

EXECUTION VERSION

INTERCREDITOR AGREEMENT

19 October 2020

between

**J&T BANKA, A.S.
as Junior Lender**

**NEW UKRAINE PE HOLDING LIMITED
as Parent**

**NUPEH CZ s.r.o.
as Senior Notes Issuer**

**J&T BANKA, A.S.
as Original Hedge Counterparty**

**J&T BANKA, A.S.
as Security Agent**

and

others

ALLEN & OVERY

Allen & Overy (Czech Republic) LLP, organizační složka

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CONTENTS

Clause	Page
1. Definitions and interpretation	1
2. Ranking and Priority	20
3. Senior Notes Creditors and Senior Notes Liabilities	20
4. Hedge Counterparties and Hedging Liabilities	22
5. Junior Creditors and Junior Liabilities	28
6. Subordinated Lenders and Subordinated Liabilities	33
7. Protection of subordination	35
8. Effect of Insolvency Event.....	36
9. Turnover of Receipts.....	37
10. Redistribution.....	40
11. Enforcement of Transaction Security	40
12. Non-Distressed Disposals	42
13. Distressed Disposals and Appropriation	43
14. Non-Cash Recoveries.....	46
15. Further Assurance – Disposals and Releases.....	49
16. Application of Proceeds.....	49
17. The Security Agent	52
18. Changes to the Parties	65
19. Costs and Expenses	67
20. Others Indemnities	68
21. Information.....	69
22. Notices	70
23. Preservation.....	71
24. Consents, Amendments and Override.....	72
25. Counterparts	75
26. Miscellaneous.....	75
27. Governing law.....	76
28. Jurisdiction	76
 Schedule	
1. Form of Debtor Accession Agreement	77
2. Form of Creditor Accession Agreement	81
3. Form of Debtor Resignation Request.....	82
 Signatories.....	83

THIS AGREEMENT is dated 19 October 2020 and made

BETWEEN:

- (1) **J&T BANKA, a.s.**, a company incorporated and existing under the laws of the Czech Republic, ID: 471 15 378, with its registered seat at Sokolovská 700/113a, Karlín, 186 00 Prague 8, Czech Republic, registered in the commercial register maintained by the Municipal Court in Prague under file No. B 1731 (the **Junior Lender**);
- (2) **New Ukraine PE Holding Limited**, a company incorporated and existing under the laws of the Republic of Cyprus, ID: HE 358309, with its registered address and seat at 16 Iouniou 1943, 9, Area A, Flat/Office 202, 3022, Limassol, Cyprus (the **Parent**);
- (3) **NUPEH CZ s.r.o.**, a company incorporated and existing under the laws of the Czech Republic with its registered office at Antala Staška 1859/34, Krč, 140 00 Praha 4, identification number 077 57 662, registered in the commercial register maintained by the Municipal Court in Prague under file No. C 307124 (the **Senior Notes Issuer**);
- (4) **J&T BANKA, a.s.**, ID: 471 15 378, with its registered seat at Sokolovská 700/113a, Karlín, 186 00 Prague 8, Czech Republic, registered in the commercial register maintained by the Municipal Court in Prague under file No. B 1731 (the **Original Hedge Counterparty**); and
- (5) **J&T BANKA, a.s.**, a company incorporated and existing under the laws of the Czech Republic, ID: 471 15 378, with its registered seat at Sokolovská 700/113a, Karlín, 186 00 Prague 8, Czech Republic, registered in the commercial register maintained by the Municipal Court in Prague under file No. B 1731 as security agent for the Secured Parties, including the Senior Noteholders, under the Senior Notes Security Agency Agreement and the Act on Bonds (the **Security Agent**).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

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

Acceleration Action means any action set out under paragraph (a) of the definition of Enforcement Action in this Clause 1.1.

Acceleration Event means:

- (a) a Senior Notes Acceleration Event; or
- (b) a Junior Acceleration Event.

Act on Bonds means Act No. 190/2004, on Bonds, as amended.

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

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

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

Borrowing Liabilities means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor or a Debtor in respect of Financial Indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as an issuer under the Senior Notes Documents and liabilities and obligations as a borrower under the Junior Finance Documents).

Business Day has the meaning given to the term "Business Day" in the Junior Facility Agreement.

Cash Proceeds means:

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

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

Civil Code means Act No. 89/2012 Coll., the Civil Code, as amended.

Close-Out Netting means:

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

Commercial Register means the commercial register of the Czech Republic administered by the relevant registry court.

Commitment has the meaning given to the term "Commitment" in the Junior Facility Agreement.

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

Common Currency means USD.

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

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

- (a) is created in favour of the Security Agent as a security agent for the other Secured Parties in respect of Liabilities owed to them; or
- (b) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as a security agent for the Secured Parties is created in favour of all the Secured Parties in respect of Liabilities owed to them and which ranks in the order of priority contemplated in Clause 2.2 (Transaction Security).

Competitive Sales Process means

- (a) any auction or other competitive sales process conducted with the advice of a Financial Adviser appointed or approved by the Security Agent pursuant to Clause 13.5 (Appointment of Financial Adviser) and the procedures which do not expressly exclude Junior Creditors from participating as prospective buyers, other than where the Financial Adviser advises the Security Agent that such participation could prejudice that auction or competitive sales process; and
- (b) any enforcement of the Transaction Security carried out by way of auction or other competitive sales process pursuant to the requirements of applicable law, including all methods of enforcement expressly set out in the Transaction Security Documents.

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

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

Creditor Accession Agreement means:

- (a) an undertaking substantially in the form set out in Schedule 2 (Form of Creditor Accession Agreement); or
- (b) a transfer certificate or an assignment document (each as envisaged in the Junior Facility Agreement) (**provided that** it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (Form of Creditor Accession Agreement)),

as the context may require.

Creditor Conflict means a conflict between the interests of any Senior Notes Creditor and any Junior Creditor.

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

Creditors means the Primary Creditors and the Subordinated Lenders.

Debt Disposal means any disposal of any Liabilities or Debtors' Intra-Group Receivables pursuant to paragraph (d) or (e) of Clause 13.1 (Facilitation of Distressed Disposals and Appropriation).

Debt Document means each of this Agreement, the Hedging Agreement, the Hedging Guarantee, the Senior Notes Documents, the Junior Finance Documents, the Security Documents, any agreement evidencing the terms of the Subordinated Liabilities and any other document designated as such by the Security Agent and the Parent.

Debtor means the Parent, the Senior Notes Issuer, and any person which becomes a Party as a Debtor in accordance with the terms of Clause 18 (Changes to the Parties).

Debtor Accession Agreement means:

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

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

Debtors' Intra-Group Receivables means, in relation to a Debtor, any liabilities and obligations owed to any other Debtor (whether actual or contingent and whether incurred solely or jointly) by that Debtor.

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

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

Distress Event means any of:

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

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

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

Enforcement means the enforcement of any Transaction Security, the requesting of a Distressed Disposal and/or the release or disposal of claims and/or Transaction Security on a Distressed Disposal under Clause 13 (Distressed Disposals and Appropriation), the giving of instructions as to actions with respect to the Transaction Security and/or the Charged Property following an Insolvency Event under Clause 11.1 (Enforcement Instructions) and the taking of any other actions consequential on (or necessary to effect) any of those actions.

Enforcement Action means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Notes Creditor or a Junior Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
 - (ii) the making of any declaration that any Liabilities are payable on demand;
 - (iii) the making of a demand in relation to a Liability that is payable on demand;
 - (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
 - (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability);
 - (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right:
 - (A) which is expressly permitted under the Senior Notes Conditions or the Junior Facility Agreement to the extent that the exercise of that right gives effect to a Permitted Payment;
 - (B) as Close-Out Netting by a Hedge Counterparty;
 - (C) as Payment Netting by a Hedge Counterparty; or
 - (D) as Inter-Hedging Agreement Netting by a Hedge Counterparty; and
 - (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities by a Creditor;

- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement (other than pursuant to a Permitted Automatic Early Termination);
- (c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (d) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 18 (Changes to the Parties)); or
- (e) the petitioning, applying or voting for, or the taking of any step (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation (within the insolvency proceedings) of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

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

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

Enforcement Instructions means instructions as to Enforcement (including the manner and timing of Enforcement) given by the Instructing Group to the Security Agent **provided that** Acceleration Actions, instructions not to undertake Enforcement or an absence of instructions as to Enforcement shall not constitute "Enforcement Instructions".

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

Event of Default means any event or circumstance specified as such in the Junior Facility Agreement or as Events of Default (in Czech as *Případy porušení*) in the Senior Notes Conditions.

Exposure means:

- (a) in relation to a Senior Noteholder, the aggregate amount of its participation (if any, and without double counting) in all Senior Notes outstanding at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Senior Notes Documents; and
- (b) in relation to a Hedge Counterparty:
 - (i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement in accordance with the terms of this Agreement on or prior to the Enforcement Date, the amount, if any, payable to it under that Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and
 - (ii) if that Hedge Counterparty has not terminated or closed out any hedging transaction under any Hedging Agreement on or prior to the Enforcement Date:
 - (A) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
 - (B) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning

and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

Fairness Opinion means, in respect of a Distressed Disposal or a Liabilities Sale, an opinion that the proceeds received or recovered in connection with that Distressed Disposal or Liabilities Sale are fair from a financial point of view taking into account all relevant circumstances, including, without limitation, the method of enforcement or disposal.

Final Discharge Date means the latest to occur of the Senior Notes Discharge Date and the Junior Discharge Date.

Financial Adviser means any:

- (a) independent internationally recognised investment bank;
- (b) independent internationally recognised accountancy firm, in particular any of PricewaterhouseCoopers Česká republika, s.r.o., Ernst & Young, s.r.o., KPMG Česká republika, s.r.o., Deloitte Advisory s.r.o. or any of their respective affiliates or legal successors; or
- (c) other independent internationally recognised professional services firm which is regularly engaged in providing valuations of businesses or financial assets or, where applicable, advising on competitive sales processes.

Financial Indebtedness has the meaning given to that term in the Junior Facility Agreement.

Group means the Parent, the Senior Notes Issuer and each of their respective Subsidiaries for the time being.

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

Hedge Counterparty means each Original Hedge Counterparty and any entity which becomes a Party as a Hedge Counterparty pursuant to Clause 18.6 (Creditor Accession Agreement).

Hedged Currency means the currency in which the Senior Notes are denominated, and which is hedged in respect of exchange rate risk under a Hedging Agreement.

Hedging Agreement means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by a Debtor and a Hedge Counterparty for the purpose of hedging currency or interest rate risks in relation to the Senior Notes.

Hedging Force Majeure means:

- (a) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:

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

Hedging Guarantee means any guarantee or financial guarantee of debts from the Hedging Agreement.

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

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

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

- (a) being insolvent;
- (b) any resolution is passed or order made for the winding up, dissolution, administration, bankruptcy or reorganisation (within the insolvency proceedings) of that member of the Group, a moratorium is declared in relation to any indebtedness of that member of the Group or an administrator is appointed to that member of the Group;
- (c) any composition, compromise, assignment or arrangement is made with any of its creditors (other than in relation to the de-minimis amounts which is made with a single creditor);
- (d) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager, bankruptcy administrator or other similar officer in respect of that member of the Group or any of its assets; or
- (e) any analogous procedure or step is taken in any jurisdiction (other than due to frivolous, vexatious and/or fraudulent action(s) initiated by a third party and which is struck down, discharged or otherwise terminated within 25 Business Days following the date when such action is taken).

Instructing Group means at any time:

- (a) prior to the Senior Notes Discharge Date:
 - (i) subject to paragraph (ii) below, the Majority Senior Noteholders; and
 - (ii) in relation to instructions as to Enforcement with respect to the Transaction Security, the group of Primary Creditors entitled to give instructions as to Enforcement (and any related steps under Clause 13 (Distressed Disposals and Appropriation)) under Clause 11.1 (Enforcement Instructions); and

(b) on or after the Senior Notes Discharge Date, the Junior Lender.

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

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

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

Joint and Several Debt means any Liabilities owed to the Security Agent:

- (a) in its capacity as security agent and creditor under Section 20 and the following of Act on Bonds to the benefit of the Senior Noteholders as set out in paragraph (c) of Clause 17.1 (Appointment of the Security Agent) in respect of the Senior Notes Documents; or
- (b) Clauses 17.2 (Security Agent as Joint and Several Creditor – Junior Creditor) and 17.3 (Security Agent as Joint and Several Creditor – Hedge Counterparties).

Junior Acceleration Event means Security Agent taking any Acceleration Action under clause 24.24 (Acceleration) of the Junior Facility Agreement.

Junior Borrower has the meaning given to the term "Borrower" in the Junior Facility Agreement.

Junior Creditor means a Junior Lender.

Junior Discharge Date means the first date on which:

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

Junior Enforcement Notice has the meaning given to that term in Clause 5.11 (Permitted Enforcement: Junior Creditors).

Junior Facility has the meaning given to the term "Facility" in the Junior Facility Agreement.

Junior Facility Agreement means the term facility agreement made between the Parent, the Senior Notes Issuer and the Junior Lender dated on or about the date of this Agreement.

Junior Finance Documents has the meaning given to the term "Finance Documents" in the Junior Facility Agreement.

Junior Liabilities means any Liabilities owed by the Debtors to any Junior Creditor under or in connection with the Junior Finance Documents.

Junior Payment Stop Event means that, in relation to Payments of the Junior Liabilities, any of the events set out in paragraphs (a), (b) or (c) of clause 4.6 (Restrictions on Distributions) of the Senior Notes Conditions has occurred.

Junior Payment Stop Notice has the meaning given to that term in Clause 5.3 (Issue of Junior Payment Stop Notice).

Junior Standstill Period has the meaning given to that term in Clause 5.11 (Permitted Enforcement: Junior Creditors).

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

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

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

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

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

the rights in respect of those Liabilities.

Liabilities Sale means a Debt Disposal pursuant to paragraph (e) of Clause 13.1 (Facilitation of Distressed Disposals and Appropriation).

Majority Senior Noteholders means in relation to a Consent, requisite majority of the Senior Noteholders required to approve that Consent pursuant to the Senior Notes Conditions but comprising in each case more than 15% of the Senior Noteholders.

Mandate Agreement means the mandate agreement in respect of issue of the Senior Notes dated 25 September 2020 between the Senior Notes Issuer, the Parent as guarantor and J&T IB and Capital Markets, a.s. as arranger.

Margin has the meaning given to the term "Margin" in the Junior Facility Agreement.

New Shareholder Injection means the aggregate amount subscribed for by any person (other than a member of the Group) for ordinary shares in the Parent or for subordinated loan notes or other subordinated debt instruments in the Parent.

Non-Cash Consideration means consideration in a form other than cash.

Non-Cash Recoveries means:

- (a) any proceeds of a Distressed Disposal or a Debt Disposal; or
- (b) any amount distributed to the Security Agent pursuant to Clause 9.1 (Turnover by the Creditors),

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

Non-Credit Related Close-Out means a Permitted Hedge Close-Out described in any of paragraph (a)(i) or (a)(ii) of Clause 4.9 (Permitted Enforcement: Hedge Counterparties).

Non-Distressed Disposal has the meaning given to that term in Clause 12 (Non-Distressed Disposals).

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

Party means a party to this Agreement.

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

Payment Netting means:

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

Permitted Automatic Early Termination means an Automatic Early Termination of a hedging transaction under a Hedging Agreement, the provision of which is permitted under Clause 4.12 (Terms of Hedging Agreements).

Permitted Equitisation means the conversion of Subordinated Liabilities into the equity capital of a Debtor, provided that all the shares issued in consideration of, or otherwise as a result of, such conversion are subscribed for by an existing shareholder of that Debtor and become subject to Transaction Security in form and substance satisfactory to the Security Agent and provided that such conversion does not constitute an Event of Default or mandatory prepayment or early redemption event (howsoever described) under the Senior Notes Documents or the Junior Finance Documents.

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

Permitted Hedge Payments means the Payments permitted by Clause 4.3 (Permitted Payments: Junior Liabilities).

Permitted Junior Payments means the Payments permitted by Clause 5.2 (Permitted Payments: Junior Liabilities).

Permitted Payment means a Permitted Hedge Payment, a Permitted Junior Payment, a Permitted Senior Notes Payment or a Permitted Subordinated Payment.

Permitted Senior Notes Payments means the Payments permitted by Clause 3.1 (Payment of Senior Notes Liabilities).

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

Primary Creditors means the Senior Notes Creditors, the Junior Creditors and the Hedging Counterparties.

Property of a member of the Group or of a Debtor means:

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

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

Recoveries has the meaning given to that term in Clause 16.1 (Order of Application).

Relevant Liabilities means:

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

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

Secured Parties means the Security Agent, any Receiver or Delegate and each of the Primary Creditors from time to time but, in the case of each Primary Creditor in respect of the Junior Liabilities and the Hedging Liabilities, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 18.6 (Creditor Accession Agreement).

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

Security Agent's Spot Rate of Exchange means, in respect of the conversion of one currency (the **First Currency**) into another currency (the **Second Currency**) the Security Agent's spot rate of exchange for the purchase of the Second Currency with the First Currency in the Prague foreign

exchange market at or about 11am (Prague time) on a particular day, which shall be notified by the Security Agent in accordance with paragraph (e) of Clause 17.5 (Duties of the Security Agent).

Security Documents means:

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

Security Property means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as security agent for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Security Agent as security agent for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as security agent for the Secured Parties; and
- (c) any other amounts or property, whether rights, entitlements, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as security agent for the Secured Parties.

Senior Creditors means the Senior Notes Creditors and the Hedge Counterparties.

Senior Liabilities means the Senior Notes Liabilities and the Hedging Liabilities.

Senior Noteholder means a noteholder (*vlastník dluhopisu*) as defined in the relevant Senior Notes Conditions.

Senior Notes means any senior notes issued or to be issued by the Senior Notes Issuer from time to time (and outstanding) under the relevant Senior Notes Conditions.

Senior Notes Acceleration Event means:

- (a) any decision of the Senior Noteholders' meeting is taken to accelerate the Senior Notes under clause 3.9(c) of the relevant Senior Notes Conditions, or
- (b) the Security Agent's accelerates the Senior Notes under clause 3.9 (other than under clause 3.9(c)) of the relevant Senior Notes Conditions.

Senior Notes Agency Agreement means any agency agreement entered into between the Senior Notes Issuer and the Security Agent in respect of any Senior Notes.

Senior Notes Conditions means the relevant terms and conditions applicable to each series of Senior Notes issued by the Senior Notes Issuer and, if applicable, as contained in the prospectus of the relevant Senior Notes as may from time to time be modified in accordance with the provisions thereof and the then existing Debt Documents and any reference in this Agreement to a particular specified condition or paragraph of a condition shall, in relation to the Senior Notes, be construed accordingly.

Senior Notes Creditor means any Senior Noteholder and the Security Agent.

Senior Notes Deferral means, at any time, a deferral (by more than six months of the relevant due date) of any scheduled repayment of the Senior Notes Liabilities (other than Liabilities due to the Security Agent acting on its own behalf, such as, amongst others, documented fees and costs of the Security Agent, and not on behalf of the Senior Noteholders) which would have fallen due under the Senior Notes Documents prior to that time but for that deferral, to the extent that, at that time, that scheduled repayment has not been made.

Senior Notes Discharge Date means the date on which all Senior Notes Liabilities owing to the Senior Notes Creditors have been fully and finally discharged whether or not as the result of enforcement and those Senior Notes Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Senior Notes Documents.

Senior Notes Documents means:

- (a) any Senior Notes Conditions;
- (b) any Senior Notes;
- (c) the Mandate Agreement;
- (d) each Subscription Agreement;
- (e) each Senior Notes Agency Agreement;
- (f) each Senior Notes Security Agency Agreement;
- (g) this Agreement;
- (h) the Transaction Security Documents; and
- (i) each Senior Notes Guarantee.

Senior Notes Guarantee means any guarantee or financial guarantee of any Senior Notes pursuant to the Senior Notes Conditions.

Senior Notes Event of Default means an Event of Default under clause 9.1 (Events of Default) of the Senior Notes Conditions.

Senior Notes Interest/Fee Deferral means, at any time, a deferral (by more than 6 months of the relevant due date) or capitalisation (in each case expressly agreed to by the relevant Senior Noteholders in accordance with the Senior Notes Documents before the relevant amount fell due) of any interest or fees (other than fees due to the Security Agent acting on its own behalf and not on behalf of the Senior Noteholders) which would have fallen due under the Senior Notes Documents prior to that time but for that deferral or capitalisation, to the extent that, at that time, payment of that interest or those fees has not been made.

Senior Notes Liabilities means the Liabilities owed by the Debtors to the Senior Notes Creditors under the Senior Notes Documents.

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

- (a) any amounts borrowed and not repaid or prepaid; and
- (b) the financial accommodation available (or potentially available),

under those Senior Notes Documents.

Senior Notes Principal Increase means in relation to an amendment or waiver of the Senior Notes Documents, the extent to which the Senior Notes Principal immediately after that amendment or waiver would (as a result of that amendment or waiver and after taking account of any repayment or cancellation to be effected at the same time as, or immediately after, that amendment or waiver), incrementally exceed the Senior Notes Principal immediately before that amendment or waiver.

Senior Notes Security Agency Agreement means any security agency agreement entered into between the Senior Notes Issuer and the Security Agent in respect of any Senior Notes.

Senior Termination Date means the date by which all the Senior Notes are scheduled to have been repaid in full pursuant to the Senior Notes Conditions.

Subordinated Debt Document means any agreement or instrument evidencing the terms of any Subordinated Liabilities.

Subordinated Lenders means a direct or indirect shareholder of the Parent or its Affiliate or a Third Party Cure Provider (other than a member of the Group) which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with a member of the Group and which is named on the signing pages as a Subordinated Lender or which becomes a Party as a Subordinated Lender in accordance with the terms of Clause 18 (Changes to the Parties).

Subordinated Liabilities means the Liabilities owed to the Subordinated Lenders by a member of the Group under the Subordinated Loan, as that term is defined in the Junior Facility Agreement.

Subscription Agreement means the agreement for subscription of the Senior Notes dated 30 September 2020 between the Senior Notes Issuer, the Parent as guarantor and J&T BANKA as manager.

Subsidiary has the meaning given to that term in the Junior Facility Agreement.

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).

Third Party Cure Provider means any person which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with a member of the Group pursuant to clause 4.2 (Loan to Value Ratio) of the Senior Notes Conditions or clause 22.3 (Equity cure) of the Junior Facility Agreement.

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

Transaction Security Documents means the Transaction Security Documents under and as defined in the Junior Facility Agreement, each to the extent that the relevant Security is provided by (or over the assets of or over the shares in) a member of the Group.

VAT means:

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

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) any **Creditor, Debtor, Hedge Counterparty, Junior Borrower, Junior Creditor, Junior Guarantor, Junior Lender, Parent, Party, Primary Creditor, Security Agent, Senior Noteholder, Senior Notes Creditor** or **Subordinated Lender** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
 - (ii) any **Creditor, Debtor, Hedge Counterparty, any Party, the Security Agent** or **Subordinated Lender** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
 - (iii) an **amount** includes an amount of cash and an amount of Non-Cash Consideration;
 - (iv) **assets** includes present and future properties, revenues and rights of every description;
 - (v) a **Debt Document** or any other agreement or instrument is (other than a reference to a **Debt Document** or any other agreement or instrument in **original form**) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
 - (vi) a **distribution** of or out of the assets of a member of the Group, includes a distribution of cash and a distribution of Non-Cash Consideration;
 - (vii) **enforcing** (or any derivation) the Transaction Security includes:
 - (A) the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor by the Security Agent; and
 - (B) the making of a demand by the Security Agent in respect of the Joint and Several Debt;
 - (viii) a **group of Creditors** includes all the Creditors and a **group of Primary Creditors** includes all the Primary Creditors and a **group of Junior Creditors** includes all the Junior Creditors;
 - (ix) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (x) the **original form** of a **Debt Document** or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
 - (xi) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

- (xii) **proceeds** of a Distressed Disposal or of a Debt Disposal includes proceeds in cash and in Non-Cash Consideration;
 - (xiii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
 - (xiv) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, Clause and Schedule headings are for ease of reference only.
 - (c) A Default (other than an Event of Default) is **continuing** if it has not been remedied or waived and an Event of Default is **continuing** if it has not been waived (unless this Agreement specifically provides otherwise).
 - (d) The determination that a Junior Payment Stop Notice is **outstanding** is to be made by reference to the provisions of Clause 5.3 (Issue of Junior Payment Stop Notice).

1.3 Czech terms

In this Agreement, where it relates to a Czech person or the context so requires, a reference to:

- (a) **bankruptcy or insolvency** includes *insolvenční řízení, konkurz, reorganizace and oddlužení*;
- (b) **passing a resolution for winding up** means *vydání rozhodnutí o úpadku*;
- (c) **being insolvent** includes being v úpadku due to over-indebtedness (*předluženost*) or inability to pay (*platební neschopnost*);
- (d) **Czech** means in or of the Czech Republic, **Cypriot** means in or of the Republic of Cyprus;
- (e) **expropriation, attachment, sequestration, distress or execution** includes *vyvlastnění, exekuce and výkon rozhodnutí*;
- (f) **liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer** includes *likvidátor, insolvenční správce* (including *predběžný správce, zástupce insolvenčního správce, oddělený insolvenční správce* and *zvláštní insolvenční správce*), *správce závodu* and *soudní exekutor*;
- (g) **share** includes a share (*akcie*), participation interest (*podíl*), business quota or other interest in a limited company, limited liability company, limited partnership or other form of incorporated entity in any jurisdiction; and
- (h) **winding up or dissolution** includes *likvidace, zrušení s likvidací* and *zrušení bez likvidace bez právního nástupce*.

1.4 Cypriot terms

In this Agreement, where it relates to a Cypriot person or the context so requires, a reference to:

- (a) **bankruptcy or insolvency** includes *πτώχευση ή αφερεγγυότητα*;
- (b) **passing a resolution for winding up** means *υιοθέτηση ψηφίσματος για διάλυση ή εκκαθάριση*;

- (c) **being insolvent** includes *ανικανότητα πληρωμής χρεών*;
- (d) **Cypriot** means in or of the Republic of Cyprus;
- (e) **expropriation, attachment, sequestration, distress or execution** includes *απαλλοτρίωση, κατάσχεση, εκτέλεση*;
- (f) **liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer** includes *εκκαθαριστής, παραλήπτης, διαχειριστής, εξεταστής ή άλλος λειτουργός παρόμοιας φύσης*;
- (g) **share** includes a share (*μετοχή*), ownership interest (*συμφέρον ιδιοκτησίας*), participation interest (*συμμετοχικό συμφέρον*), business quota or other interest (*επιχειρηματική ποσόστωση ή άλλο συμφέρον*) in a limited liability company (*εταιρεία περιορισμένης ευθύνης*), partnership (*συνεταιρισμό*) or other form of incorporated entity in any jurisdiction (*ή άλλη μορφή νομικής οντότητας οποιασδήποτε δικαιοδοσίας*); and
- (h) **winding up or dissolution** includes *εκκαθάριση ή διάλυση*.

1.5 Ukrainian terms

In this Agreement, where it relates to a Ukrainian person or the context so requires, a reference to:

- (a) **bankruptcy or insolvency** includes *провадження у справі про банкрутство, санація до відкриття провадження у справі про банкрутство, критичний фінансовий стан*;
- (b) **passing a resolution for winding up** means passing a resolution on liquidation (*прийняття рішення про ліквідацію*);
- (c) **being insolvent** includes being debtor *in провадження у справі про банкрутство, санація до відкриття провадження у справі про банкрутство, процедура фінансової реструктуризації*;
- (d) **Ukrainian** means in or of Ukraine;
- (e) **expropriation, attachment, sequestration, distress or execution** includes *вилучення, арешт, націоналізація, звернення стягнення, виконавче провадження*;
- (f) **liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer** includes *арбітражний керуючий, розпорядник майна, керуючий санацією, керуючий реструктуризацією, керуючий реалізацією, ліквідатор*;
- (g) **share** includes a share (*акція*), ownership interest, participation interest (*частка в статутному капіталі*) in a joint-stock company (*акціонерне товариство*), limited liability company (*товариство з обмеженою відповідальністю*) or other form of incorporated entity, enterprise in any jurisdiction; and
- (h) **winding up or dissolution** includes *ліквідація, припинення юридичної особи*.

2. RANKING AND PRIORITY

2.1 Primary Creditor Liabilities

Each of the Parties agrees that the Liabilities owed by the Debtors to the Primary Creditors shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:

- (a) **first**, the Senior Notes Liabilities and the Hedging Liabilities *pari passu* and without any preference between them; and
- (b) **second**, the Junior Liabilities *pari passu* and without any preference between them.

2.2 Transaction Security

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

2.3 Subordinated Liabilities

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

2.4 Creditor Representative Amounts

Subject to Clause 16 (Application of Proceeds) where applicable, nothing in this Agreement will prevent payment by the Parent or any Debtor of the Creditor Representative Amounts or the receipt and retention of such Creditor Representative Amounts by the Security Agent.

3. SENIOR NOTES CREDITORS AND SENIOR NOTES LIABILITIES

3.1 Payment of Senior Notes Liabilities

The Debtors may make Payments of the Senior Notes Liabilities at any time in accordance with the Senior Notes Documents.

3.2 Security: Senior Notes Creditors

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

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

Parties in respect of their Liabilities and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 2.2 (Transaction Security),

- (b) any guarantee, indemnity or other assurance against loss in respect of the Senior Notes Liabilities from any member of the Group in addition to those in:
 - (i) the original form of any Senior Notes Guarantees in each case granted by a Guarantor (as defined in the Senior Notes Conditions)
 - (ii) this Agreement;
 - (iii) any Common Assurance,

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

3.3 Restriction on Amendments and Waivers: Senior Notes Liabilities

The Senior Notes Creditors shall not amend or waive the terms of the Senior Notes Documents if the amendment or waiver is, in relation to the original form of the Senior Notes Documents an amendment or waiver which:

- (a) constitutes a Senior Notes Principal Increase other than envisaged and set out in the Senior Notes Documents;
- (b) constitutes an increase in the applicable Margin, or the inclusion of an additional margin, relating to the Senior Notes other than such an increase or inclusion which is contemplated by the original form of the Senior Notes Documents;
- (c) constitutes an increase in, or addition of, any fees or commission other than such an increase or addition which is:
 - (i) in consideration for the amendment or waiver of, or the giving of a consent under, any term of a Senior Notes Document;
 - (ii) in consideration for the performance of functions in connection with the refinancing or restructuring of the Senior Notes Liabilities;
 - (iii) contemplated by the original form of the Senior Notes Documents;
- (d) results in a Senior Notes Deferral;
- (e) results in any deferral of any scheduled repayment of the Senior Notes Liabilities (other than Liabilities due to the Security Agent acting on its own behalf and not on behalf of the Senior Noteholders) to a date more than 365 days after the Senior Termination Date;
- (f) results in a Senior Notes Interest/Fee Deferral; or
- (g) has the effect of making any member of the Group liable to make additional or increased payments other than:
 - (i) such additional or increased payments provided for under the original form of the Senior Notes Documents; or

- (ii) such an amendment or waiver which is permitted as a consequence of paragraphs (a) to (f) above,

unless in each case the prior consent of the Junior Creditors and each Hedge Counterparty is obtained.

4. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

4.1 Identity of Hedge Counterparties

No entity providing hedging arrangements to any Debtor shall be entitled to share in any of the Transaction Security and no liabilities and obligations arising in relation to hedging arrangements of any Debtor shall be treated as Hedging Liabilities unless that entity is or becomes a Party as a Hedge Counterparty.

4.2 Restriction on Payment: Hedging Liabilities

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

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

4.3 Permitted Payments: Hedging Liabilities

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

- (A) the relevant Debtor's obligation to make the Payment arises from:
 - I. a Credit Related Close-Out in relation to that Hedging Agreement; or
 - II. a Permitted Automatic Early Termination under that Hedging Agreement which arises as a result of an event relating to a Debtor; and
- (B) no Senior Notes Event of Default is continuing at the time of that Payment or would result from that Payment;
- (v) to the extent that no Senior Notes Event of Default is continuing or would result from that Payment and the relevant Debtor's obligation to make the Payment arises as a result of a close-out or termination arising as a result of:
 - (A) section 5(a)(vii) (*Bankruptcy*) of the 1992 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 1992 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
 - (B) section 5(a)(vii) (*Bankruptcy*) of the 2002 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 2002 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
 - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraph (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement) and the equivalent event of default has occurred with respect to the relevant Hedge Counterparty; or
 - (D) the relevant Debtor terminating or closing-out the relevant Hedging Agreement as a result of a Hedging Force Majeure and the Termination Event (as defined in the relevant Hedging Agreement in the case of a Hedging Agreement based on an ISDA Master Agreement) or the equivalent termination event (in the case of a Hedging Agreement not based on an ISDA Master Agreement) has occurred with respect to the relevant Hedge Counterparty; or
- (vi) if the Majority Senior Noteholders give prior consent to the Payment being made.
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid unless the prior consent of the Majority Senior Noteholders is obtained.
- (c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to Clause 4.4 (Payment Obligations Continue), not result in a default (however described) in respect of that Debtor under that Hedging Agreement.

4.4 Payment Obligations Continue

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 4.2 (Restriction on Payment: Hedging Liabilities) and 4.3 (Permitted Payments: Hedging Liabilities) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

4.5 No Acquisition of Hedging Liabilities

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

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

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

4.6 Amendments and Waivers: Hedging Agreements

- (a) Subject to paragraph (b) below, the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.
- (b) A Hedge Counterparty may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if:
 - (i) that amendment or waiver does not breach another term of this Agreement; and
 - (ii) that amendment or waiver would not result in a breach of any term of the Junior Finance Documents or the Senior Notes Conditions.

4.7 Security: Hedge Counterparties

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

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) this Agreement;
 - (ii) any Common Assurance; or
 - (iii) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (i) to (ii) above;
- (c) as otherwise contemplated by Clause 3.2 (Security: Senior Notes Creditors); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

4.8 Restriction on Enforcement: Hedge Counterparties

Subject to Clause 4.9 (Permitted Enforcement: Hedge Counterparties) and Clause 4.10 (Required Enforcement: Hedge Counterparties), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

4.9 Permitted Enforcement: Hedge Counterparties

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

Non-Credit Related Close-Outs

- (i) if, prior to a Distress Event, that termination or close-out would not result in a breach of any term of Junior Finance Documents or the Senior Notes Conditions;
- (ii) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;

Credit Related Close-Outs

- (i) if a Distress Event has occurred;
 - (ii) if an Event of Default has occurred under clause 9.1(f) (*Insolvency or Insolvency Motion*) of the Senior Notes Conditions, in relation to a Debtor which is party to that Hedging Agreement;
 - (iii) if the Majority Senior Noteholders give prior consent to that termination or close-out being made; or
 - (iv) on or immediately following a refinancing (or repayment) and cancellation in full of the Senior Notes Liabilities.
- (b) If a Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than 10 Business Days after notice of that default has been given to the Security Agent pursuant to paragraph (f) of Clause 21.3 (Notification of prescribed events), the relevant Hedge Counterparty:
- (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and
 - (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.
- (c) After the occurrence of an Insolvency Event in relation to any member of the Group, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that member of the Group to:
- (i) prematurely close-out or terminate any Hedging Liabilities of that member of the Group;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Hedging Liabilities;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Hedging Liabilities of that member of the Group; or
 - (iv) claim and prove in any insolvency process of that member of the Group for the Hedging Liabilities owing to it.

4.10 Required Enforcement: Hedge Counterparties

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
 - (i) the occurrence of a Senior Notes Acceleration Event and delivery to it of a notice from the Security Agent that Senior Notes Acceleration Event has occurred; and
 - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Instructing Group) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that that Senior Notes Acceleration Event occurred as a result of an arrangement made between any Debtor and any Primary Creditor with the purpose of bringing about that Senior Notes Acceleration Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under paragraph (b) of Clause 4.9 (Permitted Enforcement: Hedge Counterparties) (or would have been able to if that Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Security Agent (acting on the instructions of the Instructing Group).

4.11 Treatment of Payments Due to Debtors on Termination of Hedging Transactions

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

4.12 Terms of Hedging Agreements

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

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

- (i) a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement); or
- (ii) an event similar in meaning and effect to either of those described in paragraph (i) above (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),

that Hedging Agreement will:

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

5. JUNIOR CREDITORS AND JUNIOR LIABILITIES

5.1 Restriction on Payment: Junior Liabilities

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

- (a) that Payment is permitted under Clause 5.2 (Permitted Payments: Junior Liabilities); or
- (b) the taking or receipt of that Payment is permitted under paragraph (b)(iii) of Clause 5.11 (Permitted Enforcement: Junior Creditors).

5.2 Permitted Payments: Junior Liabilities

The Debtors and/or the Permitted Shareholders instead of the Debtors (unless it is forbidden under the Debt Documents if the Permitted Shareholders were the Debtors) may:

- (a) prior to the Senior Notes Discharge Date, make Payments to the Junior Creditors in respect of the Junior Liabilities then due in accordance with the Junior Facility Agreement if:
 - (i) no Junior Payment Stop Notice is outstanding;
 - (ii) a Junior Payment Stop Notice is outstanding but such Payments are permitted by clause 4.6 (*Restrictions on Distributions*) of the Senior Notes Conditions; or
 - (iii) such Payments are made:
 - (A) with the prior written consent of the Majority Senior Noteholders;
 - (B) on or after the Senior Notes Discharge Date.

5.3 Issue of Junior Payment Stop Notice

- (a) A Junior Payment Stop Notice is "outstanding" during the period from the date on which the Security Agent, acting on the basis of a notification from the Senior Notes Issuer, notifies the Junior Lender (with a copy to the Parent) that a Junior Payment Stop Event has occurred and is continuing, (a **Junior Payment Stop Notice**) until the first to occur of:
 - (i) the date which is 120 days after the date of issue of that Junior Payment Stop Notice;
 - (ii) if a Junior Standstill Period commences after the issue of a Junior Payment Stop Notice, the date on which that Junior Standstill Period expires;
 - (iii) the date on which the Junior Payment Stop Event in respect of which that Junior Payment Stop Notice was issued is no longer continuing;
 - (iv) the date on which the Security Agent (acting on the instruction of the Majority Senior Noteholders) cancels that Junior Payment Stop Notice by notice to the Junior Lender (with a copy to the Parent); and
 - (v) the Senior Notes Discharge Date.
- (b) No Junior Payment Stop Notice may be served by the Security Agent in reliance on a particular Junior Payment Stop Event more than six months after the Security Agent receives a notice from the Senior

Notes Issuer under the Senior Notes Conditions advising of the occurrence of the Event of Default constituting that Junior Payment Stop Event.

- (c) No more than one Junior Payment Stop Notice may be served with respect to the same event or set of circumstances.
- (d) No more than three Junior Payment Stop Notices may be served in any period of 365 days.

5.4 Effect of Junior Payment Stop Event

Any failure to make a Payment due under the Junior Finance Documents as a result of the issue of a Junior Payment Stop Notice shall not prevent:

- (a) the occurrence of an Event of Default as a consequence of that failure to make a Payment in relation to the Junior Facility Agreement; or
- (b) the issue of a Junior Enforcement Notice on behalf of Junior Creditors.

5.5 Payment Obligations and Capitalisation of Interest Continue

- (a) No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Junior Finance Document by the operation of Clauses 5.2 (Permitted Payments: Junior Liabilities) to 5.4 (Effect of Junior Payment Stop Event) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.
- (b) The accrual of interest in accordance with the Junior Facility Agreement shall continue notwithstanding the issue of a Junior Payment Stop Notice.

5.6 Cure of Payment Stop: Junior Creditors

If:

- (a) at any time following the issue of a Junior Payment Stop Notice, that Junior Payment Stop Notice ceases to be outstanding; and
- (b) the relevant Debtor then promptly pays to the respective Junior Creditors an amount equal to any Payments which had accrued under the respective Junior Facility Agreement and which would have been Permitted Junior Payments but for that Junior Payment Stop Notice,

then any Event of Default which may have occurred as a result of that suspension of Payments shall be waived and any Junior Enforcement Notice which may have been issued as a result of that Event of Default shall be waived, in each case without any further action being required on the part of the Junior Creditors.

5.7 Amendments and Waivers: Junior Creditors

- (a) Subject to paragraph (b) below, the Junior Creditors may amend or waive the terms of the Junior Finance Documents in accordance with their terms (and subject to any consent required under them) at any time.
- (b) Prior to the Senior Notes Discharge Date and subject to paragraph (c) below the Junior Creditors may not amend or waive the terms of the Junior Finance Documents if the amendment or waiver is, in relation to the original form of the Junior Finance Documents:
 - (i) an amendment to the principal amount of any Junior Facility;

- (ii) an amendment to, or waiver of, the amount, currency, dates or terms of repayment or prepayment (mandatory or otherwise) of any Junior Facility other than one:
 - (A) which is contemplated by the original form of the Junior Finance Documents; or
 - (B) the effect of which is solely to defer any scheduled repayment of the Junior Liabilities;
- (iii) an amendment to, or waiver of, the basis on which interest, fees or commission accrue, are calculated or are payable other than one:
 - (A) which is contemplated by the original form of the Junior Finance Documents;
 - (B) the effect of which is solely to convert cash pay interest to capitalised interest;
 - (C) which is:
 - I. an administrative change or correction; or
 - II. a correction of a manifest error,
 which is, in each case, not prejudicial to the Senior Notes Creditors;
- (iv) any other amendment or waiver the effect of which is to make any Debtor liable to make additional or increased payments; or
- (v) an amendment or waiver:
 - (A) which would result in any Debtor being subject to more onerous obligations under the representations, undertakings, financial covenants or events of default; and
 - (B) which has not been made to, or given in respect of, the equivalent Senior Notes Documents;
- (c) Paragraph (b) above shall not apply to any amendments or waivers made with the prior consent of the Majority Senior Noteholders.

5.8 Designation of Junior Finance Documents

If the terms of a document effect a change which would, if that change was effected by way of amendment to, or waiver of, the terms of a Junior Finance Document, require the consent of the Instructing Group under Clause 5.7 (Amendments and Waivers: Junior Creditors), that document shall not constitute a Junior Finance Document for the purposes of this Agreement or a "Finance Document" for the purposes of the relevant Junior Facility Agreement without the prior consent of the Instructing Group.

5.9 Security: Junior Creditors

At any time prior to the Senior Notes Discharge Date, the Junior Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from (or over the assets of or over the shares in) any member of the Group in respect of the Junior Liabilities owed to such Junior Creditors other than:

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:

- (i) the original form of the Junior Facility Agreement;
 - (ii) this Agreement; or
 - (iii) any Common Assurance; and
- (c) as otherwise contemplated by Clause 3.2 (Security: Senior Notes Creditors),
- unless the prior consent of the Instructing Group is obtained.

5.10 Restriction on Enforcement: Junior Creditors

Subject to Clause 5.11 (Permitted Enforcement: Junior Creditors), no Junior Creditor shall be entitled to take any Enforcement Action in respect of any of the Junior Liabilities prior to the Senior Notes Discharge Date.

5.11 Permitted Enforcement: Junior Creditors

- (a) Each Junior Creditor may take Enforcement Action which would be available to it but for Clause 5.10 (Restriction on Enforcement: Junior Creditors) in respect of any of the Junior Liabilities if at the same time as, or prior to, that action and subject to Clause 5.12 (Restriction on Enforcement against Debtors: Junior Creditors):
- (i) a Senior Notes Acceleration Event has occurred in which case each Junior Creditor may take the same Enforcement Action (but in respect of the Junior Liabilities) as constitutes that Senior Notes Acceleration Event;
 - (ii) prior to the Senior Notes Discharge Date:
 - (A) a Junior Lender has given notice (a **Junior Enforcement Notice**) to the Security Agent specifying that an Event of Default under the Junior Facility Agreement has occurred and is continuing; and
 - (B) a period (a **Junior Standstill Period**) of not less than:
 - I. 40 days in the case of an Event of Default under Clause 24.2 (Non-payment) of the Junior Facility Agreement;
 - II. 60 days in the case of an Event of Default under Clause 24.3 (Financial covenants) of the Junior Facility Agreement; or
 - III. 90 days in case of any Event of Default other than under paragraph I or II above,

has elapsed from the date on which that Junior Enforcement Notice becomes effective in accordance with Clause 22.4 (Delivery); and
 - (C) that Event of Default is continuing at the end of the Junior Standstill Period; or
 - (iii) the Majority Senior Noteholders have given their prior consent.
- (b) After the occurrence of an Insolvency Event in relation to any member of the Group, each Junior Creditor may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Junior Creditor in accordance with

Clause 8.4 (Filing of Claims)) exercise any right it may otherwise have against that member of the Group to:

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

5.12 Restriction on Enforcement against Debtors: Junior Creditors

- (a) Subject to paragraph (b) below, if the Security Agent (or any Receiver or Delegate appointed under any of the Security Documents) has given notice to the Junior Lender that the Transaction Security over shares in a Debtor or any Holding Company of a Debtor is being enforced (or that any formal steps are being taken to enforce that Transaction Security) by the sale or Appropriation of shares which are subject to that Transaction Security, no Junior Creditor may take Enforcement Action against that Debtor or against any Property of that Debtor in respect of any of the Junior Liabilities until the Security Agent (or that Receiver or Delegate) notifying the Junior Lender (which it shall do promptly) that such action is no longer being taken.
- (b) Paragraph (a) above shall not apply to action taken pursuant to paragraph (b) of Clause 5.11 (Permitted Enforcement: Junior Creditors).

5.13 Option to purchase: Junior Lender

- (a) The Junior Lender may, while the Junior Payment Stop Notice is outstanding by giving not less than 3 Business Days' notice to the Security Agent, require the transfer to it (or to any nominee or nominees) of all (or part) of the rights and obligations in respect of the Senior Notes Liabilities if:
 - (i) that transfer is lawful and subject to paragraph (ii) below, otherwise permitted by the terms of the Senior Notes Conditions;
 - (ii) any conditions relating to such a transfer contained in the Senior Notes Conditions and/or the Senior Notes Security Agency Agreement are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required; and
 - (iii) the Security Agent, on behalf of the Senior Noteholders, is paid an amount equal to the aggregate of:
 - (A) all of the Senior Notes Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Notes Documents if the Senior Notes were being prepaid by the relevant Debtors on the date of that payment; and
 - (B) all reasonably documented costs and expenses (including legal fees) incurred by the Senior Notes Creditors as a consequence of giving effect to that transfer;

- (iv) as a result of that transfer the Senior Notes Creditors have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
 - (v) an indemnity is provided from the Junior Lender (or from another third party acceptable to the Security Agent) in a form satisfactory to the Security Agent in respect of all losses which may be sustained or incurred by any Senior Notes Creditor in consequence of any sum received or recovered by any Senior Notes Creditor from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Senior Notes Creditor for any reason; and
 - (vi) the transfer is made without recourse to, or representation or warranty from, the Senior Notes Creditor or the Security Agent acting on its behalf, except that each Senior Notes Creditor or the Security Agent acting on its behalf shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) The Security Agent shall, at the request of the Junior Lender notify the Junior Lender of the sum of the amounts described in paragraphs (a)(iii)(A) and (B) above.
- (c) For the purpose of the transfer of the Senior Notes Liabilities to the Junior Lenders described above, each Senior Noteholder, by purchase of the Senior Notes, agrees to and authorises the Security Agent to effect such transfer on its behalf and, if requested by the Security Agent, will issue a special power of attorney. Each Senior Noteholder may cancel or revoke such authorisation or appointment only due to wilful misconduct of the Security Agent in substantial violation of an obligation from the Senior Notes Document and each Senior Noteholder further represents and confirms that when granting authorisations to the Security Agent under the Senior Notes Document, it is aware of the potential conflict of its interests on one and interests of the Security Agent on the other side. Each Senior Noteholder waives any claims arising from or resulting in any such conflicts of interest. Each Senior Noteholder further agrees that it shall not, by reason only of any such conflicts of interest, be entitled to terminate or withdraw any such authorisations granted to or appointments of the Security Agent in particular under this Clause.
- (d) As an alternative to the transfer of the Senior Notes Liabilities to the Junior Lenders described in paragraph (c) above, any Junior Lender may after a Senior Notes Event of Default by giving not less than 3 Business Days' notice to the Security Agent, provide a loan to the Senior Notes Issuer directly or through the Parent allowing it to exercise an early redemption of the Senior Notes at the option of the Senior Notes Issuer pursuant to clause 6.4 of the Senior Notes Conditions. Any amendment to the Junior Finance Documents required to implement such loan will be permitted notwithstanding any restrictions set out in Clause 5.7 (Amendments and Waivers: Junior Creditors).
- (e) As another alternative to the transfer of the Senior Notes Liabilities to the Junior Lenders described in paragraph (c) above, any Junior Lender may after the Senior Notes Acceleration Event by giving not less than 3 Business Days' notice to the Security Agent, arrange for repayment of the Senior Noteholders from the proceeds of a loan provided by it to the Senior Notes Issuer directly or through the Parent for repayment of the Senior Notes. Any amendment to the Junior Finance Documents required to implement such loan will be permitted notwithstanding any restrictions set out in Clause 5.7 (Amendments and Waivers: Junior Creditors).

6. SUBORDINATED LENDERS AND SUBORDINATED LIABILITIES

6.1 Subordinated Liabilities

Until the Final Discharge Date:

- (a) no Subordinated Lender shall demand or receive, and no Debtor shall (and shall ensure that no other member of the Group will) make, any payment, repayment or prepayment of any principal, interest or other amount on or in respect of, or any distribution in respect of, or any redemption, purchase or defeasance of, any Subordinated Liability in cash or in kind, except as permitted by Clause 6.2 (Permitted Payments: Subordinated Liabilities) or Clause 8.5 (Further Assurance – Insolvency Event);
- (b) neither a Subordinated Lender nor a Debtor shall exercise any set-off against any Subordinated Liability, except as permitted by Clause 6.2 (Permitted Payments: Subordinated Liabilities) or Clause 8.5 (Further Assurance – Insolvency Event);
- (c) no Subordinated Lender shall permit to subsist or receive, and no Debtor shall (and shall ensure that no other member of the Group will) create or permit to subsist any Security, or any guarantee, for, or in respect of, any Subordinated Liability;
- (d) no Subordinated Lender shall claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of any member of the Group other than in accordance with Clause 8.5 (Further Assurance – Insolvency Event) and applicable law;
- (e) no Subordinated Lender or a Debtor shall take or omit to take any action whereby the ranking and/or subordination contemplated by this Agreement may be impaired;
- (f) no Subordinated Lender or a Debtor shall permit any Subordinated Liability to be evidenced by a negotiable debt security instrument or other instrument of the same nature; and
- (g) no Subordinated Lender or a Debtor shall convert any Subordinated Liability into shares of a member of the Group, except through a Permitted Equisitisation.

6.2 Permitted Payments: Subordinated Liabilities

A member of the Group may make Payments in respect of the Subordinated Liabilities and the Subordinated Lenders may receive and retain, including by way of set-off, Payments in respect of, any Subordinated Liability, in accordance with the original form of the Subordinated Debt Documents (subject to any amendments permitted by this Agreement):

- (a) the Payment is not prohibited by the Senior Notes Conditions and the Junior Facility Agreement; or
- (b) the Instructing Group consents and the Junior Lender consents to that Payment being made; or
- (c) that Payment is made in accordance with Clause 8.5 (Further Assurance – Insolvency Event) after the occurrence of an Insolvency Event in relation to a member of the Group.

6.3 No Acquisition of Subordinated Liabilities

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

- (a) enter into any Liabilities Acquisition; or
- (b) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition unless the relevant Debtor beneficially owns such share capital as of the date of this Agreement,

in respect of any of the Subordinated Liabilities, unless the prior consent of the Instructing Group is obtained or unless expressly permitted by the Senior Notes Conditions and the Junior Facility Agreement.

6.4 Amendments and Waivers: Subordinated Lenders

Prior to the Final Discharge Date, the Subordinated Lenders may not amend, waive or agree the terms of any of the Subordinated Debt Documents unless:

- (a) the prior consent of the Instructing Group is obtained; or
- (b) that amendment, waiver or agreement is not prejudicial to the Primary Creditors (and in such case may include an increase of any facility amount, granting of new facility or postponement of any repayment date, changing interest rates, deferring interest payment dates or conversion of cash interest into capitalised interest).

6.5 Preservation of Subordinated Liabilities

Notwithstanding any term of this Agreement postponing, subordinating or preventing the payment of all or any part of the Subordinated Liabilities, the relevant Subordinated Liabilities shall, as between the members of the Group and the Subordinated Lenders, be deemed to remain owing or due and payable (and interest, default interest or indemnity payments shall continue to accrue) in accordance with the Subordinated Debt Documents.

6.6 Restriction on Enforcement: Subordinated Lenders

Subject to Clause 8.5 (Further Assurance – Insolvency Event), no Subordinated Lender shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Final Discharge Date.

7. PROTECTION OF SUBORDINATION

7.1 Continuing subordination

To the maximum extent permitted under applicable laws, the subordination provisions in this Agreement shall remain in full force and effect by way of continuing subordination until the Final Discharge Date, regardless of any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Debt Document during that period.

7.2 Immediate recourse

To the extent permitted under applicable law, each Junior Creditor and Subordinated Lender waives any right it may have of first requiring the Security Agent or any other Senior Noteholder to proceed against or enforce any other rights or security or claim payment from any person before claiming the benefit of this Agreement. This waiver applies irrespective of any provision of a Junior Finance Document or a Subordinated Debt Document to the contrary.

7.3 Representations: Subordinated Lenders

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

- (a) it is a legal entity, duly incorporated or established and existing under the laws of its jurisdiction of incorporation or formation;
- (b) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of this Agreement does not and will not conflict with:
 - (i) any law or regulation applicable to it;
 - (ii) its constitutional documents; or
 - (iii) any agreement or instrument binding upon it, in a way which would have a Material Adverse Effect (as defined in the Junior Facility Agreement).

8. EFFECT OF INSOLVENCY EVENT

8.1 Distributions

- (a) After the occurrence of an Insolvency Event in relation to any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to make that distribution to the Security Agent (or to such other person as the Security Agent shall direct) until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Security Agent shall apply distributions made to it under paragraph (a) above in accordance with Clause 16 (Application of Proceeds).

8.2 Set-Off

- (a) Subject to paragraph (b) below, to the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Creditor (except for the Security Agent) which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 16 (Application of Proceeds).
- (b) Paragraph (a) above does not apply to:
 - (i) any Close-Out Netting by a Hedge Counterparty;
 - (ii) any Payment Netting by a Hedge Counterparty; or
 - (iii) any Inter-Hedging Agreement Netting by a Hedge Counterparty.

8.3 Non-Cash Distributions

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

8.4 Filing of Claims

After the occurrence of an Insolvency Event in relation to any member of the Group, each Creditor irrevocably authorises the Security Agent, on its behalf, to:

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

8.5 Further Assurance – Insolvency Event

Each Creditor will:

- (a) do all things that the Security Agent requests in order to give effect to this Clause 8; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 8 or if the Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent or its nominee (on such terms as the Security Agent may reasonably require) to enable the Security Agent or its nominee to take such action.

8.6 Security Agent instructions

For the purposes of Clause 8.1 (Distributions), Clause 8.4 (Filing of Claims) and Clause 8.5 (Further Assurance – Insolvency Event) the Security Agent shall act:

- (a) on the instructions of the group of Primary Creditors entitled, at that time, to give instructions under Clause 11.1 (Enforcement Instructions) or Clause 11.2 (Manner of Enforcement); or
- (b) in the absence of any such instructions, as the Security Agent sees fit.

8.7 Limitation by applicable laws

Each of the provisions of this Clause 8 shall apply only to the extent permitted by applicable laws.

9. TURNOVER OF RECEIPTS

9.1 Turnover by the Creditors

Subject to Clause 9.2 (Exclusions) and to Clause 9.3 (Permitted Assurance and Receipts) if, at any time prior to the Final Discharge Date, any Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is neither:
 - (i) a Permitted Payment; nor
 - (ii) made in accordance with Clause 16 (Application of Proceeds);

- (b) other than where Clause 8.2 (Set-Off) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
 - (c) notwithstanding paragraphs (a) and (b) above, and other than where Clause 8.2 (Set-Off) applies, any amount:
 - (i) on account of, or in relation to, any of the Liabilities:
 - (A) after the occurrence of a Distress Event; or
 - (B) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
 - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,
- other than, in each case, any amount received or recovered in accordance with Clause 16 (Application of Proceeds);
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 16 (Application of Proceeds); or
 - (e) other than where Clause 8.2 (Set-Off) applies, any distribution in cash or in kind or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with Clause 16 (Application of Proceeds) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,

that Creditor (except for the Security Agent) will:

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

9.2 Exclusions

Clause 9.1 (Turnover by the Creditors) shall not apply to any receipt or recovery

- (a) by way of:
 - (i) Close-Out Netting by a Hedge Counterparty;
 - (ii) Payment Netting by a Hedge Counterparty; or

- (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty,
- (b) made in accordance with paragraphs (b) and (c) of Clause 16.2 (Prospective Liabilities).

9.3 Permitted Assurance and Receipts

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

- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation) provided that such arrangement does not trigger a Default or a mandatory prepayment under the Junior Facility Agreement or the Senior Notes Documents, if applicable; or
- (b) make any assignment or transfer permitted by Clause 18 (Changes to the Parties), which:
 - (i) is permitted by:
 - (A) the Senior Notes Conditions; or
 - (B) the Junior Facility Agreement; and
 - (ii) is not in breach of Clause 4.5 (No Acquisition of Hedging Liabilities); and
 - (iii) in the case of any Subordinated Lender, not prohibited by the relevant Subordinated Debt Document to which it is party,

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

9.4 Amounts Received by Debtors

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

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

9.5 Turnover of Non-Cash Consideration

For the purposes of this Clause 9, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to Clause 9.1 (Turnover by the Creditors) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 14.2 (Cash value of Non-Cash Recoveries).

10. REDISTRIBUTION

10.1 Recovering Creditor's Rights

- (a) Any amount paid or distributed by a Creditor (a **Recovering Creditor**) to the Security Agent under Clause 8 (Effect of Insolvency Event) or Clause 9 (Turnover of Receipts) shall be treated as having been paid or distributed by the relevant Debtor and shall be applied by the Security Agent in accordance with Clause 16 (Application of Proceeds).
- (b) On an application by the Security Agent pursuant to Clause 16 (Application of Proceeds) of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent by the Recovering Creditor (the **Shared Amount**) will be treated as not having been paid or distributed by that Debtor.

10.2 Reversal of Redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returned by that Recovering Creditor to that Debtor, then:
 - (i) each Party that received any part of that Shared Amount pursuant to an application by the Security Agent of that Shared Amount under Clause 9.1 (Turnover by the Creditors) (a **Sharing Party**) shall, upon request of the Security Agent, pay or distribute to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the **Redistributed Amount**); and
 - (ii) as between the relevant Debtor and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor.
- (b) The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Party.

10.3 Deferral of Subrogation

No Creditor or Debtor will exercise any rights which it may have by reason of the performance by it of its obligations under the Debt Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor which ranks ahead of it in accordance with the priorities set out in Clause 2 (Ranking and Priority) until such time as all of the Liabilities owing to each prior ranking Creditor (or, in the case of any Debtor, owing to each Creditor) have been irrevocably discharged in full. The Parties agree that (to the fullest extent permitted by the laws of the Czech Republic) Section 1937(2) of the Civil Code shall be excluded for the purposes of this Clause.

11. ENFORCEMENT OF TRANSACTION SECURITY

11.1 Enforcement Instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by the Instructing Group.

- (b) The Junior Lender shall at anytime following an Acceleration Event be entitled to request by a notice to the Security Agent setting out the proposed Enforcement Instruction that the Majority Senior Noteholders issue such Enforcement Instruction to the Security Agent (an **Initial Enforcement Notice**).
- (c) Subject to paragraph (d) below, the Security Agent will act in accordance with Enforcement Instructions received from the Majority Senior Noteholders.
- (d) If the Majority Senior Noteholders have not made a determination as to the method of Enforcement and have not instructed the Security Agent to act (and notified the Security Agent of that determination in writing) within 40 days of the date of the Initial Enforcement Notice, the Security Agent will act in accordance with Enforcement Instructions received from the Junior Lender until the Junior Discharge Date has occurred.
- (e) The Security Agent will act in accordance with Enforcement Instructions received from the Instructing Group from time to time. Subject to the Transaction Security having become enforceable in accordance with its terms, the Instructing Group may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.
- (f) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 11.1 (Enforcement Instructions).

11.2 Manner of Enforcement

If the Transaction Security is being enforced or other action as to Enforcement is being taken pursuant to Clause 11.1 (Enforcement Instructions), the Security Agent shall enforce the Transaction Security or take such other action as to Enforcement in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Security Agent) as the Instructing Group shall instruct or, in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate.

11.3 Exercise of Voting Rights

- (a) Each Creditor (other than the Security Agent acting on its own behalf) will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or similar proceedings relating to any member of the Group as instructed by the Security Agent and the Security Agent is authorised and directed to cast the vote of the relevant Senior Noteholders on their behalf in accordance with this paragraph (a).
- (b) The Security Agent shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by the Instructing Group.

11.4 Waiver of Rights

To the extent permitted under applicable law and subject to Clause 11.1 (Enforcement Instructions), Clause 11.2 (Manner of Enforcement), Clause 13.4 (Fair value) and Clause 16 (Application of Proceeds), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

11.5 Duties Owed

Each of the Secured Parties and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security, the duties of the Security Agent and of any Receiver or Delegate owed to the Junior Creditors in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to Clause 13.4 (Fair value), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors under general law.

11.6 Enforcement through Security Agent Only

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents (other than a Senior Notes Guarantee and a Hedging Guarantee) except through the Security Agent (save for a Senior Notes Guarantee and a Hedging Guarantee).

12. NON-DISTRESSED DISPOSALS

12.1 Definitions

In this Clause 12:

- (a) **Disposal Proceeds** means the proceeds of a Non-Distressed Disposal; and
- (b) **Non-Distressed Disposal** means a disposal of:
 - (i) an asset of a member of the Group; or
 - (ii) an asset which is subject to the Transaction Security,
to a person or persons outside the Group where:
 - (A) the Junior Lender notifies the Security Agent that the disposal is permitted under the Junior Finance Documents;
 - (B) (prior to the Senior Notes Discharge Date) a director of the Parent certifies for the benefit of the Security Agent that the disposal and, if the disposal is of the Charged Property, the release of Transaction Security is permitted, or not prohibited under the Senior Notes Documents and the Junior Lender authorises the release; and
 - (C) that disposal is not a Distressed Disposal.

12.2 Facilitation of Non-Distressed Disposals

- (a) If a disposal of an asset is a Non-Distressed Disposal, the Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) but subject to paragraph (b) below:
 - (i) to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;
 - (ii) where that asset consists of shares in the capital of a member of the Group, to release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group (including over its Property); and

- (iii) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraphs (i) and (ii) above and, if applicable, issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.
- (b) Each release of Transaction Security or any claim described in paragraph (a) above shall become effective only on, or if required by applicable law, immediately prior to or about the making of the relevant Non-Distressed Disposal.

13. DISTRESSED DISPOSALS AND APPROPRIATION

13.1 Facilitation of Distressed Disposals and Appropriation

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

- (a) ***release of Transaction Security/non-crystallisation certificates***: to release the Transaction Security or any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
- (b) ***release of liabilities and Transaction Security on a share sale/Appropriation (Debtor)***: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:
 - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
 - (ii) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
 - (iii) any other claim of a Subordinated Lender, or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;
- (c) ***release of liabilities and Transaction Security on a share sale/Appropriation (Holding Company)***: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of any Holding Company of a Debtor, to release:
 - (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;

- (ii) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and
 - (iii) any other claim of a Subordinated Lender or another Debtor over the assets of any Subsidiary of that Holding Company,
- on behalf of the relevant Creditors and Debtors;
- (d) ***facilitative disposal of liabilities on a share sale/Appropriation***: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of:
- (i) the Liabilities (other than Liabilities due to the Security Agent acting on its own behalf and not on behalf of the Senior Noteholders); or
 - (ii) the Debtors' Intra-Group Receivables, owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables (the **Transferee**) will not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Creditors and Debtors **provided that** notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement;
- (e) ***sale of liabilities on a share sale/Appropriation***: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of:
- (i) the Liabilities (other than Liabilities due to the Security Agent acting on its own behalf and not on behalf of the Senior Noteholders); or
 - (ii) the Debtors' Intra-Group Receivables, owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of:
 - (A) all (and not part only) of the Liabilities owed to the Primary Creditors (other than to the Security Agent acting on its own behalf and not on behalf of the Senior Noteholders); and
 - (B) all or part of any other Liabilities (other than Liabilities owed to the Security Agent acting on its own behalf and not on behalf of the Senior Noteholders) and the Debtors' Intra-Group Receivables,
- on behalf of, in each case, the relevant Creditors and Debtors;
- (f) ***transfer of obligations in respect of liabilities on a share sale/Appropriation***: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the **Disposed Entity**) and the Security Agent decides to transfer to another Debtor (the **Receiving Entity**) all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of the Debtor's Intra-Group Receivables, to execute and deliver or enter into any agreement to:

- (i) agree to the transfer of all or part of the obligations in respect of those Debtors' Intra-Group Receivables on behalf of the relevant Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
- (ii) to accept the transfer of all or part of the obligations in respect of those Debtors' Intra-Group Receivables on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Debtors' Intra-Group Receivables are to be transferred.

13.2 Form of consideration for Distressed Disposals and Debt Disposals

Subject to Clause 14.5 (Security Agent Protection), a Distressed Disposal or a Debt Disposal may be made in whole or in part for consideration in the form of cash or, if not for cash, for Non-Cash Consideration which is acceptable to the Security Agent.

13.3 Proceeds of Distressed Disposals and Debt Disposals

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

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

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

13.4 Fair value

- (a) In the case of:

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

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

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

- (iii) that Distressed Disposal or Liabilities Sale is made pursuant to a Competitive Sales Process; or
- (iv) a Financial Adviser appointed by the Security Agent pursuant to Clause 13.5 (Appointment of Financial Adviser) has delivered a Fairness Opinion to the Security Agent in respect of that Distressed Disposal or Liabilities Sale.

13.5 Appointment of Financial Adviser

- (a) Without prejudice to Clause 17.9 (Rights and Discretions), the Security Agent may engage, or approve the engagement of, (in each case on such terms as it may consider appropriate (including, without limitation, restrictions on that Financial Adviser's liability and the extent to which any advice, valuation or opinion may be relied on or disclosed)), pay for and rely on the services of a Financial Adviser to provide advice, a valuation or an opinion in connection with:
 - (i) a Distressed Disposal or a Debt Disposal;
 - (ii) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal; or
 - (iii) any amount of Non-Cash Consideration which is subject to Clause 9.1 (Turnover by the Creditors).
- (b) For the purposes of paragraph (a) above, the Security Agent shall act:
 - (i) on the instructions of the Instructing Group if the Financial Adviser is providing a valuation for the purposes of Clause 14.2 (Cash value of Non-Cash Recoveries); or
 - (ii) otherwise in accordance with Clause 13.6 (Security Agent's Actions).

13.6 Security Agent's Actions

For the purposes of Clause 13.1 (Facilitation of Distressed Disposals and Appropriation), Clause 13.2 (Form of consideration for Distressed Disposals and Debt Disposals) and Clause 13.4 (Fair value) the Security Agent shall act:

- (a) in the case of an Appropriation or if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 11.2 (Manner of Enforcement); and
- (b) in any other case:
 - (i) on the instructions of the Instructing Group; or
 - (ii) in the absence of any such instructions, as the Security Agent sees fit.

14. NON-CASH RECOVERIES

14.1 Security Agent and Non-Cash Recoveries

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

- (a) distribute those Non-Cash Recoveries pursuant to Clause 16 (Application of Proceeds) as if they were Cash Proceeds;

- (b) hold, manage, exploit, collect, realise and dispose of those Non-Cash Recoveries; and
- (c) hold, manage, exploit, collect, realise and distribute any resulting Cash Proceeds.

14.2 Cash value of Non-Cash Recoveries

- (a) The cash value of any Non-Cash Recoveries shall be determined by reference to a valuation obtained by the Security Agent from a Financial Adviser appointed by the Security Agent pursuant to Clause 13.5 (Appointment of Financial Adviser) taking into account any notional conversion made pursuant to Clause 16.4 (Currency Conversion).
- (b) If any Non-Cash Recoveries are distributed pursuant to Clause 16 (Application of Proceeds), the extent to which such distribution is treated as discharging the Liabilities shall be determined by reference to the cash value of those Non-Cash Recoveries determined pursuant to paragraph (a) above.

14.3 Security Agent and Non-Cash Recoveries

- (a) Subject to paragraph (b) below and to Clause 14.4 (Alternative to Non-Cash Consideration), if, pursuant to Clause 16.1 (Order of Application), the Security Agent receives Non-Cash Recoveries for application towards the discharge of any Liabilities, the Security Agent shall apply those Non-Cash Recoveries in accordance with the Junior Facility Agreement and the Senior Notes Conditions as if they were Cash Proceeds.
- (b) The Security Agent may:
 - (i) use any reasonably suitable method of distribution, as it may determine in its discretion, to distribute those Non-Cash Recoveries in the order of priority that would apply under the Junior Facility Agreement and the Senior Notes Conditions if those Non-Cash Recoveries were Cash Proceeds;
 - (ii) hold any Non-Cash Recoveries through another person (Clause 17.22(c) shall apply for the liability of the Security Agent for actions of such person); and
 - (iii) hold any amount of Non-Cash Recoveries for so long as the Security Agent shall think fit for later application pursuant to paragraph (a) above.

14.4 Alternative to Non-Cash Consideration

- (a) If any Non-Cash Recoveries are to be distributed pursuant to Clause 16 (Application of Proceeds), the Security Agent shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify the Primary Creditors entitled to receive those Non-Cash Recoveries pursuant to that distribution (the **Entitled Creditors**).
- (b) If:
 - (i) it would be unlawful for an Entitled Creditor to receive such Non-Cash Recoveries (or it would otherwise conflict with that Entitled Creditor's constitutional documents for it to do so); and
 - (ii) that Entitled Creditor promptly so notifies the Security Agent and supplies such supporting evidence as the Security Agent may reasonably require,

that Primary Creditor shall be a **Cash Only Creditor** and the Non-Cash Recoveries to which it is entitled shall be **Retained Non-Cash**.

- (c) To the extent that, in relation to any distribution of Non-Cash Recoveries, there is a Cash Only Creditor:
 - (i) the Security Agent shall not distribute any Retained Non-Cash to that Cash Only Creditor (or to the Security Agent on behalf of that Cash Only Creditor) but shall otherwise treat the Non-Cash Recoveries in accordance with this Agreement;
 - (ii) if that Cash Only Creditor is a Senior Noteholder the Security Agent shall notify the relevant Junior Creditor of that Cash Only Creditor's identity and its status as a Cash Only Creditor; and
 - (iii) to the extent notified pursuant to paragraph (ii) above, the Security Agent shall distribute any of those Non-Cash Recoveries to that Cash Only Creditor.
- (d) Subject to Clause 14.5 (Security Agent Protection), the Security Agent shall hold any Retained Non-Cash and shall, acting on the instructions of the Cash Only Creditor entitled to it, manage, exploit, collect, realise and dispose of that Retained Non-Cash for cash consideration and shall distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (Application of Proceeds).
- (e) On any such distribution of Cash Proceeds which are attributable to a disposal of any Retained Non-Cash, the extent to which such distribution is treated as discharging the Liabilities due to the relevant Cash Only Creditor shall be determined by reference to:
 - (i) the valuation which determined the extent to which the distribution of the Non-Cash Recoveries to the other Entitled Creditors discharged the Liabilities due to those Entitled Creditors; and
 - (ii) the Retained Non-Cash to which those Cash Proceeds are attributable.
- (f) Each Primary Creditor shall, following a request by the Security Agent (acting in accordance with Clause 13.6 (Security Agent's Actions)), notify the Security Agent of the extent to which paragraph (b)(i) above would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries.

14.5 Security Agent Protection

- (a) No Distressed Disposal or Debt Disposal may be made in whole or part for Non-Cash Consideration if the Security Agent has reasonable grounds for believing that its receiving, distributing, holding, managing, exploiting, collecting, realising or disposing of that Non-Cash Consideration would have an adverse effect on it.
- (b) If Non-Cash Consideration is distributed to the Security Agent pursuant to Clause 9.1 (Turnover by the Creditors) the Security Agent may, at any time after notifying the Creditors entitled to that Non-Cash Consideration and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Non-Cash Consideration for cash consideration (and distribute any Cash Proceeds of that Non-Cash Consideration to the relevant Creditors in accordance with Clause 16 (Application of Proceeds)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.
- (c) If the Security Agent holds Retained Non-Cash for a Cash Only Creditor (each as defined in Clause 14.4 (Alternative to Non-Cash Consideration)) the Security Agent may at any time, after notifying that Cash Only Creditor and notwithstanding any instruction from a Creditor or group of

Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Retained Non-Cash for cash consideration (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (Application of Proceeds)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Retained Non-Cash would have an adverse effect on it.

15. FURTHER ASSURANCE – DISPOSALS AND RELEASES

- (a) Following the receipt of the notice from the Senior Notes Issuer that all Senior Notes Liabilities have been repaid and the notice from the Junior Lender that the Junior Discharge Date has occurred, the Security Agent shall without undue delay following a written request of the Parent (and otherwise without any further enquiry or evidence), issue a written statement to the Parent confirming that the Final Discharge Date has occurred and the Transaction Security has thus terminated and provide the Parent with all reasonable cooperation (including execution and delivery all waivers, termination agreements or other documents and evidence to the Parent) which may be required in order to deregister the Transaction Security in the relevant public registers and evidences.
- (b) Each Creditor and Debtor shall:
 - (i) do all things (to the extent legally possible) that the Security Agent requests in order to give effect to Clause 12 (Non-Distressed Disposals), Clause 13 (Distressed Disposals and Appropriation) and Clause 15 (Further Assurance – Disposals and Releases) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary under the applicable law to give effect to the releases or disposals contemplated by those Clauses); and
 - (ii) if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent (to the extent the Creditor or Debtor is entitled to take that action),

provided that the proceeds of those disposals are applied in accordance with Clause 12 (Non-Distressed Disposals) or Clause 13 (Distressed Disposals and Appropriation) as the case may be.

16. APPLICATION OF PROCEEDS

16.1 Order of Application

Subject to Clause 16.2 (Prospective Liabilities), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 16, the **Recoveries**) shall be applied at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 16), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent, (other than in respect of the Joint and Several Debt), any Receiver or any Delegate and in payment to the Security Agent of their respective Creditor Representative Amounts;
- (b) in discharging all reasonably documented costs and expenses incurred by any Primary Creditor in connection with any realisation or enforcement of the Transaction Security (including any stamp taxes payable in Cyprus in relation to the Transaction Security) taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 8.5 (Further Assurance – Insolvency Event);

- (c) in payment or distribution to:
 - (i) the Security Agent on behalf of the other Senior Notes Creditors; and
 - (ii) the Hedge Counterparties,
 for application towards the discharge of:
 - (A) the Senior Notes Liabilities (in accordance with the terms of the Senior Notes Documents); and
 - (B) the Hedging Liabilities (on a *pro rata* basis between the Hedging Liabilities of each Hedge (Counterparty);
 on a *pro rata* basis between paragraphs (A) and (B) above.
- (d) in payment or distribution to the Junior Creditors for application (in accordance with the terms of the Junior Finance Documents) towards the discharge of the Junior Liabilities;
- (e) if none of the Debtors is under any further actual or contingent liability under any Senior Notes Documents, Hedging Agreement or Junior Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and
- (f) the balance, if any, in payment or distribution to the relevant Debtor.

16.2 Prospective Liabilities

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

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

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

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

- (b) Without affecting generality of paragraph (a) above, the Security Agent may for the purposes of making distribution in accordance with paragraph (c) of Clause 16.1 (Order of Application) and calculating pro rata shares of the Senior Notes Liabilities and Hedging Liabilities assume that the Hedging Liabilities owed to a Hedge Counterparty are equal to the Exposure of the relevant Hedge Counterparty. Any amounts so allocated to the Hedging Liabilities which would but for this paragraph

(b) be allocated to the Senior Notes Liabilities shall be held in accordance with paragraph (a) above for later distribution in accordance with paragraph (c) of Clause 16.1 (Order of Application).

- (c) If, for any reason, at any time from the date on which all Hedging Liabilities have matured and/or been finally quantified, any Senior Notes Liabilities remain unpaid and as a result of operation of paragraph (b) above, losses are not borne by the Senior Noteholders and the Hedge Counterparties in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures of all the Senior Noteholders and the Hedge Counterparties at the Enforcement Date, the Hedge Counterparties will make such payments to the Security Agent (on behalf of the Senior Noteholders) as the Security Agent shall require to put the Senior Noteholders and the Hedge Counterparties in such a position that (after taking into account such payments) those losses are borne in those proportions.
- (d) Before each occasion on which it intends to implement the provisions of paragraphs (b) and (c) above, the Security Agent shall send notice to each Hedge Counterparty requesting that it notify it of its Exposure.
- (e) The provisions of paragraphs (b) and (c) above shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate.
- (f) Without prejudice to the generality of paragraph (e) above, if the provisions of paragraphs (b) and (c) above have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of the revised Exposures.

16.3 Investment of Cash Proceeds

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

16.4 Currency Conversion

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

16.5 Permitted Deductions

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

16.6 Good Discharge

- (a) Any distribution or payment made in respect of the Secured Obligations by the Security Agent to the Primary Creditors shall be a good discharge, to the extent of that payment or distribution, by the Security Agent:
 - (i) in the case of a payment made in cash, to the extent of that payment; and
 - (ii) in the case of a distribution of Non-Cash Recoveries, as determined by Clause 14.2 (Cash value of Non-Cash Recoveries).
- (b) The Security Agent is under no obligation to make the payments to the Hedge Counterparties under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Primary Creditor are denominated pursuant to the relevant Debt Document.

16.7 Calculation of Amounts

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

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

17. THE SECURITY AGENT

17.1 Appointment of the Security Agent

- (a) Each Junior Creditor appoints the Security Agent to act as its agent under and in connection with the Junior Finance Documents.
- (b) Each Junior Creditor and the Senior Notes Issuer authorises the Security Agent to act as the sole party to the Security Documents (for whose benefit the respective Transaction Security is established) and to perform duties, obligations and responsibilities to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Security Documents and other relevant Debt Documents together with any other incidental rights, powers, authorities and discretions.

- (c) The appointment and authorisation of the Security Agent to act as security agent and creditor under Section 20 and the following of Act on Bonds to the benefit of the Senior Noteholders under and in connection with the Senior Notes Documents and the Act on Bonds by the Senior Noteholders will be confirmed by subscription and/or purchase of the Senior Notes as set out in the Senior Notes Conditions.
- (d) The Parties acknowledge that the Security Agent and the Senior Notes Issuer will, on or around the date of this Agreement, enter into the Senior Notes Agency Agreement as contemplated in the Act on Bonds. If the Senior Notes Agency Agreement sets out additional rights and obligations and conditions for the replacement and resignation of the Security Agent than this Agreement, in particular by reference to the provisions under the Act on Bonds, such as for instance the change and replacement of the Security Agent, the Parties have agreed not to interpret it as a conflict between the Senior Notes Agency Agreement and this Agreement.
- (e) As follows from Section 20a(7) of Act on Bonds, the Senior Noteholders are not entitled to exercise any rights under the Senior Notes in relation to security, including the Transaction Security, to the extent such rights are exercised (or have been exercised) by the Security Agent.

17.2 Security Agent as Joint and Several Creditor – Junior Creditor

- (a) The Security Agent is, in relation to any amounts outstanding under a Junior Finance Document from any of the Debtors to each Junior Creditor, a joint and several creditor of such Debtor together with such Junior Creditor. The Security Agent shall be entitled for itself in its capacity as a Secured Party (as a joint and several creditor of the Debtors together with each individual Junior Creditor) to claim from each Debtor payment of any amount owed by such Debtor to each Junior Creditor under each Junior Finance Document (including this Agreement) and each of the Debtors undertakes to pay any and all such amounts to the Security Agent pursuant to this Clause 17.2.
- (b) Each Junior Creditor acknowledges and confirms that: (i) the Security Agent is a joint and several creditor together with each individual Junior Creditor under this Clause 17.2; and (ii) the Transaction Security is established in favour of the Security Agent and as such, each Junior Creditor shall exercise its rights under the Debt Documents that may jeopardize in any way the existence or applicability of the Transaction Security (including any claim or enforcement of any monetary receivable against any of the Debtors), exclusively through the Security Agent.
- (c) For the avoidance of doubt, any Junior Creditor shall not be a joint and several creditor of the Debtors with respect to other Junior Creditors, if any.
- (d) For the purpose of this Clause, the Parties acknowledge and confirm that by payment of all amounts outstanding under the Junior Finance Documents to the Security Agent, the obligation of a Debtor to pay any amounts outstanding under the Junior Finance Documents in favour of a Junior Creditor has ceased to exist as follows from Section 1877 of the Civil Code.

17.3 Security Agent as Joint and Several Creditor – Hedge Counterparties

- (a) The Security Agent is, in relation to any amounts outstanding under the Hedging Agreements from any of the Debtors to any Hedge Counterparty, a joint and several creditor of such Debtor together with each such individual Hedge Counterparty. The Security Agent shall be entitled for itself in its capacity as a Secured Party (as a joint and several creditor of the Debtors together with each individual Hedge Counterparty) to claim from each Debtor payment of any amount owed by such Debtor to any Hedge Counterparty under each Hedging Agreement to which they are parties and each of the Debtors undertakes to pay any and all such amounts to the Security Agent pursuant to this Clause 17.3.

- (b) Each Hedge Counterparty acknowledges and confirms that: (i) the Security Agent is a joint and several creditor together with each individual Hedge Counterparty under this Clause 17.3; and (ii) the Transaction Security is established in favour of the Security Agent and as such, each Hedge Counterparty shall exercise its rights under the Debt Documents that may jeopardize in any way the existence or applicability of the Transaction Security (including any claim or enforcement of any monetary receivable against any of the Debtors), exclusively through the Security Agent.
- (c) For the avoidance of doubt, none of the Hedge Counterparties shall be a joint and several creditor of the Debtors with respect to the other Hedge Counterparties.
- (d) For the purpose of this Clause, the Parties acknowledge and confirm that by payment of all amounts outstanding under the Hedging Agreements to the Security Agent, the obligation of a Debtor to pay any amounts outstanding under the Hedging Agreements in favour of the Hedge Counterparty has ceased to exist as follows from Section 1877 of the Civil Code.

17.4 Instructions

- (a) The Security Agent shall:
 - (i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Instructing Group; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in accordance with instructions given to it by that Creditor or group of Creditors).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save for the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Instructing Group shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.
- (d) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clauses 17.7 (No Duty to Account) to Clause 17.12 (Exclusion of Liability), Clause 17.16 (Confidentiality) to Clause 17.22 (Insurance by Security Agent) and Clause 17.25 (Acceptance of Title);
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:

- (A) Clause 12 (Non-Distressed Disposals);
 - (B) Clause 16.1 (Order of Application);
 - (C) Clause 16.2 (Prospective Liabilities); and
 - (D) Clause 16.5 (Permitted Deductions).
- (e) If giving effect to instructions given by the Instructing Group would (in the Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent but with the exception of the Security Agent representing the Senior Noteholders) whose consent would have been required in respect of that Intercreditor Amendment.
- (f) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:
- (i) it has not received any instructions as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,
- the Security Agent shall:
- (A) other than where paragraph (B) below applies, do so having regard to the interests of all the Secured Parties; or
 - (B) if (in its opinion) there is a Creditor Conflict in relation to the matter in respect of which the discretion is to be exercised, do so having primary regard to the interests of all the Senior Notes Creditors; when exercising any discretion to exercise a right, power or authority solely as security agent and creditor under Section 20 and the following of Act on Bonds to the benefit of the Senior Noteholders, the Security Agent will do so having regard to the interests of all the Senior Noteholders.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the provisions of Clause 11 (Enforcement of Transaction Security) and the remainder of this Clause 17.4, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

17.5 Duties of the Security Agent

- (a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:
 - (i) forward to the Junior Lender and to each Hedge Counterparty a copy of any document received by the Security Agent from any Debtor under any Junior Debt Document; and
 - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.

- (c) Except where a Debt Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) Without prejudice to Clause 21.3 (Notification of prescribed events), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Primary Creditors.
- (e) To the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, the Security Agent shall upon a request by that Party, promptly notify that Party of the relevant Security Agent's Spot Rate of Exchange.
- (f) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied) and, with respect to the Senior Noteholders, also those duties, obligations and responsibilities set out in the Act on Bonds.

17.6 No Fiduciary Duties to Debtors or Subordinated Lenders

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

17.7 No Duty to Account

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

17.8 Business with the Group

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

17.9 Rights and Discretions

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

- (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Secured Parties) that:
- (i) no Default or Event of Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and
 - (iii) any notice made by the Parent is made on behalf of and with the consent and knowledge of all the Debtors.
- (c) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Primary Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under this Agreement.
- (h) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

17.10 Responsibility for Documentation

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

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

17.11 No Duty to Monitor

The Security Agent shall not be bound to enquire:

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

17.12 Exclusion of Liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document or the Security Property;
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may to the maximum extent permitted under applicable laws rely on this Clause.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Primary Creditor,

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

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

17.13 Junior Creditors' Indemnity to the Security Agent

- (a) Each Junior Creditor shall (in the proportion that the Junior Liabilities due to it bear to the aggregate of the Junior Liabilities for the time being (or, if the Junior Liabilities due to the Primary Creditors are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within five Business Days of demand, against any reasonably documented cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).
- (b) Subject to paragraph (c) below and prior consultation, the Parent shall, within five Business Days of demand, reimburse any Junior Creditor for any payment that Junior Creditor makes to the Security Agent pursuant to paragraph (a) above. The Parent shall be entitled to receive the relevant documents

evidencing the costs, loss or liability incurred by the Security Agent which is to be reimbursed under this paragraph (b).

- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Junior Creditor claims reimbursement relates to a liability of the Security Agent to a Debtor or liability reimbursed by the Senior Notes Issuer pursuant to Clause 17.14 (Senior Notes Issuer's Indemnity to the Security Agent).

17.14 Senior Notes Issuer's Indemnity to the Security Agent

The Senior Notes Issuer shall (in the proportion that the Senior Notes Liabilities bear to the aggregate of the Liabilities due to all the Primary Creditors for the time being (or, if the Liabilities due to the Primary Creditors are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within five Business Days of demand, against any reasonably documented cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).

17.15 Resignation of the Security Agent

- (a) The Security Agent may resign by giving one month's prior termination notice (the termination period will start running on the first day of the month following the month in which the termination notice is delivered) to the Primary Creditors and the Parent, in which case the Majority Senior Noteholders, the Junior Lenders and the Hedge Counterparties must appoint a successor Security Agent. Subject to this paragraph (a), the Parties have agreed that the Senior Notes Issuer or the Security Agent will make reasonable efforts to put to vote at the Senior Noteholders' meeting a successor Security Agent approved by the Junior Lenders and each Hedge Counterparty prior to that meeting. The Junior Lenders, the Hedge Counterparties, the Security Agent and the Senior Notes Issuer, if its participation is considered desirable by the Junior Lenders, the Hedge Counterparties and the Security Agent, undertake to cooperate so that an agreement on the successor Security Agent is made without undue delay. If the Junior Lenders and each Hedge Counterparty do not approve a successor Security Agent within 10 days' following the first nomination of a successor Security Agent by any Junior Lender, a Hedge Counterparty or the Senior Notes Issuer, the Parties agree that a successor Security Agent will be appointed by the Majority Senior Noteholders and the Junior Lenders and the Hedge Counterparties agree that such appointment will be binding upon them. The Senior Notes Issuer also undertakes to cooperate, including arranging for an extract from the Senior Noteholders' evidence to determine individual Senior Noteholders, in order to reach an agreement on a successor Security Agent before it is put to vote at the Senior Noteholders' meeting.
- (b) The above procedure on appointment of a successor Security Agent also applies in the following circumstances (and as set out in more detail in the Senior Notes Agency Agreement):
 - (i) the Czech National Bank has imposed a receivership (in Czech *přímá správa* or *zvláštní správa*) or other measure pursuant to the Act No. 374/2015 Coll., on Recovery and Resolution in the Financial Market or the Act No. 21/1992 Coll., on banks, as amended, on the Security Agent that might have adverse effect on performance of function of the Security Agent and its obligations under the Debt Documents, the Act on Bonds and any other relevant laws;
 - (ii) the Security Agent decided on its dissolution or a court did so;
 - (iii) an insolvency application in relation to the Security Agent or its property was filed and such application is not evidently groundless;

- (iv) the Security Agent is in default with exercise or performance of its rights and obligations of the Security Agent for longer than 30 Business Days and the Primary Creditors could incur damage due to such default; or
- (v) the Senior Noteholders owning cumulatively at least 5% of the aggregate nominal amount of the Senior Notes demand a replacement of the Security Agent,

and if such procedure, i.e. an approval of the Junior Lenders and the Hedge Counterparties with a successor Security Agent is not, or cannot be, obtained prior to a successor Security Agent is put to vote at the Senior Noteholders' meeting, a successor Security Agent will be appointed by the Majority Senior Noteholders and such appointment will be binding upon the Junior Creditors.

- (c) The retiring Security Agent shall make available to the successor Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents. The Parent shall, within ten Business Days of demand, reimburse the retiring Security Agent for the amount of all reasonable and documented costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (d) The Security Agent's resignation notice and any other change of the Security Agent shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer and/or replacement of all the Security Property to that successor.
- (e) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (d) above) but shall remain entitled to the benefit of this Clause 17 and Clause 20.1 (Indemnity to the Security Agent) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (f) A successor Security Agent must always be a bank with the seat in the Czech Republic.

17.16 Confidentiality

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

17.17 Information from the Creditors

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

17.18 Credit Appraisal by the Secured Parties

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

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

17.19 Security Agent's Management Time and Additional Remuneration

- (a) Any amount payable to the Security Agent under Clause 17.13 (Junior Creditors' Indemnity to the Security Agent), Clause 19 (Costs and Expenses) or Clause 20.1 (Indemnity to the Security Agent) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Parent and the Primary Creditors, and is in addition to any other fee paid or payable to the Security Agent.
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default; or
 - (ii) the Security Agent being requested by a Debtor or the Instructing Group to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Debt Documents; or

- (iii) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

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

- (c) If the Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an internationally recognised investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent (the costs of the internationally recognised investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the Parties.

17.20 Reliance and Engagement Letters

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

17.21 No Responsibility to Perfect Transaction Security

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

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

17.22 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:

- (i) to insure any of the Charged Property;
- (ii) to require any other person to maintain any insurance; or
- (iii) to verify any obligation to arrange or maintain insurance contained in any Debt Document,

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

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any

material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Instructing Group requests it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

17.23 Delegation by the Security Agent

- (a) If allowed by any applicable law and subject to three Business Days' prior notice to the Parent, each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties and any applicable law.
- (c) Without prejudice to Clause 17.12 (Exclusion of Liability), when the Security Agent, Receiver or Delegate delegates any right, power, authority or discretion to any third party, it shall be responsible for (i) the choice of any such third party and (ii) the general oversight for actions of such third party. In addition, the Security Agent shall be responsible for (i) the choice of any Receiver or Delegate and (ii) the general oversight for actions of such Receiver or Delegate.

17.24 Additional Security Agents

- (a) If allowed by any applicable law, the Security Agent may, at any time, appoint (and subsequently remove) any person to act as a separate security agent jointly with it:
 - (i) if it considers that appointment to be in the interests of the Secured Parties;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,

and the Security Agent shall give prior notice to the Parent and the Primary Creditors of that appointment.

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

17.25 Acceptance of Title

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

17.26 Subordinated Lenders and Debtors: Power of Attorney

Each Subordinated Lender and Debtor irrevocably appoints the Security Agent to be its attorney to do anything which that Subordinated Lender or Debtor has authorised the Security Agent to do under this Agreement (and the Security Agent may delegate that power on such terms as it sees fit).

18. CHANGES TO THE PARTIES

18.1 Assignments and Transfers

No Party may:

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

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

18.2 Change of Junior Lender

(a) A Junior Lender may:

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

in respect of any Debt Documents or the Liabilities if:

- (A) that assignment or transfer is in accordance with the terms of the Facility Agreement to which it is a party; and
- (B) any assignee or transferee has (if not already a Party as a Junior Lender (as the case may be)) acceded to this Agreement, as a Junior Lender (as the case may be), pursuant to Clause 18.6 (Creditor Accession Agreement).

18.3 Change of Hedge Counterparty

A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already a Party as a Hedge Counterparty) acceded to this Agreement pursuant to Clause 18.6 (Creditor Accession Agreement) as a Hedge Counterparty.

18.4 Change of Subordinated Lender

Subject to the terms of the other Debt Documents, any Subordinated Lender may:

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

in respect of the Subordinated Liabilities to another direct or indirect shareholder of the Parent or the Third Party Cure Provider if that shareholder or a Third Party Cure Provider has (if not already a Party as a Subordinated Lender) acceded to this Agreement as a Subordinated Lender, pursuant to Clause 18.6 (Creditor Accession Agreement).

18.5 New Subordinated Lender

If any direct or indirect shareholder of the Parent makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any member of the Group, each Debtor will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as a Subordinated Lender) accedes to this Agreement, as a Subordinated Lender, pursuant to Clause 18.6 (Creditor Accession Agreement).

18.6 Creditor Accession Agreement

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

- (a) any Party ceasing entirely to be a Creditor shall be discharged from further obligations towards the Security Agent and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and
- (b) a new Creditor shall assume the same obligations and become entitled to the same rights, as if it had been an original Party in the capacity specified in the Creditor Accession Agreement.

18.7 New Debtor

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

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

- (b) With effect from the date of acceptance by the Security Agent of a Debtor Accession Agreement duly executed and delivered to the Security Agent by the new Debtor or, if later, the date specified in the Debtor Accession Agreement, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Debtor.

18.8 Additional Parties

Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Agreement and Creditor Accession Agreement delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Junior Facility Agreement (and in relation to a proposed Hedge Counterparty, by a person authorised to accede to this Agreement as a Hedge Counterparty).

18.9 Resignation of a Debtor

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

- (b) The Security Agent shall accept a Debtor Resignation Request and notify the Parent and each other Party of its acceptance if:
- (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Debtor Resignation Request;
 - (ii) to the extent that the Senior Notes Discharge Date has not occurred, the Parent notifies the Security Agent that that Debtor is not, or has ceased to be, an issuer or guarantor of the Senior Notes Liabilities;
 - (iii) each Hedge Counterparty notifies the Security Agent that that Debtor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities;
 - (iv) to the extent that Junior Discharge Date has not occurred, the Junior Lender notifies the Security Agent that the Debtor is not, or has ceased to be, the Borrower; and
 - (v) the Parent confirms that that Debtor is under no actual or contingent obligations in respect of the Subordinated Liabilities.
- (c) Upon notification by the Security Agent to the Parent of its acceptance of the resignation of a Debtor, that member of the Group shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.

19. COSTS AND EXPENSES

19.1 Transaction Expenses

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

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

19.2 Amendment Costs

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

19.3 Enforcement and Preservation Costs

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

19.4 Stamp Taxes

The Parent shall pay and, within five Business Days of demand, indemnify the Security Agent against any documented cost, loss or liability the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document (except for the payment of any stamp duty under Cypriot legislation for the purpose of perfection of the Transaction Security Documents (the **Cypriot Law Stamp Duty**) until any Enforcement Action in relation to any Cypriot law governed Transaction Security is taken). The Parent shall pay and indemnify the Security Agent against such Cypriot Law Stamp Duty within five Business Days of demand following taking of any Enforcement Action in relation to the Cypriot law governed Transaction Security.

19.5 Interest on Demand

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is 5 % per annum.

20. OTHERS INDEMNITIES

20.1 Indemnity to the Security Agent

- (a) Each Debtor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any documented cost, loss or liability (together with any applicable VAT) incurred by any of them as a result of:
 - (i) any failure by the Parent to comply with its obligations under Clause 19 (Costs and Expenses);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;
 - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
 - (vi) engaging the lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
 - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 20.1 will not be prejudiced by any release or disposal under Clause 13 (Distressed Disposals and Appropriation) taking into account the operation of that Clause 13.
- (c) The Security Agent may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 20.1.

20.2 Parent's indemnity to Primary Creditors

The Parent shall promptly and as principal obligor indemnify each Primary Creditor against any reasonably documented cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 13 (Distressed Disposals and Appropriation).

21. INFORMATION

21.1 Dealings with Security Agent

Each Junior Creditor and each Hedge Counterparty shall deal directly with the Security Agent.

21.2 Disclosure between Primary Creditors and Security Agent

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

21.3 Notification of prescribed events

- (a) If a Junior Payment Stop Event either occurs or ceases to be continuing, the Senior Notes Issuer shall immediately notify the Security Agent of the same and the Security Agent shall, upon receiving the relevant notification or otherwise upon becoming aware of the same, immediately notify the Junior Lender and each Hedge Counterparty.
- (b) If a Senior Notes Payment Default either occurs or ceases to be continuing, the Security Agent shall, upon receiving that notification, notify the Junior Lender.
- (c) If a Senior Notes Acceleration Event occurs, the Security Agent shall, upon receiving that notification, notify each other Party.
- (d) If a Junior Acceleration Event occurs, the Junior Lender shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (e) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security, it shall notify each Party of that action.
- (f) If any Primary Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.
- (g) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Junior Creditor and each other Hedge Counterparty, if any.
- (h) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under Clause 4.9 (Permitted Enforcement: Hedge Counterparties) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Junior Creditor and each other Hedge Counterparty, if any.

22. NOTICES

22.1 Communications in Writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax, letter or email.

22.2 Security Agent's Communications with Primary Creditors

The Security Agent shall be entitled to carry out all dealings with the Junior Creditors and with each Hedge Counterparty directly.

22.3 Addresses

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

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

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

22.4 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
 - (i) if by way of fax, when received in legible form;
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address; or
 - (iii) if by way of email, when received in readable form and on receipt of an automated delivery receipt or confirmation of receipt from the relevant server, subject to any additional rules set out further in this Clause 22,

and, if a particular department or officer is specified as part of its address details provided under Clause 22.3 (Addresses), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Parent in accordance with this Clause 22.4 will be deemed to have been made or delivered to each of the Debtors.

- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5pm in the place of receipt shall be deemed only to become effective on the following day.

22.5 Notification of Address and Fax Number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 22.3 (Addresses) or changing its own address or fax number, the Security Agent shall notify the other Parties.

22.6 Electronic Communication

- (a) Any communication to be made under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if the Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication which becomes effective, in accordance with paragraph (c) below, after 5pm in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (c) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 22.6.

22.7 English Language

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

23. PRESERVATION

23.1 Partial Invalidity

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

23.2 No Impairment

If, at any time after its date, any provision of a Debt Document (including this Agreement) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that

Debt Document, neither the binding nature nor the enforceability of that provision or any other provision of that Debt Document will be impaired as against the other party(ies) to that Debt Document.

23.3 Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Debt Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Debt Document. No election to affirm any Debt Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Debt Document are cumulative and not exclusive of any rights or remedies provided by law.

23.4 Continuation of this Agreement

- (a) To the maximum extent permitted under applicable laws, the provisions of this Agreement shall remain in full force and effect until the Final Discharge Date, regardless of any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Debt Document during that period.
- (b) Without affecting generality of paragraph (a) above, except as otherwise provided in this Agreement the priorities referred to in Clause 2 (Ranking and Priority) will:
 - (i) not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities owing to the Primary Creditors or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;
 - (ii) apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and
 - (iii) secure the Liabilities owing to the Primary Creditors in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

24. CONSENTS, AMENDMENTS AND OVERRIDE

24.1 Required Consents

- (a) Subject to paragraph (b) below and to Clause 24.4 (Exceptions), this Agreement may be amended or waived only with the prior written consent of the Junior Lender and the Security Agent.
- (b) An amendment or waiver that has the effect of changing or which relates to:
 - (i) Clause 10 (Redistribution), Clause 16 (Application of Proceeds) or this Clause 24 (Consents, Amendments and Override);
 - (ii) paragraphs (d)(iii), (e) and (f) of Clause 17.4 (Instructions);
 - (iii) the order of priority or subordination under this Agreement,shall not be made without the prior written consent of:
 - (A) the Junior Lender;

- (B) the Security Agent;
- (C) the Parent;
- (D) the Senior Notes Issuer; and
- (E) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty).

24.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to paragraphs (b) and (c) below and to Clause 24.4 (Exceptions) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Majority Senior Noteholders (if their consent to that amendment, waiver or consent is required under the Senior Notes Conditions) and the Junior Lender, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.
- (b) The authorisation by the Majority Senior Noteholders pursuant to paragraph (a) above shall not be required if, within 40 days of the request for such authorisation made by the Senior Notes Issuer or the Security Agent, the Majority Senior Noteholders have not made a determination as to such authorisation (and notified the Security Agent of that determination in writing).
- (c) Subject to Clause 24.4 (Exceptions), any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:
 - (i) the nature or scope of the Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
 - (iii) the release of any Transaction Security,

shall not be made without the prior written consent of the Senior Noteholders if their consent to that amendment, waiver or consent is required under the Senior Notes Conditions, the Junior Creditors whose consent to that amendment, waiver or consent is required under the Junior Facility Agreement and the Hedge Counterparties.

24.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this Clause 24 will be binding on all Parties and the Security Agent may effect, on behalf of any Primary Creditor, any amendment, waiver or consent permitted by this Clause 24.
- (b) Without prejudice to the generality of Clause 17.9 (Rights and Discretions) the Security Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

24.4 Exceptions

- (a) Subject to paragraphs (c) below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:
 - (i) in the case of a Primary Creditor (other than the Security Agent), in a way which affects or would affect Primary Creditors of that Party's class generally; or

- (ii) in the case of a Debtor, to the extent consented to by the Parent under paragraph (a) of Clause 24.2 (Amendments and Waivers: Transaction Security Documents),

the consent of that Party is required.

- (b) Subject to paragraph (c) below, an amendment, waiver or consent which relates to the rights or obligations of the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the prior written consent of that the Security Agent or that Hedge Counterparty.
- (c) Neither paragraph (a) nor (b) above, nor paragraph (a) of Clause 24.2 (Amendments and Waivers: Transaction Security Documents) shall apply:
 - (i) to any release of Transaction Security, claim or Liabilities; or
 - (ii) to any consent,

which, in each case, the Security Agent gives in accordance with Clause 12 (Non-Distressed Disposals), Clause 13 (Distressed Disposals and Appropriation) or Clause 15 (Further Assurance – Disposals and Releases).

24.5 Requirement to Consent

If, at any time prior to the Senior Notes Discharge Date, the Senior Notes Creditors or the Junior Creditors give a Consent in respect of the Senior Note Documents or the Junior Finance Documents, as applicable, then, if that action was permitted by the terms of this Agreement, the Subordinated Lenders shall (shall be obliged to):

- (a) give a corresponding Consent in equivalent terms (to the extent legally possible) in relation to each of the Debt Documents to which they are a party; and
- (b) do anything (including executing any document) that the Senior Notes Creditors may reasonably require to give effect to this Clause 24.5.

24.6 Excluded Consents

Clause 24.5 (Requirement to Consent) does not apply to any Consent which has the effect of:

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

24.7 No Liability

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

24.8 Agreement to Override

Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents to the contrary. If the Transaction Security Documents or the Senior Notes Agency Agreement set out rights and obligations of the parties thereto in more detail than this Agreement, in

particular by reference to the provisions under the Act on Bonds or other applicable laws, the Parties have agreed not to interpret it as a contrary between the Senior Notes Agency Agreement and this Agreement.

25. COUNTERPARTS

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

26. MISCELLANEOUS

26.1 Causing third party to perform

If in a Debt Document a Debtor or a Subordinated Lender is obliged to "cause" a third party to provide performance to a Secured Party (or similarly is obliged to "procure" or "ensure" that a third party shall perform or shall refrain from any action), such arrangement shall be interpreted to mean that based on same, that Debtor or that Subordinated Lender undertakes that such third party shall fulfil whatever was agreed within the meaning of the second sentence of Section 1769 of the Civil Code, and that Debtor or that Subordinated Lender shall compensate the Secured Parties for any damage incurred by them in the absence of fulfilment. The provision of the first sentence of Section 1769 of the Civil Code shall not apply to the extent it might limit the scope of that Debtor's or that Subordinated Lender's obligations under the preceding sentence.

26.2 No Liability for Advice

Nothing in the Debt Documents shall be construed to mean or imply that any Secured Party provides any Debtor or any Subordinated Lender or any other person that is a party to any Debt Document with any legal, tax, accounting or investment advisory service or any advisory services concerning their business or their investment or business strategy or other issues. Unless otherwise agreed in writing, no Secured Party is obliged to inform such persons or provide them with advisory services concerning foreign exchange rate fluctuations, interest rates, value of entrusted things or securities or book-entry securities. Any information provided to such persons under or in connection with the Debt Documents shall not be deemed advice within the meaning of Section 2950 of the Civil Code. No Secured Party guarantees the completeness and correctness of information disclosed to such persons. The provisions of this Clause 26.2 shall not apply to the extent to which a Secured Party is obliged to provide information or advice under a contract or other legal title.

26.3 Liability of Common Secured Parties

Notwithstanding anything to the contrary in the Debt Documents, a Secured Party shall be liable for any damage caused to any Debtor or any Subordinated Lender by the violation of that Secured Party's obligations, provided that such damage is caused wilfully or due to gross negligence of a Secured Party.

26.4 Authorisation and waiver of conflicts of interest

- (a) If under any provision of this Agreement or any other Debt Document a Party authorises or appoints the Security Agent (as applicable) to act on behalf of any Debtor or any Creditor, such Debtor or Creditor may cancel or revoke such authorisation or appointment only due to gross negligence or wilful misconduct of the Security Agent (as applicable) in substantial violation of an obligation under the respective Debt Document; and
- (b) each Debtor and each Creditor further represents and confirms that when granting authorisations to or appointing the Security Agent (as applicable) under this Agreement or any other Debt Document, it is

aware of the potential conflict of interest of that Debtor or that Creditor on one side and the Security Agent (as applicable) on the other side. Each Debtor and each Creditor waive any claims arising from or resulting in any such conflicts of interest. Each Debtor and each Creditor further agrees that it shall not, by reason only of any such conflicts of interest, be entitled to terminate or withdraw any such authorisations granted to or appointments of the Security Agent (as applicable) under the Debt Documents.

26.5 Right of priority

If exercising of any right under any Debt Document by any Secured Party (other than the Security Agent) would qualify as performance of the right of priority of a joint and several creditor within the meaning of Clause 1877 of the Civil Code, exercising of such right shall be construed and deemed as exercise of such right by such Secured Party on behalf of the Security Agent.

26.6 Statutory Limitation Period

The Parties agree pursuant to Clause 630(1) of the Civil Code that the statutory limitation period for any right of a Party under the Debt Documents shall be ten years after the date on which a Party was for the first time entitled to claim such right.

27. GOVERNING LAW

- (a) This Agreement and any non-contractual obligations arising out of or in connection with it are governed by laws of the Czech Republic.
- (b) The Parties agree that the provisions of Sections 558(2) (to the extent in which it stipulates that business practice prevails over a non-mandatory provision of law), 1126 – 1137, 1139, 1400 – 1474, 1740(3), 1748, 1799, 1800, 1868, 1873, 1871 (2), 1913, 1931 (second sentence), 1936(1), 1950, 1951, 1952 (2), 1970, 1971, 1978(2), 1980 and 1995(2) of the Civil Code shall not apply to this Agreement.
- (c) Each of the Parties shall bear the risk of a change of circumstances within the meaning of Section 1765(2) of the Civil Code.
- (d) No Party is entitled to terminate this Agreement pursuant to Section 2000(1) of the Civil Code.

28. JURISDICTION

All disputes arising out of or in connection with this Agreement shall be resolved by the following Czech courts:

- (a) the District Court for Prague 1 if the first-instance court having subject matter jurisdiction is a district court, or
- (b) the Municipal Court in Prague if the first-instance court having subject matter jurisdiction is a regional court.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement on the date specified above.

SCHEDULE 1

FORM OF DEBTOR ACCESSION AGREEMENT

This Agreement is made on [●] and

Between:

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

This agreement is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the **Intercreditor Agreement**) dated [●] between, amongst others, New Ukraine PE Holding Limited as parent, J&T BANKA, a.s. as security agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

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

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

the **Relevant Documents**.

It is agreed as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
2. The Acceding Debtor and the Security Agent agree that (subject to clause 17.1 through to clause 17.3 of the Intercreditor Agreement) the Security Agent shall hold:
 - (a) any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
 - (b) all proceeds of that Security; and
 - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as security agent for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as security agent for the Secured Parties,as security agent for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.
3. The Acceding Debtor confirms that it intends to be a party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
4. [In consideration of the Acceding Debtor being accepted as a Subordinated Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be a party to the

Intercreditor Agreement as a Subordinated Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Subordinated 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].**

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

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

THIS AGREEMENT has been signed on behalf of the Security Agent and the Acceding Debtor on the date stated above.

The Acceding Debtor

[Executed
By: [Full Name of Acceding Debtor]

}
.....
Director

}
.....
Director/Secretary

Or

[Executed
By: [Full Name of Acceding Debtor]

}
.....
Signature of Director

}
.....
Name of the Director

in the presence of

}

Address for notices:

Address:

Fax:

Email:

The Security Agent

[Full Name of Current Security Agent]

By:

Date:

SCHEDULE 2

FORM OF CREDITOR ACCESSION AGREEMENT

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

From: [Acceding Creditor]

This Agreement is made on [date] by the Security Agent and [insert full name of new Junior Lender/ Hedge Counterparty/ Agent/Subordinated Lender] (the **Acceding [Junior Lender/ Subordinated Lender/ Hedge Counterparty]**) in relation to the intercreditor agreement (the **Intercreditor Agreement**) dated [●] between, among others, New Ukraine PE Holding Limited as parent, the Security Agent as security agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meanings when used in this Agreement.

In consideration of the Acceding [Junior Lender/ Hedge Counterparty / Subordinated Lender] being accepted as a [Junior Lender/ Hedge Counterparty / Subordinated Lender] for the purposes of the Intercreditor Agreement, the Acceding [Junior Lender / Hedge Counterparty / Subordinated Lender] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Junior Lender / Hedge Counterparty / Subordinated Lender] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Junior Lender / Hedge Counterparty / Subordinated 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.

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

This Agreement has been entered into on the date stated above.

Acceding [entity]

[Executed by:
[insert full name of Acceding [entity]]

}

.....
By:
Address:
Fax:

Accepted by the Security Agent

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

SCHEDULE 3

FORM OF DEBTOR RESIGNATION REQUEST

To: [●] as Security Agent

From: [resigning Debtor] and [Parent]

Dated: [●]

Dear Sirs

Intercreditor Agreement dated [●] between [●] (the Intercreditor Agreement)

1. We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
2. Pursuant to Clause [18.9 (Resignation of a Debtor)] of the Intercreditor Agreement we request that [resigning Debtor] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) [resigning Debtor] is under no actual or contingent obligations in respect of the Subordinated Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by Czech law.

[Parent]

[resigning Debtor]

By:

By:

SIGNATORIES

The Parent

New Ukraine PE Holding Limited

}


.....
By: Olha Turyk
Director

Senior Notes Issuer

NUPEH CZ s.r.o.

} 
By: Natalia Zolotarova
Managing Director

The Junior Lender

J&T BANKA, a.s.

By:


.....
Ing. Tomáš Klimíček
Member of the Board

By:


.....
Ing. Igor Kováč
Member of the Board

The Security Agent

J&T BANKA, a.s.



By: **Ing. Tomáš Klimíček**
Member of the Board



By: **Ing. Igor Kováč**
Member of the Board

The Original Hedge Counterparty

J&T BANKA, a.s.

By:


.....
Ing. Tomáš Klimíček
Member of the Board

By:


.....
Ing. Igor Kováč
Member of the Board