

Intercreditor Agreement

dated 7 February 2020

between
inter alios

LifeFit Group MidCo GmbH

as Issuer

LifeFit Group TopCo GmbH

as Original Shareholder Creditor

Oldenburgische Landesbank Aktiengesellschaft

as Original Super Senior RCF Creditor

Nordic Trustee & Agency AB (publ)

as Original Bond Trustee

Nordic Trustee & Agency AB (publ)

as Original Security Agent

Oldenburgische Landesbank Aktiengesellschaft

as Original Hedge Counterparty

and

Certain Entities

as Original ICA Group Companies

Gernandt & Danielsson

TABLE OF CONTENTS

Clause	Page
1. Definitions and interpretation.....	1
2. Superiority of Intercreditor Agreement	10
3. Ranking and Priority	10
4. Transaction Security and Secured Obligations	11
5. Hedge Counterparties and Hedging Obligations	12
6. Shareholder Debt	15
7. Intercompany Debt	16
8. Turnover of Non-Permitted Payments.....	17
9. Payment Block.....	18
10. Effect of Insolvency Event	19
11. Enforcement and Consultation	20
12. Appointment of the Super Senior Agent.....	24
13. Application of Recoveries	24
14. Consents.....	25
15. Release of Guarantees and Security	26
16. Role of the Security Agent.....	28
17. The Bond Trustee	29
18. Responsibility of the Representatives and the Agents.....	31
19. Information.....	34
20. Limitation on Subordination Undertaking	34
21. Changes to the Parties	35
22. Super Senior RCF refinancing and cancellation	39
23. Notices.....	39
24. Expenses and Indemnities	41
25. Amendments and waivers	42
26. Partial Invalidity	43
27. Remedies and Waivers	43
28. Force Majeure and Limitation of Liability	44
29. Counterparts.....	44
30. Governing Law	44
31. Enforcement	44
Schedule	Page
SCHEDULE 1 THE ORIGINAL ICA GROUP COMPANIES	45
SCHEDULE 2 FORM OF ICA GROUP COMPANY ACCESSION AGREEMENT.....	46
SCHEDULE 3 FORM OF CREDITOR/REPRESENTATIVE ACCESSION UNDERTAKING	47
SCHEDULE 4 TRANSACTION SECURITY DOCUMENTS	48

THIS INTERCREDITOR AGREEMENT (the "**Agreement**") is entered into on the date first stated above by and between:

- (1) **LIFEFIT GROUP MIDCO GMBH**, a limited liability company incorporated in Germany and registered with the local court (*Amtsgericht*) of Munich under HRB 248092 as issuer (the "**Issuer**");
- (2) **THE COMPANIES** set out in Schedule 1 (*The Original ICA Group Companies*) as original ICA Group Companies (the "**Original ICA Group Companies**");
- (3) **LIFEFIT GROUP TOPCO GMBH**, a limited liability company incorporated in Germany and registered with the local court (*Amtsgericht*) of Munich under HRB HRB 248091 as original Shareholder Creditor (the "**Original Shareholder Creditor**");
- (4) **OLDENBURGISCHE LANDESBANK AKTIENGESELLSCHAFT** as original Super Senior RCF Creditor (the "**Original Super Senior RCF Creditor**");
- (5) **OLDENBURGISCHE LANDESBANK AKTIENGESELLSCHAFT**] as original Hedge Counterparty (the "**Original Hedge Counterparty**");
- (6) **OLDENBURGISCHE LANDESBANK AKTIENGESELLSCHAFT** as agent for the Super Senior Creditors (the "**Original Super Senior Agent**");
- (7) **NORDIC TRUSTEE & AGENCY AB (publ)** as agent for the Bondholders (the "**Original Bond Trustee**"); and
- (8) **NORDIC TRUSTEE & AGENCY AB (publ)** as security agent for the Secured Parties (the "**Original 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. (including for avoidance of doubt a "long form confirmation" based on that document).

"2002 ISDA Master Agreement" means the 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc. (including for avoidance of doubt a "long form confirmation" based on that document).

"Acceleration Event" means a Super Senior RCF Acceleration Event or a Bonds Acceleration Event (as the context requires).

"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.

"Agents" means the Security Agent, the Bond Trustee and the Super Senior Agent.

"Bond Trustee" means the Original Bond Trustee or a new agent replacing the Original Bond Trustee in accordance with Clause 21 (*Appointment and Replacement of the Trustee*) of the Terms and Conditions.

"Bondholders" has the meaning ascribed to the term "Holder" in the Terms and Conditions.

"Bonds" has the meaning ascribed to such term in the Terms and Conditions.

"Bonds Acceleration Event" means the Bond Trustee (at its discretion or at the instructions of the requisite number of the Bondholders) accelerating all amounts due under the Bonds pursuant to Clause 15 (*Termination of the Bonds*) of the Terms and Conditions.

"Bonds Event of Default" shall have the meaning ascribed to the term "Event of Default" in the Terms and Conditions.

"Bonds Finance Documents" means the "Finance Documents" as defined in the Terms and Conditions.

"Business Day" means a day both (i) in Sweden and Frankfurt am Main, other than a public holiday (Saturdays, Sundays, Midsummer Eve (Sw. *midsommarafton*), Christmas Eve (Sw. *julafton*) and New Year's Eve (Sw. *nyårsafton*) shall for the purpose of this definition be deemed to be public holidays), and (ii) on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) System or any successor system is open.

"Conflicting Enforcement Instructions" means instructions (or proposed instructions) as to enforcement of the Transaction Security or the taking of any Enforcement Action delivered to the Security Agent by a Representative that are inconsistent with any other instruction (or proposed instruction) given as to the manner of enforcement (including any inconsistency as to the timeframe for realising value from an Enforcement Action in respect of the Transaction Security or the Guarantees or a distressed disposal) with any other instruction (or proposed instruction), it being understood that, for the purpose of triggering the consultation requirements under paragraph (b) of Clause 11.2 (*Consultation*) only and not for any other purpose (including, without limitation, determining the Instructing Party), the failure to give instructions by either the Super Senior Representative or the Senior Representative(s) will be deemed to be an instruction inconsistent with any other instructions given.

"Consultation Period" has the meaning ascribed to such term in Clause 11.2(b) (*Consultation*).

"Creditor/Representative Accession Undertaking" means an undertaking substantially in the form set out in Schedule 3 (*Form of Creditor/Representative Accession Undertaking*).

"Debt" means any indebtedness under or in connection with the Bonds, the Super Senior Debt (including any replacement Super Senior RCF referred to in Clause 22 (*Super Senior RCF refinancing*)) any Shareholder Debt and the Intercompany Debt.

"Debt Documents" means the Super Senior Documents, the Hedging Agreements, the Bonds Finance Documents, the Shareholder Debt Documents and the Intercompany Debt Documents.

"Enforcement Action" means any action of any kind to:

- (a) demand payment which has fallen due, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand all or any part of any Debt or Guarantee (other than as a result of it becoming unlawful for a Secured Party to perform its

obligations under, or of any voluntary or mandatory prepayment under, the Senior Finance Documents);

- (b) recover all or any part of any Debt (including by exercising any set-off, save as required by law and normal netting and set-off transactions in the ordinary course of business);
- (c) exercise or enforce any enforcement right under the Transaction Security, in each case granted in relation to (or given in support of) all or any part of any Debt;
- (d) petition for (or take or support any other step which may lead to) an Insolvency Event;
- (e) sue, claim or bring proceedings against the Issuer, any Guarantor or any ICA Group Company in respect of recovering any Debt; or
- (f) in relation to any Hedging Obligation only, designate an Early Termination Date (as defined in the relevant Hedging Agreement) under any Hedging Agreement, or terminate, or close out any transaction under, any Hedging Agreements, prior to its stated maturity, or demand payment of any amount which would become payable on or following an Early Termination Date (as defined in the relevant Hedging Agreement) or any such termination or close-out, unless voluntary or in accordance with a partial termination in accordance with the terms of the Senior Finance Documents and not related to any default.

"Enforcement Instructions" means instructions as to take Enforcement Actions (including the manner and timing of Enforcement) given by a Representative to the Security Agent provided that instructions to not undertake enforcement or an absence of instructions as to enforcement shall not constitute "Enforcement Instructions".

"Enforcement Proposal" has the meaning ascribed to such term in paragraph (a) of Clause 11.2 (*Consultation*).

"Event of Default" means a Super Senior RCF Event of Default or a Bonds Event of Default.

"Final Discharge Date" means the date when all principal, interest and any other costs or outstanding amounts under the Senior Finance Documents have been irrevocably discharged in full and that all commitments under the Senior Finance Documents have been cancelled or terminated.

"Guarantee" means the guarantees to be provided under the Guarantee Agreement to the Secured Parties.

"Guarantee Agreement" means the agreement to be entered into between the Issuer, the Guarantors and the Security Agent pursuant to which the Secured Obligations will be guaranteed by the Guarantors.

"Guarantors" means each Group Company which, at any point in time, is a party to the Guarantee Agreement.

"Group" means the Issuer and its Subsidiaries for the time being.

"Group Company" means a member of the Group.

"Hedge Counterparty" means:

- (a) the Original Hedge Counterparty; and

- (b) any person who becomes a Party as a Hedge Counterparty in accordance with Clause 21.1 (*Assignments and transfers by Creditors*) or Clause 21.5 (*Accession of Hedge Counterparties*).

"Hedging Agreement" means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by an ICA Group Company and a Hedge Counterparty in connection with protection against or benefit from fluctuation in any rate (including currency) or price, in respect of payments to be made under the Terms and Conditions or the Super Senior Documents (but not a derivative transaction for investment or speculative purposes).

"Hedging Obligations" means all present and future moneys, debts and liabilities due, owing or incurred from time to time by the ICA Group Companies or any Guarantor to any Hedge Counterparties under or in connection with the Hedging Agreements.

"ICA Group Companies" means the Original ICA Group Companies and any other entity which has acceded to this Agreement pursuant to the Senior Finance Documents and in accordance with Clause 21.3 (*Accession of additional ICA Group Companies*).

"ICA Group Company Accession Agreement" means an agreement substantially in the form set out in Schedule 2 (*Form of ICA Group Company Accession Agreement*).

"Insolvency Event" means that:

- (a) any Group Company is unable or admits inability to pay its debts as they fall due or is declared to be unable to pay its debts under applicable law, suspends making payments on its debts generally or, by reason of actual or anticipated financial difficulties, commences negotiations with its creditors generally (except for the Super Senior RCF Creditors or Senior Creditors) with a view to rescheduling its Financial Indebtedness;
- (b) a moratorium is declared in respect of the Financial Indebtedness of any Group Company; any analogous procedure or step is taken in any jurisdiction in respect of any Material Group Company;
- (c) any corporate action, legal proceedings or other procedures are taken (other than (i) proceedings or petitions which are being disputed in good faith and are discharged, stayed or dismissed within 60 days of commencement or, if earlier, the date on which it is advertised, (ii) proceedings or petitions concerning a claim which is less than EUR 500,000, and (iii), in relation to Subsidiaries of the Issuer, solvent liquidations) in relation to:
- (i) the suspension of payments, winding-up, dissolution, administration or reorganisation (Sw. *företagsrekonstruktion*) (by way of voluntary agreement, scheme of arrangement or otherwise) of any Group Company; and
 - (ii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Group Company or any of its assets,

or any analogous procedure or step is taken in any jurisdiction.

"Instructing Party" means the Senior Representative or, following replacement in accordance with Clause 11.2 (*Consultation*), the Super Senior Representative.

“Intercompany Creditor” means each ICA Group Company (which has not ceased to be an ICA Group Company in accordance with this Agreement) in its capacity as creditor in respect of Intercompany Debt.

“Intercompany Debt” means any debt outstanding from a Group Company to an Intercompany Creditor, excluding any intra-group loans which constitutes Transaction Security.

“Intercompany Debt Documents” means all documents, agreements and instruments evidencing any Intercompany Debt.

“Intercompany Debtor” means each ICA Group Company (which has not ceased to be an ICA Group Company in accordance with this Agreement) in its capacity as debtor in respect of Intercompany Debt.

“Liabilities” means all present and future liabilities and obligations, 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.

“Market Loan” means any loan or other indebtedness where an entity issues commercial papers, certificates, convertibles, subordinated debentures, bonds or any other debt securities (including, for the avoidance of doubt, medium term note programmes and other market funding programmes), provided in each case that such instruments and securities are or can be subject to trade on Nasdaq Stockholm or any other regulated or unregulated recognised market place.

“Material Group Company” has the meaning ascribed to that term in the Terms and Conditions.

“Party” means a party to this Agreement.

“Paying Agent” means Pareto Securities AS, or another party replacing it, as Paying Agent, in accordance with the Terms and Conditions and the rules and regulations applicable to the central securities depository and registrar in respect of the Bonds.

