

9 April 2014

**ENQUEST PLC**  
as Company

**BNP PARIBAS**  
as Facility Agent and Security Trustee

and

**DEUTSCHE TRUSTEE COMPANY LIMITED**  
as Original Notes Trustee

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**SUBORDINATION AGREEMENT**

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THIS AGREEMENT is dated 9 April 2014 and made between:

- (1) ENQUEST PLC (company number 07140891) (the “Company”);
- (2) BNP PARIBAS in its capacity as facility agent for and on behalf of the Lenders and the Hedging Banks (the “Facility Agent”);
- (3) BNP PARIBAS in its capacity as security trustee under the Revolving Credit Facility Agreement (the “Security Trustee”); and
- (4) DEUTSCHE TRUSTEE COMPANY LIMITED (company number 00338230) as notes trustee under the Original Notes Indenture (the “Original Notes Trustee”).

## SECTION 1 INTERPRETATION

IT IS AGREED as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

“**Business Days**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Paris and New York.

“**Creditor Accession Undertaking**” means a document substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*).

“**Creditors**” means the Senior Creditors and the Notes Creditors.

“**Debt Document**” means each of this Agreement, each of the Senior Finance Documents and each of the Notes Documents.

“**Debtor**” means any member of the Group that is a borrower or a guarantor (howsoever described) under any Debt Document, but excluding any Notes Issuer.

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

“**Designated Senior Liabilities**” means all Senior Liabilities of a Debtor (or any of them) which have been designated as such by the Company in accordance with Clause 7.2 (*Designation of Senior Liabilities*).

“**Enforcement Action**” means:

- (a) in relation to any Liabilities:
  - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
  - (ii) the making of any declaration that any Liabilities are payable on demand;

- (iii) the making of any demand against any member of the Group in relation to any Liabilities of that member of the Group arising by way of guarantee; or
- (iv) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;
- (b) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss, in respect of the Liabilities (other than any action permitted under Clause 9 (*Changes to the Parties*)); or
- (c) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(iv) or (c) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (ii) a Notes Trustee bringing legal proceedings against any person solely for the purpose of:
  - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
  - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
  - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages.

**“Event of Default”** means any event or circumstance specified as such in any of the Debt Documents.

**“Group”** means all Subsidiaries of the Company for the time being and **“member of the Group”** means each Subsidiary of the Company for the time being.

**“Hedging Bank”** means each person party to any Senior Facilities Agreement in such capacity.

**“Holding Company”** has the meaning given to the term “Holding Company” in the Revolving Credit Facility Agreement.

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

- (a) any resolution is passed or order made for the winding up, dissolution, administration, bankruptcy or reorganisation of that member of the Group, a moratorium is declared in relation to any indebtedness of that member of the Group or an administrator is appointed in respect of that member of the Group;
  - (b) any composition, compromise, assignment or arrangement is made with any of its creditors;
  - (c) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that member of the Group or any of its assets; or
  - (d) enforcement of any Security over any assets of that member of the Group,
- or any analogous procedure or step is taken in any jurisdiction.

“**Lenders**” means each person party to any Senior Facilities Agreement in such capacity.

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

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

“**Noteholders**” means the holders, from time to time, of the Notes, as determined in accordance with any Notes Indenture.

“**Notes**” means any notes, debt securities or other debt instruments (including the Original Notes and any additional notes) that are issued from time to time after the date of this Agreement under a Notes Indenture.

“**Notes Creditors**” means the Noteholders and each Notes Trustee.

“**Notes Default**” means an Event of Default under any Notes Indenture other than any such Event of Default arising solely by reason of a cross default (other than a cross default which is a payment default) to any Senior Finance Document.

“**Notes Documents**” means:

- (a) this Agreement;
- (b) each Notes Indenture;

- (c) the Notes; and
- (d) the Notes Guarantees.

“**Notes Enforcement Notice**” has the meaning given to that term in Clause 3.8 (*Permitted Notes Guarantee Enforcement*).

“**Notes Guarantee Liabilities**” means all Liabilities owed by the Notes Guarantors to the Notes Creditors under the Notes Documents (and a “**Notes Guarantee Liability**” shall mean any such Liability); *provided* however that Notes Issuer Liabilities, Notes Trustee Amounts and Notes Security Costs shall not be Notes Guarantee Liabilities.

“**Notes Guarantees**” means any guarantee or indemnity provided by a Notes Guarantor to any Notes Creditor under the Notes Documents; *provided that* a guarantee or indemnity by a Notes Issuer of the obligations of another Notes Issuer shall not be a Notes Guarantee.

“**Notes Guarantor**” means any Debtor (excluding, for the avoidance of doubt, any Notes Issuer) that provides a guarantee or provides an indemnity to the Notes Creditors (or any of them) under any Notes Documents, being as at the date of this Agreement, each of the persons specified in Schedule 1 (*Original Notes Guarantors*).

“**Notes Indenture**” means the Original Notes Indenture and any other notes indenture relating to the issuance of any Notes and made between, among others, a Notes Issuer and the relevant Notes Trustee.

“**Notes Issuer**” means the Company or any direct and wholly owned Subsidiary of the Company which does not itself have any Subsidiaries and which is primarily engaged in the business of effecting or facilitating the issuance of Notes and on-lending the proceeds directly or indirectly to the Company.

“**Notes Issuer Liabilities**” means the Liabilities owed by any Notes Issuer to the Notes Creditors under the Notes Documents.

“**Notes Payment Stop Notice**” has the meaning given to that term in Clause 3.3 (*Issue of Notes Payment Stop Notice*).

