

# **Intercreditor Agreement**

**HLRE HOLDING OY**

as Issuer

**DANSKE BANK A/S, FINLAND BRANCH**

as Original Super Senior RCF Creditor

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

as Original Bonds Agent

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

as Original Security Agent

**DANSKE BANK A/S**

as Original Hedge Counterparty

and

**CERTAIN ENTITIES**

as Original ICA Group Companies

12 February 2021

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This **Intercreditor Agreement** (the "**Agreement**") is entered into on 12 February 2021, by and between:

- (a) **HLRE Holding Oy**, Finnish Reg. No. 2611405-7 as issuer (the "**Issuer**");
- (b) **THE COMPANIES** set out in Schedule 1 (*The Original ICA Group Companies*) as original ICA Group Companies (the "**Original ICA Group Companies**");
- (c) **Sentica Buyout IV Ky, Sentica Buyout IV Co-investment Ky, Mr. Kimmo Riihimäki and Mr. Timo Kautto**, as Shareholder Creditors under certain Shareholder Debt (each as defined below);
- (d) **Danske Bank A/S, Finland Branch** as super senior RCF creditor (the "**Original Super Senior RCF Creditor**");
- (e) **Danske Bank A/S** as Hedge Counterparty (the "**Original Hedge Counterparty**");
- (f) **Nordic Trustee & Agency AB (publ)** as agent for the Bondholders (the "**Original Bonds Agent**"); and
- (g) **Nordic Trustee & Agency AB (publ)** as security agent for the Secured Parties (the "**Original Security Agent**").

It is agreed as follows:

## 1. Definitions and interpretation

### 1.1 Definitions

In this Agreement:

"**1992 ISDA Master Agreement**" means the Master Agreement (Multicurrency - Cross Border) as published by the International Swaps and Derivatives Association, Inc (including for avoidance of doubt a "long form confirmation" based on that document).

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

"**Acceleration Event**" means a Super Senior RCF Acceleration Event, a Bonds Acceleration Event or a New Debt 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.

"**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 14.11 (*Acceleration of the Bonds*) of the Terms and Conditions.

**"Bonds Agent"** means (i) the Original Bonds Agent or (ii) a new agent replacing the Original Bonds Agent in accordance with 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.

**"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 Action in respect 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 12.2(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 will be deemed to be an instruction inconsistent with any other instructions given.

**"Consultation Period"** has the meaning ascribed to such term in Clause 12.2(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 or similar agreement relating to the transfer of the rights and obligations of the Super Senior RCF Creditor under 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 11.3 (*Replacement of Debt*)), any New Debt, the Shareholder 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 Shareholder 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 or any ICA Group Company in respect of recovering any Debt; or
- (f) in relation to any Hedging Obligation only, designate an Early Termination Date (as defined in the relevant Hedging Agreement) under any Hedging Agreement, or terminate, or close out any transaction under, any Hedging Agreements, prior to its stated maturity, or demand payment of any amount which would become payable on or following an Early Termination Date (as defined in the relevant Hedging Agreement) or any such termination or close-out, unless voluntary or in accordance with a partial termination in accordance with the terms of the Senior Finance Documents and not related to any default.

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

**"Enforcement Proposal"** has the meaning ascribed to such term in Clause 12.2(a) (*Consultation*).

**"Event of Default"** means the occurrence of an event of default (however described) under any Senior Finance Document (for as long as it is continuing).

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

**"First Issue Date"** 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 and the guarantee provided by the Issuer under the Original Super Senior RCF.

**"Guarantee and Adherence Agreement"** shall have the meaning ascribed thereto in the Terms and Conditions.

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

**"Hedge Counterparty"** means (i) each Original Hedge Counterparty and (ii) any person who is or becomes a hedge counterparty pursuant to any Hedging Agreement and that has acceded to this Agreement.

**"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 that have acceded to this Agreement.

**"Hedging Obligations"** means all present and future moneys, debts and liabilities due, owing or incurred from time to time by any Group Company to any Hedge Counterparty under or in connection with any Hedging Agreement.

**"ICA Group Companies"** means the Original ICA Group Companies and any other entity which has acceded to this Agreement pursuant to the Senior Finance Documents and in accordance with Clause 24.3 (*Accession of Additional ICA Group Companies*).

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

**"Insolvency Event"** means:

- (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;
- (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
- (d) any analogous procedure or step is taken in any jurisdiction other than:
  - (i) proceedings which are vexatious or frivolous or are being disputed in good faith and are discharged, stayed or dismissed within 60 days of commencement; or
  - (ii) in relation to Group Companies (other than the Issuer), solvent liquidations that are permitted under the Senior Finance Documents.

**"Instructing Party"** means the Senior Representative or, following replacement in accordance with Clause 12.2 (*Consultation*), the Super Senior Representative.

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

**"Intercompany Debt"** means any loan made or credit granted by an ICA Group Company to any Group Company or any loan made or credit granted to an ICA Group Company from any Group Company (other than 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.

**"Issuing Agent"** has the meaning given to that term in the Terms and Conditions.

**"Legal Reservations"** means the limitations of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors and any matters which are set out as qualifications or reservations as to matters of law of general application in legal opinions issued by reputable law firms.

**"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.

**"Major Obligations"** means an obligation with respect to any Obligor under clause 19.4 (*Sanctions*), clause 19.6 (*Negative pledge*), clause 19.9 (*Disposals*), clause 19.10 (*Financial Indebtedness*), clause 19.11 (*Loans or credit*), clause 19.12 (*Distributions*), clause 19.13 (*Holding Company*), clause 19.18 (*Alignment with the Bond*) and clause 19.19 (*Use of proceeds*) of the Original Super Senior RCF (or any equivalent clauses in any Super Senior RCF).

**"New Debt"** means Financial Indebtedness which in accordance with the Senior Finance Documents is permitted to rank *pari passu* with the Bonds and benefit from the Transaction Security (including, for as long as the Bonds remain outstanding, under paragraph (j)(ii) in the definition of Permitted Debt in the Terms and Conditions) provided that the creditors (or a representative or agent representing such 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 (or a representative or agent representing such creditors).

**"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.

**"Original Super Senior RCF"** means the EUR 2,000,000 multicurrency revolving credit facility agreement, between amongst others HLRE Group Oy as borrower and Danske Bank A/S, Finland Branch as lender dated on or about the date of this Agreement (as amended from time to time).

**"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 the Super Senior Representative serves a written notice to the Issuer, the Security Agent, the Bonds Agent and any New Debt Creditor(s) (or any of their respective representative or agent) that an event of default (for the avoidance of doubt, after the expiry 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) unlawfulness or
- (i) cession of business,

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

**"Proceeds Account Pledge Agreement"** has the meaning given to such term in the Terms and Conditions.

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

**"Recovering Creditor"** has the meaning ascribed to it in Clause 14.1 (*Payments to Secured Parties*).

**"Representatives"** means the Super Senior Representative and the Senior Representative.

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

**"Secured Parties"** means the creditors under the Senior Finance Documents but 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 the terms of this Agreement, the Bonds Agent and the Security Agent.

**"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 (i) the Original Security Agent or (ii) any new agent replacing the Original Security Agent as security agent in accordance with Clause 24.6 (*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 creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured Obligations; and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b) above.