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

“Payment Block Event” means that the Super Senior Representative serves a written notice to the Issuer, the Security Agent and the Bond Trustee that a Triggering Event (however described and,

for the avoidance of doubt, after the expiration of any applicable grace period in respect of the default giving rise to that event of default) has occurred and is continuing.

"Recoveries" means the aggregate of all monies and other assets received or recovered (whether by way of payment, repayment, prepayment, distribution, redemption or purchase, in cash or in kind, or the exercise of any set-off or otherwise, including as a result of any Enforcement Action) from time to time by any Party under or in connection with any Super Senior Debt, Senior Debt, Shareholder Debt or Intercompany Debt, but excluding any amount received from a person other than a Party or a Group Company under a credit derivative or sub-participation arrangement.

"Recovering Creditor" has the meaning ascribed to it in Clause 8.1 (*Payments to Secured Parties*).

"Representative" means the Super Senior Representative or the Senior Representative.

"Secured Debt" means the Senior Debt and the Super Senior Debt.

"Secured Obligations" means all Liabilities due, owing or incurred from time to time by any Group Company to any Secured Party under the Senior Finance Documents, both actual and contingent.

"Secured Parties" means the Bond Trustee, the Security Agent, the Super Senior Agent and the creditors under the Senior Finance Documents but only if it (or, in the case of a Bondholder, its Representative) is a Party or has acceded to this Agreement in the appropriate capacity pursuant to Clause 21 (*Changes to the Parties*).

"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" means the Original Security Agent or any new agent replacing the Original Security Agent in accordance with Clause 21.5 (*Accession of Hedge Counterparties*).

"Security Documents" means:

- (a) each of the Transaction Security Documents;
- (b) any other document entered into at any time by any of the ICA Group Companies 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 Enforcement Objective" means maximising, so far as is consistent with prompt and expeditious realisation of value from enforcement of the Transaction Security and Guarantees, the recovery by the Secured Parties.

"Senior Creditor" means the Bondholders and the Bond Trustee.

"Senior Debt" means all indebtedness outstanding under the Bonds Finance Documents.

"Senior Discharge Date" means the first date on which all Senior Debt have been fully and finally discharged to the satisfaction of the Senior Representative, whether or not as the result of an enforcement, and the Senior Creditors are under no further obligation to provide financial accommodation to any of the Group Companies under the Senior Finance Documents.

”Senior Finance Documents” means the Bonds Finance Documents and the Super Senior Documents.

”Senior Representative” means, at any time, the representative of those Senior Creditors whose Senior Debt at that time aggregate more than fifty (50) per cent. of the total Senior Debt at that time. The Bond Trustee shall represent all Bondholders and act on the instructions of and on behalf of the Bondholders.

”Shareholder Creditor” means:

- (a) the Original Shareholder Creditor; and
- (b) any creditor being a direct or indirect shareholder of the Issuer to which Shareholder Debt is outstanding and which accedes to this Agreement in accordance with Clause 21.1 (*Assignments and Transfers by Creditors*) or Clause 21.4 (*Accession of Shareholder Creditors*).

”Shareholder Debt” means all future moneys, debts and liabilities due, owing or incurred from time to time by any member of the Group to any Shareholder Creditor, including any dividends and any advisory, monitoring or management fee.

”Shareholder Debt Documents” means all documents, agreements and instruments evidencing any Shareholder Debt.

”Super Senior Agent” means the Original Super Senior Agent, any agent replacing the Original Super Senior RCF Creditor as Super Senior Agent in connection with a replacement of the original Super Senior RCF Agreement in accordance with Clause 22 (*Super Senior RCF refinancing*), or any other agent or representative under new Super Senior RCF Documents.

”Super Senior Creditors” means the Super Senior RCF Creditors and the Hedge Counterparties.

”Super Senior Debt” means all Liabilities due, owing or incurred from time to time by any Group Company to the Super Senior Creditors under or in connection with the Super Senior RCF Documents and the Hedging Agreements.

”Super Senior Documents” means the Super Senior RCF Documents and the Hedging Agreements.

”Super Senior Representative” means the Super Senior Agent acting on behalf of those Super Senior Creditors whose Super Senior Debt at that time aggregate more than fifty (50) per cent. of the total Super Senior Debt at that time. The Super Senior Representative shall represent all Super Senior Creditors and act on the instructions of and on behalf of the Super Senior Creditors.

”Super Senior Representative” means, at any time, holders of 66 $\frac{2}{3}$ % of the aggregate of:

- (a) the Super Senior RCF;
- (b) following a permitted termination or close out of any Hedging Obligation, the settlement amount of that Hedging Obligation to the extent that that settlement amount is due to the Hedge Counterparty and has not been paid by the relevant ICA Group Company; and
- (c) (following discharge in full of the Super Senior RCF only) the deemed settlement amount of the Hedging Obligations (that have not been closed out or terminated) at any time.

”Super Senior RCF” means:

- (a) the EUR 10,000,000 super senior RCF entered into between, among others, the Original Super Senior RCF Creditor and the Issuer on or about the date of this Agreement; or
- (b) any other working capital facilities agreements in the maximum aggregate nominal amount of EUR 10,000,000 (or its equivalent in any other currency or currencies) or similar agreement providing financing for general corporate purposes between any member of the Group and a Super Senior RCF Creditor replacing the super senior working capital facility referred to in paragraph (a) above to be used for general corporate purposes of the Group in accordance with Clause 22 (*Super Senior RCF refinancing*).

"Super Senior RCF Acceleration Event" means the Super Senior Agent exercising any of its rights under any acceleration provisions of the relevant Super Senior RCF Documents.

"Super Senior RCF Creditors" means the Super Senior Agent, the Original Super Senior RCF Creditor and any person who has become a Party as a Super Senior RCF Creditor in accordance with Clause 21.1 (*Assignments and transfers by Creditors*) or Clause 21.5 (*Accession of Hedge Counterparties*).

"Super Senior RCF Documents" means the Super Senior RCF, this Agreement, the Guarantee Agreement and the Security Documents.

"Super Senior RCF Event of Default" means an event of default (however described) under any Super Senior RCF.

"Terms and Conditions" means the terms and conditions of the Bonds entered into between the Issuer and the Bond Trustee on 23 July 2019.

"Transaction Security" means the Security to be provided to the Secured Parties under the Transaction Security Documents.

"Transaction Security Documents" means:

- (a) each document listed in Schedule 4 (*Transaction Security Documents*); and
- (b) any other documents creating or expressed to create any Security in respect of the Secured Obligations.

"Triggering Event" means:

- (a) the occurrence of an event of default (however described) under any Senior Finance Document; or
- (b) a breach of any financial covenant under the Super Senior Documents.

1.2 Incorporation of defined terms

Unless a contrary indication appears, terms defined in the original form of the Terms and Conditions have the same meaning in this Agreement.

1.3 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) any **"Agent"**, any **"Creditor"**, any **"Hedge Counterparty"**, any **"ICA Group Company"**, any **"Intercompany Creditor"**, any **"Intercompany Debtor"**, the **"Issuer"**, any **"Bondholder"**, the **"Bond Trustee"** any **"Party"**, any **"Recovering Creditor"**, any **"Representative"**, any **"Super Senior Representative"**, any

"Secured Party", the **"Security Agent"**, any **"Senior Creditor"**, any **"Shareholder Creditor"**, any **"Super Senior Creditor"** or any **"Super Senior RCF Creditor"**, shall be construed so as to include its successors in title, assigns and transferees permitted under this Agreement;

- (ii) **"assets"** includes present and future properties, revenues and rights of every description;
 - (iii) **"consent"** means any consent, approval, release or waiver or agreement to any amendment;
 - (iv) any **"Debt Document"**, any **"Hedging Agreement"**, any **"Intercompany Debt Document"**, any **"Bonds Finance Document"**, any **"Senior Finance Document"**, any **"Shareholder Debt Document"** any **"Super Senior RCF Document"** or the **"Terms and Conditions"** or any other document, agreement or instrument, other than a reference to a document or other agreement or instrument in its original form, is a reference to that document, agreement or instrument as amended, supplemented or restated (however fundamentally) as permitted by this Agreement;
 - (v) the **"original form"** of a document, agreement or instrument means that document, agreement or instrument as originally entered into;
 - (vi) **"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;
 - (vii) a **"person"** includes any person, firm, company, corporation, government, state or agency of a state or any association, or partnership (whether or not having separate legal personality);
 - (viii) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, with which compliance is customary) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (ix) **"set-off"** includes combining accounts and payment netting except that, in relation to any Hedging Obligations, "set-off" does not include payment netting or close-out netting;
 - (x) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xi) a time of day is a reference to Stockholm time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) An event of default or a default, however described, is **"continuing"** if deemed to be continuing pursuant to the relevant agreement.
- (d) A Payment Block Event shall be deemed **"continuing"** if not remedied or waived by the Super Senior Creditors.

2. SUPERIORITY OF INTERCREDITOR AGREEMENT

- (a) All Debt Documents are subject to the terms of this Agreement. In the event of any inconsistency between any Debt Document and this Agreement, this Agreement shall prevail.
- (b) The Issuer, the Original Shareholder Creditor and the Original Security Agent hereby
 - (i) terminate the subordination agreement made among themselves on 30 August 2019 (the "**Subordination Agreement**"); and
 - (ii) agree that each party to the Subordination Agreement is released and discharged from all past, present and future liabilities, obligations and undertakings, whether actual or contingent, under and in connection with the Subordination Agreement.

3. RANKING AND PRIORITY

3.1 Ranking of Debt

Unless expressly provided to the contrary in this Agreement, the Debt shall rank in right and priority of payment in the following order:

- (a) *first*, the Super Senior Debt (*pari passu* between all indebtedness under the Super Senior Debt);
- (b) *secondly*, the Senior Debt (*pari passu* between all indebtedness under the Senior Debt);
- (c) *thirdly*, any liabilities raised in the form of Intercompany Debt; and
- (d) *fourthly*, any liabilities raised in the form of Shareholder Debt.

3.2 Transaction Security and Guarantees

Unless expressly provided to the contrary in this Agreement, the Transaction Security and the Guarantees will be granted with the following ranking and priority:

- (a) the Guarantees and the Transaction Security shall be granted with first priority ranking in respect of the Super Senior Debt and the Senior Debt, *pari passu* between the Super Senior Debt and the Senior Debt, but subject always to the allocation of proceeds provision as set out in Clause 13 (*Application of Recoveries*); and
- (b) the Intercompany Debt and any Shareholder Debt shall remain unguaranteed and unsecured.

3.3 Intercompany Debt and Shareholder Debt

Each of the Parties agrees that the Intercompany Debt and the Shareholder Debt are postponed and subordinated to the Liabilities owed by the ICA Group Companies to the Secured Parties.

3.4 Preservation of Shareholder Debt and Intercompany Debt

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

4. TRANSACTION SECURITY AND SECURED OBLIGATIONS

4.1 Payments of Secured Obligations

Subject to Clause 9 (*Payment Block*), the ICA Group Companies may make Payments in respect of the Secured Obligations at any time in accordance with the terms of the relevant Senior Finance Document.

4.2 Security and Guarantees

- (a) A Secured Party may take, accept or receive the benefit of:
- (i) any Security from any Group Company in respect of the Secured Obligations in addition to the Transaction Security and the Guarantees if at the same time it is also offered either:
 - (A) to the Security Agent as agent or common representative (or, if the trust structure is recognized in the relevant jurisdiction, as trustee) for all the other Secured Parties in respect of all the Secured Obligations; or
 - (B) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as agent for the Secured Parties:
 - (I) to all the Secured Parties in respect of the Secured Liabilities; or
 - (II) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties or, where appropriate, the Security Agent as representative of the Secured Parties,
- and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 3.2 (*Transaction Security and Guarantees*); and
- (ii) any guarantee, indemnity or other assurance against loss from any Group Company in respect of the Secured Obligations in addition to those in the original form of the Senior Finance Documents 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 (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 3 (*Ranking and Priority*).
- (b) If the Issuer or a Group Company provides any additional Security or guarantee for any Secured Debt, the Issuer shall ensure, and shall ensure that such Group Company ensures, that such additional Security or guarantee is (subject to the terms of this Agreement) provided to all Secured Parties on materially the same terms as the Transaction Security Documents or the Guarantee Agreement (as applicable).

4.3 Further Assurance

Each ICA Group Company shall use all reasonable endeavours to facilitate any necessary establishment of new Security or amendments to the Transaction Security Documents pursuant to this Agreement.

5. HEDGE COUNTERPARTIES AND HEDGING OBLIGATIONS

5.1 Hedge Counterparties

A person is a Hedge Counterparty and is entitled to share in any Transaction Security and the Guarantees in respect of any Hedging Obligations only if the person is:

- (a) an Original Hedge Counterparty; or
- (b) a financial institution selected by the Issuer, provided that that financial institution delivers to the Security Agent a duly completed and signed Creditor/Representative Accession Undertaking and the Security Agent executes such Creditor/Representative Accession Undertaking.

5.2 Hedging Agreements

- (a) Liabilities under a Hedging Agreement will only be treated as Hedging Obligations if the Hedging Agreement complies with this Clause 5.2.
- (b) Each Hedging Agreement shall:
 - (i) be based on the 1992 or 2002 ISDA Master Agreement or any other framework which is similar in terms and effect;
 - (ii) in the event of termination of a transaction whether upon a Termination Event or an Event of Default (each as defined in the relevant Hedging Agreement) provide for payments under the "Second Method" (in the case of the 1992 ISDA Master Agreement) or make no material amendment to the provisions of section 6(e) (*Payments on Early Termination*) (in the case of the 2002 ISDA Master Agreement) or provide for two way payments (in the case of any other form of Hedging Agreement);
 - (iii) specify "Automatic Early Termination" as applicable where a Group Company is the "Defaulting Party", each as defined in the relevant ISDA Master Agreement, or similar in the case of any other form of Hedging Agreement, only if appropriate in view of the relevant ISDA netting opinion;
 - (iv) permit the relevant Debtor and the relevant Hedge Counterparty to take such action as may be necessary to comply with Clause 5.5 (*Limitations on hedging transactions*); and
 - (v) each Hedge Counterparty shall promptly upon request supply the Security Agent with a copy of any Hedging Agreement to which it is a party.

5.3 Restrictions on payment and security

- (a) No Hedge Counterparty shall demand or receive, and no ICA Group Company shall (and the Issuer shall ensure that no other Group Company will) make, any payment in respect of any Hedging Obligations or apply any money or property in or towards discharge of any Hedging Obligations (including by way of set-off) except:
 - (i) for a payment or discharge made in accordance with scheduled payments under that Hedging Agreement and/or for a payment or discharge made in accordance with this Agreement;

- (ii) for a payment or discharge made in accordance with Clause 5.4 (*Closing out of hedging transactions*) and Clause 5.5 (*Limitations on hedging transactions*);
- (iii) payments or deductions arising as a result 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 of that Hedging Document (if the Hedging Document is based on a 2002 ISDA Master Agreement); or
 - (C) any provision of a Hedging Document which is similar in meaning and effect to any provision listed in paragraphs (A) or (B) above (if the Hedging Document is not based on an ISDA Master Agreement).
- (b) Notwithstanding any term of this Agreement postponing or preventing the payment of all or any part of the Hedging Obligations, the relevant Hedging Obligation shall, as between the Hedge Counterparty and the relevant ICA Group Company, be deemed to remain owing or due and payable (and interest, default interest or indemnity payments shall continue to accrue) in accordance with the relevant Hedging Agreement.
- (c) No Hedge Counterparty shall permit to subsist or receive, and no ICA Group Company shall (and the Issuer shall ensure that no other Group Company will) create or permit to subsist, any Security or any guarantee for or in respect of any Hedging Obligations, other than under any Transaction Security Document and the Guarantee Agreement or if permitted by the Security Agent, provided that the granting of Security or guarantees shall always be subject to approval by the Super Senior Creditors.

5.4 Closing out of hedging transactions

- (a) No Hedge Counterparty or ICA Group Company may terminate or close out any hedging transaction under a Hedging Agreement prior to its originally stated maturity or rely on automatic early termination or on any other provision (except for provisions conferring a right to withhold payments if any condition precedent for such payment has not been satisfied) in the relevant Hedging Agreement so as not to make a payment under the Hedging Agreement unless:
 - (i) any Hedging Obligations has not been paid on the due date and the non-payment has not been remedied within thirty (30) days after the Hedge Counterparty has given notice to the Security Agent of the non-payment and of its intention to terminate or close out that hedging transaction;
 - (ii) an Acceleration Event has occurred;
 - (iii) an Illegality, Tax Event, Tax Event Upon Merger, a Credit Event Upon Merger or a Force Majeure Event (each as defined in the relevant ISDA Master Agreement), or similar event in the case of any other form of Hedging Agreement, has occurred;

- (iv) any Event of Default has occurred under paragraph (d) (*Insolvency*), paragraph (e) (*Insolvency proceedings*) or paragraph (g) (*Creditors' process*) of Clause 15 (*Termination*) the Terms and Conditions or corresponding Clauses of any Super Senior Document;
 - (v) the termination or closing out is carried out only to the extent required to reflect any repayment or prepayment of Debt which was hedged by the hedging transaction, and the Security Agent is notified accordingly;
 - (vi) in accordance with Clause 5.5 (*Limitations on hedging transactions*); or
 - (vii) in case of a refinancing (or repayment) and cancellation in full of the Super Senior RCF.
- (b) Promptly following an Acceleration Event each Hedge Counterparty shall:
- (i) exercise any rights it may have to terminate or close out any hedging transactions under a Hedging Agreement;
 - (ii) pay to the Security Agent any amount owed by it and any close out amount received under a Hedging Agreement for application in accordance with Clause 13.1 (*Order of Application*); and
 - (iii) exercise any right of set off or take or receive any payment in respect of any Hedging Obligations of that Group Company.
- (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 Obligations 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 Obligations;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Hedging Obligations of that member of the Group; or
 - (iv) claim and prove in the liquidation, administration or other insolvency proceedings of that member of the Group for the Hedging Obligations owing to it.

5.5 Limitations on hedging transactions

- (a) If, at any time, the aggregate notional amount of the transactions in respect of any swaps and/or caps under any Hedging Agreements entered into for the purpose of hedging interest rate risk under the Secured Obligations exceeds or, as a result of a prepayment, will exceed 100 per cent. of the aggregate amount of the outstanding Secured Debt at that time, the Issuer must promptly notify the Security Agent and must, at the request of the Security Agent, reduce the aggregate notional amount of those transactions by an amount and in a manner satisfactory to the Security Agent so that it no longer exceeds or will not exceed 100 per cent of the aggregate amount of the Secured Debt then outstanding.

- (b) Paragraph (a) above shall not apply to any transactions in respect of any Hedging Agreement under which the borrowers under the Senior Finance Documents have no actual or contingent indebtedness.

5.6 No acquisition of Hedging Obligations

No ICA Group Company shall acquire, and shall procure that no other member of the Group will, purchase by way of assignment or transfer or enter into any sub-participation or similar arrangement, in respect of rights resulting from Hedging Obligations unless such action is made for no consideration payable (whether in cash or in kind, other than shares in the Issuer or the issue of Shareholder Debt or the prior written consent of both of the Representatives is obtained.

6. SHAREHOLDER DEBT

6.1 Shareholder Creditors

- (a) Until the Final Discharge Date:
 - (i) no Shareholder Creditor shall demand or receive, and no ICA Group Company shall (and the Issuer shall ensure that no other Group Company 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 or purchase of, any Shareholder Debt in cash or in kind (or otherwise discharge any part of the Intercompany Debt by way of set-off or otherwise), unless expressly permitted by the Senior Finance Documents;
 - (ii) no Shareholder Creditor shall claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of any Group Company other than in accordance with Clause 10.2 (*Acceleration and Claim of Shareholder Debt and Intercompany Debt*);
 - (iii) no Shareholder Creditor or ICA Group Company shall (and the Issuer shall ensure that no other Group Company will) take or omit to take any action whereby the ranking and/or subordination contemplated by this Agreement may be impaired; and
 - (iv) no Shareholder Creditor or ICA Group Company shall (and the Issuer shall ensure that no other Group Company will) amend or terminate any provision of any Shareholder Debt Document (unless the amendment is not prejudicial to the interests of the Secured Parties).
- (b) Paragraph (a) above does not apply to any action arising as a result of any prior consent of both of the Representatives.
- (c) No Shareholder Creditor shall permit to subsist or receive, and no ICA Group Company shall (and the Issuer shall ensure that no other Group Company will) create or permit to subsist, any Security or any guarantee for or in respect of any Shareholder Debt except if permitted by the Security Agent (acting on instructions from both of the Representatives).

6.2 Restrictions on enforcement by the Shareholder Creditors

- (a) Until the Final Discharge Date, no Shareholder Creditor shall, except with the prior written consent of or as required by the Security Agent, take any Enforcement Action in relation to any Shareholder Debt.
- (b) If required by the Security Agent to take Enforcement Action, the Shareholder Creditors will promptly take the relevant Enforcement Action and apply any proceeds from that Enforcement Action in accordance with Clause 8 (*Turnover of Non-Permitted Payments*).

6.3 Restrictions on ICA Group Company and Shareholder subrogation

Until the Final Discharge Date, no Shareholder Creditor or ICA Group Company shall (and the Issuer shall ensure that no other Group Company will), except with the prior consent of the Representatives, be subrogated to or entitled to exercise any right of any Secured Party or any Security or guarantee under any Senior Finance Document.

7. INTERCOMPANY DEBT

7.1 Intercompany Creditors

- (a) Until the Final Discharge Date:
 - (i) no Intercompany Creditor shall demand or receive, and no Intercompany Debtor nor any ICA Group Company shall (and the Issuer shall ensure that no other Group Company 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 or purchase of, any Intercompany Debt in cash or in kind (or otherwise discharge any part of the Intercompany Debt by way of set-off or otherwise), except as permitted by Clause 7.2 (*Permitted Intercompany Payments*) or Clause 10.2 (*Acceleration and Claim of Shareholder Debt and Intercompany Debt*), unless expressly permitted by the Senior Finance Documents;
 - (ii) no Intercompany Creditor shall claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of any Group Company other than in accordance with Clause 10.2 (*Acceleration and Claim of Shareholder Debt and Intercompany Debt*);
 - (iii) no Intercompany Creditor, Intercompany Debtor or ICA Group Company shall take or omit to take any action whereby the ranking and/or subordination contemplated by this Agreement may be impaired; and
 - (iv) no Intercompany Creditor or Intercompany Debtor shall amend or terminate any provision of any Intercompany Debt Document (unless the amendment is not prejudicial to the interests of the Secured Parties).
- (b) Paragraph (a) above does not apply to any action arising as a result of any prior consent of both of the Representatives.
- (c) No Intercompany Creditor shall permit to subsist or receive, and no ICA Group Company shall (and the Issuer shall ensure that no other Group Company will) create or permit to subsist, any Security or any guarantee for or in respect of any Intercompany Debt except if permitted by the Security Agent (acting on instructions from both of the Representatives).

7.2 Permitted Intercompany Payments

- (a) Until the Final Discharge Date and subject to Clause 8 (*Turnover of Non-Permitted Payments*) and Clause 9 (*Effect of Insolvency Event*), an Intercompany Debtor may pay, and the relevant Intercompany Creditor may receive and retain, including by way of set-off, Payments of interest (but not principal) in respect of any Intercompany Debt, in each case provided that at the time of Payment, no Triggering Event has occurred or would result from such Payment.
- (b) Notwithstanding paragraph (a) above, Payment in cash of principal and interest in respect of Intercompany Debt shall always be permitted if made for the purpose of serving Debt to the Secured Parties and such payment is made directly to the Secured Parties (represented by the Security Agent) for repayment of principal or payment of interest on such Debt owed to the Secured Parties.

7.3 Restrictions on enforcement by the Intercompany Creditors

- (a) Until the Final Discharge Date, no Intercompany Creditor shall, except with the prior written consent of or as required by the Security Agent, take any Enforcement Action in relation to any Intercompany Debt.
- (b) If required by the Security Agent to take Enforcement Action, the Intercompany Creditors will promptly take the relevant Enforcement Action and apply any proceeds from that Enforcement Action in accordance with Clause 8 (*Turnover of Non-Permitted Payments*).

7.4 Restrictions on ICA Group Company and intercompany subrogation

Until the Final Discharge Date, no Intercompany Creditor, Intercompany Debtor or ICA Group Company shall, except with the prior consent of the Representatives, be subrogated to or entitled to exercise any right of any Secured Party or any Security or guarantee under any Senior Finance Document.