“**Notes Security Costs**” means any and all fees, costs and expenses of any holder of Security (if any) for the benefit of the Noteholders in relation to the protection, preservation or enforcement of such Security or otherwise in relation to carrying out its duties in respect thereof.

“**Notes Standstill Period**” has the meaning given to that term in Clause 3.9 (*Notes Standstill Period*).

“**Notes Trustee**” means the Original Notes Trustee and any entity acting as trustee under any Notes Indenture and which accedes to this Agreement pursuant to Clause 9.3 (*Additional Notes Trustee*).

“**Notes Trustee Amounts**” means all fees, costs and expenses (including legal fees) of a Notes Trustee (including any amount payable by way of indemnity, remuneration or reimbursement for expenses incurred) payable to a Notes Trustee for its own account pursuant to the Notes Documents, and the costs of any actual or attempted Enforcement Action which is permitted by this Agreement which are recoverable pursuant to the terms of the Notes Documents (all such amounts together with any applicable VAT).

**“Original Notes”** means the US\$650,000,000 aggregate principal amount of 7.000% Senior Notes due 2022 issued by the Company pursuant to the Original Notes Indenture.

**“Original Notes Indenture”** means the indenture dated as of the date of this Agreement between, *inter alios*, the Company, each of the entities listed in Schedule 1 (*Original Notes Guarantors*) and the Original Notes Trustee.

**“Party”** means a party to this Agreement.

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

**“Permitted Payment”** means any Payment to a Notes Creditor permitted by Clause 3.2 (*Payment of Notes Guarantee Liabilities*).

**“Relevant Liabilities”** means:

- (a) in the case of a Creditor, the Liabilities owed to Creditors ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to that Creditor (as the case may be); and
- (b) in the case of a Debtor, the Liabilities owed to the Creditors.

**“Responsible Officer”** means any officer within the agency and trust, corporate trust or securities services department (however described) of a Notes Trustee, including any director, associate director, vice president, assistant vice president, assistant treasurer, trust officer or any other officer of a Notes Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement and any Notes Indenture to which a Notes Trustee is a party.

**“Revolving Credit Facility Agreement”** means a senior secured revolving credit facility agreement dated 6 March 2012 (as amended and restated on 29 January 2014) between, among others, the Company and the Security Trustee.

**“Secured Creditor”** means each of:

- (a) the Lenders; and
- (b) the Hedging Banks,

together with any other person to whom any Senior Liabilities or Designated Senior Liabilities are owed from time to time where the Senior Creditor Representative in relation to such Liabilities is a Party.

**“Security”** means a mortgage, standard security, charge, pledge, assignment, assignation, transfer, lien, right of set-off, retention or extended retention of title provision, or any other security interest securing any obligation of any person or any other agreement or arrangement having the effect of giving security or preferential ranking to a creditor, or any other agreement or arrangement having a similar effect.

**“Senior Creditor Representative”** means the Facility Agent and each entity that accedes to this Agreement as a “Senior Creditor Representative” in accordance with Clause 9.4 (*Other new Parties*).

“**Senior Creditors**” means each Secured Creditor and each Senior Representative.

“**Senior Default**” means an Event of Default under the Senior Finance Documents.

“**Senior Discharge Date**” means the date on which all Senior Liabilities have been fully and finally discharged to the satisfaction of the relevant Senior Representatives, whether or not as the result of an enforcement, and the Senior Creditors are under no further obligation to provide financial accommodation to any Debtor under any Senior Finance Document.

“**Senior Facilities Agreement**” means:

- (a) the Revolving Credit Facility Agreement; and
- (b) any facility agreement (or equivalent) that is designated as a Senior Facilities Agreement pursuant to Clause 7 (*New Senior Liabilities*).

“**Senior Finance Documents**” means this Agreement, the Senior Facilities Agreements, any hedging agreements entered into from time to time between any of the Debtors or the Notes Issuer and the Hedging Banks and any credit support documents entered into by any of the Debtors or the Notes Issuer in respect thereof, and any other agreement or document evidencing Senior Liabilities or Designated Senior Liabilities.

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

“**Senior Payment Default**” means a Default under:

- (a) clause 26.1 (*Non-payment*) of the Revolving Credit Facility Agreement; and
- (b) any equivalent thereof under any other Senior Facilities Agreement,

other than, in each case, in respect of an amount not exceeding US\$1,000,000 (or its equivalent in any other currency).

“**Senior Representative**” means the Senior Creditor Representatives, the Security Trustee and any other agent, trustee, security agent, security trustee or similar representative in relation to the Senior Liabilities.

“**Subsidiary**” has the meaning given to the term “Subsidiary” in the Revolving Credit Facility Agreement.

“**VAT**” means:

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

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
  - (i) any “**Creditor**”, any “**Debtor**”, the “**Facility Agent**”, any “**Noteholder**”, any “**Notes Creditor**”, any “**Notes Issuer**”, any “**Notes Trustee**”, any “**Party**”, any “**Secured Creditor**”, “**Security Trustee**”, any “**Senior Creditor**”, any



“**Senior Creditor Representative**”, and any “**Senior Representative**”, shall be construed to be a reference to it in its capacity as such and not in any other capacity;

- (ii) any “**Creditor**”, “**Debtor**”, “**Senior Representative**”, “**Notes Creditor**”, “**Party**”, any “**Senior Creditor**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Trustee, any person for the time being appointed as Security Trustee or Security Trustees in accordance with the Senior Finance Documents;
  - (iii) “**assets**” includes present and future properties, revenues and rights of every description;
  - (iv) a “**Debt Document**” or any other agreement or instrument is (other than a reference to a “**Debt Document**” or any other agreement or instrument in “**original form**”) a reference to that Debt Document, or other agreement or instrument, as amended, novated, replaced, supplemented, extended or restated as permitted or not prohibited by this Agreement;
  - (v) “**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;
  - (vi) the “**original form**” of a “**Debt Document**” or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
  - (vii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (viii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
  - (ix) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) A Default or Event of Default is “**continuing**” if it has not been remedied or waived.
- (d) In determining whether any Liabilities have been fully and finally discharged, the relevant Senior Creditor Representative (and, if applicable, the Security Trustee) will disregard contingent liabilities (such as the risk of clawback from a preference claim) except to the extent that it reasonably believes (after taking such legal advice as it considers appropriate) there is a reasonable likelihood that those contingent liabilities will become actual liabilities.
- (e) References to a Senior Representative acting on behalf of the Secured Creditors means such Senior Representative acting on behalf of the Secured Creditors which it represents or, if applicable, with the consent of the requisite number of Secured Creditors required under and in accordance with the applicable Senior Finance Document for which it is a Senior Representative. A Senior Representative will be

entitled to seek instructions from the Secured Creditors which it represents to the extent required by the applicable Senior Finance Document for which it is a Senior Representative as to any action to be taken by it under this Agreement.

- (f) References to a Notes Trustee acting on behalf of the Noteholders means such Notes Trustee acting on behalf of the Noteholders which it represents or, if applicable, with the consent of the requisite number of Noteholders required under and in accordance with the applicable Notes Indenture. A Notes Trustee will be entitled to seek instructions from the Noteholders which it represents to the extent required by the applicable Notes Indenture as to any action to be taken by it under this Agreement.
- (g) Any consent to be given under this Agreement shall mean such consent is to be given in writing which for the purpose of this Agreement will be deemed to include any instructions, waivers or consents provided through any applicable clearance system in accordance with the terms of the relevant Debt Document.
- (h) References to any matter being “**permitted**” under one or more Debt Documents shall include references to such matters not being prohibited under such Debt Documents. For the avoidance of doubt, if the terms of any Debt Document:
  - (i) do not require the relevant Senior Representative or Creditors to provide approval (or deem approval to have been provided) for a particular matter, step or action; or
  - (ii) do not seek to regulate a particular matter, step or action,

for the purpose of this Agreement, that matter, step or action shall not be prohibited by the terms of that Debt Document.

### 1.3 **Third party rights**

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) The Third Parties Act shall apply to this Agreement in respect of any Noteholder which by holding a Note has effectively agreed to be bound by the provisions of this Agreement and will be deemed to receive the benefits hereof, and be subject to the terms and conditions hereof, as if such person was a Party. In relation to any amendment, waiver or rescission of this Agreement, no such person that is deemed to be a party to this Agreement by virtue of this Clause 1.3 is required to consent to or execute any amendment, waiver or rescission in order for such amendment, waiver or rescission to be effective.

## 2. **RANKING AND PRIORITY**

- (a) Subject to paragraph (d) below, each Party agrees that the Liabilities shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:
  - (i) **first**, the Senior Liabilities (and, if applicable, any Designated Senior Liabilities), *pari passu* and without any preference between them; and

- (ii) **second**, the Notes Guarantee Liabilities, *pari passu* and without any preference between them.
- (b) This Agreement does not purport to rank any of the Senior Liabilities as between themselves or any of the Notes Guarantee Liabilities as between themselves.
- (c) This Agreement does not purport to rank any of the Liabilities of the Company or any other Notes Issuer.
- (d) The Parties acknowledge that the Notes Issuer Liabilities, the Notes Trustee Amounts (if any) and the Notes Security Costs (if any) are senior obligations of the relevant Notes Issuer or Notes Guarantor and this Agreement does not purport to rank, postpone and/or subordinate any of them in relation to the other Liabilities.

### **3. NOTEHOLDER AND NOTES GUARANTEE LIABILITIES**

#### **3.1 Restriction on Payment and dealings: Notes Guarantee Liabilities**

Until the Senior Discharge Date, the Company shall procure that no Debtor shall make a Payment to any Notes Creditor in respect of any Notes Guarantee Liability then due in accordance with the Notes Documents other than in accordance with this Clause 3 (*Noteholder and Notes Guarantee Liabilities*).

#### **3.2 Payment of Notes Guarantee Liabilities**

Any Debtor may:

- (a) prior to the Senior Discharge Date, make Payments to the Notes Creditors in respect of Notes Guarantee Liabilities then due (or due within five Business Days) in accordance with the Notes Documents:
  - (i) if:
    - (A) no Notes Payment Stop Notice is outstanding; and
    - (B) no Senior Payment Default has occurred and is continuing;
  - (ii) if the requisite consent is obtained under the relevant Senior Facilities Agreements; or
  - (iii) if the Payment is of:
    - (A) costs, commissions, taxes, fees payable to solicitation agents or other administrative service providers in connection with any consent process (provided that no portion of such fees may be payable to, or received by, the Noteholders) and expenses incurred in respect of (or reasonably incidental to) the Notes Documents (or any of them);
    - (B) additional amounts payable as a result of the tax gross-up provisions relating to the Notes Guarantee Liabilities and amounts in respect of currency indemnities in the Notes Documents;
    - (C) any amount not exceeding US\$2,250,000 (or its equivalent in other currencies) in aggregate in any twelve month period; or

- (D) the principal amount of the Notes Liabilities on or after the final maturity date thereof (*provided that* such maturity date is as contained in the relevant Notes Document in its original form); and
- (b) on or after the Senior Discharge Date, make Payments to the Notes Creditors in respect of the Notes Guarantee Liabilities in accordance with the Notes Documents.

### 3.3 Issue of Notes Payment Stop Notice

- (a) Until the Senior Discharge Date, except with the prior consent of the Senior Creditor Representatives or after the commencement of any Enforcement Action permitted by the terms of this Agreement, the Company shall procure that no Debtor shall make to any Notes Creditor, and no Notes Creditor may receive from any Debtor, any Payments in respect of the Notes Guarantee Liabilities if:
  - (i) a Senior Payment Default has occurred and is continuing; or
  - (ii) a Senior Default (other than a Senior Payment Default) has occurred and is continuing, from the date on which a Senior Creditor Representative (the “**Relevant Representative**”) delivers a notice (a “**Notes Payment Stop Notice**”) specifying the event or circumstance in relation to that Senior Default to the Company and the relevant Notes Trustee until the earliest of:
    - (A) the date on which such Senior Default is waived, remedied or cured in accordance with the relevant Senior Finance Document, is no longer continuing or otherwise ceases to exist;
    - (B) the date falling 179 days after receipt by the relevant Notes Trustee of that Notes Payment Stop Notice;
    - (C) the Liabilities owed by the Debtors to the relevant Senior Creditors under the relevant Senior Finance Documents under which such Senior Default occurred have been fully and finally discharged to the satisfaction of the relevant Senior Representative, whether or not as the result of an enforcement, and those relevant Senior Creditors are under no further obligation to provide financial accommodation to any Debtor under those relevant Senior Finance Documents;
    - (D) the date on which the Relevant Representative delivers a notice to the Company and the relevant Notes Trustee cancelling that Notes Payment Stop Notice;
    - (E) the expiration of any Notes Standstill Period in existence at the time of service of that Notes Payment Stop Notice; and
    - (F) the date on which the relevant Notes Trustee takes any Enforcement Action that it is permitted to take under this Agreement.
- (b) No more than one Notes Payment Stop Notice may be served with respect to the same event or set of circumstances and no Notes Payment Stop Notice may be served in respect of a Senior Default which has been notified to the relevant Senior Creditor Representative at the time at which an earlier Notes Payment Stop Notice was issued.
- (c) No Notes Payment Stop Notice may be delivered by a Senior Creditor Representative in reliance on a Senior Default more than 60 days after the date on which the relevant Senior Creditor Representative received notice of that Senior Default.

- (d) No more than one Notes Payment Stop Notice may be served in any period of 360 days.
- (e) Notwithstanding paragraph (a) above, no Notes Payment Stop Notice will prevent a Notes Issuer from making a Payment to any Notes Creditor from its own assets if such Payment is in respect of any of the Notes Issuer's obligations under the Notes in respect of which such Notes Payment Stop Notice has been delivered and, for the avoidance of doubt, such Payment is not financed by a payment to such Notes Issuer by a member of the Group which was prohibited by paragraph (a) above.

### 3.4 **Effect of Notes Payment Stop Notice or Senior Payment Default**

Any failure to make a Payment to a Notes Creditor due under the Notes Documents as a result of the issue of a Notes Payment Stop Notice or the occurrence of a Senior Payment Default shall not prevent:

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

### 3.5 **Continuing payment obligations**

For the avoidance of doubt:

- (a) no Debtor shall be released from the obligation to make any Payment (including of default interest, if any, which shall continue to accrue) to a Notes Creditor under any Notes Document by the operation of Clauses 3.1 (*Restriction on Payment and dealings: Notes Guarantee Liabilities*) to 3.4 (*Effect of Notes Payment Stop Notice or Senior Payment Default*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses; and
- (b) the accrual and capitalisation of interest (if any) in accordance with the Notes Documents shall continue notwithstanding the issue of a Notes Payment Stop Notice.

### 3.6 **Cure of Payment Stop**

If:

- (a) at any time following the issue of a Notes Payment Stop Notice or the occurrence of a Senior Payment Default, that Notes Payment Stop Notice ceases to be outstanding (by way of delivery of a cancellation notice in accordance with Clause 3.3(a)(ii)(D) (*Issue of Notes Payment Stop Notice*)) and/or (as the case may be) that Senior Payment Default ceases to be continuing; and
- (b) the relevant Debtor then promptly pays to the Notes Creditors an amount equal to any Payments to those Notes Creditors which have accrued under the Notes Documents and which would have been Permitted Payments but for that Notes Payment Stop Notice or Senior Payment Default,

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

### 3.7 **Restriction on Enforcement by Notes Creditors**

Subject to Clause 3.8 (*Permitted Notes Guarantee Enforcement*) and Clause 3.9 (*Notes Standstill Period*), no Notes Creditor shall take any Enforcement Action against a Notes Guarantor in respect of any of the Notes Guarantee Liabilities prior to the Senior Discharge Date.

### 3.8 **Permitted Notes Guarantee Enforcement**

- (a) The restrictions in Clause 3.7 (*Restriction on Enforcement by Notes Creditors*) will not apply in respect of the Notes Guarantee Liabilities:
  - (i) if:
    - (A) a Notes Default other than any Notes Default referred to or described in paragraph (ii) or (iii) below (the “**Relevant Notes Default**”) has occurred and is continuing;
    - (B) the Senior Creditor Representatives have received a notice of the Relevant Notes Default specifying the event or circumstance in relation to the Relevant Notes Default from the Notes Trustee;
    - (C) a Notes Standstill Period with respect to the Relevant Notes Default has elapsed or otherwise terminated, even if, at the end of the Notes Standstill Period or at any later time a further Notes Standstill Period has begun as a result of any other Notes Default; and
    - (D) the Relevant Notes Default is continuing at the end of the relevant Notes Standstill Period;
  - (ii) in circumstances where the Senior Creditors take any Enforcement Action in relation to a Notes Guarantor, *provided*, however, that the Notes Creditors may only take the same Enforcement Action in relation to that Notes Guarantor as the Enforcement Action taken by the Senior Creditors against that Notes Guarantor and not against any other member of the Group; or
  - (iii) in respect of any Enforcement Action against a Notes Guarantor that is the subject of an Insolvency Event (other than where that Insolvency Event occurs as a result solely of any action taken by a Notes Trustee in relation to any Notes Guarantee Liabilities).
- (b) Promptly upon becoming aware of a Notes Default, the Notes Trustee may by notice (a “**Notes Enforcement Notice**”) in writing notify the Senior Creditor Representatives of the existence of such Notes Default.

### 3.9 **Notes Standstill Period**

In relation to a Relevant Notes Default, a “**Notes Standstill Period**” shall mean the period beginning on the date (the “**Notes Standstill Start Date**”) the Senior Creditor Representatives receive a Notes Enforcement Notice from the Notes Trustee in respect of such Relevant Notes Default and ending on the earlier to occur of:

- (a) the date falling 179 days after the Notes Standstill Start Date;
- (b) the date on which the Senior Creditors take any Enforcement Action in relation to a Notes Guarantor, *provided*, however, that if a Notes Standstill Period ends pursuant to this paragraph (b), the Notes Creditors may only take the same Enforcement Action in

relation to the Notes Guarantor as the Enforcement Action taken by the Senior Creditors against such Notes Guarantor and not against any other Debtor;

- (c) the date of an Insolvency Event in relation to a Notes Guarantor against whom Enforcement Action is to be taken (other than where that Insolvency Event occurs as a result solely of any action taken by the Notes Trustee in relation to any Notes Guarantee Liabilities);
- (d) the expiry of any other Notes Standstill Period outstanding at the date such first mentioned Notes Standstill Period commenced (unless that expiry occurs as a result of a cure, waiver or other permitted remedy);
- (e) the date on which a Notes Default occurs for failure to pay principal at the original scheduled maturity of the Notes; and
- (f) the date on which the Senior Creditor Representatives consent to the taking of Enforcement Action in respect of that Relevant Notes Default by the relevant Notes Creditor(s).

### 3.10 **Option to purchase: Notes Creditors**

One or more of the Notes Trustees may, at the direction and expense of one or more of the Notes Creditors (the “**Purchasing Notes Creditor**”) and by giving not less than 10 Business Days’ notice to the Senior Creditor Representatives, at any time when a Notes Payment Stop Notice is outstanding and any Enforcement Action has been taken by or on behalf of any Secured Creditor, require the transfer to them (or to a nominee or nominees), of all, but not part, of the rights and obligations in respect of the Senior Liabilities if:

- (a) that transfer is lawful;
- (b) any conditions relating to such a transfer contained in the Senior Facilities Agreement are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required;
- (c) payment in full in cash of an amount equal to the Senior Liabilities outstanding as at the date that amount is to be paid, as determined by the Senior Creditor Representatives (acting reasonably) together with costs and expenses (including legal fees) incurred by the Secured Creditors as a consequence of giving effect to the transfer;
- (d) as a result of that transfer the Secured Creditors have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
- (e) an indemnity is provided from each Purchasing Notes Creditor other than the Notes Trustee (or from another third party acceptable to all the Secured Creditors) in a form satisfactory to each Secured Creditor in respect of all losses which may be sustained or incurred by any Secured Creditor in consequence of any sum received or recovered by any Secured Creditor from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Secured Creditor for any reason; and
- (f) the transfer is made without recourse to, or representation or warranty from, the Secured Creditors, except that each Secured Creditor shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power

to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.

#### **4. FILING OF CLAIMS**

- (a) After the occurrence of an Insolvency Event in relation to any Notes Guarantor and until the Senior Discharge Date, each Notes Creditor irrevocably authorises the relevant Senior Creditor Representative(s) acting on behalf of the Senior Creditors, on its behalf, to:
  - (i) demand, sue, prove and give receipt for any or all of that Notes Guarantor's Notes Guarantee Liabilities;
  - (ii) collect and receive all distributions on, or on account of, any or all of that Notes Guarantor's Notes Guarantee Liabilities; and
  - (iii) file claims, take proceedings and do all other things the relevant Senior Creditor Representative considers reasonably necessary to recover that Notes Guarantor's Notes Guarantee Liabilities.
- (b) If any Senior Creditor Representative collects, receives or recovers any amounts following the exercise any of its rights under paragraph (a) above and, after the Senior Discharge Date, that Senior Creditor Representative continues to hold any such amounts so collected, received or recovered, that Senior Creditor Representative shall, promptly following the Senior Discharge Date, pay all such amounts to the relevant Notes Trustee(s) *pro rata* to the amounts outstanding under each Notes Document to which the Notes Trustees are a party, for application in accordance with the terms of the Notes Documents.

#### **5. TURNOVER OF RECEIPTS**

##### **5.1 Turnover by the Notes Creditors**

If at any time prior to the Senior Discharge Date, a Notes Creditor (subject to Clause 5.2 (*Permitted assurance and receipts*)) and, in the case of a Notes Trustee, to Clause 12.1 (*Liability*)) receives or recovers any Payment or distribution of, on account of or in relation to, any of the Notes Guarantees Liabilities which is not a Permitted Payment (including by way of set-off), it will in relation to receipts and recoveries from a Notes Guarantor:

- (a) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Trustee;
- (b) promptly notify the Senior Representatives of such receipt or recovery and request that each Senior Creditor Representative confirm the amount of Liabilities outstanding under the relevant Senior Finance Documents; and
- (c) promptly following receipt of the confirmations referred to in paragraph (b) above from each of the Senior Creditor Representatives, pay or distribute such amounts to the Security Trustee for application in accordance with the terms of the relevant Senior Finance Documents (as applicable).

##### **5.2 Permitted assurance and receipts**

Nothing in this Agreement shall restrict the ability of any Creditor to:



- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by Clause 9 (*Changes to the Parties*) in the case of a Notes Trustee or, in the case of other Creditors, in accordance with the terms of the relevant Debt Documents,

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

### 5.3 Saving provision

If, for any reason, any of the trusts expressed to be created in this Clause 5 should fail or be unenforceable, the relevant Notes Creditor will, unless otherwise agreed by the Security Trustee and subject to receiving payment instructions and any other relevant information from the Security Trustee, promptly pay or distribute an amount equal to that receipt or recovery to the Security Trustee to be held on trust by the Security Trustee for application in accordance with the terms of the Senior Finance Documents.

## 6. REDISTRIBUTION

### 6.1 Recovering Creditor's rights

- (a) Any amount paid or distributed by a Notes Creditor to the Security Trustee under Clause 5 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and distributed to the Senior Creditors (each a "**Sharing Creditor**") in accordance with the terms of the Senior Finance Documents.
- (b) On a distribution by the Security Trustee under paragraph (a) above of a Payment or distribution received by a Notes Creditor from a Debtor, as between the relevant Debtor and such Notes Creditor, an amount equal to the amount received or recovered by such Notes Creditor and paid or distributed to the Security Trustee (the "**Shared Amount**") will be treated as not having been paid or distributed to that Notes Creditor by that Debtor.

### 6.2 Reversal of redistribution

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

establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

### **6.3 Deferral of subrogation**

No Notes Creditor will exercise any rights which it may have by reason of the performance by it of its obligations under the Debt Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Senior Creditor until the Senior Discharge Date.

## **7. NEW SENIOR LIABILITIES**

### **7.1 New Senior Liabilities**

The Senior Liabilities may be refinanced, replaced or increased (and such increase may be under additional or separate or replacement credit and other documents (including without limitation indentures and/or trust deeds)) on terms that do not breach the terms of the Senior Finance Documents or the Notes Documents without the consent of any other Creditors, and any obligations incurred by any Debtor or other member of the Group on such refinancing, replacement or increase of the Senior Liabilities will, to the extent designated by the Company as Designated Senior Liabilities, rank under this Agreement *pari passu* with the Senior Liabilities for all purposes hereunder.

### **7.2 Designation of Senior Liabilities**

The Company may, at any time without the prior consent of any Creditor, deliver a written notice or notices to the relevant Senior Representatives and the Notes Trustee specifying any Senior Liabilities that are to be designated as “Designated Senior Liabilities”.

### **7.3 Designation of Senior Facilities Agreements**

The Company may, at any time without the prior consent of any Creditor, deliver a written notice or notices to the relevant Senior Representatives and the Notes Trustee designating any agreement documenting any Designated Senior Liabilities as a “Senior Facilities Agreement” (and accordingly a Senior Finance Document) and the creditors in respect thereof shall be deemed to be Secured Creditors with effect from such designation and the accession of the relevant Senior Creditor Representative in accordance with the terms of this Agreement.

## **8. RELEASE OF THE NOTES GUARANTEES**

If a disposal of shares or assets of any member of the Group is effected pursuant to an Enforcement Action taken by the Security Trustee or a Creditor pursuant to the Senior Finance Documents, any Notes Guarantees from Subsidiaries whose shares or the shares of its direct or indirect Holding Company are sold will be released and any Security securing any Note Guarantee in such shares and assets of such subsidiary will be released if:

- (a) the proceeds of such sale or disposal are in cash (or substantially in cash);
- (b) all present and future obligations owed to the Creditors under the Senior Finance Documents by a member of the Group are unconditionally released and discharged or sold or disposed of concurrently with such sale; and
- (c) such sale or disposal (including any sale or disposal of any claim) is made:
  - (i) pursuant to a public auction; or

- (ii) where an independent investment bank or an internationally recognised firm of accountants selected by the Security Trustee has delivered an opinion to each Notes Trustee in respect of such sale or disposal that the amount received in connection therewith is fair from a financial point of view taking into account all relevant circumstances including the method of enforcement and the circumstances giving rise to such sale.

## **9. CHANGES TO THE PARTIES**

### **9.1 Assignments and transfers**

- (a) The Company may not assign or transfer any of its rights (if any) or obligations under this Agreement.
- (b) Any Senior Representative and any Notes Trustee may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations under this Agreement to any person that replaces it as agent or trustee (as the case may be) under the Debt Documents.

### **9.2 Change of Senior Representative**

No person shall become an agent, trustee, security agent, security trustee or similar representative in relation to the Senior Liabilities, unless at the same time, it accedes to this Agreement as a Senior Representative, pursuant to Clause 9.5 (*Creditor Accession Undertaking*).

### **9.3 Additional Notes Trustee**

No person shall become a Notes Trustee unless prior to or substantially concurrent with the issue of any Notes it accedes to this Agreement as a Notes Trustee pursuant to Clause 9.5 (*Creditor Accession Undertaking*).

### **9.4 Other new Parties**

Each Party hereto (including parties subsequently becoming bound by this Agreement) irrevocably authorises the Facility Agent to agree on its behalf with any other person intending to become party to this Agreement as a new Senior Representative, Notes Issuer or a Debtor to the execution of an accession agreement or other similar document so as to make such person a party to this Agreement and to effect such amendments to this Agreement as may be in the opinion of the Facility Agent (acting reasonably) necessary for such purpose, *provided that* any amendment which would materially and adversely affect any right, or impose or vary any material obligation, of any of the Parties hereto may not be made without the consent of that party.

### **9.5 Creditor Accession Undertaking**

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

- (a) any Party ceasing entirely to be a Senior Representative or Notes Trustee shall be discharged from further obligations towards the other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and

- (b) as from that date, the replacement or new Senior Representative or Notes Trustee shall assume the same obligations and become entitled to the same rights, as if it had been an original Party in the capacity specified in the Creditor Accession Undertaking.

## **10. NOTICES**

### **10.1 Communications in writing**

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

### **10.2 Addresses**

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

- (a) in the case of each of the Facility Agent, the Security Trustee, the Original Notes Trustee and the Company, that as set out on the execution pages hereof; and
- (b) in the case of any other Party, that notified in writing to the other Parties on or prior to the date on which it becomes a Party,

or any substitute address, fax number or department or officer which that Party may notify to the other Parties, by not less than five Business Days' notice.

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

and, if a particular department or officer is specified as part of its address details provided under Clause 10.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Trustee or a Notes Trustee will be effective only when actually received by the Security Trustee or that Notes Trustee and then only if it is expressly marked for the attention of the department or officer identified with the Security Trustee's or Notes Trustee's signature below (or any substitute department or officer as the Security Trustee or that Notes Trustee shall specify for this purpose).
- (c) Any communication or document made or delivered to the Company in accordance with this Clause 10.3 will be deemed to have been made or delivered to each of the Debtors.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **10.4 Electronic communication**

- (a) Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Notes Issuer or a Debtor to a Senior Creditor Representative or a Notes Trustee only if it is addressed in such a manner as the relevant Senior Creditor Representative or a Notes Trustee shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **10.5 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, 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.

### **11. PRESERVATION**

#### **11.1 Partial invalidity**

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

#### **11.2 No impairment**

If, at any time after its date, any provision of a Debt Document (including this Agreement) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that Debt Document, neither the binding nature nor the enforceability of that provision or any other provision of that Debt Document will be impaired as against the other party(ies) to that Debt Document.

#### **11.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Debt Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Debt Document. No election to affirm any Debt

Document on the part of a Secured Creditor shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Debt Document are cumulative and not exclusive of any rights or remedies provided by law.

#### 11.4 **Waiver of defences**

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 11.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor or other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or Security;
- (g) any intermediate Payment of any of the Liabilities owing to the Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

#### 11.5 **Priorities not affected**

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

- (a) not be affected by any reduction or increase in the Liabilities owing to the Creditors or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;
- (b) apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and
- (c) secure the Liabilities owing to the Creditors in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

## 12. NOTES TRUSTEE

### 12.1 Liability

- (a) It is expressly understood and agreed by the Parties that this Agreement is executed and delivered by each Notes Trustee not individually or personally but solely in its capacity as trustee in the exercise of the powers and authority conferred and vested in it under the relevant Notes Documents for and on behalf of the Noteholders only for which such Notes Trustee acts as trustee and it shall have no liability for acting for itself or in any capacity other than as trustee and nothing in this Agreement (except to the extent provided herein) 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 trust shall be only to make payment of such amount to or hold any such amount on trust to the extent that:
- (i) it has actual knowledge that such obligation has arisen; and
  - (ii) it has received and, on the date on which it acquires such actual knowledge, has not distributed to the Noteholders for which it acts as trustee in accordance with the relevant Notes Indenture (in relation to which it is trustee) any such amount.
- (b) It is further understood and agreed by the Parties that in no case shall any Notes 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 that Notes Trustee in good faith in accordance with this Agreement or any of the Notes Documents in a manner that such Notes Trustee reasonably believed to be within the scope of the authority conferred on it by this Agreement or any of the Notes Documents or by law; or
  - (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party,
- provided however*, that each Notes Trustee shall be personally liable under this Agreement for its own gross negligence, fraud or wilful misconduct. It is also acknowledged and agreed that no Notes Trustee shall have any responsibility for the actions of any individual Creditor or Noteholder.
- (c) The Parties acknowledge and agree that no Notes Trustee shall be charged with knowledge or existence of facts that would impose an obligation on it hereunder to make any payment or prohibit it from making any payment unless, not less than two Business Days prior to the date of such payment, a Responsible Officer of the Notes Trustee receives written notice satisfactory to it that such payments are required or prohibited by this Agreement.
- (d) The Security Trustee agrees and acknowledges that it shall have no claim against a Notes Trustee in respect of any fees, costs, expenses and liabilities due and payable to, or incurred by, the Security Trustee.

## 12.2 **No action**

- (a) Notwithstanding any other provision of this Agreement, no Notes Trustee 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 Notes Trustee 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 Notes Trustee to take action under this Agreement be construed as an obligation to do so.
- (b) Prior to taking any action under this Agreement, a Notes Trustee may (acting reasonably) request and rely upon an opinion of counsel or opinion of another qualified expert, at the expense of the Company or another Debtor.
- (c) Notwithstanding any other provisions of this Agreement or any other Notes Document to which a Notes Trustee is a party to, in no event shall a Notes Trustee 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 Notes Trustee has been advised of the likelihood of such loss or damage.

## 12.3 **Reliance and assumptions**

A Notes Trustee shall at all times, in the absence of gross negligence, fraud or wilful misconduct on its part, be:

- (a) entitled to and may rely on any notice, consent or certificate given or granted by any Party; however, the Notes Trustee shall examine the notice, consent or certificate to determine whether or not they conform to the requirements of this Agreement (but need not confirm or investigate the accuracy or mathematical calculations or other facts stated therein);
- (b) entitled to assume any payment or other distribution made pursuant to this Agreement in respect of the Notes Guarantee Liabilities has been made in accordance with, and is not prohibited by any provisions of this Agreement, unless a Responsible Officer of such Notes Trustee has received written notice to the contrary; and
- (c) entitled to assume that no Default, Senior Payment Default or Event of Default or termination event (however described) has occurred, and is not obliged to monitor or enquire as to the same, unless a Responsible Officer of such Notes Trustee has written notice to the contrary.

## 12.4 **No fiduciary duty**

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



## 12.5 **Departmentalism**

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

## 12.6 **Illegality**

- (a) Each Notes Trustee may refrain from doing anything (including disclosing any information) which might, in its reasonable opinion, constitute a breach of any law or regulation and may do anything which, in its reasonable opinion, is necessary or desirable to comply with any law or regulation.
- (b) Furthermore, each Notes Trustee 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.

## 12.7 **Provisions Survive Termination**

The provisions of this Clause 12 shall survive any termination of this Agreement.

## 13. **INFORMATION**

Subject to the terms of the Senior Finance Documents, the Company consents, until the Senior Discharge Date, to the disclosure by any Senior Creditor and the Senior Representatives to each other (whether or not through a Senior Creditor Representative or the Security Trustee) of such information concerning the Debtors as any Senior Creditor or the Senior Representatives shall see fit.

## 14. **FINANCE DOCUMENT**

The Facility Agent and the Company hereby designate that this Agreement is a “Finance Document” for the purposes of the Revolving Credit Facility Agreement.

## 15. **AMENDMENTS**

This Agreement may not be amended or otherwise modified except by an instrument in writing by each Party.

## 16. **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.

## 17. **GOVERNING LAW**

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

**18. ENFORCEMENT**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 18 is for the benefit of the Senior Representatives and each Notes Trustee only. As a result, no Senior Representative or Notes Trustee shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Senior Representatives and any Notes Trustee 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

### ORIGINAL NOTES GUARANTORS

<b>Company</b>	<b>Jurisdiction</b>	<b>Company number or equivalent</b>
EnQuest NWO Limited	England	08497436
EnQuest Heather Limited	England	02748866
EnQuest Britain Limited	England	03628497
EnQuest Heather Leasing Limited	England	07848449
EnQuest ENS Limited	England	06411750
EnQuest Global Limited	England	08482753
EQ Malaysia Ltd	England	07211014

## SCHEDULE 2

### FORM OF CREDITOR ACCESSION UNDERTAKING

To: [Insert full name of current Security Trustee] for itself and on behalf of each Secured Creditor (as defined in the Subordination Agreement referred to below).

To: [insert name of any Senior Representatives of new senior debt]

From: [Acceding Creditor]

THIS UNDERTAKING is made on [date] by [insert full name of new Senior Representative / Notes Trustee] (the “**Acceding [Senior Representative / Notes Trustee]**”) in relation to the subordination agreement (the “**Subordination Agreement**”) dated [ ● ] between, among others, EnQuest plc as the company, the Facility Agent and the Security Trustee (each as defined in the Subordination Agreement). Terms defined in the Subordination Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

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

The address, fax number, email address and attention details of the Acceding [Senior Representative / Notes Trustee] for notices are:

[insert details]

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

**THIS UNDERTAKING** has been entered into on the date stated above and is delivered on the date stated above.

**EXECUTED by**

[insert full name of Acceding Creditor]

By:

Address:

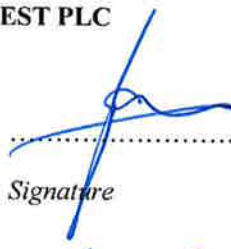
Fax:

**SIGNATURES**

**THE COMPANY**

**ENQUEST PLC**

By: .....



*Signature*

*Stefan Ricketts, Company Secretary*

*Name*

Address: *Cunard House, 5<sup>th</sup> Floor, 15 Regent St, London SW1Y 4LR*

Fax: *0207 925 4936*

**THE FACILITY AGENT**

**BNP PARIBAS**

By: .....  .....  
Signature



Laurence LE RIDANT

 .....  
Name

Address: 16 rue de Hanovre 75002 Paris

Fax:

THE SECURITY TRUSTEE

BNP PARIBAS

By:    
.....  
*Signature*

Laurence LE RIDANT

.....  
*Name*

Address: 16 rue de Hanovre 75002 Paris

Fax:

THE ORIGINAL NOTES TRUSTEE  
DEUTSCHE TRUSTEE COMPANY LIMITED

By: *Tracey Dean*  
.....

Signature **Tracey Dean**  
Associate Director

*Angeline Garvey*  
.....

Name **Angeline Garvey**  
Director

Address:

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