referred to in this Agreement.
16. 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.
17. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
18. This Agreement has been entered into on the date stated at the beginning of this Agreement.

Notes:

- * Delete as applicable. Each Lender is required to confirm which of these three categories it falls within in relation to each Borrower jurisdiction.
- ** Include if the New Lender holds a passport under the HMRC DT Treaty Passport Scheme and wishes that scheme to apply to the Facilities Agreement.
- *** Delete as applicable.
- **** Include only if the assignment includes the assignment of a Super Senior Revolving Facility Commitment/a participation in the Super Senior Revolving Facility.

Note: An assignment or transfer to a New Lender that is not a credit institution with an official banking license (*Bankkonzession*) may, under certain circumstances, trigger Austrian stamp duty (at the rate of 0.8% of the consideration for the transfer of the loan receivable) – please seek Austrian legal advice if loan receivables are to be transferred to a non-financial institution.

THE SCHEDULE

Commitment/rights and obligations to be transferred by assignment, release and assumption

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

Signatories to Assignment Agreement

[Existing Lender]

[New Lender]

[Executed as a deed by]

By:

By:

We acknowledge the above and in particular the transfer of obligations to the New Lender recorded in the above certificate.

By:

Company for all the Obligors

This Agreement is accepted as an Assignment Agreement for the purposes of the Facilities Agreement by the Agent, and as a [Creditor Accession Undertaking] for the purposes of the Intercreditor Agreement by the Security Trustee, and the Transfer Date is confirmed as [●].

Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

[Security Trustee]

By:

SCHEDULE 6

Form of Accession Letter

To: [●] as Agent

From: [Subsidiary] and [Company]

Dated:

Dear Sirs

[Company] – [●] Facilities Agreement

dated [●] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is an Accession Letter. Terms defined in the Facilities Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [Subsidiary] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facilities Agreement, the Intercreditor Agreement and the other Finance Documents as an Additional [Borrower]/[Guarantor] pursuant to clause [31.2 (*Additional Borrowers*)]/[clause 31.4 (*Additional Guarantors*)] of the Facilities Agreement and as an [Obligor] pursuant to clause [20.11 (*New Debtor*)] of the Intercreditor Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company and registered number [●].
3. [The Company confirms that no Default is continuing or would occur as a result of [Subsidiary] becoming an Additional Borrower].*
4. [Subsidiary's] administrative details are as follows:

Address:

Fax No.:

Attention:
5. This Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Company]

[Subsidiary]

NOTES:

* Insert if Accession Letter is for an Additional Borrower.

Note: An accession as Additional Obligor may, under certain circumstances, trigger Austrian stamp duty (at the rate of 1.0% of the assumed obligations) – please seek Austrian legal advice if an Austrian company shall accede as additional obligor.

SCHEDULE 7

Form of Resignation Letter

To: [] as Agent

From: [resigning Obligor] and [Company]

Dated:

Dear Sirs

[Company] - [●] Facilities Agreement

dated [●] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [clause 31.3 (*Resignation of a Borrower*)]/[clause 31.5 (*Resignation of a Guarantor*)], we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Guarantor] under the Facilities Agreement, the Intercreditor Agreement and the Finance Documents.
3. We confirm that:
 - a. no Default is continuing or would result from the acceptance of this request; and
 - b. *[this request is given in relation to a Third Party Disposal of [resigning Obligor];]
 - c. [the Disposal Proceeds have been or will be applied in accordance with Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*);]* *
 - d. [●]***
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.
5. The Company agrees to indemnify the Finance Parties for any costs, expenses, or liabilities which would have been payable by [resigning Obligor] in connection with the Finance Documents but for the release set out in paragraph 1 above.

[Company]

[resigning Obligor]

By:

By:

NOTES:

- * Insert where resignation only permitted in case of a Third Party Disposal.
- ** Amend as appropriate, e.g. to reflect agreed procedure for payment of proceeds into a specified account.
- *** Insert any other conditions required by the Facilities Agreement.

SCHEDULE 8

Form Of Compliance Certificate

To: [•] as Agent

From: [Company]

Dated:

Dear Sirs

[Company] - [●] Facilities Agreement

dated [●] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:
 - a. In respect of the Relevant Period ending on [●] [Minimum EBITDA calculation and confirmation to be included] and the covenant contained in paragraph (a) of Clause 26.2 (*Financial condition*) [has/has not] been complied with.
 - b. In respect of the Relevant Period ending on [●] [Minimum Liquidity calculation and confirmation to be included] and the covenant contained in paragraph (b) of Clause 26.2 (*Financial condition*) [has/has not] been complied with.
 - c. [Excess Cashflow for the Relevant Period ending [●] was [●]. Therefore the Excess Cashflow to be applied in prepayment pursuant to Clause 12.2 (*Disposal and Insurance Proceeds and Excess Cashflow*) will be [●].]
3. [We confirm that no Default is continuing.]*
4. [We confirm that the following companies constitute Material Companies for the purposes of the Facilities Agreement: [●].]

[We confirm that the aggregate of the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA) of the Guarantors represents not less than 85 per cent of Consolidated EBITDA.]

| | |
|--------------|-----------|
| Signed | |
| Director | Director |
| of | of |
| [Company] | [Company] |

[insert applicable certification language]

.....

for and on behalf of

[name of auditors of the Company]

NOTES:

- * If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

SCHEDULE 9

LMA Form of Confidentiality Undertaking

To: [insert name of potential Lender]

Dear Sirs

Re: EUR [●] facilities provided in connection with APCOA Parking Holdings GmbH (the "Facilities")

We understand that you are considering participating in the Facilities. In consideration of us agreeing to make available to you certain information and to prevent front-running of the Facilities, by your signature of a copy of this letter you agree as follows:

1. Confidentiality Undertaking

You undertake:

- a. to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information;
- b. to keep confidential and not disclose to anyone except as provided for by paragraph 2 below the fact that the Confidential Information has been made available or that discussions or negotiations are taking place or have taken place between us in connection with the Facilities;
- c. to use the Confidential Information only for the Permitted Purpose;
- d. to use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2.2 below) acknowledges and complies with the provisions of this letter as if that person were also a party to it; and
- e. not to make enquiries of any member of the Group or any of their officers, directors, employees or professional advisers relating directly or indirectly to the Facilities.

2. Permitted Disclosure

We agree that you may disclose Confidential Information and those matters referred to in sub-paragraph 1.1 above:

- a. to members of the Participant Group and their officers, directors, employees, professional advisers and auditors if any person to whom the Confidential

Information is to be given pursuant to this paragraph 2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

- b. to any person to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation; and
- c. with the prior written consent of us and the Borrower.

3. Notification of Required or Unauthorised Disclosure

You agree (to the extent permitted by law and regulation) to inform us:

- a. of the circumstances of any disclosure of Confidential Information made pursuant to paragraph 2.2 above except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- b. upon becoming aware that Confidential Information has been disclosed in breach of this letter.

4. Return of Copies

If you do not participate in the Facilities and we so request in writing, you shall return or destroy all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use your reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph 2.2 above.

5. Continuing Obligations

The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease on the earlier of (a) the date you become a party to or otherwise acquire (by assignment or otherwise) a direct interest in the Facilities [and] (b) 12 months after you have returned all Confidential Information supplied to you by us and destroyed or permanently erased (to the extent technically practicable) all copies of Confidential Information made by you (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than sub-paragraph 2.1) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed)[and (c) in any event [●] months from the date of this letter.

6. No Representation; Consequences of Breach, etc

You acknowledge and agree that:

- a. neither we nor any of our officers, employees or advisers (each a "**Relevant Person**") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or any member of the Group or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or any member of the Group or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and
- b. we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person or member of the Group may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

7. entire agreement, No Waiver, Amendments, etc

- a. This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- b. No failure to exercise, nor any delay in exercising any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.

- c. The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

8. Inside Information

You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and you undertake not to use any Confidential Information for any unlawful purpose.

9. Nature of Undertakings

The undertakings given by you under Part A of this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of the Company and each other member of the Group.

10. Third party rights

- a. Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter 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 letter.
- b. The Relevant Persons and each member of the Group may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
- c. Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person or any member of the Group to rescind or vary this letter at any time.