**"Security Enforcement Objective"** means maximising, insofar as is consistent with prompt and expeditious realisation of value from enforcement of the Transaction Security and the 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 all indebtedness outstanding under the Bonds Finance Documents and any New Debt.

**"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 the 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.

**"Shareholder Creditor"** any direct or indirect shareholder of the Issuer in its capacity as creditor in respect of Shareholder Debt.

**"Shareholder Debt"** all present and future moneys, debts and liabilities due, owing or incurred from time to time by the Issuer to any Shareholder Creditor, including any dividends and any advisory, monitoring or management fee.

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

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

- (a) its aggregate commitment under the Super Senior RCF, 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 to the extent it is a Hedging Obligation; and
- (c) after the Super Senior RCF Discharge Date only, in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement to the extent it constitutes a Hedging Obligation that has, as of the date the calculation is made, not been terminated or closed out, 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), and that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement.

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

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

**"Super Senior Discharge Date"** means the date when all principal, interest and any other costs or outstanding amounts under the Super Senior Debt 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 Headroom"** means an amount not exceeding EUR 2,000,000 (plus premium, accrued and unpaid interest, fees and costs).

**"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 11.3 (*Replacement of Debt*).

**"Super Senior RCF Acceleration Event"** means the Super Senior RCF Creditor 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, or any person representing any party under (i) or (ii).

**"Super Senior RCF Debt"** means all Liabilities due, owing or incurred from time to time by the ICA Group Companies 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 the "Finance Documents" as defined in the Super Senior RCF.

**"Super Senior Representative"** means the Super Senior RCF Creditor acting on the instructions of and on behalf of the 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.

**"Terms and Conditions"** means the terms and conditions of the Bonds entered into between the Issuer and the Original Bonds Agent on 10 February 2021.

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

**"Transaction Security Documents"** means:

- (a) a Finnish law governed pledge over all the shares in Vesivek Oy granted by HLRE Group Oy;
- (b) a Finnish law governed pledge over all the shares in Nesco Oy granted by Nesco Invest Oy;
- (c) a Finnish law governed pledge over all the shares in HLRE Group Oy granted by the Issuer;
- (d) a Swedish law governed pledge over all the shares owned by Vesivek Oy in Vesivek Sverige AB, being approximately 91 per cent. of the shares issued in Vesivek Sverige AB, granted by Vesivek Oy;
- (e) a Finnish law governed business mortgage over the assets in HLRE Group Oy in the amount of EUR 57,200,000, with best priority;
- (f) a Finnish law governed business mortgage over the assets in Vesivek Oy in the amount of EUR 57,200,000, with best priority;
- (g) a Finnish law governed business mortgage over the assets in Nesco Invest Oy in the amount of EUR 57,200,000, with best priority;
- (h) a Finnish law governed business mortgage over the assets in Nesco Oy in the amount of EUR 57,200,000, with best priority;
- (i) a Swedish law governed business mortgage over the assets in Vesivek Sverige AB in the amount of SEK 20,000,000, with best priority;
- (j) pledge over any current and future Material Intercompany Loans;
- (k) a Finnish law governed pledge over real estate mortgage certificates in the total amount of EUR 13,673,208.07 in respect of Orimattila production plant with property no. 560-418-9-942, granted by Nesco Oy; and
- (l) a Finnish law governed pledge over real estate mortgage certificates in the total amount of EUR 46,800,000 in respect of Lieto industrial hall with property no. 423-428-13-1, granted by Vesivek Oy.

## 1.2 Incorporation of defined terms

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

## 1.3 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
  - (i) any "**Agent**", any "**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 "Shareholder Creditor", any "Super Senior RCF Creditor" the "Security Agent", any "Representative", or any "Senior Creditor" shall be construed so as to include its successors in title, assigns and transferees permitted under this Agreement;

- (ii) "assets" includes present and future properties, revenues and rights of every description;
  - (iii) "consent" means any consent, approval, release or waiver or agreement to any amendment;
  - (iv) any "Debt Document", any "Intercompany Document", any "Shareholder Debt Document" any "Super Senior RCF Document", any "Hedging Agreement", any "Senior Finance Document", 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.

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

### **3.2 Security over Proceeds Account Pledge Agreement**

Any Security granted over the Proceeds Account Pledge Agreement or similar arrangement whereby the proceeds from the Bonds, the New Debt or other Debt are paid pending satisfaction of certain conditions for its disbursement shall not be subject to this Agreement and, hence, only secure the obligations and liabilities owed towards the creditor having disbursed such debt.

### **3.3 Transaction Security and Guarantees**

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

- (a) the Guarantees and the Transaction Security shall be granted with first priority ranking in respect of the Super Senior Debt and the Senior Debt, *pari passu* between the Super Senior Debt and the Senior Debt, but subject always to the allocation of proceeds provision as set out in Clause 15 (*Application of Recoveries*); and
- (b) the Intercompany Debt and any Shareholder Debt shall remain unguaranteed and unsecured.



### **3.4 Intercompany Debt and Shareholder Debt**

- (a) Each of the Parties agrees that the Intercompany Debt and the Shareholder Debt are postponed and subordinated to the Liabilities owed by the ICA Group Companies to the Secured Parties.
- (b) This Agreement does not purport to rank any of the Intercompany Debt or the Shareholder Debt as between themselves.

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

Notwithstanding any term of this Agreement postponing, subordinating or preventing the payment of all or any part of the Shareholder Debt and Intercompany Debt, the relevant Shareholder Debt or Intercompany Debt shall, as between the Shareholder Creditors and Intercompany 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 9 (*Payment Block*), the ICA Group Companies may make Payments in respect of the Secured Obligations at any time in accordance with the terms of the relevant Senior Finance Document.

### **4.2 Amendments and Waivers**

- (a) Subject to Clause 27 (*Amendments and waivers*) and paragraph (b) below, the relevant Secured Parties and ICA Group Companies may amend or waive the terms of the Senior Finance Documents in accordance with their terms (and subject only to any consent required under them) at any time.
- (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 equalling to the Super Senior Headroom.

### **4.3 Security and Guarantees**

A Secured Party may take, accept or receive the benefit of:

- (a) 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:
  - (i) 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

(ii) 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:

(A) to all the Secured Parties in respect of the Secured Obligations;  
or

(B) 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 3.3 (*Transaction Security and Guarantees*); and

(b) any guarantee, indemnity or other assurance against loss from any Group Company in respect of the Secured Obligations in addition to those in the original form of the Senior Finance Documents if and to the extent legally possible, at the same time it is also offered to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 3 (*Ranking and Priority*).

## **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 1992 or 2002 ISDA Master Agreement and be 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) provide for payments under the "Secured Method" (in the case of the 1992 ISDA Master Agreement) or two way payments (in the case of any other form of Hedging Agreement);

(iii) specify "Automatic Early Termination" as applicable where a Group Company is the "Defaulting Party", each as defined in the relevant ISDA Master Agreement, or similar in the case of any other form of Hedging

Agreement, only if appropriate in view of the relevant ISDA netting opinion; 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 shall (and the Issuer shall ensure that no other Group Company will) make, any payment in respect of any Hedging Obligations or apply any money or property in or towards discharge of any Hedging Obligations (including by way of set-off) except:

- (i) for a payment or discharge made in accordance with scheduled payments under that Hedging Agreement and this Agreement;
- (ii) for a payment or discharge made in accordance with Clause 5.4 (*Closing out of hedging transactions*) and Clause 5.5 (*Limitations on hedging transactions*);

- (iii) payments or deductions arising as a result of:

- (A) any of sections 2(d) (*Deduction or Withholding for Tax*), 2(e) (*Default Interest; Other Amounts*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*) and 11 (*Expenses*) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);
- (B) any of sections 2(d) (*Deduction or Withholding for Tax*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*), 9(h)(i) (*Prior to Early Termination*) and 11 (*Expenses*) of the 2002 ISDA Master Agreement of that Hedging Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
- (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraph (A) or (B) above (if the Hedging Agreement is not based on the relevant ISDA Master Agreement),

for the avoidance of doubt, application by a Hedge Counterparty in the order permitted by Clause 15 (*Application of Recoveries*) of proceeds received by a Hedge Counterparty in connection with the enforcement of any Transaction Security or the Guarantees.

- (b) No Hedge Counterparty shall permit to subsist or receive, and no ICA Group Company shall (and the Issuer shall ensure that no other Group Company will) create or permit to subsist, any Security or any guarantee for or in respect of any Hedging Obligations, other than under the original form of any Transaction Security Document, Super Senior RCF and the Guarantee and Adherence

Agreement or if permitted by the Security Agent, provided that the granting of Security or guarantees shall always be subject to approval by the Super Senior RCF Creditor

#### 5.4 Closing out of hedging transactions

- (a) No Hedge Counterparty or ICA Group Company may terminate or close out any hedging transaction under a Hedging Agreement prior to its originally stated maturity or rely on automatic early termination or on any other provision 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 30 days after the Hedge Counterparty has given notice to the Security Agent of the non-payment and of its intention to terminate or close out that hedging transaction;
  - (ii) an Acceleration Event has occurred;
  - (iii) an Illegality, Tax Event, Tax Event Upon Merger or a Credit Event Upon Merger (each as defined in the relevant ISDA Master Agreement), or similar event in the case of any other form of Hedging Agreement, has occurred;
  - (iv) any Event of Default has occurred under clauses 14.5 (*Insolvency*), 14.6 (*Insolvency proceedings*) or 14.8 (*Creditors' process*) of the Terms and Conditions or corresponding Clauses of any Super Senior RCF;
  - (v) the termination or closing out is carried out only to the extent required to reflect any repayment or prepayment of Debt which was hedged by the hedging transaction, and the Security Agent is notified accordingly;
  - (vi) in accordance with Clause 5.5 (*Limitations on hedging transactions*); or
  - (vii) in case of a refinancing (or repayment) and cancellation in full of the Super Senior RCF.
- (b) Promptly following an Acceleration Event each Hedge Counterparty shall:
- (i) exercise any rights it may have to terminate or close out any hedging transactions under a Hedging Agreement;
  - (ii) pay to the Security Agent any amount owed by it and any close out amount received under a Hedging Agreement for application in accordance with Clause 15.1 (*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 Limitations on hedging transactions

- (a) If, at any time, the aggregate notional amount of the transactions in respect of the Hedging Agreements exceeds or, as a result of a prepayment, will exceed 100 per cent. of the aggregate amount of the outstanding Senior Debt at that time, the Issuer must promptly notify the Security Agent and must, at the request of the Security Agent (acting on instruction of the Super Senior Representative), reduce the aggregate notional amount of those transactions by an amount and in a manner satisfactory to the Security Agent (acting on instruction of the Super Senior Representative) so that it no longer exceeds or will not exceed 100 per cent of the aggregate amount of the Senior Debt then outstanding.
- (b) Paragraph (a) above shall not apply to any transactions in respect of any Hedging Agreement under which the borrowers under the Senior Finance Documents have no actual or contingent indebtedness.
- (c) The Security Agent must make a request under paragraph (a) above if so required by a Hedge Counterparty.

## 6. Shareholder Debt

### 6.1 Shareholder Creditors

- (a) Until the Final Discharge Date:
  - (i) no Shareholder Creditor shall demand or receive, and no Shareholder Debtor nor any ICA Group Company shall (and the Issuer shall ensure that no other Group Company will) make, any payment, repayment or prepayment of any principal, interest or other amount on or in respect of, or any distribution in respect of, or any redemption or purchase of, any Shareholder Debt in cash or in kind (or otherwise discharge any part of the Shareholder Debt by way of set-off or otherwise), unless expressly permitted by the Senior Finance Documents;
  - (ii) no Shareholder Creditor shall claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of any Group Company;
  - (iii) no Shareholder Creditor, Shareholder Debtor or ICA Group Company shall take or omit to take any action whereby the ranking and/or subordination contemplated by this Agreement may be impaired; and
  - (iv) no Shareholder Creditor or Shareholder Debtor shall amend or terminate any provision of any Shareholder Debt Document (unless the amendment is not prejudicial to the interests of the Secured Parties).
- (b) Paragraph (a) above does not apply to any action arising as a result of any prior consent of the Representatives.

- (c) No Shareholder Creditor shall permit to subsist or receive, and no ICA Group Company shall (and the Issuer shall ensure that no other Group Company will) create or permit to subsist, any Security or any guarantee for or in respect of any Shareholder Debt, other than Security constituting Transaction Security and except if permitted by the Security Agent (acting on instructions from the Representatives).

## **6.2 Permitted Subordinated Payments**

Notwithstanding anything to the contrary in this Clause 6 (*Shareholder Debt*), the Issuer shall be permitted to make payments which are otherwise permitted under the Senior Finance Documents.

## **6.3 Restrictions on enforcement by the Shareholder Creditors**

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

## **6.4 Restrictions on ICA Group Company and Subordinated subrogation**

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

## **6.5 Release of obligations**

At any time following an Acceleration Event each Shareholder Creditor must, if requested by the Security Agent, release and discharge any Shareholder 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.

# **7. Intercompany Debt**

## **7.1 Intercompany Creditors**

- (a) Until the Final Discharge Date:
  - (i) no Intercompany Creditor shall demand or receive, and no Intercompany Debtor nor any ICA Group Company shall (and the Issuer shall ensure that no other Group Company will) make, any payment, repayment or prepayment of any principal, interest or other amount on or in respect of, or any distribution in respect of, or any redemption or purchase of, any Intercompany Debt in cash or in kind (or otherwise

discharge any part of the Intercompany Debt by way of set-off or otherwise), except as permitted by Clause 7.2 (*Permitted Intercompany Payments*) or Clause 10.2 (*Acceleration and Claim of Shareholder Debt and Intercompany Debt*);

- (ii) no Intercompany Creditor shall claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of any Group Company other than in accordance with Clause 10.2 (*Acceleration and Claim of Shareholder Debt and Intercompany Debt*);
  - (iii) no Intercompany Creditor, Intercompany Debtor or ICA Group Company shall take or omit to take any action whereby the ranking and/or subordination contemplated by this Agreement may be impaired; and
  - (iv) no Intercompany Creditor or Intercompany Debtor shall amend or terminate any provision of any Intercompany 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 shall (and the Issuer shall ensure that no other Group Company will) create or permit to subsist, any Security or any guarantee for or in respect of any Intercompany Debt except if permitted by the Security Agent (acting on instructions from the Representatives).

## **7.2 Permitted Intercompany Payments**

- (a) Until the Final Discharge Date and subject to Clause 8 (*Turnover of Non-Permitted Payments*) and Clause 10 (*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 on Intercompany Debt and intercompany loans subject to Transaction Security shall always be permitted if made for the purpose of servicing Debt to the Secured Parties and such payment is made directly to the Secured Parties (represented by the Security Agent) for repayment of principal or payment of interest on such Debt owed to the Secured Parties.

### **7.3 Restrictions on enforcement by the Intercompany Creditors**

- (a) Until the Final Discharge Date, no Intercompany Creditor shall, except with the prior written consent of or as required by the Security Agent, take any Enforcement Action in relation to any Intercompany Debt 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 8 (*Turnover of Non-Permitted Payments*).

### **7.4 Restrictions on ICA Group Company and intercompany subrogation**

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

### **7.5 Release of obligations**

At any time following an Acceleration Event, 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.

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

### **8.1 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 for application in accordance with Clause 15.1 (*Order of Application*). Should such amount not be paid by the relevant Secured Party to the Security Agent for application in accordance with Clause 15.1 (*Order of Application*)) such amount shall be considered in any application of proceeds in accordance with Clause 15.1 (*Order of Application*)) and such Secured Party's share in any such application may be reduced accordingly.

### **8.2 Turnover by Shareholder Creditors**

A Shareholder Creditor that receives any Recovery (including by way of set-off) in excess of what is permitted pursuant to this Agreement shall notify the Security Agent and forthwith pay such amount to the Security Agent for application in accordance with Clause 15.1 (*Order of Application*)).

### **8.3 Turnover by ICA Group Companies**

If any of the ICA Group Companies receives or recovers any amount which, under the terms of the Debt Documents, should have been paid to a Secured Party or an



Intercompany Creditor, that ICA Group Company will promptly pay that amount to the Security Agent for application in accordance with Clause 15.1 (*Order of Application*).

#### **8.4 Protection of Debt upon Turnover**

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

### **9. Payment Block**

- (a) Following a Payment Block Event and for as long as it is continuing and up until the earlier of (i) the taking of Enforcement Actions in accordance with this Agreement and (ii) a written notice from the Super Senior Representative to the Security Agent to the contrary, no payments of principal or interest in respect of the Senior Debt shall be made to the Senior Creditors (notwithstanding any other provisions to the contrary herein) (a "**Payment Block**"), except for in accordance with Clause 15.1 (*Order of Application*). For the avoidance of doubt, the failure by the Issuer to make any timely payments due under the Senior Debt shall constitute an event of default (however described) under the Terms and Conditions and the New 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 Senior Debt (despite the Payment Block) shall be paid to the Security Agent and applied in accordance with Clause 15.1 (*Order of Application*).

### **10. Effect of Insolvency Event**

#### **10.1 Subordination**

- (a) If an Insolvency Event occurs:
  - (i) the allocation of proceeds between the Super Senior Debt and Senior Debt shall be as set out in Clause 15 (*Application of Recoveries*); and
  - (ii) the Shareholder Debt and the Intercompany Debt will be subordinated in right of payment to the Super Senior Debt and the Senior Debt.
- (b) The subordination provisions, to the extent permitted under the applicable law, in this Agreement shall remain in full force and effect by way of continuing subordination and shall not be affected in any way by any intermediate payment or discharge in whole or in part of any Debt.

#### **10.2 Acceleration and Claim of Shareholder Debt and Intercompany Debt**

- (a) After the occurrence of an Insolvency Event and until the Final Discharge Date, the Security Agent may:

- (i) accelerate, claim, enforce and prove for any Shareholder Debt and Intercompany Debt owed by such Group Company or Intercompany Debtor or make a demand under any guarantee or indemnity against loss in respect of such Shareholder Debt or Intercompany Debt;
  - (ii) file claims and proofs, give receipts and take any proceedings or other action as the Security Agent considers necessary to recover that Shareholder Debt or Intercompany Debt; and
  - (iii) receive all distributions on that Shareholder Debt or Intercompany Debt for application in accordance with Clause 15.1 (*Order of Application*).
- (b) If and to the extent that the Security Agent is not entitled, or elects not, to take any of the action mentioned in paragraph (a) above, each Shareholder Creditor or Intercompany Creditor will do so promptly on request by the Security Agent.
- (c) Each Shareholder Creditor and Intercompany Creditor irrevocably authorises the Security Agent to, on behalf of each Shareholder Creditor and Intercompany Creditor, take any action referred to in paragraph (a) above in respect of any Shareholder Debt or Intercompany Debt owed by a Group Company or Intercompany Debtor referred to in such paragraph and each Shareholder Creditor and Intercompany Creditor will provide all forms of proxy or other documents that the Security Agent may reasonably require for such purpose.

### **10.3 Distributions**

- (a) After the occurrence of an Insolvency Event and until the Final Discharge Date, each Party shall:
- (i) hold any Recovery received or receivable by it during such period in respect of any Debt as escrow funds and separate from its own funds (or under another appropriate arrangement in the jurisdiction of an Intercompany Creditor not incorporated in Sweden) for the Secured Parties;
  - (ii) promptly pay such Recovery (or, where the Recovery is by way of discharge by set-off, an equivalent amount) to the Security Agent for application in accordance with Clause 15.1 (*Order of Application*); and
  - (iii) promptly direct the trustee in bankruptcy, receiver, administrator or other person distributing the assets of the relevant Group Company or their proceeds to pay distributions in respect of the Debt directly to the Security Agent.

### **10.4 Further Assurance**

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

## 11. Transaction Security

### 11.1 Additional Security and Guarantees

- (a) If the Issuer or a Group Company provides any additional Security for any Secured Obligations, other than Hedging Obligations, the Issuer shall ensure, and shall ensure that such Group Company 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.
- (b) If the Issuer or a Group Company provides any additional guarantee (other than the guarantee provided by the Issuer under the Original Super Senior RCF) for any Secured Obligations, other than Hedging Obligations, the Issuer shall ensure, and shall ensure that such 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.

### 11.2 Sharing of Transaction Security and Guarantees with New Debt

- (a) A Group Company may grant Security and guarantees for New Debt to a New Debt Creditor provided that:
  - (i) such New Debt shares in the Transaction Security and the Guarantees (other than the guarantee provided by the Issuer under the Original Super Senior RCF); 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), in each case to be shared between the Senior Creditors and the Super Senior Creditors as set forth in this Agreement,

in each case further provided that the New Debt Creditor shall accede to this Agreement as a Senior Creditor and the New Debt shall rank as Senior Debt pursuant to the terms of this Agreement.

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

### 11.3 Replacement of Debt

- (a) The Issuer 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 of the Super Senior Headroom (the "**Replacement Super Senior Debt**") and/or (ii) replace the Bonds

with new bonds or debt facilities (the "**Replacement Senior Debt**"); provided 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 this Agreement;
  - (ii) the Transaction Security shall secure the Replacement Senior Debt on the same terms, *mutatis mutandis*, as it secures the Bonds including the terms of this Agreement;
  - (iii) the new creditor(s) shall directly or through an agent or another representative be a party to the Security Documents;
  - (iv) 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;
  - (v) the new creditor(s) of the Replacement Super Senior Debt shall:
    - (A) directly or through an agent or another representative accede to this Agreement as a Super Senior RCF Creditor (unless an agent or representative representing such Person has acceded to this Agreement); 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; and
  - (vi) the new creditor(s) of the Replacement Senior Debt shall:
    - (A) directly or through an agent or another representative accede to this Agreement as a Senior Creditor (unless an agent or representative representing such Person has acceded to this Agreement); and
    - (B) have the same right to the Transaction Security and any Guarantees and the proceeds pertaining thereto as the previous Senior Creditors.
- (b) Subject to the fulfillment of the conditions set out in paragraph (a) above, the Security Agent may from time to time, at the request of the Issuer, amend vary and/or restate the 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) 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 Clause 11.3 any reference to Bonds and any reference to related finance documents (including the Bonds Finance Documents and any reference to the Super Senior RCF and

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

#### **11.4 Cancellation of Super Senior RCF**

To the extent the Issuer purchases or redeems Bonds whereby the aggregate Nominal Amount of Bonds outstanding falls below 75 per cent. of the aggregate Nominal Amount as per the First Issue Date, the debt outstanding under the Super Senior RCF shall, if requested by the Super Senior RCF Creditors, be repaid and cancelled *pro rata* to the amount by which the outstanding amount under the Bonds falls below the Nominal Amount as per the First Issue Date. For the purpose of calculating the aggregate Outstanding Nominal Amount of the Bonds, any Bonds held by any Group Company shall not be included.

### **12. Enforcement and Consultation**

#### **12.1 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 12.2 (*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 12.2 (*Consultation*), no Secured Party may independently accelerate, seek payment and exercise other rights and powers to take Enforcement Actions under the Senior Finance Documents.
- (c) The Security Agent may refrain from enforcing the Transaction Security and/or Guarantees or take other Enforcement Actions unless instructed otherwise by the Instructing Party in accordance with Clause 12.2 (*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 12.2 (*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 12.1 (*Enforcement Actions and Enforcement Instructions*) and Clause 12.2 (*Consultation*), the Senior Representative may only give an Enforcement Instructions if the proceeds to be

received from the proposed Enforcement Action is 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 12.1.
- (g) If an Insolvency Event has occurred with respect to a member of the Group , then each Super Senior Creditor shall be entitled to exercise any right they may otherwise have against that member of the Group to accelerate any of that member of the Group's Super Senior Debt or declare such Super Senior Debt prematurely due and payable or payable on demand, make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Super Senior Debt, exercise any right of set-off or take or receive any payment in respect of any Super Senior Debt of that member of the Group or claim and prove in any insolvency process of that member of the Group for the Super Senior Debt owing to it.
- (h) In relation to any Hedging Obligation only, the Security Agent may not 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 not prohibited by the Senior Finance Documents and not related to any default.
- (i) Unless and until the Security Agent has received instructions from the Instructing Party in accordance with this Agreement, the Security Agent shall (without first having to obtain any Secured Party's consent) be entitled to enter into agreements with an ICA Group Company or a third party or take any other actions, if it is, in the Security Agent's opinion, necessary for the purpose of maintaining, altering, releasing or enforcing the Transaction Security and the Guarantees, creating further Security or guarantees for the benefit of the Secured Parties or for the purpose of settling the Secured Parties' or the ICA Group Companies' rights to the Transaction Security, in each case in accordance with the terms of the Senior Finance Documents and provided that such agreements or actions are not detrimental to the interests of the Secured Parties.
- (j) 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 or this Agreement.

## 12.2 Consultation

- (a) If any Representative wishes to issue Enforcement Instructions in accordance with Clause 12.1(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 Representative.

- (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) in case of a failure to give instructions by one of the Representatives, 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 and/or the Guarantees have become enforceable as a result of an Insolvency Event; or
  - (ii) each of the Super Senior Representative and the Senior Representative 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 for the Representatives to consult and the Security Agent shall, provided that no joint Enforcement Instructions has been agreed during the Consultation Period (in which case such joint Enforcement Instruction will be applicable), act in accordance with the Enforcement Instructions then received from the Instructing Party and the Instructing Party may issue Enforcement 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) the Super Senior Discharge Date has not occurred 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, prior to taking any further enforcement action, 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.

### 12.3 Miscellaneous

- (a) Upon Enforcement Actions in respect of the Transaction Security, the proceeds shall be distributed in accordance with Clause 15.1 (*Order of Application*).
- (b) Any Enforcement Action required to be taken by the Representative in accordance with agreed Enforcement Instructions pursuant to 12.2 (*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 15.1 (*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 shall constitute escrow funds (*Sw. redovisningsmedel*) and must be held on a separate account on behalf of the Secured Parties or the Issuer as the case may be. The Security Agent shall promptly arrange for payments to be made in accordance with Clause 15.1 (*Order of Application*).
- (e) Nothing herein shall preclude the rights of the Super Senior RCF Creditors, the Bonds Agent or any New Debt Creditors 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 Creditors or the Security Agent and is not inconsistent with its obligations contained in this Agreement and each of the Super Senior RCF Creditor, the Bonds Agent and any New Debt Creditor (or its agent/representative) shall give prompt notice to the others of any action taken by it to join, intervene or otherwise support any such proceedings.

### 12.4 Disposal and Releases

- (a) If in connection with any Enforcement Action, the Security Agent sells or otherwise disposes of (or proposes to sell or otherwise dispose of) any asset under any Transaction Security Document, or a Group Company sells or otherwise disposes of (or proposes to sell or otherwise dispose of) any asset at the request of the Security Agent, the Security Agent may, and is hereby irrevocably authorised on behalf of each Party to:
  - (i) release the Security created pursuant to the Transaction Security Documents over the relevant asset and apply the net proceeds of sale or disposal in or towards payment of Debt in accordance with Clause 15.1 (*Order of Application*); and
  - (ii) if the relevant asset comprises all of the shares in the capital of an ICA Group Company or any holding company of an ICA Group Company,



- (A) release that ICA Group Company 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 or holding company or their Subsidiaries over any of its assets under any of the Transaction Security Documents; and/or
- (B) dispose of any Debt owed by such ICA Group Company, provided that the net proceeds thereof are applied in accordance with Clause 15.1 (*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 12.4 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.
- (c) No release under paragraph (a) above will affect the obligations or liabilities of any Intercompany Creditor to the Secured Parties.

## **12.5 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. Appointment of the Super Senior RCF Creditor**

Each Hedge Counterparty will appoint upon accession to this Agreement as Hedge Counterparty the Super Senior RCF Creditor to act as its representative and give instructions to the Security Agent in accordance with this Agreement.

## **14. Sharing among the Secured Parties**

### **14.1 Payments to Secured Parties**

If a Secured Party (a "**Recovering Creditor**") makes a Recovery in respect of any amounts owed by any ICA Group Company other than in accordance with Clause 15.1 (*Order of Application*) such Recovering Creditor shall not be entitled to retain such amount and shall notify the Security Agent and forthwith pay such amount to the Security Agent for application in accordance with Clause 15.1 (*Order of Application*). Should such amount not be paid by the relevant Recovering Creditor to the Security Agent for application in

accordance with Clause 15.1 (*Order of Application*) and the relevant Recovering Creditor applies that amount towards payment of indebtedness owing under the Senior Finance Documents to which it is a party then:

- (a) the relevant Secured Party shall notify each Agent thereof and the Security Agent shall, using reasonable efforts, determine whether the Recovery is in excess of the amount that the Recovering Creditor would have been paid had the Recovery been made by the Security Agent and distributed in accordance with Clause 15.1 (*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 15.1 (*Order of Application*), such excess amount shall be considered in any application of proceeds in accordance with Clause 15.1 (*Order of Application*) and the Recovering Creditor's share in the application may be reduced accordingly.

## 14.2 Exceptions

- (a) This Clause 14 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.
- (b) This Clause 14 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.

## 15. Application of Recoveries

### 15.1 Order of Application

- (a) Subject to the rights of creditors mandatorily preferred by law applying to companies generally, the proceeds of any Enforcement Action (including but not limited to any proceeds received from any direct or indirect realisation or sale by the Security Agent of any assets being subject to Transaction Security, payments under any Guarantees or proceeds received in connection with bankruptcy or other insolvency proceedings) shall be paid to the Security Agent for application in the following order of priority:
  - (i) **first**, in or towards payment *pro rata* of unpaid fees, costs, expenses and indemnities payable by the Issuer to the Security Agent (or its delegate);

- (ii) **secondly**, in or towards payment *pro rata* of unpaid fees, costs, expenses and indemnities payable by the Issuer and any Group Company to the Issuing Agent, the Super Senior RCF Creditor, the Bonds Agent and any agent representing creditors of any New Debt;
  - (iii) **thirdly**, towards payment *pro rata* of accrued interest unpaid under the Super Senior RCF Documents;
  - (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**, in or towards payment *pro rata* of any other costs or outstanding amounts unpaid under the Bonds Finance Documents and any New Debt Documents;
  - (viii) **eighthly**, after the Final Discharge Date, towards payment *pro rata* of accrued interest unpaid and principal under the Intercompany Debt;
  - (ix) **ninthly**, after the Final Discharge Date, towards payment *pro rata* of accrued interest unpaid and principal under the Shareholder Debt; and
  - (x) **tenthly**, after the Final Discharge Date, in payment of the surplus (if any) to the relevant ICA Group Company or other person entitled to it.
- (b) For the sake of clarity, the waterfall provision set out in paragraph (a) above shall apply regardless of any Transaction Security not being (for whatever reason) valid and enforceable in respect of the relevant Secured Party and regardless of any discharge of Secured Obligations, for example, in connection with corporate restructuring proceedings to the effect that respective priority position in waterfall will be provided for the full amount of the respective layer of Secured Obligations as if the discharge had not taken place.

## 15.2 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 15.1 (*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.

## 16. Consents

### 16.1 No Objection by Shareholder Creditors or Intercompany Creditors

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

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

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

### 16.2 Consents

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

### 16.3 Prepayments

- (a) Until the Final Discharge Date, each Shareholder Creditor, each Intercompany Creditor and any Secured Party waives any right it may have to any proceeds or other amounts which are required by any Senior Finance Document to be applied in mandatory prepayment of any Debt owing to a Secured Party or which is applied in voluntary prepayment of any such Debt, in each case to the extent that any such proceeds or amounts are applied in accordance with the relevant Senior Finance Document or this Agreement, provided that following an Enforcement Action all amounts Recovered shall be applied in accordance with Clause 15.1 (*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.

## 17. Release of Security

- (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 or otherwise approved by the Secured Parties.
- (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 17. No such release will affect the obligations and liabilities of any other ICA Group Company under any Senior Finance Document.
- (c) Any Transaction Security or Guarantee to be released in accordance with this Clause 17 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. Role of the Security Agent

### 18.1 Appointment of the Security Agent

Each Secured Party hereby irrevocably:

- (a) appoints the Security Agent to act as security agent under and in connection with the relevant Senior Finance Documents and this Agreement;
- (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 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 and this Agreement, together with any other incidental rights, powers, authorities and discretions.

### 18.2 Duties of the Security Agent

- (a) The duties of the Security Agent under the Senior Finance Documents and this Agreement are solely mechanical and administrative in nature 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 Debt 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 Debt Documents including with respect to the financial condition and status of any ICA Group Company or other Group Company.
- (c) The Security Agent shall not be held responsible for any loss or damage resulting from a legal enactment (Finnish or foreign), the intervention of a public authority (Finnish 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 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 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 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.

### **18.3 Exclusion of Liability**

- (a) Without limiting paragraph (b) below, the Security Agent shall, when acting in accordance with the provisions of this Agreement or any Senior Finance 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 or this Agreement, unless directly caused by its gross negligence or wilful misconduct.
- (b) No Party (other than the Security Agent) may take any proceedings against any officer, employee or agent of the Security Agent in respect of any claim it might have against the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Senior Finance Document or this Agreement and any officer, employee or agent of the Security Agent may rely on this Clause 18.3.
- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Senior Finance Documents or this Agreement to be paid by it if it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by it for that purpose.

### **18.4 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. The Bonds Agent**

### **19.1 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 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 Bonds Finance Documents or by law, or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party; provided however, that 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 19.1 shall survive the termination of this Agreement.

## **19.2 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.

## **19.3 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 15.1 (*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 10 (*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. Collective Majority**

### **20.1 Coordination with Collective Majority Senior Creditors**

If, and for as long as, the New Debt is larger than the debt outstanding under the Bonds, the Bonds Agent and any representative of any New Debt Creditors shall conduct the respective voting procedures under the respective debt instruments and any representative of any New Debt Creditors shall share its result from such procedure with the Bonds Agent. The Bonds Agent shall, based on such results, determine the decision of the Collective Majority Senior Creditors and act as the Senior Representative if not replaced with another representative appointed by the Collective Majority Senior Creditors.

### **20.2 Appointment of representative for the Collective Majority Senior Creditors**

If, and for as long as, the New Debt is larger than the debt outstanding under the Bonds, each of the Senior Creditors hereby irrevocably appoints the Bonds Agent to act as Senior Representative. The Collective Majority Senior Creditors may, if requested by more than 10 per cent. of the Collective Majority Senior Creditors, replace the Bonds Agent as Senior Representative with a new representative. Such resolution shall be taken with a more than 50 per cent. majority requirement of all Senior Debt and a quorum of at least 20 per cent. of all Senior Debt. The Bonds Agent and the representatives of any New Debt shall conduct the respective voting procedures under the respective debt instruments and any representative of any New Debt Creditors shall share its result from such procedure with the Bonds Agent.

## **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 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**

Each Representative 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**

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

### **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 to pay on the due date an amount pursuant to a Senior Finance Document);
  - (ii) no Super Senior Debt or Senior Debt have been accelerated;
  - (iii) any instructions or Enforcement Instructions received by it from a Representative or an Agent are duly given in accordance with the terms of the Senior Finance Documents, and, unless it has received actual notice of revocation, that those instructions or directions have not been revoked;
  - (iv) any right, power, authority or discretion vested in any Party or any group of creditors or Secured Parties has not been exercised; and
  - (v) any notice or request made by the Issuer is made on behalf of and with the consent and knowledge of all the ICA Group Companies.
- (c) The Representatives and the Agents may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Representatives and the Agents may disclose to any other Party any information it reasonably believes it has received as Agent.
- (e) The Representatives and the Agents are not obliged to monitor or enquire whether any Event of Default (or an event that may lead to an Event of Default) has occurred.

### **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 for information supplied by it or on its behalf in connection with any Senior Finance Document, each Secured Party (other than any Representative (in its personal capacity) and the Security Agent) confirms that it:

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

## **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 (including any information relating to the financial condition or affairs of any ICA Group Company or the nature or extent of recourse against any Party or its assets) whether coming into its possession before, on or after the date of this Agreement; or
- (b) obtaining any certificate or other document from any ICA Group Company.

## **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**

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

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

### **22.2 Amounts of Debt**

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

### **22.3 Hedge Counterparty**

- (a) Each Hedge Counterparty shall on request by the Super Senior RCF Creditor or the Security Agent from time to time notify the Super Senior RCF Creditor and the Security Agent of the Notional Amount (as defined in the relevant Hedging Agreement) of each Hedging Agreement to which it is a party and the residual maturity of each such Hedging Agreement.
- (b) If any Hedge Counterparty does not promptly on request notify the Super Senior RCF Creditor and the Security Agent of any matter pursuant to paragraph (a) above, the Super Senior RCF Creditor 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 Debt Creditor shall deal with the Security Agent exclusively through its Representative.

## 23. Limitation on obligations

- (a) Notwithstanding anything to the contrary in this Agreement or the other Senior Finance Documents, the liability of any ICA Group Company (other than the Issuer) incorporated in Sweden under this Agreement and any Transaction Security shall be limited if (and only if) and to the extent required by an application of the provisions of Chapter 17 of the Swedish Companies Act ((Sw. *Aktiebolagslagen*) (2005:551)) regulating prohibited loans and guarantees and distribution of assets (including profits and dividends and any other form of transfer of value (Sw. *värdeöverföring*) and Chapter 21 of the Swedish Companies Act regulating prohibited loans, guarantees and financial assistance within the meaning of the Swedish Companies Act also taking into account any other security granted and/or guarantee given by the ICA Group Company. It is agreed that the Transaction Security only applies to the maximum extent permitted by the above mentioned provisions of the Swedish Companies Act.
- (b) Notwithstanding anything to the contrary in this Agreement or the other Senior Finance Documents, the liability of any ICA Group Company (other than the Issuer) incorporated in Finland under this Agreement and any Transaction Security shall be limited if (and only if) and to the extent required by an application of the mandatory provisions of the Finnish Companies Act (Fin: *osakeyhtiölaki*, (624/2006, as amended)) regulating (i) unlawful financial assistance, as provided in Chapter 13, Section 10 of the Finnish Companies Act, (ii) distribution of assets, as provided in Chapter 13, Section 1 of the Finnish Companies Act or (iii) other applicable mandatory provisions of Finnish corporate law and it is understood that the liability of each ICA Group Company incorporated in Finland under this Agreement and the other Senior Finance Documents only applies to the extent permitted by the above mentioned provisions of the Finnish Companies Act.
- (c) Notwithstanding anything to the contrary in this Agreement or the other Senior Finance Documents, the liability of any ICA Group Company (other than the Issuer) incorporated in Sweden under this Agreement and any Transaction Security shall be deemed to have been given only to the extent such guarantee or security interest does not violate Sections 8-7 and 8-10 of the Norwegian Companies Act 1997 (the Companies Act) regulating unlawful financial assistance and other prohibited loans, guarantees and joint and several liability as well as providing of security, and the liability of an ICA Group Company incorporated in Norway only applies to the extent permitted by such provisions of the Companies Act. To the extent applicable, each ICA Group Company incorporated in Norway also irrevocably waives all its rights under the provisions of the Norwegian Financial Agreements Act of 25 June 1999 no. 46 (not being mandatory provisions), including (without limitation) the rights set out in Sections 62 through 74 of that act.

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

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

No Secured Party, Shareholder Creditor or Intercompany Creditor may assign or transfer any of its rights or obligations under this Agreement or any Debt Document to, or in favour of, any person unless such assignment or transfer is made in accordance with the terms of the relevant Debt Document (and, in relation to Shareholder Debt or Intercompany Debt, that person is permitted or required to become an Shareholder Creditor or Intercompany Creditor by the Senior Finance Documents) and provided that such person executes and delivers a duly completed and signed ICA Group Company 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 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**

No ICA Group Company may assign or transfer any of its rights or obligations under this Agreement or any Debt Document other than pursuant to Clause 17 (*Release of Security*).

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

- (a) If any Group Company has any Liabilities under any Intercompany Debt to another Group Company whereby (i) the term of any such loan is at least twelve (12) months and (ii) the principal amount thereof is at least EUR 500,000, the Issuer shall procure that the Group Company providing and 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 Accession Agreement duly executed and delivered to the Security Agent by the new ICA Group Company or, if later, the date specified in the ICA Group Company Accession Agreement, the new ICA Group Company shall assume the same obligations and become entitled to the same rights as if it had been an original Party as an ICA Group Company.

### **24.4 Accession of Shareholder Creditors**

- (a) If any Group Company has any Secured Obligations or any Liabilities to a Shareholder Creditor, the Issuer shall procure that the Shareholder Creditor to which such Liabilities are owed shall (if not already a Party as a Shareholder Creditor) accede to this Agreement as a Shareholder Creditor, in accordance with paragraph (b) below, on such date.
- (b) With effect from the date of acceptance by the Security Agent of a Creditor/Representative Accession Undertaking duly executed and delivered to

the Security Agent by the new Shareholder Creditor or, if later, the date specified in the Creditor/Representative Accession Undertaking, the new Shareholder Creditor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Shareholder Creditor.

#### **24.5 Accession of New Debt Creditors under New Debt**

In order for indebtedness under any credit facility to constitute "**New Debt**" for the purposes of this Agreement:

- (a) 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;
- (b) each creditor in respect of that credit facility shall accede to this Agreement as a New Debt Creditor; and
- (c) 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).

#### **24.6 Resignation of Agents**

- (a) An Agent may resign and appoint one of its Affiliates acting through an office in Sweden as successor by giving notice to the other Representatives, the Hedge Counterparties and the Issuer.
- (b) Alternatively an Agent may resign by giving notice to the other Agents, the Hedge Counterparties and the Issuer, in which case the other Agents (after consultation with the Issuer) may appoint a successor Agent.
- (c) If the Agents have not agreed upon and appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the retiring Agent (after consultation with the Issuer) may appoint a successor Agent.
- (d) The retiring Agent shall, at its own cost, make available to its successor such documents and records and provide such assistance as its successor may reasonably request for the purposes of performing its functions as Agent under the Senior Finance Documents and this Agreement.
- (e) The resignation notice of an Agent shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of this Agreement provided however that a retiring Security Agent shall remain entitled to the benefit of Clause 18 (*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); and
  - (iii) resignation and appointment of an Agent shall always be made in accordance with the Senior Finance Documents.

#### **24.7 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, the Super Senior RCF Creditor will be replaced by the agent appointed in respect of such replacement Super Senior Debt.

#### **24.8 Execution and Notification by Security Agent**

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

### **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 Bonds Agent and the Original Security Agent, that identified with its name below;
- (b) in the case of any Original ICA Group Company, that identified with the Issuer's name below; and
- (c) in the case of each Shareholder Creditor, New Debt 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 Shareholder 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, Shareholder 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 reasonable 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.

### **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) 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 (unless it has been reimbursed by an ICA Group Company pursuant to a Senior Finance 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 or this Agreement, the Security Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Security Agent would otherwise be obliged to make under the Senior Finance Documents or this Agreement and apply the amount deducted in or towards satisfaction of the amount

owed. For the purposes of the Senior Finance Documents or this Agreement that Party shall be regarded as having received any amount so deducted.

## 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 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.

## 26.6 Currency Indemnity

- (a) If any Recoveries or any other payment required to be paid by any Shareholder Creditor, Intercompany Creditor, Intercompany Debtor or ICA Group Company under this Agreement (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (i) making or filing a claim or proof against that Shareholder Creditor, Intercompany Creditor, Intercompany Debtor or ICA Group Company; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

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

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

## 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 or any Security Document and the Guarantee and Adherence Agreement) in accordance with their terms at any time.
- (c) No amendment or waiver may be made or given to the extent it 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 Bonds Agent, 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 adversely 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 directly affect the rights or obligations of that Hedge Counterparty.
- (f) The consent of an ICA Group Company, Shareholder Creditor, Intercompany Debtor or an Intercompany Creditor is not required for any amendment or waiver of a term of this Agreement except if the amendment or waiver may impose new or additional obligations on or withdraw or reduce the rights of such ICA Group Company, Shareholder Creditor, Intercompany Debtor or Intercompany Creditor.
- (g) 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, Shareholder Creditor or Intercompany Creditor any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## 30. Force Majeure and Limitation of Liability

- (a) A Secured Party shall not be held responsible for any damage arising out of any Finnish or foreign legal enactment, or any measure undertaken by a Finnish 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.

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

**SCHEDULE 1****The Original ICA Group Companies**

<b>Name of Original ICA Group Company</b>	<b>Registration number/business ID</b>	<b>Jurisdiction</b>
HLRE Holding Oy	2611405-7	Finland
HLRE Group Oy	2607255-5	Finland
Vesivek Oy	0951383-0	Finland
Nesco Oy	0432656-9	Finland
Nesco Invest Oy	2394855-8	Finland
Vesivek Sverige AB	559043-6118	Sweden



**Form of ICA Group Company Accession Agreement**

To: [ ] as Security Agent

From: [ICA Group Company]

Dated: [ ]

Dear Sirs

**HLRE Holding Oy - Intercreditor Agreement dated 12 February 2021 (the "Agreement")**

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

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

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

4. [ICA Group Company]'s administrative details are as follows:

Address:

E-mail:

Attention:

5. This ICA Group Company Accession Agreement is governed by Swedish law.

[Security Agent]

By:

Date:

**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]

**HLRE Holding Oy - Intercreditor Agreement dated 12 February 2021 (the "Agreement")**

**THIS UNDERTAKING** is made on [date] by [insert full name of new Super Senior RCF Creditor/Hedge Counterparty/New Debt Creditor/Representative/Shareholder Creditor] (the "**Acceding Super Senior RCF Creditor/Hedge Counterparty/New Debt Creditor/Representative/Shareholder Creditor**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated 12 February 2021 between, among others, HLRE Holding Oy as the Issuer, Nordic Trustee & Agency AB (publ) as Security Agent and the Secured Parties (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

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

This Undertaking is governed by 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

**The Issuer**

**HLRE Holding Oy**



Name: Hanne Keidasto

Name:

Address: Jasperintie 273, 33960 Pirkkala, Finland

E-mail: [hanne.keidasto@vesivek.fi](mailto:hanne.keidasto@vesivek.fi)

Attention: Hanne Keidasto

**The Original ICA Group Companies**

**HLRE Holding Oy**



Name: Hanne Keidasto

Name:

**HLRE Group Oy**



Name: Hanne Keidasto

Name:

**Vesivek Oy**



Name: Hanne Keidasto

Name:

**Nesco Oy**



Name: Hanne Keidasto

Name:

**Nesco Invest Oy**



Name: Hanne Keidasto

\_\_\_\_\_  
Name:

**Vesivek Sverige AB**




Name: Hanne Keidasto

\_\_\_\_\_  
Name:


**The Shareholder Creditors**

**Sentica Buyout IV Ky**

  
Name: PENTTI TUUSKA

\_\_\_\_\_  
Name:

**Sentica Buyout IV Co-investment Ky**

  
Name: PENTTI TUUSKA

\_\_\_\_\_  
Name:

**Mr. Kimmo Riihimäki**

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

**Mr. Timo Kautto**

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

**The Shareholder Creditors**

**Sentica Buyout IV Ky**

\_\_\_\_\_  
Name:

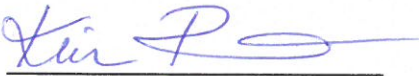
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Name:

**Sentica Buyout IV Co-investment Ky**

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Name:

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Name:

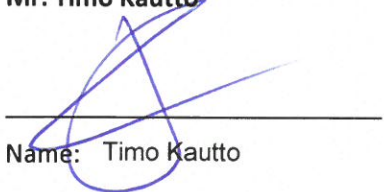
**Mr. Kimmo Riihimäki**

  
\_\_\_\_\_

Name: Kimmo Riihimäki

\_\_\_\_\_  
Name:

**Mr. Timo Kautto**

  
\_\_\_\_\_

Name: Timo Kautto

\_\_\_\_\_  
Name:

**The Original Bonds Agent**

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



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Name: **Anna Litewka**

\_\_\_\_\_  
Name:

Address: Box 7329, 103 90 Stockholm

E-mail: sweden@nordictrustee.com

Attention: CEO

**The Original Security Agent**

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



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Name: **Anna Litewka**

\_\_\_\_\_  
Name:

Address: Box 7329, 103 90 Stockholm

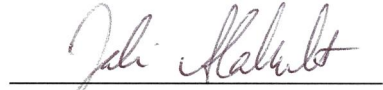
E-mail: sweden@nordictrustee.com

Attention: CEO

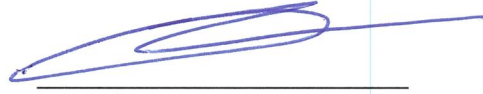


**The Original Super Senior RCF Creditor**

**Danske Bank A/S, Finland Branch**



Name: **Jari Alahuhta**



Name: **Juha Salmenpohja**

Address: Danske Bank A/S, Finland Branch, P.O. Box 1613, FI-00075 DANSKE BANK, Finland

E-mail: loanmanfi@danskebank.com

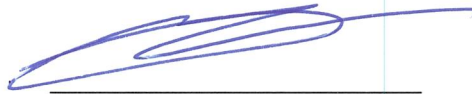
Attention: Loan Support

**The Original Hedge Counterparty**

**Danske Bank A/S**



Name: **Jari Alahuhta**



Name: **Juha Salmenpohja**

Address: Danske Bank A/S, Finland Branch, P.O. Box 1613, FI-00075 DANSKE BANK, Finland

E-mail: loanmanfi@danskebank.com

Attention: Loan Support