8. TURNOVER OF NON-PERMITTED PAYMENTS

8.1 Payments to Secured Parties

If a Secured Party (a "**Recovering Creditor**") makes a Recovery in respect of any amounts owed by any ICA Group Company other than in accordance with Clause 13.1 (*Order of Application*) such Recovering Creditor shall not be entitled to retain such amount and shall notify the Security Agent and forthwith pay such amount to the Security Agent for application in accordance with Clause 13.1 (*Order of Application*). Should such amount not be paid by the relevant Recovering Creditor to the Security Agent for application in accordance with Clause 13.1 (*Order of Application*) and the relevant Recovering Creditor applies that amount towards payment of indebtedness owing under the Senior Finance Documents to which it is a party then:

- (a) the relevant Secured Party shall notify each Agent thereof and the Security Agent shall, using reasonable efforts, determine whether the Recovery is in excess of the amount that the Recovering Creditor would have been paid had the Recovery been made by the Security Agent and distributed in accordance with Clause 13.1 (*Order of Application*), without taking account of any Tax which would be imposed on any Agent in relation to the Recovery; and

- (b) if the Recovery is higher than the amount which the Security Agent determines may be retained by the Recovering Creditor as its share of any payment to be made in accordance with Clause 13.1 (*Order of Application*), such excess amount shall be considered in any application of proceeds in accordance with Clause 13.1 (*Order of Application*) and the Recovery Creditor's share in the application may be reduced accordingly.
- (c) This Clause 8.1 shall not apply to the extent that the Recovering Creditor would not, after making any payment pursuant to this Clause, have a valid and enforceable subrogation claim against the relevant ICA Group Company.
- (d) This Clause 8.1 shall not apply to any amount which the Recovering Creditor has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified the other Secured Parties of the legal or arbitration proceedings; and
 - (ii) all other Secured Parties had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

8.2 Turnover by Shareholder Creditors

A Shareholder Creditor that receives any Recovery (including by way of set-off) in excess of what is permitted pursuant to this Agreement shall notify the Security Agent and forthwith pay such amount to the Security Agent for application in accordance with Clause 13.1 (*Order of Application*).

8.3 Turnover by ICA Group Companies

If any of the ICA Group Companies receives or recovers any amount which, under the terms of the Documents, should have been paid to a Secured Party or an Intercompany Creditor, that ICA Group Company will promptly pay that amount to the Security Agent for application in accordance with Clause 13.1 (*Order of Application*).

8.4 Protection of Debt upon Turnover

If a Party is obliged to pay an amount to the Security Agent in accordance with this Clause 8, the relevant Debt in respect of which the Party made such payment to the Security Agent will be deemed not to have been reduced or discharged in any way or to any extent by the relevant payment.

9. PAYMENT BLOCK

- (a) Following a Payment Block Event and for as long as it is continuing or until a written notice from the Super Senior Representative to the Security Agent to the contrary, no payments may be made under the Bonds Finance Documents (notwithstanding any other provisions to the contrary herein) (a "**Payment Block**"), except for payments in accordance with Clause 13.1 (*Order of Application*). For the avoidance of doubt, the failure by the Issuer to make any timely payments due under the Bonds shall constitute an Event of Default under the relevant Debt Documents and the unpaid amount shall carry default interest in accordance with the relevant Debt Document.

- (b) Upon the occurrence of a Payment Block, any amounts paid or recovered under the Bonds Finance Documents shall be paid to the Security Agent and applied in accordance with Clause 13.1 (*Order of Application*).

10. EFFECT OF INSOLVENCY EVENT

10.1 Subordination

- (a) If an Insolvency Event occurs:
 - (i) the allocation of proceeds between the Super Senior Debt and Senior Debt shall be as set out in Clause 13 (*Application of Recoveries*); and
 - (ii) the Shareholder Debt and the Intercompany Debt will be subordinated in right of payment to the Super Senior Debt and the Senior Debt.
- (b) The subordination provisions, to the extent permitted under the applicable law, in this Agreement shall remain in full force and effect by way of continuing subordination and shall not be affected in any way by any intermediate payment or discharge in whole or in part of any Debt.

10.2 Acceleration and Claim of Shareholder Debt and Intercompany Debt

- (a) After the occurrence of an Insolvency Event and until the Final Discharge Date, the Security Agent may:
 - (i) accelerate, claim, enforce and prove for any Shareholder Debt and Intercompany Debt owed by such Group Company or Intercompany Debtor or make a demand under any guarantee or indemnity against loss in respect of such Shareholder Debt or Intercompany Debt;
 - (ii) file claims and proofs, give receipts and take any proceedings or other action as the Security Agent considers necessary to recover that Shareholder Debt or Intercompany Debt; and
 - (iii) receive all distributions on that Shareholder Debt or Intercompany Debt for application in accordance with Clause 13.1 (*Order of Application*).
- (b) If and to the extent that the Security Agent is not entitled, or elects not, to take any of the action mentioned in paragraph (a) above, each Shareholder Creditor or Intercompany Creditor will do so promptly on request by the Security Agent.
- (c) Each Shareholder Creditor and Intercompany Creditor hereby irrevocably authorises the Security Agent to, on behalf of each Shareholder Creditor and Intercompany Creditor, take any action referred to in paragraph (a) above in respect of any Shareholder Debt or Intercompany Debt owed by a Group Company or Intercompany Debtor referred to in such paragraph and each Shareholder Creditor and Intercompany Creditor will provide all forms of proxy or other documents that the Security Agent may reasonably require for such purpose.

10.3 Distributions

- (a) After the occurrence of an Insolvency Event and until the Final Discharge Date, each Party shall:

- (i) hold any Recovery received or receivable by it during such period in respect of any Debt as escrow funds and separate from its own funds for the Secured Parties;
- (ii) promptly pay such Recovery (or, where the Recovery is by way of discharge by set-off, an equivalent amount) to the Security Agent for application in accordance with Clause 13.1 (*Order of Application*); and
- (iii) promptly direct the trustee in bankruptcy, receiver, administrator or other person distributing the assets of the relevant Group Company or their proceeds to pay distributions in respect of the Debt directly to the Security Agent.

10.4 Further Assurance

Each Party shall, at its own expense, take whatever action the Security Agent may require to give effect to this Clause 10.

11. ENFORCEMENT AND CONSULTATION

11.1 Enforcement Actions and Enforcement Instructions

- (a) Until the Final Discharge Date, the Security Agent shall:
 - (i) exercise any right, power, authority or discretion vested in it as Security Agent in accordance with Clause 11.2 (*Consultation*) (or, if so instructed pursuant to that Clause, refrain from exercising any right, power, authority or discretion vested in it as Security Agent); and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction from the Representatives.
- (b) Other than as expressly permitted under Clause 11.2 (*Consultation*), no Secured Party may independently accelerate, seek payment and exercise other rights and powers to take Enforcement Actions under the Senior Finance Documents.
- (c) The Security Agent may refrain from enforcing the Transaction Security and/or Guarantees or take other Enforcement Actions unless instructed otherwise by the Instructing Party in accordance with Clause 11.2 (*Consultation*) but always subject to paragraph (e) below.
- (d) Subject to the Transaction Security or the Guarantees having become enforceable in accordance with their terms and subject to Clause 11.2 (*Consultation*) below, the Representatives may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as it sees fit, provided that the instructions are consistent with the Security Enforcement Objective.
- (e) Notwithstanding anything to the contrary in this Clause 11.1 (*Enforcement Actions and Enforcement Instructions*) and Clause 11.2 (*Consultation*), the Senior Representative may only give any Enforcement Instructions if the proceeds to be received from the proposed Enforcement Action are expected to amount to or exceed the amount of the Super Senior Debt.
- (f) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 11.1.

- (g) Unless and until the Security Agent has received instructions from the Instructing Party in accordance with this Agreement, the Security Agent shall (without first having to obtain any Secured Party's consent) be entitled to enter into agreements with an ICA Group Company or a third party or take any other actions, if it is, in the Security Agent's opinion, necessary for the purpose of maintaining, altering, releasing or enforcing the Transaction Security and the Guarantees, creating further Security or guarantees for the benefit of the Secured Parties or for the purpose of settling the Secured Parties' or the ICA Group Companies' rights to the Transaction Security, in each case in accordance with the terms of the Senior Finance Documents and provided that such agreements or actions are not detrimental to the interests of the Super Senior Creditors or any other of the Secured Parties.
- (h) The Security Agent is not authorised to act on behalf of a Secured Party (without first obtaining that Party's, or, with respect to Bondholders, the Bond Trustee's, consent) in any legal or arbitration proceedings relating to any Senior Finance Document or this Agreement.

11.2 Consultation

- (a) If any Representative wishes to issue Enforcement Instructions in accordance with paragraph (d) of Clause 11.1 (*Enforcement Actions and Enforcement Instructions*), such Representative shall deliver a copy of those proposed Enforcement Instructions (an "**Enforcement Proposal**") to the Security Agent and the Security Agent shall promptly forward such Enforcement Proposal to the other Representatives.
- (b) Subject to paragraph (c) below, if the Security Agent has received Conflicting Enforcement Instructions, the Security Agent shall promptly notify the Representatives and the Representatives shall consult with each other and the Security Agent (as the case may be) in good faith for a period of not more than thirty (30) days (or such shorter period as the Representatives may agree) (the "**Consultation Period**") from the earlier of (i) the date of the latest such Conflicting Enforcement Instruction and (ii) the date falling ten (10) Business Days after the date on which the original Enforcement Proposal is delivered in accordance with paragraph (a) above, with a view to agreeing instructions as to enforcement.
- (c) The Representatives shall not be obliged to consult (or, in the case of sub-paragraph (ii) below, shall be obliged to consult for such shorter period as the Instructing Party may determine) in accordance with paragraph (b) above if:
 - (i) the Transaction Security and/or the Guarantees have become enforceable as a result of an Insolvency Event; or
 - (ii) each of the Super Senior Creditors and the Senior Creditors (represented by their Representatives) agree that no Consultation Period is required.
- (d) If consultation has taken place during the Consultation Period (provided that if the Conflicting Enforcement Instructions were due to that a Representative did not submit Enforcement Instructions there shall be no requirement that consultation has taken place) there shall be no further obligation to consult and the Security Agent may act in accordance with the Enforcement Instructions then or previously received from the Instructing Party

and the Instructing Party may issue instructions as to enforcement to the Security Agent at any time thereafter.

- (e) If:
 - (i) no Enforcement Action has been taken by the Security Agent within three (3) months from the end of the Consultation Period; or
 - (ii) no proceeds from an Enforcement Action in respect of the Transaction Security or the Guarantees have been received by the Security Agent which are sufficient to discharge all claims of the Super Senior Creditors in full within six (6) months from the end of the Consultation Period,

then the Super Senior Representative shall become the Instructing Party and be entitled to give Enforcement Instructions.

- (f) If a Secured Party (acting reasonably) considers that the Security Agent is enforcing the Transaction Security in a manner which is not consistent with the Security Enforcement Objective, such Secured Party shall give notice to the other Secured Parties after which the Representatives and the Security Agent shall consult for a period of twenty (20) days (or such lesser period that the Secured Parties may agree) with a view to agreeing on the manner of enforcement.

11.3 Miscellaneous

- (a) Upon Enforcement Actions in respect of the Transaction Security and/or the Guarantees, the proceeds shall be distributed in accordance with Clause 13.1 (*Order of Application*).
- (b) Any Enforcement Action required to be taken by the Representative in accordance with agreed Enforcement Instructions pursuant to 11.2 (*Consultation*) above, shall be taken by such Representative at the request of the Security Agent.
- (c) All Security and/or Guarantees or arrangement having similar effects may be released by the Security Agent, without the need for any further referral to or authority from anyone, upon any Enforcement Action provided that the proceeds are distributed in accordance with Clause 13.1 (*Order of Application*).
- (d) Funds that the Security Agent receives (directly or indirectly) in connection with an Enforcement Action in respect of the Transaction Security or Guarantees shall constitute escrow funds (*Sw. redovisningsmedel*) and must be held on a separate account on behalf of the Secured Parties or the ICA Group Companies as the case may be. The Security Agent shall promptly arrange for payments to be made in accordance with Clause 13.1 (*Order of Application*).
- (e) Nothing in this Agreement shall preclude the rights of the Super Senior Creditors or the Bond Trustee to join or intervene in or otherwise support any proceedings arising from insolvency proceedings or do such other things as may be necessary to maintain a claim or Security, always as long as such action does not adversely affect the rights of the other Secured Parties or the Security Agent and is not inconsistent with its obligations contained in this Agreement and each of the Super Senior Agent and the Bond Trustee shall give prompt notice to the other of any action taken by it to join, intervene or otherwise support any such proceedings.

11.4 Disposal and Releases

- (a) If in connection with any Enforcement Action, the Security Agent sells or otherwise disposes of (or proposes to sell or otherwise dispose of) any asset under any Transaction Security Document, or a Group Company sells or otherwise disposes of (or proposes to sell or otherwise dispose of) any asset at the request of the Security Agent, the Security Agent may, and is hereby irrevocably authorised on behalf of each Party to:
- (i) release the Security created pursuant to the Transaction Security Documents over the relevant asset and apply the net proceeds of sale or disposal in or towards payment of Debt in accordance with Clause 13.1 (*Order of Application*); and
 - (ii) if the relevant asset comprises all of the shares in the capital of an ICA Group Company or any holding company of an ICA Group Company,
 - (A) release that ICA Group Company and each of its Subsidiaries from all their past, present and future liabilities and/or obligations (both actual and contingent and including but not limited to borrowing and guarantee liabilities and any liabilities arising by way of subrogation or otherwise as a consequence of taking Enforcement Action) under any Debt Document or in relation to any Debt and release any Security granted by that ICA Group Company or holding company or their Subsidiaries over any of its assets under any of the Transaction Security Documents; and/or
 - (B) dispose of any Debt owed by such ICA Group Company, provided that the net proceeds thereof are applied in accordance with Clause 13.1 (*Order of Application*),
- provided that such action is consistent with the Security Enforcement Objective.
- (b) The release of liabilities shall, at the election of the Security Agent, be effected by way of capital contribution or forgiveness of liabilities or similar arrangements applicable in the jurisdiction of incorporation of such ICA Group Company or in any other way deemed appropriate by the Security Agent.
- (c) Each Party shall execute any assignments, transfers, releases or other documents and grant any consents and take any actions that the Security Agent may reasonably consider necessary to give effect to any release or disposal pursuant to this Clause 11.4 or for the purpose of any Enforcement Action taken (or to be taken) by the Security Agent in accordance with this Agreement or a transaction otherwise permitted by the Senior Finance Documents.
- (d) No release under paragraph (a) above will affect the obligations or liabilities of any Intercompany Creditor to the Secured Parties.

11.5 Exercise of Voting Rights

- (a) Each Secured Party agrees with the Security Agent that it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any Group Company as instructed by the Security Agent.

- (b) The Security Agent shall give instructions for the purposes of paragraph (a) above as directed by the Instructing Party.

12. APPOINTMENT OF THE SUPER SENIOR AGENT

- (a) Each Original Hedge Counterparty appoints the Super Senior Agent to act as its representative and give instructions to the Security Agent in accordance with this Agreement.
- (b) Each Hedge Counterparty (other than each Original Hedge Counterparty) will appoint upon accession to this Agreement as Hedge Counterparty:
 - (i) the Super Senior Agent; or
 - (ii) (subject to the written consent of the Issuer) itself or a third party,

to act as its representative and give instructions to the Security Agent in accordance with this Agreement, provided that, with respect to paragraph (ii) above, the Parties prior to such appointment shall negotiate and agree in good faith the necessary amendments to this Agreement for the inclusion of a new agent for such Hedge Counterparty.

13. APPLICATION OF RECOVERIES

13.1 Order of Application

- (a) Subject to the rights of creditors mandatorily preferred by law applying to companies generally, the proceeds of any Enforcement Action (including but not limited to any proceeds received from any direct or indirect realisation or sale by the Security Agent of any assets being subject to Transaction Security, payments under any Guarantees or proceeds received in connection with bankruptcy or other insolvency proceedings) shall be paid to the Security Agent for application in the following order of priority:
 - (i) *firstly*, in or towards payment *pro rata* of unpaid fees, costs, expenses and indemnities payable by any Group Company to the Security Agent;
 - (ii) *secondly*, in or towards payment *pro rata* of unpaid fees, costs, expenses and indemnities payable by any Group Company to the Paying Agent, the Super Senior Agent and the Bond Trustee;
 - (iii) *thirdly*, towards payment *pro rata* of accrued interest unpaid, principal under the Super Senior Documents and any other costs or outstanding amounts under the Super Senior Documents, including any close out amount and any other outstanding amounts under the Hedging Obligations (if any);
 - (iv) *fourthly*, towards payment *pro rata* of accrued interest unpaid under the Senior Debt (interest due on an earlier Interest Payment Date to be paid before any interest due on a later Interest Payment Date);
 - (v) *fifthly*, towards payment *pro rata* of principal under the Senior Debt;
 - (vi) *sixthly*, in or towards payment *pro rata* of any other costs or outstanding amounts unpaid under the Terms and Conditions and any other Senior Debt documents;

- (vii) *seventhly*, after the Final Discharge Date, towards payment *pro rata* of accrued interest unpaid and principal under the Intercompany Debt;
 - (viii) *eighthly*, after the Final Discharge Date, towards payment *pro rata* of accrued interest unpaid and principal under the Shareholder Debt; and
 - (ix) *ninthly*, after the Final Discharge Date, in payment of the surplus (if any) to the relevant ICA Group Company or other person entitled to it.
- (b) For the sake of clarity, the waterfall provision set out in paragraph (a) above shall apply regardless of any Transaction Security not being (for whatever reason) valid and enforceable in respect of the relevant Secured Party and regardless of any discharge of Secured Obligations, for example, in connection with corporate restructuring proceedings to the effect that respective priority position in waterfall will be provided for the full amount of the respective layer of Secured Obligations as if the discharge had not taken place.

13.2 Non-Cash Distributions

If the Security Agent or any Secured Party receives any distribution otherwise than in cash in respect of any Debt, such distribution will not be applied pursuant to Clause 13.1 (*Order of Application*) and reduce the relevant Debt until cash proceeds from realisation of such distribution have been received and applied by the Security Agent.

14. CONSENTS

14.1 No Objection by Shareholder Creditors or Intercompany Creditors

No Shareholder Creditor or Intercompany Creditor shall have any claim or remedy against any Group Company or any Secured Party by reason of:

- (a) the entry by any of them into any Senior Finance Document or any other agreement between any Secured Party and any Group Company;
- (b) any waiver or consent; or
- (c) any requirement or condition imposed by or on behalf of any Secured Party under any Senior Finance Document or any such other agreement,

which breaches or causes an event of default or potential event of default (however described) under any Shareholder Debt Document or Intercompany Debt Document. No Shareholder Creditor or Intercompany Creditor may object to any such matter by reason of any provision of any Shareholder Debt Document or Intercompany Debt Document.

14.2 Consents

If the Secured Parties or any class of them give any waiver or consent under, or in relation to, any Senior Finance Document in circumstances where the relevant ICA Group Company is required to obtain a corresponding waiver or consent under, or in relation to, any Shareholder Debt Document or Intercompany Debt Document to avoid a breach of or default under that Shareholder Debt Document or Intercompany Debt Document, that waiver or consent under that Senior Finance Document shall automatically operate as a waiver or consent, as the case may be, under that Shareholder Debt Document or Intercompany Debt Document.

14.3 Prepayments

- (a) Until the Final Discharge Date, each Shareholder Creditor, each Intercompany Creditor and any Secured Party waives any right it may have to any proceeds or other amounts which are required by any Senior Finance Document to be applied in mandatory prepayment of any Debt owing to a Secured Party or which is applied in voluntary prepayment of any such Debt, in each case to the extent that any such proceeds or amounts are applied in accordance with the relevant Senior Finance Document or this Agreement, provided that following an Enforcement Action all amounts Recovered shall be applied in accordance with Clause 13.1 (*Order of Application*).
- (b) Paragraph (a) above shall, unless an Event of Default has occurred and is continuing, apply notwithstanding that any such proceeds or amounts result from the disposal of any asset which is subject to Security created under the Transaction Security Documents.

15. RELEASE OF GUARANTEES AND SECURITY

15.1 General

- (a) The Security Agent is authorised and may execute on behalf of any Secured Party, in each case without any need for further deferral to or authority from such Secured Party, any release of the Guarantees or the Security created by any Transaction Security Document in the Issuer, to the extent that such release is made in accordance with the terms and conditions of the Senior Finance Documents.
- (b) Each Party acknowledges and agrees that it will execute such releases as the Security Agent may request in order to give effect to this Clause 15. No such release will affect the obligations and liabilities of any other ICA Group Company under any Senior Finance Document not subject to such release.
- (c) Any Transaction Security or Guarantee to be released in accordance with this Clause 15 will always be released *pro rata* between the Secured Parties and the remaining Transaction Security will continue to rank *pari passu* between the Secured Parties as set forth in the Transaction Security Documents and this Agreement.
- (d) The Security Agent shall facilitate disposals as set out in Clause 15.2 (*Release and granting of security upon disposals*) without any authorisation from any Secured Party being required.

15.2 Release and granting of security upon disposals

- (a) Subject in each case to the prior written consent from the Super Senior Representative, a Group Company may dispose of shares in a pledged Group Company (provided that such Group Company is not, and has not been, a Material Group Company) (a "**Disposed Company**") to a person or entity not being a Group Company, provided that, prior to the disposal, Security is granted to the Secured Parties (represented by the Security Agent) over:
 - (i) shares in another Group Company (the "**Substitute Company**") on terms equivalent to the terms of other Security Documents and that, provided that the EBITDA and turnover of the Substitute Company (on a consolidated basis) amount

to at least ninety (90) per cent. of the EBITDA and turnover of the Disposed Company (on a consolidated basis); or

- (ii) the following assets:
 - (A) a bank account held by the disposing Group Company with a reputable bank (in the sole discretion of the Security Agent) (the "**Proceeds Account**") on terms similar to the terms of other Security Documents, to which account the Issuer and the disposing Group Company shall ensure that the cash purchase price (less transaction costs) for the Disposed Company is transferred directly from the purchaser; and
 - (B) any vendor loan granted by a disposing Group Company to a purchaser of the Disposed Company, on terms similar to the terms of other Security Documents.
- (b) Prior to a disposal in accordance with paragraph (a)(i) above, the Issuer shall provide to the Security Agent a certificate signed by authorised signatories of the Issuer setting out and certifying the EBITDA and turnover of the Disposed Company and the Substitute Company (each on a consolidated basis).
- (c) A Group Company which has granted Security over a Proceeds Account may request that the Security Agent releases any funds (in whole or in part) standing to the credit on the Proceeds Account for the purpose of such Group Company's acquisition of shares in a target company (the "**Target Company**"), provided that (i) the Issuer provides evidence to the Security Agent that the purchase price (less refinancing debt, fees, costs and taxes) for the shares in the Target Company corresponds to at least the amount to be released from the Proceeds Account, and (ii) the Issuer and such Group Company shall ensure that all shares in the Target Company are immediately following the acquisition pledged to the Secured Parties (represented by the Security Agent) on terms similar to the terms of other Security Documents and that such pledge is duly perfected as soon as possible.
- (d) The Security Agent shall not release any Security over the shares in a Disposed Company until a written consent from the Super Senior Representative has been obtained and the conditions set out in paragraph (a)(i) or (a)(ii) and paragraph (b) above have been fulfilled.
- (e) When determining EBITDA for a company in this Clause 15.2, EBITDA shall be calculated for that company in the same manner as EBITDA for the Group is calculated for the Issuer in accordance with the Terms and Conditions.

15.3 Intra-group restructuring

Subject to the terms of the Senior Finance Documents, a Group Company shall until the occurrence of an Event of Default be entitled to make disposals of shares in pledged Group Companies (not being a Material Group Company) (a "**Share Disposal**") to another Group Company (provided that if the disposing Group Company is a Material Group Company the acquiring Group Company shall be a Material Group Company), provided that the transfer shall be made subject to the Security over such shares and the Issuer shall procure that the acquiring Group Company shall enter into any agreements, execute any documents and take all actions requested by the Security Agent (acting reasonably) for the purpose of maintaining Security over such shares.

16. ROLE OF THE SECURITY AGENT

16.1 Appointment of the Security Agent

Each Secured Party hereby irrevocably:

- (a) appoints the Security Agent to act as security agent under and in connection with the relevant Senior Finance Documents and this Agreement, to the extent permitted by applicable law;
- (b) authorises the Security Agent on its behalf to sign, execute and enforce the Transaction Security Documents and the Guarantee Agreement;
- (c) authorises the Security Agent to enter into agreements with the Issuer or a third party or take such other actions, as is, in the Security Agent's opinion, necessary for the purpose of maintaining, releasing or enforcing the Transaction Security or the Guarantees or for the purpose of settling the Secured Parties' or the Issuer's rights to the Transaction Security or the Guarantees, in each case in accordance with the terms of the Senior Finance Documents and provided that such agreements or actions are not in the sole opinion of the Security Agent detrimental to the interests of the Secured Parties (for the avoidance of doubt, a release in accordance with Clause 15.2 (*Release and granting of security upon disposals*) shall for the purpose of this Clause 16.1 not be deemed detrimental to the Secured Parties); and
- (d) authorises the Security Agent on its behalf to perform the duties and to exercise the rights, powers, authorities and discretions specifically given to it under or in connection with the relevant Senior Finance Documents and this Agreement, together with any other incidental rights, powers, authorities and discretions.

16.2 Duties of the Security Agent

- (a) The duties of the Security Agent under the Senior Finance Documents and this Agreement are solely mechanical and administrative in nature. Except as specifically provided in the Debt Documents to which the Security Agent is a party, the Security Agent has no obligations of any kind to any other Party under or in connection with the Debt Documents.
- (b) The Security Agent is not responsible for:
 - (i) the adequacy, accuracy or completeness of any information supplied by any Party in connection with the Documents or
 - (ii) the content, valid execution, legality, validity or enforceability of any Document or any agreement or document relating thereto, the perfection of any Transaction Security, or whether a Secured Party has recourse against any Party or any of its respective assets.
- (c) Each Secured Party confirms to the Security Agent that it has made and will continue to make its own independent appraisal and investigation of all risks arising under or in connection with the Documents including with respect to the financial condition and status of any ICA Group Company or other Group Company.
- (d) The Security Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Group Company or any other person.

- (e) Notwithstanding any other provision of any Senior Finance Document or this Agreement 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.
- (f) Notwithstanding anything to the contrary in the Senior Finance Documents, if the Security Agent is not satisfied that it does not need to be resident, incorporated (including by way of a branch office), registered or authorised in any jurisdiction or deposit any funds in any jurisdiction where the Security Agent, at the time the relevant Transaction Security shall be granted, is not resident, incorporated (including by way of a branch office), registered or authorised in, the Security Agent shall have a right to (without consent from any Secured Party) waive the requirement in any Senior Finance Document to grant that Transaction Security. Satisfaction in this respect should either be through the inclusion of such statement in a legal opinion or by any other legal statement from a well reputable law firm which in form and substance is acceptable to the Security Agent (acting reasonably).

16.3 Exclusion of Liability

- (a) Without limiting paragraph (b) below, the Security Agent shall incur no liability towards any of the parties to this Agreement and will not be liable for any damages occurred as a result of any action taken by it under or in connection with any Senior Finance Document or this Agreement, unless directly caused by its gross negligence or wilful misconduct.
- (b) No Party (other than the Security Agent) may take any proceedings against any officer, employee or agent of the Security Agent in respect of any claim it might have against the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Senior Finance Document or this Agreement and any officer, employee or agent of the Security Agent may rely on this Clause 16.3.
- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Senior Finance Documents or this Agreement to be paid by it if it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by it for that purpose.

17. THE BOND TRUSTEE

17.1 Liability

- (a) It is expressly understood and agreed by the Parties that this Agreement is executed and delivered by the Bond Trustee not individually or personally but solely in its capacity as agent in the exercise of the powers and authority conferred and vested in it under the relevant Bonds Finance Documents for and on behalf of the Bondholders only for which the Bond Trustee acts as agent and it shall have no liability for acting for itself or in any capacity other than as agent and nothing in this Agreement shall impose on it any obligation to pay any amount out of its personal assets. Notwithstanding any other provision of this Agreement, its obligations hereunder (if any) to make any payment of any amount or to hold any amount on behalf of any other party shall be only to make payment of such amount to or hold any such amount to the extent that (i) it has actual knowledge that such obligation has arisen and (ii) it has received and, on the date on which it acquires

such actual knowledge, has not distributed to the Bondholders for which it acts as agent in accordance with the relevant Terms and Conditions (in relation to which it is an agent) any such amount.

- (b) It is further understood and agreed by the Parties that in no case shall the Bond Trustee be:
 - (i) personally responsible or accountable in damages or otherwise to any other party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by the Bond Trustee in accordance with this Agreement or any of the Bonds Finance Documents in a manner that the Bond Trustee believed to be within the scope of the authority conferred on it by this Agreement or any of the Finance Documents (as defined in the Terms and Conditions) or by law; or
 - (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party; provided however, that the Bond Trustee shall be personally liable under this Agreement for its own gross negligence or wilful misconduct.
- (c) It is also acknowledged and agreed that no Bond Trustee shall have any responsibility for the actions of any individual Bondholder (save in respect of its own actions).
- (d) The Bond Trustee is not responsible for the appointment or for monitoring the performance of the Security Agent.
- (e) The Security Agent agrees and acknowledges that it shall have no claim against the Bond Trustee in respect of any fees, costs, expenses and liabilities due and payable to, or incurred by, the Security Agent.
- (f) The Bond Trustee shall be under no obligation to instruct or direct the Security Agent to take any Security Enforcement Action unless it shall have been instructed to do so by the Bondholders and if it shall have been indemnified and/or secured to its satisfaction.
- (g) The provisions of this Clause 17.1 shall survive the termination of this Agreement.

17.2 Instructions

In acting under this Agreement, the Bond Trustee is entitled to seek instructions from the Bondholders at any time and, where it acts on the instructions of the Bondholders, the Bond Trustee shall not incur any liability to any person for so acting. The Bond Trustee is not liable to any person for any loss suffered as a result of any delay caused as a result of it seeking instructions from the Bondholders.

17.3 Bond Trustee's assumptions

- (a) The Bond Trustee is entitled to assume that:
 - (i) any payment or other distribution (other than payments or distributions made by the Bond Trustee) made pursuant to this Agreement in respect of the Bonds has been made in accordance with the ranking in Clause 3 (*Ranking and Priority*) and is not prohibited by any provisions of this Agreement and is made in accordance with these provisions;

- (ii) the proceeds of enforcement of the Guarantees or any Security conferred by the Transaction Security Documents have been applied in the order set out in Clause 13.1 (*Order of Application*); and
 - (iii) any Bonds issued comply with the provisions of this Agreement.
- (b) The Bond Trustee shall not have any obligation under Clause 9 (*Effect of Insolvency Event*) in respect of amounts received or recovered by it unless:
 - (i) it has actual knowledge that the receipt or recovery falls within paragraph (a) above; and
 - (ii) it has not distributed to the relevant Bondholders in accordance with the Terms and Conditions any amount so received or recovered.
- (c) The Bond Trustee shall not be obliged to monitor performance by the ICA Group Companies, the Security Agent or any other Party to this Agreement or the Bondholders of their respective obligations under, or compliance by them with, the terms of this Agreement.

18. RESPONSIBILITY OF THE REPRESENTATIVES AND THE AGENTS

18.1 No action

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

18.2 Reliance on certificates

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

18.3 No fiduciary duty

No Representative and no Agent shall be deemed to owe any fiduciary duty to any Secured Party, Shareholder Creditor or Intercompany Creditor (other than if expressly stated) and shall not be personally liable to any Secured Party, Shareholder Creditor or Intercompany Creditor if it shall in good faith mistakenly pay over or distribute to any Secured Party, Shareholder Creditor or Intercompany Creditor or to any other person cash, property or securities to which any other Secured Party, Shareholder Creditor or Intercompany Creditor shall be entitled by virtue of this Agreement or otherwise.

18.4 Debt assumptions

- (a) The Representatives and the Agents may rely on:
 - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
 - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Representatives and the Agents may assume, unless it has received notice to the contrary in its capacity as agent, that:
 - (i) no event of default or potential event of default, however described, has occurred (unless it has actual knowledge of a failure by an ICA Group Company to pay on the due date an amount pursuant to a Senior Finance Document);
 - (ii) no Super Senior Debt or Senior Debt have been accelerated;
 - (iii) any instructions or Enforcement Instructions received by it from a Representative or an Agent are duly given in accordance with the terms of the Senior Finance Documents, and, unless it has received actual notice of revocation, that those instructions or directions have not been revoked;
 - (iv) any right, power, authority or discretion vested in any Party or any group of creditors or Secured Parties has not been exercised; and
 - (v) any notice or request made by the Issuer is made on behalf of and with the consent and knowledge of all the ICA Group Companies.
- (c) The Representatives and the Agents may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Representatives and the Agents may disclose to any other Party any information it reasonably believes it has received as Agent.
- (e) The Representatives and the Agents are not obliged to monitor or enquire whether any Event of Default (or an event that may lead to an Event of Default) has occurred.

18.5 Provisions survive termination

The provisions of this Clause 18 shall survive any termination of this Agreement.

18.6 Other Parties not affected

No provision of this Clause 18 shall alter or change the rights and obligations as between the other Parties in respect of each other. This Clause 18 is intended to afford protection to the Representatives or the Agents only.

18.7 Confirmation

Without affecting the responsibility of any ICA Group Company for information supplied by it or on its behalf in connection with any Senior Finance Document, each Secured Party (other than any Representative (in its personal capacity) and the Security Agent) confirms that it:

- (a) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Senior Finance Documents (including the financial condition and affairs of the Group and the nature and extent of any recourse against any Party or its assets); and
- (b) has not relied on any information provided to it by the Representatives in connection with any Senior Finance Document.

18.8 Provision of information

No Representative and no Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party. No Representative and no Agent is responsible for:

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

18.9 Disclosure of information

The Issuer irrevocably authorises any Representative and any Agent to disclose to any Secured Party any information that is received by the Representative or the Agent in its capacity as Representative or Agent.

18.10 Illegality

- (a) Each Representative and each Agent may refrain from doing anything (including disclosing any information) which might, in its opinion, constitute a breach of any law or regulation and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.
- (b) Furthermore, each Representative and each Agent may also refrain from taking such action if it would otherwise render it liable to any person in that jurisdiction or if, in its opinion based upon such legal advice, it would not have the power to do the relevant thing in that jurisdiction by virtue of any applicable law in that jurisdiction or if it is determined by any court or other competent authority in that jurisdiction that it does not have such power.

19. INFORMATION

19.1 Notification of prescribed events

If a default (however described) is continuing, an Event of Default occurs or ceases to be continuing, or if an Acceleration Event occurs:

- (a) the relevant Representative shall upon becoming aware of the same notify the Security Agent; and
- (b) the Security Agent shall, upon receiving that notification, notify each other Representative and each Hedge Counterparty.

19.2 Amounts of Debt

Each Representative, the Hedge Counterparties, the Shareholder Creditors and the Intercompany Creditors will on written request by any of the others or the Security Agent from time to time notify the others and the Security Agent in writing of details of the amount of its outstanding Debt.

19.3 Hedge Counterparty

- (a) Each Hedge Counterparty shall on request by the Super Senior Agent or the Security Agent from time to time notify the Super Senior Agent and the Security Agent of the Notional Amount (as defined in the relevant Hedging Agreement) of each Hedging Agreement to which it is a party and the residual maturity of each such Hedging Agreement.
- (b) If any Hedge Counterparty does not promptly on request notify the Super Senior Agent and the Security Agent of any matter pursuant to paragraph (a) above, the Super Senior Agent and the Security Agent may assume that the Notional Amount (as defined in the relevant Hedging Agreement) of each relevant Hedging Agreement is that set out in that Hedging Agreement and may calculate the residual maturity of each relevant Hedging Agreement by reference to that Hedging Agreement.

19.4 Dealings with Security Agent and other Representatives

- (a) Each Super Senior Creditor shall deal with the Security Agent exclusively through its Representative.
- (b) Each Bondholder shall deal directly with the Bond Trustee and the Bond Trustee shall deal directly with the Security Agent.

20. LIMITATION ON SUBORDINATION UNDERTAKING

20.1 German Limitation Language

- (a) Any obligations and undertakings in respect of Intercompany Debt assumed under Clause 7 (*Intercompany Debt*) or Clause 8 (*Turnover of Non-Permitted Payments*) of this Agreement shall not apply to an ICA Group Company incorporated in Germany (a “**German ICA Group Company**”) if and to the extent compliance with such obligations and undertakings would cause the effect of reducing the German ICA Group Company’s (or in the case of a limited partnership with a limited company as general partner (GmbH & Co.KG) the general partner’s) net assets (*Reinvermögen*) (the “**Net Assets**”) to an amount of less than its stated share capital (*Stammkapital*) or, if the Net Assets are already an amount of less

than its stated share capital, of causing such amount to be further reduced (a “**Capital Impairment**”) and thereby leading to a violation of section 30 of the German Limited Liability Companies Act (*GmbHG*).

- (b) The determination whether the compliance with any restrictions on payments, enforcement or set-off in respect of Intercompany Debt would cause a Capital Impairment shall be made in accordance with the principles and adjustments set out below:
- (c) The amount of the Net Assets shall be determined in accordance with the German Commercial Code (*De. Handelsgesetzbuch*, the “*HGB*”) consistently applied by the relevant German ICA Group Company in preparing its unconsolidated balance sheets (*De. Jahresabschluss*) according to section 42 of the German Limited Liability Company Act (*De. Gesetz betreffend die Gesellschaften mit beschränkter Haftung*, the “*GmbHG*”) and sections 242, 264 of the HGB in the previous years, save that:
 - (i) any amounts not available for distribution to the shareholders of the relevant German ICA Group Company in accordance with sections 268 para. 8, 253 para. 6 and 272 para. 5 of the HGB shall be deducted when calculating the amount of the Net Assets of the relevant German ICA Group Company;
 - (ii) the amount of any increase of the stated share capital (*De. Stammkapital*) of the relevant German ICA Group Company carried out after the date of this Agreement and made from retained earnings (*De. Kapitalerhöhung aus Gesellschaftsmitteln*) or in violation of the provisions of any Senior Finance Document shall be deducted from the relevant stated share capital (*De. Stammkapital*) of the relevant German ICA Group Company; and
 - (iii) loans and other liabilities incurred by the relevant German ICA Group Company in violation of the provisions of any Senior Finance Document and financial indebtedness from shareholder loans which are subordinated pursuant to section 39 of the German Insolvency Code shall be disregarded in calculating the liabilities of the relevant German ICA Group Company.

21. CHANGES TO THE PARTIES

21.1 Assignments and transfers by Creditors

No Secured Party, Shareholder Creditor or Intercompany Creditor may assign or transfer any of its rights or obligations under this Agreement or any Debt Document to, or in favour of, any person unless such assignment or transfer is made in accordance with the terms of the relevant Debt Document (and, in relation to Shareholder Debt or Intercompany Debt, that person is permitted or required to become an Shareholder Creditor or Intercompany Creditor by the Senior Finance Documents) and provided that such person (save for any Bondholder) executes and delivers a duly completed and signed ICA Group Company Accession Agreement or, where applicable, Creditor/Representative Accession Undertaking to the Security Agent. Such assignment or transfer will not be effective unless and until the Security Agent executes an ICA Group Company Accession Agreement or, where applicable, Creditor/Representative Accession Undertaking duly completed and signed on behalf of that person.

21.2 Assignment and transfer by ICA Group Companies

No ICA Group Company may assign or transfer any of its rights or obligations under this Agreement or any Document other than pursuant to Clause 15 (*Release of Guarantees and Security*).

21.3 Accession of additional ICA Group Companies

- (a) If any Group Company which is not an ICA Group Company provides Transaction Security or issues a Guarantee, it shall accede to this Agreement as an ICA Group Company, in accordance with paragraph (b) below, on the date it provides such Transaction Security.
- (b) With effect from the date of acceptance by the Security Agent of an ICA Group Company Accession Agreement duly executed and delivered to the Security Agent by the new ICA Group Company or, if later, the date specified in the ICA Group Company Accession Agreement, the new ICA Group Company shall assume the same obligations and become entitled to the same rights as if it had been an original Party as an ICA Group Company.

21.4 Accession of Shareholder Creditors

- (a) If any Group Company has any Liabilities under any Shareholder Debt to a Shareholder Creditor, the Issuer shall procure (i) that the Shareholder Creditor to which such Liabilities are owed shall (if not already a Party as a Shareholder Creditor) accede to this Agreement as a Shareholder Creditor, in accordance with paragraph (b) below, on such date and (ii) that the Group Company incurring such Liabilities shall (if not already a Party as a ICA Group Company) accede to this Agreement as an ICA Group Company, in accordance with paragraph (c) of Clause 23.3 (*Accession of additional ICA Group Companies*) on such date.
- (b) With effect from the date of acceptance by the Security Agent of a Creditor/Representative Accession Undertaking duly executed and delivered to the Security Agent by the new Shareholder Creditor or, if later, the date specified in the Creditor/Representative Accession Undertaking, the new Shareholder Creditor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Shareholder Creditor.

21.5 Accession of Hedge Counterparties

- (a) A person with which any ICA Group Company has entered into or intends to enter into a Hedging Agreement may become a Party to this Agreement as a Hedge Counterparty in accordance with paragraph (b) below.
- (b) With effect from the date of acceptance by the Security Agent of a Creditor/Representative Accession Undertaking duly executed and delivered to the Security Agent by the Hedge Counterparty or, if later, the date specified in the Creditor/Representative Accession Undertaking, the Hedge Counterparty shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Hedge Counterparty.

21.6 Accession or change of Super Senior RCF Creditor

- (a) Upon entry into a Super Senior RCF or the refinancing of the Super Senior RCF which is permitted by the Senior Finance Documents or an accession of an affiliate of a lender as an ancillary lender under the Super Senior RCF, each new Super Senior RCF Creditor shall

accede to this Agreement as a Super Senior RCF Creditor in accordance with paragraph (b) below.

- (b) With effect from the date of acceptance by the Security Agent of a Creditor/Representative Accession Undertaking duly executed and delivered to the Security Agent by new Super Senior RCF Creditor or, if later, the date specified in the Creditor/Representative Accession Undertaking, the new Super Senior RCF Creditor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Super Senior RCF Creditor.
- (c) Upon a refinancing of the Super Senior RCF which is permitted by the Senior Finance Documents, the Super Senior Agent will be replaced by the agent appointed in respect of such replacement Super Senior Debt.
- (d) The majority senior lenders under the Super Senior RCF Documents may appoint a successor to the Super Senior Agent.

21.7 Resignation of Agents

- (a) An Agent may resign and appoint one of its Affiliates acting through an office in Sweden as successor by giving notice to the other Representatives, the Hedge Counterparties and the Issuer.
- (b) Alternatively, an Agent may resign by giving notice to the other Agents, the Hedge Counterparties and the Issuer, in which case the other Agents (after consultation with the Issuer) may appoint a successor Agent.
- (c) If the Agents have not agreed upon and appointed a successor Agent in accordance with paragraph (b) above within thirty (30) days after notice of resignation was given, the retiring Agent (after consultation with the Issuer) may appoint a successor Agent.
- (d) The retiring Agent shall, at its own cost, make available to its successor such documents and records and provide such assistance as its successor may reasonably request for the purposes of performing its functions as Agent under the Senior Finance Documents and this Agreement.
- (e) The resignation notice of an Agent shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of this Agreement provided however that a retiring Security Agent shall remain entitled to the benefit of Clause 16 (*Role of the Security Agent*) and 24.5 (*Indemnity to the Security Agent*).
- (g) A successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) Notwithstanding paragraphs (a) to (g) above:
 - (i) resignation and appointment of the Security Agent is subject to the approval by the Bond Trustee and the Super Senior Creditors. The Bond Trustee shall be authorised (in its sole discretion) to grant such consent without any approval or consent from the Bondholders;

- (ii) notwithstanding paragraph (i) above, the Original Security Agent may resign as Security Agent once the Bonds have been redeemed without any prior approval or consent (for the avoidance of doubt even if any other Secured Obligations are outstanding);
- (iii) a Security Agent's resignation notice shall only take effect upon the appointment of a successor and the transfer of all the Security assets to that successor;
- (iv) resignation and appointment of an Agent shall always be made in accordance with the Senior Finance Documents; and
- (v) a Super Senior Agent may only resign if the new Super Senior Agent accedes to this Agreement.

21.8 Replacement of Security Agent

- (a) Subject to paragraph (d) below, if the Security Agent is insolvent or becomes subject to bankruptcy proceedings, the Security Agent shall be deemed to resign as Security Agent and the Senior Representatives shall within twenty (20) Business Days appoint a successor Security Agent which shall be an independent financial institution or other reputable company which regularly acts as security agent under debt issuances.
- (b) Subject to paragraph (d) below, the Senior Representatives may, by notice to the Security Agent, require the Security Agent to resign in accordance with Clause 21.7 (*Resignation of Agents*) above, provided that the costs referred to in paragraph (d) of Clause 21.7 (*Resignation of Agents*) shall be borne by the Issuer.
- (c) If the Senior Representatives have not appointed a successor Security Agent within ninety (90) calendar days after (a) the earlier of the notice of resignation was given or the resignation otherwise took place or (b) the Security Agent was dismissed through a decision by the Senior Representatives, the Issuer shall appoint a successor Security Agent which shall be an independent financial institution or other reputable company which regularly acts as security agent under debt issuances.
- (d) Replacement of the Security Agent pursuant to this Clause 21.8 may only be made if and at the times when such replacement does not impair the perfection of the Transaction Security or is otherwise materially adverse to the Senior Creditor's interests.

21.9 Execution and Notification by Security Agent

- (a) Each Party (other than the relevant acceding person) irrevocably authorises the Security Agent to execute on its behalf any ICA Group Company Accession Agreement and any Creditor/Representative Accession Undertaking which has been duly completed and signed on behalf of the relevant acceding person in accordance with this Agreement.
- (b) The Security Agent shall notify the other Parties promptly of the receipt and execution by it on their behalf of any ICA Group Company Accession Agreement and any Creditor/Representative Accession Undertaking.

22. SUPER SENIOR RCF REFINANCING AND CANCELLATION

22.1 Super Senior RCF refinancing

- (a) The Issuer shall (after prior approval from the Super Senior RCF Creditors) from time to time be entitled to replace the Super Senior RCF in full or in part with one or several new revolving debt facilities for general corporate purposes or working capital purposes, provided that:
- (i) the nominal amount of such revolving debt facilities does not in aggregate exceed EUR 10,000,000 (or its equivalent in any other currency or currencies);
 - (ii) the Transaction Security shall secure the new debt on the same terms, *mutatis mutandis*, as it secures the Super Senior RCF, including the terms of this Agreement;
 - (iii) each new Super Senior RCF Creditor shall directly or through an agent or a trustee be a party to the Transaction Security;
 - (iv) the Security Agent shall hold the Transaction Security on behalf of the new Super Senior RCF Creditor on the same terms, *mutatis mutandis*, as the Transaction Security is held by the Security Agent on behalf of the Secured Parties;
 - (v) each new Super Senior RCF Creditor shall directly or through an agent or a trustee accede to this Agreement as a Super Senior RCF Creditor; and
 - (vi) each new Super Senior RCF Creditor shall have the same right to the Transaction Security and the Guarantees and the proceeds pertaining thereto as the previous Super Senior RCF Creditors.
- (b) Subject to the fulfilment of the conditions set out in paragraph (a) above, the Security Agent may from time to time, at the request of the Issuer, amend vary and/or restate the Transaction Security or the Guarantees on behalf of itself and the Secured Parties in order to release Security and/or Guarantees provided to an existing Super Senior RCF Creditor (with the prior consent of such existing Secured Party) and/or to create Security and/or guarantees in favour of a new Super Senior RCF Creditor.

22.2 Super Senior RCF cancellation

If the Issuer repurchases, amortises, cancels, prepays or otherwise repays the Bonds such that the aggregate nominal amount of the Bonds falls below EUR 24,000,000, the Super Senior RCF shall, if requested by the Super Senior RCF Creditor, be cancelled and the relevant ICA Group Companies shall prepay the Super Senior RCF, in each case in an amount *pro rata* to the amount by which the outstanding nominal amount of the Bonds falls below EUR 40,000,000.

23. NOTICES

23.1 Communications in Writing

Any communication or document to be made or delivered under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made or delivered by e-mail or letter.

23.2 Addresses

The address and e-mail (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 Issuer, the Original Super Senior Creditors, the Super Senior Representative, the Original Hedge Counterparty and the Original Security Agent, that identified with its name below;
- (b) in the case of any Original ICA Group Company, that identified with the Issuer's name below;
- (c) in the case of the Original Bond Trustee, that identified with the Original Bond Trustee's name below; and
- (d) in the case of each Shareholder Creditor and Intercompany Creditor, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,

or any substitute address, e-mail or department or officer as the 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 (5) Business Days' notice.

23.3 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 e-mail, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 23.2 (*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) A notice given by e-mail which is dispatched after close of business at the place of receipt, or on a day which is not a Business Day, will be deemed to have been given on the next Business Day.

23.4 Notification of Address and E-mail Address

Promptly upon receipt of notification of an e-mail address and postal address or change thereof pursuant to Clause 23.2 (*Addresses*) or changing its own e-mail address, postal address, the Security Agent shall notify the other Parties.

23.5 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 Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

24. EXPENSES AND INDEMNITIES

24.1 Secured Party Expenses

To the extent not already paid under another Debt Document, the Issuer will, within three (3) Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including external legal fees) incurred by that Secured Party in connection with the enforcement or preservation of that Secured Party's rights against an ICA Group Company, Shareholder Creditor or Intercompany Creditor under this Agreement.

24.2 Security Agent Expenses

The Issuer shall promptly on demand pay the Security Agent the amount of all costs and expenses (including external legal fees) incurred by it in connection with the administration, preservation, enforcement or release of any Guarantee or any Security created pursuant to any Transaction Security Document.

24.3 Secured Parties' Indemnity to the Security Agent

Each other Secured Party shall (in proportion to its share of the Debt then outstanding to all the Debt then outstanding and/or available for drawing under the relevant Senior Finance Documents) indemnify the Security Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Security Agent (otherwise than by reason of its gross negligence or wilful misconduct) in acting as Security Agent under the Senior Finance Documents (unless it has been reimbursed by an ICA Group Company pursuant to a Senior Finance Document).

24.4 Deduction from Amounts Payable by the Security Agent

If any Party owes an amount to the Security Agent under the Senior Finance Documents or this Agreement, the Security Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Security Agent would otherwise be obliged to make under the Senior Finance Documents or this Agreement and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Senior Finance Documents or this Agreement that Party shall be regarded as having received any amount so deducted.

24.5 Indemnity to the Security Agent

The Issuer shall promptly indemnify the Security Agent against any cost, loss or liability incurred by the Security Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is an event of default or potential event of default, however described;

- (b) acting or relying on any notice, request or instruction which it believes to be genuine, correct and appropriately authorised;
- (c) the protection or enforcement of the Transaction Security,
- (d) the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent by the Senior Finance Documents or by law; or
- (e) any default by any Group Company in the performance of any of the obligations expressed to be assumed by it in the Senior Finance Documents.

24.6 Currency Indemnity

- (a) If any Recoveries or any other payment required to be paid by any Shareholder Creditor, Intercompany Creditor, Intercompany Debtor or ICA Group Company under this Agreement (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
 - (i) making or filing a claim or proof against that Shareholder Creditor, Intercompany Creditor, Intercompany Debtor or ICA Group Company; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Shareholder Creditor, Intercompany Creditor, Intercompany Debtor or ICA Group Company shall as an independent obligation, within three Business Days of demand, indemnify the Security Agent and, until the Final Discharge Date, the Representatives against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Shareholder Creditor, Intercompany Creditor, Intercompany Debtor and ICA Group Company waives any right they may have in any jurisdiction to pay any amount under this Agreement in a currency or currency unit other than that in which it is expressed to be payable.

25. AMENDMENTS AND WAIVERS

- (a) Subject to this Clause 25, the relevant Secured Parties and ICA Group Companies may amend or waive the terms of the Senior Finance Documents in accordance with their terms (and subject only to any consent required under them) at any time. The ICA Group Companies may not agree without the prior consent of the Issuer to any amendment or waiver of the terms of the Bonds Finance Documents if such waiver or amendment
 - (i) results in the maturity date of the Bonds falling before the Termination Date (as such term is defined in the Super Senior RCF);
 - (ii) results in the introduction of any scheduled repayment of the Bonds prior to the Termination Date (as such term is defined in the Super Senior RCF);

- (iii) constitutes an increase of the total amount of all Bonds issued or subscribed to be issued to an among which exceeds EUR 120,000,000; or
 - (iv) constitutes an increase of the Floating Rate Margin applicable to the Bonds to a percentage rate per annum which exceeds 8.50 per cent. p.a..
- (b) No term of this Agreement may be amended or waived except with the prior written consent of each of the Representatives (until the Final Discharge Date).
 - (c) Subject to this Clause 25, each Secured Party may amend or waive the terms of the finance documents for the Secured Obligations owed to such Secured Party (other than this Agreement, the Guarantee Agreement or any Transaction Security Documents) in accordance with their terms at any time.
 - (d) No amendment or waiver may be made or given that has the effect of changing or which relates to an amendment to any material term of this Agreement (including to the order of priority or subordination under this Agreement) without the prior written consent of the Representatives and the Security Agent (until the Final Discharge Date).
 - (e) The prior consent of each of the Representatives is required to authorise any amendment or waiver of, or consent under, any Transaction Security and/or Guarantee which would affect the nature or scope of the security assets or the manner in which the proceeds of enforcement of the Transaction Security or the Guarantee are distributed.
 - (f) The consent of a Hedge Counterparty is only required for any amendment or waiver of a term of this Agreement which does directly affect the rights or obligations of that Hedge Counterparty.
 - (g) The consent of an ICA Group Company, Shareholder Creditor, Intercompany Debtor or an Intercompany Creditor is not required for any amendment or waiver of a term of this Agreement except if the amendment or waiver may impose new or additional obligations on or withdraw or reduce the rights of such ICA Group Company, Shareholder Creditor, Intercompany Debtor or Intercompany Creditor.
 - (h) Any amendment or waiver made in accordance with this Clause 25 will be binding on all Parties and the Security Agent may affect, on behalf of any Representative or Secured Party, any amendment or waiver permitted by this Clause 25.

26. PARTIAL INVALIDITY

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

27. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, Shareholder Creditor or Intercompany Creditor any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

28. FORCE MAJEURE AND LIMITATION OF LIABILITY

- (a) A Secured Party shall not be held responsible for any damage arising out of any Swedish or foreign legal enactment, or any measure undertaken by a Swedish or foreign public authority, or war, strike, lockout, boycott, blockade or any other similar circumstance. The reservation in respect of strikes, lockouts, boycotts and blockades applies even if the Secured Party takes such measures, or is subject to such measures.
- (b) Any damage that may arise in other cases shall not be indemnified by the Secured Parties if it has observed normal care. The Secured Parties shall not in any case be held responsible for any indirect damage. Should there be an obstacle as described above for the Secured Parties to take any action in compliance with this Agreement, such action may be postponed until the obstacle has been removed.

29. COUNTERPARTS

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

30. GOVERNING LAW

This Agreement and any non-contractual obligation (*außervertragliches Schuldverhältnis*) arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of Germany.

31. ENFORCEMENT

31.1 Jurisdiction

- (a) To the extent legally permissible, the courts of Munich, Germany, shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (a “**Dispute**”).
- (b) Notwithstanding paragraph (a) above, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

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

SCHEDULE 1
THE ORIGINAL ICA GROUP COMPANIES

Name of Original ICA Group Company	Registration number	Jurisdiction
LifeFit Group MidCo GmbH	HRB 248092	Germany
Barry's Bootcamp GmbH	HRB 115552	Germany
elbgym GmbH	HRB 154843	Germany
Fitness First Germany GmbH	HRB 30512	Germany
smile X InterCo GmbH	HRB 102812	Germany
MKS Sport GmbH	HRB 17279	Germany
MKS Sport 3 GmbH	HRB 19353	Germany
smilefit SLS GmbH & Co. KG	HRA 11482	Germany
smilefit I-O GmbH & Co. KG	HRA 20136	Germany

SCHEDULE 2
FORM OF ICA GROUP COMPANY ACCESSION AGREEMENT

To: [◆] as Security Agent
From: [ICA Group Company]
Dated: [◆]

Dear Sirs

LifeFit Group MidCo GmbH
Intercreditor Agreement dated [◆] 2020 (the "Agreement")

1. We refer to the Agreement. This is an ICA Group Company Accession Agreement. Terms defined in the Agreement have the same meaning in this ICA Group Company Accession Agreement unless given a different meaning in this ICA Group Company Accession Agreement.
2. [ICA Group Company] agrees to be bound by the terms of the Agreement as an ICA Group Company, Intercompany Creditor and Intercompany Debtor.
3. [ICA Group Company] is a company duly incorporated under the laws of [name of relevant jurisdiction].
4. [The liability of [ICA Group Company] under the Agreement is subject to the following limitations:

 [Limitation language to be inserted subject to local counsel advice.]
5. [ICA Group Company]'s administrative details are as follows:

 Address:

 E-mail:

 Attention:
6. This ICA Group Company Accession Agreement is governed by German law.

[ICA Group Company]

By: _____ Date: _____

The Security Agent

[name of Security Agent:

By: _____ Date: _____

SCHEDULE 3
FORM OF CREDITOR/REPRESENTATIVE ACCESSION UNDERTAKING

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

From: *[Acceding Creditor]*

LifeFit Group MidCo GmbH
Intercreditor Agreement dated [♦] 2020 (the "Agreement")

THIS UNDERTAKING is made on *[date]* by *[insert full name of new Super Senior RCF Creditor/ Hedge Counterparty/Representative/Shareholder Creditor]* (the "**Acceding [Super Senior RCF Creditor/Hedge Counterparty/Representative/Shareholder Creditor]**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated [♦] 2020 between, among others, LifeFit Group MidCo GmbH as the Issuer, Nordic Trustee & Agency AB (publ) as Security Agent and the Secured Parties (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding *[Super Senior RCF Creditor/Hedge Counterparty/Representative/Shareholder Creditor]* being accepted as a *[Super Senior RCF Creditor/Hedge Counterparty/Representative/Shareholder Creditor]* for the purposes of the Intercreditor Agreement, the Acceding *[Super Senior RCF Creditor/Hedge Counterparty/Representative/Shareholder Creditor]* confirms that, as from *[date]*, it intends to be party to the Intercreditor Agreement as a *[Super Senior RCF Creditor/Hedge Counterparty/Representative/Shareholder Creditor]* and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a *[Super Senior RCF Creditor/Hedge Counterparty/Representative/Shareholder Creditor]* and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to Intercreditor Agreement.

This Undertaking is governed by German law.

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

[Acceding Creditor]

By:

Address:

E-Mail:

Accepted by the Security Agent

[Insert full name of current Security Agent]

By:

Date:

SCHEDULE 4
TRANSACTION SECURITY DOCUMENTS

Pledgor(s)/Assignor	Transaction Security	Governing law
LifeFit Group TopCo GmbH	Security Assignment of Shareholder Loans Share Pledge Agreement in relation the shares in LifeFit Group MidCo GmbH	German law
LifeFit Group MidCo GmbH	Security Assignment of Material Intra-Group Loans Account Pledge Agreement Share Pledge Agreement in relation the shares in smile X InterCo GmbH Share Pledge Agreement in relation the shares in elbgym GmbH Share Pledge Agreement in relation the shares in Fitness First Germany GmbH Share Pledge Agreement in relation the shares in Barry's Bootcamp GmbH	German law
Barry's Bootcamp GmbH	Security Assignment of Material Intra-Group Loans Account Pledge Agreement	German law
elbgym GmbH	Security Assignment of Material Intra-Group Loans Account Pledge Agreement	German law
Fitness First Germany GmbH	Security Assignment of Material Intra-Group Loans Account Pledge Agreement	German law
smile X InterCo GmbH	Security Assignment of Material Intra-Group Loans Account Pledge Agreement Share Pledge Agreement in relation the shares in MKS Sport GmbH Share Pledge Agreement in relation the shares in MKS Sport 3 GmbH Share Pledge Agreement in relation the shares in vivasport GmbH Share Pledge Agreement in relation the shares in smile Verwaltungs-GmbH 2 Interest Pledge Agreement in relation the limited partnership interests in smilefit SLS GmbH & Co. KG Interest Pledge Agreement in relation the limited	German law

Pledgor(s)/Assignor	Transaction Security	Governing law
	partnership interests in smilefit I-O GmbH & Co. KG	
MKS Sport GmbH	Security Assignment of Material Intra-Group Loans Account Pledge Agreement	German law
MKS Sport 3 GmbH	Security Assignment of Material Intra-Group Loans Account Pledge Agreement	German law
smilefit SLS GmbH & Co. KG	Security Assignment of Material Intra-Group Loans Account Pledge Agreement	German law
smilefit I-O GmbH & Co. KG	Security Assignment of Material Intra-Group Loans Account Pledge Agreement	German law
vivasport GmbH	Interest Pledge Agreement in relation the general partnership interests in smilefit I-O GmbH & Co. KG	German law
smile Verwaltungs-GmbH 2	Interest Pledge Agreement in relation the general partnership interests in smilefit SLS GmbH & Co. KG	German law

SIGNATURE PAGES

The Issuer

LIFEFIT GROUP MIDCO GMBH

By:

Address: [◆]

Email: [◆]

Attention: [◆]

By:

The Original ICA Group Companies

LIFEFIT GROUP MIDCO GMBH

By:

By:

BARRY'S BOOTCAMP GMBH

By:

By:

ELBGYM GMBH

By:

By:

FITNESS FIRST GERMANY GMBH

By:

By:

SMILE X INTERCO GMBH

By:

By:

MKS SPORT GMBH

By:

By:

MKS SPORT 3 GMBH

By:

By:

SMILEFIT SLS GMBH & CO. KG

By:

By:

SMILEFIT I-O GMBH & CO. KG

By:

By:

The Bond Trustee

NORDIC TRUSTEE & AGENCY AB (publ)

By:

By:

Address: Norrlandsgatan 23, 111 43 Stockholm, Sweden

Email: sweden@nordictrustee.com

Attention: CEO

The Security Agent

NORDIC TRUSTEE & AGENCY AB (publ)

By:

By:

Address: Norrlandsgatan 23, 111 43 Stockholm, Sweden

Email: sweden@nordictrustee.com

Attention: CEO

The Super Senior Agent

OLDENBURGISCHE LANDESBANK AKTIENGESELLSCHAFT

By:

By:

Address: [◆]

Email: [◆]

Attention: [◆]

The Original Super Senior RCF Creditor

OLDENBURGISCHE LANDESBANK AKTIENGESELLSCHAFT

By:

By:

Address: [◆]

Email: [◆]

Attention: [◆]

The Original Hedge Counterparty

OLDENBURGISCHE LANDESBANK AKTIENGESELLSCHAFT

By:

By:

Address: [◆]

Email: [◆]

Attention: [◆]