11. Governing Law and Jurisdiction

- a. This letter and the agreement constituted by your acknowledgement of its terms (the "**Letter**") and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.
- b. The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

12. Definitions

In this letter (including the acknowledgement set out below):

"Company" means APCOA Parking Holdings GmbH (formerly Perpetuum Beteiligungsgesellschaft mbH), a German limited liability company registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Munich under HRB 167425.

"Confidential Information" means all information relating to the Company, any Obligor, the Group, the Finance Documents and/or the Facilities which is provided to you in relation to the Finance Documents or Facilities by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- i. is or becomes public information other than as a direct or indirect result of any breach by you of this letter; or
- ii. is identified in writing at the time of delivery as non-confidential by us or our advisers; or
- iii. is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, from a source which is, as far as you are aware, unconnected with the Group and which, in either case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Facility Agreement" means the facility agreement entered into in relation to the Facilities.

"Finance Documents" means the documents defined in the Facility Agreement as Finance Documents.

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

"Obligor" means a borrower or a guarantor under the Facility Agreement.

"Participant Group" means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 2006).

"Permitted Purpose" means considering and evaluating whether to enter into the Facilities.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....

For and on behalf of

[Agent]

SCHEDULE 10

Timetables⁷

Part 1 - Loans

| | Loans in euro, Danish Krone, Norwegian Krone, Sterling and/or Swedish Krona | Loans in sterling | Loans in other currencies |
|--|---|----------------------|------------------------------|
| Agent notifies the Company if a currency is approved as an Optional Currency in accordance with Clause 4.3 (<i>Conditions relating to Optional Currencies</i>) | - | - | U-4 |
| Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)) for any Utilisation for Loans on the first Utilisation Date | U-1 9.30 a.m. | U-1 9.30 a.m. | U-1 9.30 a.m. |
| Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)) for Utilisations of Loans (other than any Utilisation on the first Utilisation Date) or a Selection Notice (Clause 15.1 (<i>Selection of Interest Periods and Terms</i>)) | U-3 9.30 a.m. | U-1 9.30 a.m. | U-3 9.30 a.m. |
| Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under Clause 5.4 (<i>Lenders' participation</i>) and notifies the Lenders of the Loan in accordance with Clause 5.4 | U-3 Noon | U-1 noon | U-3 noon |

⁷ Timetable to be adapted to closing mechanism.

| | | | |
|---|---|--------------------------------|--------------------------------|
| <i>(Lenders' participation)</i> | | | |
| Agent receives a notification from a Lender under Clause 8.2 <i>(Unavailability of a currency)</i> | Quotation Day 9.30 a.m. | Quotation Day 9.30 a.m. | Quotation Day 9.30 a.m. |
| Agent gives notice in accordance with Clause 8.2 <i>(Unavailability of a currency)</i> | Quotation Day 5.30pm | Quotation Day 5.30pm | Quotation Day 5.30pm |
| LIBOR or EURIBOR or NIBOR or CIBOR or STIBOR is fixed | Quotation Day as of 11:00 a.m. (London time) in respect of LIBOR and as of 11.00 a.m. (Brussels time) in respect of EURIBOR and as of 11.00 a.m. (Oslo time) in respect of NIBOR and as of 11.00 am (Stockhom time) in respect of STIBOR and as of 11.00 am (Copenhagen time) in respect of CIBOR | Quotation Day as of 11:00 a.m. | Quotation Day as of 11:00 a.m. |
| "U" = | date of utilisation or, if applicable, in the case of a Term Loan that has already been borrowed, the first day of the relevant Interest Period for that Term Loan. | | |
| "U - X" = | X Business Days prior to date of utilisation | | |

Part 2 - Bank Guarantees

Bank Guarantees

Delivery of a duly completed Utilisation Request (Clause 6.2 (*Delivery of a Utilisation Request for Bank Guarantees*) for any Utilisation other than for Existing Bank Guarantees

U-3 9.30 a.m. or, in relation to Bank Guarantees not substantially in the form set out in Schedule 11 (*Form of Bank Guarantee*), U-5 9.30 a.m.

Delivery of the Utilisation Request by the Bank Guarantee Agent to the Issuing Bank in case of Bank Guarantee Facility B

U-2 or, in relation to Bank Guarantees not substantially in the form set out in Schedule 11 (*Form of Bank Guarantee*), U-4

Agent (in case of a Bank Guarantee to be issued under the Super Senior Revolving Facility) determines (in relation to a Utilisation) the Base Currency Amount of the Bank Guarantee if required under paragraph (e) of Clause 6.6 (*Fronted Bank Guarantee Facility*) and notifies the relevant Issuing Bank and Lenders of the Bank Guarantee in accordance with paragraph (e) of Clause 6.6 (*Fronted Bank Guarantee Facility*).

U-2 noon

Delivery of duly completed Renewal Request (Clause 6.7 (*Renewal of Bank Guarantee*))

U-3 9.30 a.m.

"U" =

date of utilisation

"U-X" =

Business Days prior to date of utilisation

SCHEDULE 11

Form of Bank Guarantee

To
..... (Beneficiary)

Rental Guarantee No.

Dear Sirs,

We have been informed that a rental contract, hereinafter "Underlying Contract", has been concluded between you and hereinafter "Principal", on under ref. No. and that the Underlying Contract stipulates that a Rental Guarantee be issued in the amount of % of the total price.

This being premised, we, Deutsche Bank, hereby irrevocably undertake to pay you without delay on your first written demand for payment an amount up to

EUR ...
(in words: EURO)

provided your demand for payment is simultaneously supported by your written statement (whether in the demand itself or in a separate document(s) accompanying the demand and referred to in it) stating

- a) that the Principal is in breach of his obligation(s) under the Underlying Contract, and
- b) the respect in which the Principal is in breach, and
- c) that the obligation(s) in respect of which the Principal is in breach is/are covered by the present guarantee and that you are therefore entitled to demand payment up to the amount of the demand for payment.

This guarantee shall expire, even if this document is not returned, on, and shall then be null and void, if and to the extent that no demand under this guarantee in accordance with its conditions has reached us in Stuttgart by the end of that day.

This guarantee is transferable with our written consent only.

The issuance of this guarantee is permitted according to German Law.

This guarantee is subject to German Law.

SCHEDULE 12

Form of Increase Confirmation

To: [●] as Agent, [●] as Security Trustee, [[●] as Issuing Bank]* and [●] as Company,
for and on behalf of each Obligor

From: [the Increase Lender] (the "**Increase Lender**")

Dated:

[Company] - [●]Facilities Agreement dated [●] (the "**Facilities Agreement**")

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This Agreement (the "**Agreement**") shall take effect as an Increase Confirmation for the purpose of the Facilities Agreement and as a [Creditor Accession Undertaking] for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 2.2 (*Increase*) of the Facilities Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the schedule (the "**Relevant Commitment**") as if it was an Original Lender under the Facilities Agreement.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the "**Increase Date**") is [●].
5. On the Increase Date, the Increase Lender becomes:
 - a. party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
 - b. party to the Intercreditor Agreement as a [Senior Lender] (as defined in the Intercreditor Agreement).
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 37.2 (*Addresses*) are set out in the schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (g) of Clause 2.2 (*Increase*).
8. The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor with respect to each Borrower incorporated in [●], that it is:

- a. [a Qualifying Lender (other than a Treaty Lender);]
- b. [a Treaty Lender;]
- c. [not a Qualifying Lender].**

and that it is [not] incorporated, having its place of effective management or acting through a Facility Office situated in a Belgian Non-Cooperative Jurisdiction.

9. [The Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
 - a. a company resident in the United Kingdom for United Kingdom tax purposes;
 - b. a partnership each member of which is
 - i. a company resident in the United Kingdom for United Kingdom tax purposes; or
 - ii. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the UK CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the UK CTA; or
 - iii. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing its chargeable profits (within the meaning of section 19 of the UK CTA).
10. [The Increase Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [●]) and is tax resident in [●], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Company notify:
 - a. each Borrower which is a Party as a Borrower as at the Increase Date; and
 - b. each Additional Borrower which becomes an Additional Borrower after the Increase Date

that it wishes the scheme to apply to the Facilities Agreement.]***
11. [The Increase Lender confirms that it [is]/[is not]**** a Non-Acceptable B/G Lender.]*****

12. We refer to clause [20.9] (*Creditor Accession Undertaking*) of the Intercreditor Agreement:

In consideration of the Increase Lender being accepted as a [Priority Senior Lender] for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the Increase Lender confirms that, as from the Increase Date, it intends to be party to the Intercreditor Agreement as a [Priority Senior Lender], and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Priority Senior Lender] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

13. 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.
14. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
15. This Agreement has been entered into on the date stated at the beginning of this agreement.

Note: The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

NOTES:

- * Only if increase in Total Super Senior Revolving Facility Commitments
- ** Delete as applicable - each Increase Lender is required to confirm which of these three categories it falls within in relation to each Borrower jurisdiction.
- *** This confirmation must be included if the Increase Lender holds a passport under the HMRC DT Treaty Passport Scheme and wishes that scheme to apply to the Facilities Agreement.
- **** Delete as applicable.
- ***** Include only if the increase involves the assumption of a Super Senior Revolving Facility Commitment.

SCHEDULE 13

Existing Bank Guarantees⁸

| Borrower | Currency | Outstanding Amount | Beneficiary | Expiry Date |
|---|-----------------|---------------------------|---------------------------|--------------------|
| APCOA PARKING DEUTSCHLAND GMBH | EUR | 3,000,000 | LBBW | unlimited |
| APCOA PARKING DEUTSCHLAND GMBH | EUR | 4,000,000 | Commerzbank AG | 31/12/2014 |
| APCOA PARKING (UK) LIMITED, | GBP | 1,500,000 | Worldpay | 31/12/2015 |
| APCOA PARKING HOLDINGS GMBH | EUR | 65,000 | Commerzbank AG | 31/12/2014 |
| APCOA PARKING HOLDINGS GMBH | EUR | 17,000,000 | Commerzbank AG | unlimited |
| APCOA PARKING HOLDINGS GMBH | EUR | 3,000,000 | Commerzbank AG | 31/12/2014 |
| APCOA PARKING HOLDINGS GMBH | EUR | 2,900,000 | Commerzbank AG | 31/12/2014 |

⁸ To be updated to reflect status as of closing.

| | | | | |
|--|------------|-------------------|---------------------------|-------------------|
| APCOA PARKING HOLDINGS GMBH | EUR | 1,350,000 | Commerzbank AG | 31/12/2014 |
| APCOA PARKING HOLDINGS GMBH | EUR | 600,000 | Commerzbank AG | 31/12/2014 |
| APCOA PARKING HOLDINGS GMBH | EUR | 4,000,000 | Commerzbank AG | 31/12/2014 |
| APCOA PARKING HOLDINGS GMBH | NOK | 30,000,000 | DnB Bank ASA | 31/12/2014 |
| APCOA PARKING HOLDINGS GMBH | GBP | 2,275,000 | Gatwick | 30/06/2015 |
| APCOA PARKING HOLDINGS GMBH | NOK | 30,000,000 | DnB Bank ASA | 31/12/2016 |

SCHEDULE 14

Agreed Security Principles

1. AGREED SECURITY PRINCIPLES

- a. The guarantees and security to be provided will be given in accordance with certain agreed security principles (the "**Agreed Security Principles**"). This Schedule 14 addresses the manner in which the Agreed Security Principles will impact on the guarantees and security proposed to be taken in relation to this transaction.
- b. The Agreed Security Principles embody a recognition by all parties that there may be certain legal and practical difficulties in obtaining effective security from all members of the Group in every jurisdiction in which members of the Group are located. In particular:
 - i. general statutory limitations, financial assistance, corporate benefit, fraudulent preference, "thin capitalisation" rules, retention of title claims and similar principles may limit the ability of a member of the Group to provide a guarantee or security or may require that the guarantee be limited by an amount or otherwise;
 - ii. a factor in determining whether or not security shall be taken is cost;
 - iii. any assets subject to third party arrangements which may prevent those assets from being charged will be excluded from any relevant security document;
 - iv. members of the Group will not be required to give guarantees or enter into security documents if it is not within the legal capacity of the relevant members of the Group or if the same would contravene any legal prohibition or could reasonably be expected to result in personal or criminal liability on the part of any officer; and
 - v. the giving of a guarantee, the granting of security or the perfection of the security granted will not be required if it would have a material adverse effect on the ability of the relevant Obligor to conduct its operations and business in the ordinary course as otherwise permitted by the Finance Documents and would be unduly onerous.

Notwithstanding the above, each party required to provide Security shall use its reasonable endeavours to overcome any of the above difficulties including, but not limited to, complying with whitewash procedures or equivalent.

2. GUARANTEES AND SECURITY

- a. Each guarantee will be an upstream, cross-stream and downstream guarantee for all liabilities of the Obligors and Luxco 3 under the Finance Documents in accordance with, and subject to, the requirements of the Agreed Security Principles in each relevant jurisdiction.
- b. Where Luxco 3 or an Obligor pledges shares, the security document will (subject to agreed exceptions) be governed by the law of the company whose shares are being pledged and not by the law of the country of the pledgor.

3. TERMS OF SECURITY DOCUMENTS

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

- a. to the extent possible, all security shall be given in favour of the Security Trustee and, to the extent legally required under local law in the relevant jurisdiction, the Finance Parties. "Parallel debt" provisions will be used where necessary; such provisions will be contained in the Intercreditor Agreement and not the individual Transaction Security Documents unless required under local laws. With respect to any Austrian law security created under Finance Documents the joint and several creditorship shall apply, and accordingly the Security Trustee shall be joint and several creditor of the obligations secured by the respective Austrian Transaction Security Documents. To the extent possible, no action shall be required to be taken in relation to the guarantees or Security when any Lender transfers any of its participation in the Facility to a new Lender;
- b. security will not be enforceable until an Event of Default has occurred and the Agent has notified the Company of that occurrence (or, if mandatory provisions of the governing law of the relevant Transaction Security Documents so require, until any of the secured obligations has become due and payable);
- c. the security documents should only operate to create security rather than to impose new commercial obligations. Accordingly, they should not contain any additional representations or undertakings (such as in respect of insurance, information or the payment of costs) unless these are the same as those contained in this Agreement or are covenants required for the creation, perfection or protection of the security;
- d. in respect of the share pledges, until the security has become enforceable, the pledgors should be permitted to retain and to exercise voting rights to any shares pledged by them in a manner which does not adversely affect the

validity or enforceability of the security or cause an Event of Default to occur and the pledgors should be permitted to pay dividends upstream on pledged shares to the extent permitted under this Agreement;

- e. the Finance Parties should only be able to exercise any power of attorney granted to them under the security documents after the relevant security has become enforceable or if the relevant Obligor or Luxco 3 has failed to perform the relevant obligations;
- f. the amount secured by any security document or under a guarantee will not be an "all monies" charge or guarantee but will be restricted to liabilities arising under the Finance Documents;
- g. to the extent that covenants to pay in the security documents or guarantees refer to calculation of interest payable, this should be calculated at the rate specified in the relevant clauses of this Agreement; and
- h. negative pledges should not prevent transactions which are permitted under this Agreement.

SCHEDULE 15

Capitalisation / Cash Pay Notice

From: [Company]

To: [Agent]

Dated:

Dear Sirs

[Company] – [●] Facilities Agreement

dated [●] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This is a Capitalisation / Cash Pay Notice. Terms defined in the Facilities Agreement have the same meaning in this Capitalisation / Cash Pay Notice unless given a different meaning in this Utilisation Request.
2. We further refer to paragraph (a) of clause 14.3 (*Capitalised Interest / Cash pay option for Term Facility B Loans*) of the Facilities Agreement and hereby request that in addition to interest accruing in accordance with Clause 14.1 (*Calculation of Interest*) interest shall accrue on the Term Facility B Loans (on the Interest Period commencing on [●]) at [the Additional Cash Margin] / [the Capitalised Margin] for that Interest Period.

Yours faithfully

.....

authorised signatory for [the Company]

Belgian Capitalisation Notice

From: the Company on behalf of [Borrower incorporated in Belgium]

To: [Agent]

Dated:

Dear Sirs

[Company] – [●] Facilities Agreement

dated [●] (the "Facilities Agreement")

3. We refer to the Facilities Agreement. This is a Belgian Capitalisation Notice.
4. Terms defined in the Facilities Agreement have the same meaning in this Belgian Capitalisation Notice unless given a different meaning herein.
5. We further refer to paragraph (e) of clause 14.3 (*Capitalised Interest/Cash pay option for Term Facility B Loans*) of the Facilities Agreement and hereby irrevocably request that an amount equal to the Capitalised Interest in an amount of EUR [●] be added to the [*refer to relevant Term Loan made to Borrower incorporated in Belgium*] made available on [●] with effect from [●] [_____] 20[●] (being the Payment Date).

Yours faithfully

.....

authorised signatory for[the Company]

We hereby acknowledge and agree to the terms of the request set out above:

.....

For and on behalf of [●] as Agent

SCHEDULE 16

Incremental Facility Notice

Incremental Facility Notice (number: [...])

To: [●] as Agent

From: APCOA Parking Holdings GmbH

Dated: [●]

Dear Sirs

[Company] –Facilities Agreement

Dated [●] (as amended from time to time, the "Facilities Agreement")

1. We refer to the Facilities Agreement and in particular clause 2.5 (*Incremental Facility Commitments*) thereof. Terms defined in the Facilities Agreement have the same meaning when used in this Incremental Facility Notice.
2. We have agreed with the following institutions (the "**Incremental Facility Lenders**" in respect of the Incremental Facility Commitments detailed in this Incremental Facility Notice) that they commit Incremental Facility Commitments as follows:

| Name of Incremental Facility Lender | Existing Lender (yes/no) | Incremental Facility Commitment (EUR) (for Term Facility B) | Incremental Facility Commitment (EUR) (for Term Facility C) |
|--|---|--|--|
|--|---|--|--|

TOTAL:

3. The date on which the Incremental Facility Commitments referred to above are to become effective (the Incremental Facility Date) is [●].
4. The Availability Period is: [●].
5. The Borrower and amounts are: [insert name of Borrower] EUR [●].
6. The aggregate of the Incremental Facility Commitments (including pursuant to this notice) is: EUR [●].
7. In our reasonable opinion the Incremental Facility Minimum Amount is EUR [●].

Yours faithfully

.....

[Authorised Signatory]

For and on behalf of [Company]

[Lender Confirmations]

We [*insert name of any Incremental Facility Lender not already a Lender*] agree to become (if not already a Party) a party to the Facilities Agreement as a Lender with an Incremental Facility Commitment as recorded above.

Attached to this Incremental Facility Notice is a Creditor Accession Undertaking (as defined in the Intercreditor Agreement) executed by [*insert name of each Incremental Facility Lender not already a Lender*].

We [*insert name of any Incremental Facility Lender not already a Lender*] confirm, for the benefit of the Agent and without liability to any Obligor with respect to each Borrower incorporated in [●], that we are:

- a. [a Qualifying Lender (other than a Treaty Lender);]
- b. [a Treaty Lender;]
- c. [not a Qualifying Lender].*

[We *[insert name of any Incremental Facility Lender not already a Lender]* confirm that the person beneficially entitled to interest payable to us in respect of an advance under a Finance Document are either:

- a. a company resident in the United Kingdom for United Kingdom tax purposes;
- b. a partnership each member of which is
 - i. a company resident in the United Kingdom for United Kingdom tax purposes; or
 - ii. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the UK CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the UK CTA; or
 - iii. a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing its chargeable profits (within the meaning of section 19 of the UK CTA).

[We *[insert name of any Incremental Facility Lender not already a Lender]* confirm that we hold a passport under the HMRC DT Treaty Passport scheme (reference number [●]) and are tax resident in [●], so that interest payable to us by borrowers is generally subject to full exemption from UK withholding tax and request that the Company notifies:

- (a) each Borrower which is a Party as a Borrower as at the Increase Date; and
- (b) each Additional Borrower which becomes an Additional Borrower after the Increase Date

that we wish the scheme to apply to the Facilities Agreement.]**

Accepted and agreed by:

.....

[Authorised Signatory]

[Name of each Lender]

We acknowledge the accession of each of the parties (other than the Company) to this letter to each of the Agreement as a Lender and the Intercreditor Deed as a Senior Lender.

.....

[Authorised Signatory]

the Agent

[Authorised Signatory]

the Security Trustee

NOTES:

- * Delete as applicable - each Incremented Facility Lender is required to confirm which of these three categories it falls within in relation to each Borrower jurisdiction.
- ** This confirmation must be included if the Incremented Facility Lender holds a passport under the HMRC DT Treaty Passport Scheme and wishes that scheme to apply to the Facilities Agreement.

SCHEDULE 17

Bank Guarantee B Sublimit Adjustment

From: APCOA Parking Holdings GmbH

To: [name of Issuing Bank] in its capacity as Issuing Bank under Bank Guarantee Facility B

With copy to: [name of Bank Guarantee Agent] in its capacity as Bank Guarantee Agent under Bank Guarantee Facility B

Dated: [●]

Dear Sirs,

[Company] – [●] Facilities Agreement

dated [●] (the "Facilities Agreement")

Adjustment of Bank Guarantee B Sublimit

We refer to the Facilities Agreement under which you act as Issuing Bank under Bank Guarantee Facility B. Unless otherwise defined herein capitalized terms shall have the meaning given to them in the Facilities Agreement.

Reference is made to paragraph (a) of Clause 6.13 (*Adjustments of Bank Guarantee B Sublimit*). We hereby notify you that with effect as of [insert DATE] (the "**Bank Guarantee B Sublimit Adjustment Date**") [*drafting note: date needs to be at least 15 BD in case of an increase or 10 BD in case of a decrease of the Sublimit after the date of the notice*] the Bank Guarantee Sublimit applicable to you shall be Euro [insert AMOUNT].

Yours sincerely,

Apcoa Parking Holdings GmbH as Company

SIGNATURES⁹

The Company

APCOA PARKING HOLDINGS GMBH

Name:

Title:

⁹ To be finalized prior to signing.

The Original Borrowers

APCOA PARKING HOLDINGS GMBH

Name:

Title:

APCOA PARKING DEUTSCHLAND GMBH

Name:

Title:

APCOA PARKING BELGIUM NV

Name:

Title:

APCOA PARKING HOLDINGS (UK) LIMITED

Name:

Title:

APCOA PARKING (UK) LIMITED

Name:

Title:

APCOA PARKING AUSTRIA GMBH

Name:

Title:

APCOA PARKING DANMARK A/S

Name:

Title:

**APCOA PARKING SVERIGE AB
(FORMERLY EUROPARK SVENSKA AB)**

Name:

Title:

EUROPARK HOLDING AS

Name:

Title:

EUROPARK SCANDINAVIA AS

Name:

Title:

The Original Guarantors

APCOA PARKING HOLDINGS GMBH

Name:

Title:

APCOA PARKING AKTIENGESELLSCHAFT

Name:

Title:

APCOA PARKING DEUTSCHLAND GMBH

Name:

Title:

EUROPARK HOLDING AS

Name:

Title:

EUROPARK SCANDINAVIA AS

Name:

Title:

EUROPARK AS

Name:

Title:

APCOA PARKING HOLDING DANMARK APS

Name:

Title:

APCOA PARKING DANMARK A/S

Name:

Title:

APCOA HOLDING ITALIA S.R.L.

Name:

Title:

APCOA PARKING ITALIA S.P.A.

Name:

Title:

APCOA PARKING BELGIUM NV

Name:

Title:

APCOA PARKING AUSTRIA GMBH

Name:

Title:

APCOA PARKING HOLDINGS (UK) LIMITED

Name:

Title:

APCOA PARKING (UK) LIMITED

Name:

Title:

**APCOA PARKING SVERIGE AB
(FORMERLY EUROPARK SVENSKA AB)**

Name:

Title:

APCOA PARKING NEDERLAND B.V.

By:

Title: Authorised Signatory

The Original Lenders

[*INSERT NAME OF LENDER*]

**Acting by [] represented by []
pursuant to the authority granted under
the Schemes of Arrangement**

Name:

Title:

The Agent

DEUTSCHE BANK LUXEMBOURG S.A.

Name:

Title:

The Security Trustee

DEUTSCHE BANK LUXEMBOURG S.A.

Name:

Title:

The New Issuing Bank 1

DEUTSCHE BANK AG, FILIALE DEUTSCHLANDGESCHÄFT

Name:

Title:

The New Issuing Bank 2

DNB BANK ASA

Name:

Title:

The Bank Guarantee Agent

DEUTSCHE BANK AG, FILIALE DEUTSCHLANDGESCHÄFT

Name:

Title:

The Retiring Issuing Bank

MIZUHO BANK, LTD.

Name:

Title: