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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**Form 10-Q**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Quarterly Period Ended September 30, 2009

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Transition Period From \_\_\_\_ to \_\_\_\_

001-33289

Commission File Number

**ENSTAR GROUP LIMITED**

*(Exact name of registrant as specified in its charter)*

**Bermuda**

*(State or other jurisdiction of incorporation or organization)*

**N/A**

*(I.R.S. Employer Identification No.)*

**P.O. Box HM 2267  
Windsor Place, 3rd Floor  
18 Queen Street  
Hamilton HM JX**

**Bermuda**

*(Address of principal executive office, including zip code)*

**(441) 292-3645**

*(Registrant's telephone number, including area code)*

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of November 5, 2009, the registrant had outstanding 13,566,175 ordinary shares, par value \$1.00 per share.

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## TABLE OF CONTENTS

	<u>Page</u>
<b>PART I — FINANCIAL INFORMATION</b>	
<u>Item 1.</u>	<u>Financial Statements:</u>
	<u>Condensed Consolidated Balance Sheets as of September 30, 2009 and December 31, 2008 (Unaudited)</u>
	1
	<u>Condensed Consolidated Statements of Earnings for the Three and Nine Month Periods Ended September 30, 2009 and 2008 (Unaudited)</u>
	2
	<u>Condensed Consolidated Statements of Comprehensive Income for the Three and Nine Month Periods Ended September 30, 2009 and 2008 (Unaudited)</u>
	3
	<u>Condensed Consolidated Statements of Changes in Shareholders' Equity for the Nine Month Periods Ended September 30, 2009 and 2008 (Unaudited)</u>
	4
	<u>Condensed Consolidated Statements of Cash Flows for the Nine Month Periods Ended September 30, 2009 and 2008 (Unaudited)</u>
	5
	<u>Notes to Condensed Consolidated Financial Statements (Unaudited)</u>
	6
	<u>Report of the Independent Registered Public Accounting Firm</u>
	28
<u>Item 2.</u>	<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>
	29
<u>Item 3.</u>	<u>Quantitative and Qualitative Disclosures About Market Risk</u>
	48
<u>Item 4.</u>	<u>Controls and Procedures</u>
	48
<b>PART II — OTHER INFORMATION</b>	
<u>Item 1.</u>	<u>Legal Proceedings</u>
	49
<u>Item 1A.</u>	<u>Risk Factors</u>
	49
<u>Item 6.</u>	<u>Exhibits</u>
	50
<u>Signatures</u>	51
<u>EX-10.1</u>	
<u>EX-15.1</u>	
<u>EX-31.1</u>	
<u>EX-31.2</u>	
<u>EX-32.1</u>	
<u>EX-32.2</u>	

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## Item 1. FINANCIAL STATEMENTS

**ENSTAR GROUP LIMITED**  
**UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS**  
**As of September 30, 2009 and December 31, 2008**

	September 30, 2009	December 31, 2008
	(expressed in thousands of U.S. dollars, except share data)	
<b>ASSETS</b>		
Short-term investments, available for sale, at fair value (amortized cost: 2009 — \$196,013; 2008 — \$406,712)	\$ 196,424	\$ 406,712
Short-term investments, held to maturity, at amortized cost (fair value: 2009 — \$202,047; 2008 — \$0)	202,115	—
Fixed maturities, available for sale, at fair value (amortized cost: 2009 — \$78,601; 2008 — \$103,452)	78,326	104,797
Fixed maturities, held to maturity, at amortized cost (fair value: 2009 — \$1,083,552; 2008 — \$598,686)	1,062,057	586,716
Fixed maturities, trading, at fair value (amortized cost: 2009 — \$93,273; 2008 — \$110,453)	97,199	115,846
Equities, trading, at fair value (cost: 2009 — \$16,413; 2008 — \$5,087)	18,689	3,747
Other investments, at fair value (cost: 2009 — \$162,977; 2008 — \$147,652)	76,363	60,237
Total investments	1,731,173	1,278,055
Cash and cash equivalents	1,300,085	1,866,546
Restricted cash and cash equivalents	452,928	343,327
Accrued interest receivable	20,884	21,277
Accounts receivable, net	18,116	15,992
Income taxes recoverable	1,332	—
Reinsurance balances receivable	660,189	672,696
Investment in partly owned company	21,314	20,850
Goodwill	21,222	21,222
Other assets	113,318	118,186
<b>TOTAL ASSETS</b>	<b>\$ 4,340,561</b>	<b>\$ 4,358,151</b>
<b>LIABILITIES</b>		
Losses and loss adjustment expenses	\$ 2,685,952	\$ 2,798,287
Reinsurance balances payable	183,638	179,917
Accounts payable and accrued liabilities	86,160	39,340
Income taxes payable	27,226	19,034
Loans payable	319,162	391,534
Other liabilities	80,080	58,808
<b>TOTAL LIABILITIES</b>	<b>3,382,218</b>	<b>3,486,920</b>
<b>SHAREHOLDERS' EQUITY</b>		
Share capital		
Authorized issued and fully paid, par value \$1 each (authorized 2009: 156,000,000; 2008: 156,000,000)		
Ordinary shares (issued and outstanding 2009: 13,579,483; 2008: 13,334,353)	13,579	13,334
Non-voting convertible ordinary shares (issued 2009: 2,972,892; 2008: 2,972,892)	2,973	2,973
Treasury stock at cost (non-voting convertible ordinary shares 2009: 2,972,892; 2008: 2,972,892)	(421,559)	(421,559)
Additional paid-in capital	718,315	709,485
Accumulated other comprehensive income	(9,667)	(30,871)
Retained earnings	397,116	341,847
Total Enstar Group Limited Shareholders' Equity	700,757	615,209
Noncontrolling interest	257,586	256,022
<b>TOTAL SHAREHOLDERS' EQUITY</b>	<b>958,343</b>	<b>871,231</b>
<b>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY</b>	<b>\$ 4,340,561</b>	<b>\$ 4,358,151</b>

See accompanying notes to the unaudited condensed consolidated financial statements

ENSTAR GROUP LIMITED

UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS  
For the Three and Nine-Month Periods Ended September 30, 2009 and 2008

	Three Months Ended		Nine Months Ended	
	September 30, 2009	September 30, 2008	September 30, 2009	September 30, 2008
	(expressed in thousands of U.S. dollars, except share and per share data)			
<b>INCOME</b>				
Consulting fees	\$ 4,112	\$ 7,410	\$ 11,627	\$ 17,046
Net investment income	24,640	6,849	60,442	28,658
Net realized gains (losses)(1)	2,912	(192)	1,982	(262)
	<u>31,664</u>	<u>14,067</u>	<u>74,051</u>	<u>45,442</u>
<b>EXPENSES</b>				
Net reduction in loss and loss adjustment expense liabilities	(42,558)	(3,469)	(86,630)	(28,267)
Salaries and benefits	16,997	6,013	41,328	31,317
General and administrative expenses	12,195	10,121	35,487	36,004
Interest expense	4,262	7,919	13,902	18,878
Net foreign exchange (gain) loss	(7,164)	25,056	(7,177)	18,787
	<u>(16,268)</u>	<u>45,640</u>	<u>(3,090)</u>	<u>76,719</u>
<b>EARNINGS (LOSS) BEFORE INCOME TAXES AND SHARE OF NET EARNINGS OF PARTLY OWNED COMPANY</b>				
	47,932	(31,573)	77,141	(31,277)
INCOME TAXES	(2,660)	(10,434)	(2,019)	(13,389)
SHARE OF NET EARNINGS OF PARTLY OWNED COMPANY	196	—	465	—
<b>EARNINGS (LOSS) BEFORE EXTRAORDINARY GAIN</b>				
	45,468	(42,007)	75,587	(44,666)
Extraordinary gain — Negative goodwill	—	—	—	50,280
<b>NET EARNINGS (LOSS)</b>				
	45,468	(42,007)	75,587	5,614
Less: Net (earnings) loss attributable to noncontrolling interests (including share of extraordinary gain of \$nil, \$nil, \$nil and \$15,084, respectively)	(10,481)	5,572	(20,318)	(19,189)
<b>NET EARNINGS (LOSS) ATTRIBUTABLE TO ENSTAR GROUP LIMITED</b>				
	<u>\$ 34,987</u>	<u>\$ (36,435)</u>	<u>\$ 55,269</u>	<u>\$ (13,575)</u>
<b>EARNINGS PER SHARE — BASIC:</b>				
Earnings (loss) before extraordinary gain attributable to Enstar Group Limited ordinary shareholders	\$ 2.58	\$ (2.74)	\$ 4.10	\$ (3.93)
Extraordinary gain attributable to Enstar Group Limited ordinary shareholders	—	—	—	2.84
Net earnings (loss) attributable to Enstar Group Limited ordinary shareholders	<u>\$ 2.58</u>	<u>\$ (2.74)</u>	<u>\$ 4.10</u>	<u>\$ (1.09)</u>
<b>EARNINGS PER SHARE — DILUTED:</b>				
Earnings (loss) before extraordinary gain attributable to Enstar Group Limited ordinary shareholders	\$ 2.53	\$ (2.74)	\$ 4.03	\$ (3.93)
Extraordinary gain attributable to Enstar Group Limited ordinary shareholders	—	—	—	2.84
Net earnings (loss) attributable to Enstar Group Limited ordinary shareholders	<u>\$ 2.53</u>	<u>\$ (2.74)</u>	<u>\$ 4.03</u>	<u>\$ (1.09)</u>
Weighted average ordinary shares outstanding — basic	13,578,555	13,317,919	13,492,044	12,404,871
Weighted average ordinary shares outstanding — diluted	13,814,651	13,317,919	13,729,387	12,404,871
<b>AMOUNTS ATTRIBUTABLE TO ENSTAR GROUP LIMITED ORDINARY SHAREHOLDERS:</b>				
Earnings (loss) before extraordinary gain	\$ 34,987	\$ (36,435)	\$ 55,269	\$ (48,771)
Extraordinary gain	—	—	—	35,196
Net earnings (loss)	<u>\$ 34,987</u>	<u>\$ (36,435)</u>	<u>\$ 55,269</u>	<u>\$ (13,575)</u>

(1) There were no other-than-temporary impairment losses recognized in accumulated other comprehensive income in the periods presented.

See accompanying notes to the unaudited condensed consolidated financial statements

## ENSTAR GROUP LIMITED

UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME  
For the Three and Nine-Month Periods Ended September 30, 2009 and 2008

	Three Months Ended		Nine Months Ended	
	September 30, 2009	September 30, 2008	September 30, 2009	September 30, 2008
	(expressed in thousands of U.S. dollars)			
NET EARNINGS (LOSS)	\$ 45,468	\$ (42,007)	\$ 75,587	\$ 5,614
Other comprehensive income:				
Unrealized holding (losses) gains on investments arising during the period	(13,028)	3,608	(27,901)	(4,115)
Reclassification adjustment for net realized (gains) losses included in net earnings	(2,912)	192	(1,982)	262
Currency translation adjustment	28,286	(21,038)	65,511	(13,303)
Total other comprehensive income (loss):	12,346	(17,238)	35,628	(17,156)
Comprehensive income (loss)	57,814	(59,245)	111,215	(11,542)
Less comprehensive (income) loss attributable to noncontrolling interests	(14,073)	9,261	(34,741)	(15,500)
COMPREHENSIVE INCOME (LOSS) ATTRIBUTABLE TO ENSTAR GROUP LIMITED	\$ 43,741	\$ (49,984)	\$ 76,474	\$ (27,042)

See accompanying notes to the unaudited condensed consolidated financial statements

**ENSTAR GROUP LIMITED**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CHANGES**  
**IN SHAREHOLDERS' EQUITY**  
**For the Nine-Month Periods Ended September 30, 2009 and 2008**

	Nine Months Ended	
	September 30,	
	2009	2008
	(expressed in thousands of U.S. dollars)	
<b>Share Capital — Ordinary Shares</b>		
Balance, beginning of period	\$ 13,334	\$ 11,920
Shares issued	168	1,374
Share awards granted/vested	77	39
Balance, end of period	<u>\$ 13,579</u>	<u>\$ 13,333</u>
<b>Share Capital — Non-Voting Convertible Ordinary Shares</b>		
Balance, beginning and end of period	<u>\$ 2,973</u>	<u>\$ 2,973</u>
<b>Treasury Shares</b>		
Balance, beginning and end of period	<u>\$ (421,559)</u>	<u>\$ (421,559)</u>
<b>Additional Paid-in Capital</b>		
Balance, beginning of period	\$ 709,485	\$ 590,934
Share awards granted/vested	3,567	2,855
Shares issued	5,263	115,165
Amortization of share awards	—	390
Balance, end of period	<u>\$ 718,315</u>	<u>\$ 709,344</u>
<b>Accumulated Other Comprehensive (Loss) Income</b>		
Balance, beginning of period	\$ (30,871)	\$ 6,035
Other comprehensive income (loss)	21,204	(13,467)
Balance, end of period	<u>\$ (9,667)</u>	<u>\$ (7,432)</u>
<b>Retained Earnings</b>		
Balance, beginning of period	\$ 341,847	\$ 260,296
Net earnings (loss)	55,269	(13,575)
Balance, end of period	<u>\$ 397,116</u>	<u>\$ 246,721</u>
<b>Noncontrolling Interest</b>		
Balance, beginning of period	\$ 256,022	\$ 63,437
(Return) contribution of capital	(32,198)	119,849
Dividends paid	(980)	—
Net earnings	20,318	19,189
Other comprehensive income (loss)	14,424	(3,689)
Balance, end of period	<u>\$ 257,586</u>	<u>\$ 198,786</u>

See accompanying notes to the unaudited condensed consolidated financial statements

**ENSTAR GROUP LIMITED**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**For the Nine-Month Periods Ended September 30, 2009 and 2008**

	Nine Months Ended	
	September 30,	
	2009	2008
(expressed in thousands of U.S. dollars)		
<b>OPERATING ACTIVITIES:</b>		
Net earnings	\$ 75,587	\$ 5,614
Adjustments to reconcile net earnings to cash flows provided by operating activities:		
Negative goodwill	—	(50,280)
Share of undistributed net (earnings) of partly owned company	(465)	—
Share-based compensation expense	—	390
Net realized and unrealized investment (gain) loss	(1,982)	262
Share of net (gain) loss from other investments	(2,334)	48,399
Other items	4,563	7,747
Depreciation and amortization	763	637
Amortization of bond premiums and discounts	5,660	(343)
Net movement of trading securities	18,878	214,324
Changes in assets and liabilities:		
Reinsurance balances receivable	23,508	(28,158)
Other assets	6,885	63,729
Losses and loss adjustment expenses	(183,180)	81,410
Reinsurance balances payable	964	(68,874)
Accounts payable and accrued liabilities	52,498	(20,134)
Other liabilities	22,915	21,708
Net cash flows provided by operating activities	<u>24,260</u>	<u>276,431</u>
<b>INVESTING ACTIVITIES:</b>		
Acquisitions, net of cash acquired	8,504	220,087
Purchase of available-for-sale securities	(244,310)	(184,571)
Sales and maturities of available-for-sale securities	489,778	237,705
Purchase of held-to-maturity securities	(697,146)	—
Maturity of held-to-maturity securities	56,622	129,738
Movement in restricted cash and cash equivalents	(109,601)	(218,998)
Funding of other investments	(24,255)	(29,179)
Purchase of investment in partly-owned company	—	(21,387)
Other investing activities	(2,060)	(350)
Net cash flows (used in) provided by investing activities	<u>(522,468)</u>	<u>133,045</u>
<b>FINANCING ACTIVITIES:</b>		
Proceeds from issuance of ordinary shares	—	116,538
Contribution to surplus of subsidiary by noncontrolling interest	—	110,567
Receipt of loans	—	352,032
Repayment of loans	(97,845)	(106,942)
Distribution of capital to noncontrolling interest	(33,178)	—
Proceeds from exercise of stock options	2,796	—
Net cash flows (used in) provided by financing activities	<u>(128,227)</u>	<u>472,195</u>
TRANSLATION ADJUSTMENT	59,974	(70,930)
NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS	(566,461)	810,741
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	1,866,546	995,237
CASH AND CASH EQUIVALENTS, END OF PERIOD	<u>\$ 1,300,085</u>	<u>\$ 1,805,978</u>
<b>Supplemental Cash Flow Information</b>		
Income taxes paid	\$ 12,867	\$ 6,188
Interest paid	<u>\$ 10,697</u>	<u>\$ 10,580</u>

See accompanying notes to the unaudited condensed consolidated financial statements

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**September 30, 2009 and December 31, 2008**  
**(Expressed in thousands of U.S. Dollars, except per share amounts)**  
**(unaudited)**

**1. BASIS OF PREPARATION AND CONSOLIDATION**

Our condensed consolidated financial statements have not been audited. These statements have been prepared in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP") for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for complete financial statements. In the opinion of management, these financial statements reflect all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation of our financial position and results of operations as at the end of and for the periods presented. Results of operations for subsidiaries acquired are included from the dates of their acquisition by the Company. Intercompany transactions are eliminated on consolidation. The results of operations for any interim period are not necessarily indicative of the results for a full year. All significant inter-company accounts and transactions have been eliminated. In these notes, the terms "we," "us," "our," or "the Company" refer to Enstar Group Limited and its direct and indirect subsidiaries. The following information is unaudited and should be read in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2008.

***Adoption of New Accounting Standards***

The term "FAS" used in these notes refers to Statements of Financial Accounting Standards issued by the United States Financial Accounting Standards Board ("FASB").

In June 2009, the Financial Accounting Standards Board ("FASB") established the Accounting Standards Codification ("the Codification") as the source of authoritative U.S. GAAP for non-governmental entities, in addition to guidance issued by the Securities and Exchange Commission ("SEC"). The Codification supersedes all then-existing, non-SEC accounting and reporting standards and reorganizes existing U.S. GAAP into authoritative accounting topics and sub-topics. The Company adopted the Codification as of September 30, 2009, and it impacted the Company's disclosures by eliminating all references to pre-Codification standards.

The Company adopted the revised guidance, issued by FASB on the accounting for business combinations, effective January 1, 2009. The revised guidance retains the fundamental requirements from previous guidance that the acquisition method of accounting be used for all business combinations and for an acquirer to be identified for each business combination. The revised guidance requires an acquirer to recognize the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree at the acquisition date, measured at their fair values as of that date. The revised guidance also requires the Company to recognize acquisition-related costs separately from the acquisition, recognize assets acquired and liabilities assumed arising from contractual contingencies at their acquisition-date fair values and recognize goodwill as the excess of the consideration transferred plus the fair value of any noncontrolling interest in the acquiree at the acquisition date over the fair values of the identifiable net assets acquired. The adoption of the revised guidance did not have a material impact on the consolidated financial statements.

The Company adopted the new guidance issued by FASB on the accounting for noncontrolling interests, effective January 1, 2009. The new guidance clarifies that a noncontrolling interest in a subsidiary is an ownership interest that should be reported as equity in the consolidated financial statements. The new guidance requires consolidated net income to be reported at the amounts that include the amounts attributable to both the parent and the noncontrolling interest. The new guidance also establishes a method of accounting for changes in a parent's ownership interest in a subsidiary that results in deconsolidation. The presentation and disclosure of the new guidance have been applied retrospectively for all periods presented. The adoption of the new guidance resulted in reclassification of noncontrolling interest in the amounts of \$257.6 million and \$256.0 million to shareholders' equity as at September 30, 2009 and December 31, 2008, respectively.

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**1. BASIS OF PREPARATION AND CONSOLIDATION — (cont'd)**

The Company adopted new guidance issued by FASB on the disclosures about derivative instruments and hedging activities, effective January 1, 2009. The new guidance expands the disclosure requirements and requires the reporting entity to provide enhanced disclosures about the objectives and strategies for using derivative instruments, quantitative disclosures about fair values and amounts of gains and losses on derivative contracts, and credit-risk related contingent features in derivative agreements. The adoption of the new guidance did not have a material impact on the consolidated financial statements.

The Company adopted the new guidance issued by FASB on determining fair value when the volume and level of activity for an asset or liability have significantly decreased and identifying transactions that are not orderly, effective April 1, 2009. The new guidance provides additional guidance on: (1) estimating fair value when the volume and level of activity for an asset or liability have significantly decreased in relation to the normal market activity for the asset or liability, and (2) identifying transactions that are not orderly. The new guidance has been applied prospectively; retrospective application was not permitted. The adoption of the new guidance did not have a material impact on the consolidated financial statements.

The Company adopted the new guidance issued by FASB for the accounting for other-than-temporary impairments ("OTTI"), effective April 1, 2009. The new guidance provides new guidance on the recognition and presentation of OTTI for available-for-sale and held-to-maturity fixed maturities (equities are excluded). An impaired security is not recognized as an impairment if management does not intend to sell the impaired security and it is more likely than not it will not be required to sell the security before the recovery of its amortized cost basis. If management concludes a security is other-than-temporarily impaired, the new guidance requires that the difference between the fair value and the amortized cost of the security be presented as an OTTI charge in the consolidated statements of earnings, with an offset for any noncredit-related loss component of the OTTI charge to be recognized in other comprehensive income. Accordingly, only the credit loss component of the OTTI amount will have an impact on the Company's earnings. The new guidance also requires extensive new interim and annual disclosure for both fixed maturities and equities to provide further disaggregated information, as well as information about how the credit loss component of the OTTI charge was determined, and requires a roll forward of such amount for each reporting period. The adoption of the new guidance did not have a material impact on the consolidated financial statements.

The Company adopted the new guidance issued by FASB for the interim disclosures about fair value of financial instruments, effective April 1, 2009. The new guidance extends the disclosure requirements about fair value of financial instruments to interim financial statements and requires those disclosures in summarized financial information at interim reporting periods. The adoption of the new guidance did not have a material impact on the consolidated financial statements. To facilitate period-to-period comparisons, certain amounts in the 2008 consolidation financial statements have been reclassified to conform to the 2009 presentation. Such reclassifications had no effect on the Company's consolidated net income.

The Company adopted the revised guidance issued by FASB for recognizing and measuring pre-acquisition contingencies in a business combination, effective April 1, 2009. The revised guidance amends the prior guidance by requiring that assets acquired or liabilities assumed in a business combination that arise from contingencies be recognized at fair value only if fair value can be reasonably estimated; otherwise the asset or liability should generally be recognized at reasonable estimate of the amount of loss. The revised guidance removes the requirement to disclose an estimate of the range of outcomes of recognized contingencies at the acquisition date. The adoption of the revised guidance did not have a material impact on the consolidated financial statements.

The Company adopted the new guidance issued by FASB for the accounting for subsequent events, effective June 30, 2009. The new guidance, establishes general standards of accounting for and disclosure of events that

ENSTAR GROUP LIMITED  
NOTES TO THE UNAUDITED CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**1. BASIS OF PREPARATION AND CONSOLIDATION — (cont'd)**

occur after the balance sheet date but before the financial statements are issued or are available to be issued. The new guidance provides guidance on the period after the balance sheet date during which management of a reporting entity should evaluate events or transactions that may occur for potential recognition or disclosure in the financial statements, the circumstances under which an entity should recognize events or transactions occurring after the balance sheet date in its financial statements and the disclosures that an entity should make about events or transactions that occurred after the balance sheet date. The adoption of the new guidance did not have a material impact on the consolidated financial statements. The Company evaluated subsequent events through the date the accompanying financial statements were issued, which was November 6, 2009.

***Recently Issued Accounting Standards Not Yet Adopted***

In June 2009, the FASB issued the revised guidance for the consolidation of variable interest entities. The revised guidance requires an entity to perform an analysis to determine whether the entity's variable interest or interests give it a controlling financial interest in a variable interest entity. It determines whether a reporting entity is required to consolidate another entity based on, among other things, the other entity's purpose and design and the reporting entity's ability to direct the activities of the other entity that most significantly impact the other entity's economic performance. The revised guidance is effective as of the beginning of each reporting entity's first annual reporting period that begins after November 15, 2009, for interim periods within that first annual reporting period, and for interim and annual reporting periods thereafter. The Company is currently evaluating the impact of adopting this revised guidance on the consolidated financial statements.

The Company has determined that all other recently issued accounting pronouncements will not have a material impact on its consolidated financial statements, or do not apply to its operations.

**2. ACQUISITIONS**

***Constellation Reinsurance***

On January 31, 2009, the Company, through its indirect subsidiary, Sun Gulf Holdings Inc., completed the acquisition of all of the outstanding capital stock of Constellation Reinsurance Company Limited ("Constellation") for a total purchase price of approximately \$2.5 million. Constellation is a New York domiciled reinsurer that is in run-off. The acquisition was funded from available cash on hand.

The purchase price and fair value of the assets acquired in the Constellation acquisition were as follows:

Purchase price	\$2,500
Direct costs of acquisition	—
Total purchase price	<u>\$2,500</u>
Net assets acquired at fair value	<u>\$2,500</u>

The following summarizes the estimated fair values of the assets acquired and the liabilities assumed at the date of the acquisition:

Cash, restricted cash and investments	\$ 11,254
Reinsurance balances receivable	3,374
Losses and loss adjustment expenses	<u>(12,128)</u>
Net assets acquired at fair value	<u>\$ 2,500</u>

From January 31, 2009, the date of acquisition, to September 30, 2009, the Company has recorded in its condensed consolidated statement of earnings revenues and net (losses) related to Constellation of \$0.1 million and \$(0.3) million, respectively.

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**2. ACQUISITIONS — (cont'd)**

The following pro forma condensed combined income statement for the three and nine-months ended September 30, 2008 combines the historical consolidated statements of earnings of the Company with those of AMP Limited's Australian-based closed reinsurance and insurance operations ("Gordian") and Unionamerica Holdings Limited ("UAH"), which were acquired in the first and fourth quarters of 2008, respectively, giving effect to the business combinations and related transactions as if they had occurred on January 1, 2008.

*Pro Formas, for the Three Months Ended September 30, 2008*

Three Months Ended September 30, 2008	Enstar Group Limited	Gordian	UAH	Pro forma Adjustments	Enstar Group Limited Pro forma
Total income	\$ (1,825)	\$ 15,893	\$ 637	\$ —	\$ 14,705
Total expenses	(33,742)	(22,332)	(14,802)	(8,417)(a)	(79,293)
Loss attributable to Enstar Group Limited	(35,567)	(6,439)	(14,165)	(8,417)	(64,588)
Less: Noncontrolling interest	3,641	1,932	4,249	2,526(b)	12,348
Net loss attributable to Enstar Group Limited	<u>\$ (31,926)</u>	<u>\$ (4,507)</u>	<u>\$ (9,916)</u>	<u>\$ (5,891)</u>	<u>\$ (52,240)</u>
Net loss per ordinary share attributable to Enstar Group Limited — basic and diluted					<u>\$ (3.92)</u>

*Notes to the Pro Forma Condensed Combined Income Statements for the Three Months Ended September 30, 2008:*

Expenses:	
(a)(i) Adjustment to interest expense to reflect the financing costs of the acquisitions for the period	\$(2,929)
(ii) Adjustment to recognize amortization of fair value adjustments recorded at dates of acquisition	(6,299)
(iii) Adjustment to income taxes for pro forma adjustments	811
	<u>(8,417)</u>
(b) Reflects noncontrolling interest's share of net pro forma income statement adjustments	2,526

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**2. ACQUISITIONS — (cont'd)**

*Pro Formas, for the Nine Months Ended September 30, 2008*

Nine Months Ended September 30, 2008	Enstar Group Limited	Gordian	UAH	Pro forma Adjustments	Enstar Group Limited Pro forma
Total income	\$ 17,787	\$ 34,425	\$ 13,573	\$ (5,194)(a)	\$ 60,591
Total expenses	(82,624)	11,186	(52,081)	(34,143)(b)	(157,662)
(Loss) earnings before extraordinary gain	(64,837)	45,611	(38,508)	(39,337)	(97,071)
Extraordinary gain	50,280	—	—	—	50,280
(Loss) earnings before extraordinary gain	(14,557)	45,611	(38,508)	(39,337)	(46,791)
Noncontrolling interest (including share of extraordinary gain of \$15,084)	(13,137)	(13,683)	11,552	11,801(c)	(3,467)
Net (loss) earnings attributable to Enstar Group Limited	<u>\$ (27,694)</u>	<u>\$ 31,928</u>	<u>\$ (26,956)</u>	<u>\$ (27,536)</u>	<u>\$ (50,258)</u>
Loss per ordinary share attributable to Enstar Group Limited before extraordinary gain — basic and diluted					\$ (6.89)
Extraordinary gain attributable to Enstar Group Limited — basic and diluted					<u>2.84</u>
Net loss per ordinary share attributable to Enstar Group Limited — basic and diluted					<u>\$ (4.05)</u>

*Notes to the Pro Forma Condensed Combined Income Statements for the Nine Months Ended September 30, 2008:*

Income:	
(a) Adjustment to conform the accounting policy for investments to that of the Company	\$ (5,194)
Expenses:	
(b)(i) Adjustment to interest expense to reflect the financing costs of the acquisitions for the period	(13,645)
(ii) Adjustment to recognize amortization of fair value adjustments recorded at dates of acquisition	(24,833)
(iii) Adjustment to income taxes for pro forma adjustments	<u>4,335</u>
	(34,143)
(c) Reflects noncontrolling interest's share of net pro forma income statement adjustments	11,801

**British Engine**

On September 30, 2009, the Company, through its indirect subsidiary, Knapton Holdings Limited, entered into a definitive agreement for the purchase of British Engine Insurance Limited ("British Engine") from RSA Insurance Group plc for a total purchase price of GBP 28.0 million (approximately \$45.5 million). British Engine is a U.K. domiciled reinsurer that is in run-off. The purchase price of approximately \$45.5 million is expected to be financed in part by a bank loan facility to be finalized before closing and from available cash on hand. Completion of the transaction is conditioned on, among other things, regulatory approval and satisfaction of various customary closing conditions. The transaction is expected to close in the fourth quarter of 2009.

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**2. ACQUISITIONS — (cont'd)**

*Copenhagen Re*

On October 15, 2009, the Company, through its wholly-owned subsidiary, Marlon Insurance Company Limited, completed the previously announced acquisition of Copenhagen Reinsurance Company Ltd. (“Copenhagen Re”) from Alm. Brand Forsikring A/S for a purchase price of DKK149.2 million (approximately \$30.0 million). Copenhagen Re is a Norwegian domiciled reinsurer that is in run-off. The acquisition was funded from available cash on hand. As the initial accounting for the business combination has not been completed at the time of issuance of these financial statements, the disclosure required for business combinations will be made in a subsequent filing.

*Assuransinvest*

On November 2, 2009, the Company, through its wholly-owned subsidiary, Nordic Run-Off Limited, entered into a definitive agreement for the purchase of Forsakringsaktiebolaget Assuransinvest MF (“Assuransinvest”) for a purchase price of SEK 78.8 million (approximately \$11.1 million). Assuransinvest is a Swedish domiciled reinsurer that is in run-off. The purchase price is expected to be funded from available cash on hand. Completion of the transaction is conditioned on, among other things, regulatory approval and satisfaction of various customary closing conditions. The transaction is expected to close in the first quarter of 2010.

**3. SIGNIFICANT NEW BUSINESS**

The Company owns 50.1% of Shelbourne Group Limited (“Shelbourne”), which in turn owns 100% of Shelbourne Syndicate Services Limited, the Managing Agency for Lloyd’s Syndicate 2008, a syndicate approved by Lloyd’s of London on December 16, 2007 to undertake Reinsurance to Close (“RITC”) transactions (the transferring of liabilities from one Lloyd’s syndicate to another) with Lloyd’s syndicates in run-off. In February 2009, Lloyd’s Syndicate 2008 entered into a RITC agreement with a Lloyd’s syndicate with total gross insurance reserves of approximately \$67.0 million.

JCF FPK I L.P. (“JCF FPK”), a joint investment program between J.C. Flowers II L.P. (the “Flowers Fund”) and Fox-Pitt Kelton Cochran Caronia Waller (USA) LLC (“FPK”), owns 25% of Shelbourne. The Flowers Fund is a private investment fund advised by J.C. Flowers & Co. LLC. J. Christopher Flowers, a member of the Company’s board of directors and one of its largest shareholders, is the founder and Managing Member of J.C. Flowers & Co. LLC. John J. Oros, the Company’s Executive Chairman and a member of its board of directors, is a Managing Director of J.C. Flowers & Co. LLC. An affiliate of the Flowers Fund controls approximately 41% of FPK. In addition, in July 2008, FPK acted as lead managing underwriter in the Company’s public share offering.

**4. RESTRICTED CASH AND CASH EQUIVALENTS**

Restricted cash and cash equivalents were \$452.9 million and \$343.3 million as of September 30, 2009 and December 31, 2008, respectively. The restricted cash and cash equivalents are used as collateral against letters of credit and as guarantees under trust agreements. Letters of credit are issued to ceding insurers as security for the obligations of insurance subsidiaries under reinsurance agreements with those ceding insurers.

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**4. RESTRICTED CASH AND CASH EQUIVALENTS — (cont'd)**

**5. INVESTMENTS**

*Available-for-sale*

The amortized cost and estimated fair value of investments in fixed maturity securities classified as available-for-sale were as follows:

	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses Non-OTTI	Fair Value
<b>As at September 30, 2009</b>				
U.S. government and agency	\$ 51,224	\$ 1,081	\$ (2)	\$ 52,303
Non-U.S. government	10,776	30	(13)	10,793
Corporate	210,902	1,092	(1,838)	210,156
Residential mortgage-backed	1,169	17	—	1,186
CMO	543	—	(231)	312
	<u>\$274,614</u>	<u>\$ 2,220</u>	<u>\$ (2,084)</u>	<u>\$274,750</u>

	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses Non-OTTI	Fair Value
<b>As at December 31, 2008</b>				
U.S. government and agency	\$239,856	\$ 2,197	\$ —	\$242,053
Non-U.S. government	25,447	32	—	25,479
Corporate	229,135	737	(1,217)	228,655
Residential mortgage-backed	1,634	—	—	1,634
Asset backed	13,509	218	(255)	13,472
CMO	583	—	(367)	216
	<u>\$510,164</u>	<u>\$ 3,184</u>	<u>\$ (1,839)</u>	<u>\$511,509</u>

The following tables summarize fixed maturity securities classified as available-for-sale in an unrealized loss position and the aggregate fair value and gross unrealized loss by length of time the security has continuously been in an unrealized loss position:

	12 months or greater		Less than 12 months		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
<b>As at September 30, 2009</b>						
U.S. government and agency	\$ —	\$ —	\$ 2,535	\$ (2)	\$ 2,535	\$ (2)
Non-U.S. government	—	—	6,441	(13)	6,441	(13)
Corporate	15,327	(1,093)	8,198	(745)	23,525	(1,838)
CMO	312	(231)	—	—	312	(231)
	<u>\$15,639</u>	<u>\$ (1,324)</u>	<u>\$17,174</u>	<u>\$ (760)</u>	<u>\$32,813</u>	<u>\$ (2,084)</u>

ENSTAR GROUP LIMITED  
 NOTES TO THE UNAUDITED CONDENSED  
 CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

5. INVESTMENTS — (cont'd)

	12 months or greater		Less than 12 months		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
<b>As at December 31, 2008</b>						
Corporate	\$ —	\$ —	\$18,130	\$ (1,217)	\$18,130	\$ (1,217)
Asset backed	—	—	3,313	(255)	3,313	(255)
CMO	216	(367)	—	—	216	(367)
	<u>\$216</u>	<u>\$ (367)</u>	<u>\$21,443</u>	<u>\$ (1,472)</u>	<u>\$21,659</u>	<u>\$ (1,839)</u>

As at September 30, 2009 and December 31, 2008, the number of securities classified as available-for-sale in an unrealized loss position was 29 and 30, respectively, with a fair value of \$32.8 million and \$21.7 million, respectively. Of these securities, the number of securities that had been in an unrealized loss position for twelve months or longer was nineteen and one, respectively. As of September 30, 2009, one of these securities was considered to be other-than-temporarily impaired.

The contractual maturities of our fixed maturities, classified as available-for-sale, are shown below. Actual maturities may differ from contractual maturities because borrowers may have the right to call or prepay obligations with or without call or prepayment penalties.

	Amortized Cost	Fair Value	% of Total Fair Value
<b>As at September 30, 2009</b>			
Due in one year or less	\$206,956	\$207,445	75.5%
Due after one year through five years	30,824	31,281	11.4%
Due after five years through ten years	15,342	14,771	5.4%
Due after 10 years	19,780	19,755	7.2%
	272,902	273,252	99.5%
Residential mortgage-backed	1,169	1,186	0.4%
CMO	543	312	0.1%
	<u>\$274,614</u>	<u>\$274,750</u>	<u>100.0%</u>

	Amortized Cost	Fair Value	% of Total Fair Value
<b>As at December 31, 2008</b>			
Due in one year or less	\$393,357	\$393,673	77.1%
Due after one year through five years	74,547	73,556	14.4%
Due after five years through ten years	11,117	12,016	2.3%
Due after 10 years	15,417	16,942	3.3%
	494,438	496,187	97.1%
Residential mortgage-backed	1,634	1,634	0.3%
Asset backed	13,509	13,472	2.6%
CMO	583	216	0.0%
	<u>\$510,164</u>	<u>\$511,509</u>	<u>100.0%</u>

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**5. INVESTMENTS — (cont'd)**

***Held-to-maturity***

The amortized cost and estimated fair value of investments in fixed maturity securities classified as held-to-maturity were as follows:

	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses Non - OTTI	Fair Value
<b>As at September 30, 2009</b>				
U.S. government and agency	\$ 167,066	\$ 2,279	\$ (34)	\$ 169,311
Non-U.S. government	239,606	3,626	(131)	243,101
Corporate	775,927	16,904	(1,379)	791,452
Municipal	9,692	12	—	9,704
Residential mortgage-backed	8,244	161	(2)	8,403
Commercial mortgage-backed	5,168	1,132	—	6,300
Asset backed	23,678	1,326	(243)	24,761
CMO	34,791	49	(2,273)	32,567
	<u>\$1,264,172</u>	<u>\$ 25,489</u>	<u>\$ (4,062)</u>	<u>\$1,285,599</u>

	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses Non - OTTI	Fair Value
<b>As at December 31, 2008</b>				
U.S. government and agency	\$ 95,583	\$ 2,155	\$ —	\$ 97,738
Non-U.S. government	156,620	9,466	—	166,086
Corporate	277,073	2,452	(2,107)	277,418
Residential mortgage-backed	9,819	—	(193)	9,626
Commercial mortgage-backed	17,074	1,045	(117)	18,002
Asset backed	29,057	297	(602)	28,752
CMO	1,490	—	(426)	1,064
	<u>\$586,716</u>	<u>\$ 15,415</u>	<u>\$ (3,445)</u>	<u>\$598,686</u>

During the nine months ended September 30, 2009, the Company's investments classified as held-to-maturity increased from \$586.7 million as at December 31, 2008 to \$1,264.2 million as at September 30, 2009. The increase of \$677.5 million was due to a combination of: (1) the Company reducing its cash position through the purchase of short-term investments and fixed maturity investments classified as held-to-maturity; and (2) fixed maturity investments that were classified on acquisition as available-for-sale maturing or being sold and replaced by fixed maturity investments and short term investments classified as held-to-maturity. On acquisition, fixed maturity investments are generally classified as available-for-sale if they do not meet our investment parameters in regards to either duration or ratings.

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**5. INVESTMENTS — (cont'd)**

The following tables summarize fixed maturity securities classified as held-to-maturity in an unrealized loss position and the aggregate fair value and gross unrealized loss by length of time the security has continuously been in an unrealized loss position:

	12 months or greater		Less than 12 months		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
<b>As at September 30, 2009</b>						
U.S. government and agency	\$ —	\$ —	\$ 32,448	\$ (34)	\$ 32,448	\$ (34)
Non-U.S. government	—	—	22,466	(131)	22,466	(131)
Corporate	3,877	(533)	117,875	(846)	121,752	(1,379)
Residential mortgage-backed	301	—	66	(2)	367	(2)
Asset backed	873	(119)	9,042	(124)	9,915	(243)
CMO	1,030	(179)	25,099	(2,094)	26,129	(2,273)
	<u>\$6,081</u>	<u>\$ (831)</u>	<u>\$206,996</u>	<u>\$ (3,231)</u>	<u>\$213,077</u>	<u>\$ (4,062)</u>

	12 months or greater		Less than 12 months		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
<b>As at December 31, 2008</b>						
Corporate	\$ 2,014	\$ (46)	\$21,391	\$ (2,061)	\$23,405	\$ (2,107)
Residential mortgage-backed	2,699	(193)	—	—	2,699	(193)
Commercial mortgage-backed	58	(117)	—	—	58	(117)
Asset backed	26,642	(602)	—	—	26,642	(602)
CMO	1,011	(426)	—	—	1,011	(426)
	<u>\$32,424</u>	<u>\$ (1,384)</u>	<u>\$21,391</u>	<u>\$ (2,061)</u>	<u>\$53,815</u>	<u>\$ (3,445)</u>

As at September 30, 2009 and December 31, 2008, the number of fixed maturity securities classified as held-to-maturity in an unrealized loss position was 64 and 38, respectively, with a fair value of \$213.1 million and \$53.8 million, respectively. Of these securities, the number of securities that had been in an unrealized loss position for 12 months or longer was 11 and 24, respectively. As of September 30, 2009, none of these securities were considered to be other-than-temporarily impaired. The Company has no intent to sell and it is not more likely than not that the Company will be required to sell these securities before their anticipated recovery. The unrealized losses from these securities were not a result of credit, collateral or structural issues.

The contractual maturities of our fixed maturities, classified as held-to-maturity, are shown below. Actual maturities may differ from contractual maturities because borrowers may have the right to call or prepay obligations with or without call or prepayment penalties.

ENSTAR GROUP LIMITED  
 NOTES TO THE UNAUDITED CONDENSED  
 CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

5. INVESTMENTS — (cont'd)

	Amortized Cost	Fair Value	% of Total Fair Value
<b>As at September 30, 2009</b>			
Due in one year or less	\$ 491,374	\$ 494,185	38.4%
Due after one year through five years	625,871	642,564	50.0%
Due after five years through ten years	59,452	61,697	4.8%
Due after 10 years	15,594	15,122	1.2%
	1,192,291	1,213,568	94.4%
Residential mortgage-backed	8,244	8,403	0.7%
Commercial mortgage-backed	5,168	6,300	0.5%
Asset backed	23,678	24,761	1.9%
CMO	34,791	32,567	2.5%
	<u>\$1,264,172</u>	<u>\$1,285,599</u>	<u>100.0%</u>

	Amortized Cost	Fair Value	% of Total Fair Value
<b>As at December 31, 2008</b>			
Due in one year or less	\$ 80,002	\$ 80,492	13.4%
Due after one year through five years	387,550	395,224	66.1%
Due after five years through ten years	61,724	65,526	10.9%
Due after 10 years	—	—	—
	529,276	541,242	90.4%
Residential mortgage-backed	9,819	9,626	1.6%
Commercial mortgage-backed	17,074	18,002	3.0%
Asset backed	29,057	28,752	4.8%
CMO	1,490	1,064	0.2%
	<u>\$586,716</u>	<u>\$598,686</u>	<u>100.0%</u>

**Trading**

The estimated fair values of investments in fixed maturity securities and short-term investments classified as trading securities were as follows:

	September 30, 2009	December 31, 2008
U.S. government and agency	\$ 70,872	\$ 84,351
Corporate	25,276	30,644
Asset backed	615	399
CMO	436	452
Equities	18,689	3,747
	<u>\$ 115,888</u>	<u>\$ 119,593</u>

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**5. INVESTMENTS — (cont'd)**

*Other Investments*

At September 30, 2009 and December 31, 2008, the Company had \$76.4 million and \$60.2 million, respectively, of other investments recorded in limited partnerships, limited liability companies and equity funds. These other investments represented 2.2% and 1.7% of total investments and cash and cash equivalents at September 30, 2009 and December 31, 2008, respectively. All of the Company's investments in limited partnerships and limited liability companies that are categorized as other investments are subject to restrictions on redemptions and sales that are determined by the governing documents and limit the Company's ability to liquidate these investments in the short term. Due to a lag in the valuations reported by the managers, the Company records changes in the investment value with up to a three-month lag. These investments are accounted for under the equity method. As at September 30, 2009 and December 31, 2008, the Company had unfunded capital commitments relating to its other investments of \$101.2 million and \$108.0 million, respectively. As at September 30, 2009 and December 31, 2008, the Company had 93.2% and 90.6%, respectively, of other investments with a related party.

*Other-Than-Temporary Impairment Process*

Upon the adoption of the new guidance on investments in debt and equity securities, effective April 1, 2009, the Company changed its quarterly process for assessing whether declines in the fair value of its fixed maturity investments, both available-for-sale and held-to-maturity, represented impairments that are other-than-temporary. The process now includes reviewing each fixed maturity investment that is impaired and determining: (1) if the Company has the intent to sell the fixed maturity investment or (2) if it is more likely than not that the Company will be required to sell the fixed maturity investment before its anticipated recovery; and (3) assessing whether a credit loss exists, that is, where the Company expects that the present value of the cash flows expected to be collected from the fixed maturity investment are less than the amortized cost basis of the investment.

The Company had no planned sales of its fixed maturity investments classified as available-for-sale or held-to-maturity as at September 30, 2009. In assessing whether it is more likely than not that the Company will be required to sell a fixed maturity investment before its anticipated recovery, the Company considers various factors including its future cash flow requirements, legal and regulatory requirements, the level of its cash, cash equivalents, short term investments and fixed maturity investments available for sale in an unrealized gain position, and other relevant factors. For the three months ended September 30, 2009, the Company did not recognize any other-than-temporary impairments due to required sales.

In evaluating credit losses, the Company considers a variety of factors in the assessment of a fixed maturity investment including: (1) the time period during which there has been a significant decline below cost; (2) the extent of the decline below cost and par; (3) the potential for the fixed maturity investment to recover in value; (4) an analysis of the financial condition of the issuer; (5) the rating of the issuer; and (6) failure of the issuer of the fixed maturity investment to make scheduled interest or principal payments.

Based on the factors described above, the Company determined that, as at September 30, 2009, a credit loss existed for one fixed maturity investment. The Company did not consider an evaluation of future cash-flows necessary for this fixed maturity investment. The impairment of \$0.6 million was recognized in earnings.

ENSTAR GROUP LIMITED  
NOTES TO THE UNAUDITED CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

5. INVESTMENTS — (cont'd)

*Fair Value of Financial Instruments*

In accordance with the guidance on fair value measurements and disclosures, the Company has categorized its investments among levels as follows:

September 30, 2009				
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value
U.S. government and agency	\$ —	\$ 123,175	\$ —	\$123,175
Non-U.S. government	—	10,793	—	10,793
Corporate	—	235,432	—	235,432
Residential mortgage-backed	—	1,186	—	1,186
Asset backed	—	37	578	615
CMO	—	748	—	748
Equities	15,339	—	3,350	18,689
Other investments	—	—	76,363	76,363
<b>Total investments</b>	<b>\$ 15,339</b>	<b>\$ 371,371</b>	<b>\$ 80,291</b>	<b>\$467,001</b>

December 31, 2008				
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value
U.S. government and agency	\$ —	\$ 326,404	\$ —	\$326,404
Non-U.S. government	—	25,479	—	25,479
Corporate	—	259,299	—	259,299
Residential mortgage-backed	—	1,634	—	1,634
Asset backed	—	13,519	352	13,871
CMO	—	668	—	668
Equities	3,747	—	—	3,747
Other investments	—	—	60,237	60,237
<b>Total investments</b>	<b>\$ 3,747</b>	<b>\$ 627,003</b>	<b>\$ 60,589</b>	<b>\$691,339</b>

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**5. INVESTMENTS — (cont'd)**

The following table presents a reconciliation of the beginning and ending balances for all investments measured at fair value on a recurring basis using Level 3 inputs during the three months ended September 30, 2009.

	<u>Fixed Maturity Investments</u>	<u>Other Investments</u>	<u>Equity Securities</u>	<u>Total</u>
Level 3 investments as of July 1, 2009	\$ 263	\$ 71,039	\$ 3,200	\$74,502
Net purchases (sales and distributions)	—	517	—	517
Total realized and unrealized gains	315	4,807	150	5,272
Net transfers in and/or (out) of Level 3	—	—	—	—
Level 3 investments as of September 30, 2009	<u>\$ 578</u>	<u>\$ 76,363</u>	<u>\$ 3,350</u>	<u>\$80,291</u>

The amount of net gains for the period included in earnings attributable to the fair value of changes in assets still held at September 30, 2009 was \$4.3 million. Of this amount, \$0.5 million was included in net realized gains/(losses) and \$3.8 million in net investment income.

The following table presents a reconciliation of the beginning and ending balances for all investments measured at fair value on a recurring basis using Level 3 inputs during the nine month period ended September 30, 2009:

	<u>Fixed Maturity Investments</u>	<u>Other Investments</u>	<u>Equity Securities</u>	<u>Total</u>
Level 3 investments as of January 1, 2009	\$ 352	\$ 60,237	\$ —	\$60,589
Net purchases (sales and distributions)	—	12,932	2,006	14,938
Total realized and unrealized gains	226	3,194	1,344	4,764
Net transfers in and/or (out) of Level 3	—	—	—	—
Level 3 investments as of September 30, 2009	<u>\$ 578</u>	<u>\$ 76,363</u>	<u>\$ 3,350</u>	<u>\$80,291</u>

The amount of net gains for the period included in earnings attributable to the fair value of changes in assets still held at September 30, 2009 was \$3.7 million. Of this amount, \$1.6 million was included in net realized gains/(losses) and \$2.1 million was included in net investment income.

During the nine months ended September 30, 2009 and 2008, proceeds from the sale and maturities of available-for-sale securities were \$489.8 million and \$237.7 million, respectively. Gross realized gains on sale of available-for sale securities were \$0.1 million and \$0.3 million, respectively, and gross unrealized losses on sale of available-for-sale securities, were \$0.6 million and \$nil, respectively.

**Restricted Investments**

The Company is required to maintain investments on deposit with various regulatory authorities to support its insurance and reinsurance operations. The investments on deposit are available to settle insurance and reinsurance liabilities. The Company also utilizes trust accounts to collateralize business with its insurance and reinsurance counterparties. These trust accounts generally take the place of letter of credit requirements. The investments in

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**5. INVESTMENTS — (cont'd)**

trust as collateral are primarily highly rated fixed maturity securities. The carrying value of our restricted investments was as follows:

	<u>September 30,</u> <u>2009</u>	<u>December 31,</u> <u>2008</u>
Assets used for collateral in trust for third-party agreements	\$ 216,280	\$ 297,491
Deposits with U.S. regulatory authorities	6,340	11,751
	<u>\$ 222,620</u>	<u>\$ 309,242</u>

**6. LOANS PAYABLE**

On December 30, 2008, in connection with the UAH acquisition, Royston Run-off Limited ("Royston") borrowed the full amount of \$184.6 million available under a term facilities agreement (the "Unionamerica Facilities Agreement"), with National Australia Bank Limited ("NABL"). Of that amount, Royston borrowed \$152.6 million under Facility A and \$32.0 million under Facility B. The loans are secured by a lien covering all of the assets of Royston. The Company provided a guarantee of all of Royston's obligations under the facilities agreement. The Facility A portion is repayable within three years from October 3, 2008, the date of the Unionamerica Facilities Agreement. The Facility B portion is repayable within four years from the date of the Unionamerica Facilities Agreement. The Flowers Fund has a 30% non-voting equity interest in Royston Holdings Ltd., the direct parent company of Royston.

On August 4, 2009, Royston entered into an amendment and restatement of the Unionamerica Facilities Agreement pursuant to which: (1) NABL's participation in the original \$184.6 million facility was reduced from 100% to 50%, with Barclays Bank PLC providing the remaining 50%; (2) the guarantee provided by the Company of all of the obligations of Royston under the Unionamerica Facilities Agreement was terminated; and (3) the interest rate on the Facility A portion was reduced from LIBOR plus 3.50% to LIBOR plus 2.75% and the interest rate on the Facility B portion was reduced from LIBOR plus 4.00% to LIBOR plus 3.25%.

On August 25, 2009, the Company's wholly-owned subsidiary, Cumberland Holdings Limited ("Cumberland"), distributed AU\$106.8 million (approximately \$89.4 million) of which AU\$53.4 million (approximately \$44.7 million) went towards repayment of the outstanding principal of the term facility agreement of Cumberland, which partially funded the Gordian acquisition (the "Cumberland Loan Facility"), with the remaining AU\$53.4 million (approximately \$44.7 million) being distributed to Cumberland's voting and non-voting equity participants. As at September 30, 2009, the outstanding loan balance related to the Cumberland Loan Facility was AU\$95.2 million (approximately \$84.1 million).

Subsequent to September 30, 2009, on October 10, 2009, Cumberland distributed an additional AU\$43.0 million (approximately \$39.0 million) of which AU\$21.5 million (approximately \$19.5 million) went towards repayment of the outstanding principal of the Cumberland Loan Facility with the remaining AU\$21.5 million (approximately \$19.5 million) being distributed to Cumberland's voting and non-voting equity participants.

The fair values of the Company's floating rate loans approximate their book value.

**7. EMPLOYEE BENEFITS**

Our share-based compensation plans provide for the grant of various awards to our employees and to members of the board of directors. These are described in Note 12 to the Consolidated Financial Statements contained in our Annual Report on Form 10-K for the year ended December 31, 2008. The information below includes both the employee and director components of our share-based compensation.

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**7. EMPLOYEE BENEFITS — (cont'd)**

**(a) Employee share plans**

Employee stock awards for the nine months ended September 30, 2009 are summarized as follows:

	<u>Number of Shares</u>	<u>Weighted Average Fair Value of the Award</u>
Nonvested — January 1, 2009	13,749	\$ 813
Granted	68,653	3,517
Vested	<u>(80,766)</u>	<u>(4,251)</u>
Nonvested — September 30, 2009	<u>1,636</u>	\$ 102

*i) 2004-2005 Employee Share Plan*

On May 23, 2006, the Company entered into an agreement and plan of merger with The Enstar Group, Inc. ("EGI") and a recapitalization agreement. These agreements provided for the cancellation of the then-current annual incentive compensation plan and replaced it with a new annual incentive compensation plan.

As a result of the execution of these agreements, the accounting treatment for share-based awards under the Company's employee share plan changed from book value to fair value. The determination of the share-award expenses was based on the fair-market value per share of EGI common stock as of the grant date and is recognized over the vesting period.

Compensation costs of \$0.1 million and \$0.4 million relating to the issuance of share-awards to employees of the Company in 2004 and 2005 have been recognized in the Company's statement of earnings for the three and nine months ended September 30, 2008, respectively, as compared to \$Nil for both the three and nine month periods ended September 30, 2009.

*ii) 2006-2010 Annual Incentive Plan and 2006 Equity Incentive Plan*

For the nine months ended September 30, 2009 and 2008, 64,378 and 27,140 shares were awarded to officers and employees under the 2006 Equity Incentive Plan, respectively. The total value of the awards for the nine months ended September 30, 2009 and 2008 was \$3.3 million and \$2.6 million, respectively, and was charged against the 2006-2010 Annual Incentive Plan accrual established for the years ended December 31, 2008 and 2007, respectively.

The accrued expense/(recovery) relating to the 2006-2010 Annual Incentive Plan for the three and nine months ended September 30, 2009, was \$6.2 million and \$9.8 million, respectively, as compared to \$(3.5) million and \$0.5 million for the three and nine-month periods ended September 30, 2008, respectively.

*iii) Enstar Group Limited Employee Share Purchase Plan*

Compensation costs of less than \$0.1 million and \$0.2 million relating to the shares issued under the Employee Share Purchase Plan (the "Plan") have been recognized in the Company's statement of earnings for the three and nine-month periods ended September 30, 2009, respectively, as compared to less than \$0.1 million and \$0.1 million for the three and nine-month periods ended September 30, 2008, respectively. As at September 30, 2009, 6,970 shares have been issued to employees under the Plan.

ENSTAR GROUP LIMITED  
NOTES TO THE UNAUDITED CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

7. EMPLOYEE BENEFITS — (cont'd)

(b) *Options*

	Number of Shares	Weighted Average Exercise Price	Intrinsic Value of Shares
Outstanding — January 1, 2009	490,371	\$ 25.40	\$16,545
Granted	—	—	—
Exercised	(162,785)	17.18	(2,796)
Forfeited	—	—	—
Outstanding — September 30, 2009	<u>327,586</u>	\$ 29.49	\$10,693

Stock options outstanding and exercisable as of September 30, 2009 were as follows:

Ranges of Exercise Prices	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life
\$10 - \$20	160,860	\$ 17.23	1.4 years
\$40 - \$60	166,726	41.32	3.9 years

(c) *Deferred Compensation and Stock Plan for Non-Employee Directors*

For the nine months ended September 30, 2009 and 2008, 5,292 and 3,331 restricted share units, respectively, were credited to the accounts of Non-Employee Directors under the Enstar Group Limited Deferred Compensation and Ordinary Share Plan for Non-Employee Directors (the "Deferred Compensation Plan").

Following T. Wayne Davis' resignation from the Board of Directors, 1,576 restricted share units previously credited to his account under the Deferred Compensation Plan were converted into the same number of the Company's ordinary shares on April 1, 2009, with fractional shares paid in cash. Also on April 1, 2009, 14,146 restricted stock units previously credited to Mr. Davis' account under EGI's Deferred Compensation and Stock Plan for Non-Employee Directors were converted into the same number of the Company's ordinary shares.

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**8. EARNINGS PER SHARE**

The following table sets forth the comparison of basic and diluted earnings per share for the three and nine-month periods ended September 30, 2009 and 2008.

	Three Months Ended		Nine Months Ended	
	September 30, 2009	September 30, 2008	September 30, 2009	September 30, 2008
<b>Basic earnings (loss) per share</b>				
Net earnings (loss) attributable to Enstar Group Limited before extraordinary gain	\$ 34,987	\$ (36,435)	\$ 55,269	\$ (48,771)
Weighted average shares outstanding — basic	13,578,555	13,317,919	13,492,044	12,404,871
Earnings (loss) per share attributable to Enstar Group Limited before extraordinary gain — basic	\$ 2.58	\$ (2.74)	\$ 4.10	\$ (3.93)
<b>Diluted earnings (loss) per share</b>				
Net earnings (loss) attributable to Enstar Group Limited before extraordinary gain	\$ 34,987	\$ (36,435)	\$ 55,269	\$ (48,771)
Weighted average shares outstanding — basic	13,578,555	13,317,919	13,492,044	12,404,871
Share equivalents:				
Unvested Shares	1,636	—	5,896	—
Options	223,390	—	223,254	—
Restricted share units	11,070	—	8,193	—
Weighted average shares outstanding — diluted	13,814,651	13,317,919	13,729,387	12,404,871
Earnings (loss) per share attributable to Enstar Group Limited before extraordinary gain — diluted	\$ 2.53	\$ (2.74)	\$ 4.03	\$ (3.93)

The following securities have not been included in the computation of diluted earnings per share for the three and nine-month periods ended September 30, 2008 because to do so would have been anti-dilutive for the periods presented.

	Three Months Ended September 30, 2008	Nine Months Ended September 30, 2008
Unvested shares	25,862	18,037
Options	261,207	258,324
Restricted share units	4,478	3,255
Total	291,547	279,616

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**8. EARNINGS PER SHARE — (cont'd)**

**9. RELATED PARTY TRANSACTIONS**

The Company has entered into certain transactions with companies and partnerships that are affiliated with J. Christopher Flowers and John J. Oros. Mr. Flowers is a member of the Company's board of directors and is one of the Company's largest shareholders. Mr. Oros is the Company's Executive Chairman and a member of the board of directors.

- During the nine months ended September 30, 2009 the Company funded an additional \$6.1 million of its outstanding capital commitment to entities affiliated with Messrs. Flowers and Oros. The Company had, as of September 30, 2009 and December 31, 2008, investments in entities affiliated with Messrs. Flowers and Oros with a total value of \$71.2 million and \$54.5 million, respectively, and outstanding commitments to entities managed by Messrs. Flowers and Oros, for the same periods, of \$97.9 million and \$104.0 million, respectively. The Company's outstanding commitments may be drawn down over approximately the next five years.
- On January 16, 2009, the Company committed to invest approximately \$8.7 million in JCF III Co-invest I L.P., an entity affiliated with Messrs. Flowers and Oros, in connection with its investment in certain of the operations, assets and liabilities of IndyMac Bank, F.S.B.

As at September 30, 2009, the related party investments associated with Messrs. Flowers and Oros accounted for 96.7% of the total unfunded capital commitments of the Company and 93.2% of the total amount of investments classified as Other Investments by the Company.

**10. SEGMENT INFORMATION**

The determination of reportable segments is based on how senior management monitors the Company's operations. The Company measures the results of its operations under two major business categories: consulting and reinsurance.

The Company's consulting segment comprises the operations and financial results of those subsidiaries that provide management and consulting services, forensic claims inspections services and reinsurance collection services to third-party clients, as well as to the Company's reinsurance segment, in return for management fees. The Company provides consulting and management services through its subsidiaries located in the United States, Bermuda and Europe to large multinational company clients with insurance and reinsurance companies and portfolios in run-off relating to risks spanning the globe. As a result, extracting and quantifying revenues attributable to certain geographic locations would be impracticable given the global nature of the business.

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**10. SEGMENT INFORMATION — (cont'd)**

All of the consulting fees for the reinsurance segment relate to intercompany fees paid to the consulting segment.

	<b>Three Months Ended September 30, 2009</b>		
	<b>Reinsurance</b>	<b>Consulting</b>	<b>Total</b>
Consulting fees	\$ (8,099)	\$ 12,211	\$ 4,112
Net investment income	22,927	1,713	24,640
Net realized gain	2,912	—	2,912
	<u>17,740</u>	<u>13,924</u>	<u>31,664</u>
Net reduction in loss and loss adjustment expense liabilities	(42,558)	—	(42,558)
Salaries and benefits	7,577	9,420	16,997
General and administrative expenses	7,795	4,400	12,195
Interest expense	4,262	—	4,262
Net foreign exchange (gain) loss	(7,253)	89	(7,164)
	<u>(30,177)</u>	<u>13,909</u>	<u>(16,268)</u>
Earnings before income taxes and share of net earnings of partly owned company	47,917	15	47,932
Income taxes	(1,449)	(1,211)	(2,660)
Share of net earnings of partly owned company	196	—	196
Net earnings (loss)	46,664	(1,196)	45,468
Less: Net earnings attributable to noncontrolling interest	(10,481)	—	(10,481)
Net earnings (loss) attributable to Enstar Group Limited	<u>\$ 36,183</u>	<u>\$ (1,196)</u>	<u>\$ 34,987</u>

**ENSTAR GROUP LIMITED**  
**NOTES TO THE UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**10. SEGMENT INFORMATION — (cont'd)**

	<b>Three Months Ended September 30, 2008</b>		
	<b>Reinsurance</b>	<b>Consulting</b>	<b>Total</b>
Consulting fees	\$ (7,922)	\$ 15,332	\$ 7,410
Net investment income	14,116	(7,267)	6,849
Net realized loss	(192)	—	(192)
	<u>6,002</u>	<u>8,065</u>	<u>14,067</u>
Net reduction in loss and loss adjustment expense liabilities	(3,469)	—	(3,469)
Salaries and benefits	(1,746)	7,759	6,013
General and administrative expenses	6,746	3,375	10,121
Interest expense	7,919	—	7,919
Net foreign exchange loss	24,144	912	25,056
	<u>33,594</u>	<u>12,046</u>	<u>45,640</u>
Loss before income taxes and minority interest	(27,592)	(3,981)	(31,573)
Income taxes	(11,827)	1,393	(10,434)
Net loss	(39,419)	(2,588)	(42,007)
Less: Net loss attributable to noncontrolling interest	5,572	—	5,572
Net loss attributable to Enstar Group Limited	<u>\$ (33,847)</u>	<u>\$ (2,588)</u>	<u>\$ (36,435)</u>

	<b>Nine Months Ended September 30, 2009</b>		
	<b>Reinsurance</b>	<b>Consulting</b>	<b>Total</b>
Consulting fees	\$ (24,343)	\$ 35,970	\$ 11,627
Net investment income	57,617	2,825	60,442
Net realized gain	1,982	—	1,982
	<u>35,256</u>	<u>38,795</u>	<u>74,051</u>
Net reduction in loss and loss adjustment expense liabilities	(86,630)	—	(86,630)
Salaries and benefits	14,004	27,324	41,328
General and administrative expenses	22,578	12,909	35,487
Interest expense	13,902	—	13,902
Net foreign exchange gain	(6,892)	(285)	(7,177)
	<u>(43,038)</u>	<u>39,948</u>	<u>(3,090)</u>
Earnings (loss) before income taxes and share of net earnings of partly owned company	78,294	(1,153)	77,141
Income taxes	399	(2,418)	(2,019)
Share of net earnings of partly owned company	465	—	465
Net earnings (loss)	79,158	(3,571)	75,587
Less: Net earnings attributable to noncontrolling interest	(20,318)	—	(20,318)
Net earnings (loss) attributable to Enstar Group Limited	<u>\$ 58,840</u>	<u>\$ (3,571)</u>	<u>\$ 55,269</u>

ENSTAR GROUP LIMITED  
NOTES TO THE UNAUDITED CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

10. SEGMENT INFORMATION — (cont'd)

	Nine Months Ended September 30, 2008		
	Reinsurance	Consulting	Total
Consulting fees	\$ (24,206)	\$ 41,252	\$ 17,046
Net investment income (loss)	39,127	(10,469)	28,658
Net realized loss	(262)	—	(262)
	<u>14,659</u>	<u>30,783</u>	<u>45,442</u>
Net reduction in loss and loss adjustment expense liabilities	(28,267)	—	(28,267)
Salaries and benefits	5,487	25,830	31,317
General and administrative expenses	24,004	12,000	36,004
Interest expense	18,878	—	18,878
Net foreign exchange loss	18,249	538	18,787
	<u>38,351</u>	<u>38,368</u>	<u>76,719</u>
Loss before income taxes and share of net earnings of partly owned company	(23,692)	(7,585)	(31,277)
Income taxes	(16,575)	3,186	(13,389)
Loss before extraordinary gain	(40,267)	(4,399)	(44,666)
Extraordinary gain — Negative goodwill	50,280	—	50,280
Net earnings (loss)	10,013	(4,399)	5,614
Less: Net earnings attributable to noncontrolling interest	(19,189)	—	(19,189)
Net loss attributable to Enstar Group Limited	<u>\$ (9,176)</u>	<u>\$ (4,399)</u>	<u>\$ (13,575)</u>

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Shareholders  
of Enstar Group Limited

We have reviewed the accompanying condensed consolidated balance sheet of Enstar Group Limited and subsidiaries (the "Company") as of September 30, 2009, and the related condensed consolidated statements of earnings and comprehensive income for the three-month and nine-month periods ended September 30, 2009 and 2008, and changes in shareholders' equity and cash flows for the nine-month periods ended September 30, 2009 and 2008. These interim financial statements are the responsibility of the Company's management.

We conducted our review in accordance with the standards of the Public Company Accounting Oversight Board (United States). A review of interim financial information consists principally of applying analytical procedures and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States), the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to such condensed consolidated interim financial statements for them to be in conformity with accounting principles generally accepted in the United States of America.

We have previously audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of Enstar Group Limited and subsidiaries as of December 31, 2008 and the related consolidated statements of earnings, comprehensive income, changes in shareholders' equity, and cash flows for the year then ended prior to the retrospective adjustment to give effect to revised presentation and disclosure requirements related to noncontrolling interests in consolidated subsidiaries (not presented herein); and in our report dated March 4, 2009, we expressed an unqualified opinion on those consolidated financial statements. We have also audited the adjustments that were applied to retrospectively adjust the December 31, 2008 consolidated financial statements of Enstar Group Limited and subsidiaries (not presented herein). In our opinion, the information set forth in the accompanying condensed consolidated balance sheet as of December 31, 2008 is fairly stated, in all material respects, in relation to the consolidated balance sheet from which it has been derived.

/s/ Deloitte & Touche

Hamilton, Bermuda  
November 6, 2009

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following is a discussion and analysis of our results of operations for the three and nine months ended September 30, 2009 and 2008. This discussion and analysis should be read in conjunction with the attached unaudited condensed consolidated financial statements and notes thereto and the audited consolidated financial statements and notes thereto contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008.

**Business Overview**

Enstar Group Limited, or Enstar, was formed in August 2001 under the laws of Bermuda to acquire and manage insurance and reinsurance companies in run-off, and to provide management, consulting and other services to the insurance and reinsurance industry.

Since our formation we have acquired a number of insurance and reinsurance companies and are now administering those businesses in run-off. We derive our net earnings from the ownership and management of these companies primarily by settling insurance and reinsurance claims below the recorded loss reserves and from returns on the portfolio of investments retained to pay future claims. In addition, we have formed other businesses that provide management and consultancy services, claims inspection services and reinsurance collection services to our affiliates and third-party clients for both fixed and success-based fees.

**Recent Transactions**

On November 2, 2009, we, through our wholly-owned subsidiary, Nordic Run-Off Limited, entered into a definitive agreement for the purchase of Forsakringsaktiebolaget Assuransinvest MF, or Assuransinvest, for a purchase price of SEK 78.8 million (approximately \$11.1 million). Assuransinvest is a Swedish domiciled reinsurer that is in run-off. The purchase price is expected to be funded from available cash on hand. Completion of the transaction is conditioned on, among other things, regulatory approval and satisfaction of various customary closing conditions. The transaction is expected to close in the first quarter of 2010.

On October 15, 2009, we, through our wholly-owned subsidiary, Marlon Insurance Company Limited, completed the previously announced acquisition of Copenhagen Reinsurance Company Ltd., or Copenhagen Re, from Alm. Brand Forsikring A/S for a total purchase price of DKK149.2 million (approximately \$30.0 million). Copenhagen Re is a Norwegian domiciled reinsurer that is in run-off. The acquisition was funded from available cash on hand.

On September 30, 2009, we, through our indirect subsidiary, Knapton Holdings Limited, entered into a definitive agreement for the purchase of British Engine Insurance Limited, or British Engine, from RSA Insurance Group plc for a total purchase price of GBP 28.0 million (approximately \$45.5 million). British Engine is a U.K. domiciled reinsurer that is in run-off. The purchase price of approximately \$45.5 million is expected to be financed in part by a bank loan facility to be finalized before closing and from available cash on hand. Completion of the transaction is conditioned on, among other things, regulatory approval and satisfaction of various customary closing conditions. We expect the transaction to close in the fourth quarter of 2009.

On January 31, 2009, we, through our indirect subsidiary, Sun Gulf Holdings Inc., completed the acquisition of all of the outstanding capital stock of Constellation Reinsurance Company Limited, or Constellation, for a total purchase price of approximately \$2.5 million. Constellation is a New York domiciled reinsurer that is in run-off. The acquisition was funded from available cash on hand.

We own 50.1% of Shelbourne Group Limited, which in turn owns 100% of Shelbourne Syndicate Services Limited, the Managing Agency for Lloyd's Syndicate 2008, a syndicate approved by Lloyd's of London on December 16, 2007 to undertake Reinsurance to Close or "RITC" transactions (the transferring of liabilities from one Lloyd's Syndicate to another) with Lloyd's syndicates in run-off. In February 2009, Lloyd's Syndicate 2008 entered into a RITC agreement with a Lloyd's syndicate with total gross insurance reserves of approximately \$67.0 million. JCF FPK I L.P., or JCF FPK, a joint investment program between J.C. Flowers II L.P., or the Flowers Fund, and Fox-Pitt Keltton Cochran Caronia Waller (USA) LLC, or FPK, owns 25% of Shelbourne Group Limited.

The Flowers Fund is a private investment fund advised by J.C. Flowers & Co. LLC. J. Christopher Flowers, a member of our board of directors and one of our largest shareholders, is the founder and Managing Member of J.C. Flowers & Co. LLC. John J. Oros, our Executive Chairman and a member of our board of directors, is a Managing Director of J.C. Flowers & Co. LLC. In July 2008, FPK acted as lead managing underwriter in our public share offering. An affiliate of the Flowers Fund controls approximately 41% of FPK.

**Results of Operations**

The following table sets forth our selected consolidated statement of operations data for each of the periods indicated.

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2009	2008	2009	2008
	(in thousands of U.S. dollars)			
<b>INCOME</b>				
Consulting fees	\$ 4,112	\$ 7,410	\$ 11,627	\$ 17,046
Net investment income	24,640	6,849	60,442	28,658
Net realized gains (losses)	2,912	(192)	1,982	(262)
	<u>31,664</u>	<u>14,067</u>	<u>74,051</u>	<u>45,442</u>
<b>EXPENSES</b>				
Net reduction in loss and loss adjustment expense liabilities	(42,558)	(3,469)	(86,630)	(28,267)
Salaries and benefits	16,997	6,013	41,328	31,317
General and administrative expenses	12,195	10,121	35,487	36,004
Interest expense	4,262	7,919	13,902	18,878
Net foreign exchange (gain) loss	(7,164)	25,056	(7,177)	18,787
	<u>(16,268)</u>	<u>45,640</u>	<u>(3,090)</u>	<u>76,719</u>
Earnings (loss) before income taxes and share of net earnings of partly owned company	47,932	(31,573)	77,141	(31,277)
Income taxes	(2,660)	(10,434)	(2,019)	(13,389)
Share of net earnings of partly owned company	196	—	465	—
Earnings (loss) before extraordinary gain	45,468	(42,007)	75,587	(44,666)
Extraordinary gain — negative goodwill	—	—	—	50,280
NET EARNINGS (LOSS)	45,468	(42,007)	75,587	5,614
Less: Net (earnings) loss attributable to noncontrolling interest	(10,481)	5,572	(20,318)	(19,189)
NET EARNINGS (LOSS) ATTRIBUTABLE TO ENSTAR GROUP LIMITED	<u>\$ 34,987</u>	<u>\$(36,435)</u>	<u>\$ 55,269</u>	<u>\$ (13,575)</u>

**Comparison of the Three Months Ended September 30, 2009 and 2008**

We reported consolidated net earnings (loss), before net (earnings) loss attributable to noncontrolling interest, of approximately \$45.5 million for the three months ended September 30, 2009 as compared to approximately \$(42.0) million for the same period in 2008. The increase in earnings of approximately \$87.5 million was primarily attributable to the following:

- (i) An increase in investment income (inclusive of realized gains/(losses)) of \$20.9 million primarily as a result of the reduction in the writedowns in fair value of our private equity portfolio classified as other investments of \$28.1 million, partially offset by lower investment income reflecting the impact of lower global short-term and intermediate interest rates.

[Table of Contents](#)

- (ii) A movement in foreign exchange earnings from a loss of \$25.1 million for the three months ended September 30, 2008 to a gain of \$7.2 million for the three months ended September 30, 2009. This increase of \$32.3 million arose primarily as a result of holding surplus net foreign currency assets at a time when the U.S. dollar was depreciating against the majority of currencies.
- (iii) Reduced interest expense of \$3.7 million due primarily to lower interest rates on outstanding term loan facility agreements.
- (iv) An increased net reduction in loss and loss adjustment expense liabilities of \$39.1 million.
- (v) Reduced consulting fees of \$3.1 million due primarily to decreased incentive fees earned from third-party arrangements.
- (vi) A reduction in income taxes of \$7.8 million due to lower tax liabilities recorded on the results of our taxable subsidiaries; partially offset by
- (vii) An increase in salary and general and administrative costs of \$13.1 million due primarily to increased salary costs related to our discretionary bonus plan as a result of increased net earnings in the period.

We recorded noncontrolling interest in net (earnings) loss of \$(10.5) million and \$5.6 million for the three months ended September 30, 2009 and 2008, respectively. The increase for the three months ended September 30, 2009 in noncontrolling interest was due primarily to: (1) an increase in net earnings for the three months ended September 30, 2009 as compared to the same period in 2008; and (2) an increase in the number of subsidiary companies for which there exists a noncontrolling interest. Accordingly, net earnings attributable to Enstar Group Limited increased from a loss of approximately \$36.4 million for the three months ended September 30, 2008 to earnings of approximately \$35.0 million for the three months ended September 30, 2009.

*Consulting Fees:*

	<b>Three Months Ended September 30,</b>		
	<b>2009</b>	<b>2008</b>	<b>Variance</b>
	<small>(in thousands of U.S. dollars)</small>		
Consulting	\$12,211	\$15,332	\$ (3,121)
Reinsurance	(8,099)	(7,922)	(177)
<b>Total</b>	<b>\$ 4,112</b>	<b>\$ 7,410</b>	<b>\$ (3,298)</b>

We earned consulting fees of approximately \$4.1 million and \$7.4 million for the three months ended September 30, 2009 and 2008, respectively. The decrease in consulting fees for the period primarily related to decreased incentive fees earned from third-party agreements.

Internal management fees of \$8.1 million and \$7.9 million were paid in the three months ended September 30, 2009 and 2008, respectively, by our reinsurance companies to our consulting companies. The increase in internal fees paid to the consulting segment was due primarily to increased fees paid from companies we acquired in the fourth quarter 2008 partially offset by a decrease in fees paid by our reinsurance companies in respect of internal collection and audit services.

*Net Investment Income and Net Realized Gains:*

	<b>Three Months Ended September 30,</b>					
	<b>Net Investment Income</b>			<b>Net Realized Gains/(Losses)</b>		
	<b>2009</b>	<b>2008</b>	<b>Variance</b>	<b>2009</b>	<b>2008</b>	<b>Variance</b>
	<small>(in thousands of U.S. dollars)</small>					
Consulting	\$ 1,713	\$ (7,267)	\$ 8,980	\$ —	\$ —	\$ —
Reinsurance	22,927	14,116	8,811	2,912	(192)	3,104
<b>Total</b>	<b>\$24,640</b>	<b>\$ 6,849</b>	<b>\$17,791</b>	<b>\$2,912</b>	<b>\$(192)</b>	<b>\$ 3,104</b>

[Table of Contents](#)

Net investment income for the three months ended September 30, 2009 increased by \$17.8 million to \$24.6 million, as compared to \$6.8 million for the same period in 2008. The increase was primarily attributable to the following:

- (i) Movement of \$28.1 million in the fair value of our investments in New NIB Partners LP, the Flowers Fund, Affirmative Investment LLC and GSC European Mezzanine Fund II, LP from a writedown of \$24.3 million for the three months ended September 30, 2008 to an appreciation of \$3.8 million for the three months ended September 30, 2009; partially offset by
- (ii) Lower investment income from fixed maturities and cash and cash equivalents, reflecting the impact of lower global short-term and intermediate interest rates — the average U.S. Federal Funds Rate has decreased from 2.00% for the three months ended September 30, 2008 to 0.25% for the three months ended September 30, 2009.
- (iii) Decrease in the Australian dollar and British pound quarterly average foreign exchange rates to the U.S. dollar.

The average return on our cash and fixed maturities investments for the three months ended September 30, 2009 was 2.35%, as compared to the average return of 5.1% for the three months ended September 30, 2008. The average Standard & Poor's credit rating of our fixed income investments at September 30, 2009 was AA.

Net realized gains for the three months ended September 30, 2009 and 2008 were \$2.9 million and \$(0.2) million, respectively, with the increase relating primarily to the mark to market gains in the value of our equity portfolio.

*Net Reduction in Loss and Loss Adjustment Expense Liabilities:*

The following table shows the components of the movement in the net increase in loss and loss adjustment expense liabilities for the three months ended September 30, 2009 and 2008.

	Three Months Ended	
	September 30,	
	2009	2008
	(in thousands of U.S. dollars)	
Net Losses Paid	\$ (50,756)	\$ (36,366)
Net Change in Case Reserves	91,540	26,468
Net Change in IBNR	3,952	13,850
Reduction in Estimates of Net Ultimate Losses	44,736	3,952
Reduction in Provisions of Unallocated Loss Adjustment Expense Liabilities	9,830	13,672
Amortization of Fair Value Adjustments	(12,008)	(14,155)
Net Reduction in Loss and Loss Adjustment Expense Liabilities	\$ 42,558	\$ 3,469

The net reduction in loss and loss adjustment expense liabilities for the three months ended September 30, 2009 and 2008 was \$42.6 million and \$3.5 million, respectively.

The net reduction in loss and loss adjustment expense liabilities for the three months ended September 30, 2009 of \$42.6 million was attributable to a reduction in estimates of net ultimate losses of \$44.7 million and a reduction in provisions of unallocated loss adjustment expense liabilities, or ULAE, of \$9.8 million, relating to 2009 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments of \$12.0 million relating to companies acquired.

The reduction in estimates of net ultimate losses of \$44.7 million primarily related to the following:

- (i) A reduction in net ultimate losses of \$23.8 million in two of our insurance entities whereby previously advised net case and loss adjustment expense, or LAE, reserves of \$18.6 million were settled without

payment. The application of our reserving methodologies to the reduced case and LAE reserves resulted in a reduction in net incurred but not reported, or IBNR, reserves of \$5.2 million.

- (ii) During the three months ended September 30, 2009, we culminated historic case reserve reviews for eight of our insurance and reinsurance subsidiaries for which no updated advices had been received for a number of years. This review confirmed the redundancy of approximately 4,000 advised case reserves with an aggregate value of \$16.6 million.
- (iii) A reduction in net ultimate losses of \$5.4 million in another of our insurance entities that completed, during September 2009, a Solvent Scheme of Arrangement relating to its U.K. liabilities. A Solvent Scheme of Arrangement is an arrangement between a company and its creditors whereby the company, by making a one-time full and final settlement of its liabilities to policyholders, is able to achieve financial certainty and finality. During the three months ended September 30, 2009, the entity in question settled its remaining U.K. net case reserves of \$1.5 million, net IBNR reserves of \$3.1 million and net reinsurance recoverables for the net receipt of \$0.8 million.

The table below provides a reconciliation of the beginning and ending reserves for losses and loss adjustment expenses for the three months ended September 30, 2009 and September 30, 2008. Losses incurred and paid are reflected net of reinsurance recoverables.

	Three Months Ended September 30,	
	2009	2008
(in thousands of U.S. dollars)		
Balance as of July 1	\$ 2,781,577	\$ 2,311,590
Less: Reinsurance Recoverables	375,431	529,075
	2,406,146	1,782,515
Incurred Related to Prior Years	(42,558)	(3,469)
Paid Related to Prior Years	(50,756)	(36,366)
Effect of Exchange Rate Movement	15,867	(102,521)
Acquired on Acquisition of Subsidiaries	—	198,502
Net balance as at September 30	\$ 2,328,699	\$ 1,838,661
Plus: Reinsurance Recoverables	357,253	526,527
Balance as at September 30	<u>\$ 2,685,952</u>	<u>\$ 2,365,188</u>

*Salaries and Benefits:*

	Three Months Ended September 30,		
	2009	2008	Variance
(in thousands of U.S. dollars)			
Consulting	\$ 9,420	\$ 7,759	\$ (1,661)
Reinsurance	7,577	(1,746)	(9,323)
Total	<u>\$ 16,997</u>	<u>\$ 6,013</u>	<u>\$ (10,984)</u>

Salaries and benefits, which include expenses relating to our discretionary bonus and employee share plans, were \$17.0 million and \$6.0 million for the three months ended September 30, 2009 and 2008, respectively.

The increase in salaries and benefits was primarily attributable to:

- (i) An increase in the discretionary bonus expense for the three months ended September 30, 2009 of \$9.7 million.
- (ii) Increased staff costs due to an increase in average staff numbers from 250 for the three months ended September 30, 2008 to 287 as at September 30, 2009; partially offset by

[Table of Contents](#)

- (iii) A reduction in the average British pound exchange rate to U.S. dollars for the three months ended September 30, 2008 and 2009 from approximately 1.895 to 1.641, respectively. Of our total headcount as at September 30, 2009 and September 30, 2008, approximately 67% and 64%, respectively, had their salaries paid in British pounds.

Expenses relating to our discretionary bonus plan will be variable and dependent on our overall profitability.

*General and Administrative Expenses:*

	Three Months Ended September 30,		
	2009	2008	Variance
	(in thousands of U.S. dollars)		
Consulting	\$ 4,400	\$ 3,375	\$ (1,025)
Reinsurance	7,795	6,746	(1,049)
Total	<u>\$12,195</u>	<u>\$10,121</u>	<u>\$ (2,074)</u>

General and administrative expenses attributable to the consulting segment increased by \$1.0 million during the three months ended September 30, 2009, as compared to the three months ended September 30, 2008 due primarily to increased professional fees.

General and administrative expenses attributable to the reinsurance segment increased by \$1.0 million during the three months ended September 30, 2009, as compared to the three months ended September 30, 2008. For the three months ended September 30, 2009 as compared to the same period in 2008, we had increased professional fees due primarily to legal fees incurred in respect to issues around the ongoing lawsuit described in "Part II — Other Information — Item 1. Legal Proceedings" of this filing.

*Interest Expense:*

	Three Months Ended September 30,		
	2009	2008	Variance
	(in thousands of U.S. dollars)		
Consulting	\$ —	\$ —	\$ —
Reinsurance	4,262	7,919	(3,657)
Total	<u>\$4,262</u>	<u>\$7,919</u>	<u>\$ (3,657)</u>

Interest expense of \$4.3 million and \$7.9 million was recorded for the three months ended September 30, 2009 and 2008, respectively. The decrease in interest expense was primarily attributable to the combination of:

- (i) A reduction in the principal balance on the outstanding loan relating to the acquisition of AMP Limited's Australian-based closed reinsurance and insurance operations, or Gordian.
- (ii) A reduction in the Australian LIBOR interest rate on the term facility agreement of our wholly-owned subsidiary, Cumberland Holdings Limited, which partially funded the Gordian acquisition, or the Cumberland Loan Facility, between September 30, 2008 and September 30, 2009.
- (iii) A reduction in the average Australian dollar exchange rate to U.S. dollars from approximately 0.89 for the three months ended September 30, 2008 to approximately 0.83 for the three months ended September 30, 2009, respectively; partially offset by
- (iv) Interest costs associated with the term facilities agreement in connection with the, Unionamerica Holdings Limited acquisition, or the Unionamerica Facilities Agreement, which we entered into in December 2008.

*Foreign Exchange Gain/Loss:*

	<b>Three Months Ended September 30,</b>		
	<b>2009</b>	<b>2008</b>	<b>Variance</b>
	<i>(in thousands of U.S. dollars)</i>		
Consulting	\$ (89)	\$ (912)	\$ 823
Reinsurance	7,253	(24,144)	31,397
<b>Total</b>	<b>\$7,164</b>	<b>\$ (25,056)</b>	<b>\$32,220</b>

We recorded a foreign exchange gain of \$7.2 million for the three months ended September 30, 2009, as compared to a foreign exchange loss of \$25.1 million for the same period in 2008. For the three months ended September 30, 2009, the foreign exchange gain arose primarily as a result of the matching of our non-U.S. dollar assets and liabilities at a time when the U.S. dollar has been depreciating against most major currencies along with realized foreign exchange gains earned on the maturity of non-U.S. dollar available-for-sale securities, partially offset by foreign exchange losses arising as a result of the holding of surplus U.S. dollar assets in one of our subsidiaries whose functional currency is Australian dollars at a time when the U.S. dollar has been depreciating against the U.S. dollar. Unrealized foreign exchange gains (losses) on our non-U.S. dollar available-for-sale securities held by us as at September 30, 2009 are recorded through accumulated other comprehensive income.

In addition to the foreign exchange losses recorded in our consolidated statement of earnings for the three-month period ended September 30, 2009, we recorded in our condensed consolidated statement of comprehensive income currency translation adjustment gains, net of noncontrolling interest, for the three months ended September 30, 2009 of \$20.7 million, as compared to losses of \$14.2 million for the same period in 2008. For the three months ended September 30, 2009, the currency translation adjustment gains arose primarily as a result of translation adjustment gains of \$21.2 million relating to Gordian, whose functional currency is Australian Dollars, partially offset by translation adjustment losses of \$0.5 million relating to our consulting subsidiaries whose functional currency is British pounds.

The table below provides a summary of foreign exchange related losses recorded in earnings and in accumulated other comprehensive income for the three months ended September 30, 2008:

	<b>Three Months Ended September 30, 2008</b>			
	<b>AUD</b>	<b>GBP</b>	<b>Other</b>	<b>Total</b>
	<i>(in thousands of U.S. dollars)</i>			
Losses recorded through earnings	\$ (5,970)	\$ (15,223)	\$ (3,863)	\$ (25,056)
Losses recorded through accumulated other comprehensive income	(12,898)	(1,275)	—	(14,173)

*Australian Dollar Foreign Exchange*

We incurred foreign exchange losses attributable to Gordian, our Australian based operations, recorded through earnings and accumulated other comprehensive income, as summarized in the below table:

	<b>Three Months Ended September 30, 2008</b>
	<i>(in thousands of U.S. dollars)</i>
<b>RECORDED THROUGH EARNINGS</b>	
Losses arising on U.S. dollar denominated liabilities	\$ (20,387)
Gains arising on surplus U.S. dollar denominated short-term investments	16,325
Gains arising on other foreign currency movements	(1,908)
<b>Total Gordian foreign exchange loss recorded through earnings</b>	<b>\$ (5,970)</b>

	Three Months Ended September 30, 2008 <u>(in thousands of U.S. dollars)</u>
<b>RECORDED THROUGH ACCUMULATED OTHER COMPREHENSIVE INCOME:</b>	
Gains arising on U.S. dollar denominated investments classified as available-for-sale	\$ 19,007
Losses on currency translation adjustment	(31,905)
Total Gordian foreign exchange loss recorded through other accumulated other comprehensive income	\$ (12,898)
Combined decrease in shareholders' equity	\$ (18,868)

Combining the impact of foreign exchange losses recorded through earnings and through accumulated other comprehensive income resulted in a decrease in our total shareholders' equity of \$18.9 million in the three months ended September 30, 2008, which was attributable to: (1) net foreign exchange movements relating to broadly matched non-Australian dollar assets and liabilities amounting to \$1.4 million; (2) Gordian's surplus Australian dollar assets, which resulted in a \$15.6 million unrealized foreign exchange loss; and (3) other foreign currency losses of \$1.9 million.

a) *Treatment of broadly matched non-Australian dollar assets and liabilities:*

The functional currency of Gordian is the Australian dollar. As a result, Gordian may be exposed to foreign currency exchange risk relating to its non-Australian dollar net assets, primarily being U.S. dollars. We currently do not use foreign currency hedges to manage our foreign currency exchange risk. We manage our exposure to foreign currency exchange risk by broadly matching our non-Australian dollar denominated assets against our non-Australian dollar denominated liabilities. This matching process is carried out quarterly in arrears and therefore any mismatches occurring in the period may give rise to foreign exchange gains and losses.

For the quarter ended September 30, 2008, we had broadly matched Gordian's U.S. dollar assets with its U.S. dollar liabilities. As shown in the table below, the net foreign exchange impact on Gordian for the quarter ended September 30, 2008 was a \$1.4 million decrease to our total shareholders' equity:

	Three Months Ended September 30, 2008 <u>(in thousands of U.S. dollars)</u>
Losses arising on U.S. dollar denominated liabilities	\$ (20,387)
Gains arising on U.S. dollar denominated investments classified as available-for-sale	19,007
Combined decrease in shareholders' equity	\$ (1,380)

The investments that we hold in our Australian subsidiary have been designated as available-for-sale. In accordance with the guidance, any unrealized gains or losses on available-for-sale investments (including foreign exchange gains and losses) are included as part of accumulated other comprehensive income within shareholders' equity.

As a result, the foreign exchange losses on U.S. denominated liabilities of \$20.4 million for the three months ended September 30, 2008 were recorded in earnings and the associated foreign exchange gains on U.S. dollar denominated investments classified as available-for-sale of \$19.0 million were recorded in accumulated other comprehensive income, a separate component of shareholders' equity.

[Table of Contents](#)b) *Gordian's surplus Australian dollar assets*

Australian regulations require that Gordian retain a level of surplus assets in Australian dollars. At September 30, 2008, the surplus assets of Gordian, net of the Cumberland Facility, amounted to approximately AU\$268.0 million, of which approximately AU\$159.5 million was held in U.S. dollars with the balance was held in Australian dollars.

We have concluded that under the guidance for foreign currency matters, the functional currency of Gordian is Australian dollars. As a result, we are required to: (1) record any Australian dollar gains or losses recognized by Gordian relating to its holding of surplus U.S. dollar assets through earnings; and (2) we are required to record any U.S. dollar gains or losses on the translation of the net Australian dollar assets of Gordian through accumulated other comprehensive income. The result of this treatment is as follows:

	<u>Three Months Ended September 30, 2008</u>
	<u>(in thousands of U.S. dollars)</u>
Gains arising on surplus U.S. dollar denominated short-term investments	\$ 16,325
Losses on currency translation adjustment	(31,905)
Combined decrease in shareholders' equity	<u>\$ (15,580)</u>

The decrease to our total shareholders' equity of \$15.6 million for the three months ended September 30, 2008 was primarily attributable to the translation of surplus Australian dollar net assets of approximately AU\$108.5 million held by Gordian, which the Australian regulators require us to maintain in Australian dollars.

*Surplus British Pounds*

For the quarter ended September 30, 2008, we had a foreign exchange loss of approximately \$15.2 million, which was primarily the result of our holding surplus British pounds relating to cash collateral required to support British pound denominated letters of credit required by U.K. regulators at a time when the British pound exchange rate to the U.S. dollar decreased from approximately 1.993 as at June 30, 2008 to approximately 1.781 as at September 30, 2008. Since letters of credit are in excess of the British pound liabilities held by our subsidiaries, the subsidiary companies were unable to match the surplus assets against liabilities during the quarter, resulting in the foreign exchange loss.

*Income Tax (Expense)/Recovery:*

	<u>Three Months Ended September 30,</u>		
	<u>2009</u>	<u>2008</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Consulting	\$ (1,211)	\$ 1,393	\$ (2,604)
Reinsurance	(1,449)	(11,827)	10,378
Total	<u>\$ (2,660)</u>	<u>\$ (10,434)</u>	<u>\$ 7,774</u>

We recorded income tax expense of \$2.7 million and \$10.4 million for the three months ended September 30, 2009 and 2008, respectively. The decrease in income tax expense of \$7.8 million between 2008 and 2009 related primarily to decreased taxes incurred by Gordian of \$11.2 million, partially offset by increased taxes payable by our U.S. and U.K. operations on their earnings in the period. Gordian operates in a tax paying jurisdiction and pays taxes based on its Australian GAAP determined net earnings, which can differ materially from its reported U.S. GAAP net earnings.

*Noncontrolling Interest*

	<b>Three Months Ended September 30,</b>		
	<b>2009</b>	<b>2008</b>	<b>Variance</b>
	<b>(in thousands of U.S. dollars)</b>		
Consulting	\$ —	\$ —	\$ —
Reinsurance	(10,481)	5,572	(16,053)
<b>Total</b>	<b>\$ (10,481)</b>	<b>\$ 5,572</b>	<b>\$ (16,053)</b>

We recorded net (earnings) loss attributable to noncontrolling interest of \$(10.5) million and \$5.6 million for the three months ended September 30, 2009 and 2008, respectively. The increase for the three months ended September 30, 2009 in noncontrolling interest was due primarily to an increase in the number of subsidiary companies for which there exists a noncontrolling interest and an increase and in earnings for those same companies.

*Comparison of the Nine Months Ended September 30, 2009 and 2008*

We reported consolidated net earnings (loss), before extraordinary item and net earnings attributable to noncontrolling interest, of approximately \$75.6 million for the nine months ended September 30, 2009 as compared to approximately \$(44.7) million for the same period in 2008. The increase in earnings of approximately \$120.3 million was primarily attributable to the following:

- (i) An increase in investment income (inclusive of realized gains (losses)) of \$34.0 million primarily as a result of the change in the writedowns in fair value of our private equity portfolio classified as other investments of \$49.1 million, partially offset by lower investment income reflecting the impact of lower global short-term and intermediate interest rates.
- (ii) A movement in foreign exchange from a loss of \$18.8 million for the nine months ended September 30, 2008 to a gain of \$7.2 million for the nine months ended September 30, 2009. This increase of \$26.0 million arose primarily as a result of holding surplus net foreign currency assets at a time when the U.S. dollar had been declining against the majority of currencies.
- (iii) Reduced interest expense of \$5.0 million due primarily to lower interest rates on outstanding term loan facility agreements.
- (iv) An increased net reduction in loss and loss adjustment expense liabilities of \$58.3 million.
- (v) A reduction in income taxes of \$11.4 million due to lower tax liabilities recorded on the results of our taxable subsidiaries; partially offset by
- (vi) An increase in salary and general and administrative costs of \$9.5 million due primarily to increased salary costs related to our discretionary bonus plan as a result of increased net earnings in the period and to an increased number of employees.

We recorded noncontrolling interest in earnings of \$20.3 million and \$19.2 million for the nine months ended September 30, 2009 and 2008, respectively. Net (loss) earnings attributable to Enstar Group Limited increased from approximately \$(13.6) million for the nine months ended September 30, 2008 to approximately \$55.3 million for the nine months ended September 30, 2009.

*Consulting Fees:*

	<b>Nine Months Ended September 30,</b>		
	<b>2009</b>	<b>2008</b>	<b>Variance</b>
	<b>(in thousands of U.S. dollars)</b>		
Consulting	\$ 35,970	\$ 41,252	\$ (5,282)
Reinsurance	(24,343)	(24,206)	(137)
<b>Total</b>	<b>\$ 11,627</b>	<b>\$ 17,046</b>	<b>\$ (5,419)</b>

[Table of Contents](#)

We earned consulting fees of approximately \$11.6 million and \$17.0 million for the nine months ended September 30, 2009 and 2008, respectively. The decrease in consulting fees primarily related to decreased management and incentive fees earned from third-party agreements.

Internal management fees of \$24.3 million and \$24.2 million were paid in the nine months ended September 30, 2009 and 2008, respectively, by our reinsurance companies to our consulting companies.

*Net Investment Income and Net Realized Gains/(Losses):*

	Nine Months Ended September 30,					
	Net Investment Income			Net Realized Gains/(Losses)		
	2009	2008	Variance	2009	2008	Variance
			(in thousands of U.S. dollars)			
Consulting	\$ 2,825	\$ (10,469)	\$13,294	\$ —	\$ —	\$ —
Reinsurance	57,617	39,127	18,490	1,982	(262)	2,244
Total	<u>\$60,442</u>	<u>\$ 28,658</u>	<u>\$31,784</u>	<u>\$1,982</u>	<u>\$(262)</u>	<u>\$ 2,244</u>

Net investment income for the nine months ended September 30, 2009 increased by \$31.8 million to \$60.4 million, as compared to \$28.7 million for the same period in 2008. The increase was primarily attributable to the combination of the following items:

- (i) Movement in changes in fair value of our private equity investments classified as other investments from a writedown of \$47.0 million for the nine months ended September 30, 2008 to an appreciation of \$2.1 million for the nine months ended September 30, 2009; partially offset by
- (ii) Lower investment income from fixed maturities and cash and cash equivalents, reflecting the impact of lower global short-term and intermediate interest rates — the average U.S. Federal Funds Rate has decreased from an average of 2.45% for the nine months ended September 30, 2008 to an average of 0.25% for the nine months ended September 30, 2009.

The average return on our cash and fixed maturities investments for the nine months ended September 30, 2009 was 2.03%, as compared to the average return of 4.16% for the nine months ended September 30, 2008. The average Standard & Poor's credit rating of our fixed income investments at September 30, 2009 was AA.

Net realized gains (losses) for the nine months ended September 30, 2009 and 2008 were \$2.0 million and \$(0.3) million, respectively. The increase was due primarily to mark to market gains earned during 2009 on our equity portfolios.

[Table of Contents](#)

**Fair Value Measurements**

The following table summarizes all of our financial assets and liabilities measured at fair value in accordance with the guidance for fair value measurements and disclosures hierarchy.

	September 30, 2009			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value
	(in thousands of U.S. dollars)			
U.S. government and agency	\$ —	\$ 123,175	\$ —	\$123,175
Non-U.S. government	—	10,793	—	10,793
Corporate	—	235,432	—	235,432
Residential mortgage-backed	—	1,186	—	1,186
Asset backed	—	37	578	615
CMO	—	748	—	748
Equities	15,339	—	3,350	18,689
Other investments	—	—	76,363	76,363
<b>Total investments</b>	<b>\$ 15,339</b>	<b>\$ 371,371</b>	<b>\$ 80,291</b>	<b>\$467,001</b>

*Net Reduction in Loss and Loss Adjustment Expense Liabilities:*

The following table shows the components of the movement in the net reduction in loss and loss adjustment expense liabilities for the nine months ended September 30, 2009 and 2008.

	Nine Months Ended September 30,	
	2009	2008
	(in thousands of U.S. dollars)	
Net Losses Paid	\$ (130,577)	\$ (293,857)
Net Change in Case Reserves	133,742	65,911
Net Change in IBNR	89,137	255,778
Reduction in Estimates of Net Ultimate Losses	92,302	27,832
Reduction in Provisions for Bad Debts	9,714	—
Reduction in Provisions of Unallocated Loss Adjustment Expense Liabilities	29,370	32,924
Amortization of Fair Value Adjustments	(44,756)	(32,489)
<b>Net Reduction in Loss and Loss Adjustment Expense Liabilities</b>	<b>\$ 86,630</b>	<b>\$ 28,267</b>

The net reduction in loss and loss adjustment expense liabilities for the nine months ended September 30, 2009 of \$86.6 million was attributable to a reduction in estimates of net ultimate losses of \$92.3 million, a reduction in aggregate provisions for bad debts of \$9.7 million and a reduction in provisions of unallocated loss adjustment expense liabilities of \$29.4 million, relating to 2009 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$44.8 million.

The reduction in estimates of net ultimate losses of \$92.3 million primarily related to the following:

- (i) A reduction in estimates of loss reserves in one of our subsidiaries of \$25.2 million following the commutation of one of our largest ten assumed and ceded exposures at less than case and LAE reserves.
- (ii) A reduction in estimates of net ultimate losses of \$13.0 million in one of our subsidiaries as a result of net favorable incurred loss development for the six months ended June 30, 2009 of \$2.6 million and reductions in IBNR reserves of \$10.4 million. The net favorable incurred loss development of \$2.6 million, whereby net advised case and LAE reserves of \$6.6 million were settled for net paid losses of \$4.0 million, arose from the settlement of losses during the period below carried reserves.

The net reduction in the estimate of the subsidiary's IBNR loss and loss adjustment expense liabilities of \$10.4 million was the result of the application of our reserving methodologies to the reduced case and LAE reserves following the subsidiary's semi-annual actuarial review of reserves, which are required by local regulation.

- (iii) A reduction in net ultimate losses of \$23.8 million in two of our insurance entities whereby previously advised net case and LAE reserves of \$18.6 million were settled without payment. The application of our reserving methodologies to the reduced case and LAE reserves resulted in a reduction in net IBNR reserves of \$5.2 million.
- (iv) During the three months ended September 30, 2009, we culminated historic case reserve reviews for eight of our insurance and reinsurance subsidiaries for which no updated advices had been received for a number of years. This review confirmed the redundancy of approximately 4,000 advised case reserves with an aggregate value of \$16.6 million.
- (v) A reduction in net ultimate losses of \$14.1 million in another of our insurance entities that completed, during September 2009, a Solvent Scheme of Arrangement relating to its U.K. liabilities. During the nine months ended September 30, 2009, the entity in question settled its remaining U.K. net case reserves of \$8.4 million, net IBNR reserves of \$10.4 million and net reinsurance recoverables for the net payment of \$4.7 million.

The reduction in estimates of net ultimate losses of \$27.8 million for the nine months ended September 30, 2008 was primarily attributable to the reduction in the three months ended June 30, 2008 of estimates of net ultimate losses of \$25.5 million related to one of our subsidiaries and comprised net favorable incurred loss development of \$12.1 million and related reductions in IBNR reserves of \$13.4 million. The net favorable incurred loss development of \$12.1 million, whereby net advised case and LAE reserves of \$21.2 million were settled for net paid losses of \$9.1 million, arose from the settlement of non-commuted losses during the period below carried reserves and approximately three commutations of assumed and ceded exposures at less than case and LAE reserves. The net reduction in the estimate of the subsidiary's IBNR loss and loss adjustment expense liabilities of \$13.4 million was a result of an independent actuarial review and the application of our reserving methodologies to the reduced case and LAE reserves. During the nine months ended September 30, 2008, another of our reinsurance subsidiaries commuted its largest exposure, which was fully reinsured by a single reinsurer with an AA- rating from Standard & Poor's. The subsidiary paid net claims of \$221.2 million and reduced net IBNR loss reserves by the same amount.

The table below provides a reconciliation of the beginning and ending reserves for losses and loss adjustment expenses for the nine months ended September 30, 2009 and September 30, 2008. Losses incurred and paid are reflected net of reinsurance recoverables.

	<b>Nine Months Ended September 30,</b>	
	<b>2009</b>	<b>2008</b>
	<b>(in thousands of U.S. dollars)</b>	
Balance as of January 1	\$ 2,798,287	\$ 1,591,449
Less: Reinsurance recoverables	394,575	427,964
	<u>2,403,712</u>	<u>1,163,485</u>
Incurred Related to Prior Years	(86,630)	(28,267)
Paid Related to Prior Years	(130,577)	(293,857)
Effect of Exchange Rate Movement	81,993	(62,002)
Retroactive Reinsurance Contracts Assumed	48,818	394,913
Acquired on Acquisition of Subsidiaries	11,383	664,389
Net balance as at September 30	<u>\$ 2,328,699</u>	<u>\$ 1,838,661</u>
Plus: Reinsurance Recoverables	357,253	526,527
Balance as at September 30	<u>\$ 2,685,952</u>	<u>\$ 2,365,188</u>

[Table of Contents](#)*Salaries and Benefits:*

	<u>Nine Months Ended September 30,</u>		
	<u>2009</u>	<u>2008</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Consulting	\$27,324	\$25,830	\$ (1,494)
Reinsurance	14,004	5,487	(8,517)
Total	<u>\$41,328</u>	<u>\$31,317</u>	<u>\$ (10,011)</u>

Salaries and benefits, which include expenses relating to our discretionary bonus and employee share plans, were \$41.3 million and \$31.3 million for the three months ended September 30, 2009 and 2008, respectively.

The increase in salaries and benefits was primarily attributable to:

- (i) An increase in the discretionary bonus expense for the nine months ended September 30, 2009 of \$9.8 million.
- (ii) Increased staff costs due to an increase in average staff numbers from 245 for the nine months ended September 30, 2008 to 287 for the nine months ended September 30, 2009; partially offset by
- (iii) A reduction in the average British pound exchange rate from approximately 1.948 to 1.544 for the nine months ended September 30, 2008 and 2009, respectively. Of our total headcount as at September 30, 2009 and September 30, 2008, approximately 67% and 65% had their salaries paid in British pounds.

Expenses relating to our discretionary bonus plan will be variable and are dependent on our overall profitability.

*General and Administrative Expenses:*

	<u>Nine Months Ended September 30,</u>		
	<u>2009</u>	<u>2008</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Consulting	\$12,909	\$12,000	\$ (909)
Reinsurance	22,578	24,004	1,426
Total	<u>\$35,487</u>	<u>\$36,004</u>	<u>\$ 517</u>

General and administrative expenses attributable to the reinsurance segment decreased by \$1.4 million during the nine months ended September 30, 2009, as compared to the nine months ended September 30, 2008. For the nine months ended September 30, 2008, we incurred approximately \$5.1 million of bank loan structure fees in respect of acquisitions we completed during that period. For the nine months ended September 30, 2009 we did not incur any similar fees. In addition, expenses were lower as a result of a reduction in the British pound exchange rate, in which a large portion of our costs are denominated. The reduced expenses were partially offset by increased costs associated with increased professional fees due in part to legal fees incurred in respect to issues around the ongoing lawsuit described in "Part II — Other Information — Item 1. Legal Proceedings" of this filing.

*Interest Expense:*

	<u>Nine Months Ended September 30,</u>		
	<u>2009</u>	<u>2008</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Consulting	\$ —	\$ —	\$ —
Reinsurance	13,902	18,878	4,976
Total	<u>\$13,902</u>	<u>\$18,878</u>	<u>\$ 4,976</u>

[Table of Contents](#)

Interest expense of \$13.9 million and \$18.9 million was recorded for the nine months ended September 30, 2009 and 2008, respectively. The decrease in interest expense was primarily attributable to the combination of:

- (i) A reduction in the principal balance on the Cumberland Loan Facility.
- (ii) A reduction in the Australian LIBOR interest rate on the Cumberland Loan Facility between September 30, 2008 and September 30, 2009.
- (iii) A reduction in the average Australian dollar exchange rate to U.S. dollars from approximately 0.91 for the nine months ended September 30, 2008 to approximately 0.754 for the nine months ended September 30, 2009; partially offset by
- (iv) Interest costs associated with the Unionamerica Facilities Agreement, which we entered into in December 2008.

*Foreign Exchange Gain/(Loss):*

	<u>Nine Months Ended September 30,</u>		
	<u>2009</u>	<u>2008</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Consulting	\$ 285	\$ (538)	\$ 823
Reinsurance	6,892	(18,249)	25,141
Total	<u>\$7,177</u>	<u>\$ (18,787)</u>	<u>\$25,964</u>

We recorded a foreign exchange gain of \$7.2 million for the nine months ended September 30, 2009, as compared to a foreign exchange loss of \$18.8 million for the same period in 2008. For the nine months ended September 30, 2009, the foreign exchange gain arose primarily as a result of holding surplus British pounds relating primarily to cash collateral requirements to support British pound denominated letters of credit required by U.K. regulators, partially offset by the combination of realized foreign exchange losses on currency translations and foreign exchange losses arising as a result of the holding of surplus U.S. dollar assets in one of our subsidiaries whose functional currency is Australian dollars at a time when the U.S. dollar has been depreciating against the Australian dollar.

We recorded a foreign exchange loss of \$18.8 million for the nine-month period ended September 30, 2008. For the nine months ended September 30, 2008, the primary reasons for the reduction in foreign exchange gains were predominantly the same as for the reduction for the three months ended September 30, 2008, as described above in "— Comparison of Three Months Ended September 30, 2009 and 2008 — Foreign Exchange Gain/(Loss)."

In addition to the foreign exchange gains recorded in our consolidated statement of earnings for the nine months ended September 30, 2009, we recorded in our condensed consolidated statement of comprehensive income currency translation adjustment gains (losses), net of noncontrolling interest, of \$46.3 million as compared to \$(9.6) million for the same period in 2008. For the nine months ended September 30, 2009, the currency translation adjustment gains related primarily to Gordian. As the functional currency of Gordian is Australian dollars, we are required to record any U.S. dollar gains or losses on the translation of the net Australian dollar assets of Gordian through accumulated other comprehensive income.

*Income Tax (Expense)/Recovery:*

	<u>Nine Months Ended September 30,</u>		
	<u>2009</u>	<u>2008</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Consulting	\$ (2,418)	\$ 3,186	\$ (5,604)
Reinsurance	399	(16,575)	16,974
Total	<u>\$ (2,019)</u>	<u>\$ (13,389)</u>	<u>\$11,370</u>

[Table of Contents](#)

We recorded income tax expense of \$2.0 million and \$13.4 million for the nine months ended September 30, 2009 and 2008, respectively. Income tax (expense)/recovery of \$(2.4) million and \$3.2 million were recorded in the consulting segment for the nine months ended September 30, 2009 and 2008, respectively. The variance between the two periods was primarily attributable to our recording of tax recoveries on net losses incurred by our U.S. operations for the nine months ended September 30, 2008 for which, in 2009, we are now recording a tax expense.

Income tax recovery/(expense) of \$0.4 million and \$(16.6) million were recorded in the reinsurance segment for the nine months ended September 30, 2009 and 2008, respectively. During the period ended September 30, 2009 and 2008, we booked a reduction in benefits relating to the expiration of various applicable statutes of limitations on certain previously recorded uncertain tax liabilities. The benefit recorded for the nine months ended September 30, 2009 and 2008 was \$1.5 million and \$3.3 million, respectively. These benefits were partially offset by net income tax expense related to those subsidiaries operating in taxable jurisdictions of \$1.1 million and \$19.9 million, respectively. The reduction in tax expense related primarily to Gordian whose tax expense for the nine months ended September 30, 2009 was \$1.4 million as compared to \$19.3 million for the same period in 2008. Gordian operates in a tax paying jurisdiction and pays taxes based on its Australian GAAP determined net earnings, which may differ materially from its reported U.S. GAAP net earnings.

*Negative Goodwill:*

	Nine Months Ended September 30,		
	2009	2008	Variance
	(in thousands of U.S. dollars)		
Consulting	\$ —	\$ —	\$ —
Reinsurance	—	50,280	(50,280)
Total	\$ —	\$50,280	\$ (50,280)

Negative goodwill of \$nil million and \$50.3 million was recorded for the nine months ended September 30, 2009 and 2008, respectively. For the nine months ended September 30, 2008, the negative goodwill of \$50.3 million was earned in connection with our acquisition of Gordian and represents the excess of the cumulative fair value of net assets acquired of \$455.7 million over the cost of \$405.4 million. This excess was, in accordance with the guidance for business combinations, recognized as an extraordinary gain in 2008. The negative goodwill arose primarily as a result of the income earned by Gordian between the date of the balance sheet on which the agreed purchase price was based, September 30, 2007, and the date the acquisition closed, March 5, 2008.

*Noncontrolling Interest*

	Nine Months Ended September 30,		
	2009	2008	Variance
	(in thousands of U.S. dollars)		
Consulting	\$ —	\$ —	\$ —
Reinsurance	(20,318)	(4,105)	(16,213)
Reinsurance — extraordinary gain	—	(15,084)	15,084
Total	\$ (20,318)	\$ (19,189)	\$ (1,129)

We recorded net earnings attributable to noncontrolling interest of \$20.3 million and \$19.2 million for the nine months ended September 30, 2009 and 2008, respectively. The increase for the nine months ended September 30, 2009, excluding the noncontrolling interest in negative goodwill of \$15.1 million relating to the Gordian acquisition, related primarily to the increase in net earnings for the period for those entities who have noncontrolling interests.

## Liquidity and Capital Resources

On August 25, 2009, our wholly-owned subsidiary, Cumberland Holdings Limited, or Cumberland, distributed A\$106.8 million (approximately \$89.4 million) of which A\$53.4 million (approximately \$44.7 million) went towards repayment of the outstanding principal of the Cumberland Loan Facility. The remaining balance of A\$53.4 million (approximately \$44.7 million) was distributed to the voting and non-voting equity participants of Cumberland. As at September 30, 2009, the outstanding loan balance related to the Cumberland Loan Facility was A\$95.2 million (approximately \$84.1 million).

Subsequent to September 30, 2009, on October 10, 2009, Cumberland distributed an additional A\$43.0 million (approximately \$39.0 million) of which A\$21.5 million (approximately \$19.5 million) went towards repayment of the outstanding principal of the Cumberland Loan Facility. The remaining balance of A\$21.5 million (approximately \$19.5 million) was distributed to the voting and non-voting equity participants of Cumberland.

Other than these repayments, there have been no material changes to our liquidity position or capital resource requirements since December 31, 2008. For more information refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources" included in Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2008, filed with the SEC on March 5, 2009.

On December 30, 2008, in connection with the Unionamerica Holdings Limited acquisition, Royston Run-off Limited, or Royston, borrowed the full amount of \$184.6 million available under a term facilities agreement, or the Unionamerica Facilities Agreement, with National Australia Bank Limited, or NABL. Of that amount, Royston borrowed \$152.6 million under Facility A and \$32.0 million under Facility B. The loans are secured by a lien covering all of the assets of Royston. We provided a guarantee of all of Royston's obligations under the facilities agreement. The Facility A portion is repayable within three years from October 3, 2008, the date of the Unionamerica Facilities Agreement. The Facility B portion is repayable within four years from the date of the Unionamerica Facilities Agreement. The Flowers Fund has a 30% non-voting equity interest in Royston Holdings Ltd., the direct parent company of Royston.

On August 4, 2009, Royston entered into an amendment and restatement of the Unionamerica Facilities Agreement pursuant to which: (1) NABL's participation in the original \$184.6 million facility was reduced from 100% to 50%, with Barclays Bank PLC providing the remaining 50%; (2) the guarantee provided by us of all of the obligations of Royston under the Unionamerica Facilities Agreement was terminated; and (3) the interest rate on the Facility A portion was reduced from LIBOR plus 3.50% to LIBOR plus 2.75% and the interest rate on the Facility B portion was reduced from LIBOR plus 4.00% to LIBOR plus 3.25%.

With respect to the nine-month periods ended September 30, 2009 and 2008, net cash provided by our operating activities was \$24.3 million and \$276.4 million, respectively. The decrease in cash flows was primarily attributable to:

- (i) A decrease of \$195.4 million in net movement of trading securities for the nine months ended September 30, 2009.
- (ii) A decrease in the net assets assumed on retroactive reinsurance contracts during the nine months ended September 30, 2009. During the nine months ended September 30, 2009 and September 30, 2008, we entered into one and four RITC transactions with Lloyd's syndicates, respectively. As a result of entering into these RITC agreements for the nine months ended September 30, 2009 and September 30, 2008, net liabilities of \$8.3 million and \$353.0 million, respectively, were included as part of operating activities.
- (iii) A movement in share of net (gain) loss from other investments from a loss of \$48.4 million to a gain of \$2.3 million.

This decrease was partially offset by an increase for the nine months ended September 30, 2009 in net earnings, before extraordinary gain, of \$120.3 million. Due to the nature of our operating activities — managing insurance and reinsurance companies in run-off — it is not unexpected to have significant swings in net cash provided by our operating activities.

[Table of Contents](#)

Net cash (used in) provided by investing activities for the nine-month periods ended September 30, 2009 and 2008 was \$(522.5) million and \$133.0 million, respectively. The decrease in the cash flows was primarily due to an increase in net purchases of held-to-maturity securities and a reduction in net cash acquired on acquisitions, which was partially offset by an increase in cash provided by the sales and maturities of available-for-sale securities. During the nine months ended September 30, 2009, we reduced our cash position through the purchase of short-term investments and fixed maturities classified as held-to-maturity. This reallocation out of cash and into held-to-maturity investments was intended to enhance the yield on our cash and investment balances held.

Net cash (used in) provided by financing activities for the nine month periods ended September 30, 2009 and 2008 was \$(128.2) million and \$472.2 million, respectively. The decrease in cash flows (for the nine months ended September 30, 2009 as compared to the nine months ended September 30, 2008 was primarily attributable to a decrease in bank borrowings, a decrease in proceeds from issuance of ordinary shares and a decrease in net capital contributed by noncontrolling interest shareholders relating to acquisitions completed.

**Commitments and Contingencies**

There have been no other material changes in our commitments or contingencies since December 31, 2008. Refer to Item 7 included in our Annual Report on Form 10-K for the year ended December 31, 2008.

**Critical Accounting Estimates**

Our critical accounting estimates are discussed in Management's Discussion and Analysis of Results of Operations and Financial Condition contained in our Annual Report on Form 10-K for the year ended December 31, 2008.

**Off-Balance Sheet and Special Purpose Entity Arrangements**

At September 30, 2009, we have not entered into any off-balance sheet arrangements, as defined by Item 303 (a)(4) of Regulation S-K.

### Cautionary Statement Regarding Forward-Looking Statements

This quarterly report contains statements that constitute “forward-looking statements” within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, with respect to our financial condition, results of operations, business strategies, operating efficiencies, competitive positions, growth opportunities, plans and objectives of our management, as well as the markets for our ordinary shares and the insurance and reinsurance sectors in general. Statements that include words such as “estimate,” “project,” “plan,” “intend,” “expect,” “anticipate,” “believe,” “would,” “should,” “could,” “seek,” and similar statements of a future or forward-looking nature identify forward-looking statements for purposes of the federal securities laws or otherwise. All forward-looking statements are necessarily estimates or expectations, and not statements of historical fact, reflecting the best judgment of our management and involve a number of risks and uncertainties that could cause actual results to differ materially from those suggested by the forward-looking statements. These forward-looking statements should, therefore, be considered in light of various important factors, including those set forth in and incorporated by reference in this quarterly report.

Factors that could cause actual results to differ materially from those suggested by the forward-looking statements include:

- risks associated with implementing our business strategies and initiatives;
- the adequacy of our loss reserves and the need to adjust such reserves as claims develop over time;
- risks relating to the availability and collectability of our reinsurance;
- changes in economic conditions, including interest rates, inflation, currency exchange rates, equity markets and credit conditions including current market conditions and the instability in the global credit markets, which could affect our investment portfolio, our ability to finance future acquisitions and our profitability;
- losses due to foreign currency exchange rate fluctuations;
- tax, regulatory or legal restrictions or limitations applicable to us or the insurance and reinsurance business generally;
- increased competitive pressures, including the consolidation and increased globalization of reinsurance providers;
- emerging claim and coverage issues;
- lengthy and unpredictable litigation affecting assessment of losses and/or coverage issues;
- loss of key personnel;
- changes in our plans, strategies, objectives, expectations or intentions, which may happen at any time at management’s discretion;
- operational risks, including system or human failures;
- risks that we may require additional capital in the future which may not be available or may be available only on unfavorable terms;
- the risk that ongoing or future industry regulatory developments will disrupt our business, or mandate changes in industry practices in ways that increase our costs, decrease our revenues or require us to alter aspects of the way we do business;
- changes in Bermuda law or regulation or the political stability of Bermuda;
- changes in tax laws or regulations applicable to us or our subsidiaries, or the risk that we or one of our non-U.S. subsidiaries become subject to significant, or significantly increased, income taxes in the United States or elsewhere; and
- changes in accounting policies or practices.

*The factors listed above should be not construed as exhaustive and should be read in conjunction with the other cautionary statements and Risk Factors that are included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, filed with the SEC on March 5, 2009, as well as in the materials filed and to be filed with the SEC. We undertake no obligation to publicly update or review any forward looking statement, whether as a result of new information, future developments or otherwise.*

**Item 3. QUANTITATIVE AND QUALITATIVE INFORMATION ABOUT MARKET RISK**

There have been no material changes in our market risk exposures since December 31, 2008. For more information refer to "Quantitative and Qualitative Disclosures about Market Risk" included in Item 7A of our Annual Report on Form 10-K for the year ended December 31, 2008 filed with the SEC on March 5, 2009.

**Item 4. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

Our management performed an evaluation, with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) as of September 30, 2009. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective to ensure that information that we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC and is accumulated and communicated to management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

**Changes in Internal Controls**

Our management has performed an evaluation, with the participation of our Chief Executive Officer and our Chief Financial Officer, of changes in our internal control over financial reporting that occurred during the three months ended September 30, 2009. Based upon that evaluation there were no changes in our internal control over financial reporting that occurred during the three months ended September 30, 2009 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**PART II — OTHER INFORMATION**

**Item 1. LEGAL PROCEEDINGS**

We are, from time to time, involved in various legal proceedings in the ordinary course of business, including litigation regarding claims. We do not believe that the resolution of any currently pending legal proceedings, either individually or taken as a whole, will have a material adverse effect on our business, results of operations or financial condition. Nevertheless, we cannot assure you that lawsuits, arbitrations or other litigation will not have a material adverse effect on our business, financial condition or results of operations. We anticipate that, similar to the rest of the insurance and reinsurance industry, we will continue to be subject to litigation and arbitration proceedings in the ordinary course of business, including litigation generally related to the scope of coverage with respect to asbestos and environmental claims. There can be no assurance that any such future litigation will not have a material adverse effect on our business, financial condition or results of operations.

In April 2008, we, Enstar US, Inc., or Enstar US, Dukes Place Limited and certain affiliates of Dukes Place, or, collectively, Dukes Place, were named as defendants in a lawsuit filed in the United States District Court for the Southern District of New York by National Indemnity Company, or NICO, an indirect subsidiary of Berkshire Hathaway. The complaint alleges, among other things, that Dukes Place, we and Enstar US: (i) interfered with the rights of NICO as reinsurer under reinsurance agreements entered into between NICO and each of Stonewall and Seaton, two Rhode Island domiciled insurers that are indirect subsidiaries of Dukes Place, and (ii) breached certain duties owed to NICO under management agreements between Enstar US and each of Stonewall and Seaton. The suit was filed shortly after Virginia Holdings Ltd., our indirect subsidiary, or Virginia, completed a hearing before the Rhode Island Department of Business Regulation as part of Virginia's application to buy a 44.4% interest in the insurers from Dukes Place. Virginia completed that acquisition on June 13, 2008. The suit does not seek a stated amount of damages. On July 23, 2008, we and Enstar US filed a motion to dismiss Count I (relating to breach of fiduciary duty), Count III (relating to breach of contract) and Count V (relating to inducing breach of contract), in each case for failure to state a claim upon which relief can be granted. Subsequently, the parties entered into a Stipulation and Order filed with the Court on October 7, 2008, by which (i) NICO agreed to dismiss Count V of its Complaint with prejudice, (ii) the defendants agreed to withdraw their motion to dismiss Counts I and III without prejudice, reserving all of their rights and defenses to challenge these claims on the merits, and (iii) NICO agreed to extend the defendants' time to file an answer and counterclaim. On November 5, 2008, we, Enstar US and Dukes Place filed an answer to NICO's complaint and Dukes Place asserted certain counterclaims against NICO. On January 12, 2009, NICO filed a motion to dismiss certain of the counterclaims, along with a motion for summary judgment addressed to the counterclaims. We, Enstar US and Dukes Place filed papers in opposition to NICO's motion on February 23, 2009, and NICO filed reply briefs in support of its motion on March 23, 2009. In a letter dated July 1, 2009, the parties requested a stay of the proceedings, which was granted by the Court by Order dated August 26, 2009. We, Enstar US and Dukes Place are currently in discussions with NICO regarding a potential settlement of all claims and counterclaims. Our management believes the suit will not have a material impact on us or our subsidiaries.

**Item 1A. RISK FACTORS**

Our results of operations and financial condition are subject to numerous risks and uncertainties described in "Risk Factors" included in Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, filed with the SEC on March 5, 2009. The risk factors identified therein have not materially changed.

**Item 6. EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>
10.1*	Amended and Restated Term Facilities Agreement, dated as of October 3, 2008, as amended and restated August 4, 2009, by and among Royston Run-off Limited, National Australia Bank Limited and Barclays Bank PLC.
15.1*	Deloitte & Touche Letter Regarding Unaudited Interim Financial Information.
31.1*	Certification pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2**	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

\* Filed herewith

\*\* Furnished herewith

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on November 6, 2009.

ENSTAR GROUP LIMITED

By: /s/ Richard J. Harris  
Richard J. Harris,  
Chief Financial Officer, Authorized Signatory and  
Principal Accounting and Financial Officer

**EXHIBIT INDEX**

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31.2*	Certification pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2**	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

\* Filed herewith

\*\* Furnished herewith

**Royston Run-off Limited**

as Borrower

and

**Royston Run-off Limited**

as Original Obligor

and

**National Australia Bank Limited**

and

**Barclays Bank PLC**

as Arrangers

and

**National Australia Bank Limited**

as Agent and Security Agent

**Amended and Restated US Dollar \$184,616,000 Term Facility Agreement**

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## Contents

1 Definitions and Interpretation	1
2 The Facilities	21
3 Purpose	22
4 Conditions of Loans	22
5 Loans	24
6 Repayment	24
7 Illegality, Voluntary Prepayment and Cancellation	25
8 Mandatory Prepayment	26
9 Restrictions	30
10 Interest	30
11 Interest Periods	31
12 Changes To The Calculation Of Interest	32
13 Fees	33
14 Tax Gross Up And Indemnities	33
15 Increased Costs	38
16 Indemnities	39
17 Mitigation By The Lenders	41
18 Costs And Expenses	41
19 Representations	42
20 Information Undertakings	50
21 Financial Covenants	55
22 General Undertakings	58
23 Events Of Default	68
24 Changes To The Lenders	72
25 Changes to the Obligors	76
26 Role Of The Agent, The Arrangers, The Security Agent And Others	77
27 Conduct Of Business By The Finance Parties	85
28 Sharing Among The Finance Parties	85
29 Payment Mechanics	86
30 Set-Off	90
31 Notices	90
32 Calculations And Certificates	93
33 Partial Invalidity	93
34 Remedies And Waivers	93
35 Amendments And Waivers	93
36 Counterparts	94

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37 Governing Law	94
38 Enforcement	95
Schedule 1 The Original Parties	97
Schedule 2 Conditions Precedent	98
Schedule 3 Requests	107
Schedule 4 Mandatory Cost Formula	109
Schedule 5 Form of Transfer Certificate	112
Schedule 6 Form of Assignment Agreement	116
Schedule 7 Form of Accession Letter	119
Schedule 8 Form of Compliance Certificate	120
Schedule 9 LMA Form of Confidentiality Undertaking	123
Schedule 10 Timetables	127
Schedule 11 Group Structure	128
Schedule 12 Security Agent	129

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## Term Facilities Agreement

Dated 3 October 2008

### Between:

- (1) **Royston Run-off Limited**, a company incorporated under the laws of England and Wales whose registered office is at Avaya House, 2 Cathedral Hill, Guildford, Surrey, GU2 7YL with company number 06708757 (the **Borrower**);
- (2) **The members of the Group** listed in Part 1 of Schedule 1 (*The Original Parties*) as Original Obligors (the **Original Obligors**);
- (3) **Unionamerica Holdings Limited**, a company incorporated under the laws of England and Wales whose registered office is at Avaya House, 2 Cathedral Hill, Guildford, Surrey, GU2 7YL with company number 02822469 and **Unionamerica Acquisition Company Limited**, a company incorporated under the laws of England and Wales whose registered office is at Avaya House, 2 Cathedral Hill, Guildford, Surrey, GU2 7YL with company number 02820274, as additional obligors;
- (4) **National Australia Bank Limited** as mandated lead arranger and **Barclays Bank PLC** as co-arranger (each an **Arranger** and together the **Arrangers**);
- (5) **The Financial Institutions** listed in Part 2 and Part 3 of Schedule 1 (*The Original Parties*) as lenders (the **Original Lenders**);
- (6) **National Australia Bank Limited** as agent of the other Finance Parties (the **Agent**); and
- (7) **National Australia Bank Limited** as Security Agent for the Secured Parties.

### It is agreed:

1 Definitions and Interpretation

1.1 In this Agreement:

**Acceptable Bank** means a bank or financial institution which has a rating for its long-term unsecured and non-credit-enhanced debt obligations of A+ or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A1 or higher by Moody's Investor Services Limited or a comparable rating from an internationally recognised credit rating agency or any other bank or financial institution approved by the Agent.

**Accession Letter** means a document substantially in the form set out in Schedule 7 (*Form of Accession Letter*).

**Accounting Principles** means generally accepted accounting principles in the United Kingdom.

**Acquisition** means the acquisition by the Borrower of the Target Shares on the terms of the Acquisition Documents.

**Acquisition Agreement** means the agreement relating to the sale and purchase of the Target Shares to be entered into and made between, among others, the Borrower and the Vendor in the form set out in the draft provided to the Agent prior to the date of this Agreement or in such other form as the Agent may agree.

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**Acquisition Costs** means all fees, costs and expenses, stamp, registration and other Taxes incurred (or required to be paid) by the Borrower or any other member of the Group in connection with the Acquisition or the Transaction Documents.

**Acquisition Documents** means the Acquisition Agreement, the Disclosure Letter and any other document designated as an **Acquisition Document** by the Agent and the Borrower.

**Additional Cost Rate** has the meaning given to it in Schedule 4 (*Mandatory Cost Formula*).

**Additional Obligor** means a company which becomes an Obligor in accordance with Clause 25 (*Changes to the Obligors*).

**Additional Security Agent** has the meaning given to it in Schedule 12 (*Security Agent*).

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

**Agent's Spot Rate of Exchange** means the Agent's spot rate of exchange for the purchase of the relevant currency with the Base Currency in the London foreign exchange market at or about 11:00 a.m. on a particular day.

**Assignment Agreement** means an agreement substantially in the form set out in Schedule 6 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

**Auditors** means one of PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte & Touche or such other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).

**Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

**Availability Period** means the period from and including the date of this Agreement to and including the date falling four months after the date of this Agreement.

**Available Commitment** means, in relation to a Facility, a Lender's Commitment under that Facility minus:

- (a) the amount of its participation in any outstanding Loans under that Facility; and
- (b) in relation to any proposed Loan, the amount of its participation in any Loans that are due to be made under that Facility on or before the proposed Utilisation Date.

**Available Facility** means, in relation to a Facility, the aggregate for the time being of each Lender's Available Commitment in respect of that Facility.

**Base Currency** means US Dollars.

**Base Currency Equivalent** means, the amount of the relevant currency required to purchase the relevant amount of US Dollars at the Agent's Spot Rate of Exchange.

**Break Costs** means the amount (if any) by which:

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- (a) the interest, excluding the Margin, which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the London interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Hamilton, Bermuda, and New York.

**Cash Equivalent Investments** means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security:
- (i) for which a recognised trading market exists;
  - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State;
  - (iii) which matures within one year after the relevant date of calculation; and
  - (iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investor Services Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) Sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);
- (e) any investment accessible within 30 days in money market funds which have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Rating Ltd or P-1 or higher by Moody's Investor Services Limited and which invest substantially all their assets in securities of the types described in sub-paragraphs (a) to (d) above; or
- (f) any other debt security approved by the Majority Lenders,
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in each case, to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents).

**Certain Funds Period** means the period commencing on the date of this Agreement and ending on the earlier of (i) the day following the First Utilisation Date and (ii) the last day of the Availability Period.

**Certain Funds Loan** means a Loan made or to be made during the Certain Funds Period.

**Change of Control** means:

- (a) the Investors cease to have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
  - (i) cast, or control the casting of, 100% of the maximum number of votes that might be cast at a general meeting of the Borrower;
  - (ii) appoint or remove all of the directors or other equivalent officers of the Borrower; or
  - (iii) give directions with respect to the operating and financial policies of the Borrower with which the directors or other equivalent officers of the Borrower are obliged to comply;
- (b) the cessation of full beneficial ownership by the Investors of all of the issued share capital of the Borrower;
- (c) Enstar ceases to have Control of the Borrower;
- (d) the cessation of full beneficial ownership by Enstar of all of more than 50% of the issued share capital of the Borrower;
- (e) the cessation of full beneficial ownership by the Borrower of all of the issued share capital of the Target or a member of the Target Group.

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

**Chief Financial Officer** means the finance director of the relevant company or group from time to time (or any director of the relevant company or group acting as such officer's deputy in that capacity or performing those functions).

**Closing Date** means the date on which Completion occurs.

**Commitment** means a Facility A Commitment or Facility B Commitment.

**Completion** means the completion of the Acquisition in accordance with clause 5 of the Acquisition Agreement.

**Compliance Certificate** means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*).

**Confidentiality Undertaking** means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 9 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Agent.

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**Consolidated Tangible Net Worth** means as such term is defined in Clause 21.1 (*Financial definitions*).

**Constitutional Documents** means the memorandum of association and the articles of association.

**Control** means

- (a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
  - (i) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the Borrower;
  - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the Borrower; or
  - (iii) give directions with respect to the operating and financial policies of the Borrower with which the directors or other equivalent officers of the Borrower are obliged to comply; or
- (b) the holding beneficially of more than 50% of the issued share capital of the Borrower (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

**Creditor** means a Lender or a Hedge Counterparty.

**Debentures** means the debentures to be granted by each of the Borrower, the Target and Unionamerica Acquisition Company Limited over all of its assets.

**Default** means an Event of Default or any event or circumstance specified in Clause 23 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

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

**Disclosure Letter** has the meaning given to that term in the Acquisition Agreement.

**Disruption Event** means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
  - (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
    - (i) from performing its payment obligations under the Finance Documents; or
    - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,
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and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

**Dormant Subsidiaries** means, from the Closing Date:

- (a) SPRE Limited; and
- (b) any member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets (including, without limitation, Financial Indebtedness owed to it) which in aggregate have a value of US\$50,000 or more or its equivalent in other currencies,

and **Dormant Subsidiary** means any of them.

**Enstar** means Enstar Group Limited, a company incorporated under the laws of Bermuda with registered number EC30916.

**Enstar Guarantee** means the guarantee in the agreed form entered into on or before the Closing Date by Enstar in favour of the Security Agent (as trustee for the Finance Parties) guaranteeing all of the Borrower's obligations under the Finance Documents.

**Event of Default** means any event or circumstance specified as such in Clause 23 (*Events of Default*).

**Facility** means Facility A or Facility B.

**Facility A** means the term loan facility made available under this Agreement as described in paragraph (a) of Clause 2.1 (*The Facilities*).

**Facility A Commitment** means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Facility A Commitment" in Part 2 or Part 3 of Schedule 1 (*The Original Parties*) subject to Clause 2.2 (*Facilities Adjustment*) and the amount of any other Facility A Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount in the Base Currency of any Facility A Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

**Facility A Loan** means a loan made or to be made under Facility A or the principal amount outstanding for the time being of that loan.

**Facility B** means the term loan facility made available under this Agreement as described in paragraph (b) of Clause 2.1 (*The Facilities*).

**Facility B Commitment** means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Facility B Commitment" in Part 2 or Part 3 of Schedule 1 (*The Original Parties*) subject to Clause 2.2 (*Facilities Adjustment*) and the amount of any other Facility B Commitment transferred to it under this Agreement; and
  - (b) in relation to any other Lender, the amount in the Base Currency of any Facility B Commitment transferred to it under this Agreement,
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to the extent not cancelled, reduced or transferred by it under this Agreement.

**Facility B Loan** means a loan made or to be made under Facility B or the principal amount outstanding for the time being of that loan.

**Facility Office** means

- (a) in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

**Fee Letter** means

- (a) any letter or letters dated on or about the date of this Agreement between National Australia Bank Limited in its capacity as Arranger and the Borrower (or the Agent and the Borrower or the Security Agent and the Borrower) setting out any of the fees referred to in Clause 13 (*Fees*); and
- (b) any agreement setting out fees payable to a Finance Party under any Finance Document.

**Finance Document** means this Agreement, the Enstar Guarantee, any Accession Letter, any Compliance Certificate, any Fee Letter, any Hedging Agreement, the Shareholder's Undertaking, the Subordination Deed, any Selection Notice, any Transaction Security Document, any Utilisation Request and any other document designated as a **Finance Document** by the Agent and the Borrower.

**Finance Party** means the Agent, the Arrangers, the Security Agent, a Hedge Counterparty or a Lender.

**Financial Indebtedness** means any indebtedness for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
  - (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
  - (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
  - (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;
  - (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
  - (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value as at the relevant date on which Financial Indebtedness is calculated (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
  - (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
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- (h) any amount of any liability under an advance or deferred purchase agreement if (1) one of the primary reasons behind entering into the agreement is to raise finance or (2) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;
- (i) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing; and
- (j) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (i) above.

**Financial Quarter** has the meaning given to that term in Clause 21.1 (*Financial definitions*).

**Financial Year** has the meaning given to that term in Clause 21.1 (*Financial definitions*).

**First Utilisation Date** means the first Utilisation Date.

**Forecast Cash Flows** means the forecast of cash flows in agreed form relating to the Acquisition prepared by Enstar showing total cash inflows to be US\$541,080,000.

**Free Net Worth** has the meaning given to that term in Clause 21.1 (*Financial definitions*).

**FSA** means the Financial Services Authority.

**Group** means the Borrower and each of its Subsidiaries for the time being.

**Group Structure Chart** means the group structure chart in Schedule 11 (*Group Structure*).

**Hedge Counterparty** means any Lender which enters into any Hedging Agreement with the Borrower.

**Hedging Agreement** means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by the Borrower and a Hedge Counterparty for the purpose of hedging interest rate liabilities in relation to the Facilities.

**Hedging Commitments** means on any date and in respect of a Hedge Counterparty, an amount equal to the amount (if any) which would be payable to such Hedge Counterparty under any Hedging Agreement to which it is a party if such date were deemed to be an Early Termination Date in respect of an Event of Default for which the Borrower was the Defaulting Party (and for this purpose **Early Termination Date, Event of Default, Settlement Amount** and **Defaulting Party** shall have the meanings given to them in the applicable ISDA Master Agreement), and such amount shall be certified by the relevant Hedge Counterparty in accordance with the applicable ISDA Master Agreement.

**Holding Account** means the account in the name of the Borrower held with the Agent at 88 Wood Street, London EC2V 7QQ, Sort Code: 16-55-90 and Account number: 3210 198935 501 (as the same may be redesignated, substituted or replaced from time to time).

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**Holding Company** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

**Information Memorandum** means the document concerning the Original Obligors and the Target Group which, at the request of the Borrower and on its behalf, is to be prepared in relation to this transaction, approved by the Borrower and distributed by an Arranger prior to the Syndication Date in connection with the syndication of the Facilities.

**Information Package** means the Forecast Cash Flows and the Report.

**Insolvency Representative** means any liquidator, administrator, receiver, receiver and manager, administrative receiver, custodian, trustee or similar officer in any jurisdiction.

**Intellectual Property** means

- (a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each member of the Group.

**Interest Period** means, in relation to a Loan, each period determined in accordance with Clause 11 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 10.3 (*Default Interest*).

**Investors** means:

- (a) Enstar and its or any subsequent successors or assigns or transferees; and
- (b) JCF Investment Entity and its or any subsequent successors or assigns or transferees.

**JCF Investment Entity** means each JCF Shareholder, severally and not jointly, solely in its capacity as a shareholder of the Shareholder or the Borrower and to the extent of its investment therein.

**JCF Shareholder** means J.C. Flowers II L.P and its Affiliates, successors, assigns and transferees that may from time to time be a shareholder of the Shareholder or the Borrower.

**Joint Venture** means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other similar entity.

**Legal Opinion** means any legal opinion delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or Clause 25 (*Changes to the Obligors*).

**Legal Reservations** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
  - (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against
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non-payment of UK stamp duty may be void and defences of set-off or counterclaim;

- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

**Lender** means

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 24 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

**LIBOR** means, in relation to any Loan:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the currency or Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

as of the Specified Time on the Quotation Day for the offering of deposits in US Dollars and for a period comparable to the Interest Period for that Loan.

**LMA** means the Loan Market Association.

**Loan** means a Facility A Loan or a Facility B Loan.

**Major Event of Default** means any circumstances constituting an Event of Default under any of:

- (a) Clause 23.1 (*Non-Payment*);
  - (b) Clause 23.2.2 (*Financial Covenants and other Obligations*) insofar as it relates to a breach of Clauses 22.4 (*Merger*), 22.5 (*Change of business*), 22.6 (*Acquisitions*), 22.7 (*Joint ventures*), 22.8 (*Holding Companies*), 22.13 (*Negative Pledge*), 22.14 (*Disposals*), 22.16 (*Loans or credit*), 22.17 (*No Guarantees or Indemnities*), 22.18 (*No Dividends or Share Redemption*), 22.20 (*Share capital*) or 22.24 (*Amendments*);
  - (c) Clause 23.3 (*Other obligations*) in so far as it relates to Clause 22.19 (*Financial Indebtedness*);
  - (d) Clause 23.4 (*Misrepresentation*) insofar as it relates to a breach of any Major Representation;
  - (e) Clauses 23.6.1 and 23.6.3 (*Insolvency*);
  - (f) Clause 23.7 (*Insolvency Proceedings*);
  - (g) Clause 23.8 (*Creditors' Process*);
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- (h) Clause 23.9 (*Unlawfulness and Invalidity*) (but only in so far as it relates to this Agreement, the Shareholder's Undertaking, the Enstar Guarantee and/or any Transaction Security Document);
- (i) Clause 23.10 (*Shareholder's Undertaking and Enstar Guarantee*);
- (j) Clause 23.16 (*Repudiation and Rescission of Agreements*) (but only in so far as it relates to this Agreement, the Shareholder's Undertaking, the Enstar Guarantee, any Acquisition Document and/or any Transaction Security Document); and
- (k) Clause 23.18 (*FSMA Sanctions*),

except that paragraphs (a) to (d) and (h) to (j) above inclusive shall only apply insofar as the relevant Event of Default relates to the Borrower or the Shareholder and not any other member of the Group, where relevant, and not taking into account any breach by the Borrower of any procuring obligations in respect of any member of the Target Group.

**Major Representation** means a representation or warranty with respect to the Borrower only under any of Clause 19.2 (*Status*) to Clause 19.6 (*Validity and Admissibility in Evidence*) inclusive.

**Majority Creditors** means:

- (a) if there are no Loans then outstanding under this Agreement, a Creditor or Creditors the sum of whose Commitments and Hedging Commitments aggregate more than  $66\frac{2}{3}\%$  of the sum of the Total Commitments and Hedging Commitments (or, if the Total Commitments and Hedging Commitments have been reduced to zero, aggregated more than  $66\frac{2}{3}\%$  of the Total Commitments and Hedging Commitments immediately prior to the reduction); or
- (b) at any other time, a Creditor or Creditors whose participations in the Loans and whose Hedging Commitments then outstanding aggregate more than  $66\frac{2}{3}\%$  of the aggregate of all the Loans and Hedging Commitments then outstanding.

**Majority Lenders** means a Lender or Lenders whose Commitments aggregate more than  $66\frac{2}{3}$  per cent of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than  $66\frac{2}{3}$  per cent. of the Total Commitments immediately prior to that reduction).

**Mandatory Cost** means the percentage rate per annum calculated by the Agent in accordance with Schedule 4 (*Mandatory Cost Formula*).

**Mandatory Prepayment Account** means the interest-bearing account in the name of the Borrower held with the Agent at 88 Wood Street, London EC2V 7QQ, Sort Code: 16-55-90 and Account number: 3210 198935 500 (as the same may be redesignated, substituted or replaced from time to time).

**Margin** means:

- (a) in relation to Facility A, 2.75 (two point seven five) per cent. per annum; and
- (b) in relation to Facility B, 3.25 (three point two five) per cent. per annum.

**Material Adverse Effect** means a material adverse effect on:

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- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Group taken as a whole; or
- (b) the ability of an Obligor to perform its payment obligations under the Finance Documents and/or its obligations under Clause 21.2 (*Financial condition*); or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

**Month** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period. **Monthly** shall be construed accordingly.

**Obligor** means an Original Obligor or an Additional Obligor.

**Obligors' Agent** means the Borrower, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.4 (*Obligors' Agent*).

**Original Financial Statements** means

- (a) in relation to the Target, its consolidated audited financial statements for its Financial Year ended 31 December 2007;
- (b) in relation to any other Obligor, its audited financial statements delivered to the Agent as required by Clause 25 (*Changes to the Obligors*); and
- (c) in relation to any other member of the Group, its audited financial statements delivered to the Agent as required by Clause 20.2 (*Financial Statements*).

**Participating Member State** means any member state of the European Communities that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

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

**Permitted Disposal** means any sale, lease, licence, transfer or other disposal permitted by Clause 22.28 (*Intra-Group transactions*) or which is not an intra-Group transaction and is on arm's length terms:

- (a) of cash made by any member of the Group in the ordinary course of trading of the disposing entity;
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- (b) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments; and
- (c) arising as a result of any Permitted Security.

**Permitted Distribution** means

- (a) a Target Distribution;
  - (b) the payment of a dividend, the making of a loan or the movement of cash by way of a share buyback by the Borrower, in each case, declared as a result of the receipt of a Target Distribution into the Holding Account provided the following conditions are satisfied:
    - (i) the Borrower's obligations under Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*) have been complied with in full;
    - (ii) no Default is continuing at the time such dividend is to be paid or would occur if such dividend is paid;
    - (iii) at the time the relevant dividend is to be paid no circumstances exist such that (in the opinion of the Agent) on the publication of any accounts by reference to which Net Worth Cover in Clause 21.2 (*Financial condition*) is calculated, there would be a breach of that financial covenant on its next following test date if the dividend was paid;
    - (iv) the Borrower has given the Agent not less than 5 Business Days' written notice of the Borrower's intention to pay the proposed dividend and has at the same time delivered to the Agent a certificate signed by a director of the Borrower certifying that (1) he is not aware of any Default which is continuing or of any Default which is likely to occur on or prior to the anticipated date of payment and (2) containing calculations to show that the Net Worth Cover financial covenant in Clause 21.2 (*Financial condition*) will be complied with following the payment of the proposed dividend on the next following test date; and
    - (v) the Agent shall not have (1) objected to the payment of such dividend before the expiry of the 5 Business Day notice period referred to in paragraph (iv) above because any of the conditions for payment under this paragraph (b) has not been met or (2) requested reasonable further information to establish whether the conditions established by this Clause are met. If the Agent objects, it shall state which conditions of this paragraph (b) it does not consider to have been satisfied, in which case the Borrower shall not pay the proposed dividend unless (in the case of a breach of the Net Worth Cover financial covenant) it obtains a certificate from the Auditors confirming to the Agent that in their opinion the financial conditions necessary to allow the payment of the relevant dividend have been satisfied, or in the case of any other Default the Agent becomes satisfied that the conditions for payment under this paragraph (b) have been met; and
  - (c) the payment of a dividend to the Target or its wholly-owned Subsidiaries,
- provided that no such Target Distribution, payment, distribution or other action detailed in paragraphs (a) to (c) above will be permitted at any time after the occurrence of a Default which is continuing.
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**Permitted Financial Indebtedness** means Financial Indebtedness arising under:

- (a) a Permitted Loan;
- (b) a Permitted Guarantee;
- (c) any Finance Document; or
- (d) any letters of credit secured on the assets of the Target Group that match liabilities held on the balance sheet of the Target Group in favour of the cedant (who is also the beneficiary of such letter of credit).

**Permitted Guarantee** means

- (a) any guarantee of Permitted Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness provided that Clause 22.28 (*Intra-Group transactions*) is complied with; or
- (b) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (a) of the definition of Permitted Security,

provided that no new guarantee will be permitted at any time after the occurrence of a Default which is continuing.

**Permitted Loan** means

- (a) Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness provided Clause 22.28 (*Intra-Group transactions*) is complied with; or
- (b) any loan permitted by Clause 22.28 (*Intra-Group transactions*); or
- (c) any loan invested pursuant to Clause 21.4 (*Equity cure- Regulatory Cover*) or Clause 21.5 (*Equity cure- Net Worth Cover*).

**Permitted Payment** means a payment of fees on arms' length terms by any member of the Group to any Subsidiary of Enstar that is not a member of the Group for management services up to a maximum aggregate amount of all such payments not exceeding:

- (a) in 2009, US\$6,000,000;
- (b) in 2010, US\$5,100,000;
- (c) in 2011, US\$4,335,000;
- (d) in 2012, US\$3,685,000;
- (e) in 2013, US\$5,632,000;
- (f) in 2014, US\$700,000;
- (g) in 2015, US\$600,000;
- (h) in 2016, US\$500,000;
- (i) in 2017, US\$400,000;
- (j) in 2018, US\$400,000,

provided that no such payment will be permitted at any time after the occurrence of a Default which is continuing.

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**Permitted Security** means

- (a) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group but only so long as (1) such arrangement does not permit credit balances of Obligors to be netted or set-off against debit balances of members of the Group which are not Obligors and (2) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors;
- (b) any Quasi Security arising as a result of a disposal which is a Permitted Disposal;
- (c) any Transaction Security;
- (d) any security relating to letters of credit issued by any Citigroup entity required to be given by any regulation; or
- (e) any security relating to any US trust funds required to be given by any regulation.

**Permitted Share Issue** means an issue of shares:

- (a) by a member of the Group (other than the Borrower) which is a Subsidiary to its immediate Holding Company to the extent permitted by Clause 22.28 (*Intra-Group Transactions*) and where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms provided that no such issue of shares will be permitted at any time after the occurrence of a Default which is continuing; or
- (b) by the Borrower to the Shareholder where the proceeds of such share issue are applied to remedy a breach of the Regulatory Cover or the Net Worth Cover financial covenant in Clause 21.2 (*Financial condition*) pursuant to Clause 21.4 (*Equity cure- Regulatory Cover*) or Clause 21.5 (*Equity cure- Net Worth Cover*).

**Permitted Transaction** means

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents; or
- (b) transactions (other than (i) any sale, lease, licence, transfer or other disposal; and (ii) the granting or creation of Security, the incurring or permitting to subsist of Financial Indebtedness or the disposal of the shares of any member of the Group), conducted in the ordinary course of trading on arm's length terms,

provided that no such disposal, transaction or other action detailed in paragraphs (a) or (b) above that is not already existing will be permitted at any time after the occurrence of a Default which is continuing.

**Qualifying Lender** has the meaning given to that term in Clause 14 (*Tax gross-up and indemnities*).

**Quarter Date** has the meaning given to that term in Clause 21.1 (*Financial definitions*).

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**Quarterly Financial Statement** has the meaning given to that term in Clause 20 (*Information Undertakings*).

**Quasi-Security** has the meaning given to that term in Clause 22.13 (*Negative pledge*).

**Quotation Day** means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period, unless market practice differs in the London interbank market for a currency, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the London interbank market (and if quotations would normally be given by leading banks in the London interbank market on more than one day, the Quotation Day will be the last of those days).

**Rating Agency** means Standard & Poor's Rating Services or other equivalent internationally recognised statistical rating organisation.

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

**Reference Banks** means National Australia Bank Limited and such other banks as may be appointed by the Agent in consultation with the Borrower.

**Related Fund** in relation to a fund (**first fund**), means a fund which is managed or advised by the same investment manager or adviser as the first fund or, if it is managed by a different investment manager or adviser, a fund whose investment manager or adviser is an Affiliate of the investment manager or adviser of the first fund.

**Relevant Jurisdiction** means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

**Regulatory Cover** has the meaning given to it in Clause 21.1 (*Financial definitions*).

**Relevant Period** has the meaning given to that term in Clause 21.1 (*Financial definitions*).

**Repeating Representations** means each of the representations set out in Clauses 19.2 (*Status*) to Clause 19.7 (*Governing law and enforcement*), Clause 19.11 (*No default*), paragraph 19.12.6 of Clause 19.12 (*No misleading information*), Clause 19.13 (*Original Financial Statements*) and Clause 19.18 (*Ranking*) to Clause 19.20 (*Legal and beneficial ownership*).

**Report** means the InsurMath report titled "Proposed Acquisition of Unionamerica" dated 1 October 2008, and capable of being relied upon by National Australia Bank Limited and the other Secured Parties.

**Restricted Subsidiaries** means, from the Closing Date, Unionamerica Insurance Company Limited.

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**Screen Rate** means the British Bankers' Association Interest Settlement Rate for US Dollars and the relevant period displayed on the appropriate page of the Telerate screen. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Borrower and the Lenders.

**Secured Parties** means each Finance Party from time to time party to this Agreement, any Receiver or Delegate.

**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 National Australia Bank Limited in its capacity as security agent and trustee for the other Finance Parties under this Agreement and the Transaction Security Documents and any Additional Security Agent or Delegate appointed by it in accordance with the terms of this Agreement.

**Selection Notice** means a notice substantially in the form set out in Part 2 of Schedule 3 (*Requests*) given in accordance with Clause 11 (*Interest periods*).

**Shareholder** means Royston Holdings Limited and its, or any subsequent successors, assigns or transferees.

**Shareholder's Undertaking** means the Shareholder's undertaking dated 29 December 2008 from the Shareholder and the Borrower to the Finance Parties.

**Specified Time** means a time determined in accordance with Schedule 10 (*Timetables*).

**Sterling** and **£** means the lawful currency of the UK.

**Subordination Deed** means the subordination deed dated 4 August 2009 between, inter alia, the Shareholder, the Original Obligors and the Agent.

**Subsidiary** means an entity of which a person:

- (a) has direct or indirect Control; or
- (b) owns directly or indirectly more than fifty per cent. (50%) of the share capital or similar right of ownership; or
- (c) is entitled to receive more than fifty per cent. (50%) of the dividends or distributions,

and any entity (whether or not so controlled) treated as a subsidiary in the latest financial statements of that person from time to time.

**Syndication Date** means any day on which an Arranger confirms that the primary syndication of the Facilities has been completed.

**Target** mean Unionamerica Holdings Limited, a company incorporated under the laws of England and Wales with registered number 02822469 and having its registered address at 60 Gracechurch Street, London EC3V 0HR.

**Target Distribution** means:

- (a) the payment of a dividend, the making of a loan or the movement of cash by way of a share buyback by a member of the Target Group to the Target; and/or
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(b) the payment (or subsequent payment) of a dividend, the making of a loan or the movement of cash by way of a share buyback by the Target to the Borrower,

where, in each case it is deposited in the Holding Account and the amount has been notified to the Agent in advance.

**Target Group** means the Target and its Subsidiaries.

**Target Shares** means all of the issued shares of the Target.

**Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**Taxes Act** means the Income and Corporation Taxes Act 1988.

**Termination Date** means in relation to:

(a) Facility A, the date falling three years from the date of this Agreement; and

(b) Facility B, the date falling four years from the date of this Agreement.

**Total Commitments** means the aggregate of the Total Facility A Commitments and the Total Facility B Commitments, being US\$184,616,000 at the date of this Agreement, subject to Clause 2.2 (*Facilities Adjustment*).

**Total Facility A Commitments** means the aggregate of the Facility A Commitments, being US\$152,616,000 at the date of this Agreement, subject to Clause 2.2 (*Facilities Adjustment*).

**Total Facility B Commitments** means the aggregate of the Facility B Commitments, being US\$32,000,000 at the date of this Agreement, subject to Clause 2.2 (*Facilities Adjustment*).

**Transaction Documents** means the Finance Documents, the Acquisition Documents and the Constitutional Documents of the Borrower.

**Transaction Security** means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

**Transaction Security Documents** means the Debentures and any originals of all share certificates and stock transfer forms (all stock transfer forms to be executed by two directors or a director and the secretary of the company that owns the relevant shares but with the sections relating to the consideration and the transferee left blank) or equivalent, duly executed by the relevant Obligor in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents and required to be delivered to the Agent under Schedule 2 (*Conditions Precedent*) together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents including, but not limited to, each document listed in Schedule 2 Part 1C (*Conditions subsequent*).

**Transfer Certificate** means a certificate substantially in the form set out in Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower.

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**Transfer Date** means, in relation to an assignment or transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

**Treasury Transactions** means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

**UK** means the United Kingdom of Great Britain and Northern Ireland.

**Unpaid Sum** means any sum due and payable but unpaid by an Obligor under the Finance Documents.

**US Dollars** or **USD** or **US\$** means the lawful currency of the United States of America.

**Utilisation Date** means the date on which a Loan is made.

**Utilisation Request** means a notice substantially in the relevant form set out in Schedule 3 (*Requests*).

**VAT** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

**Vendor** means the seller under the Acquisition Agreement.

## 1.2 Construction

1.2.1 Unless a contrary indication appears, a reference in this Agreement to:

- (a) the **Agent**, any **Arranger**, any **Finance Party**, any **Lender**, any **Obligor**, any **Party**, any **Secured Party**, the **Security Agent** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
  - (b) a document in **agreed form** is a document which is previously agreed in writing by or on behalf of the Borrower and the Agent or, if not so agreed, is in the form specified by the Agent;
  - (c) **assets** includes present and future properties, revenues and rights of every description;
  - (d) a **Finance Document** or a **Transaction Document** or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated (in any case, however fundamentally);
  - (e) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
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- (f) **wholly owned subsidiary** means a company or corporation that has no members except for:
    - (i) another company or corporation and that other company's or corporation's wholly-owned subsidiaries; or
    - (ii) persons acting on behalf of that other company or corporation and that other company's or corporation's wholly-owned subsidiaries.
  - (g) **including** and **in particular** shall not be construed restrictively but shall mean **including without prejudice to the generality of the foregoing** and **in particular, but without limitation**;
  - (h) **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;
  - (i) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, joint venture, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;
  - (j) 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;
  - (k) a provision of law is a reference to that provision as amended or re-enacted and any subordinate legislation made under it; and
  - (l) a time of day is a reference to London time.
- 1.3 Section, Clause and Schedule headings are for ease of reference only.
- 1.4 Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- 1.5 A Default (other than an Event of Default) is **continuing** if it has not been remedied or waived and an Event of Default is **continuing** if it has not been waived.
- 1.6 Any consent, waiver or approval required from a Finance Party under a Finance Document must be in writing and will be of no effect if not in writing.
- 1.7 Reference to a monetary sum specified in Sterling in Clause 19 (*Representations*), Clause 20 (*Information Undertakings*), Clause 21 (*Financial Covenants*), Clause 22 (*General Undertakings*) and/or Clause 23 (*Events of Default*) shall be deemed to include reference to the Base Currency Equivalent of such sum.
- 1.8 **Third Party Rights**
- 1.8.1 Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (**Third Parties Act**) to enforce or enjoy the benefit of any term of this Agreement.
- 1.8.2 Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
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## 2 The Facilities

### 2.1 The Facilities

Subject to the terms of this Agreement and to Clause 2.2 (*Facilities Adjustment*), the Lenders make available to the Borrower:

- (a) a term loan facility in an aggregate amount equal to the Total Facility A Commitments; and
- (b) a term loan facility in an aggregate amount equal to the Total Facility B Commitments.

### 2.2 Facilities Adjustment

Where 60% of the Base Currency Equivalent of the purchase price of the Target Shares (excluding fees and other expenses but including interest accruing thereon in accordance with the Acquisition Agreement) is less than US\$184,616,000, the Total Commitments shall be reduced to such amount. Any such reduction shall be applied to the Total Facility A Commitments and the Total Facility B Commitments *pro rata*.

### 2.3 Finance Parties' rights and obligations

- 2.3.1 The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- 2.3.2 The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- 2.3.3 A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

### 2.4 Obligors' Agent

- 2.4.1 Each Obligor (other than the Borrower) by its execution of this Agreement or an Accession Letter irrevocably appoints the Borrower to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
  - (a) the Borrower on its behalf to supply all information concerning itself contemplated by the Finance Documents to the Finance Parties and to give all notices and instructions, to execute on its behalf any Accession Letter, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
  - (b) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Borrower,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

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2.4.2 Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

### 3 Purpose

#### 3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facilities towards:

3.1.1 paying to the Vendor an amount from the Facilities not exceeding US\$184,616,000 to purchase the Target Shares under the Acquisition Agreement providing that such amount equates to no more than 60% of the purchase price of the Target Shares (excluding fees and other expenses); and

3.1.2 paying the following fees connected with this Agreement:

- (a) the arrangement and participation fee payable pursuant to Clause 13.2 (*Arrangement fee*);
- (b) the commitment fee payable to the Agent for the account of the Lenders pursuant to Clauses 13.1 (*Commitment fee*);
- (c) the agency fee payable to the Agent pursuant to Clause 13.3 (*Agency fee*); and
- (d) the legal fees of Clyde & Co LLP incurred in the drafting and negotiation of the Finance Documents amounting to no more than £60,000 plus VAT and disbursements.

#### 3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

### 4 Conditions of Loans

#### 4.1 Initial conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Loan if: on or before the Utilisation Date for that Loan, the Agent has received all of the documents and other evidence listed in Part 1A and Part 1B of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Obligors' Agent and the Lenders in writing promptly upon being so satisfied.

#### 4.2 Further conditions precedent

Subject to Clause 4.1 (*Initial conditions precedent*), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) (other than in respect of a Certain Funds Loan to which Clause 4.4 (*Loans during the Certain Funds Period*))

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apply), if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) in relation to any Loan on the First Utilisation Date, all the representations and warranties in Clause 19 (*Representations*) (other than Clause 19.12 (*No misleading information*)) which are made on the date of this Agreement only) and in the Enstar Guarantee and the Shareholder's Undertaking or, in relation to any other Loan, the Repeating Representations and the representations and warranties that are deemed to be repeated under clause 6.15 of the Enstar Guarantee, to be made by each Obligor or Enstar, as the case may be, are true; and
- (b) none of the events described in Clause 12.2 (*Market disruption*) has occurred which has resulted in any Lender being unable to fund its participation in the proposed Loan.

#### 4.3 Maximum number of Loans

4.3.1 The Borrower may not deliver a Utilisation Request if as a result of the proposed Loan more than two Loans would be outstanding.

4.3.2 The Borrower may not request that a Loan be divided.

#### 4.4 Loans during the Certain Funds Period

4.4.1 Subject to Clause 4.1 (*Initial conditions precedent*), during the Certain Funds Period, the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' Participation*) in relation to a Certain Funds Loan, if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Major Event of Default is continuing or would result from the proposed Loan; and
- (b) all the Major Representations are true in all material respects.

4.4.2 During the Certain Funds Period (save in circumstances where, pursuant to Clause 4.4.1 above, a Lender is not obliged to comply with Clause 5.4 (*Lenders' Participation*)) and subject as provided in Clause 7.1 (Illegality)), none of the Finance Parties shall be entitled to:

- (a) cancel any of its Commitments;
  - (b) rescind, terminate or cancel this Agreement or any of the Facilities or exercise any similar right or remedy or make or enforce any claim under the Finance Documents it may have;
  - (c) refuse to participate in the making of a Certain Funds Loan;
  - (d) exercise any right of set-off or counterclaim in respect of a Certain Funds Loan to the extent to do so would prevent or limit the making of a Certain Funds Loan;
  - (e) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document to the extent to do so would prevent or limit the making of a Certain Funds Loan; or
  - (f) enforce any Security under the Transaction Security Documents or take any proceeding which would constitute an Event of Default under Clause 23.7 (*Insolvency proceedings*) or Clause 23.8 (*Creditors' process*),
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provided that immediately upon the expiry of the Certain Funds Period all such rights, remedies and entitlements shall be available to the Finance Parties notwithstanding that they may not have been used or been available for use during the Certain Funds Period.

#### **4.5 Enstar Guarantee**

The Finance Parties agree that if the Original Lender reduces its participation in the Facilities to or below 50% of the Total Commitments then the Enstar Guarantee shall immediately be released and all references to the Enstar Guarantee in this Agreement shall have no application.

### **5 Loans**

#### **5.1 Delivery of a Utilisation Request**

The Borrower may utilise the Facilities by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

#### **5.2 Completion of a Utilisation Request for Loans**

5.2.1 Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:

- (a) the proposed Utilisation Date is a Business Day within the Availability Period;
- (b) the currency and amount of the Loan comply with Clause 5.3 (*Currency*); and
- (c) the proposed Interest Period complies with Clause 11 (*Interest Periods*).

5.2.2 Only one Loan may be requested in each Utilisation Request.

#### **5.3 Currency**

The currency specified in a Utilisation Request must be US Dollars.

#### **5.4 Lenders' participation**

5.4.1 If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

5.4.2 The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.

#### **5.5 Cancellation of Commitment**

5.5.1 The Total Facility A Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility A.

5.5.2 The Total Facility B Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility B.

### **6 Repayment**

6.1.1 The Borrower shall repay the Facility A Loan in full on the Termination Date for Facility A.

6.1.2 The Borrower shall repay the Facility B Loan in full on the Termination Date for Facility B.

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6.1.3 The Borrower may not reborrow any part of the Facilities which is repaid.

## **7 Illegality, Voluntary Prepayment and Cancellation**

### **7.1 Illegality**

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Loan:

- (a) that Lender, shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Obligors' Agent, the Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall repay that Lender's participation in the Loans made to the Borrower on the last day of the Interest Period for each Loan occurring after the Agent has notified the Obligors' Agent or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

### **7.2 Voluntary cancellation**

7.2.1 Subject to Clause 7.3 (*Voluntary prepayment of Loans*) the Borrower may, if it gives the Agent not less than 10 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of US\$500,000) of the Available Facility. Any cancellation under this Clause 7.2 shall reduce the Commitments under the Facilities pro rata.

7.2.2 The Borrower shall not cancel any part of the Available Commitment unless at the same time it cancels a pro rata amount of the Available Commitments for Facility A and Facility B.

### **7.3 Voluntary prepayment of Loans**

7.3.1 The Borrower may, if it gives the Agent not less than 10 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Facility A Loan or Facility B Loan as specified in the relevant notice (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of US\$500,000 or its equivalent).

7.3.2 A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the applicable Available Facility is zero).

### **7.4 Right of cancellation and repayment in relation to a single Lender**

7.4.1 If:

- (a) any sum payable to any Lender by an Obligor is required to be increased under Clause 14.2 (*Tax gross-up*); or
- (b) any Lender claims indemnification from the Obligors' Agent or an Obligor under Clause 14.3 (*Tax indemnity*) or Clause 15.1 (*Increased costs*),

the Obligors' Agent may, whilst the circumstance giving rise to the requirement or indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.

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- 7.4.2 On receipt of a notice referred to in Clause 7.4.1 above in relation to a Lender, the Commitment of that Lender shall immediately be reduced to zero.
- 7.4.3 On the last day of each Interest Period which ends after the Obligors' Agent has given notice under Clause 7.4.1 above in relation to a Lender (or, if earlier, the date specified by the Obligors' Agent in that notice), the Borrower shall repay that Lender's participation in that Loan together with all interest and other amounts accrued under the Finance Documents.

## 8 **Mandatory Prepayment**

### 8.1 **Exit**

8.1.1 For the purpose of this Clause 8.1:

**Flotation:** means

- (a) a successful application being made for the admission of any part of the share capital of any member of the Group (or Holding Company of any member of the Group other than Enstar) to the Official List of the UK Listing Authority or any equivalent in another country and the admission of any part of the share capital of any member of the Group (or Holding Company of any member of the Group other than Enstar or any of its Holding Companies) to trading on the London Stock Exchange plc or any equivalent in another country; or
  - (b) the grant of permission to deal in any part of the issued share capital of any member of the Group (or Holding Company of any member of the Group other than Enstar or any of its Holding Companies) on the Alternative Investment Market or the European Acquisition of Securities Dealers Automated Quotation System or on any recognised investment exchange (as that term is used in the Financial Services and Markets Act 2000) or in or on any exchange or market replacing the same or any other exchange or market in any country.
- 8.1.2 Upon the occurrence of:
- (a) any Flotation;
  - (b) a Change of Control; or
  - (c) the total of all outstanding Loans falling below US\$10,000,000 or its equivalent after the First Utilisation Date,
- the Facilities will be cancelled and all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

### 8.2 **Disposal, Insurance, Acquisition Proceeds and Target Distributions**

8.2.1 For the purposes of Clauses 8.3 (*Application of mandatory prepayments*) and Clause 8.4 (*Mandatory Prepayment Accounts and Holding Accounts*):

**Acquisition Proceeds:** means the proceeds of a claim against, or recovery or refund from (**Recovery Claim**) the Vendor or any of its Affiliates (or any employee, officer or adviser) in relation to the Acquisition Documents or against the provider of any Report (in its capacity as a provider of that Report) except for Excluded Acquisition Proceeds, and after deducting:

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- (a) any reasonable expenses which are incurred by any member of the Group to persons who are not members of the Group; and
- (b) any Tax incurred and required to be paid by a member of the Group (as reasonably determined by the relevant member of the Group on the basis of existing rates and taking into account any available credit, deduction or allowance),

in each case in relation to that Recovery Claim.

**Disposal:** means a sale, lease, licence, transfer, loan or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

**Disposal Proceeds:** means the consideration receivable by any member of the Group (including any amount receivable in repayment of intercompany debt) for any Disposal made by any member of the Group except for Excluded Disposal Proceeds and after deducting:

- (a) any reasonable expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group; and
- (b) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

**Excluded Acquisition Proceeds:** means any proceeds of a Recovery Claim which the Borrower notifies the Agent are, or are to be, applied:

- (a) in payment of amounts payable to the Vendor pursuant to the Acquisition Agreement by way of adjustment to the purchase price in respect of the Acquisition (except to the extent relating to a working capital adjustment);
- (b) to satisfy (or reimburse a member of the Group which has discharged) any liability, charge or claim upon a member of the Group by a person which is not a member of the Group; or
- (c) in the replacement, reinstatement and/or repair of assets of members of the Group which have been lost, destroyed or damaged,

in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are so applied as soon as possible (but in any event within 180 days, or such longer period as the Majority Lenders may agree) after receipt.

**Excluded Disposal Proceeds:** means Disposal Proceeds which have been derived from a Disposal permitted by Clause 22.28 (*Intra-Group transactions*) or of a type described in paragraphs (a) or (b) or (c) (but only if and to the extent that such Disposal is in exchange for other Cash Equivalent Investments) of the definition of **Permitted Disposal**.

**Excluded Insurance Proceeds:** means any proceeds of an insurance claim which the Borrower notifies the Agent are, or are to be, applied:

- (a) to meet a third party claim; or
  - (b) in amelioration of the loss in respect of which the relevant insurance claim was made,
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in each case as soon as possible (but in any event within 180 days, or such longer period as the Majority Lenders may agree) after receipt.

**Insurance Proceeds:** means the proceeds of any insurance claim received by any member of the Group except for Excluded Insurance Proceeds and after deducting any reasonable expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group.

8.2.2 The Borrower shall prepay Loans in the following amounts at the times and in the order of application contemplated by Clause 8.3 (*Application of mandatory prepayments*):

- (a) the amount of Acquisition Proceeds;
- (b) the amount of Disposal Proceeds;
- (c) the amount of Insurance Proceeds; and
- (d) the amount of all Target Distributions until the amount outstanding under the Loans is less than or equal to US\$84,616,000, and thereafter in the amount equal to the percentage of Target Distribution as set out in the second column below when the Net Worth Cover ratio in Clause 21.2 (*Financial Condition*) is as specified in the first column below (as demonstrated in writing by the Borrower to the satisfaction of the Agent). To the extent FSA approval is required for a Target Distribution, the Borrower shall procure that such Target Distribution is paid into a Mandatory Prepayment Account within 90 days of the giving of FSA approval for such Target Distribution.

<b>Net Worth Cover ratio</b>	<b>Percentage of Target Distribution Proceeds to be applied in prepayment of the Facilities</b>
Less than or equal to 2.50:1	100%
Greater than 2.50:1 but less than or equal to 3.00:1	75%
Greater than 3.00:1	50%

### 8.3 Application of mandatory prepayments

8.3.1 A prepayment made under Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*) shall:

- (a) be applied in prepayment of Loans as contemplated in Clauses 8.3.1(b) to 8.3.3 inclusive below;
- (b) unless the Obligors' Agent makes an election under Clause 8.3.2 below, be applied in prepayment of the Loans within 5 Business Days of receipt of such proceeds or Target Distribution; and
- (c) be applied in prepayment of the Facility A Loans and, when all the Facility A Loans have been prepaid in full, prepayment of the Facility B Loans.

8.3.2 Subject to Clause 8.3.3 below, the Obligors' Agent may elect that any prepayment under Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*) be applied in prepayment of a Loan on the last day of the Interest

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Period relating to that Loan. If the Obligors' Agent makes that election then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.

8.3.3 If the Obligors' Agent has made an election under Clause 8.3.2 above but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Lenders otherwise agree in writing).

#### 8.4 **Mandatory Prepayment Accounts and Holding Accounts**

8.4.1 The Obligors' Agent shall ensure that:

- (a) Disposal Proceeds, Insurance Proceeds, Acquisition Proceeds and any Target Distribution in respect of which the Obligors' Agent has made an election under Clause 8.3 (*Application of mandatory prepayments*) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group; and
- (b) Excluded Disposal Proceeds to be applied in replacement of assets, Excluded Insurance Proceeds and Excluded Acquisition Proceeds are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Group.

8.4.2 The Borrower irrevocably authorises the Agent to apply:

- (a) amounts credited to the Mandatory Prepayment Account; and
- (b) amounts credited to the Holding Account which have not been duly applied as contemplated within 180 days of receipt of the relevant proceeds (or such longer time period as the Majority Lenders may agree),

to pay amounts due and payable under Clause 8.3 (*Application of mandatory prepayments*) and otherwise under the Finance Documents. The Borrower further irrevocably authorises the Agent to so apply amounts credited to the Holding Account in respect of Excluded Disposal Proceeds to be applied in replacement of assets, Excluded Insurance Proceeds and Excluded Acquisition Proceeds whether or not 180 days have elapsed since receipt of those proceeds if a Default has occurred and is continuing. The Borrower also irrevocably authorises the Agent to transfer any amounts credited to the Holding Account referred to in this Clause 8.4.2 to the Mandatory Prepayment Account pending payment of amounts due and payable under the Finance Documents (but if all such amounts have been paid any such amounts remaining credited to the Mandatory Prepayment Account may (unless a Default has occurred) be transferred back to the Holding Account).

8.4.3 A Lender, Security Agent or Agent with which a Mandatory Prepayment Account or Holding Account is held acknowledges and agrees that (1) interest shall accrue at normal commercial rates offered by such Lender, Security Agent or Agent in Europe on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing, and (2) each such account is subject to the Transaction Security.

#### 8.5 **Excluded proceeds**

Where Excluded Acquisition Proceeds, Excluded Disposal Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific

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purpose within a specified period (as set out in the relevant definition of Excluded Acquisition Proceeds, Excluded Disposal Proceeds or Excluded Insurance Proceeds), the Obligors' Agent shall ensure that those amounts are used for that purpose and shall promptly deliver a certificate to the Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

## **9 Restrictions**

### **9.1 Notices of Cancellation or Prepayment**

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 7 (*Illegality, Voluntary Prepayment and Cancellation*), Clause 8.3 (*Application of mandatory prepayments*) or Clause 8.4 (*Mandatory Prepayment Accounts and Holding Accounts*) (subject to the terms of those Clauses) shall be irrevocable and, unless a contrary indication appears in this Agreement, any such notice shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

### **9.2 Interest and other amounts**

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

### **9.3 No Reborrowing of Facility**

No Borrower may reborrow any part of the Facilities which is prepaid.

### **9.4 Prepayment in accordance with Agreement**

No Borrower shall repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

### **9.5 No reinstatement of Commitments**

No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

### **9.6 Agent's receipt of Notices**

If the Agent receives a notice under Clause 7 (*Illegality, Voluntary Prepayment and Cancellation*) or an election under Clause 8.3 (*Application of mandatory prepayments*), it shall promptly forward a copy of that notice or election to either the Obligors' Agent or the affected Lender, as appropriate.

## **10 Interest**

### **10.1 Calculation of Interest**

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin;
  - (b) LIBOR; and
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(c) Mandatory Cost, if any,  
(together the **Interest**).

## 10.2 **Payment of Interest**

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period).

## 10.3 **Default interest**

- 10.3.1 If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to Clause 10.3.2 below, is 1 per cent higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted a Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 10.3 shall be immediately payable by the Obligor on demand by the Agent.
- 10.3.2 If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
- (a) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (b) the rate of interest applying to the overdue amount during that first Interest Period shall be 1 per cent higher than the rate which would have applied if the overdue amount had not become due.
- 10.3.3 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

## 10.4 **Notification of rates of interest**

The Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.

## 11 **Interest Periods**

### 11.1 **Selection of Interest Periods and Terms**

- 11.1.1 The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.
- 11.1.2 Each Selection Notice for a Loan is irrevocable and must be delivered to the Agent by the Borrower not later than the Specified Time.
- 11.1.3 If the Borrower fails to deliver a Selection Notice to the Agent in accordance with Clause 11.1.2 above, the relevant Interest Period will be three Months.
- 11.1.4 Subject to this Clause 11, the Borrower may select an Interest Period of three or six Months or any other period agreed between the Borrower and the Agent (acting on the instructions of all the Lenders).
- 11.1.5 An Interest Period for a Loan shall not extend beyond the Termination Date.
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- 11.1.6 Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
- 11.1.7 Prior to the Syndication Date, Interest Periods shall be one month or such other period as the Agent and the Borrower may agree and any Interest Period which would otherwise end during the month preceding or extend beyond the Syndication Date shall end on the Syndication Date.

## 11.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

## 12 Changes To The Calculation Of Interest

### 12.1 Absence of quotations

Subject to Clause 12.2 (*Market disruption*), if LIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

### 12.2 Market disruption

- 12.2.1 If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
- (a) the applicable Margin;
  - (b) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and
  - (c) the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.
- 12.2.2 In this Agreement **Market Disruption Event** means:
- (a) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine LIBOR for the relevant currency and Interest Period; or
  - (b) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 30 per cent of that Loan) that the cost to it of obtaining matching deposits in the London Interbank market would be in excess of LIBOR.

### 12.3 Alternative basis of interest or funding

- 12.3.1 If a Market Disruption Event occurs and the Agent or the Borrower so requires, the Agent and the Obligors' Agent shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.
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12.3.2 Any alternative basis agreed pursuant to Clause 12.3.1 above shall, with the prior consent of all the Lenders and the Obligors' Agent, be binding on all Parties.

#### 12.4 **Break Costs**

12.4.1 The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

12.4.2 Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

### 13 **Fees**

#### 13.1 **Commitment fee**

13.1.1 The Borrower shall pay to the Agent (for the account of each Lender) a fee in the Base Currency computed at the rate of:

- (a) one per cent. (1%) per annum on the daily undrawn and uncanceled amount of Facility A; and
- (b) one per cent. (1%) per annum on the daily undrawn and uncanceled amount of Facility B.

13.1.2 The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the relevant Availability Period, on the last day of the relevant Availability Period and on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

#### 13.2 **Arrangement fee**

The Borrower shall pay to National Australia Bank Limited in its capacity as an Arranger an arrangement fee and a participation fee in the amount, manner and at the times agreed in a Fee Letter.

#### 13.3 **Agency fee**

The Borrower shall pay to the Agent (for its own account) an agency fee in the amount, manner and at the times agreed in a Fee Letter.

### 14 **Tax Gross Up And Indemnities**

#### 14.1 **Definitions**

14.1.1 In this Agreement:

- (a) **Protected Party:** means a Finance Party which is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.
  - (b) **Qualifying Lender:** means  
a Lender (other than a Lender within sub-paragraph (ii) below) which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
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- (A) a Lender:
    - (1) which is a bank (as defined for the purpose of section 879 of the Income Tax Act 2007 (**ITA 2007**)) making an advance under a Finance Document; or
    - (2) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of ITA 2007) at the time that that advance was made,  
and which is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance;
  - (B) a Lender which is:
    - (1) a company resident in the United Kingdom for United Kingdom tax purposes;
    - (2) a partnership each member of which is:
      - (a) a company so resident in the United Kingdom; or
      - (b) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which is required to bring into account in computing its chargeable profits (within the meaning of section 11(2) of the Taxes Act) the whole of any share of interest payable in respect of that advance that falls to it by reason of sections 114 and 115 of the Taxes Act;
    - (3) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account that interest payable in respect of that advance in computing the chargeable profits (for the purposes of section 11(2) of the Taxes Act) of that company; or
    - (4) a Treaty Lender; or
    - (5) a building society (as defined for the purposes of section 880 of ITA 2007).
  - (c) **Tax Confirmation**: means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
    - (i) a company resident in the United Kingdom for United Kingdom tax purposes;
    - (ii) a partnership each member of which is:
      - (A) a company so resident in the United Kingdom; or
      - (B) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its
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chargeable profits (for the purposes of section 11(2) of the Taxes Act) the whole of any share of interest payable in respect of that advance that falls to it by reason of sections 114 and 115 of the Taxes Act; or

(iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 11(2) of the Taxes Act) of that company.

(d) **Tax Credit:** means a credit against, relief or remission for, or repayment of, any Tax.

(e) **Tax Deduction:** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

(f) **Tax Payment:** means either the increase in a payment made by an Obligor to a Finance Party under Clause 14.2 (*Tax gross-up*) or a payment under Clause 14.3 (*Tax indemnity*).

(g) **Treaty Lender:** means a Lender which:

(i) is treated as a resident of a Treaty State for the purposes of the Treaty; and

(ii) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected.

(h) **Treaty State:** means a jurisdiction having a double taxation agreement (**Treaty**) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest; and

(i) **UK Non-Bank Lender** means

(i) where a Lender becomes a Party on the day on which this Agreement is entered into, a Lender listed in Part 3 of Schedule 1 (*The Original Parties*); and

(ii) where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Assignment Agreement or Transfer Certificate which it executes on becoming a Party.

14.1.2 Unless a contrary indication appears, in this Clause 14 a reference to **determines** or **determined** means a determination made in the absolute discretion of the person making the determination.

#### 14.2 **Tax gross-up**

14.2.1 Each Obligor shall make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.

14.2.2 The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction that is must make) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to

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that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.

- 14.2.3 If a Tax Deduction is required by law to be made by an Obligor from any payment due from it under the Finance Documents, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- 14.2.4 An Obligor is not required to make an increased payment to a Lender under Clause 14.2.3 above for a Tax Deduction in respect of tax imposed by the jurisdiction in which that Obligor is incorporated from a payment of interest on a Loan, if on the date on which the payment falls due:
- (a) the payment could have been made to the relevant Lender without a Tax Deduction if it was a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration or application of) any law or Treaty, or any published practice or concession of any relevant taxing authority; or
  - (b)
    - (i) the relevant Lender is a Qualifying Lender solely under paragraph (B) of the definition of Qualifying Lender;
    - (ii) the Board of the Commissioners for Her Majesty's Revenue and Customs has given (and not revoked) a direction (**Direction**) under section 931 of ITA 2007 (previously section 349C of the Taxes Act) (as that provision has effect on the date on which the relevant Lender became a Party) which relates to that payment and that Lender has received from that Obligor or the Borrower a certified copy of that Direction; and
    - (iii) the payment could have been made to the Lender without any Tax Deduction in the absence of that Direction; or
  - (c) the relevant Lender is a Qualifying Lender solely under paragraph (B) (1), (2) or (3) of the definition of Qualifying Lender and it has not, other than by reason of any change after the date of this Agreement in (or in the interpretation, administration or application of) any law, or any published practice or concession of any relevant taxing authority, given a Tax Confirmation to the Borrower; or
  - (d) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under Clause 14.2.7 below.
- 14.2.5 If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- 14.2.6 Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been
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made or (as applicable) any appropriate payment paid to the relevant taxing authority.

- 14.2.7 A Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
- 14.2.8 A UK Non-Bank Lender which becomes a Party on the day on which this Agreement is entered into gives a Tax Confirmation to the Borrower by entering into this Agreement.
- 14.2.9 A UK Non-Bank Lender shall promptly notify the Borrower and the Agent if there is any change in the position from that set out in the Tax Confirmation.

#### 14.3 Tax indemnity

14.3.1 The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

14.3.2 Clause 14.3.1 above shall not apply:

(a) with respect to any Tax assessed on a Finance Party:

- (i) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
- (ii) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,  
if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

(b) to the extent a loss, liability or cost:

- (i) is compensated for by an increased payment under Clause 14.2 (*Tax gross-up*); or
- (ii) would have been compensated for by an increased payment under Clauses 14.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in Clause 14.2 (*Tax gross-up*) applied.
- (iii) A Protected Party making, or intending to make a claim under Clause 14.3.1 above, shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (iv) A Protected Party shall, on receiving a payment from an Obligor under Clauses 14.3.1 to 14.3.2, notify the Agent.

#### 14.4 Tax Credit

14.4.1 If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

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- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part or to that Tax Payment; and
- (b) that Finance Party has obtained, utilised and retained that Tax Credit, the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

#### 14.5 Stamp taxes

The Borrower shall pay and, within three Business Days of demand, indemnify each Secured Party and the Arrangers against any cost, loss or liability such Secured Party or such Arranger incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

#### 14.6 Value added tax

- 14.6.1 All consideration expressed to be payable under a Finance Document by any Party to a Finance Party shall be deemed to be exclusive of any VAT. Subject to Clause 14.6.2 below, if VAT is chargeable on any supply made by any Finance Party to any Party in connection with a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT (and such Finance party shall promptly provide an appropriate VAT invoice to such Party).
- 14.6.2 If VAT is chargeable on any supply made by any Finance Party (**Supplier**) to any other Finance Party (**Recipient**) in connection with a Finance Document, and any Party is required by the terms of any Finance Document to pay an amount equal to the consideration for such supply to the Supplier, such Party shall also pay to the Supplier (in addition to and at the same time as paying such amount) an amount equal to the amount of such VAT.
- 14.6.3 Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of the VAT.

#### 15 Increased Costs

##### 15.1 Increased costs

- 15.1.1 Subject to Clause 15.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.
  - 15.1.2 In this Agreement **Increased Costs**: means
    - (a) a reduction in the rate of return from the Facilities or on a Finance Party's (or its Affiliate's) overall capital;
    - (b) an additional or increased cost; or
    - (c) a reduction of any amount due and payable under any Finance Document,
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which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

## 15.2 Increased cost claims

- 15.2.1 A Finance Party intending to make a claim pursuant to Clause 15.2 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- 15.2.2 Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

## 15.3 Exceptions

- 15.3.1 Clause 15.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (b) compensated for by Clause 14.3 (*Tax indemnity*) (or would have been compensated for under Clause 14.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 14.3 (*Tax indemnity*) applied);
  - (c) compensated for by the payment of the Mandatory Cost; or
  - (d) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- 15.3.2 In this Clause 15 reference to a **Tax Deduction** has the same meaning given to the term in Clause 14.1 (*Definitions*).

## 16 Indemnities

### 16.1 Currency indemnity

- 16.1.1 If any sum due from an Obligor under the Finance Documents (**Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (**First Currency**) in which that Sum is payable into another currency (**Second Currency**) for the purpose of:
- (a) making or filing a claim or proof against that Obligor; or
  - (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
  - (c) that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Arrangers and each other Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (1) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (2) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- 16.1.2 Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.
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## 16.2 Other indemnities

- 16.2.1 The Borrower shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Arrangers and each other Secured Party against any cost, loss or liability incurred by it as a result of:
- (a) the occurrence or continuance of any Default;
  - (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 28 (*Sharing among the Finance Parties*);
  - (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
  - (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.
- 16.2.2 The Borrower shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the Acquisition (whether or not completed) or the funding of the Acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on Clauses 16.2.1(c) to 16.2.1(d) subject to Clause 1.8 (*Third party rights*) and the provisions of the Third Parties Act.
- ## 16.3 Indemnity to the Agent
- The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
- (a) investigating any event which it reasonably believes is a Default; or
  - (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.
- ## 16.4 Indemnity to the Security Agent
- 16.4.1 Each Obligor shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
- (a) the taking, holding, protection or enforcement of the Transaction Security;
  - (b) the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law; and
  - (c) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.
- 16.4.2 The Security Agent may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all
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sums necessary to give effect to the indemnity in Clause 16.4.1 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

## **17 Mitigation By The Lenders**

### **17.1 Mitigation**

17.1.1 Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 14 (*Tax gross-up and indemnities*) or Clause 15.1 (*Increased costs*) or paragraph 3 of Schedule 4 (*Mandatory cost formula*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

17.1.2 Clause 17.1 above does not in any way limit the obligations of any Obligor under the Finance Documents.

### **17.2 Limitation of liability**

17.2.1 The Borrower shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 17.1 (*Mitigation*).

17.2.2 A Finance Party is not obliged to take any steps under Clause 17.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **18 Costs And Expenses**

### **18.1 Transaction expenses**

The Borrower shall promptly on demand pay the Agent, the Arrangers and the Security Agent the amount of all costs and expenses (including legal fees and due diligence costs) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, completion, syndication and perfection of:

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

### **18.2 Amendment costs**

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 29.12 (*Change of currency*), the Borrower shall, within three Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

### **18.3 Security Agent's ongoing costs**

18.3.1 In the event of (1) a Default; (2) the Security Agent considering it necessary or expedient or (3) the Security Agent being requested by an Obligor or the Majority Lenders to undertake duties which the Security Agent and the Borrower agree to

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be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under the Finance Documents, the Borrower shall pay to the Security Agent any additional remuneration that may be agreed between them.

18.3.2 If the Security Agent and the Borrower fail to agree upon the nature of the duties or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrower or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrower) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

#### 18.4 **Enforcement and preservation costs**

The Borrower shall, within three Business Days of demand, pay to the Arrangers and each other Secured Party on a full indemnity basis the amount of all costs and expenses (including legal, valuation, accountancy and consulting fees and commission and out of pocket expenses) and any VAT thereon incurred by it in connection with the enforcement of or the preservation of or the release of any rights under any Finance Document or any of the documents referred to in such documents in any jurisdiction and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

### 19 **Representations**

#### 19.1 **General**

19.1.1 Each Obligor makes the representations and warranties set out in this Clause 19 to each Finance Party in accordance with Clause 19.34 (*Times when representations made*).

19.1.2 In relation to the representations and warranties made on the date of this Agreement and any other date on or before the Closing Date, it is assumed that Completion has occurred and the Borrower has the full knowledge of the senior management of the Target.

#### 19.2 **Status**

19.2.1 It and each of its Subsidiaries is a limited liability company, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

19.2.2 It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

#### 19.3 **Binding obligations**

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
  - (b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.
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#### 19.4 **Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the Transaction Security do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any member of the Group; or
- (c) any agreement or instrument binding upon it or any member of the Group or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument or would result in any liability on the part of a Finance Party to any third party or require the creation of any security interest over any asset in favour of a third party.

#### 19.5 **Power and authority**

19.5.1 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

19.5.2 No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

#### 19.6 **Validity and admissibility in evidence**

19.6.1 All Authorisations required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
- (b) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect except any Authorisation referred to in Clause 19.9 (*No filing or stamp taxes*), which Authorisations will be promptly obtained or effected as soon as practicable after the date of this Agreement.

19.6.2 All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect and are not likely to be revoked or materially adversely amended and no notice of an intention to terminate any such Authorisation has been received by any member of the Group.

#### 19.7 **Governing law and enforcement**

19.7.1 The law expressed to be the governing law in each Finance Document will be recognised and enforced in the Relevant Jurisdictions of each Obligor executing that Finance Document.

19.7.2 Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

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19.8 **Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in Clause 23.7.1 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 23.8 (*Creditors' process*),

has been taken or, to the knowledge of the Borrower, threatened in relation to a member of the Group; and none of the circumstances described in Clause 23.6 (*Insolvency*) applies to any member of the Group.

19.9 **No filing or stamp taxes**

Under the laws of its Relevant Jurisdiction it is not necessary that any Finance Document be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except any filing, recording or enrolling or any tax or fee payable in relation to any Transaction Security Documents which are referred to in any Legal Opinion and which will be made or paid promptly after the date of the relevant Finance Document.

19.10 **Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

19.11 **No default**

19.11.1 No Event of Default and, on the date of this Agreement and the First Utilisation Date, no Default is continuing or is reasonably likely to result from the making of any Loan or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.

19.11.2 No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

19.12 **No misleading information**

19.12.1 Any factual information contained in the Information Memorandum or the Information Package was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given.

19.12.2 The Forecast Cash Flows has been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements and on the basis of recent historical information, is fair and based on reasonable assumptions and has been approved by the board of directors of the Borrower.

19.12.3 Any financial projection or forecast contained in the Information Memorandum or the Information Package has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the

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date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration.

- 19.12.4 The expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Memorandum or the Information Package were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds.
- 19.12.5 No event or circumstance has occurred or arisen and no information has been omitted from the Information Memorandum or the Information Package and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Memorandum or the Information Package being untrue or misleading in any material respect.
- 19.12.6 All material information provided to a Finance Party by or on behalf of the Investors or the Borrower in connection with the Acquisition and/or the Target Group on or before the date of this Agreement and not superseded before that date (whether or not contained in the Information Package) is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied.
- 19.12.7 All other written information provided by any Obligor or any member of the Group (including its advisers) to a Finance Party or the provider of any Report was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.
- 19.12.8 As at the date of this Agreement, there has been no insurance claim since the date of the most recent valuation of insurance liabilities report that would or, if adversely determined, is reasonably likely to, have a Material Adverse Effect.
- 19.12.9 As at the date of this Agreement, there are no negative marked-to-market outstandings under any existing Treasury Transactions entered into by or on behalf of any member of the Group that would have a Material Adverse Effect.
- 19.13 **Original Financial Statements**
- 19.13.1 Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied unless expressly disclosed to the Agent in writing to the contrary.
- 19.13.2 Subject to the disclosures in the Disclosure Letter, its Original Financial Statements prior to them having been audited fairly represent its financial condition and results of operations (consolidated in the case of Target) for the relevant period unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement.
- 19.13.3 Subject to the disclosures in the Disclosure Letter, there has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Borrower) since the date of the Original Financial Statements.
- 19.13.4 The Original Financial Statements of the Target and the Borrower do not consolidate the results, assets or liabilities of any person or business which does not form part of the Target Group.
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- 19.13.5 Its most recent financial statements delivered pursuant to Clause 20.2 (*Financial statements*):
- (a) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; and
  - (b) give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- 19.13.6 The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared.
- 19.13.7 Since the date of the most recent financial statements delivered pursuant to Clause 20.2 (*Financial statements*) there has been no material adverse change in the business, assets or financial condition of the Group.
- 19.14 **No proceedings pending or threatened**
- No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect, have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any of its Subsidiaries.
- 19.15 **No breach of laws**
- 19.15.1 It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- 19.15.2 No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.
- 19.16 **Taxation**
- 19.16.1 It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax of £100,000 (or its equivalent in any other currency) or more.
- 19.16.2 No claims or investigations are being or are reasonably likely to be made or conducted against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, any member of the Group of £100,000 (or its equivalent in any other currency) or more is reasonably likely to arise.
- 19.16.3 It is resident for Tax purposes only in the jurisdiction of its incorporation.
- 19.17 **Security and Financial Indebtedness**
- 19.17.1 No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.
- 19.17.2 No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.
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19.18 **Ranking**

The Transaction Security ranks or will rank prior to all other Security.

19.19 **Good title to assets**

It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

19.20 **Legal and beneficial ownership**

19.20.1 Subject to Clause 19.20.3 below and except as disclosed in the Disclosure Letter, it and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security to the Security Agent.

19.20.2 Subject to Clause 19.20.3 below, all the Target Shares are legally and beneficially owned by the Borrower free from any claims, third party rights or competing interests.

19.20.3 The Target Shares are beneficially but not legally owned by the Borrower until those shares are registered in the register of shareholders of Target, and the Borrower will procure that registration will be made as soon as possible after the Closing Date and in any event within 7 days of the date of this Agreement.

19.21 **Ownership**

Each of the Obligors and their Subsidiaries is a direct or indirect wholly-owned subsidiary of Enstar.

19.22 **Shares**

The shares of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security. There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any member of the Group or member of the Target Group (including any option or right of pre-emption or conversion). There is no Security or other restrictions in existence that may attach to any dividends or other distributions that may be made in respect of any shares of any member of the Group.

19.23 **Intellectual Property**

It and each of its Subsidiaries:

- (a) is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted and as assumed in the Information Package;
  - (b) does not (nor does any of its Subsidiaries), in carrying on its businesses, infringe any Intellectual Property of any third party in any respect which has or is reasonably likely to have a Material Adverse Effect; and
  - (c) has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it to the
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extent that failure to do so has or is reasonably likely to have a Material Adverse Effect.

#### 19.24 **Group Structure Chart**

19.24.1 The Group Structure Chart is true, complete and accurate in all material respects and shows the following information:

- (a) each member of the Group, including current name and (if applicable) company registration number, its jurisdiction of incorporation and/or establishment, a list of shareholders and indicating whether a company is a Dormant Subsidiary or a company is not a company with limited liability;
- (b) all minority interests in any member of the Group and any person in which any member of the Group holds shares in its issued share capital or equivalent ownership interest of such person; and
- (c) all intra-Group loans of £1,000 or more.

19.24.2 All necessary intra-Group loans, transfers, share exchanges and other steps resulting in the final Group structure are set out in the Group Structure Chart and have been or will be taken in compliance with all relevant laws and regulations and all requirements of relevant regulatory authorities.

19.24.3 All necessary steps required to transfer or dispose of Travelers Special Services Limited, UA Combined Investment Company, Jago Dedicated Limited, Jago Capital Limited and MFCM Limited out of the Target Group have been taken in compliance with all relevant laws and regulations and all requirements of relevant authorities have been complied with including, without limitation, all conditions and consents to such transfers or disposals required or imposed by the FSA and Lloyd's, and no member of the Target Group has retained any liability in respect of any such company.

#### 19.25 **Financial Year end**

The end of the Financial Year for each member of the Group is 31 December.

#### 19.26 **Obligors**

Each member of the Group (other than a Dormant Subsidiary or a Restricted Subsidiary) is or will be an Obligor on the First Utilisation Date.

#### 19.27 **Acquisition Documents, Disclosures and other Documents**

19.27.1 The Acquisition Documents contain all the terms of the Acquisition.

19.27.2 There is no disclosure made in the Disclosure Letter or any other disclosure to the Acquisition Documents which has or may have a material adverse effect on any of the information, opinions, intentions, forecasts and projections contained or referred to in the Information Package.

19.27.3 To the best of its knowledge no representation or warranty (as qualified by the Disclosure Letter) given by any party to the Acquisition Documents is untrue or misleading in any material respect.

19.27.4 As at the date of delivery, the documents delivered to the Agent under any Finance Document by or on behalf of any Obligor (including pursuant to Clause 4.1 (*Initial conditions precedent*)) are genuine (or, in the case of copy documents, are true, complete and accurate copies of originals which are genuine), are up-to-date and

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in full force and effect (or if a copy, the original is up-to-date and in full force and effect) and have not been amended.

**19.28 Insurance**

There has been no non-disclosure, misrepresentation or breach of any term of any material insurance policy which would entitle any insurer to repudiate, rescind or cancel it or to treat it as avoided in whole or in part or otherwise decline any valid claim under it by or on behalf of any member of the Group.

**19.29 Immunity**

19.29.1 The execution by it of each Finance Document constitutes, and the exercise by it of its rights and performance of its obligations under each Finance Document will constitute private and commercial acts performed for private and commercial purposes.

19.29.2 It will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its Relevant Jurisdictions in relation to any Finance Document.

**19.30 No adverse consequences**

19.30.1 It is not necessary under the laws of its Relevant Jurisdictions:

- (a) in order to enable any Finance Party to enforce its rights under any Finance Document; or
- (b) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,
- (c) that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.

19.30.2 No Finance Party is or will be deemed to be resident, domiciled or carrying on business in its Relevant Jurisdictions by reason only of the execution, performance and/or enforcement of any Finance Document.

**19.31 Holding Company**

Except as may arise under the Transaction Documents and for Acquisition Costs, before the date of this Agreement the Borrower has not traded or incurred any liabilities or commitments (actual or contingent, present or future).

**19.32 Pensions**

Each member of the Group is in compliance in all material respects with all applicable laws, regulations and contracts relating to the provision of pension schemes and any pension scheme(s) it operates or participates in. All contributions due to be paid to each such pension scheme have been paid.

**19.33 Net Worth**

On the date of this Agreement, the Consolidated Tangible Net Worth is not less than US\$305,000,000.

**19.34 Times when representations made**

19.34.1 All the representations and warranties in this Clause 19 are made by each Original Obligor on the date of this Agreement except for the representations and

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warranties set out in (a) Clause 19.12 (*No misleading information*) which are deemed to be made by each Obligor (i) with respect to the Information Memorandum on the date the Information Memorandum is approved by the Borrower and (ii) with respect to the Information Package, on the date of this Agreement, on the First Utilisation Date and on any later date on which the Information Package (or part of it) is released to an Arranger for distribution in connection with syndication and (b) Clause 19.21 (*Ownership*) to the extent that it relates to ownership of any member of the Target Group.

- 19.34.2 All the representations and warranties in this Clause 19 are deemed to be made by each Obligor on the First Utilisation Date other than Clauses 19.12.8 to 19.12.9 (*No misleading information*).
- 19.34.3 The representations and warranties in Clauses 19.12.1 to 19.12.7 (*No misleading information*) are also deemed to be made by each Obligor on the Syndication Date.
- 19.34.4 The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period (except that those contained in Clauses 19.13.1 to 19.13.4 (*Original Financial Statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement).
- 19.34.5 All the representations and warranties in this Clause 19 except Clause 19.12 (*No misleading information*), Clause 19.24 (*Group Structure Chart*), Clause 19.27 (*Acquisition Documents, Disclosures and other Documents*) and Clause 19.31 (*Holding Company*) are deemed to be made by each Additional Obligor on the day on which it becomes (or it is proposed that it becomes) an Additional Obligor.
- 19.34.6 Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## 20 Information Undertakings

### 20.1 General

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 20:

- (a) **Annual Financial Statements:** means the financial statements for a Financial Year delivered pursuant to Clause 20.2 (*Financial statements*).
- (b) **Quarterly Financial Statements:** means the financial statements for a Financial Quarter delivered pursuant to Clause 20.2 (*Financial statements*).

### 20.2 Financial statements

20.2.1 The Borrower shall deliver to the Agent in sufficient copies for all the Lenders:

- (a) as soon as they are available, but in any event within 120 days after the end of each of its Financial Years:
  - (i) its audited consolidated financial statements for that Financial Year;

- (ii) the audited financial statements (consolidated if appropriate) of each Obligor for that Financial Year; and
- (iii) the audited financial statements of any other member of the Group for that Financial Year if requested by the Agent;
- (b) as soon as they are available, but in any event within 45 days after the end of each Financial Quarter of each of its Financial Years its consolidated financial statements for that Financial Quarter, to include:
  - (i) details of all Disposal Proceeds as defined in Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*);
  - (ii) details of all surpluses in any fund or funds of each member of the Group which is an insurance company;
  - (iii) a summary of cash realisations of each of the Target Group;
  - (iv) details of the proceeds of the cash realisations of each of the Target Group;
  - (v) a discussion of major incurred claims movements with appropriate narrative;
- (c) as soon as it is available but in any event within 30 days after the start of each of its Financial Years, an updated forecast of cashflows for that Financial Year in the same form as the Forecast Cash Flows for each of the Target Group;
- (d) as soon as they are available, but in any event within 45 days after the end of each Financial Quarter of each of its Financial Years:
  - (i) a written breakdown of all reinsurance and retrocession balances of the Borrower at the end of that Financial Quarter including details of the counterparty from whom such balances are owed, an ageing of such balances, and details of any movements in any receivables and recoveries made during such period; and
  - (ii) details of any bad debt or other provisions held by the Borrower at the end of that Financial Quarter including details of changes made in relation to such bad debts or other provisions together with the reasons for such provisions being made.

### 20.3 **Provision and contents of Compliance Certificate**

- 20.3.1 The Borrower shall supply a Compliance Certificate to the Agent with each set of its audited consolidated Annual Financial Statements and each set of its consolidated Quarterly Financial Statements.
  - 20.3.2 The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 21 (*Financial Covenants*) including confirmation that the Borrower is in compliance with Clause 21.2.1(d) (*Requisite Rating*).
  - 20.3.3 Each Compliance Certificate shall be signed by two directors one of whom must be the Chief Financial Officer of the Group and, if required to be delivered with the consolidated Annual Financial Statements of the Borrower, shall be reported on by the Borrower's Auditors in the form agreed by the Borrower and the Majority Lenders.
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#### 20.4 Requirements as to financial statements

20.4.1 The Borrower shall procure that each set of Annual Financial Statements and Quarterly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Borrower shall procure that:

- (a) each set of Annual Financial Statements shall be audited by the Auditors;
- (b) each set of Quarterly Financial Statements includes:
  - (i) a cashflow forecast in respect of the Group relating to the twelve month period commencing at the end of the relevant Financial Quarter; and
  - (ii) a statement by the directors of the Borrower commenting on the performance of the Group for the quarter to which the financial statements relate and the Financial Year to date and any material developments or material proposals affecting the Group or its business.

20.4.2 Each set of financial statements delivered pursuant to Clause 20.2 (*Financial Statements*):

- (a) shall be certified by the Chief Financial Officer of the Borrower as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the Auditors and accompanying those Annual Financial Statements;
  - (b) in the case of consolidated financial statements of the Group, shall be accompanied by a statement by the Chief Financial Officer of the Borrower comparing actual performance for the period to which the financial statements relate to the actual performance for the corresponding period in the preceding Financial Year of the Group; and
  - (c) shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements of the Obligor or other member of the Group concerned, unless, in relation to any set of financial statements, the Borrower notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and its Auditors (or, if appropriate, the Auditors of the Obligor) deliver to the Agent:
    - (i) a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the Original Financial Statements of the Obligor or other member of the Group concerned were prepared; and
    - (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 21 (*Financial Covenants*) has been complied with and to make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements of the Obligor or other member of the Group concerned.
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(d) Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

20.4.3 If the Agent receives a report from the Borrower's Auditors pursuant to Clause 20.4.2(c) above, the Majority Lenders (in consultation with the Borrower and the Auditors) may require such changes to the covenants set out in Clause 21 (*Financial Covenants*) as are necessary solely to reflect the changes notified to them.

20.4.4 If the Agent wishes to discuss the financial position of any member of the Group with the Auditors, the Agent may notify the Borrower, stating the questions or issues which the Agent wishes to discuss with the Auditors. In this event, the Borrower must ensure that the Auditors are authorised (at the expense of the Borrower):

- (a) to discuss the financial position of each member of the Group with the Agent on request from the Agent;
- (b) to verify any financial information required by the Finance Documents to be provided to the Agent;
- (c) to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request; and
- (d) to verify any figures required to calculate the financial covenants in Clause 21 (*Financial covenants*) or the Margin.

#### 20.5 **Presentations**

Once in every Financial Year, or more frequently if requested to do so by the Agent if a Lender reasonably suspects a Default is continuing or may have occurred or may occur, at least two directors of the Borrower (one of whom shall be the Chief Financial Officer of the Borrower) must give a presentation to the Finance Parties in London about the on-going business and financial performance of the Group.

#### 20.6 **Year-end**

20.6.1 The Borrower shall procure that the end of each Financial Year of each member of the Group falls on 31 December.

20.6.2 The Borrower shall procure that each quarterly accounting period and each Financial Quarter of each member of the Group ends on a Quarter Date.

#### 20.7 **Information: miscellaneous**

20.7.1 The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) within 30 days after submission to the relevant governmental or regulatory authority, all returns required to be prepared by any member of the Group in accordance with any applicable law, rule, regulation or direction of the Bermuda Monetary Authority, the FSA or any other governmental or regulatory authority;
  - (b) at the same time as they are dispatched, copies of all documents dispatched by the Borrower to its shareholders generally (or any class of them) or dispatched by the Borrower or any Obligors to its creditors generally (or any class of them);
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- (c) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined would involve a liability, or a potential or alleged liability, exceeding £100,000 (or its equivalent in other currencies);
- (d) promptly upon becoming aware of the relevant claim, the details of any claim which is current, threatened or pending against the Vendor or any other person in respect of the Acquisition Documents and details of any disposal or insurance claim which will require a prepayment under Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*);
- (e) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents; and
- (f) promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this Agreement and an up to date copy of its shareholders' register (or equivalent in its jurisdiction of incorporation)) as any Finance Party through the Agent may reasonably request.

20.7.2 The Borrower shall give at least five Business Days' written notice to the Security Agent of any proposal by the Borrower or the directors of the Borrower to appoint an administrator. The notice shall comply with the requirements of paragraph 26(3) of Schedule B1 of the Insolvency Act 1986.

#### 20.8 **Notification of default**

20.8.1 Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

20.8.2 Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### 20.9 **"Know your customer" checks**

20.9.1 If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
  - (b) any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or
  - (c) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,
  - (d) obliges the Agent or any Lender (or, in the case of Clause 20.9.1(c) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall (and the Borrower shall ensure
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that each Obligor shall) promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in Clause 20.9.1(c) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in Clause 20.9.1(c) above, any prospective new Lender to carry out and be satisfied with the results of all necessary "know your customer" or other checks in relation to any relevant person pursuant to the transactions contemplated in the Finance Documents.

20.9.2 Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied with the results of all necessary "know your customer" or other checks on Lenders or prospective new Lenders pursuant to the transactions contemplated in the Finance Documents.

20.9.3 The Borrower shall, by not less than 10 Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 25 (*Changes to the Obligors*).

20.9.4 Following the giving of any notice pursuant to Clause 20.9.3 above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent, or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other checks in relation to any relevant person pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

## 21 Financial Covenants

### 21.1 Financial definitions

In this Clause 21:

- (a) **Consolidated Tangible Net Worth:** means at any time, the aggregate of the Equity Shareholders Funds of the Target on the last day of the Relevant Period minus (i) the aggregate of the Permitted Financial Indebtedness; (ii) any liabilities incurred by the Borrower in the ordinary course of its business but not paid on the last day of the Relevant Period; and (iii) any assets or monies that may be required to cover the cost of forecast redundancies within the Group.
  - (b) **Equity Shareholders Funds:** means the aggregate amount of paid up or credited as paid up on the issued share capital of a company (including on the share premium account) and of the amounts standing to the credit of revenue reserves of a company.
  - (c) **Facility Debt:** means on the last day of the Relevant Period, the aggregate of the Group's consolidated Financial Indebtedness in respect of the Facilities.
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- (d) **Free Net Worth** means at any time, the aggregate amount of paid up, or credited as paid up, on the issued share capital of Enstar (including on the share premium account) and of the amounts standing to the credit of revenue reserves of Enstar on the last day of the Relevant Period minus the aggregate of the Financial Indebtedness incurred by Enstar and any of its Subsidiaries on a consolidated basis which is not paid on the last day of the Relevant Period.
- (e) **Financial Quarter:** means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.
- (f) **Financial Year:** means each period of twelve months ending on 31 December.
- (g) **Net Worth Cover:** means the ratio of Consolidated Tangible Net Worth to Facility Debt.
- (h) **Quarter Date:** means each of 31 March, 30 June, 30 September and 31 December.
- (i) **Regulatory Cover:** means the ratio of the capital resources of the Target as determined in accordance with Section 2.2 of the Integrated Prudential Sourcebook for Insurers as amended from time to time (including as required to meet solvency requirements) to the capital resources requirement of the Target as determined in accordance with Section 2.1 of the Integrated Prudential Sourcebook for Insurers as amended from time to time (including as required to meet solvency requirements).
- (j) **Relevant Period:** means each period of twelve months (or, if shorter, the period from the date of this Agreement) ending on each Quarter Date.

## 21.2 Financial condition

21.2.1 The Borrower shall ensure that:

- (a) **Regulatory Cover:** Regulatory Cover shall not at any time be less than 1.1:1;
  - (b) **Net Worth Cover:** Net Worth Cover shall not at any time be less than 1.65:1;
  - (c) **Free Net Worth:** Free Net Worth shall not at any time be less than US\$300,000,000; and
  - (d) **Requisite Rating:**
    - (i) the short term rating and/or long term rating of investments as determined by the Rating Agency for:
      - (A) at least 87.5% of the total value of the investments held by the Group have a rating of not less than A- or are held in cash and are investments not advised by J.C. Flowers & Co. LLC; and
      - (B) at least 62.5% of the total value of the investments held by the Group have a rating of AAA- or are held in cash; and
    - (ii) the total commitment of investments in J. C. Flowers & Co. LLC held by the Group shall at no time exceed US \$75,727,000.
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### 21.3 Financial testing

- 21.3.1 The financial covenants set out in Clauses 21.2.1(a) (*Regulatory cover*) and 21.2.1(b) (*Net Worth Cover*) shall be calculated in accordance with the Accounting Principles and tested first by reference to the Quarterly Financial Statements and where available, by reference to the Annual Financial Statements (each delivered in accordance with Clause 20.2 (*Financial Statements*) and each Compliance Certificate delivered pursuant to Clause 20.3 (*Provision and contents of Compliance Certificate*)).
- 21.3.2 When calculating the financial covenants in this Clause the effect of all transactions between members of the Group shall be eliminated to the extent not already netted out on consolidation.
- 21.3.3 No item shall be deducted or credited more than once in any calculation.
- 21.3.4 Where an amount in any financial statement or Compliance Certificate is not denominated in US Dollars, it shall be converted into US Dollars at the rate specified in the financial statements so long as such rate has been set in accordance with the Accounting Principles.
- 21.3.5 The financial covenants in Clauses 21.2.1(a) (*Regulatory Cover*) and 21.2.1(b) (*Net Worth Cover*) of Clause 21.2 (*Financial condition*) shall apply on a continuing basis but shall be tested on each Quarter Date commencing with the 31 March 2009 Quarter Date.

### 21.4 Equity cure- Regulatory Cover

- 21.4.1 No Event of Default under Clause 23.2 (*Financial Covenants and other obligations*) in relation to Clauses 21.2.1(a) (*Regulatory Cover*) will occur if:
- (a) the proceeds of an additional contributed surplus or any Permitted Share Issue permitted by paragraph (b) of the definition of that term (which are designated in writing by the Borrower to the Agent as being provided for the purpose of this Clause 21.4 (*Equity cure- Regulatory Cover*)) and/or any debt (subordinated on terms approved by the Agent acting reasonably) (in each case the **New Regulatory Investment**) is invested in the Borrower within 5 Business Days of the date on which the Borrower becomes aware of a breach of Clause 21.2.1(a) (*Regulatory Cover*).
  - (b) promptly following receipt by the Borrower of the proceeds of such New Regulatory Investment (and in any event prior to the expiry of such 5 Business Day period), a certificate signed by the finance director of the Borrower is delivered to the Agent confirming that on recalculating the Regulatory Cover financial covenant set out in Clause 21.2.1(a) (*Regulatory Cover*) would be complied with and attaching reasonable details of such calculations. For these purposes the amount of the New Regulatory Investment shall be included in calculating the aggregate of the Equity Shareholders Funds of the Restricted Subsidiaries.

### 21.5 Equity cure- Net Worth Cover

No Event of Default under Clause 23.2 (*Financial Covenants and other obligations*) in relation to Clauses 21.2.1(b) (*Net Worth Cover*) will occur if:

- (a) the proceeds of an additional contributed surplus or any Permitted Share Issue permitted by paragraph (b) of the definition of that term (which are designated in writing by the Borrower to the Agent as being provided for the
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purpose of this Clause 21.5) and/or any debt (subordinated on terms approved by the Agent acting reasonably) (in each case the **New Investment**) is invested in the Borrower within 5 Business Days of the date on which the Borrower becomes aware of a breach of Clause 21.2.1(b) (*Net Worth Cover*).

- (b) promptly following receipt by the Borrower of the proceeds of such New Investment (and in any event prior to the expiry of such 5 Business Day period), a certificate signed by the finance director of the Borrower is delivered to the Agent confirming that on recalculating the Net Worth Cover financial covenant set out in Clause 21.2.1(b) (*Net Worth Cover*) for the period (and for these purposes the amount of the New Investment shall be included in calculating Consolidated Tangible Net Worth) in respect of which the breach arose, and on the basis that the New Investment is deemed to have been made immediately prior to the relevant Quarter Date, such financial covenant would be complied with (and such certificate shall attach reasonable details of such calculations).

No more than two New Investments may be made until the Termination Date and no two New Investments may be made in consecutive Financial Quarters.

## 22 **General Undertakings**

The undertakings in this Clause 22 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### 22.1 **Authorisations and compliance with laws**

Each Obligor shall (and the Borrower shall ensure that each member of the Group will) promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent of,  
any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
- (c) enable it to perform its obligations under the Finance Documents and the Acquisition Documents;
- (d) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document or Acquisition Document; and
- (e) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

### 22.2 **Compliance with laws**

Each Obligor shall (and the Borrower shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

### 22.3 **Taxation**

- 22.3.1 Each Obligor shall (and the Borrower shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
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- (a) such payment is being contested in good faith;
- (b) adequate reserves are being maintained for those Taxes and the costs required to contest them have been disclosed in its latest financial statements delivered to the Agent under Clause 20.2.1(a) (*Financial statements*); and
- (c) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

22.3.2 No member of the Group may change its residence for Tax purposes.

**22.4 Merger**

Other than in the case of a Permitted Transaction which is referred to in paragraph (a) of the definition of that term, no Obligor shall (and the Borrower shall ensure that no other member of the Group will) enter into (or agree to enter into) any amalgamation, demerger, merger, consolidation or corporate reconstruction other than any solvent liquidation or reorganisation.

**22.5 Change of business**

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group taken as a whole from that carried on by the Target Group at the date of this Agreement.

**22.6 Acquisitions**

Other than in the case of a Permitted Transaction, which is referred to in paragraph (a) or (c) of the definition of that term, or the Acquisition no Obligor shall (and the Borrower shall ensure that no other member of the Group will):

- (a) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
- (b) incorporate a company.

**22.7 Joint ventures**

No Obligor shall (and the Borrower shall ensure that no member of the Group will):

- (a) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
- (b) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

**22.8 Holding Companies**

The Borrower shall not trade, carry on any business, own any assets or incur any liabilities except for:

- (a) the provision of administrative services (excluding treasury services) to other members of the Group of a type customarily provided by a holding company to its Subsidiaries;
  - (b) ownership of shares in its Subsidiaries, intra-Group debit balances, intra-Group credit balances and other credit balances in bank accounts, cash and
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Cash Equivalent Investments but only if those shares, credit balances, cash and Cash Equivalent Investments are subject to the Transaction Security; or

- (c) any liabilities under the Transaction Documents to which it is a party and professional fees and administration costs in the ordinary course of business as a holding company,

and this Clause shall prevail if but for this Clause a transaction would otherwise be a Permitted Disposal, Permitted Financial Indebtedness, a Permitted Guarantee, a Permitted Loan, Permitted Security or a Permitted Transaction or be permitted by Clause 22.28 (*Intra-Group Transactions*).

#### 22.9 **Dormant Subsidiaries and Restricted Subsidiaries**

No Obligor shall (and the Borrower shall ensure no member of the Group will) cause or permit any member of the Group:

- (a) which is a Dormant Subsidiary to (i) commence trading or (ii) cease to satisfy the criteria for a Dormant Subsidiary or (iii) have, or potentially have, latent liabilities in an aggregate amount of US\$50,000 or more or its equivalent in other currencies; or
- (b) which is a Restricted Subsidiary to cease to satisfy the criteria for a Restricted Subsidiary,

unless such Dormant Subsidiary or Restricted Subsidiary (as the case may be) becomes an Additional Obligor in accordance with Clauses 25.2 (*Additional Obligors*).

#### 22.10 **Preservation of assets**

Each Obligor shall (and the Borrower shall ensure that each member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business if failure to do so has or is reasonably likely to have a Material Adverse Effect.

#### 22.11 **Pari passu ranking**

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party or Hedge Counterparty against it under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

#### 22.12 **Acquisition Documents**

- 22.12.1 The Borrower shall promptly pay all amounts payable to the Vendor under the Acquisition Documents as and when they become due (except to the extent that any such amounts are being contested in good faith by a member of the Group and where adequate reserves are set aside for any such payment).
  - 22.12.2 The Borrower shall (and will procure that each relevant member of the Group will), take all reasonable and practical steps to preserve and enforce its rights (or the rights of any other member of the Group) and pursue any claims and remedies arising under any Acquisition Documents.
  - 22.12.3 No Obligor shall (and the Borrower shall procure that no relevant member of the Group will) amend, vary, novate, supplement, supercede, waive or terminate any
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term of an Acquisition Document without the prior written consent of the Agent (such consent not to be unreasonably withheld or delayed)

## 22.13 **Negative pledge**

22.13.1 Except as permitted under Clause 22.13.2 below:

- (a) No Obligor shall (and the Borrower shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Borrower shall ensure that no other member of the Group will) sell, transfer or otherwise dispose of any of its receivables.
- (c) No Obligor shall (and the Borrower shall ensure that no other member of the Group will):
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any other member of the Group;
  - (ii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iii) enter into any other preferential arrangement having a similar effect,in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset. A transaction referred to in this paragraph (c) is termed **Quasi-Security**.

22.13.2 Clause 22.13.1 above does not apply to any Security or (as the case may be) Quasi-Security, which is:

- (i) Permitted Security; or
- (ii) given under the Finance Documents

## 22.14 **Disposals**

22.14.1 Except as permitted under Clause 22.14.2 below, no Obligor shall (and the Borrower shall ensure that no member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer, licence or otherwise dispose of any asset.

22.14.2 Clause 22.14.1 above does not apply to any sale, lease, transfer or other disposal which is:

- (a) a Permitted Disposal; or
- (b) a Permitted Transaction which is referred to in paragraph (a) of the definition of that term.

## 22.15 **Arm's length basis**

22.15.1 Except as permitted by Clause 22.15.2 below, no Obligor shall (and the Borrower shall ensure no member of the Group will) enter into any transaction with any person except on arm's length terms and for full market value.

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22.15.2 The following transactions shall not be a breach of Clause 22.15.1:

- (a) intra-Group transactions permitted under Clause 22.28 (*Intra-Group transactions*); and
- (b) fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or agreed by the Agent.

**22.16 Loans or credit**

22.16.1 Except as permitted under Clause 22.16.2 below, no Obligor shall (and the Borrower shall ensure that no member of the Group will) be a creditor in respect of any Financial Indebtedness.

22.16.2 Clause 22.16.1 above does not apply to:

- (a) a Permitted Loan (which is consistent with Clause 22.8 (*Holding Companies*)); or
- (b) a Permitted Transaction which is referred to in paragraph (a) of the definition of that term; or
- (c) a Permitted Distribution.

**22.17 No Guarantees or indemnities**

22.17.1 Except as permitted under Clause 22.17.2 below, no Obligor shall (and the Borrower shall ensure that no member of the Group will) incur or allow to remain outstanding any guarantee, bond or indemnity in respect of any obligation of any person.

22.17.2 Clause 22.17.1 above does not apply to a guarantee which is:

- (a) a Permitted Guarantee (which is consistent with Clause 22.8 (*Holding Companies*)); or
- (b) a Permitted Transaction which is referred to in paragraph (a) of the definition of that term.

**22.18 Dividends and share redemption**

22.18.1 Except as permitted under 22.18.2 below, the Borrower shall not (and will ensure that no other member of the Group will):

- (a) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital) or any additional paid in capital;
- (b) repay or distribute any dividend or share premium reserve;
- (c) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Borrower; or
- (d) redeem, repurchase, defease, retire, reduce, cancel or repay any of its share capital or resolve to do so.

22.18.2 Clause 22.18.1 above does not apply to:

- (a) a Permitted Distribution;
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- (b) a Permitted Payment; or
- (c) a Permitted Transaction which is referred to in paragraph (a) of the definition of that term.

#### 22.19 **Financial Indebtedness**

- 22.19.1 Except as permitted under Clause 22.19.2 below, no Obligor shall (and the Borrower shall ensure that no member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.
- 22.19.2 Clause 22.19.1 above does not apply to Financial Indebtedness which is:
- (a) Permitted Financial Indebtedness; or
  - (b) contemplated by paragraph (a) of the definition of Permitted Transaction.

#### 22.20 **Share capital**

No Obligor shall (and the Borrower shall ensure no member of the Group will) issue any shares except pursuant to a Permitted Share Issue.

#### 22.21 **Pensions**

- 22.21.1 The Borrower shall ensure that all pension schemes operated by or maintained for the benefit of members of the Group incorporated in the United Kingdom and/or any of their employees are funded in accordance with the requirements of the Pensions Act 1995 in relation to the minimum funding requirement (where the scheme is subject to the minimum funding requirement under that Act) and in accordance with the requirements of the Pensions Act 2004 in relation to the statutory funding objective (where the scheme is subject to the statutory funding objective under that Act) and that no action or omission is taken by any such member of the Group in relation to such a pension scheme which has or is reasonably likely to have a Material Adverse Effect (including the termination or commencement of winding-up proceedings of any such pension scheme or any member of the Group ceasing to employ any such member of such a pension scheme).
- 22.21.2 Except for the pension schemes (if any) for the time being operated by the Borrower or in which it participates, the Borrower shall ensure that no member of the Group incorporated in the United Kingdom is or has been at any time an employer (for the purposes of Sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993) or "connected" with or an "associate" of (as those terms are under in Sections 39 or 43 of the Pensions Act 2004) such an employer.
- 22.21.3 The Borrower shall deliver to the Agent at such times as those reports are prepared in order to comply with the then current statutory or auditing requirements (as applicable either to the trustees of any relevant schemes or to the Borrower), actuarial reports in relation to all pension schemes mentioned in Clause 22.21.1 above.
- 22.21.4 The Borrower shall promptly notify the Agent of any material change in the rate of contributions to any pension schemes mentioned in Clause 22.21.1 above paid or recommended to be paid (whether by the scheme actuary or otherwise) or required (by law or otherwise).
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## 22.22 Access

Each Obligor shall, and the Borrower shall ensure that each member of the Group will (not more than once in every Financial Year unless the Agent reasonably suspects a Default is continuing or may occur), permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent free access at all reasonable times and on reasonable notice at the risk and cost of the Obligor to (a) the premises, assets, books, accounts and records of each member of the Group and (b) meet and discuss matters with Richard Harris and David Rocke.

## 22.23 Intellectual Property

22.23.1 Each Obligor shall and the Borrower shall procure that each member of the Group will:

- (a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for its business;
- (b) use reasonable endeavours (including the institution of legal proceedings) to prevent any infringement in any material respect of the Intellectual Property;
- (c) promptly notify the Agent if it becomes aware of any infringement or challenge to the validity, enforceability or ownership of any Intellectual Property and supply the Security Agent with all information relating to it which is reasonably requested by the Agent;
- (d) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;
- (e) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of that Intellectual Property or imperil the right of any member of the Group to use such property; and
- (f) not discontinue the use of the Specified Intellectual Property (as defined in any Transaction Security Document),

where failure to do so in the case of Clause 22.23.1(a) and 22.23.1(b) above, or, in the case of Clauses 22.23.1(d) and 22.23.1(e) above, such use, permission to use, omission or discontinuation is reasonably likely to have a Material Adverse Effect — *wording to be discussed*.

22.23.2 Failure to comply with any part of Clause 22.23.1 above shall not be a breach of Clause 22.23.1 to the extent that any dealing with Intellectual Property which would otherwise be a breach of Clause 22.23.1 is contemplated by paragraph (a) of the definition of Permitted Transaction.

## 22.24 Amendments

No Obligor shall (and the Borrower shall ensure that no other Obligor or member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Transaction Document or any other document delivered to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*) or Clause 25 (*Changes to the Obligors*) or enter into any agreement with any shareholders of the Borrower except in writing:

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- (a) in accordance with the provisions of Clause 35 (*Amendments and Waivers*), the Subordination Deed or the Enstar Guarantee; or
- (b) prior to the First Utilisation Date, with the prior written consent of the Original Lenders; or
- (c) after the First Utilisation Date, in a way which:
  - (i) could not reasonably be expected to materially and adversely affect the interests of the Lenders or the ranking and/or subordination arrangements provided for in the Shareholder's Undertaking or the Subordination Deed; and
  - (ii) would not change the date, amount or method of payment of the dividends on the Borrower's shares.

The Borrower shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs (a) to (c) above.

**22.25 Financial assistance**

Each Obligor shall (and the Borrower shall procure each member of the Group will) comply in all respects with any legislation governing the granting of financial assistance in its jurisdiction of incorporation including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

**22.26 Treasury Transactions**

No Obligor shall (and the Borrower shall procure that no members of the Group will) enter into any Treasury Transaction other than the hedging transactions (if any) documented by the Hedging Agreements.

**22.27 Further assurance**

22.27.1 Each Obligor shall (and the Borrower shall procure that each member of the Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify and in such form as the Security Agent may reasonably require (in favour of the Security Agent or its nominee(s)) in order to:

- (a) perfect or protect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;
  - (b) confer on the Security Agent or confer on the Finance Parties, Security over any property and assets of that Obligor located in any jurisdiction which is (to the extent permitted by local law) equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
  - (c) facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
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22.27.2 Each Obligor shall (and the Borrower shall procure that each member of the Group shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

#### 22.28 **Intra-Group transactions**

22.28.1 Without the consent of the Agent, no member of the Group may enter into any transaction (whether by way of disposal, investment, loan, borrowing, guarantee or otherwise) with, or in respect of the obligations of, any other member of the Group save and except where such transaction is a Permitted Transaction and is not unlawful under any law or regulation in any relevant jurisdiction including under any applicable financial assistance legislation.

22.28.2 Without the consent of the Agent, no member of the Group may enter into any transaction (whether by way of disposal, investment, loan, borrowing, guarantee or otherwise) with, or in respect of the obligations of, Enstar or any of its Subsidiaries (excluding other members of the Group) where the value of such transaction exceeds US\$100,000 save and except where such transaction is conducted in the ordinary course of trading on arm's length terms or is a Permitted Transaction.

22.28.3 If the relevant intra-Group transaction contemplated by Clause 22.28.1 above:

- (a) is a disposal of assets from one Obligor to another and if Transaction Security had been granted by the Obligor disposing of such asset then the asset must be either transferred subject to such Security or the acquiring Obligor must grant equivalent Security over that asset in favour of the Security Agent; or
- (b) results in Financial Indebtedness being owed by an Obligor to another Obligor then the creditor of such Financial Indebtedness shall grant Security over its rights in respect of such Financial Indebtedness in favour of the Lenders on terms acceptable to the Agent (acting on the instructions of the Majority Lenders).

#### 22.29 **Cash Management**

22.29.1 Subject to Clause 22.29.2 below, no Obligor shall and each Obligor will procure that none of its Subsidiaries will, at any time hold cash or Cash Equivalent Investments greater than required for its projected cashflow requirements (the amount being the **Cash Balance**) and such Cash Balance shall only be lent by such member of the Group by way of a Permitted Distribution.

22.29.2 No Obligor shall be obliged at any time to procure that a Subsidiary transfer any Cash Balance under Clause 22.29.1 above:

- (a) at a time when to do so would cause the Obligor or the Subsidiary (despite that person using all reasonable effects to avoid the relevant Tax liability) to incur a materially greater Tax liability in respect of the Cash Balance than it would otherwise incur if the transfer were made at a later date;
  - (b) if (despite using all reasonable efforts to avoid the breach or the result) to do so would breach any applicable law, FSA requirement or result in personal liability for the Obligor or the Subsidiary or any such person's directors or management; or
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(c) which would leave an amount which is less than £200,000 in that Subsidiary.

#### 22.30 **Obligors**

22.30.1 The Borrower shall ensure that at all times after the First Utilisation Date, each member of the Group that is not a Dormant Subsidiary or a Restricted Subsidiary is an Obligor.

22.30.2 The Borrower need only perform its obligations under Clause 22.30.1 above if it is not unlawful for the relevant person to become an Obligor and that person becoming an Obligor would not result in personal liability for that person's directors or other management. Each Obligor must use, and must procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any such unlawfulness or personal liability. This includes agreeing to a limit on the amount guaranteed. The Agent may (but shall not be obliged to) agree to such a limit if, in its opinion, to do so would avoid the relevant unlawfulness or personal liability.

#### 22.31 **Syndication**

The Borrower shall provide reasonable assistance to the Arrangers in the preparation of the Information Memorandum and the primary syndication of the Facilities (including, without limitation, by making senior management available for the purpose of making presentations to, or meeting, potential lending institutions) and will comply with all reasonable requests for information from potential syndicate members prior to completion of syndication.

#### 22.32 **Regulatory Compliance**

The Borrower shall observe and comply with all applicable acts, byelaws and regulations (including, without limitation, under the Financial Services and Markets Act 2000 (and related subordinate legislation) and the FSA Handbook (as amended from time to time) and any conditions or requirements prescribed under any applicable acts, byelaws and regulations), the failure to observe or comply with which would reasonably be expected to have a Material Adverse Effect

#### 22.33 **Conditions subsequent**

The Borrower shall:

- (a) within 7 days of the date of this Agreement, deliver to the Agent evidence that an additional repayment of principal in an amount of at least AUD36,000,000 (aggregate amount of AUD86,000,000) has been made under the Facilities Agreement dated 27 February 2008 between, inter alia, Cumberland Holdings Limited as borrower, National Australia Bank Limited and HSH Nordbank AG, London branch as Arrangers and Original Lenders, and National Australia Bank Limited as Agent and Security Agreement;
  - (b) within 7 days of the date of this Agreement, deliver to the Agent evidence that all amounts outstanding under the Facilities Agreement dated 24 July 2008 between, inter alia, Simcoe Holdings Limited as borrower and National Australia Bank Limited as Arranger, Original Lender, Agent and Security Agreement have been repaid in full;
  - (c) within 45 days of the First Utilisation Date, deliver to the Agent, in form and substance satisfactory to it, each document listed in Schedule 2 Part 1C (*Conditions Subsequent*);
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- (d) within 5 days of the First Utilisation Date, deliver to the Agent a copy of the register of members of the Target showing the Borrower as the sole shareholder.

## 23 Events Of Default

Each of the events or circumstances set out in this Clause 23 is an (*Event of Default*).

### 23.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document in the manner in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
  - (i) administrative or technical error by a bank in the transmission of funds; or
  - (ii) a Disruption Event; and
- (b) payment is made within 5 Business Days of its due date.

### 23.2 Financial covenants and other obligations

23.2.1 Any requirement of Clause 21 (*Financial Covenants*) is not satisfied.

23.2.2 An Obligor does not comply with the provisions of Clauses 20 (*Information Undertakings*), Clause 22.4 (*Merger*) to 22.8 (*Holding Companies*) (inclusive), Clauses 22.13 (*Negative pledge*) to 22.21 (*Pensions*) (inclusive), Clause 22.24 (*Amendments*) or Clause 22.33 (*Conditions subsequent*).

23.2.3 An Obligor does not comply with any provision of any Transaction Security Document.

### 23.3 Other obligations

23.3.1 An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 23.1 (*Non-payment*) and Clause 23.2 (*Financial covenants and other obligations*)).

23.3.2 No Event of Default under Clause 23.3.1 above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days after the earlier of the Agent giving notice to the Borrower or relevant Obligor or the Borrower or an Obligor becoming aware of the failure to comply.

### 23.4 Misrepresentation

23.4.1 Any representation, warranty or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.

23.4.2 No Event of Default under Clause 23.4.1 above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days after the earlier of the Agent giving notice to the Obligor's Agent or relevant Obligor or the Obligor's Agent or an Obligor becoming aware of the failure to comply.

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### 23.5 **Cross default**

- 23.5.1 Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- 23.5.2 Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- 23.5.3 Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- 23.5.4 Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- 23.5.5 No Event of Default will occur under Clauses 23.5.1 to 23.5.4 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses 23.5.1 to 23.5.4 above is less than £250,000 (or its Base Currency Equivalent).

### 23.6 **Insolvency**

- 23.6.1 An Obligor or any member of the Group is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- 23.6.2 The value of the assets of any Obligor or any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- 23.6.3 A moratorium is declared in respect of any indebtedness of any Obligor or any member of the Group. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

### 23.7 **Insolvency proceedings**

- 23.7.1 Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor or any member of the Group;
  - (b) a composition, compromise, assignment or arrangement with any creditor of any Obligor or any member of the Group;
  - (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor or any member of the Group or any of its assets; or
  - (d) enforcement of any Security over any assets of any Obligor or any member of the Group,
- or any analogous procedure or step is taken in any jurisdiction.
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- 23.7.2 Clause 23.7.1 above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement, or, if earlier, the date on which it is advertised.
- 23.8 **Creditors' process**
- Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor or a member of the Group having an aggregate value of £500,000 or more and is not discharged within 7 days.
- 23.9 **Unlawfulness and invalidity**
- 23.9.1 It is or becomes unlawful for an Obligor or, any other member of the Group that is party to the Subordination Deed, to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective or any subordination created under the Subordination Deed or the guarantee created under the Enstar Guarantee is or becomes unlawful.
- 23.9.2 Any obligation or obligations of any Obligor under any Finance Document or any member of the Group under the Subordination Deed are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
- 23.9.3 Any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Subordination Deed or the guarantee created under the Enstar Guarantee ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.
- 23.10 **Subordination Deed and Enstar Guarantee**
- 23.10.1 Any party to the Subordination Deed and/or the Enstar Guarantee (other, in each case, than a Finance Party) fails to comply with the provisions of, or does not perform its obligations under, the Subordination Deed and/or the Enstar Guarantee or a representation or warranty given by that party in the Subordination Deed and/or the Enstar Guarantee is incorrect in any material respect.
- 23.10.2 No Event of Default under 23.10.1 above will occur if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, and it is remedied within 10 Business Days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.
- 23.11 **Cessation of business**
- Any Obligor or any member of the Group suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of a disposal which is a Permitted Disposal or a Permitted Transaction which is contemplated in paragraph (a) of the definition of that term.
- 23.12 **Change of ownership**
- After the date of this Agreement, an Obligor (other than the Borrower) ceases to be a wholly-owned Subsidiary of the Borrower except in the case, as a result of a disposal which is a Permitted Disposal.
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**23.13 Amending articles of association**

The Borrower amends, varies, supplements, supersedes, waives or terminates any provision of its Constitutional Documents which could adversely affect the interests of the Finance Parties without the prior written consent of the Majority Lenders.

**23.14 Audit qualification**

The Auditors of the Group qualify the audited annual consolidated financial statements of the Borrower.

**23.15 Expropriation**

The authority or ability of any Obligor or any member of the Group to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor or any member of the Group or any of its assets.

**23.16 Repudiation and rescission of agreements**

23.16.1 An Obligor (or any other relevant party other than a Finance Party), the Shareholder or any Investor rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

23.16.2 Any party to the Acquisition Documents or the Subordination Deed rescinds or purports to rescind or repudiates or purports to repudiate any of those agreements or instruments in whole or in part where to do so has or is, in the reasonable opinion of the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.

**23.17 Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any Obligor or any member of the Group or its assets and which if successful would be reasonably likely to have a Material Adverse Effect.

**23.18 FSMA Sanctions**

Any fine, levy or sanctions are imposed upon any member of the Target Group by the FSA or under FSMA which the Majority Lenders reasonably believe has or is reasonably likely to have a Material Adverse Effect

**23.19 Material adverse change**

Any event or circumstance occurs which the Majority Lenders reasonably believe has or is reasonably likely to have a Material Adverse Effect.

**23.20 Acceleration**

23.20.1 On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower:

- (a) cancel the Total Commitments at which time they shall immediately be cancelled;
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- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
- (c) declare that all or part of the Loans be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders;
- (d) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

## 24 Changes To The Lenders

### 24.1 Assignments and transfers by the Lenders

Subject to this Clause 24, a Lender (**Existing Lender**) may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations, under any Finance Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (**New Lender**).

### 24.2 Conditions of assignment or transfer

24.2.1 An Existing Lender must consult with the Borrower for no more than 5 days before it may make an assignment or transfer in accordance with Clause 24.1 (*Assignments and transfers by the Lenders*) unless the assignment or transfer is:

- (a) to another Lender or an Affiliate of a Lender;
- (b) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender; or
- (c) made at a time when an Event of Default is continuing.

24.2.2 An assignment will only be effective on:

- (a) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender; and
- (b) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

24.2.3 A transfer will only be effective if the procedure set out in Clause 24.5 (*Procedure for transfer*) is complied with.

24.2.4 If:

- (a) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
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- (b) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 14 (*Tax gross-up and indemnities*) or Clause 15.1 (*Increased costs*),

then (unless the assignment, transfer or charge has been made in mitigation in accordance with Clause 17 (*Mitigation by the Lenders*)) the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

#### 24.3 **Assignment or transfer fee**

Unless the Agent otherwise agrees and excluding an assignment or transfer:

- (a) to an Affiliate of a Lender;
- (b) to a Related Fund; or
- (c) made in connection with primary syndication of the Facilities,

the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of £1,000.

#### 24.4 **Limitation of responsibility of Existing Lenders**

24.4.1 Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

- (a) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
- (b) the financial condition of any Obligor;
- (c) the performance and observance by any Obligor or any other member of the Group of its obligations under the Transaction Documents or any other documents; or
- (d) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,

and any representations or warranties implied by law are excluded.

24.4.2 Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:

- (a) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
- (b) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

24.4.3 Nothing in any Finance Document obliges an Existing Lender to:

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- (a) accept a re-transfer or reassignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 24; or
- (b) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

#### 24.5 Procedure for transfer

24.5.1 Subject to the conditions set out in Clause 24.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause 24.5.3 below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to Clause 24.5.2 below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

24.5.2 The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender upon its completion of all "know your customer" or other checks relating to any person that it is required to carry out in relation to the transfer to such New Lender.

24.5.3 On the Transfer Date:

- (a) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights, benefits and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the **Discharged Rights and Obligations**);
- (b) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights and benefits against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
- (c) the Agent, the Arrangers, the Security Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arrangers, the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
- (d) the New Lender shall become a Party as a **Lender**.

#### 24.6 Procedure for assignment

24.6.1 Subject to the conditions set out in Clause 24.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with Clause 24.6.3 below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to Clause 24.6.2 below, as soon as reasonably practicable after receipt by

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it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

24.6.2 The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender upon its completion of all “know your customer” or other checks relating to any person that it is required to carry out in relation to the assignment to such New Lender.

24.6.3 On the Transfer Date:

- (a) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
- (b) the Existing Lender will be released from the obligations (**Relevant Obligations**) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
- (c) the New Lender shall become a Party as a **Lender** and will be bound by obligations equivalent to the Relevant Obligations.

24.6.4 Lenders may utilise procedures other than those set out in this Clause 24 to assign their rights under the Finance Documents provided that they comply with the conditions set out in Clause 24.2 (*Conditions of assignment or transfer*).

#### 24.7 **Copy of Transfer Certificate or Assignment Agreement to Borrower**

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

#### 24.8 **Disclosure of information**

- (a) Any Lender may disclose to any of its Affiliates and any other person:
  - (i) to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under the Finance Documents;
  - (ii) with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Finance Documents or any Obligor; or
  - (iii) for whose benefit that Lender charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 24.9 (*Security interests over Lenders' rights*); or
  - (iv) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation; and
- (b) any Finance Party may disclose to a rating agency or its professional advisers, or (with the consent of the Borrower) any other person,

any information about any Obligor, the Group and the Finance Documents as that Lender or other Finance Party shall consider appropriate if in relation to paragraphs (a)(i) and (ii) above, the person to whom the information is to be given has entered

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into a Confidentiality Undertaking (unless such information was publicly available at the time disclosed).

Any Confidentiality Undertaking signed by a Finance Party pursuant to this Clause 24.8 shall supersede any prior confidentiality undertaking signed by such Finance Party for the benefit of any member of the Group.

#### 24.9 **Security Interests over Lenders' rights**

24.9.1 In addition to the other rights provided to Lenders under this Clause 24, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

24.9.2 except that no such charge, assignment or Security shall:

- (a) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (b) require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

#### 25 **Changes to the Obligors**

##### 25.1 **Assignment and transfers by Obligors**

No Obligor or any other member of the Group may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

##### 25.2 **Additional Obligors**

25.2.1 Subject to compliance with the provisions of Clause 20.9 (*"Know your customer" checks*), the Borrower may request that any of its wholly owned Subsidiaries become an Obligor.

25.2.2 The Borrower shall procure that any entity that becomes a member of the Group (and is not a Dormant Subsidiary or a Restricted Subsidiary) shall, as soon as possible after becoming a member of the Group, become an Additional Obligor and grant Security as the Agent may require and shall accede to the Subordination Deed.

25.2.3 A member of the Group shall become an Additional Obligor if:

- (a) the Borrower and the proposed Obligor deliver to the Agent a duly completed and executed Accession Letter; and
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(b) the Agent has received all of the documents and other evidence listed in Part 2 (Conditions precedent) in relation to that Additional Obligor, each in form and substance satisfactory to the Agent.

25.2.4 The Agent shall notify the Borrower and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 2 (Conditions precedent).

25.2.5 If any legal prohibition would prevent or limit a Subsidiary's ability to become an Additional Obligor and/or to enter into Transaction Security, the Obligors shall use their reasonable endeavours lawfully to overcome the prohibition.

### 25.3 Repetition of Representations

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in Clause 19.34 (*Times when representations made*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

### 25.4 Resignation and release of security on disposal

25.4.1 In this clause, **Third Party Disposal** means the disposal of an Obligor to a person which is not a member of the Group where that disposal is permitted under Clause 22.14 (*Disposals*) or made with the approval of the Majority Lenders (and the Borrower has confirmed this is the case).

25.4.2 If the Borrower or an Obligor is or is proposed to be the subject of a Third Party Disposal then:

- (a) where the Borrower or that Obligor created Transaction Security over any of its assets or business in favour of the Security Agent, or Transaction Security in favour of the Security Agent was created over the shares (or equivalent) of the Borrower or that Obligor, the Security Agent may, at the cost and request of the Borrower, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation;
- (b) the resignation of the Borrower or that Obligor and related release of Transaction Security referred to in Clause 25.4 above shall not become effective until all Disposal Proceeds resulting from that Third Party Disposal have been irrevocably paid to the Agent in accordance with Clause 8 (*Mandatory Prepayment*); and
- (c) if the disposal of the Borrower or that Obligor is not made, the release of Transaction Security referred to in Clause 25.4 above shall have no effect and the obligations of the Borrower or Obligor and the Transaction Security created or intended to be created by or over the Borrower or that Obligor shall continue in full force and effect.

## 26 Role Of The Agent, The Arrangers, The Security Agent And Others

### 26.1 Appointment of the Agent

26.1.1 The Arrangers and each of the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.

26.1.2 The Arrangers and each of the Lenders authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

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## 26.2 Duties of the Agent

- 26.2.1 The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party excluding, for the avoidance of doubt, any Fee Letter.
- 26.2.2 Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 26.2.3 If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties. The Agent is not obliged to monitor or enquire whether a Default has occurred.
- 26.2.4 If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arrangers or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- 26.2.5 The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

## 26.3 Role of the Arrangers

Except as specifically provided in the Finance Documents, the Arrangers have no obligations of any kind to any other Party under or in connection with any Finance Document.

## 26.4 No fiduciary duties

- 26.4.1 Nothing in this Agreement constitutes the Agent and/or the Arrangers as a trustee or fiduciary of any other person.
- 26.4.2 None of the Agent, the Security Agent or the Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

## 26.5 Business with the Group

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

## 26.6 Rights and discretions

- 26.6.1 The Agent may rely on:
- (a) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
  - (b) 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.
- 26.6.2 The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
- (a) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 23.1 (*Non-payment*));
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- (b) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
- (c) any notice or request made by the Borrower (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.

26.6.3 The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, actuaries or other experts.

26.6.4 The Agent may act in relation to the Finance Documents through its personnel and agents.

26.6.5 The Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.

26.6.6 The Agent may execute on behalf of the Finance Parties any document expressed by any Finance Document to be executed by the Agent on their behalf.

26.6.7 Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent or the Arrangers is 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.

#### 26.7 **Majority Lenders' instructions**

26.7.1 Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if in relation to any Hedging Agreement, the Majority Creditors) (or, if so instructed by the Majority Lenders (or Majority Creditors, as the case may be), refrain from exercising any right, power, authority or discretion vested in it as 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 of the Majority Lenders (or Majority Creditors, as the case may be).

26.7.2 Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders or Majority Creditors as the case may be will be binding on all the Finance Parties other than the Security Agent.

26.7.3 Any Lender may by notice to the Agent divide its Loans or Commitments into separate amounts to reflect sub-participation or similar transactions and may require the Agent to count such separate amounts individually in calculating the composition of the Majority Lenders.

26.7.4 The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders or Majority Creditors) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

26.7.5 In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders or Majority Creditors), the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.

26.7.6 The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This Clause 26.7 shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction

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Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

**26.8 Responsibility for documentation**

Neither the Agent nor the Arrangers:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, an Arranger, an Obligor or any other person given in or in connection with any Finance Document, the Information Memorandum or the Report or the transactions contemplated in the Finance Documents; or
- (b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security.

**26.9 Exclusion of liability**

- 26.9.1 Without limiting Clause 26.9.2 below and without prejudice to the provisions of Clause 29.13 (*Disruption to the Payment Systems etc.*), the Agent will not be liable for any action taken by it under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct.
- 26.9.2 No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent, or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Agent, may rely on this Clause subject to Clause 1.8 (*Third party rights*) and the provisions of the Third Parties Act.
- 26.9.3 The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent 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 the Agent for that purpose.
- 26.9.4 Nothing in this Agreement shall oblige the Agent or the Arrangers to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arrangers.

**26.10 Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability (including for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or in the case of any costs, loss or liability pursuant to Clause 29.13 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on

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the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

**26.11 Resignation of the Agent**

- 26.11.1 The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the Lenders and the Borrower.
- 26.11.2 Alternatively the Agent may resign by giving notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.
- 26.11.3 If the Majority Lenders have not appointed a successor Agent in accordance with Clause 26.11.2 above within 30 days after notice of resignation was given, the Agent (after consultation with the Borrower) may appoint a successor Agent (acting through an office in the United Kingdom).
- 26.11.4 The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- 26.11.5 The Agent's resignation notice shall only take effect upon the appointment of a successor.
- 26.11.6 Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 26. Its 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.
- 26.11.7 After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with Clause 26.11.2 above. In this event, the Agent shall resign in accordance with Clause 26.11.2 above.

**26.12 Confidentiality**

- 26.12.1 In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- 26.12.2 If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
- 26.12.3 Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arrangers are obliged to disclose to any other person (i) any confidential information, or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.

**26.13 Relationship with the Lenders**

- 26.13.1 The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
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26.13.2 Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 4 (*Mandatory Cost Formula*).

26.13.3 Each Lender shall supply the Agent with any information that the Security Agent may reasonably specify (through the Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Lender shall deal with the Security Agent exclusively through the Agent and shall not deal directly with the Security Agent.

26.14 **Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

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

26.15 **Reference Banks**

26.15.1 If a Lender is a Reference Bank (or an Affiliate of a Reference Bank) but later ceases to be a Lender, the Agent shall (in consultation with the Borrower) appoint another Lender or another Affiliate of a Lender to replace that Reference Bank.

26.15.2 If a Reference Bank which was not a Lender subsequently becomes a Lender, the Agent may (in consultation with the Borrower) appoint that Lender to replace any Reference Bank which is not then either a Lender or an Affiliate of a Lender.

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**26.16 Deduction from amounts payable by the Agent**

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

**26.17 Reliance and engagement letters**

Each Finance Party and Secured Party confirms that each Arranger and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by an Arranger or Agent) the terms of any reliance letter or engagement letters relating to the Report or letters provided by accountants or actuaries in connection with the Finance Documents or the transactions contemplated in the Finance Documents (including any net asset letter in connection with the financial assistance procedures) and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

**26.18 Appointment of Security Agent**

26.18.1 Each other Finance Party irrevocably appoints the Security Agent as its agent and trustee on the terms set out in Schedule 12 (*Security Agent*).

26.18.2 Each Obligor and each other Finance Party agrees to the terms set out in Schedule 12 (*Security Agent*). In the event of any conflict between the terms of Schedule 12 (*Security Agent*) and any other Finance Document, the terms of Schedule 12 (*Security Agent*) shall prevail.

**26.19 Release of Security**

26.19.1 The Security Agent may at its sole discretion and without reference to any other Finance Party take such action as it deems necessary or advisable to release any assets from the Security constituted by the Transaction Security Documents to the extent that their disposal or release is:

- (a) permitted or required by the terms of this Agreement including pursuant to any instructions given to it in accordance with Clause 26.20 (*Instructions*); or
- (b) permitted or required by the original form of any other Finance Document and will not result or could not reasonably be expected to result in any breach of the terms of this Agreement.

26.19.2 If:

- (a) all of the shares in the capital of any member of the Group are to be disposed of, which would result in any Obligor ceasing to be a member of the Group; or
- (b) any asset which is the subject of a Transaction Security Document is to be disposed of to a person outside (and which will remain outside) the Group,

and in any such case:

- (i) the Majority Lenders agree to such disposal; or
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- (ii) the Security Agent has received instructions from the relevant Finance Parties that comply with Clause 26.20 (*Instructions*) instructing it to release the relevant Security and/or Guarantees over such asset; or
- (iii) the disposal is permitted by the terms of the relevant Finance Document and will not result or could not reasonably be expected to result in any breach of any of the terms of this Agreement; or
- (iv) the disposal is being made at the request of the Security Agent in circumstances where any Security created by the Transaction Security Documents has become enforceable; or
- (v) the disposal is being effected by enforcement of a Transaction Security Document,

then, in the case of a disposal contemplated by paragraph (a) above, the Security provided by that Obligor over its assets under the Transaction Security Documents and any related guarantees given by, or in respect of, such Obligor will be released and in the case of a disposal contemplated by paragraph (b) above those assets will be released from such Security, in each case at the expense of the relevant Obligor.

26.19.3 The Security Agent is authorised by each other Finance Party to execute (on behalf of itself and each such Finance Party) all releases of any Security or any guarantee resulting from any disposal contemplated in Clauses 26.19.1 and 26.19.2 above, without the need for any further referral to, or authority from, any other Party, including any formal release of any asset which the Security Agent in its absolute discretion considers necessary or desirable in connection with that disposal.

**26.20 Instructions:**

26.20.1 The Security Agent shall act in accordance with:

- (a) the terms of this Agreement; or
- (b) joint instructions received from, or on behalf of, the Majority Lenders.

26.20.2 Any release of any Security constituted by the Transaction Security Documents or any release of any claim arising by virtue of any guarantee given under the Finance Documents, shall (other than as provided in Clause 26.19 (*Release of Security*)) require the prior written consent of, or on behalf of, the Majority Lenders).

26.20.3 The Security Agent will not be liable to any other Finance Party for any act (or omission) if it acts (or refrains from taking any action) in accordance with the terms of this Agreement even if such action would otherwise cause a breach of any Finance Document. If there is any conflict between the provisions of this Agreement and any other Finance Document with regard to instructions or other matters affecting the Security Agent, this Agreement will prevail.

26.20.4 Any instructions given to the Security Agent in accordance with the terms of this Agreement will be binding on all other Finance Parties who shall not be entitled to object to anything done or omitted to be done as a result of such instructions.

26.20.5 In the absence of instructions, the Security Agent may act (or refrain from taking action) in such manner as it considers to be in the best interests of the Finance Parties but is not authorised to act on behalf of another Finance Party (without first obtaining their consent) in any legal or arbitration proceedings relating to any Finance Document.

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26.20.6 The Security Agent may refrain from acting in accordance with any instructions until it has received such Security as it may require for any cost, loss or liability (together with any associated Tax) which it may incur in complying with the instructions.

## 27 **Conduct Of Business By The Finance Parties**

No provision of any Finance Document will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## 28 **Sharing Among The Finance Parties**

### 28.1 **Payments to Finance Parties**

If a Finance Party (**Recovering Finance Party**) receives or recovers any amount from an Obligor other than in accordance with Clause 29 (*Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 31 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (**Sharing Payment**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 29.8 (*Partial payments*).

### 28.2 **Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 29.8 (*Partial payments*).

### 28.3 **Recovering Finance Party's rights**

28.3.1 On a distribution by the Agent under Clause 28.2 (*Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.

28.3.2 If and to the extent that the Recovering Finance Party is not able to rely on its rights under Clause 28.3.1 above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

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#### 28.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 28.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
- (b) that Recovering Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed.

#### 28.5 **Exceptions**

28.5.1 This Clause 28 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor except where that would be inconsistent with the terms of the Subordination Deed.

28.5.2 A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

- (a) it notified the other Finance Party of the legal or arbitration proceedings; and
- (b) the other Finance Party 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.

28.5.3 A Hedge Counterparty which is a Recovering Finance Party is not obliged to share with any other Finance Party any amount which it has received or recovered pursuant to terminating or closing out a Hedging Arrangement under Clauses 27 (*Conduct of Business By The Finance Parties*) and/or 28 (*Sharing Among The Finance Parties*), where such termination or close out is permitted under the terms of this Agreement.

#### 29 **Payment Mechanics**

##### 29.1 **Payments to the Agent**

29.1.1 On each date on which an Obligor or a Lender is required to make a payment under a Finance Document excluding a payment under the terms of a Hedging Agreement, that Obligor or Lender shall (and the Borrower shall ensure that such Obligor will) make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

29.1.2 Payment shall be made to such account with such bank as the Agent specifies.

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## 29.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 29.3 (*Distributions to an Obligor*) and Clause 29.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice.

## 29.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 30 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

## 29.4 Clawback

- 29.4.1 Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- 29.4.2 If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

## 29.5 Proceeds of enforcement

Subject to the payment of any claim ranking in priority as a matter of law, the proceeds of enforcement of the Security constituted by the Transaction Security Documents shall be paid to the Security Agent and those proceeds (together with all other amounts paid to the Security Agent in accordance with the terms of this Agreement or any other Finance Document) shall be applied in the following order:

- (a) First, in satisfaction of all costs, charges, expenses (including legal expenses) and liabilities properly incurred by the Security Agent or any Insolvency Representative appointed under the Transaction Security Documents or their attorneys or agents and of the remuneration of such Insolvency Representative (and all interest on such sums as provided in the Finance Documents);
  - (b) Second, in payment of all reasonable costs and expenses (including legal expenses) properly incurred by or on behalf of any other Finance Party in connection with such enforcement;
  - (c) Third, in payment to the Agent for application in or towards the discharge of the Loans on a pro rata basis; and
  - (d) Fourth, any surplus to such persons who may be entitled to them.
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29.6 **Waterfall**

No such proceeds or amounts shall be applied in payment of any amounts specified in any of the paragraphs in Clause 29.5 (*Proceeds of Enforcement*) until all amounts specified in any earlier paragraph have been paid in full.

29.7 **Good discharge**

An acknowledgement of receipt signed by the relevant person to whom payments are to be made under 29.5 (*Proceeds of Enforcement*) shall be a good discharge of the Security Agent.

29.8 **Partial payments**

29.8.1 If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:

- (a) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent under the Finance Documents;
- (b) **secondly**, in or towards payment pro rata of:
  - (i) any periodical payments (not being payments as a result of termination of closing out) due but unpaid to the Hedge Counterparties under the Hedging Agreements (if any); and
  - (ii) any accrued interest, fee or commission due but unpaid under this Agreement;
- (c) **thirdly**, in or towards payment pro rata of:
  - (i) any payments as a result of termination or closing out due but unpaid to the Hedge Counterparties under the Hedging Agreements (if any); and
  - (ii) any principal amount due but unpaid under this Agreement; and
- (d) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

29.8.2 The Agent shall, if so directed by the Majority Creditors, vary the order set out in paragraphs (a) to (d) above.

29.8.3 Clauses 29.8.1 and 29.8.2 above will override any appropriation made by an Obligor.

29.9 **No set-off by Obligors**

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

29.10 **Business Days**

29.10.1 Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

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29.10.2 During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

**29.11 Currency of account**

29.11.1 Subject to Clauses 29.11.2 to 29.11.5 below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.

29.11.2 A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated on its due date.

29.11.3 Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.

29.11.4 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

29.11.5 Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

**29.12 Change of currency**

29.12.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

- (a) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and
- (b) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

29.12.2 If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

**29.13 Disruption to Payment Systems etc.**

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;
  - (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to
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do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 35 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 29.13; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

30 **Set-Off**

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. No security interest is created by this Clause 30.

31 **Notices**

31.1 **Communications in writing**

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

31.2 **Addresses**

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

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

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

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### 31.3 **Delivery**

31.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) 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 31.2 (*Addresses*), if addressed to that department or officer.

31.3.2 Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).

31.3.3 All notices from or to an Obligor shall be sent through the Agent.

31.3.4 Any communication or document made or delivered to the Borrower in accordance with this Clause 31 will be deemed to have been made or delivered to each of the Obligors or any other member of the Group party to a Finance Document.

### 31.4 **Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 31.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

### 31.5 **Electronic communication**

31.5.1 Any communication to be made between the Agent or the Security Agent and another Finance Party under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent, the Security Agent and the relevant Finance Party:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (c) notify each other of any change to their address or any other such information supplied by them.

31.5.2 Any electronic communication made between the Agent or the Security Agent and a Finance Party will be effective only when actually received in readable form and in the case of any electronic communication made by a Finance Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.

### 31.6 **Use of websites**

31.6.1 The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (**Website Lenders**) who accept this

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method of communication by posting this information onto an electronic website designated by the Borrower and the Agent (**Designated Website**) if:

- (a) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
- (b) both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
- (c) the information is in a printable format or otherwise capable of being downloaded by the relevant Website Lender and is in a format previously agreed between the Borrower and the Agent.

If any Lender (**Paper Form Lender**) does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall at its own cost supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrower shall at its own cost supply the Agent with at least one copy in paper form of any information required to be provided by it.

31.6.2 The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.

31.6.3 The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:

- (a) the Designated Website cannot be accessed due to technical failure;
- (b) the password specifications for the Designated Website change;
- (c) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
- (d) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
- (e) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Borrower notifies the Agent under paragraphs (a) to (e) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

31.6.4 Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall at its own cost comply with any such request within ten Business Days.

### 31.7 **English language**

31.7.1 Any notice given under or in connection with any Finance Document must be in English.

31.7.2 All other documents provided under or in connection with any Finance Document must be:

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- (a) in English; or
- (b) 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.

**32 Calculations And Certificates**

**32.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

**32.2 Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**32.3 Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the London interbank market differs, in accordance with that market practice.

**33 Partial Invalidity**

If, at any time, any provision of the Finance Documents 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.

**34 Remedies And Waivers**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under the Finance Documents 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.

**35 Amendments And Waivers**

**35.1 Required consents**

35.1.1 Subject to Clause 35.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors' Agent and any such amendment or waiver will be binding on all Parties.

35.1.2 The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 35.

35.1.3 Each Obligor agrees to any such amendment or waiver permitted by this Clause 35 which is agreed to by the Obligors' Agent.

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## 35.2 Exceptions

35.2.1 An amendment or waiver that has the effect of changing or which relates to:

- (a) the definition of **Majority Lenders** in Clause 1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in or an extension of any Commitment or the Total Commitments;
- (f) a change to the Borrower or Obligors other than in accordance with Clause 25 (*Changes to the Obligors*);
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 8 (*Mandatory prepayment*), Clause 24 (*Changes to the Lenders*) or this Clause 35;
- (i) the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed (except to the extent that it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
- (j) the release of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document;
- (k) any amendment to Clause 29.5 (*Proceeds of Enforcement*) or to the order of priority or subordination under the Subordination Deed; or
- (l) any extension of an Availability Period,

shall not be made without the prior consent of all the Lenders,

35.2.2 An amendment or waiver which relates to the rights or obligations of the Agent, the Arrangers, a Hedge Counterparty or the Security Agent may not be effected without the consent of the Agent, the Arrangers, Hedge Counterparty or the Security Agent.

## 36 Counterparts

Each Finance Document 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 the Finance Document.

## 37 Governing Law

This Agreement is governed by English law.

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## 38 Enforcement

### 38.1 Jurisdiction of English courts

- 38.1.1 The courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with the Finance Documents expressed to be governed by English law (including a dispute regarding the existence, validity or termination of any Finance Document) (**Dispute**), only where such Dispute is the subject of proceedings commenced by the Obligor.
- 38.1.2 Where a Dispute is the subject of proceedings commenced by one or more Finance Parties, the Finance Parties are entitled to bring such proceedings in any court or courts of competent jurisdiction (including but not limited to the courts of England). If any Obligor raises a counter-claim in the context of proceedings commenced by one or more Finance Parties, that Obligor shall bring such counter-claim before the court seized of the Finance Party's claim and no other court.
- 38.1.3 The commencement of legal proceedings in one or more jurisdictions shall not, to the extent allowed by law, preclude the Finance Parties from commencing legal actions or proceedings in any other jurisdiction, whether concurrently or not.
- 38.1.4 To the extent allowed by law, each Obligor irrevocably waives any objection it may now or hereafter have on any grounds whatsoever to the laying of venue of any legal proceeding, and any claim it may now or hereafter have that any such legal proceeding has been brought in an inappropriate or inconvenient forum.

### 38.2 Service of process

Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):

- (a) irrevocably appoints Enstar (EU) Limited. (Attention: Derek Reid, Avaya House, 2 Cathedral Hill, Guildford, Surrey GU2 7YL) as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned; and
- (c) if any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.
- (d) The Borrower confirms that Enstar (EU) Limited has expressly agreed and consented to the provisions of Clause 37 (*Governing law*) and of Clause 38 (*Enforcement*).

### 38.3 Waiver of Immunity

Each Obligor (to the fullest extent permitted by law) irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought against it by any Finance Party in relation to any Finance Document, and to ensure that no such claim is made on its behalf;
  - (b) waives all rights of immunity in respect of it or its assets; and
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(c) consents generally in respect of such proceedings to the giving of relief or the issue of any process in connection with such proceedings.

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

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**Schedule 1 The Original Parties****Part 1****The Original Obligors**

<u>Name of Original Borrower</u>	<u>Jurisdiction of Incorporation, Registration Number</u>
Royston Run-off Limited	England and Wales, 06708757
<u>Name of Original Obligor</u>	<u>Jurisdiction of Incorporation, Registration Number</u>
Royston Run-off Limited	England and Wales, 06708757
Unionamerica Holdings Limited	England and Wales, 02822469
Unionamerica Acquisition Company Limited	England and Wales, 02820274

**Part 2****The Original Lenders — other than UK non-bank Lenders**

<u>Name of Original Lender</u>	<u>Facility A Commitment US\$</u>	<u>Facility B Commitment US\$</u>
National Australia Bank Limited	76,308,000	16,000,000
Barclays Bank PLC	76,308,000	16,000,000

**Part 3****The Original Lenders — UK non-bank Lenders**

<u>Name of Original Lender</u>	<u>Facility A Commitment US\$</u>	<u>Facility B Commitment US\$</u>
None		

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## **Schedule 2 Conditions Precedent**

### **Part 1A**

#### **Conditions precedent to signing of the Agreement**

##### **1 Obligors**

- 1.1 A copy of the Constitutional Documents of each Original Obligor, with such amendments as the Security Agent may reasonably request.
- 1.2 A copy of a resolution of the board of directors of each Original Obligor:
  - (a) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
  - (b) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- 1.3 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above in relation to the Finance Documents and related documents.
- 1.4 A copy of a resolution signed by all the holders of the issued shares in each Original Obligor, approving the terms of, and the transactions contemplated by, the Finance Documents to which each Original Obligor is a party.
- 1.5 A copy of the register of members of the Borrower.
- 1.6 A certificate of the Borrower (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Original Obligor to be exceeded.
- 1.7 A certificate of an authorised signatory of each Original Obligor certifying that each copy document relating to it specified in this Part 1A of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement or, to the extent such document has previously been delivered to the Agent that such document has not been amended or superseded since the date of such delivery.

##### **2 Finance Documents**

- 2.1 The Shareholder's Undertaking in agreed form.
  - 2.2 The Enstar Guarantee in agreed form.
  - 2.3 The Fee Letters executed by the Borrower.
  - 2.4 The following Transaction Security Document to be in agreed form:
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Name of Original Obligor	Transaction Security Document	Governing law of document
Royston Run-off Limited	Debenture over all the assets of its assets present and future	English

2.5 Any document or information required to be delivered to the Agent or the Security Agent on or prior to the date of this Agreement pursuant to the terms of any Transaction Security Document and not otherwise specifically referred to in this Schedule.

### 3 Legal Opinion

The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons to become Lenders pursuant to the primary syndication of the Facilities, to be in agreed form:

- (a) A legal opinion of Clyde & Co LLP, legal advisers to the Agent and the Arrangers as to English law substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (b) A legal opinion of Wakefield Quin as to Bermudian law substantially in the form distributed to the Original Lenders prior to signing this Agreement.

### 4 Other Documents And Evidence

- 4.1 If any Original Obligor is incorporated in a jurisdiction other than England and Wales, evidence that Enstar (EU) Limited has accepted its appointment as process agent referred to in Clause 38.2 (*Service of process*) and confirmed it agrees and consents to the provisions of Clause 37 (*Governing law*) and of Clause 38 (*Enforcement*).
  - 4.2 The Group Structure Chart which shows the Group.
  - 4.3 A copy, certified by an authorised signatory of the Borrower to be a true copy, of the Original Financial Statements of each member of the Group.
  - 4.4 A copy of any other Authorisation or other document, opinion or assurance which the Agent notifies the Borrower is necessary or desirable in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
  - 4.5 Any information and evidence in respect of any Obligor, the Shareholder or any Investor required by any Finance Party to enable it to be satisfied with the results of all "know your customer" or other checks which it is required to carry out in relation to such person.
  - 4.6 A copy of the Forecast Cash Flows.
  - 4.7 A copy of the Report.
  - 4.8 Evidence that a repayment of principal in an amount of at least AUD50,000,000 has been made under the Facilities Agreement dated 27 February 2008 between, inter alia, Cumberland Holdings Limited as borrower, National Australia Bank Limited and HSH Nordbank AG, London branch as Arrangers and Original Lenders, and National Australia Bank Limited as Agent and Security Agreement.
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## Part 1B

### Conditions Precedent to initial Loan

- 1 A Certificate of the Borrower (signed by a director) certifying that:
    - (a) each of the matters specified in clause 3 (or the appropriate provision setting out conditions) of the Acquisition Agreement has been satisfied or, with the consent of the Agent, waived and the Acquisition Agreement has become wholly unconditional in all respects;
    - (b) no Acquisition Document has been amended, varied, novated, supplemented, superseded, waived or terminated except with the consent of the Agent;
    - (c) the Borrower is not aware of any breach of any warranty or any claim under the Acquisition Agreement save to the extent disclosed against in the Disclosure Letter; and
    - (d) all necessary or desirable Authorisations from any governmental authority or other regulatory body in relation to the Acquisition and in connection with the entry into and performance of the transactions contemplated by any Transaction Document (or for the validity or enforceability of any of those documents) have been obtained and are in full force and effect together with certified copies of those obtained; and
    - (e) the total amount of Loans equates to an amount equal to not more than 60% of the Base Currency Equivalent of the purchase price of the Target Shares (excluding fees and other expenses).
  - 2 A copy of each of the Acquisition Documents and the other Transaction Documents (other than the Finance Documents) executed and delivered by the parties to those documents.
  - 3 Evidence that the Extraordinary Transactions and the settlement of all Intra-Group Payables and Intra-Group Receivables (in each case as such term is defined in the Acquisition Agreement) as anticipated in the Acquisition Agreement have been completed.
  - 4 Evidence that the commitment fees, arrangement and participation fees and agency fees have or will on the First Utilisation Date be paid in full.
  - 5 A copy of all notices required to be sent under the Transaction Security Documents duly acknowledged by the addressees.
  - 6 Originals of all share certificates transfers and stock transfer forms (all stock transfer forms to be executed by two directors or a director and the secretary of the company that owns the relevant shares but with the sections relating to the consideration and the transferee left blank) or equivalent, duly executed by the relevant Obligor in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents. The original share certificates relating to the Target Shares to be delivered to the Agent as soon as is reasonably practicable once the Borrower has completed the Acquisition.
  - 7 The Shareholder's Undertaking executed by the Borrower and the Shareholder.
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- 8 The Enstar Guarantee executed by Enstar.
  - 9 The Debenture to be provided by the Borrower executed by the Borrower.
  - 10 A copy of a resolution of the board of directors of the Shareholder:
    - (a) approving the terms of, and the transactions contemplated by, the Shareholder's Undertaking and resolving that it execute, deliver and perform the Shareholder's Undertaking;
    - (b) authorising a specified person or persons to execute the Shareholder's Undertaking on its behalf; and
    - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Shareholder's Undertaking.
  - 11 A copy of a resolution of the board of directors of Enstar:
    - (a) approving the terms of, and the transactions contemplated by, the Enstar Guarantee and resolving that it execute, deliver and perform the Shareholder's Undertaking;
    - (b) authorising a specified person or persons to execute the Enstar Guarantee on its behalf; and
    - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Enstar Guarantee.
  - 12 A specimen of the signature of each person authorised by the resolution referred to in paragraphs 10 and 11 above in relation to the Enstar Guarantee and Shareholder's Undertaking and related documents.
  - 13 A certificate signed by an authorised signatory of the Borrower specifying each member of the Group (assuming the Closing Date has occurred) which is a Dormant Subsidiary and/or a Restricted Subsidiary as at the Closing Date together with certified copies (certified by such authorised signatory to be a true copy) of the last audited accounts of each such Dormant Subsidiary and/or Restricted Subsidiary.
  - 14 A certificate of an authorised signatory of the Shareholder and Enstar certifying that each copy document relating to it specified in this Part 1B of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement and confirming that the constitutional documents of each previously delivered to the Agent have not been amended or superseded since the date of such delivery.
  - 15 A certificate of an authorised signatory of the Borrower certifying that there no member of the Target Group has any outstanding loans as at the First Drawdown Date.
  - 16 A copy, certified by an authorised signatory of the Borrower to be a true copy, of a written notice from the FSA in accordance with section 184 FSMA in terms satisfactory to the Agent, that it approves or has no objection to the Borrower acquiring control (within the meaning of FSMA) of the Target pursuant to the Acquisition Agreement, or, in the absence of such notice, the period within which the FSA may serve a notice of objection pursuant to section 186 FSMA having elapsed without the FSA having served such notice of objection on the Borrower.
-

- 17 Evidence that all amounts outstanding under the Facilities Agreement dated 24 July 2008 between, inter alia, Simcoe Holdings Limited as borrower and National Australia Bank Limited as Arranger, Original Lender, Agent and Security Agreement have been repaid in full.
- 18 Evidence that an additional repayment of principal in an amount of at least AUD36,000,000 (aggregate amount of AUD86,000,000) has been made under the Facilities Agreement dated 27 February 2008 between, inter alia, Cumberland Holdings Limited as borrower, National Australia Bank Limited and HSH Nordbank AG, London branch as Arrangers and Original Lenders, and National Australia Bank Limited as Agent and Security Agreement.
- 19 A certificate of the Borrower (signed by a director) confirming that on the First Utilisation Date:
  - (a) Regulatory Cover is not less than 1.1:1;
  - (b) Net Worth Cover is not less than 1.65:1;
  - (c) Free Net Worth is at least US\$300,000,000; and
  - (d) 100% by value of all investments in the investment portfolio of the Group have the Requisite Rating individually or are in investments advised by J.C.Flowers & Co. LLC, provided that no more than 10% of the total portfolio is held in investments advised by J.C.Flowers & Co. LLC,

and that none of the above will be breached as a result of the borrowing in full of the Total Commitments.

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## **Part 1C**

### **Conditions subsequent**

#### **1 Target**

- 1.1 A copy of the Constitutional Documents of the Target and each other member of the Target Group providing a Debenture, with such amendments as the Security Agent may reasonably request.
- 1.2 A copy of a resolution of the board of directors of the Target and each other member of the Target Group providing a Debenture:
  - (a) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
  - (b) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- 1.3 A specimen of the signature of each person authorised by the resolutions referred to in paragraph 1.2 above in relation to the Finance Documents and related documents.
- 1.4 A copy of a resolution signed by all the holders of the issued shares in the Target, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Target is a party.
- 1.5 A copy of the register of members of the Target and each other member of the Target Group providing a Debenture.
- 1.6 A certificate of the Target and each other member of the Target Group providing a Debenture (signed by a director) confirming that securing the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on the Target or such other member of the Target Group providing a Debenture to be exceeded.
- 1.7 A certificate of an authorised signatory of the Target and each other member of the Target Group providing a Debenture certifying that each copy document relating to it specified in this Part 1C of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement or, to the extent such document has previously been delivered to the Agent that such document has not been amended or superseded since the date of such delivery.
- 1.8 A certificate of the Target and each other member of the Target Group providing a Debenture signed by the Chief Financial Officer of such company confirming the solvency of the relevant company.

#### **2 Finance Documents**

- 2.1 At least two originals of each of the following Transaction Security Documents executed by the relevant Obligor:
-

Name of Obligor	Transaction Security Document	Governing law of document
Unionamerica Holdings Limited	Debenture over all the assets of its assets present and future	English
Unionamerica Acquisition Company Limited	Debenture over all the assets of its assets present and future	English

- 2.2 A copy of all notices required to be sent under the Transaction Security Documents duly acknowledged by the addressees.
- 2.3 Originals of all share certificates transfers and stock transfer forms (all stock transfer forms to be executed by two directors or a director and the secretary of the company that owns the relevant shares but with the sections relating to the consideration and the transferee left blank) or equivalent, duly executed by the relevant Obligor in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents .
- 2.4 Any document or information required to be delivered to the Agent or the Security Agent on or prior to the date of this Agreement pursuant to the terms of any Transaction Security Document and not otherwise specifically referred to in this Schedule.

**3 Legal Opinions**

A legal opinion of Clyde & Co LLP as to English law in a form satisfactory to the Original Lenders addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons to become Lenders pursuant to the primary syndication of the Facility.

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## Part 2

### Conditions precedent required to be delivered by an Additional Obligor

- 1 An Accession Letter (if relevant) executed by the Additional Obligor and the Borrower.
  - 2 A copy of the constitutional documents of the Additional Obligor, with such amendments as the Agent may reasonably require.
  - 3 A copy of a resolution of the board of directors of the Additional Obligor:
    - 3.1 approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute, deliver and perform the Accession Letter and any other Finance Document to which it is party;
    - 3.2 authorising a specified person or persons to execute the Accession Letter and other Finance Documents on its behalf;
    - 3.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
    - 3.4 authorising the Borrower to act as its agent in connection with the Finance Documents.
  - 4 A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
  - 5 A copy of a resolution signed by all the holders of the issued shares of the Additional Obligor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Obligor is a party.
  - 6 A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
  - 7 A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part 2 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Letter.
  - 8 If available, the latest audited financial statements of the Additional Obligor.
  - 9 The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:
    - 9.1 A legal opinion of Clyde & Co LLP as advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Letter.
    - 9.2 If the Additional Obligor is incorporated in or has its **centre of main interest** or **establishment** in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Agent in the jurisdiction of its incorporation, **centre of main interest** or **establishment** (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance
-

Document (**Applicable Jurisdiction**) as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Letter.

- 10 If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that Enstar (EU) Limited as any process agent referred to in Clause 38.2 (*Service of process*) has accepted its appointment and confirmed it agrees and consents to the provisions of Clause 37 (*Governing law*) and of Clause 38 (*Enforcement*).
  - 11 The Transaction Security Documents or other security documents which are required by the Agent to be executed by the proposed Additional Obligor.
  - 12 Any notices or documents (including title deeds) required to be given or executed under the terms of those security documents.
  - 13 Share certificates and stock transfer forms executed in blank (as described in paragraph 3(l) of Part 1 of this Schedule) as required by any security document.
  - 14 Such documentary evidence as legal counsel to the Agent may require that such Additional Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.
  - 15 Evidence that all necessary or desirable Authorisations from any government authority or other regulatory body in connection with the entry into and performance of the transactions contemplated by the Accession Letter, any Finance Document or Transaction Document to which the Additional Obligor is party or for the validity or enforceability of any of those documents have been obtained and are in full force and effect, together with certified copies of those obtained.
  - 16 A certificate of the Borrower confirming that no Default is continuing or would occur as a result of the Additional Obligor executing the Accession Letter or the Finance Documents or the Transaction Documents to which it is party.
  - 17 Any security documents that are required by the Agent to be executed by the proposed Additional Obligor subject to Clause 22.27 (*Further Assurance*) and Clause 22.30 (*Obligors*).
-

**Schedule 3 Requests**

**Part 1 Utilisation Request**

**Loans**

From: Royston Run-off Limited

To: National Australia Bank Limited (as Agent)

Dated:

Dear Sirs

**Royston Run-off Limited – Facilities Agreement dated [ ] (Facilities Agreement)**

- 1 We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- 2 We wish to borrow a Loan on the following terms:
  - 2.1 Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)
  - 2.2 Amount: [ ] or, if less, the Available Facility
  - 2.3 Interest Period: [ ]
- 3 We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
- 4 Please arrange for the Arranger's arrangement, participation fee, the Lenders' commitment fees, the Agent's agency fee and lawyer's fees totalling US\$[ ] to be deducted from the net proceeds and the balance, being:  
  
US\$[ ], to be credited to: [account]
- 5 This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
**Royston Run-off Limited**

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**Part 2 Selection Notice**

From: Royston Run-off Limited

To: National Australia Bank Limited (as Agent)

Dated:

Dear Sirs

**Royston Run-off Limited — Facilities Agreement dated [ ] (Facilities Agreement)**

- 1 We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
- 2 We refer to the Loan with an Interest Period ending on [ ].
- 3 We request that the next Interest Period for the above Loan[s] is [ ].
- 4 This Selection Notice is irrevocable.

Yours faithfully,

.....  
authorised signatory for  
**Royston Run-off Limited**

---

#### Schedule 4 Mandatory Cost Formula

- 1 The Mandatory Cost is an addition to the interest rate to compensate the Lenders for the cost of compliance with:
  - 1.1 the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions); or
  - 1.2 the requirements of the European Central Bank.
- 2 On the first day of each Interest Period (or as soon as possible thereafter) the Agent shall calculate, as a percentage rate, a rate (**Additional Cost Rate**) for each Lender in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Agent as a weighted average of the Lenders' Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loans) and will be expressed as a percentage rate per annum.
- 3 The Additional Cost Rate for any Lender lending from a Facility Office in a Participating Member State will be the percentage notified by that Lender to the Agent. This percentage will be certified by that Lender in its notice to the Agent to be its reasonable determination of the cost (expressed as a percentage of that Lender's participation in all Loans made from that Facility Office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that Facility Office.
- 4 The Additional Cost Rate for any Lender lending from a Facility Office in the United Kingdom will be calculated by the Agent as follows:
  - 4.1 in relation to a US Dollar Loan:

$$\frac{AB+C(B-D)+Ex0.01}{100-(A+C)}$$

per cent per annum

- 4.2 in relation to a Loan in any currency other than sterling:

$$\frac{Ex0.01}{300}$$

per cent per annum

where:

- (A) is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which that Lender is from time to time required to maintain as an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements.
  - (B) is the percentage rate of interest (excluding the Margin and the Mandatory Cost and, if the Loan is an Unpaid Sum, the additional rate of interest specified in paragraph (a) of Clause 10.3 (*Default interest*)) payable for the relevant Interest Period on the Loan.
  - (C) is the percentage (if any) of Eligible Liabilities which that Lender is required from time to time to maintain as interest bearing Special Deposits with the Bank of England.
-

- (D) is the percentage rate per annum payable by the Bank of England to the Agent on interest bearing Special Deposits.
- (E) is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Agent as being the average of the most recent rates of charge supplied by the Reference Banks to the Agent pursuant to paragraph 7 below and expressed in pounds per £1,000,000.
- 5 For the purposes of this Schedule:
- 5.1 **Eligible Liabilities:** and **Special Deposits** have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;
- 5.2 **Fees Rules:** means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;
- 5.3 **Fee Tariffs:** means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and
- 5.4 **Tariff Base:** has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.
- 6 In application of the above formulae, A, B, C and D will be included in the formulae as percentages (i.e. 5 per cent. will be included in the formula as 5 and not as 0.05). A negative result obtained by subtracting D from B shall be taken as zero. The resulting figures shall be rounded to four decimal places.
- 7 If requested by the Agent, each Reference Bank shall, as soon as practicable after publication by the Financial Services Authority, supply to the Agent, the rate of charge payable by that Reference Bank to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by that Reference Bank as being the average of the Fee Tariffs applicable to that Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Reference Bank.
- 8 Each Lender shall supply any information required by the Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information on or prior to the date on which it becomes a Lender:
- 8.1 the jurisdiction of its Facility Office; and
- 8.2 any other information that the Agent may reasonably require for such purpose.
- Each Lender shall promptly notify the Agent of any change to the information provided by it pursuant to this paragraph.
- 9 The percentages of each Lender for the purpose of A and C above and the rates of charge of each Reference Bank for the purpose of E above shall be determined by the Agent based upon the information supplied to it pursuant to paragraphs 7 and 8 above and on the assumption that, unless a Lender notifies the Agent to the contrary, each Lender's obligations in relation to cash ratio deposits and Special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a Facility Office in the same jurisdiction as its Facility Office.
-

- 10 The Agent shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or Reference Bank pursuant to paragraphs 3, 7 and 8 above is true and correct in all respects.
  - 11 The Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Reference Bank pursuant to paragraphs 3, 7 and 8 above.
  - 12 Any determination by the Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.
  - 13 The Agent may from time to time, after consultation with the Borrower and the Lenders, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.
-



- 4.3 a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of an advance under a Finance Document in computing the chargeable profits (for the purposes of section 11(2) of the Taxes Act) of that company; or \*\*\* ]
- 4.4 [ \*\*\* a Treaty Lender \*\*\* ].
- 5 This Transfer Certificate 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 Transfer Certificate.
- 6 For the purpose of Clause 31.6 (*Use of websites*) the New Lender is a [ \*\*\* Website Lender \*\*\* ] [ \*\*\* Paper Form Lender \*\*\* ], \*\*\* ] OR [ \*\*\* each New Lender specifies in Part 4 of the Schedule opposite its name whether it is a Website Lender or a Paper Form Lender. \*\*\* ]
- 7 This Transfer Certificate is governed by English law.
- 8 The parties to this Transfer Certificate intend it to take effect as a deed and this Transfer Certificate shall be treated as having been duly executed and delivered as a deed only upon being dated.

**IN WITNESS WHEREOF** the authorised signatories of the parties have executed this deed on the day and year first above written.

---

**The Schedule**  
**Commitment/rights and obligations to be transferred**  
**[insert relevant details]**

[Facility Office address, fax number and attention details for notices and account details for payments,]

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as [•].

[Agent]

By:

[ \*\*\* OR FOR GLOBAL TRANSFER CERTIFICATES \*\*\* ]

Part 1

The Existing Lenders

[ \*\*\* ]

[ \*\*\* ]

[ \*\*\* ]

Part 2

The New Lenders

[ \*\*\* ]

[ \*\*\* ]

[ \*\*\* ]

Part 3

Details of portion of outstanding Loans and Commitment

Lender	Commitment	Loans
[*list here existing and new lenders*] [ *** ] [ *** ] [ *** ] [ *** ]	[**]	[**]

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**Part 4**

**New Lenders' Administrative Details**

<u>New Lender</u>	<u>Facility office Address/Fax no.Attention of</u>	<u>Address for service of notices (if different)</u>	<u>Account for Payment</u>	<u>Website or Paper Form Lender</u>
[ *** ]	[ *** ]	[ *** ]	[ *** ]	[ *** ]
EXECUTED as a Deed by	)			
[ *** Each Existing Lender *** ]	)	Authorised Signatory		
Dated:				
Executed as a Deed by	)			
[ *** Each New Lender *** ]	)	Authorised Signatory Dated:		
The Transfer Certificate is	)			
accepted by the Agent and the	)			
Transfer Date is confirmed by the	)			
Agent as [ *** ]	)			
Signed by [National Australia Bank Limited (ABN 12004044937) (as Agent)]	)			
Dated:				
Signed by [National Australia Bank Limited (ABN 12004044937) (as Security Agent)]				
Dated:				

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which is required to bring into account in computing its chargeable profits (for the purposes of section 11(2) of the Taxes Act) the whole of any share of interest payable in respect of that advance that falls to it by reason of sections 114 and 115 of the Taxes Act; or

- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of an advance under a Finance Document in computing the chargeable profits (for the purposes of section 11(2) of the Taxes Act) of that company; or \*\*\*]
  - (d) [\*\*\* a Treaty Lender \*\*\*].
- 8 This Assignment 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 Assignment Agreement.
- [\*\*\* Consider including checklist of steps necessary for the New Lender to obtain the benefit of the Transaction Security \*\*\*].
- 9 For the purpose of Clause 31.6 (*Use of Websites*) the New Lender is a [\*\*\* Website Lender \*\*\*] [\*\*\* Paper Form Lender \*\*\*]
- 10 This Assignment Agreement is governed by English law.
- 11 This Assignment Agreement has been [\*\*\* executed and delivered as a deed \*\*\*] [\*\*\* entered into \*\*\*] on the date stated at the beginning of this Assignment Agreement.
-

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred by  
assignment, release and accession**

[\*\*\* insert relevant details \*\*\*]

[\*\*\* Facility office address, fax number and attention details for notices and account details for payments \*\*\*]

[\*\*\* Existing Lender \*\*\*]

[\*\*\* New Lender \*\*\*]

By:

By:

This Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as [\*\*\*].

[\*\*\* Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party. \*\*\*]

[\*\*\* Agent \*\*\*]

By:

---

**Schedule 7 Form of Accession Letter**

To: National Australia Bank Limited as Agent

From: [Subsidiary] and Royston Run-off Limited

Dated:

Dear Sirs

**Royston Run-off Limited – Facilities Agreement dated [ ] (Facilities Agreement)**

- 1 We refer to the Facilities Agreement. This is an Accession Letter. Terms defined in the Facilities Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
- 2 [Subsidiary] agrees to become an Additional Obligor and to be bound by the terms of the Facilities Agreement, the Subordination Deed and the other Finance Documents as an Additional Obligor pursuant to Clause 25.2 (*Additional Obligor*) of the Facilities Agreement and as an [Obligor] pursuant to Clause [ ] of the Subordination Deed. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company and registered number [ ].
- 3 [Subsidiary's] administrative details are as follows:  
Address:  
Fax No.:  
Attention:
- 4 This Accession Letter is governed by English Law

[This Accession Letter is entered into by deed.]

.....  
For and on behalf of  
Royston Run-off Limited

.....  
For and on behalf of  
[Subsidiary]

---

## Schedule 8 Form of Compliance Certificate

To: National Australia Bank Limited as Agent

From: Royston Run-off Limited

Dated:

Dear Sirs

### Royston Run-off Limited — Facilities Agreement dated [ ] (Facilities Agreement)

- 1 We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
  - 2 We confirm that as at [\*\*\* insert the relevant testing date/ the Testing Date \*\*\*]:
    - 2.1 **Regulatory Cover (which must be a minimum of 1.1:1):** the capital resources of the Target, as determined in accordance with Section 2.2 of the Integrated Prudential Sourcebook for Insurers as amended from time to time (including as required to meet solvency requirements) was [\*\*\*] and the capital resources requirement of the Target, as determined in accordance with Section 2.1 of the Integrated Prudential Sourcebook for Insurers as amended from time to time (including as required to meet solvency requirements) was [\*\*\*], therefore Regulatory Cover was [\*\*\*] and that the requirements of Clause 21.2.1(a) (*Regulatory cover*) have been met.
    - 2.2 **Net Worth Cover (which must be a minimum of 1.65:1):** Consolidated Tangible Net Worth was [\*\*\*] and Facility Debt was [\*\*\*], therefore Net Worth Cover was [\*\*\*] and that the requirements of Clause 21.2.1(b) (*Net Worth Cover*) have been met.
    - 2.3 **Free Net Worth (which must be a minimum of \$300,000,000):** Free Net Worth was [\*\*\*], therefore Free Net Worth was [\*\*\*] and that the requirements of Clause 21.2.1(c) (*Free Net Worth*) have been met.
    - 2.4 **Requisite Rating:**
      - (i) the short term rating and/or long term rating of investments as determined by the Rating Agency for:
        - (A) at least 87.5% of the total value of the investments held by the Group have a rating of not less than A- or are held in cash and are investments not advised by J.C. Flowers & Co. LLC; and
        - (B) at least 62.5% of the total value of the investments held by the Group have a rating of AAA- or are held in cash; and
      - (ii) the total commitment of investments in J. C. Flowers & Co. LLC held by the Group shall at no time exceed US \$75,727,000, in each case as demonstrated below. [attach details of calculations] and therefore the requirements of Clause 21.2.1(d) (*Requisite Rating*) have been met.
-

3 We confirm that no Default is continuing. <sup>1</sup>

4 [We confirm that the following companies constitute Restricted Subsidiaries and/or Dormant Subsidiaries for the purposes of the Facilities Agreement:]

Name	Registration Number	Restricted/Dormant
------	---------------------	--------------------

Signed .....

Director of Royston Run-off Limited

Director of Royston Run-off Limited

<sup>1</sup> If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

---

*[insert applicable certification language]*

for and on behalf of

[name of Auditors of Royston Run-off Limited]

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**Schedule 9 LMA Form of Confidentiality Undertaking**

**LMA CONFIDENTIALITY LETTER  
FOR PRIMARY SYNDICATION  
[Letterhead of Arranger]**

To: *[insert name of Potential Lender]*

Re: the Facilities

**Borrower:**

**Amount:**

**Agent:**

Dear Sirs

We understand that you are considering participating in the Facilities. In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

**1 Confidentiality Undertaking**

You undertake:

- 1.1 to keep the Confidential Information confidential and not to disclose it to anyone except as provided for by paragraph 2 below and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information;
- 1.2 to keep confidential and not disclose to anyone the fact that the Confidential Information has been made available or that discussions or negotiations are taking place or have taken place between us in connection with the Facilities;
- 1.3 to use the Confidential Information only for the Permitted Purpose;
- 1.4 (to use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2(b) below) acknowledges and complies with the provisions of this letter as if that person were also a party to it; and
- 1.5 not to make enquiries of any Obligor or member of the Group or any of their officers, directors, employees or professional advisers relating directly or indirectly to the Facilities.

**2 Permitted Disclosure**

We agree that you may disclose confidential information:

- 2.1 to members of the Participant Group and their officers, directors, employees and professional advisers to the extent necessary for the Permitted Purpose and to any auditors of members of the Participant Group;
  - 2.2 where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body, (ii) where required by the rules of any stock exchange on which the shares or other securities of any member of the Participant Group are listed or (iii) where required by the laws
-

or regulations of any country with jurisdiction over the affairs of any member of the Participant Group; or  
with the prior written consent of us and the Borrower.

**3 Notification Of Required Or Unauthorised Disclosure**

You agree (to the extent permitted by law) to inform us of the full circumstances of any disclosure under paragraph 2(b) or upon becoming aware that confidential information has been disclosed in breach of this letter.

**4 Return Of Copies**

If we so request in writing, you shall return all confidential information supplied to you by us and destroy or permanently erase all copies of confidential information made by you and use all reasonable endeavours to ensure that anyone to whom you have supplied any confidential information destroys or permanently erases such confidential information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such confidential information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the confidential information has been disclosed under paragraph 2(b) above.

**5 Continuing Obligations**

The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease (a) if you become a party to or otherwise acquire (by assignment or sub participation) an interest, direct or indirect in the facility or (b) twelve months after you have returned all confidential information supplied to you by us and destroyed or permanently erased all copies of confidential information made by you (other than any such confidential information or copies which have been disclosed under paragraph 2 above (other than sub-paragraph 2(a)) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed).

**6 No Representation; Consequences Of Breach, Etc**

You acknowledge and agree that:

- 6.1 neither we nor any of our officers, employees or advisers (each a **Relevant Person**) (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or any member of the Group or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or any Obligor or any member of the Group or be otherwise liable to you or any other person in respect to the Confidential Information or any such information; and
  - 6.2 we or the Obligors or any members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person or Obligor or any member of the Group may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.
-

## 7 **No Waiver; Amendments, Etc**

This letter sets out the full extent of your obligations of confidentiality owed to us in relation to the information the subject of this letter. No failure or delay in exercising any right, power or privilege under this letter will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges under this letter. The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

## 8 **Inside Information**

You acknowledge that some or all of the confidential information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation relating to insider dealing and you undertake not to use any confidential information for any unlawful purpose.

## 9 **Nature Of Undertakings**

The undertakings given by you under this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of the borrower, each other Obligor and each other member of the Group.

## 10 **Third Party Rights**

- 10.1 Subject to paragraph 6 and paragraph 9 the terms of this letter may be enforced and relied upon only by you and us and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 10.2 Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person or any Obligor or any member of the Group to rescind or vary this letter at any time.

## 11 **Governing Law And Jurisdiction**

This letter (including the agreement constituted by your acknowledgement of its terms) shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.

## 12 **Definitions**

In this letter (including the acknowledgement set out below):

**Confidential Information** means any information relating to the Borrower, the Group, and the Facilit[y/ies] and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that (a) is or becomes public knowledge other than as a direct or indirect result of any breach of this letter or (b) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, other than from a source which is connected with the Group and which, in either case, as far as you are aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality.

**Group** means the Borrower and each of its holding companies and subsidiaries and each subsidiary of each of its holding companies (as each such term is defined in the Companies Act 1985).

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**Obligor** means [ \*\*\* ].

**Participant Group** means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 1985).

**Permitted Purpose** means considering and evaluating whether to enter into the Facilities.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....

For and on behalf of

National Australia Bank Limited (as Arranger)

To: National Australia Bank Limited (as Arranger)

The Borrower, each other Obligor and each other member of the Group

We acknowledge and agree to the above:

.....

For and on behalf of

[Potential Lender]

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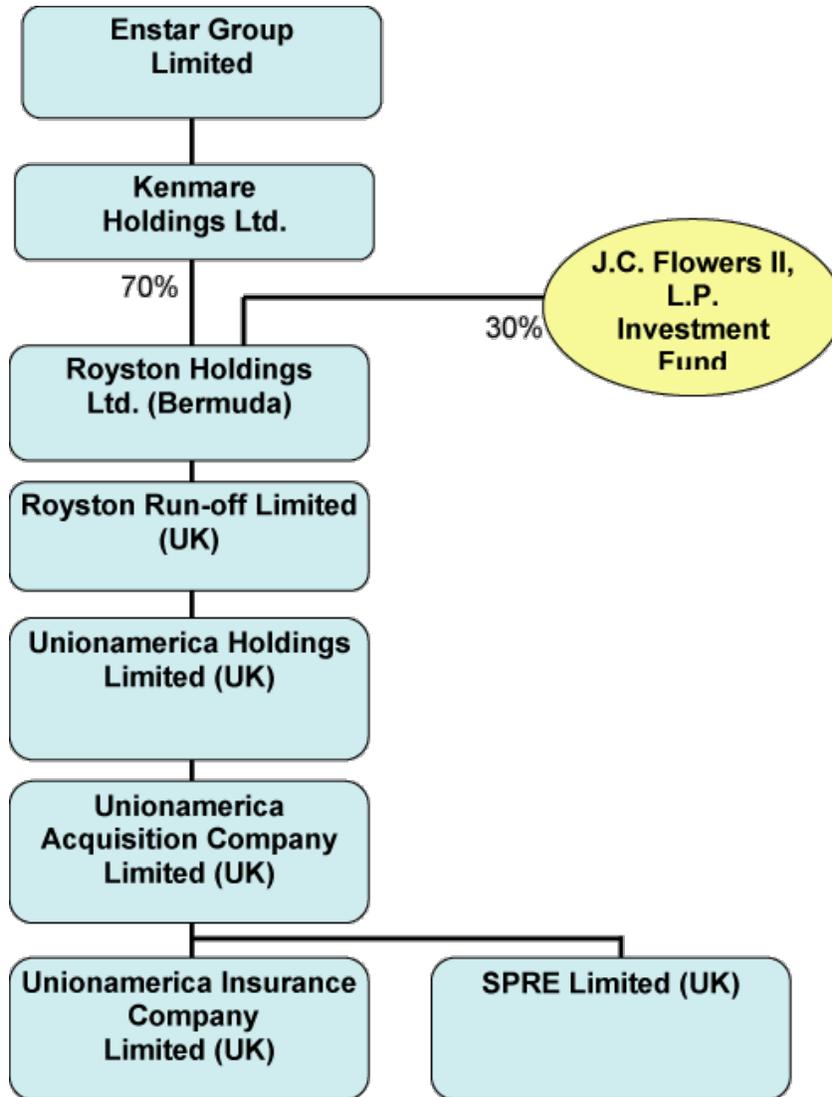
## Schedule 10 Timetables

### Loans

	Loans in US Dollars
Delivery of a duly completed Utilisation Request (Clause 5.1 ( <i>Delivery of a Utilisation Request</i> )) or a Selection Notice (Clause 11.1 ( <i>Selection of Interest Periods and Terms</i> ))	3 Business Days prior to the date of the Loan 9.30 a.m.
Agent notifies the Lenders of the Loan in accordance with Clauses 5.4 ( <i>Lenders' participation</i> )	3 Business Days prior to the date of the Loan 3.00 p.m.
LIBOR is fixed	Quotation Day as of 11.00 a.m.

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Schedule 11 Group Structure



## Schedule 12 Security Agent

### 1 Appointment

- 1.1 Each other Finance Party appoints the Security Agent to act as its agent and trustee under and in connection with the Finance Documents.
- 1.2 Each other Finance Party:
  - 1.2.1 authorises the Security Agent to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions;
  - 1.2.2 confirms its approval of each Transaction Security Document; and
  - 1.2.3 authorises and directs the Security Agent (by itself or by any Delegate) to execute and enforce the Transaction Security Documents as trustee, agent or in any other role (and whether or not expressly in that Finance Party's name) on its behalf, subject always to the terms of the Finance Documents.

### 2 Duties

- 2.1 Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 2.2 The Security Agent has only those duties which are expressly specified in the Finance Documents.
- 2.3 The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- 2.4 Any requirement that the Security Agent is to "act reasonably" is to be construed as an obligation on the Finance Parties which are approached by it for instructions in accordance with this Agreement in relation to the relevant matter and not as an individual obligation on the Security Agent in that capacity.

### 3 Relationship

- 3.1 The relationship between the Security Agent and each other Finance Party is that of principal and agent save only that the benefits of the Transaction Security Documents are held by the Security Agent as trustee for them (to the extent that any amount is or is capable of being secured thereby).
  - 3.2 In relation to any jurisdiction the courts of which would not recognise or give effect to the trusts expressed to be created by any Finance Document, the relationship of each other Finance Party to the Security Agent shall be construed solely as one of principal and agent but, to the fullest extent permissible under the laws of such jurisdiction, all the other provisions of the Finance Document shall have full force and effect between the Parties.
  - 3.3 The Security Agent shall not be liable to any Party for any breach by any other Party of any Finance Document.
  - 3.4 The Security Agent shall not be bound to account to any Party or any other person for any sum or the profit element of any sum received by it for its own account.
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4 **No Fiduciary Duties**

4.1 Nothing in the Finance Documents makes the Security Agent a fiduciary for any other Party or any other person.

5 **Business with the Group**

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

5.2 If it is also a Lender, the Security Agent has the same rights and powers under the Finance Documents as any other Lender and may exercise those rights and powers as though it were not the Security Agent.

6 **Rights and Discretions**

6.1 The Security Agent may rely on:

6.1.1 any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and

6.1.2 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.

6.2 The Security Agent may assume (unless it has received notice to the contrary in its capacity as agent for the other Finance Parties) that:

6.2.1 no Event of Default has occurred (unless it has actual knowledge of an Event of Default arising under Clause 23.1 (*Non-payment*) of this Agreement);

6.2.2 any right, power, authority or discretion vested in the Majority Lenders or any other person has not been exercised; and

6.2.3 any notice or request made by the Borrower is made on behalf of and with the consent and knowledge of all the Obligors.

6.3 The Security Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.

6.4 The Security Agent may act in relation to the Finance Documents through its personnel and Delegates.

6.5 The Security Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.

6.6 Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty or duty of confidentiality.

7 **Responsibility**

The Security Agent is not responsible for:

7.1 the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by any person given in or in connection with any Finance Document or the transactions contemplated in the Finance Documents.

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- 7.2 the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security; or
- 7.3 for any failure in perfecting or protecting the Security created by any Transaction Security Document including any failure to:
  - 7.3.1 take any necessary registration or recordings or filings of or otherwise protect the relevant Security under any laws in any jurisdiction;
  - 7.3.2 give notice to any person of the execution of any Transaction Security Document; or
  - 7.3.3 to obtain any authorisation for the creation of any Security, unless directly caused by its gross negligence or wilful misconduct.

## 8 **Exclusion of Liability**

- 8.1 Without limiting paragraph 8.2 below, the Security Agent will not be liable for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- 8.2 No Party (other than the Security Agent) may take any proceedings against any officer, employee or Delegate 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 Delegate in relation to any Finance Document and any officer, employee or Delegate of the Security Agent may rely on this provision.
- 8.3 The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent 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 the Security Agent for that purpose.
- 8.4 The Parties agree that the Security Agent shall not be subject to the duty of care imposed on trustees by the Trustee Act 2000.
- 8.5 Nothing in this Agreement shall oblige the Security Agent to carry out any "know your customer" or other checks in relation to any person on behalf of any other Finance Party and every other Finance Party confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.

## 9 **Indemnity**

- 9.1 Each other Finance Party shall 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 the Security Agent's gross negligence or wilful misconduct) in acting as Security Agent under the Finance Documents (unless the Security Agent has been reimbursed by an Obligor pursuant to a Finance Document).
  - 9.2 The liability shall be divided between such Finance Parties pro rata to their respective aggregate Commitments [and outstandings under the Hedging Agreement] from time to time or if all Commitments [and outstandings under the Hedging Agreement] have been reduced to zero, their respective aggregate
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Commitments [and outstandings under the Hedging Agreement] immediately prior to that reduction.

9.3 The Security Agent may, in priority to any payment to the Finance Parties, indemnify itself out of the Obligors' assets charged by the Transaction Security Documents in respect of, and pay and retain, all sums necessary to give effect to this indemnity and to all other indemnities given to it in the other Finance Documents in its capacity as Security Agent. The Security Agent shall have a lien on the Transaction Security Documents and the proceeds of enforcement of the Transaction Security Documents for all such sums.

#### 10 **Resignation and Additional Security Agents**

10.1 The Security Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the other Finance Parties and the Borrower.

10.2 Alternatively the Security Agent may resign by giving notice to the other Finance Parties and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Security Agent.

10.3 If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph 10.2 above within 30 days after notice of resignation was given, the Security Agent (after consultation with the Borrower) may appoint a successor Security Agent (acting through an office in the United Kingdom).

10.4 The retiring Security Agent shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents.

10.5 The Security Agent's resignation notice shall only take effect upon the appointment of a successor.

10.6 Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Schedule. Its 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.

10.7 After consultation with the Borrower, the Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph 10.2 above. In this event, the Security Agent shall resign in accordance with paragraph 10.2 above.

10.8 The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate security agent or trustee or as a co-agent or co-trustee jointly with it (any such person, an **Additional Security Agent**):

10.8.1 if it is necessary in performing its duties and if the Security Agent considers that appointment to be in the interest of the Finance Parties; or

10.8.2 for the purposes of complying with or conforming to any legal requirements restrictions or conditions which the Security Agent deems to be relevant; or

10.8.3 for the purposes of obtaining or enforcing any judgement or decree in any jurisdiction, and the Security Agent will give notice to the other Parties of any such appointment.

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10.9 Any Additional Security Agent appointed in accordance with paragraph 10.8 above shall (subject to the terms of this Agreement) have the rights, powers and discretions (not exceeding those conferred on the Security Agent by this Agreement) and the duties and obligations as are conferred or imposed on the Additional Security Agent by the instrument of its appointment.

10.10 The remuneration that the Security Agent may pay to any Additional Security Agent and any reasonable costs and expenses (properly incurred) incurred by any Additional Security Agent in performing its functions pursuant to its appointment will, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

## 11 **Confidentiality**

11.1 In acting as agent for the Finance Parties, the Security Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

11.2 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.

11.3 Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent shall not be obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of a fiduciary duty.

## 12 **Relationship with the Lenders**

12.1 The Security Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five Business Days prior notice from that Party or the Agent to the contrary.

## 13 **Credit Appraisal**

13.1 Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each other Finance Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

13.1.1 the financial condition, status and nature of each member of the Group;

13.1.2 the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

13.1.3 whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

13.1.4 the adequacy, accuracy and/or completeness of any information provided by the Security Agent, any other Party or by any other person under or in connection with

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any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

13.1.5 the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

14 **Deduction from Amounts Payable by the Security Agent**

If any Party owes an amount to the Security Agent under the Finance Documents 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 Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

15 **Title**

The Security Agent may accept without enquiry the title (if any) which an Obligor may have to any asset over which Security is intended to be created by any Transaction Security Document.

16 **Holding**

The Security Agent is not obliged to hold any share certificates or title deed, any Transaction Security Document or other document in connection with any asset over which Security is intended to be created by any Transaction Security Documents in its own possession. The Security Agent may permit the relevant Obligor or any professional adviser of the Security Agent to retain all such title deeds and other documents in its possession.

17 **Investments**

Except as otherwise provided in any Transaction Security Document, all moneys which are received by the Security Agent under that Transaction Security Document may be invested in the name of or under the control of the Security Agent in any investments which may be selected by the Security Agent. Additionally, those moneys may be placed on deposit in the name of or under the control of the Security Agent at such bank or institution (including itself) and upon such terms as it may think fit.

18 **Enforcement**

The Security Agent shall to the extent practicable use all reasonable endeavours to enforce the Security constituted by the Transaction Security Documents if it receives instructions to do so from the relevant Finance Parties that comply with Clause 26.20 (*Instructions*).

19 **Recoveries to be held on Trust**

19.1 The Security Agent shall hold the Recoveries on trust for the Finance Parties.

19.2 The Recoveries shall be distributed between the Finance Parties in accordance with Clause 29.5 (*Proceeds of enforcement*). Once so applied, the Security Agent shall be under no obligation to monitor how the relevant person receiving any such amount has applied such amounts.

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- 19.3 Only amounts actually received by the Security Agent shall be capable of being applied by the Security Agent in accordance with this paragraph 19.
- 19.4 If the Security Agent receives any distribution under this Agreement or any other document otherwise than in cash from any person, the Security Agent may realise such distribution as it sees fit and then shall apply the proceeds of such realisation in accordance with the provisions of this Agreement.
- 19.5 If the Security Agent receives any amount under this Agreement or under any other Finance Document in a currency other than the currency of the relevant Debt the Security Agent may convert such amount into the currency of the relevant Debt at the Security Agent's spot rate of exchange for the purchase of the relevant currency with the currency of the amount received in the London foreign exchange market.

20 **Payment of Taxes**

The Security Agent shall be entitled to make such deductions and withholdings (on account of Taxes or otherwise) from payments to any other Finance Party as it is required by any applicable law to make and to pay out of amounts due to any other Finance Party all Taxes assessed against it in respect of any property charged or assigned pursuant to the Transaction Security Documents or by virtue of its role as agent or trustee under the Finance Documents.

21 **Conflict with Transaction Security Documents**

If there is any conflict between the provisions of this Schedule and any Transaction Security Documents with regard to instructions to or other matters affecting the Security Agent, this Schedule will prevail.

22 **Discharge Date**

Forthwith upon the date on which all present and future sums, obligations or liabilities from time to time due, owing or incurred (actually or contingently) by any Obligor to a Finance Party under or in connection with the Finance Documents shall have been irrevocably discharged in full and all Commitments have been cancelled, the trusts set out in Clause 26.18 (*Appointment of Security Agent*) and in this Schedule 12 shall be wound up and all the rights, duties and obligations of the Security Agent to the other Finance Parties (but not liabilities already incurred for negligence or breach of duty) shall cease

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**Execution page**

**The Borrower**

**Executed as a Deed by**  
**Royston Run-off Limited**  
acting by:

)  
)  
)

Gareth Nokes  
\_\_\_\_\_  
Director

\_\_\_\_\_  
Alan Turner  
\_\_\_\_\_  
Director

**The Original Obligor**

**Executed as a Deed by**  
**Royston Run-off Limited**  
acting by:

)  
)  
)

Gareth Nokes  
\_\_\_\_\_  
Director

\_\_\_\_\_  
Alan Turner  
\_\_\_\_\_  
Director



**The Additional Obligors**

**Executed as a Deed by**  
**Unionamerica Holdings Limited**  
acting by:

)  
)  
)

Gareth Nokes  
Director

Alan Turner  
Director

**Executed as a Deed by**  
**Unionamerica Acquisition Company Limited**  
acting by:

)  
)  
)

Gareth Nokes  
Director

Alan Turner  
Director

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**The Existing Lender**

**Executed as a Deed by**  
**National Australia Bank Limited**  
**ABN 12004044937**

acting by:

)  
)  
)

Andrew Lloyd

Director

\_\_\_\_\_

Mark Arrand

Director

\_\_\_\_\_

**The New Lender**

**Executed as a Deed by**  
**Barclays Bank PLC**

acting by:

)  
)  
)

Chris Miles

Director

\_\_\_\_\_

Jonathan Bush

Director

\_\_\_\_\_

\_\_\_\_\_

**The Arranger**

**Executed as a Deed by**  
**National Australia Bank Limited**  
**ABN 12004044937**

)  
)  
)

Andrew Lloyd  
Director

Mark Arrand  
Director

acting by:

**The Co-Arranger**

**Executed as a Deed by**  
**Barclays Bank PLC**  
acting by:

)  
)  
)

Chris Miles  
Director

Jonathan Bush  
Director



**The Agent**

**Executed as a Deed by**  
**National Australia Bank Limited**  
**ABN 12004044937**  
acting by:

)  
)  
)

Andrew Lloyd  
Director

\_\_\_\_\_

Mark Arrand  
Director

\_\_\_\_\_

**The Security Agent**

**Executed as a Deed by**  
**National Australia Bank Limited**  
**ABN 12004044937**  
acting by:

)  
)  
)

Andrew Lloyd  
Director

\_\_\_\_\_

Mark Arrand  
Director

\_\_\_\_\_

Enstar Group Limited  
3rd Floor, Windsor Place  
18 Queen Street  
Hamilton HM JX, Bermuda

We have reviewed, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the unaudited condensed consolidated interim financial information of Enstar Group Limited and subsidiaries for the three and nine-month periods ended September 30, 2009 and 2008, as indicated in our report dated November 6, 2009; because we did not perform an audit, we expressed no opinion on that information.

We are aware that our report referred to above, which is included in your Quarterly Report on Form 10-Q for the quarter ended September 30, 2009, is incorporated by reference in Registration Statement No. 333-149551, 333-148863, 333-148862 and 333-141793 on Form S-8.

We also are aware that the aforementioned report, pursuant to Rule 436(c) under the Securities Act of 1933, is not considered a part of the Registration Statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of Sections 7 and 11 of that Act.

/s/ Deloitte & Touche

Hamilton, Bermuda  
November 6, 2009

**CERTIFICATION PURSUANT TO  
RULE 13a-14(a)/15d-14(a),  
AS ADOPTED PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Dominic F. Silvester, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Enstar Group Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 6, 2009

/s/ Dominic F. Silvester

\_\_\_\_\_  
Dominic F. Silvester  
Chief Executive Officer

**CERTIFICATION PURSUANT TO  
RULE 13a-14(a)/15d-14(a),  
AS ADOPTED PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Richard J. Harris, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Enstar Group Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 6, 2009

/s/ Richard J. Harris

Richard J. Harris  
Chief Financial Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Enstar Group Limited (the "Company") on Form 10-Q for the quarterly period ended September 30, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Dominic F. Silvester, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 6, 2009

/s/ Dominic F. Silvester

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Dominic F. Silvester  
Chief Executive Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Enstar Group Limited (the "Company") on Form 10-Q for the quarterly period ended September 30, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Richard J. Harris, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 6, 2009

/s/ Richard J. Harris

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Richard J. Harris  
Chief Financial Officer