

# **Amendment and Restatement Agreement**

dated 23 May 2023

to amend and restate the

## **Intercreditor Agreement**

originally dated 25 November 2019

between, *inter alios*,

**SKILL BIDCO APS**

as Issuer

**SGL INTERNATIONAL A/S**

as Old Issuer

**JYSKE BANK A/S**

as Original Facility Agent

**JYSKE BANK A/S**

as Original Super Senior RCF Creditor and Original Super Senior Guarantee Creditor

**NORDIC TRUSTEE & AGENCY AB (PUBL)**

as Original Bonds Agent

**INTERTRUST (SWEDEN) AB**

as Original Security Agent

This amendment and restatement agreement (the "**Amendment and Restatement Agreement**") to the Intercreditor Agreement (as defined below) is entered into on 23 May 2023 and made between:

- (a) **Skill BidCo ApS**, Danish reg. no. (CVR) 43 63 99 51 as issuer and ICA group company (the "**Issuer**");
- (b) **Skill MidCo ApS**, Danish reg. no. (CVR) 43 93 69 56 as original subordinated creditor and third part security provider (the "**Parent**");
- (c) **SGL International A/S**, Danish reg. no. (CVR) 37521043 as old issuer (the "**Old Issuer**");
- (d) **THE ENTITIES** listed in Part I (*ICA Group Companies*) of Schedule 1 (*The ICA Group Companies and Third Party Security Providers*), as ICA group companies (the "**ICA Group Companies**");
- (e) **THE ENTITIES** listed in Part II (*Third Party Security Providers*) of Schedule 1 (*The ICA Group Companies and Third Party Security Providers*), as third party security providers (the "**Third Party Security Providers**");
- (f) **Jyske Bank A/S** as facility agent for the Original Super Senior RCF Creditor (the "**Original Facility Agent**");
- (g) **Jyske Bank A/S** as super senior RCF creditor (the "**Original Super Senior RCF Creditor**");
- (h) **Jyske Bank A/S** as super senior guarantee creditor (the "**Original Super Senior Guarantee Creditor**");
- (i) **Jyske Bank A/S** as hedge counterparty (the "**Original Hedge Counterparty**");
- (j) **Goldman Sachs Bank Europe SE** as hedge counterparty (the "**New Hedge Counterparty**");
- (k) **Nordic Trustee & Agency AB (publ)** as agent for the Bondholders (the "**Original Bonds Agent**"); and
- (l) **Intertrust (Sweden) AB** as security agent for the Secured Parties (the "**Original Security Agent**").

## Background

- A.** Reference is made to the intercreditor agreement entered into between, amongst other, the Old Issuer, the super senior RCF creditors under the Super Senior RCF, the facility agent under the Super Senior RCF, certain hedging counterparties and Intertrust (Sweden) AB (representing the Bondholders (as defined therein)) on 25 November 2019 (as amended and restated from time to time) (the "**Intercreditor Agreement**").
- B.** Reference is further made to the terms and conditions between the Issuer and the Agent dated 1 March 2023 under which the Issuer have issue Bonds (as defined therein) with NO0012826033 (the "**Terms and Conditions**").

- C. Reference is finally made to the DKK 750,000,000 committed super senior revolving facility agreement between, amongst others, the Issuer as parent and original borrower, Scan Global Logistics A/S as company and original borrower, and Jyske Bank A/S as original lender (the "**Super Senior RCF**"), dated on or about the date of this Amendment and Restatement Agreement.
- D. The parties to this Amendment and Restatement Agreement have agreed to amend and restate the Intercreditor Agreement in accordance with Clause 3 (*Amendment and Restatement of the Intercreditor Agreement*) below.

## 1. Definitions

Terms defined in the Amended and Restated Intercreditor Agreement (as defined below) shall have the same meaning when used in this Amendment and Restatement Agreement, unless specifically stated otherwise herein or the context otherwise requires.

## 2. Effectiveness

- (a) This Amendment and Restatement Agreement shall be effective as of the date hereof.
- (b) The Amended and Restated Intercreditor Agreement shall become effective on the date on which the Original Bonds Agent notifies the Issuer that it has received, waived the requirement to receive or is satisfied that it will receive, all of the following documents and other evidence (the "**Effective Date**"):

  - (i) evidence that the Closing Date (as defined in the Terms and Conditions (as defined below)) has occurred; and
  - (ii) evidence that the Existing Bonds (as defined in the Terms and Conditions (as defined below)) have been redeemed in full.

## 3. Amendment and Restatement of the Intercreditor Agreement

The parties hereto agree that the Intercreditor Agreement has, with effect from and including the Effective Date, been amended and restated so as to read as set forth in Schedule 2 (*Amended and Restated Intercreditor Agreement*) (the "**Amended and Restated Intercreditor Agreement**"), so that the rights and obligations of the parties hereto and thereto relating to their performance under the Intercreditor Agreement, shall be governed by, and construed in accordance with, the terms of the Amended and Restated Intercreditor Agreement.

## 4. Confirmation

- (a) The parties hereto agree and acknowledge that, for the purpose of any Debt Documents:
  - (i) the senior secured bonds with ISIN NO0012826033 issued by the Issuer on 2 March 2023 under the Terms and Conditions (the "**Bonds**") shall be

considered being Replacement Senior Debt (as defined in the Intercreditor Agreement); and

(ii) the Super Senior RCF shall be considered being Replacement Super Senior Debt (as defined in the Intercreditor Agreement).

(b) The Issuer, the Old Issuer and each ICA Group Company confirms that, except as expressly amended or waived by this Amendment and Restatement Agreement, the Debt Documents and the obligations thereunder of the parties thereto shall continue in full force and effect, and any security or guarantee created or given by it or any other party under any Debt Document will continue in full force and effect and will extend to the liabilities under the Bonds and the Super Senior RCF.

## 5. **Accessions**

(a) By its execution of this Agreement and subject to the occurrence of the Effective Date, the Issuer acknowledges the terms of the Amended and Restated Intercreditor Agreement and agrees to be bound by the terms of the Amended and Restated Intercreditor Agreement as the Issuer and an ICA Group Company (each as defined therein).

(b) By its execution of this Agreement and subject to the occurrence of the Effective Date, the Original Security Agent acknowledges the Terms and Conditions and agrees to be bound by the Terms and Conditions as Security Agent as it has been an original party to the Terms and Conditions.

(c) By its execution of this Agreement and subject to the occurrence of the Effective Date, the Original Hedge Counterparty acknowledges the terms of the Amended and Restated Intercreditor Agreement and agrees to be bound by the terms of the Amended and Restated Intercreditor Agreement as the Original Hedge Counterparty (as defined therein).

(d) By its execution of this Agreement and subject to:

(i) the occurrence of the Effective Date; and

(ii) the Issuer and the New Hedge Counterparty entering into an ISDA master agreement,

the New Hedge Counterparty acknowledges the terms of the Amended and Restated Intercreditor Agreement and agrees to be bound by the terms of the Amended and Restated Intercreditor Agreement as the Hedge Counterparty (as defined therein).

(e) By its execution of this Agreement and subject to the occurrence of the Effective Date, the Original Bonds Agent acknowledges the terms of the Amended and Restated Intercreditor Agreement and agrees to be bound by the terms of the Amended and Restated Intercreditor Agreement as the Original Bonds Agent (as defined therein).

- (f) By its execution of this Agreement and subject to the occurrence of the Effective Date, the Parent acknowledges the terms of the Amended and Restated Intercreditor Agreement and agrees to be bound by the terms of the Amended and Restated Intercreditor Agreement as Subordinated Creditor (as defined therein).
- (g) By its execution of this Agreement and subject to the occurrence of the Effective Date, each of SGL Fulfillment & Distribution A/S and Scan Global Logistics Pty Ltd acknowledges the terms of the Amended and Restated Intercreditor Agreement and agrees to be bound by the terms of the Amended and Restated Intercreditor Agreement as an ICA Group Company (as defined therein).
- (h) By its execution of this Agreement and subject to the occurrence of the Effective Date, each of SGL Road ApS, SGL Fulfillment & Distribution A/S and Scan Global Logistics Pty Ltd acknowledges the terms of the Amended and Restated Intercreditor Agreement and agrees to be bound by the terms of the Amended and Restated Intercreditor Agreement as an ICA Group Company (as defined therein).
- (i) By its execution of this Agreement and subject to the occurrence of the Effective Date, each Third Party Security Provider acknowledges the terms of the Amended and Restated Intercreditor Agreement and agrees to be bound by the terms of the Amended and Restated Intercreditor Agreement as a Third Party Security Provider (as defined therein).

## 6. Miscellaneous

- (a) This Amendment and Restatement Agreement is a Senior Finance Document for the purposes of the Amended and Restated Intercreditor Agreement and the other Debt Documents.
- (b) This Amendment and Restatement Agreement may be executed in a number of counterparts, and this has the same effect as if the signatures of the counterparts were on a single copy of this Amendment and Restatement Agreement.

## 7. Governing Law and Jurisdiction

Clauses 32 (*Governing Law*) and 33 (*Enforcement*) of the Amended and Restated Intercreditor Agreement shall apply to this Amendment and Restatement Agreement *mutatis mutandis* as if such provision were fully set out herein.

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*[Signature page follows]*

## SIGNATURES

**Skill BidCo ApS**

as Issuer

A handwritten signature in blue ink, appearing to read "Philip Ropcke".

By: Philip Ropcke

**Skill MidCo ApS**

as Parent

A handwritten signature in blue ink, appearing to read "Philip Ropcke".

By: Philip Ropcke

**SGL International A/S**

as Old Issuer

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By:

## **SIGNATURES**

**Skill BidCo ApS**

as Issuer

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By:

**Skill MidCo ApS**

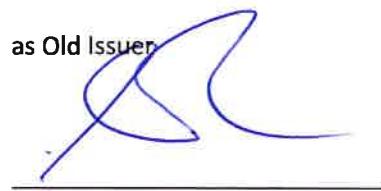
as Parent

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By:

**SGL International A/S**

as Old Issuer



By: **GLAES BRONSGAARD PEDERSEN**

**Skill BidCo ApS**

as ICA Group Company

A blue ink signature of the name "Philip Ropcke" is written in a cursive, flowing style. It is positioned above a solid horizontal line.

By: Philip Ropcke

**SGL International A/S**

**Scan Global Logistics A/S**

**SGL Express A/S**

**SGL Road ApS**

**SGL Fulfillment & Distribution A/S**

**Scan Global Logistics AB**

**SGL Road AB**

**SGL Express Holding AB**

**SGL Express AB**

**Scan Global Logistics Limited (晟嘉亞美有限公司)**

**Contenosa, S.A.**

**Naypemar Barcelona, S.L.**

as ICA Group Companies

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By:

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By:

**Skill BidCo ApS**

as ICA Group Company

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By:

**SGL International A/S**

**Scan Global Logistics A/S**

**SGL Express A/S**

**SGL Road ApS**

**SGL Fulfillment & Distribution A/S**

**Scan Global Logistics AB**

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**SGL Express Holding AB**

**SGL Express AB**

**Scan Global Logistics Limited (晟嘉亞美有限公司)**

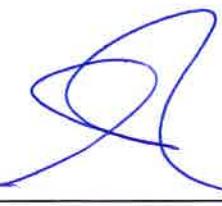
**Contentosa, S.A.**

**Naypemar Barcelona, S.L.**

as ICA Group Companies

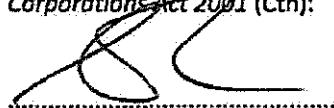


By: **ALLAN DYRGAARD MELGAARD**



By: **GLAES BRØNSGAARD PEDERSEN**

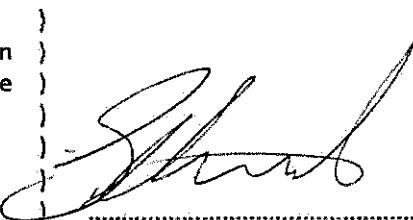
EXECUTED by  
SCAN GLOBAL LOGISTICS PTY LTD in  
accordance with section 127(1) of the  
Corporations Act 2001 (Cth):



Signature of director

CLAES BRONSGAARD  
PEDERSEN

Name of director (block letters)

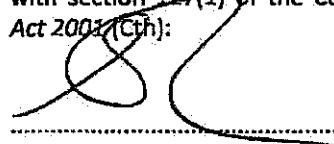


Signature of director



Name of director (block letters)

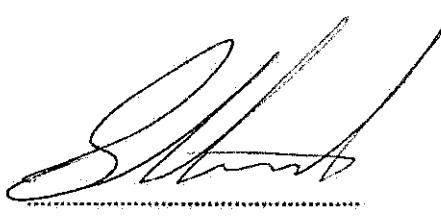
EXECUTED by  
SGL AUSTRALIA PTY LTD in accordance  
with section 127(1) of the Corporations  
Act 2001 (Cth):



Signature of director

CLAES BRONSGAARD  
PEDERSEN

Name of director (block letters)



Signature of director



Name of director (block letters)

**Skill MidCo ApS**

as Third Party Security Provider

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By: Philip Ropcke

**Scan (UK) Midco Limited**

as Third Party Security Provider

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By:

**Tran Sea Land, S.A. De C.V.**

as Third Party Security Provider

---

By:

**SGL TransGroup US Corp**

as Third Party Security Provider

---

By:

**Skill MidCo ApS**

as Third Party Security Provider

---

By:

**Scan (UK) Midco Limited**

as Third Party Security Provider



By: **CLAES BRØNSGAARD PEDERSEN**

**Tran Sea Land, S.A. De C.V.**

as Third Party Security Provider



By: **CLAES BRØNSGAARD PEDERSEN**

**Attorney-in-fact**

**SGL TransGroup US Corp**

as Third Party Security Provider

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By:

**Skill MidCo ApS**

as Third Party Security Provider

---

By:

**Scan (UK) Midco Limited**

as Third Party Security Provider

---

By:

**Tran Sea Land, S.A. De C.V.**

as Third Party Security Provider

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By:

**SGL TransGroup US Corp**

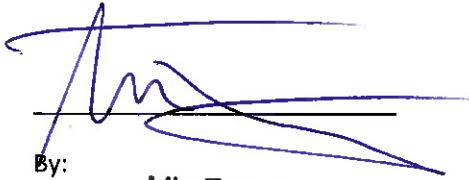
as Third Party Security Provider

A handwritten signature in blue ink, appearing to read "Angela Santillan". It is written in a cursive, flowing style with a blue ink pen.

By: Angela Santillan / VP

**Intertrust (Sweden) AB**

as Original Security Agent

By:  
  
Mia Fogelberg

  
Kristofer Nivenius

**Jyske Bank A/S**

as Original Facility Agent, Original Super Senior RCF Creditor, Original Super Senior Guarantee Creditor and Original Hedge Counterparty

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By:

**Nordic Trustee & Agency AB (publ)**

as Original Bonds Agent

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By:

**Goldman Sachs Bank Europe SE**

as New Hedge Counterparty

---

By:

**Intertrust (Sweden) AB**

as Original Security Agent

---

By:

**Jyske Bank A/S**

as Original Facility Agent, Original Super Senior RCF Creditor, Original Super Senior Guarantee Creditor and Original Hedge Counterparty

By:



Jesper Jensen Mehlbye  
Senior Vice President  
Acquisition Finance  
Jyske Bank A/S



Philip Krag-Olsen  
Relationship Manager  
Acquisition Finance  
Jyske Bank A/S

**Nordic Trustee & Agency AB (publ)**

as Original Bonds Agent

---

By:

**Goldman Sachs Bank Europe SE**

as New Hedge Counterparty

---

By:

**Intertrust (Sweden) AB**

as Original Security Agent

---

By:

**Jyske Bank A/S**

as Original Facility Agent, Original Super Senior RCF Creditor, Original Super Senior Guarantee Creditor and Original Hedge Counterparty

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By:

**Nordic Trustee & Agency AB (publ)**

as Original Bonds Agent



By: **Adam Kastengren Sandberg**

**Goldman Sachs Bank Europe SE**

as New Hedge Counterparty

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By:

**Intertrust (Sweden) AB**

as Original Security Agent

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By:

**Jyske Bank A/S**

as Original Facility Agent, Original Super Senior RCF Creditor, Original Super Senior Guarantee Creditor and Original Hedge Counterparty

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By:

**Nordic Trustee & Agency AB (publ)**

as Original Bonds Agent

---

By:

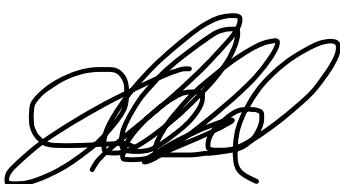
**Goldman Sachs Bank Europe SE**

as New Hedge Counterparty

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By: David Dorndorf  
Authorized Signatory



Jans Meckel  
Managing Director

**SCHEDULE 1****The ICA Group Companies and Third Party Security Providers****Part I – ICA Group Companies**

Name of Original ICA Group Company	Registration number / company number	Jurisdiction
Skill BidCo ApS	(CVR) 43 63 99 51	Denmark
SGL International A/S	(CVR) 37 52 10 43	Denmark
Scan Global Logistics A/S	(CVR) 14 04 96 73	Denmark
SGL Express A/S	(CVR) 40 13 99 15	Denmark
SGL Road ApS	(CVR) 30 58 57 39	Denmark
SGL Fulfillment & Distribution A/S	(CVR) 40 42 82 24	Denmark
Scan Global Logistics AB	556480-2782	Sweden
SGL Road AB	556468-4305	Sweden
SGL Express Holding AB	556672-3507	Sweden
SGL Express AB	556871-4116	Sweden
Scan Global Logistics Limited (晟嘉亞美有限公司)	858799	Hong Kong
Contenosa, S.A.	A-28517274	Spain
Naypemar Barcelona, S.L.	B-60265303	Spain
Scan Global Logistics Pty Ltd	ACN 089 605 694	Australia
SGL Australia Pty Ltd	ACN 144 047 450	Australia

**Part II – Third Party Security Providers**

Name of Original Third Party Security Provider	Registration number / company number	Jurisdiction
Skill MidCo ApS	(CVR) 43 93 69 56	Denmark
Scan (UK) Midco Limited	10201709	United Kingdom
Tran Sea Land, S.A. De C.V.	Commercial ElectronicFolio (Folio MercantilElectrónico) number 429329-1	Mexico
SGL TransGroup US Corp.	83-3770558	Delaware

**SCHEDULE 2****The Amended and Restated Intercreditor Agreement**

[*Separate Document*]

## **Intercreditor Agreement**

**Skill BidCo ApS**

as Issuer

**Jyske Bank A/S**

as Original Facility Agent

**Jyske Bank A/S**

as Original Super Senior RCF Creditor

**Nordic Trustee & Agency AB (publ)**

as Original Bonds Agent

**Intertrust (Sweden) AB**

as Original Security Agent

**certain entities**

as Hedge Counterparties

and

**certain entities**

as Original ICA Group Companies

**originally dated 25 November 2019 and as amended and restated pursuant to an  
amendment and restatement agreement dated 23 May 2023**

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## List of Schedules

<b>Schedule 1</b>	The ICA Group Companies and Third Party Security Providers
<b>Schedule 2</b>	Form of ICA Group Company/Third Party Security Provider Accession Agreement
<b>Schedule 3</b>	Form of Creditor/Representative Accession Undertaking

This **Intercreditor Agreement** (the "Agreement") was originally entered into on 25 November 2019 (as amended and restated pursuant to an amendment and restatement agreement dated 27 September 2021 and most recently an amendment and restatement agreement dated 23 May 2023) by and between:

- (a) **Skill BidCo ApS**, Danish reg. no. (CVR) 43 63 99 51 as issuer (the "Issuer");
- (b) **Skill MidCo ApS**, Danish reg. no. (CVR) 43 93 69 56 as original subordinated creditor (the "Original Subordinated Creditor");
- (c) **Scan Global Logistics A/S**, Danish reg. no. (CVR) 14049673 as super senior borrower (the "Super Senior Borrower");
- (d) **THE COMPANIES** set out in Part I (ICA Group Companies) of Schedule 1 (*The ICA Group Companies and Third Party Security Providers*) as original ICA Group Companies (the "Original ICA Group Companies");
- (e) **THE COMPANIES** set out in Part II (*Third Party Security Providers*) of Schedule 1 (*The ICA Group Companies and Third Party Security Providers*) as original third party security providers (the "Original Third Party Security Providers");
- (f) **Jyske Bank A/S** as facility agent for the Original Super Senior RCF Creditor (the "Original Facility Agent");
- (g) **Jyske Bank A/S** as super senior RCF creditor (the "Original Super Senior RCF Creditor");
- (h) **Jyske Bank A/S** as hedge counterparty (the "Original Hedge Counterparty");
- (i) **Goldman Sachs Bank Europe SE** as hedge counterparty (the "New Hedge Counterparty");
- (j) **Nordic Trustee & Agency AB (publ)** as agent for the Bondholders (the "Original Bonds Agent"); and
- (k) **Intertrust (Sweden) AB** 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:

"**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, a Bonds Acceleration Event, a New Debt Acceleration Event or Second Lien 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 Bonds Agent, the Facility Agent and any agent appointed under any New Debt Documents or any Second Lien Debt Documents.

**"Bondholders"** has the meaning given to such term in the Terms and Conditions.

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

**"Bonds Acceleration Event"** means the Bonds Agent (at its discretion or at the instructions of the requisite number of the Bondholders) accelerating all amounts due under the Bonds pursuant to clause 14.10 (*Acceleration of the Bonds*) of the Terms and Conditions.

**"Bonds Agent"** means the Original Bonds Agent or a new agent replacing the Original Bonds Agent in accordance with clause 22 (*Appointment and Replacement of the Agent and the Security Agent*) 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"** has the meaning given to such term in the Terms and Conditions.

**"Collective Majority Senior Creditors"** means the Senior Creditors representing a majority of the Senior Debt under any Bonds and New Debt, based on the Senior Creditors under any Bonds and any New Debt voting as one creditor class.

**"Collective Majority Super Senior Creditors"** means, at any time, those Super Senior Creditors whose Super Senior Credit Participations at that time aggregate more than 50 per cent. of the total Super Senior Credit Participations at that time.

**"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 as to the manner of enforcement (including any inconsistency as to the timeframe for realising value from an enforcement of the Transaction Security or the Guarantees or a distressed disposal), it being understood that, for the purpose of triggering the consultation requirements under Clause 13.2(b) (*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 13.2(b) (*Consultation*).

**"Creditor/Representative Accession Undertaking"** means:

- (a) an undertaking substantially in the form set out in Schedule 3 (*Form of Creditor/Representative Accession Undertaking*); or
- (b) a Transfer Certificate (as defined in the Super Senior RCF) (provided that it contains an accession to this Agreement which is 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 Debt referred to in Clause 12.3 (*Super Senior RCF refinancing, Senior Debt refinancing and Second Lien Debt refinancing*)), any New Debt, any Second Lien Debt, any Subordinated Debt and the Intercompany Debt.

**"Debt Documents"** means the Super Senior RCF Documents, the Hedging Agreements, the Bonds Finance Documents, the New Debt Documents, the Second Lien Debt Documents, the Subordinated Debt Documents and the Intercompany Documents.

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

- (a) declare prematurely due and payable or otherwise seek to accelerate payment of or place a demand on all or any part of any Debt (notwithstanding whether such Debt has fallen due or not) 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, any ICA Group Company or any Third Party Security Provider 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 the Second Lien Debt Documents, permitted pursuant to Clause 5.3 (*Restrictions on payment and security*) and not related to any default.

**"Enforcement Instructions"** means instructions as to 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 Clause 13.2(a) (*Consultation*).

**"Event of Default"** means a Super Senior RCF Event of Default, a Bonds Event of Default, a New Debt Event of Default or a Hedging Agreement Event of Default.

**"Facility Agent"** means the Original Facility Agent, any agent replacing the Original Facility Agent in connection with a replacement of the original Super Senior RCF Agreement in accordance with Clause 12.3 (*Super Senior RCF refinancing, Senior Debt refinancing and Second Lien Debt refinancing*), or any other agent or representative under new Super Senior RCF Documents.

**"Final Discharge Date"** means the date when all principal, interest and any other costs or outstanding amounts under the Senior Finance Documents and the Second Lien Debt Documents have been unconditionally and irrevocably paid and discharged in full and all commitments of the Secured Parties under the Senior Finance Documents and the Second Lien Debt Documents have expired, been cancelled or terminated.

**"Finance Documents"** has the meaning given to such term in the Terms and Conditions.

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

**"Group Company"** means a member of the Group.

**"Guarantee"** means the guarantees provided under the Guarantee and Adherence Agreement to the Secured Parties.

**"Guarantee and Adherence Agreement"** means the guarantee and adherence agreement pursuant to which the Guarantors shall, amongst other, guarantee all amounts outstanding under the Senior Finance Documents and any Second Lien Debt Documents, including but not limited to the Bonds, plus accrued interests and expenses.

**"Guarantors"** means SGL International A/S, Scan Global Logistics A/S, SGL Express A/S, Scan Global Logistics AB, SGL Road AB, SGL Express Holding AB, SGL Express AB, Scan Global Logistics Limited (晟嘉亞美有限公司), Contenosa, S.A., Naypemar Barcelona, S.L., Scan Global Logistics Pty Ltd, SGL Australia Pty Ltd and each entity becoming a guarantor in respect of any Secured Obligations from time to time in accordance with the Senior Finance Documents and/or the Second Lien Debt Documents, each a **"Guarantor"**.

**"Hedge Counterparty"** means (i) the Original Hedge Counterparty, (ii) the New Hedge Counterparty, and (iii) any person who is or becomes a hedge counterparty pursuant to any Hedging Agreement in accordance with Clause 5.1 (*Hedge Counterparties*).

**"Hedging Agreement"** means any and all currency or interest swaps and/or interest cap and/or hedging agreements entered into or to be entered into by the Issuer or any other Group Company with any Hedge Counterparty.

**"Hedging Agreement Event of Default"** means an event of default or a termination event, however so described, under a Hedging Agreement.

**"Hedging Obligations"** means all present and future moneys, debts and liabilities due, owing or incurred from time to time by the Issuer or any other Group Company to any Hedge Counterparty under or in connection with any Hedging Agreement, including for the avoidance of doubt any transaction entered into thereunder.

**"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/or the Second Lien Debt Documents and in accordance with Clause 24.3 (*Accession of Additional ICA Group Companies*).

**"ICA Group Company/Third Party Security Provider Accession Agreement"** means:

- (a) an agreement substantially in the form set out in Schedule 2 (*Form of ICA Group Company/Third Party Security Provider Accession Agreement*); or
- (b) an Accession Letter (as defined in the Super Senior RCF) (provided that it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of ICA Group Company/Third Party Security Provider Accession Agreement*)).

**"Insolvency Event"** means:

- (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 with a view to rescheduling its Financial Indebtedness; or
- (b) a moratorium is declared in respect of the Financial Indebtedness of any Group Company.
- (c) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, bankruptcy, dissolution, administration or reorganisation of any Group Company;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Group Company; or

- (iii) the appointment of a liquidator, trustee in bankruptcy, 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 other than:

- (iv) proceedings which are vexatious or frivolous or are being disputed in good faith and are discharged, stayed or dismissed within sixty (60) days of commencement; or
- (v) in relation to Group Companies (other than the Issuer), solvent liquidations that are permitted under the Senior Finance Documents and the Second Lien Debt Documents.

**"Instructing Party"** means:

- (a) at any time prior to the Senior Discharge Date, the Senior Representative or, following replacement in accordance with Clause 13.2 (*Consultation*), the Super Senior Representative; or
- (b) at any time after the Senior Discharge Date, the Second Lien 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 loan or credit made by any Group Company to the Issuer or any other Group Company, where (i) the term of the loan is at least twelve (12) months (the term to be determined by the Issuer) and (ii) the principal amount thereof is at least of EUR 1,000,000 excluding any intercompany loans that are subject to Transaction Security.

**"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.

**"Intercompany Documents"** means all documents, agreements and instruments evidencing any Intercompany Debt.

**"Interest Rate Hedge Excess"** means the amount by which the Total Interest Rate Hedging exceeds the Secured Obligations (excluding any Hedging Obligations).

**"Interest Rate Hedging"** means, in relation to a Hedge Counterparty at any time, the aggregate of the notional amounts of any interest rate hedging transactions which are, at that time, in effect under a Hedging Agreement to which that Hedge Counterparty and an ICA Group Company are party.

**"Interest Rate Hedging Proportion"** means, in relation to a Hedge Counterparty and that Hedge Counterparty's Interest Rate Hedging, the proportion (expressed as a percentage) borne by that Hedge Counterparty's Interest Rate Hedging to the Total Interest Rate Hedging.

**"Issuing Agent"** has the meaning given to that term in the Terms and Conditions or any New Debt Documents.

**"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, provided that in respect of any Third Party Security Provider, any such liabilities and obligations will only be in relation to its liabilities and obligations under the Debt Documents in connection with the granting of Security under such Debt Documents, and any representations, warranties or undertakings given in such Debt Documents, not being direct Liabilities in respect of any Secured Obligations (other than to the extent that a Third Party Security Provider has expressly assumed any such Liabilities).

**"Major Obligations"** means an obligation with respect to any Group Company pursuant to any negative pledge undertaking or restriction on financial indebtedness, disposals, loans out or holding company activities under any Super Senior RCF.

**"Material Group Company"** has the meaning given to such term in the Terms and Conditions or any New Debt Documents.

**"New Debt"** means Financial Indebtedness incurred by any Group Company pursuant to paragraph (k), (l) or (p) in the definition of "Permitted Debt" in the Terms and Conditions or any New Debt Documents (as applicable) provided that the creditors under such debt has acceded to this Agreement.

**"New Debt Acceleration Event"** means the Representative of any New Debt Creditors exercising any of its rights under any acceleration provisions of the relevant New Debt Documents.

**"New Debt Creditors"** means each creditor under and as defined in the relevant New Debt Documents.

**"New Debt Documents"** means each document or instrument entered into after the date hereof between any Group Company and a New Debt Creditor setting out the terms of any credit which creates or evidences New Debt.

**"New Debt Event of Default"** shall have the meaning ascribed to the term event of default in the New Debt Documents.

**"Other Working Capital Facility"** means any working capital facility of the Group permitted pursuant to paragraph (o) of the definition of "Permitted Debt" in the Terms and Conditions or any New Debt Documents (as applicable) other than any Super Senior RCF.

**"Original Super Senior RCF"** means the DKK 750,000,000 revolving credit facility agreement dated on or about the date hereof and entered into between, *inter alios*, the Issuer as parent, the Super Senior Borrower as borrower and Jyske Bank A/S as lender.

**"Party"** means a party to this Agreement.

**"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 when a Facility Agent serves a written notice to the Issuer, the Security Agent, the Bonds Agent and any New Creditor that an Event of Default (for the avoidance of doubt, after the expiration of any applicable grace period in respect of the default giving rise to the Event of Default) relating to:

- (a) a non payment,
- (b) a breach of financial covenants,
- (c) non-compliance with any of the Major Obligations,
- (d) a cross default,
- (e) insolvency,
- (f) insolvency proceedings,
- (g) creditors' process,
- (h) impossibility or illegality or
- (i) cession of business,

under the Super Senior RCF has occurred or a Facility Agent serves a written notice of acceleration to the Issuer, the Security Agent, the Bonds Agent and any New Creditor (or its/their representative/agent).

**"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, Second Lien Debt, Subordinated 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 15.1 (*Payments to Secured Parties*).

**"Representatives"** means the Super Senior Representative, the Senior Representative and any Second Lien Representative.

**"Second Lien Acceleration Event"** means the Second Lien Representative of any Second Lien Creditors exercising any of its rights under any acceleration provisions of the relevant Second Lien Debt Documents.

**"Second Lien Creditor"** means each creditor under and as defined in the relevant Second Lien Debt Documents.

**"Second Lien Debt"** means all indebtedness outstanding under any Second Lien Financing.

**"Second Lien Debt Documents"** means each document or instrument entered into after the date hereof between the Issuer and a Second Lien Creditor setting out the terms of any credit which creates or evidences Second Lien Debt.

**"Second Lien Financing"** shall have the meaning given to that term in the Terms and Conditions.

**"Second Lien Representative"** means, at any time, the representative of those Second Lien Creditors whose Second Lien Debt at that time aggregate more than 50 per cent. of the total Second Lien Debt at that time.

**"Secured Obligations"** means all present and future, actual and contingent, liabilities and obligations at any time due, owing or incurred by any Group Company or Third Party Security Provider towards the Secured Parties outstanding from time to time under the Senior Finance Documents and the Second Lien Debt Documents.

**"Secured Parties"** means:

- (a) each Agent;
- (b) the creditors under the Senior Finance Documents; and
- (c) the creditors under the Second Lien Debt Documents,

but, in relation to paragraph (b) and (c) above, only if such creditor (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 24 (*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 24.8 (*Resignation of Agents*).

**"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 or any Third Party Security Provider 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,

and in case of paragraph (b) and (c) above, excluding any Security and/or further assurance provided for any Working Capital Facility provided by any Group Company pursuant to and in accordance with the US Intercreditor Agreement.

**"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, always provided that such enforcement is made in compliance with the fiduciary duties of the Security Agent and the Secured Parties.

**"Senior Creditor"** means the Bondholders, the Bonds Agent and any New Debt Creditor acceding to this Agreement as a Senior Creditor.

**"Senior Debt"** means (i) all indebtedness outstanding under the Bonds Finance Documents and (ii) any document relating to any New Debt.

**"Senior Discharge Date"** means the date when all principal, interest and any other costs or outstanding amounts under the Senior Finance Documents have been unconditionally and irrevocably paid and discharged in full and all commitments of the Senior Creditors and the Super Senior Creditors under the Senior Finance Documents have expired, been cancelled or terminated

**"Senior Finance Documents"** means the Bonds Finance Documents, the Super Senior RCF Documents, the Hedging Agreements and any New Debt Documents.

**"Senior Representative"** means, at any time, the representative of:

- (a) those Senior Creditors whose Senior Debt at that time aggregate more than 50 per cent. of the total Senior Debt at that time; or
- (b) for as long as any New Debt is larger than the debt outstanding under the Bonds, those Senior Creditors, voting for the relevant decision, whose Senior Debt at that time aggregate more than 50 per cent. of the total Senior Debt at that time, calculated based on the Senior Creditors under any Bonds and any New Debt voting as one creditor class with a representative of the majority of such creditor class being the senior representative.

The Bonds Agent shall represent all Bondholders and act on the instructions of and on behalf of the Bondholders unless the New Debt is larger than the debt outstanding under Bonds in which case the Bonds Agent or another representative selected by the Collective Majority Senior Creditors shall represent all the Senior Creditors and act on the instructions of the Collective Majority Senior Creditors and on behalf of all the Senior Creditors.

**"Spanish Capital Companies Law"** means the *Real Decreto Legislativo 1/2010, de 2 de Julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital*, as amended from time to time.

**"Subordinated Creditor"** means the Original Subordinated Creditor and any third party including any direct or indirect shareholder of the Issuer (for the avoidance of doubt not including any Secured Party or any ICA Group Company) which shall be subordinated pursuant to this Agreement and which accedes to this Agreement in accordance with Clause 24.1 (*Assignments and Transfers by Creditors*) or Clause 24.5 (*Accession of Subordinated Creditors*).

**"Subordinated Debt Documents"** means all documents, agreements and instruments evidencing any Subordinated Debt.

**"Subordinated Debt"** means all present and future moneys, debts and liabilities due, owning or incurred from time to time by any member of the Group to any Subordinated Creditor, including any dividends and any advisory, monitoring or management fee.

**"Subsidiary"** means in relation to any company or corporation, (a "**Holding Company**"), a company or corporation:

- (a) which is controlled, directly or indirectly, by the Holding Company;
- (b) more than half the issued share capital of which is owned, directly or indirectly, by the Holding Company; or
- (c) which is a subsidiary of another Subsidiary of the Holding Company,

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

**"Super Senior Creditors"** means the Super Senior RCF Creditors and the Hedge Counterparties.

**"Super Senior Credit Participation"** means, in relation to a Super Senior RCF Creditor or a Hedge Counterparty the aggregate of:

- (a) its aggregate commitments under the Super Senior RCF Documents, if any;
- (b) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that

termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and

- (c) after the Super Senior RCF Discharge Date only, in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement that amount, in each case, to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement.

**"Super Senior Debt"** means all indebtedness to the Super Senior Creditors outstanding under the Super Senior RCF Documents and the Hedging Agreements.

**"Super Senior Headroom"** means a maximum aggregate amount equal to 17.5 per cent. of the aggregate of (i) the Total Nominal Amount of the Bonds (as defined in the terms and Conditions), (ii) any debt incurred pursuant to paragraph (l) of the definition of "Permitted Debt" (excluding any Subordinated Loans (as defined in the Term and Conditions)) of the Terms and Conditions, and (iii) the aggregate outstanding amount under any Market Loans (excluding any Subordinated Loans) (each as defined in the Terms and Conditions) and the total commitment of any Working Capital Facilities (as defined in the Terms and Conditions).

**"Super Senior RCF"** means (i) the Original Super Senior RCF and (ii) any other working capital facility agreement or similar agreement providing financing for general corporate purposes between any Group Company and a Super Senior RCF Creditor replacing a Super Senior RCF in accordance with Clause 12.3 (*Super Senior RCF refinancing, Senior Debt refinancing and Second Lien Debt refinancing*).

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

**"Super Senior RCF Creditors"** means (i) the Original Super Senior RCF Creditor and (ii) any person who is or becomes a lender under a Super Senior RCF.

**"Super Senior RCF Debt"** means all Liabilities due, owing or incurred from time to time by the ICA Group Companies and the Third Party Security Providers to the Super Senior RCF Creditors under or in connection with the Super Senior RCF Documents.

**"Super Senior RCF Discharge Date"** means the date when all principal, interest and any other costs or outstanding amounts under the Super Senior RCF have been irrevocably

discharged in full and all commitments of the Super Senior RCF Creditor under the Super Senior RCF Documents have expired, been cancelled or terminated.

**"Super Senior RCF Documents"** means (i) the Super Senior RCF, (ii) this Agreement, (iii) the Guarantee and Adherence Agreement and (iv) the Security Documents.

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

**"Super Senior Representative"** means, at any time, the representative of the Collective Majority Super Senior Creditors.

**"Terms and Conditions"** means the terms and conditions of the Bonds entered into between the Issuer and the Bonds Agent on 1 March 2022 and as amended and restated on 20 March 2023.

**"Third Party Security Provider"** means:

- (a) the Original Third Party Security Providers (in their respective capacity as a Third Party Security Provider as it relates to the Secured Obligations); and
- (b) any other person that has provided Transaction Security over any or all of its assets but is not a debtor in respect of any of the direct Liabilities of the Secured Obligations to which that Transaction Security relates and which has acceded to this Agreement as a Third Party Security Provider in accordance with Clause 24.4 (Accession of Additional Third Party Security Providers),

and, in each case, which entity has not ceased to be a Third Party Security Provider in accordance with the terms of this Agreement.

**"Total Interest Rate Hedging"** means, at any time, the aggregate of each Hedge Counterparty's Interest Rate Hedging at that time.

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

**"Transaction Security Documents"** means:

- (a) a pledge over any Subordinated Loans (as defined in the Terms and Conditions) made to the Issuer by its direct or indirect parent company;
- (b) a pledge over all the shares currently issued in the Issuer, each Guarantor, the US HoldCo, Transfair North America International Freight Services, LLC, Scan Global Logistics Spain S.L.U., Tran Sea Land, S.A. de C.V. and SGL Australia Pty Ltd;
- (c) a pledge over any Material Intercompany Loan (as defined in the Terms and Conditions) made by the Issuer or SGL International A/S to US HoldCo or to any Material Group Company (other than Scan Global Logistics Ltd – Shanghai);

- (d) a pledge over existing floating charges or business mortgages in the business of Scan Global Logistics A/S and a security document over substantially all assets of Scan Global Logistics Limited (晟嘉亞美有限公司);
- (e) a Mexican law governed non-possessory pledge agreement (*contrato de prenda sin transmission de posesión*) over substantially all movable assets of Tran Sea Land, S.A. de C.V.;
- (f) a second-ranking charge over substantially all assets of Scan Global Logistics Limited (晟嘉亞美有限公司);
- (g) a second-ranking share mortgage over the shares in Scan Global Logistics Limited (晟嘉亞美有限公司) granted by Scan Global Logistics A/S;
- (h) a supplemental agreement to the equity pledge agreement originally dated 25 November 2019 granted by Scan Global Logistics A/S regarding its equity interest in Scan Global Logistics (Shanghai) Co., Ltd. (麦兰威典 (上海) 国际货运代理有限公司); and
- (i) a pledge over 64 per cent. of the shares currently issued in SGL Transgroup de México, S.A. de C.V.;
- (j) any further Security required to be granted pursuant to the Terms and Conditions, any New Debt Documents or this Agreement (other than any Security granted subject to and in accordance with the US Intercreditor Agreement).

**"US HoldCo"** means TransGroup Global Inc., business identity code 81-3664939.

**"US Intercreditor Agreement"** shall have the meaning given to the term "US HoldCo Intercreditor Agreement" in the Terms and Conditions.

## 1.2 Incorporation of defined terms

Unless a contrary indication appears, terms defined in the Terms and Conditions or any New Debt Documents (as applicable) 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 **"Super Senior RCF Creditor"**, any **"Hedge Counterparty"**, any **"Bondholder"**, the **"Bonds Agent"** any **"Creditor"**, any **"Intercompany Debtor"**, any **"Intercompany Creditor"**, the **"Issuer"**, any **"New Debt Creditor"**, any **"ICA Group Company"**, any **"Party"**, any **"Recovering Creditor"**, any **"Secured Party"**, any **"Subordinated Creditor"**, the **"Security Agent"**, any **"Representative"**, any **"Second Lien Creditor"**, any **"Senior Creditor"** or any **"Third Party Security Provider"** 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 "**Intercompany Document**", any "**Subordinated Debt Document**" any "**Super Senior RCF Document**", any "**Hedging Agreement**", any "**Senior Finance Document**", any "**Second Lien Debt Documents**", a "**Bonds Finance Document**", the "**Terms and Conditions**", a "**New Debt Document**" 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) or two or more of the foregoing;
- (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 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, a default or potential default, however described, is "**continuing**" if deemed to be continuing pursuant to the relevant agreement. A Payment Block Event shall be deemed to be continuing if not remedied or waived.

## 1.4 Third Party Security Provider

Unless otherwise expressly agreed between the Security Agent and a Third Party Security Provider and notwithstanding any other provision of this Agreement or the Debt Documents:

- (a) the recourse of the Security Agent (or any other Secured Party) against the Third Party Security Provider in respect of the Secured Obligations is limited to the rights of enforcement and recovery against the assets subject to Transaction Security provided by the Third Party Security Provider only;
- (b) the Third Party Security Provider's liabilities and obligations under the Debt Documents are limited to, and may only be discharged from, the aggregate amount actually received by the Security Agent from the proceeds of realisation of the assets of a Third Party Security Provider as a result of enforcement of the Transaction Security granted pursuant to Transaction Security Documents to which it is a party (the "**Third Party Security Recovery Proceeds**") (and the liabilities of the Third Party Security Provider under the Debt Documents shall be fully discharged and extinguished upon such realisation by the Security Agent of the assets subject to Transaction Security provided by the Third Party Security Provider; and
- (c) no Secured Party:
  - (i) shall have any recourse to any assets of the Third Party Security Provider other than the assets subject to Transaction Security provided by the Third Party Security Provider;
  - (ii) may seek to recover from the Third Party Security Provider any shortfall between the amount of the Third Party Security Recovery Proceeds and the Secured Obligations including by proving or otherwise claiming in the Third Party Security Provider's insolvency proceedings; or
  - (iii) may sue or commence, join or bring any action or proceeding against the Third Party Security Provider or take Enforcement Action against the Third Party Security Provider in relation to any shortfall referred to in sub-paragraph (ii) above or on any other grounds.

## 2. Superiority of Intercreditor Agreement

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.

## 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 RCF and the Hedging Obligations);
- (b) *second*, the Senior Debt (*pari passu* between all indebtedness under the Bonds and any New Debt);
- (c) *third*, any Second Lien Debt (*pari passu* between all indebtedness under the Second Lien Debt);
- (d) *fourth*, any liabilities raised in the form of Intercompany Debt; and
- (e) *fifth*, any liabilities raised in the form of Subordinated 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, the Senior Debt and the Second Lien Debt, *pari passu* between the Super Senior Debt, the Senior Debt and the Second Lien Debt, but subject always to the allocation of proceeds provision as set out in Clause 16 (*Application of Recoveries*).
- (b) The Intercompany Debt and any Subordinated Debt shall remain unguaranteed and unsecured.

### **3.3 Intercompany Debt and Subordinated Debt**

Each of the Parties agrees that the Intercompany Debt and the Subordinated Debt are postponed and subordinated to the Liabilities owed by the ICA Group Companies and the Third Party Security Providers to the Secured Parties.

### **3.4 Floating Charge**

The floating charge security in the business of the Super Senior Borrower shall continue to be registered as an owner's mortgage deed (in Danish: *ejerpantebrev*) in the Danish Personal Property Register (in Danish: *Personbogen*) with the Super Senior Creditors as first priority pledgee and the Security Agent (for this purpose acting on behalf of the other Secured Parties) as second priority pledgee. Regardless of the registration, the Super Senior Creditors shall comply with the restrictions set out in the Intercreditor Agreement and may not take any Enforcement Actions unless the Super Senior Creditor has become the Instructing Party in accordance with Clause 13 (*Enforcement and Consultation*).

### **3.5 Preservation of Subordinated Debt and Intercompany Debt**

Notwithstanding any term of this Agreement postponing, subordinating or preventing the payment of all or any part of the Subordinated Debt and Intercompany Debt, the relevant Subordinated Debt or Intercompany Debt shall, as between the Subordinated 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. Secured Parties and Secured Obligations

### 4.1 Payments of Secured Obligations

Subject to Clause 10 (*Payment Block*), the ICA Group Companies and the Third Party Security Providers may make Payments in respect of any Super Senior Debt or any Senior Debt at any time in accordance with the terms of this Agreement and the relevant Senior Finance Document.

### 4.2 Amendments and Waivers

- (a) Subject to Clause 27 (*Amendments and waivers*) and paragraph (b) and (c) below, the relevant Secured Parties, ICA Group Companies and Third Party Security Providers 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.
- (b) No Super Senior RCF Creditor and no ICA Group Company may increase the principal amount of any Super Senior RCF Debt other than through an increase of the principal amount under the Super Senior RCF up to an amount when aggregated with any amount outstanding under any Other Working Capital Facility equals to or is lower than the Super Senior Headroom. For purposes of ensuring compliance with the Super Senior Headroom, the Super Senior Creditors may assume that any confirmation from the Issuer of the aggregate amount outstanding under the Bonds, the New Debt and any Other Working Capital Facilities is correct unless it has actual knowledge to the contrary and the Super Senior Creditors do not have to verify or assess the contents of any such confirmation.

### 4.3 Security and guarantees

- (a) Subject to paragraph (b) below, 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:

- (1) to all the Secured Parties in respect of the Secured Liabilities; or
- (2) 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 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 and/or the Second Lien Debt 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 ranks in the same order of priority as that contemplated in Clause 3 (*Ranking and Priority*).

- (b) Any Security provided for the benefit of a Secured Party pursuant to the US Intercreditor Agreement shall not be subject to the sharing provisions in this Clause 4.3.

## 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 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 2002 ISDA Master Agreement or, with respect to the Original Hedge Counterparty, its customary framework agreement (and in respect of such customary framework agreement, provided that such is in form and substance satisfactory to the Security Agent);
  - (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, or similar in the case of any other form of Hedging Agreement than the 2002 ISDA Master Agreement) provide for two way payments;

- (iii) specify "Automatic Early Termination" as applicable where a Group Company is the "Defaulting Party", each as defined in the relevant 2002 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; and
- (iv) 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 or Third Party Security Provider shall (and the Issuer shall ensure that no other Group Company or Third Party Security Provider 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) if the Payment is a scheduled Payment arising under the relevant Hedging Agreement;
  - (ii) for a payment or discharge made in accordance with Clause 5.4 (*Closing out of hedging transactions*); or
  - (iii) to the extent that the relevant Group Company's obligation to make the Payment arises as a result of the operation of:
    - (A) any of sections 2(d) (*Deduction or Withholding for Tax*), 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
    - (B) any provision of a Hedging Document which is similar in meaning and effect to any provision listed in paragraph (A) above (if the Hedging Document is not based on a 2002 ISDA Master Agreement),

for the avoidance of doubt, application by a Hedge Counterparty in the order permitted by Clause 16 (*Application of Recoveries*) of proceeds received by a Hedge Counterparty in connection with the enforcement of any Transaction Security or the Guarantees shall not be restricted pursuant to this Clause 5.3.

- (b) No Hedge Counterparty shall permit to subsist or receive, and no ICA Group Company or Third Party Security Provider shall (and the Issuer shall ensure that no other Group Company or Third Party Security Provider will) create or permit to subsist, any Security or any guarantee for or in respect of any Hedging Obligations, other than under the Security Documents and the Guarantee and Adherence Agreement or if permitted by the Security Agent.

## 5.4 Closing out of hedging transactions

- (a) No Hedge Counterparty or ICA Group Company may (and the Issuer shall ensure that no other Group Company or Third Party Security Provider will) 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 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 5 Business 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) if, prior to an Acceleration Event or an enforcement of any Transaction Security, the Issuer has certified to that Hedge Counterparty that that termination or close-out would not result in a breach of any minimum hedging requirement or similar requirement in any Senior Finance Documents and/or any Second Lien Debt Documents;
  - (iii) to the extent necessary to comply with paragraph (e) of Clause 5.5 (*Total Interest Rate Hedging*);
  - (iv) an Acceleration Event has occurred or any Transaction Security is enforced;
  - (v) an Illegality, Tax Event, Tax Event Upon Merger, a Credit Event Upon Merger or a Force Majeure Event (each as defined in the relevant 2002 ISDA Master Agreement), or similar event in the case of any other form of Hedging Agreement, has occurred;
  - (vi) any Event of Default has occurred under clauses 14.4 (*Insolvency*), 14.5 (*Insolvency proceedings*) or 14.6 (*Creditors' process*) of the Terms and Conditions or corresponding clauses of any Senior Finance Documents or any Second Lien Debt Documents; or
  - (vii) if the Collective Majority Senior Creditors and the Collective Majority Super Senior Creditors give prior consent to that termination or close-out being made.
- (b) Promptly following an Acceleration Event or the enforcement of any Transaction Security 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 (or as the Security Agent may direct) any amount owed by it and any close out amount received under a Hedging Agreement for application in accordance with Clause 16.1 (*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.

## 5.5 Total Interest Rate Hedging

- (a) The Issuer shall procure that, at all times the Total Interest Rate Hedging does not exceed the Secured Obligations.
- (b) Subject to paragraph (a) above, if the Total Interest Rate Hedging is less than the Secured Obligations, an ICA Group Company may (but, shall be under no obligation to) enter into additional hedging arrangements to increase the Total Interest Rate Hedging.
- (c) If any reduction in the Secured Obligations results in an Interest Rate Hedge Excess then, on the same day as that reduction becomes effective in accordance with the terms of the relevant Senior Finance Document and/or Second Lien Debt Document, the relevant ICA Group Company shall, and the Issuer shall procure that the relevant ICA Group Company shall, reduce each Hedge Counterparty's Interest Rate Hedging by that Hedge Counterparty's Interest Rate Hedging Proportion of that Interest Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary.
- (d) The relevant ICA Group Company shall, and the Issuer shall procure that the relevant ICA Group Company will, pay to that Hedge Counterparty (in accordance with the relevant Hedging Agreement) an amount equal to the sum of all payments (if any) that become due from each relevant ICA Group Company to a Hedge Counterparty under the relevant Hedging Agreement(s) as a result of any action described in paragraph (c) above.
- (e) Each Hedge Counterparty shall co-operate in any process described in paragraph (d) above and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging Agreement(s) to an ICA Group Company as a result of any action described in paragraph (c) above.

## 6. Second Lien Debt

### 6.1 Second Lien Creditors

- (a) Until the Senior Discharge Date:
  - (i) no Second Lien Creditor shall demand or receive, and the Issuer shall not (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 Second Lien Debt in cash or in kind (or otherwise discharge any part of the Second Lien Debt by way of set-off or otherwise), except as permitted by Clause 6.2 (*Permitted Second*

*Lien Payments)* or in accordance with the instructions given by the Security Agent;

- (ii) no Second Lien Creditor shall claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of any Group Company;
- (iii) neither the Second Lien Creditors, the Issuer, any ICA Group Company nor any Third Party Security Provider shall take or omit to take any action whereby the ranking and/or subordination contemplated by this Agreement may be impaired; and
- (iv) neither the Second Lien Creditors, the Issuer, any ICA Group Company nor any Third Party Security Provider shall amend or terminate any provision of any Second Lien Debt Documents (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 all Representatives.
- (c) No Second Lien Creditor shall permit to subsist or receive, and neither the Issuer nor any 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 Second Lien Debt except if permitted by this Agreement.

## 6.2 Permitted Second Lien Payments

Until the Senior Discharge Date and subject to Clause 9 (*Turnover of Non-Permitted Payments*) and Clause 11 (*Effect of Insolvency Event*), the Issuer may pay, and the relevant Second Lien Creditor may receive and retain, including by way of set-off Payments of interest in respect of the Second Lien Debt provided that:

- (a) at the time of Payment, no Event of Default has occurred and is continuing or would result from such Payment; and
- (b) such payment is permitted pursuant to the Senior Finance Documents and the Second Lien Debt Documents.

## 6.3 Restrictions on enforcement by the Second Lien Creditors

- (a) Until the Senior Discharge Date, no Second Lien Creditor shall, except with the prior written consent of or as required by the Security Agent, take any Enforcement Action in relation to any Second Lien Debt.
- (b) If required by the Security Agent to take Enforcement Action, the Second Lien Creditors will promptly take the relevant Enforcement Action and apply any proceeds from that Enforcement Action in accordance with Clause 9 (*Turnover of Non-Permitted Payments*).

## 7. Subordinated Debt

### 7.1 Subordinated Creditors

- (a) Until the Final Discharge Date:
  - (i) no Subordinated Creditor shall demand or receive, and no ICA Group Company or Third Party Security Provider shall (and the Issuer shall ensure that no other Group Company or Third Party Security Provider 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 Subordinated Debt in cash or in kind (or otherwise discharge any part of the Subordinated Debt by way of set-off or otherwise), unless expressly permitted by the Senior Finance Documents and/or the Second Lien Debt Documents;
  - (ii) no Subordinated 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 11.2 (*Acceleration and Claim of Subordinated Debt and Intercompany Debt*);
  - (iii) no Subordinated Creditor, ICA Group Company or Third Party Security Provider shall take or omit to take any action whereby the ranking and/or subordination contemplated by this Agreement may be impaired; and
  - (iv) no Subordinated Creditor, ICA Group Company or Third Party Security Provider shall amend or terminate any provision of any Subordinated 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 the Representatives.
- (c) No Subordinated 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 Subordinated Debt except if permitted by the Security Agent (acting on instructions from the Representatives).

### 7.2 Restrictions on enforcement by the Subordinated Creditors

- (a) Until the Final Discharge Date, no Subordinated Creditor shall, except with the prior written consent of or as required by the Security Agent, take any Enforcement Action in relation to any Subordinated Debt.
- (b) If required by the Security Agent to take Enforcement Action, the Subordinated Creditors will promptly take the relevant Enforcement Action and apply any proceeds from that Enforcement Action in accordance with Clause 9 (*Turnover of Non-Permitted Payments*).

### **7.3 Restrictions on ICA Group Companies, Third Party Security Providers and subordinated subrogation**

Until the Final Discharge Date, no Subordinated Creditor, ICA Group Company or Third Party Security Provider 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 and/or any Second Lien Debt Documents.

### **7.4 Conversion into equity**

In the event that the equity of any Swedish ICA Group Company at any time prior to the Final Discharge Date is less than half of its registered share capital, each Subordinated Creditor shall, as soon as reasonably practical, take any action required in order to convert the Subordinated Debt (or part thereof) into equity through conditional capital contributions (Sw. *villkorade aktieägartillskott*) or unconditional capital contributions (Sw. *ovillkorade aktieägartillskott*) or similar arrangements applicable in the jurisdiction of incorporation of such Swedish ICA Group Company in an amount sufficient to ensure that the equity of the relevant Swedish ICA Group Company is at least equal to its registered share capital. For the avoidance of doubt, the obligations of each Subordinated Creditor under this Agreement are several. No Subordinated Creditor is responsible for the obligations of any other Subordinated Creditor.

### **7.5 Release of obligations**

At any time following an Event of Default, each Subordinated Creditor must, if requested by the Security Agent, release and discharge any Subordinated Debt specified by the Security Agent, by way of shareholders' contribution (Sw. *aktieägartillskott*), forgiveness of liabilities, or in any other way deemed appropriate by the Security Agent.

## **8. Intercompany Debt**

### **8.1 Intercompany Creditors**

(a) Until the Final Discharge Date:

- (i) no Intercompany Creditor shall demand or receive, and no Intercompany Debtor, ICA Group Company or Third Party Security Provider shall (and the Issuer shall ensure that no other Group Company or Third Party Security Provider 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 8.2 (*Permitted Intercompany Payments*) or Clause 11.2 (*Acceleration and Claim of Subordinated Debt and Intercompany Debt*);
- (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 11.2 (*Acceleration and Claim of Subordinated Debt* and *Intercompany Debt*);

- (iii) no Intercompany Creditor, Intercompany Debtor, ICA Group Company or Third Party Security Provider 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 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 the Representatives.
- (c) No Intercompany Creditor shall permit to subsist or receive, and no ICA Group Company or Third Party Security Provider shall (and the Issuer shall ensure that no other Group Company or Third Party Security Provider 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 the Representatives).

## 8.2 Permitted Intercompany Payments

- (a) Until the Final Discharge Date and subject to Clause 9 (*Turnover of Non-Permitted Payments*) and Clause 11 (*Effect of Insolvency Event*), an Intercompany Debtor may pay, and the relevant Intercompany Creditor may receive and retain, including by way of set-off:
  - (i) Payments of principal and interest in respect of any Intercompany Debt not subject to Transaction Security; and
  - (ii) Payments of interest in respect of any intercompany debt subject to the terms of the Transaction Security Documents,
 in each case provided that at the time of Payment, no Event of Default has occurred and is continuing or would result from such Payment.
- (b) Notwithstanding paragraph (a) above, Payment of principal and interest in respect of Intercompany Debt and intercompany debt subject to Transaction Security shall always be permitted if made for the purpose of serving Debt 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.

## 8.3 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 or intercompany debt subject to Transaction Security.

- (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 9 (*Turnover of Non-Permitted Payments*).

#### **8.4 Restrictions on ICA Group Companies, Third Party Security Providers and intercompany subrogation**

Until the Final Discharge Date, no Intercompany Creditor, Intercompany Debtor, ICA Group Company or Third Party Security Provider 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 and/or any Second Lien Debt Documents.

#### **8.5 Conversion into equity**

In the event that the equity of any Swedish ICA Group Company at any time prior to the Final Discharge Date is less than half of its registered share capital, each Intercompany Creditor shall, as soon as reasonably practical, take any action required in order to convert the Intercompany Debt (or part thereof) into equity through conditional capital contributions (Sw. *villkorade aktieägartillskott*) or unconditional capital contributions (Sw. *ovillkorade aktieägartillskott*) or similar arrangements applicable in the jurisdiction of incorporation of such Swedish ICA Group Company in an amount sufficient to ensure that the equity of the relevant Swedish ICA Group Company is at least equal to its registered share capital. For the avoidance of doubt, the obligations of each Intercompany Creditor under this Agreement are several. No Intercompany Creditor is responsible for the obligations of any other Intercompany Creditor.

#### **8.6 Release of obligations**

At any time following an Event of Default, each Intercompany Creditor must, if requested by the Security Agent, release and discharge any Intercompany Debt specified by the Security Agent, by way of shareholders' contribution (Sw. *aktieägartillskott*), forgiveness of liabilities, or in any other way deemed appropriate by the Security Agent.

### **9. Turnover of Non-Permitted Payments**

#### **9.1 Turnover by Secured Parties**

A Secured Party 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, or as the Security Agent may otherwise direct, for application in accordance with Clause 16.1 (*Order of Application*). Should such amount not be paid by the relevant Secured Party to the Security Agent for application in accordance with Clause 16.1 (*Order of Application*) such amount shall be considered in any application of proceeds in accordance with Clause 16.1 (*Order of Application*) and such Secured Party's share in any such application may be reduced accordingly.

## 9.2 Turnover by Subordinated Creditors

**9.3** A Subordinated 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, or as the Security Agent may otherwise direct, for application in accordance with Clause 16.1 (*Order of Application*)).

## 9.4 Turnover by ICA Group Companies and Third Party Security Providers

If any of the ICA Group Companies or Third Party Security Providers receives or recovers any amount which, under the terms of the Debt Documents, should have been paid to a Secured Party or an Intercompany Creditor, that ICA Group Company or Third Party Security Provider will promptly pay that amount to the Security Agent, or as the Security Agent may otherwise direct, for application in accordance with Clause 16.1 (*Order of Application*)).

## 9.5 Protection of Debt upon Turnover

If a Party is obliged to pay an amount to the Security Agent in accordance with this Clause 9, 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.

# 10. Payment Block

- (a) Following a Payment Block Event and for as long as it is continuing and until the earlier of (i) the taking of Enforcement Actions in accordance with this Agreement or (ii) a written notice from a Facility Agent to the Security Agent to the contrary, no payments may be made under the Bonds Finance Documents, the New Debt Documents or any Second Lien Debt Documents (notwithstanding any other provisions to the contrary herein) (a "**Payment Block**"), except for in accordance with Clause 16.1 (*Order of Application*). For the avoidance of doubt, the failure by the Issuer to make any timely payments due under the Bonds, the New Debt or any Second Lien Debt 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 a Payment Block, any amounts paid or recovered under the Bonds Finance Documents, the New Debt Documents or the Second Lien Debt Documents shall be paid to the Security Agent, or as the Security Agent may direct, and applied in accordance with Clause 16.1 (*Order of Application*).

## 11. Effect of Insolvency Event

### 11.1 Subordination

- (a) If an Insolvency Event occurs:
  - (i) the allocation of proceeds between the Super Senior Debt, Senior Debt and the Second Lien Debt shall be as set out in Clause 16 (*Application of Recoveries*); and
  - (ii) the Subordinated Debt and the Intercompany Debt will be subordinated in right of payment to the Super Senior Debt, the Senior Debt and the Second Lien 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.

### 11.2 Acceleration and Claim of Subordinated 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 Subordinated 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 Subordinated 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 Subordinated Debt or Intercompany Debt; and
  - (iii) receive all distributions on that Subordinated Debt or Intercompany Debt for application in accordance with Clause 16.1 (*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 Subordinated Creditor or Intercompany Creditor will do so promptly on request by the Security Agent.
- (c) Each Subordinated Creditor and Intercompany Creditor irrevocably authorises the Security Agent to, on behalf of each Subordinated Creditor and Intercompany Creditor, take any action referred to in paragraph (a) above in respect of any Subordinated Debt or Intercompany Debt owed by a Group Company or Intercompany Debtor referred to in such paragraph and each Subordinated Creditor and Intercompany Creditor will provide all forms of proxy or other documents that the Security Agent may reasonably require for such purpose.

### 11.3 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 (or under another appropriate arrangement in the jurisdiction of an Intercompany Creditor) 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, or as the Security Agent may direct, for application in accordance with Clause 16.1 (*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.

### 11.4 Further Assurance

Each Party shall, at its own expense, take whatever action the Security Agent may require to give effect to this Clause 11.

## 12. Transaction Security

### 12.1 Additional Security and Guarantees

- (a) Subject to paragraph (c) below, if the Issuer, a Third Party Security Provider or a Group Company provides any additional Security for any Secured Obligation, other than Hedging Obligations, the Issuer shall ensure, and shall ensure that such Group Company or Third Party Security Provider ensures, that such additional Security is provided to all the Secured Parties on the same terms as the Transaction Security Documents and in accordance with the terms (including ranking) set out in the Senior Finance Documents and the Second Lien Debt Documents.
- (b) Subject to paragraph (c) below, if the Issuer, Third Party Security Provider or a Group Company provides any additional guarantee for any Secured Obligation, other than Hedging Obligations, the Issuer shall ensure, and shall ensure that such Third Party Security Provider or Group Company ensures, that such additional guarantee is provided to all the Secured Parties on the same terms as the Guarantee and Adherence Agreement and in accordance with the terms (including ranking) set out in the Senior Finance Documents and the Second Lien Debt Documents.
- (c) Any Security provided for the benefit of a Secured Party pursuant to the US Intercreditor Agreement shall not be subject to the sharing provisions in this Clause 12.1.

## 12.2 Sharing of Transaction Security and Guarantees with New Debt or Second Lien Debt

- (a) A Group Company may grant Security and guarantees for New Debt to a New Debt Creditor and/or for Second Lien Debt to a Second Lien Debt Creditor provided that:
  - (i) such New Debt and/or Second Lien Debt shares in the Transaction Security and the Guarantees; and/or
  - (ii) such Security and guarantees which are not Transaction Security or Guarantees are granted also to all the Secured Parties (including the New Debt Creditor and/or the Second Lien Creditor), in each case to be shared between the Senior Creditors, the Super Senior Creditors and the Second Lien Creditors as set forth in this Agreement,

in each case further provided that the New Debt Creditor and/or the Second Lien Creditor shall accede to this Agreement as a Senior Creditor and/or Second Lien Creditor (as applicable) and the New Debt and/or Second Lien Debt (as applicable) shall rank as Senior Debt and/or Second Lien Debt (as applicable) pursuant to the terms of this Agreement.

- (b) Any Security and guarantee granted pursuant to paragraph (a) above shall constitute Transaction Security or a Guarantee (as applicable) and any documents regarding such Security or guarantee shall constitute a Security Document or a Guarantee and Adherence Agreement, as the case may be.

## 12.3 Super Senior RCF refinancing, Senior Debt refinancing and Second Lien Debt refinancing

- (a) The Issuer or any ICA Group Company shall from time to time be entitled to (i) replace the Super Senior RCF in full with one or several new revolving debt facilities for general corporate purposes and/or working capital purposes up to the amount permitted pursuant to Clause 4.2(b) above (the "**Replacement Super Senior Debt**"), (ii) replace the Bonds with new bonds or debt facilities (the "**Replacement Senior Debt**") and/or replace any Second Lien Debt with new any new Second Lien Financing (the "**Replacement Second Lien Debt**") provided that such replacement is permitted by the Senior Finance Documents and/or the Second Lien Finance Documents and provided further that:
  - (i) the Transaction Security shall secure the Replacement Super Senior Debt on the same terms, *mutatis mutandis*, as it secures the previous Super Senior RCF, including the terms of the Intercreditor Agreement;
  - (ii) the Transaction Security shall secure the Replacement Senior Debt on the same terms, *mutatis mutandis*, as it secures the Senior Debt including the terms of the Intercreditor Agreement;

- (iii) the Transaction Security shall secure the Replacement Second Lien Debt on the same terms, *mutatis mutandis*, as it secures the Second Lien Debt including the terms of the Intercreditor Agreement;
- (iv) the new creditor(s) shall directly or through an agent or another representative be a party to the Security Documents;
- (v) the Security Agent shall hold the Transaction Security on behalf of the new creditors on the same terms, *mutatis mutandis*, as the Transaction Security is held by the Security Agent on behalf of the Secured Parties;
- (vi) the new creditor(s) of the Replacement Super Senior Debt shall:
  - (A) directly or through an agent or another representative accede to the Intercreditor Agreement as a Super Senior RCF Creditor; and
  - (B) have the same right to the Transaction Security and any Guarantees and the proceeds pertaining thereto as the previous Super Senior RCF Creditor;
- (vii) the new creditor(s) of the Replacement Senior Debt shall:
  - (A) directly or through an agent or another representative accede to the Intercreditor Agreement as a Senior Creditor; and
  - (B) have the same right to the Transaction Security and any Guarantees and the proceeds pertaining thereto as the previous Senior Creditors; and
- (viii) the new creditor(s) of the Replacement Second Lien Debt shall:
  - (A) directly or through an agent or another representative accede to the Intercreditor Agreement as a Second Lien Creditor; and
  - (B) have the same right to the Transaction Security and any Guarantees and the proceeds pertaining thereto as the previous Second Lien Creditors.

(b) Provided that the terms set out above are complied with, the Security Agent may from time to time, at the request of the Issuer, amend, vary and/or restate the Security Documents and the Guarantee and Adherence Agreement on behalf of itself and the Secured Parties in order to release Transaction Security and/or any Guarantee provided to an existing Secured Party (with the prior consent of such existing Secured Party), to confirm that any existing Transaction Security and/or the Guarantee and Adherence Agreement remains effective, and/or to create Transaction Security and/or Guarantees in favour of a new creditor(s).

(c) Following any replacement of debt in accordance with this paragraph any reference to Senior Debt and any reference to related finance documents

(including the Finance Documents), any reference to the Super Senior RCF or the Second Lien Debt and any reference to related finance documents (as applicable) shall instead refer to the debt incurred under the Replacement Senior Debt and related finance documents, the Replacement Super Senior Debt and related finance documents or the Replacement Second Lien Debt and related finance documents (as applicable).

#### **12.4 Cancellation of Super Senior RCF**

If the Super Senior Headroom is less than the aggregate amount outstanding under the Super Senior RCF and any Other Working Capital Facility the Issuer shall, within thirty (30) days, ensure that loans under the Super Senior RCF are repaid to ensure that the aggregate amount outstanding under the Super Senior RCF and any Other Working Capital Facility is not higher than the Super Senior Headroom.

### **13. Enforcement and Consultation**

#### **13.1 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 13.2 (*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 13.2 (*Consultation*) or as expressly permitted under Clause 5.4 (*Closing out of hedging transactions*), no Secured Party may independently accelerate, seek payment and exercise other rights and powers to take Enforcement Actions under the Senior Finance Documents and/or the Second Lien Debt Documents.
- (c) The Security Agent may refrain from enforcing the Transaction Security or take other Enforcement Actions unless instructed otherwise by the Instructing Party in accordance with Clause 13.2 (*Consultation*) but always subject to paragraph (e) below.
- (d) Subject to the Transaction Security or the Guarantees having become enforceable in accordance with its terms and subject to paragraph 13.2 (*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 13.1 (*Enforcement Actions and Enforcement Instructions*) and Clause 13.2 (*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 13.1.
- (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, a Third Party Security Provider 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', the ICA Group Companies' or the Third Party Security Providers' rights to the Transaction Security, in each case in accordance with the terms of the Senior Finance Documents and/or the Second Lien Debt Documents and provided that such agreements or actions are not detrimental to the interests 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 Bonds Agent's, consent) in any legal or arbitration proceedings relating to any Senior Finance Document, any Second Lien Debt Document or this Agreement.

## 13.2 Consultation

- (a) If any Representative wishes to issue Enforcement Instructions in accordance with Clause 13.1(d), 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 (A) the date of the latest such Conflicting Enforcement Instruction and (B) 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 (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 or the Guarantees have become enforceable as a result of an Insolvency Event; or

- (ii) each of the Super Senior Creditors, the Senior Creditors and the Second Lien 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 (A) no Enforcement Action has been taken by the Security Agent within three (3) months from the end of the Consultation Period, or (B) no proceeds from an Enforcement Action in respect of the Transaction Security or the Guarantees have been received by the Security Agent 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 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.
- (g) Notwithstanding the foregoing, following an Insolvency Event in respect of a Group Company, each Secured Party may take the same Enforcement Action as the Bondholder Agent and/or the Bondholders in respect of that Group Company in order to prove its debt in such insolvency.

### 13.3 Miscellaneous

- (a) Upon Enforcement Actions in respect of the Transaction Security, the proceeds shall be distributed in accordance with Clause 16.1 (*Order of Application*).
- (b) Any Enforcement Action required to be taken by the Representative in accordance with agreed Enforcement Instructions pursuant to 13.2 (*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 16.1 (*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, the ICA Group Companies or the Third Party Security Providers as the case may be. The Security Agent shall promptly arrange for payments to be made in accordance with Clause 16.1 (*Order of Application*).

- (e) Nothing in this Agreement shall preclude the rights of the Super Senior RCF Creditors, the Senior Creditors, any Second Lien Creditor, the Bonds Agent or a Representative 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 Secured Party shall give prompt notice to the other Secured Parties of any action taken by it to join, intervene or otherwise support any such proceedings.

#### **13.4 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 subject to Security 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 16.1 (*Order of Application*); and
  - (ii) if the relevant asset comprises all of the shares in the capital of an ICA Group Company, a Third Party Security Provider or any holding company of an ICA Group Company,
    - (A) release that ICA Group Company, Third Party Security Provider or holding company of an ICA Group Company from all its past, present and future liabilities and/or obligations (both actual and contingent) under any Debt Document or in relation to any Debt and release any Security granted by that ICA Group Company, Third Party Security Provider or holding company of an ICA Group 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, Third Party Security Provider or holding Company of an ICA Group Company, provided that the net proceeds thereof are applied in accordance with Clause 16.1 (*Order of Application*),

provided that such action is consistent with the Security Enforcement Objective.

- (b) 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 13.4 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 and/or the Second Lien Debt Documents.
- (c) No release under paragraph (a) above will affect the obligations or liabilities of any Intercompany Creditor to the Secured Parties.

### **13.5 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.

### **13.6 Exercise of Purchase Option**

- (a) The Bonds Agent (on behalf of some or all of the Bondholders) may exercise an option to purchase the Super Senior Debt in full at par or at any other lower price agreed with the Super Senior RCF Creditors at any time after the Senior Creditors have taken action:
  - (i) under the acceleration provisions in respect of the Senior Secured Obligations (following an event of default); or
  - (ii) under the enforcement provisions relating to the Security,
 by giving not less than 10 Business Days' notice to the Security Agent.
- (b) Neither the Bonds Agent (unless validly instructed by the Bondholders) nor any Bondholders shall be obliged to exercise this purchase option.

## **14. Appointment of the Facility Agent**

Each Hedge Counterparty will appoint upon accession to this Agreement as Hedge Counterparty:

- (a) (if the Hedge Counterparty is the Original Hedge Counterparty) the Facility Agent; or
- (b) (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 (b) 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.

## 15. Sharing among the Secured Parties

### 15.1 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 or a Third Party Security Provider other than in accordance with Clause 16.1 (*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, or as the Security Agent may otherwise direct, for application in accordance with Clause 16.1 (*Order of Application*). Should such amount not be paid by the relevant Recovering Creditor to the Security Agent for application in accordance with Clause 16.1 (*Order of Application*) and the relevant Recovering Creditor applies that amount towards payment of indebtedness owing under the Senior Finance Documents and/or the Second Lien Debt Documents to which it is a party (as applicable) 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 16.1 (*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 16.1 (*Order of Application*), such excess amount shall be considered in any application of proceeds in accordance with Clause 16.1 (*Order of Application*) and the Recovering Creditor's share in the application may be reduced accordingly.

### 15.2 Exceptions

- (a) This Clause 15 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 or Third Party Security Provider.
- (b) This Clause 15 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.

## 16. Application of Recoveries

### 16.1 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, or as the Security Agent may direct, for application in the following order of priority:

- (i) **first**, in or towards payment *pro rata* of unpaid fees, costs, expenses and indemnities payable by the Group Companies to the Security Agent;
- (ii) **secondly**, in or towards payment *pro rata* of unpaid fees, costs, expenses and indemnities payable by the Issuer to the Issuing Agent, the Facility Agent, the Bonds Agent and any agent representing creditors of any New Debt or any Second Lien Debt;
- (iii) **thirdly**, towards payment *pro rata* of accrued interest unpaid under the Super Senior RCF Documents and any ordinary scheduled payments due and payable in respect of the Hedging Obligations pursuant to the terms of any relevant Hedging Agreement;
- (iv) **fourthly**, towards payment *pro rata* of principal under the Super Senior RCF and any other costs or outstanding amounts under the Super Senior RCF Documents and any close out amount and any other outstanding amounts under the Hedging Obligations;
- (v) **fifthly**, 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);
- (vi) **sixthly**, towards payment *pro rata* of principal under the Senior Debt;
- (vii) **seventhly**, after the Senior Discharge Date, towards payment *pro rata* of accrued interest unpaid under the Second Lien Debt (interest due on an earlier Interest Payment Date to be paid before any interest due on a later Interest Payment Date);
- (viii) **eighthly**, after the Senior Discharge Date, towards payment *pro rata* of principal under the Second Lien Debt;
- (ix) **ninthly**, in or towards payment *pro rata* of any other costs or outstanding amounts unpaid under any Senior Finance Documents and/or any Second Lien Debt Documents;

- (x) **tenthly**, after the Final Discharge Date, towards payment *pro rata* of accrued interest unpaid and principal under the Intercompany Debt;
- (xi) **eleventhly**, after the Final Discharge Date, towards payment *pro rata* of accrued interest unpaid and principal under the Subordinated Debt; and
- (xii) **twelfthly**, after the Final Discharge Date, in payment of the surplus (if any) to the relevant ICA Group Company, Third Party Security Provider 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.

## 16.2 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 16.1 (*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.

## 17. Consents

### 17.1 No Objection by Subordinated Creditors or Intercompany Creditors

No Subordinated 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, any Second Lien Debt Documents 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, any Second Lien Debt Documents or any such other agreement,

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

## 17.2 Consents

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

## 17.3 Prepayments

- (a) Until the Final Discharge Date, each Subordinated 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 and/or any Second Lien Debt Documents 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, the relevant Second Lien Debt Documents or this Agreement, provided that following an Enforcement Action all amounts Recovered shall be applied in accordance with Clause 16.1 (*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.

## 18. Release of Security

### 18.1 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, to the extent that such release is made in accordance with the terms and conditions of the Senior Finance Documents and the Second Lien Debt Documents (if any).
- (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 18. No such release will affect the obligations and liabilities of any other ICA Group Company or Third Party Security Provider under any Senior Finance Document and/or any Second Lien Debt Documents.
- (c) Any Transaction Security or Guarantee to be released in accordance with this Clause 18 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.

## 18.2 Intra-group restructuring

Subject to the terms of the Senior Finance Documents and the Second Lien Debt Documents, a Group Company shall provided that no Event of Default has occurred and is continuing be entitled to make disposals of shares in pledged Group Companies (not being a Material Company) (a "**Share Disposal**") or pledged intercompany loans (a "**Loan Disposal**") to another Group Company (provided that if the disposing Group Company is a Material Company the acquiring Group Company shall be a Material Company), provided that:

- (a) in case of a Share Disposal, 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; and
- (b) in case of a Loan Disposal of a pledged intercompany loan, the transfer shall be made subject to the Security over such pledged intercompany loan and the Issuer shall procure that the acquiring Group Company and/or the debtor under such pledged intercompany loan shall enter into any agreements, execute any documents and take all actions requested by the Security Agent for the purpose of maintaining Security over such intercompany loan.

## 19. Role of the Security Agent

### 19.1 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 or the relevant Second Lien Debt Documents (as applicable) and this Agreement. In relation to any Transaction Security governed by:
  - (i) Danish law (the "**Danish Transaction Security**"), each Secured Party appoints the Security Agent to act and hold such Danish Transaction Security as security agent and representative (in Danish: *fuldmægtig og repræsentant*) for:
    - (A) the Senior Creditors in accordance with Chapter 4 of the Danish Capital Markets Act (as amended and/or replaced);
    - (B) the Super Senior Creditors in accordance with Section 18(1), cf. Section 1(2), of the Danish Capital Markets Act (as amended and/or replaced); and

(C) the Second Lien Creditors in accordance with Section 18(1), cf. Section 1(2), of the Danish Capital Markets Act (as amended and/or replaced),

provided that where the Danish Transaction Security is pledged or assigned to any Secured Party, the Security Agent shall represent such Secured Party as agent; and

(ii) Mexican law (the "**Mexican Transaction Security**"), each Secured Party (other than the Security Agent) appoints the Security Agent to act and hold such Mexican Transaction Security as security agent and hereby each Secured Party (other than the Security Agent) grants to the Security Agent a *comisión mercantil con representación* in accordance with Articles 273, 274, and any other applicable Articles of the Mexican Commerce Code (*Código de Comercio*), to act in its name and on its behalf, and for the benefit of the Secured Parties, as security agent in connection with this Agreement and the Mexican Transaction Security, in each case, on the terms contained in this Agreement;

(b) authorises the Security Agent on its behalf to sign, execute and enforce the Transaction Security Documents and the Guarantee and Adherence 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 the Second Lien Debt 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; 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, the relevant Second Lien Debt Documents and this Agreement, together with any other incidental rights, powers, authorities and discretions.

(e) Each Secured Party, at the request of the Security Agent, undertakes to:

(i) appear together with the Security Agent or grant notarised and apostilled powers of attorney for the benefit of the Security Agent which might be necessary and/or convenient for the Security Agent to exercise any right, power, authority or discretion given to the Security Agent under this Agreement or under any Debt Documents (including in to the extent necessary in any enforcement proceedings or to the extent necessary or convenient for the release of any Spanish law governed Security or Guarantee) and to execute any document, power of attorney or instrument including any Spanish public document required to be

executed in the exercise by the Security Agent of such rights, power, authority or discretions; and

- (ii) provide to the Security Agent, upon their request, any debt certificate or calculation (including evidence of the basis of those calculations) made by each Secured Party in accordance with any outstanding amounts under the Debt Documents.

## 19.2 Duties of the Security Agent

- (a) The duties of the Security Agent under the Senior Finance Documents, the Second Lien Debt Documents and this Agreement are solely mechanical and administrative in nature and shall in relation to this Agreement be limited to those expressly set forth in this Agreement. 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 legality, validity or enforceability of any Debt Document or any agreement or document relating thereto or whether a Secured Party has recourse against any Party or any of its respective assets. 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, Third Party Security Provider or other Group Company.
- (c) The Security Agent shall not be held responsible for any loss or damage resulting from a legal enactment (Swedish or foreign), the intervention of a public authority (Swedish or foreign), an act of war, a strike, a blockade, a boycott, a lockout or any other similar circumstance. The reservation in respect of strikes, blockades, boycotts and lockouts shall apply even if the Security Agent itself is subject to such measures or takes such measures. Where a circumstance referred to in this paragraph prevents the Security Agent from making payments or taking measures, such payments or measures may be postponed until such circumstance no longer exists. If the Security Agent is prevented from receiving payment/delivery, the Security Agent shall not be obliged to pay interest.
- (d) Any loss or damage that has occurred in other circumstances than as set out in paragraph (b) and (c) above shall not be indemnified by the Security Agent unless such losses or damages are suffered or occurred by reason of wilful wrongdoing or negligence on the part of the Security Agent. The Security Agent shall for the avoidance of doubt not be deemed to be negligent if having acted in accordance with such practices and procedures as are generally accepted in the banking sector. In no event shall the Security Agent be liable for any indirect loss or damage.

- (e) The ICA Group Companies and the Third Party Security Providers undertakes to indemnify the Security Agent from and against all actions, claims, demands and proceedings brought or made against it in its capacity as Security Agent under the Senior Finance Documents and the Second Lien Debt Documents and all costs, charges, expenses and other liabilities of whatever nature for which it may be or become liable by reason of such actions, claims, demands and proceedings, except with respect to any such actions, claims, demands or proceedings, costs, charges, expenses and other liabilities arising by reason of wilful wrongdoing or negligence on the part of the Security Agent.
- (f) 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.
- (g) Notwithstanding any other provision of any Senior Finance Document, any Second Lien Debt 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.
- (h) The provisions of this Clause 19.2 shall survive any termination of this Agreement.

### **19.3 Exclusion of Liability**

- (a) Without limiting paragraph (b) below, the Security Agent shall, when acting in accordance with the provisions of this Agreement, any Senior Finance Document or any Second Lien Debt Document, 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, any Second Lien Debt 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, any Second Lien Debt Document or this Agreement and any officer, employee or agent of the Security Agent may rely on this Clause 19.3.
- (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, the Second Lien Debt 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.
- (d) The provisions of this Clause 19.3 shall survive any termination of this Agreement.

## 19.4 Confidentiality

- (a) The Security Agent (in acting as security agent for the Secured Parties) shall be regarded as acting through its respective security agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.

## 19.5 Spanish law governed Security Documents

- (a) If the Security Agent (with the consent of each other Secured Party) so elects by prior written notice to the Issuer, with respect to the Spanish law governed Security Documents:
  - (i) the Security Agent will be joint and several creditor (*acreedor solidario* pursuant to article 1137 et seq of the Spanish Civil Code) (together with the relevant Secured Party) of each and every obligation of each Group Company towards the Secured Party under any of the Secured Debt Documents. However, the aggregate amount due by each Group Company to the Security Agent will never exceed the aggregate amount due by each Group Company to each Secured Party under any of the Debt Documents;
  - (ii) the Security Agent will have its own independent right to demand and performance by each Group Company of those obligations; and
  - (iii) the Security Agent shall share the proceeds obtained in connection with the Spanish law governed Security Documents in accordance with this Agreement.
- (b) Each Secured Party, hereby irrevocably authorises and, to the extent practicable, empowers the Security Agent (whether or not through any employees or agents) and, to the extent the Security Agent may have any interest therein, every other Party hereto, to execute on behalf of itself and each other Party (even if it involves conflict of interest and acting with multiple representation to the extent legally possible) all the necessary documents for the creation, perfection, amendment, ratification, extension, release, enforcement or confirmation of any security created under any Spanish law governed Security Document agreed upon in accordance with the Debt Documents. In particular, the Security Agent is empowered by each of the Secured Parties to:
  - (i) exercise such rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Security Agent under the Spanish law governed Security Documents or any other Debt Document together with such powers and discretions as are reasonably incidental thereto;

- (ii) appear before a Spanish notary public and accept any type of guarantee or security, or irrevocable power of attorney, or any amendment or supplement thereto, whether personal or in rem, granted in favour of the Secured Parties (whether in its own capacity or as agent for other parties) over any and all shares fixing their price for the purposes of an auction and the address for serving of notices and submitting to the jurisdiction of law courts by waiving its own forum, and release such guarantees or security, all of the foregoing under the terms and conditions which the attorney may freely agree, signing the notarial deeds (*escrituras públicas*) or intervened deeds (*póliza intervenidas*) that the attorney may deem fit;
- (iii) upon enforcement in Spain of any security interests created by any Group Company under the Debt Documents, carry out any action which may be necessary for the enforcement of the Spanish law governed Security Documents; and/or
- (iv) represent the Secured Parties in any auction of any asset charged under a Spanish law governed Security Document and grant, in their name and on their behalf, all private and public documents as may be necessary in relation to the enforcement of the Spanish law governed Security Documents.

(c) As an exception to the above, to the extent any Secured Party is unable to grant such powers referred to in paragraph (a) above or in any other provision of this Agreement to the Security Agent, each such Secured Party irrevocably undertakes, upon request of the Security Agent, to:

- (i) appear and execute with the Security Agent to enable the Security Agent to exercise any right, power, authority or discretion or instrument including any Spanish public document; or exercise in conjunction with the Security Agent and in the same act those powers which otherwise would have been conferred on the Security Agent; or
- (ii) grant a power of attorney, duly notarised and apostilled or legalised (as the case may be), empowering the Security Agent (or its successor as a result of a change of Security Agent) to carry out any of the actions that may be required in Spain.

(d) The relevant Secured Party will need to fully disclose its identity for the purpose of:

- (i) granting the notarial power of attorney referred to in paragraph (b) above; and
- (ii) if so requested by the Security Agent, granting any document (public or private) in Spain necessary for accepting, confirming, completing or enforcing any Debt Documents in Spain.

- (e) The Security Agent is entitled to accept any Spanish law governed Security Document in the name and on behalf of the Secured Parties by virtue of the powers granted in this Clause 19.5.
- (f) In furtherance of this Clause 19.5, each Secured Party hereby undertakes, promptly upon request of the Security Agent, to ratify and confirm all transactions entered into and other actions by the Security Agent (or any of its substitutes or delegates) in the proper exercise of the power granted to it hereunder.

## 20. The Bonds Agent

### 20.1 Liability

- (a) It is expressly understood and agreed by the Parties that this Agreement is executed and delivered by the Bonds Agent 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 Bonds Agent 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 Bonds Agent 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 Bonds Agent in good faith in accordance with this Agreement or any of the Bonds Finance Documents in a manner that the Bonds Agent 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 Bonds Agent shall be personally liable under this Agreement for its own gross negligence or wilful misconduct. It is also acknowledged and agreed that no Bonds Agent shall have any responsibility for the actions of any individual Bondholder (save in respect of its own actions).
- (c) The Bonds Agent is not responsible for the appointment or for monitoring the performance of the Security Agent.

- (d) The Security Agent agrees and acknowledges that it shall have no claim against the Bonds Agent in respect of any fees, costs, expenses and liabilities due and payable to, or incurred by, the Security Agent.
- (e) The Bonds Agent 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.
- (f) The provisions of this Clause 20.1 shall survive the termination of this Agreement.

## 20.2 Instructions

In acting under this Agreement, the Bonds Agent is entitled to seek instructions from the Bondholders at any time and, where it acts on the instructions of the Bondholders, the Bonds Agent shall not incur any liability to any person for so acting. The Bonds Agent 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.

## 20.3 Bonds Agent's assumptions

- (a) The Bonds Agent is entitled to assume that:
  - (i) any payment or other distribution (other than payments or distributions made by the Bonds Agent) 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 16.1 (*Order of Application*); and
  - (iii) any Bonds issued comply with the provisions of this Agreement.
- (b) The Bonds Agent shall not have any obligation under Clause 11 (*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 Bonds Agent 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.

## 20.4 Agent under any New Debt Documents

Clauses 20.1 (*Liability*) to 20.3 (*Bonds Agent's assumption*) (inclusive) above shall apply *mutatis mutandis* to any agent representing New Debt Creditors in accordance with any New Debt Documents.

## 21. Responsibility of the Representatives and the Agents

### 21.1 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 or Second Lien Debt 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.

### 21.2 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.

### 21.3 No fiduciary duty

- (a) Save to the extent required by law, no Representative and no Agent shall be deemed to owe any fiduciary duty to any Secured Party, Subordinated Creditor or Intercompany Creditor (other than if expressly stated).
- (b) No Representative and no Agent shall be personally liable to any Secured Party, Subordinated Creditor or Intercompany Creditor if it shall in good faith

mistakenly pay over or distribute to any Secured Party, Subordinated Creditor or Intercompany Creditor or to any other person cash, property or securities to which any other Secured Party, Subordinated Creditor or Intercompany Creditor shall be entitled by virtue of this Agreement or otherwise.

#### 21.4 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 or a Third Party Security Provider to pay on the due date an amount pursuant to a Senior Finance Document or a Second Lien Debt Document);
  - (ii) no Super Senior Debt, Senior Debt or Second Lien 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 the Second Lien Debt 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 and all of the Third Party Security Providers.
- (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.

## **21.5 Provisions survive termination**

The provisions of this Clause 21 shall survive any termination of this Agreement.

## **21.6 Other Parties not affected**

No provision of this Clause 21 shall alter or change the rights and obligations as between the other Parties in respect of each other. This Clause 21 is intended to afford protection to the Representatives or the Agents only.

## **21.7 Confirmation**

Without affecting the responsibility of any ICA Group Company or Third Party Security Provider for information supplied by it or on its behalf in connection with any Senior Finance Document or any Second Lien Debt Documents, 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 and the Second Lien Debt 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 or any Second Lien Debt Document.

## **21.8 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 or the Second Lien Debt Documents (including any information relating to the financial condition or affairs of any ICA Group Company or any Third Party Security Provider 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 or any Third Party Security Provider.

## **21.9 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.

## 21.10 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.

## 22. Information

### 22.1 Notification of prescribed events

- (a) If a default (however described) is continuing, an Event of Default occurs or ceases to be continuing, or if an Acceleration Event occurs:
  - (i) the relevant Representative shall upon becoming aware of the same notify the other Representatives and the Security Agent; and
  - (ii) the Security Agent shall, upon receiving that notification, notify each other Representative and each Hedge Counterparty.
- (b) For the purpose of this Clause 22.1 only, a default (however described) shall only be deemed to be continuing and an Event of Default shall only be deemed to have occurred under the Super Senior RCF Documents and/or the Hedging Agreements, if a default (other than a payment default) has not been waived or remedied within five Business Days.

### 22.2 Amounts of Debt

Each Representative, the Hedge Counterparties, the Subordinated 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.

### 22.3 Hedge Counterparty

- (a) Each Hedge Counterparty shall on request by the Facility Agent or the Security Agent from time to time notify the Facility 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 Facility Agent and the Security Agent of any matter pursuant to paragraph (a) above,

the Facility 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.

## 22.4 Dealings with Security Agent and other Representatives

- (a) Each Super Senior RCF Creditor shall deal with the Security Agent exclusively through its Representative.
- (b) Each Bondholder shall deal directly with the Bonds Agent and the Bonds Agent shall deal directly with the Security Agent.
- (c) Each New Creditor shall deal with the Security Agent exclusively through its Representative.
- (d) Each Second Lien Creditor shall deal with the Security Agent exclusively through its Representative.

## 23. Limitation on Subordination Undertaking

### 23.1 Swedish law limitations

Notwithstanding any other provisions in this Agreement or any other Debt Document, the obligations of each ICA Group Company and Third Party Security Provider incorporated as a Swedish limited liability company (Sw. *Aktiebolag*) (each a "**Swedish Party**") in its capacity as a party to this Agreement and any other Debt Document to which it is a party shall be limited if (and only if) required by the provisions of the Swedish Companies Act regulating distribution of assets (Chapter 17, Sections 1-4 (or its equivalent from time to time)) and it is understood that the liability of each Swedish Party under this Agreement and the Debt Documents only applies to the extent permitted by the above provisions of the Swedish Companies Act.

### 23.2 Danish law limitations

- (a) Notwithstanding any provision of this Agreement or any other Debt Document, the obligations of any ICA Group Company incorporated in Denmark (each a "**Danish ICA Group Company**") and, to the extent required in order to comply with statutory provisions, of any ICA Group Company that, directly or indirectly, is a Subsidiary of that Danish ICA Group Company and is incorporated in a jurisdiction other than Denmark, expressed to be assumed in this Agreement or any other Debt Document:
  - (i) shall be deemed not to be assumed (and any security created in relation thereto shall be limited) if and to the extent required to comply with Danish statutory provisions on unlawful financial assistance including, but not limited to, sections 206 through 212 of the Danish Companies Act (Da: *selskabsloven*) as amended and supplemented from time to time; and

- (ii) shall, in relation to obligations not incurred as a result of borrowings, hedging or issuance of bonds under any Debt Document by the Danish ICA Group Company or by a direct or indirect Subsidiary of the Danish ICA Group Company, further be limited to an amount equal to the greater of:
  - (A) the equity of the Danish ICA Group Company at the date of this Agreement or, as the case may be, the date of the Danish ICA Group Company's accession to this Agreement; and
  - (B) the equity at the date when a claim for payment is made against the Danish ICA Group Company under this Agreement or any other Debt Document,

in each case calculated in accordance with the Danish ICA Group Company's generally accepted accounting principles at the relevant time (including, if applied by the Danish ICA Group Company, IFRS), however, in the case of paragraph (B) above only adjusted by adding back obligations (in the amounts outstanding at the time when a claim for payment is made) of the Danish ICA Group Company in respect of any intercompany loan owing by the Danish ICA Group Company to another ICA Group Company and originally borrowed or owed by that ICA Group Company under a Debt Document and on-lent by that ICA Group Company to the Danish ICA Group Company provided always that any payment made by the Danish ICA Group Company under this Agreement in respect of such obligations of the Danish ICA Group Company shall reduce *pro tanto* the outstanding amount of the intercompany loan owing by the Danish ICA Group Company.

- (b) The above limitations shall apply to any security by guarantee, indemnity, collateral or otherwise and to subordination of rights and claims, subordination or turnover of rights of recourse, application of proceeds and any other means of direct and indirect financial assistance.

### **23.3 Hong Kong law limitations**

- (a) Notwithstanding anything to the contrary in this Agreement or the other Debt Documents, the obligations of any ICA Group Company incorporated in Hong Kong under this Agreement shall not apply if, and only to the extent, compliance by that ICA Group Company with such obligations would constitute unlawful financial assistance, as provided in Division 5 of Part 5 of the Companies Ordinance (Cap. 622 of the Laws of Hong Kong).
- (b) The above limitations shall apply to any security by guarantee, indemnity, collateral or otherwise and to subordination of rights and claims, subordination or turnover of rights of recourse, application of proceeds and any other means of direct and indirect financial assistance.

### 23.4 PRC law limitations

- (a) Notwithstanding anything to the contrary in this Agreement or the other Debt Documents, the liability of any ICA Group incorporated in the People's Republic of China under this Agreement shall be limited if required by an application of the provisions of the Chinese Company Law (中华人民共和国主席令第16号) regulating transfer of equity (Chapter 3), the Administration of Foreign Exchange for Cross-border Guarantee (汇发[2014]29号) regulating cross-border guarantee (Chapter 2) or their equivalent from time to time, and it is understood that the obligations of an ICA Group Company incorporated in the People's Republic of China under this Agreement shall apply only to the extent permitted by the above-mentioned provisions of the Chinese Company Law and the Administration of Foreign Exchange for Cross-border Guarantee, or their equivalent from time to time.
- (b) The above limitations shall apply to any security by guarantee, indemnity, collateral or otherwise and to subordination of rights and claims, subordination or turn over of rights of recourse, application of proceeds and any other means of direct and indirect financial assistance.

### 23.5 Spanish law limitations

- (a) Notwithstanding anything to the contrary, nothing in this Agreement or the Senior Finance Documents or the Second Lien Debt Documents shall oblige an ICA Group Company incorporated in Spain to incur any obligation or liability which, if incurred, constitute or may constitute unlawful financial assistance within the meaning of Spanish Capital Companies Law and/or would be contrary to the corporate interest of that ICA Group Company.
- (b) In addition, the obligations and liabilities for each ICA Group Company incorporated in Spain under this Agreement or any other provision of the Senior Finance Documents or the Second Lien Debt Documents, in respect of the Bonds, shall not include any obligations or liabilities which, if incurred, constitute or may constitute a breach of Article 401 of the Spanish Capital Companies Law or any other legal provision that may substitute this article or be applicable in this respect to any ICA Group Company incorporated in Spain. In particular, the obligations and liabilities of an ICA Group Company incorporated in Spain in the form of a Spanish limited liability company (*sociedad de responsabilidad limitada*), including, but not limited to Naypemar Barcelona S.L.U., shall not exceed an amount equal to twice the equity (*recursos propios*) of the relevant Spanish limited liability company (*sociedad de responsabilidad limitada*).
- (c) The above limitations shall apply to any security by guarantee, indemnity, collateral or otherwise and to subordination of rights and claims, subordination or turn over of rights of recourse, application of proceeds and any other means of direct and indirect financial assistance.

### **23.6 English law limitations**

The amount which may be paid by any ICA Group Company and/or Third Party Security Provider incorporated in England under or pursuant to any Senior Finance Documents and/or any Second Lien Debt Documents is limited to the extent that the granting of a Guarantee and/or of security constituted under any relevant Transaction Security Documents to which it is a party would be illegal, in breach of law or regulation, or constituting unlawful financial assistance in any relevant jurisdiction.

## **24. Changes to the Parties**

### **24.1 Assignments and Transfers by Creditors**

No Secured Party, Subordinated 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 Subordinated Debt or Intercompany Debt, that person is permitted or required to become an Subordinated Creditor or Intercompany Creditor by the Senior Finance Documents and/or the Second Lien Debt Documents) and provided that such person executes and delivers a duly completed and signed ICA Group Company/Third Party Security Provider Accession Agreement or, where applicable, Creditor/Representative Accession Undertaking (except for the Bondholders) to the Security Agent. Such assignment or transfer will not be effective unless and until the Security Agent executes an ICA Group Company/ Third Party Security Provider Accession Agreement or, where applicable, Creditor/Representative Accession Undertaking duly completed and signed on behalf of that person.

### **24.2 Assignment and Transfer by ICA Group Companies and Third Party Security Providers**

No ICA Group Company or Third Party Security Provider may assign or transfer any of its rights or obligations under this Agreement or any Debt Document other than pursuant to Clause 18 (*Release of Security*).

### **24.3 Accession of Additional ICA Group Companies**

- (a) If any Group Company has any Liabilities in respect of any Intercompany Debt to another Group Company, the Issuer shall procure that the Group Company incurring those Liabilities shall (if not already a Party as an ICA Group Company) accede to this Agreement as an ICA Group Company, in accordance with paragraph (b) below, on such date.
- (b) With effect from the date of acceptance by the Security Agent of an ICA Group Company/Third Party Security Provider 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/Third Party Security Provider 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.

#### 24.4 Accession of Additional Third Party Security Providers

- (a) If any person gives any security, guarantee, indemnity or other assurance against loss in respect of any Secured Obligations to any Secured Party without being a debtor with respect to any such Liabilities, such person shall (if not already a Party as an ICA Group Company or Third Party Security Provider) accede to this Agreement as a Third Party Security Provider, in accordance with paragraph (b) below, on such date.
- (b) With effect from the date of acceptance by the Security Agent of an ICA Group Company/Third Party Security Provider Accession Agreement duly executed and delivered to the Security Agent by the new Third Party Security Provider or, if later, the date specified in the ICA Group Company/Third Party Security Provider Accession Agreement, the new Third Party Security Provider shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Third Party Security Provider.

#### 24.5 Accession of Subordinated Creditors

- (a) If any Group Company has any Secured Obligations or any Liabilities to a Subordinated Creditor, the Issuer shall procure that the Subordinated Creditor to which such Liabilities are owed shall (if not already a Party as a Subordinated Creditor) accede to this Agreement as a Subordinated Creditor, in accordance with paragraph (b) below, 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 Subordinated Creditor or, if later, the date specified in the Creditor/Representative Accession Undertaking, the new Subordinated Creditor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Subordinated Creditor.

#### 24.6 Accession of New Debt Creditors under New Debt

- (a) In order for indebtedness under any credit facility to constitute "**New Debt**" for the purposes of this Agreement:
  - (i) the Issuer shall designate that credit facility as a New Debt Facility and confirm in writing to the Secured Parties that the establishment of that New Debt Facility as New Debt under this Agreement will not breach the terms of any of its existing Senior Finance Documents and/or any Second Lien Debt Documents;
  - (ii) each creditor in respect of that credit facility shall accede to this Agreement as a New Debt Creditor; and
  - (iii) the facility agent in respect of that credit facility shall accede to this Agreement as the Representative in relation to that credit facility pursuant to Clause 24 (*Changes to the Parties*).

- (b) In connection with any New Debt, the Security Agent may from time to time, at the request of the Issuer, amend, vary and/or restate the Security Documents and the Guarantee and Adherence Agreement on behalf of itself and the Secured Parties as may be necessary in connection with such New Debt, confirm that any existing Transaction Security and/or the Guarantee and Adherence Agreement remains effective, and/or create new Transaction Security and/or new Guarantees in favour of Secured Parties.

#### 24.7 Accession of Second Lien Creditors under Second Lien Debt

- (a) In order for indebtedness under any credit facility to constitute "**Second Lien Debt**" for the purposes of this Agreement:
  - (i) the Issuer shall designate that credit facility as Second Lien Debt and confirm in writing to the Secured Parties that the establishment of that such Second Lien Financing as Second Lien Debt under this Agreement will not breach the terms of any of its existing Senior Finance Documents and/or Second Lien Debt Documents;
  - (ii) each creditor in respect of that Second Lien Financing shall accede to this Agreement as a Second Lien Creditor; and
  - (iii) the agent (if any) in respect of that Second Lien Financing shall accede to this Agreement as the Second Lien Representative in relation to that Second Lien Financing pursuant to Clause 24 (*Changes to the Parties*).
- (b) In connection with any Second Lien Debt, the Security Agent may from time to time, at the request of the Issuer, amend, vary and/or restate the Security Documents and the Guarantee and Adherence Agreement on behalf of itself and the Secured Parties as may be necessary in connection with such Second Lien Debt, confirm that any existing Transaction Security and/or the Guarantee and Adherence Agreement remains effective, and/or create new Transaction Security and/or new Guarantees in favour of Secured Parties.

#### 24.8 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 and the Issuer may appoint a successor Agent.
- (c) If the Agents and the Issuer have not agreed upon and appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the retiring Agent (after consultation with the 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, the Second Lien Debt 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 19 (*Role of the Security Agent*) and 26.5 (*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)–(g) above:
  - (i) resignation and appointment of the Security Agent is subject to the approval by the Bonds Agent, the Super Senior Creditors and any New Debt Creditors. The Bonds Agent 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) resignation and appointment of an Agent shall always be made in accordance with the Senior Finance Documents and the Second Lien Debt Documents; and
  - (iv) a Facility Agent may only resign if the new Facility Agent accedes to this Agreement.

#### **24.9 Change of Super Senior RCF Creditor**

- (a) A Super Senior RCF Creditor may assign any of its rights or transfer any of its rights and obligations in respect of any Super Senior RCF Documents or the Liabilities if that assignment or transfer is in accordance with the terms of the Super Senior RCF.
- (b) Upon a refinancing of the Super Senior RCF which is permitted by the Senior Finance Documents and any Second Lien Debt Documents, the Facility Agent will be replaced by the agent appointed in respect of such replacement Super Senior Debt.
- (c) The majority senior lenders under the Super Senior RCF Documents may appoint a successor to the Facility Agent.

## 24.10 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/Third Party Security Provider 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/Third Party Security Provider Accession Agreement and any Creditor/Representative Accession Undertaking.

## 25. Notices

### 25.1 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.

### 25.2 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 RCF Creditor, the Original Facility Agent, the Original Bonds Agent and the Original Security Agent, that identified with its name below;
- (b) in the case of any Original ICA Group Company or a Third Party Security Provider, that identified with the Issuer's name below; and
- (c) in the case of each Subordinated Creditor, New 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 Business Days' notice.

### 25.3 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 25.2 (*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.

#### **25.4 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 25.2 (*Addresses*) or changing its own e-mail address or postal address, the Security Agent shall notify the other Parties.

#### **25.5 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.

### **26. Expenses and Indemnities**

#### **26.1 Secured Party Expenses**

To the extent not already paid under another Debt Document, each ICA Group Company, each Third Party Security Provider, each Subordinated Creditor and each Intercompany Creditor will, within three 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 that ICA Group Company, Third Party Security Provider, Subordinated Creditor or Intercompany Creditor under this Agreement.

## 26.2 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. The obligation to pay the Security Agent under of this Clause 26.2 shall survive any termination of this Agreement.

## 26.3 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 and the relevant Second Lien Debt Documents) indemnify the Security Agent, within three 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 and the Second Lien Debt Documents (unless it has been reimbursed by an ICA Group Company or a Third Party Security Provider pursuant to a Senior Finance Document or any Second Lien Debt Document).

## 26.4 Deduction from Amounts Payable by the Security Agent

If any Party owes an amount to the Security Agent under the Senior Finance Documents, the Second Lien Debt 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, the Second Lien Debt 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, the Second Lien Debt Documents or this Agreement that Party shall be regarded as having received any amount so deducted.

## 26.5 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, the Second Lien Debt 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 or the Second Lien Debt Documents.

## 26.6 Currency Indemnity

- (a) If any Recoveries or any other payment required to be paid by any Subordinated Creditor, Intercompany Creditor, Intercompany Debtor, ICA Group Company or Third Party Security Provider 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 Subordinated Creditor, Intercompany Creditor, Intercompany Debtor, ICA Group Company or Third Party Security Provider; or
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Subordinated Creditor, Intercompany Creditor, Intercompany Debtor, ICA Group Company or Third Party Security Provider 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 Subordinated Creditor, Intercompany Creditor, Intercompany Debtor, ICA Group Company and Third Party Security Provider 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.

## 27. Amendments and waivers

- (a) No term of this Agreement may be amended or waived except with the prior written consent of the Representatives (until the Final Discharge Date).
- (b) Subject to Clause 4.2 (*Amendments and Waivers*), 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, any Transaction Security Documents and the Guarantee and Adherence Agreement) in accordance with their terms at any time.
- (c) 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).

- (d) The prior consent of the Representatives is required to authorize any amendment or waiver of, or consent under, any Transaction Security 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 and Guarantees are distributed.
- (e) The consent of a Hedge Counterparty is not required for any amendment or waiver of a term of this Agreement which does not affect the rights or obligations of that Hedge Counterparty.
- (f) The consent of an ICA Group Company, Third Party Security Provider, Subordinated 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, Third Party Security Provider, Subordinated Creditor, Intercompany Debtor or Intercompany Creditor.
- (g) An amendment, waiver or consent which relates to the rights or obligations of a Hedge Counterparty may not be effected without the consent of that Hedge Counterparty.
- (h) Any amendment or waiver made in accordance with this Clause 27 will be binding on all Parties and the Security Agent may effect, on behalf of any Representative or Secured Party, any amendment or waiver permitted by this Clause 27.

## **28. 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.

## **29. Remedies and Waivers**

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, Subordinated 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.

## **30. 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.

## **31. 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.

## **32. Governing Law**

This Agreement is governed by Swedish law.

## **33. Enforcement**

### **33.1 Jurisdiction**

- (a) The courts of Sweden, with the City Court of Stockholm being the court of first instance, have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement or any non-contractual obligation arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of 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.

### **33.2 Enforcement before the Spanish courts**

In the event that enforcement proceedings are initiated in Spain with respect of a Debt Document, the Parties expressly agree, for purposes of Article 571, et seq. of the Spanish Law 1/2000, of 7 January, on Civil Procedure (*Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil*), that the settlement to determine the enforceable Debt will be determined by the Security Agent.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**SCHEDULE 1****The ICA Group Companies and Third Party Security Providers****Part 1 – ICA Group Companies**

Name of Original ICA Group Company	Registration number / company number	Jurisdiction
Skill BidCo ApS	(CVR) 43 63 99 51	Denmark
SGL International A/S	(CVR) 37 52 10 43	Denmark
Scan Global Logistics A/S	(CVR) 14 04 96 73	Denmark
SGL Express A/S	(CVR) 40 13 99 15	Denmark
SGL Road ApS	(CVR) 30 58 57 39	Denmark
SGL Fulfillment & Distribution A/S	(CVR) 40 42 82 24	Denmark
Scan Global Logistics AB	556480-2782	Sweden
SGL Road AB	556468-4305	Sweden
SGL Express Holding AB	556672-3507	Sweden
SGL Express AB	556871-4116	Sweden
Scan Global Logistics Limited (晟嘉亞美有限公司)	858799	Hong Kong
Contenosa, S.A.	A-28517274	Spain
Naypemar Barcelona, S.L.	B-60265303	Spain
Scan Global Logistics Pty Ltd	ACN 089 605 694	Australia
SGL Australia Pty Ltd	ACN 144 047 450	Australia

## Part II - Third Party Security Providers

Name of Original Third Party Security Provider	Registration number / company number	Jurisdiction
Skill MidCo ApS	(CVR) 43 93 69 56	Denmark
Scan (UK) Midco Limited	10201709	United Kingdom
Tran Sea Land S.A. De C.V.	Commercial Electronic Folio ( <i>Folio Mercantil Electrónico</i> ) number 429329-1	Mexico
SGL TransGroup US Corp.	83-3770558	Delaware

## SCHEDULE 2

### **Form of ICA Group Company/Third Party Security Provider Accession Agreement**

To: [ ] as Security Agent  
From: [ICA Group Company/Third Party Security Provider]  
Dated: [ ]

Dear Sirs

#### **Skill BidCo ApS - Intercreditor Agreement dated 23 May 2023 (the "Agreement")**

1. We refer to the Agreement. This is an ICA Group Company/Third Party Security Provider Accession Agreement. Terms defined in the Agreement have the same meaning in this ICA Group Company/Third Party Security Provider Accession Agreement unless given a different meaning in this ICA Group Company/Third Party Security Provider Accession Agreement.
2. [ICA Group Company/Third Party Security Provider] agrees to be bound by the terms of the Agreement as [an ICA Group Company, Intercompany Creditor and Intercompany Debtor/Third Party Security Provider].
3. [Proposed ICA Group Company/Proposed Third Party Security Provider] is a company duly incorporated under the laws of [name of relevant jurisdiction].

[The amount which may be paid by [Proposed ICA Group Company/Proposed Third Party Security Provider] is subject to the following limitations:

*[Guarantor/security limitation language to be inserted subject to local counsel advice.]*

4. [ICA Group Company/Third Party Security Provider]'s administrative details are as follows:

Address:

E-mail:

Attention:

5. This ICA Group Company/Third Party Security Provider Accession Agreement is governed by Swedish law.

[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]

#### **Skill BidCo ApS - Intercreditor Agreement dated 23 May 2023 (the "Agreement")**

**THIS UNDERTAKING** is made on [date] by [insert full name of new Super Senior RCF Creditor/Hedge Counterparty/New Debt Creditor/Second Lien Creditor/Representative/Subordinated Creditor] (the "Acceding Super Senior RCF Creditor/Hedge Counterparty/New Debt Creditor/Second Lien Creditor/Representative/Subordinated Creditor") in relation to the intercreditor agreement (the "Intercreditor Agreement") dated [•] between, among others, [•] as the Issuer, [•] 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/New Debt Creditor/Second Lien Creditor/Representative/Subordinated Creditor] being accepted as a [Super Senior RCF Creditor/Hedge Counterparty/New Debt Creditor/Second Lien Creditor/Representative/Subordinated Creditor] for the purposes of the Intercreditor Agreement, the Acceding [Super Senior RCF Creditor/Hedge Counterparty/New Debt Creditor/Second Lien Creditor/Representative/Subordinated Creditor] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Super Senior RCF Creditor/Hedge Counterparty/New Debt Creditor/Second Lien Creditor/Representative/Subordinated Creditor] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Super Senior RCF Creditor/Hedge Counterparty/New Debt Creditor/Second Lien Creditor/Representative/Subordinated Creditor] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to Intercreditor Agreement.

This Undertaking is governed by Swedish law.

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

[Acceding Creditor]

By:

Address:

E-Mail:

Accepted by the Security Agent

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for and on behalf of

[Insert full name of current Security Agent]

Date:

## Signatures

*[Intentionally left blank]*

### **The Issuer**

Skill BidCo ApS

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Name:

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Name:

Address:

E-mail:

Attention:

### **The Original Bonds Agent**

Nordic Trustee & Agency AB (publ)

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Name:

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Name:

Address:

E-mail:

Attention:

### **The Original Security Agent**

Intertrust (Sweden) AB

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Name:

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Name:

Address:

E-mail:

Attention:

**The Original Super Senior RCF Creditor**

Jyske Bank A/S

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Name:

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Name:

Address: Vesterbrogade 9, DK-1780 Copenhagen V, Denmark

E-mail: Ifa@jyskebank.dk / mehlbye@jyskebank.dk

Attention: Lars Fast / Jesper Jensen Mehlbye

**The Original Facility Agent**

Jyske Bank A/S

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Name:

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Name:

Address: Vesterbrogade 9, DK-1780 Copenhagen V, Denmark

E-mail: Ifa@jyskebank.dk / mehlbye@jyskebank.dk

Attention: Lars Fast / Jesper Jensen Mehlbye

**The Original Hedge Counterparty**

Jyske Bank A/S

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Name:

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Name:

Address: Vesterbrogade 9, DK-1780 Copenhagen V, Denmark

E-mail: Ifa@jyskebank.dk / mehlbye@jyskebank.dk

Attention: Lars Fast / Jesper Jensen Mehlbye

**The New Hedge Counterparty**

Goldman Sachs Bank Europe SE

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Name:

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Name:

Address:

E-mail:

Attention: