
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 June 30, 2011
- 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 August 4, 2011, the registrant had outstanding 13,707,427 voting ordinary shares and 749,869 non-voting convertible ordinary shares, each par value \$1.00 per share.

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PART I — FINANCIAL INFORMATION

Item 1. FINANCIAL STATEMENTS

ENSTAR GROUP LIMITED
UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS
As of June 30, 2011 and December 31, 2010

	June 30, 2011	December 31, 2010
	(expressed in thousands of U.S. dollars, except share data)	
ASSETS		
Short-term investments, available-for-sale, at fair value (amortized cost: 2011 — \$ nil 2010 — \$7,209)	\$ —	\$ 7,263
Short-term investments, trading, at fair value	325,036	507,978
Fixed maturities, available-for-sale, at fair value (amortized cost: 2011 — \$817,284; 2010 — \$1,068,540)	852,810	1,094,947
Fixed maturities, trading, at fair value	1,093,134	524,122
Equities, trading, at fair value	65,890	60,082
Other investments, at fair value	255,619	234,714
Total investments	2,592,489	2,429,106
Cash and cash equivalents	759,724	799,154
Restricted cash and cash equivalents	512,792	656,200
Accrued interest receivable	20,765	19,980
Accounts receivable	17,928	24,790
Income taxes recoverable	6,357	7,968
Reinsurance balances receivable	1,004,111	961,442
Funds held by reinsured companies	230,973	274,699
Goodwill	21,222	21,222
Other assets	34,400	41,343
TOTAL ASSETS	<u>\$5,200,761</u>	<u>\$ 5,235,904</u>
LIABILITIES		
Losses and loss adjustment expenses	\$3,267,341	\$ 3,291,275
Reinsurance balances payable	224,266	231,435
Accounts payable and accrued liabilities	41,998	94,390
Income taxes payable	5,455	50,075
Loans payable	205,636	245,278
Other liabilities	109,826	107,630
TOTAL LIABILITIES	<u>3,854,522</u>	<u>4,020,083</u>
COMMITMENTS AND CONTINGENCIES		
SHAREHOLDERS' EQUITY		
Share capital		
Authorized, issued and fully paid, par value \$1 each (authorized 2011: 156,000,000; 2010: 156,000,000)		
Ordinary shares (issued and outstanding 2011: 13,519,723; 2010: 12,940,021)	13,520	12,940
Non-voting convertible ordinary shares:		
Series A (issued 2011: 2,972,892; 2010: 2,972,892)	2,973	2,973
Series B, C and D (issued and outstanding 2011: 749,869; 2010: nil)	750	—
Treasury shares at cost (Series A non-voting convertible ordinary shares 2011: 2,972,892; 2010: 2,972,892)	(421,559)	(421,559)
Additional paid-in capital	774,637	667,907
Accumulated other comprehensive income	50,336	35,017
Retained earnings	664,021	651,143
Total Enstar Group Limited Shareholders' Equity	1,084,678	948,421
Noncontrolling interest	261,561	267,400
TOTAL SHAREHOLDERS' EQUITY	<u>1,346,239</u>	<u>1,215,821</u>
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	<u>\$5,200,761</u>	<u>\$ 5,235,904</u>

See accompanying notes to the unaudited condensed consolidated financial statements

ENSTAR GROUP LIMITED

UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS
For the Three and Six Month Periods Ended June 30, 2011 and 2010

	Three Months Ended		Six Months Ended	
	June 30, 2011	June 30, 2010	June 30, 2011	June 30, 2010
(expressed in thousands of U.S. dollars, except share and per share data)				
INCOME				
Consulting fees	\$ 2,045	\$ 3,500	\$ 6,081	\$ 17,628
Net investment income	22,928	22,998	41,470	49,119
Net realized and unrealized gains (losses)	5,264	(4,227)	8,632	(2,025)
Gain on bargain purchase	—	—	13,105	—
	<u>30,237</u>	<u>22,271</u>	<u>69,288</u>	<u>64,722</u>
EXPENSES				
Net reduction in ultimate loss and loss adjustment expense liabilities:				
Reduction in estimates of net ultimate losses	(27,829)	(35,104)	(30,441)	(37,046)
Reduction in provisions for bad debt	(1,672)	(7,768)	(1,672)	(13,107)
Reduction in provisions for unallocated loss adjustment expense liabilities	(11,783)	(11,696)	(23,320)	(20,661)
Amortization of fair value adjustments	6,969	12,202	17,046	18,852
	<u>(34,315)</u>	<u>(42,366)</u>	<u>(38,387)</u>	<u>(51,962)</u>
Salaries and benefits	16,723	14,254	27,105	29,444
General and administrative expenses	28,211	15,801	45,961	26,288
Interest expense	1,697	2,805	3,663	5,199
Net foreign exchange losses (gains)	1,932	(5,615)	9,266	1,973
	<u>14,248</u>	<u>(15,121)</u>	<u>47,608</u>	<u>10,942</u>
EARNINGS BEFORE INCOME TAXES AND SHARE OF NET EARNINGS OF PARTLY OWNED COMPANY				
EARNINGS OF PARTLY OWNED COMPANY	15,989	37,392	21,680	53,780
INCOME TAXES	(975)	(16,115)	(1,592)	(22,037)
SHARE OF NET EARNINGS OF PARTLY OWNED COMPANY	—	2,203	—	9,353
NET EARNINGS	15,014	23,480	20,088	41,096
Less: Net earnings attributable to noncontrolling interest	(5,639)	(11,050)	(7,210)	(12,745)
NET EARNINGS ATTRIBUTABLE TO ENSTAR GROUP LIMITED	<u>\$ 9,375</u>	<u>\$ 12,430</u>	<u>\$ 12,878</u>	<u>\$ 28,351</u>
EARNINGS PER SHARE — BASIC:				
Net earnings attributable to Enstar Group Limited ordinary shareholders	<u>\$ 0.67</u>	<u>\$ 0.91</u>	<u>\$ 0.96</u>	<u>\$ 2.08</u>
EARNINGS PER SHARE — DILUTED:				
Net earnings attributable to Enstar Group Limited ordinary shareholders	<u>\$ 0.66</u>	<u>\$ 0.89</u>	<u>\$ 0.94</u>	<u>\$ 2.04</u>
Weighted average shares outstanding — basic	13,999,179	13,702,832	13,475,418	13,661,516
Weighted average shares outstanding — diluted	14,285,685	14,019,489	13,755,623	13,925,551

See accompanying notes to the unaudited condensed consolidated financial statements

ENSTAR GROUP LIMITED

UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
For the Three and Six Month Periods Ended June 30, 2011 and 2010

	Three Months Ended		Six Months Ended	
	June 30, 2011	June 30, 2010	June 30, 2011	June 30, 2010
	(expressed in thousands of U.S. dollars)			
NET EARNINGS	\$15,014	\$ 23,480	\$ 20,088	\$ 41,096
Other comprehensive income:				
Unrealized holding gains (losses) on investments arising during the period	5,839	(6,412)	14,575	(5,652)
Reclassification adjustment for net realized and unrealized (gains) losses included in net earnings	(5,264)	4,227	(8,632)	2,025
Decrease in defined benefit pension liability	—	—	272	—
Currency translation adjustment	10,049	(22,688)	12,255	(17,116)
Total other comprehensive income (loss):	10,624	(24,873)	18,470	(20,743)
Comprehensive income (loss)	25,638	(1,393)	38,558	20,353
Less comprehensive income attributable to noncontrolling interest	(7,846)	(3,965)	(10,361)	(7,125)
COMPREHENSIVE INCOME (LOSS) ATTRIBUTABLE TO ENSTAR GROUP LIMITED	\$17,792	\$ (5,358)	\$ 28,197	\$ 13,228

See accompanying notes to the unaudited condensed consolidated financial statements

ENSTAR GROUP LIMITED

UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CHANGES
IN SHAREHOLDERS' EQUITY
For the Six Month Periods Ended June 30, 2011 and 2010

	Six Months Ended June 30,	
	2011	2010
	(expressed in thousands of U.S. dollars)	
Share Capital — Ordinary Shares		
Balance, beginning of period	\$ 12,940	\$ 13,581
Issue of shares	538	44
Share awards granted/vested	42	79
Balance, end of period	<u>\$ 13,520</u>	<u>\$ 13,704</u>
Share Capital — Series A Non-Voting Convertible Ordinary Shares		
Balance, beginning and end of period	<u>\$ 2,973</u>	<u>\$ 2,973</u>
Share Capital — Series B, C and D Non-Voting Convertible Ordinary Shares		
Balance, beginning of period	\$ —	\$ —
Preferred shares converted	750	—
Balance, end of period	<u>\$ 750</u>	<u>\$ —</u>
Share Capital — Preference Shares		
Balance, beginning of period	\$ —	\$ —
Issue of shares	750	—
Shares converted	(750)	—
Balance, end of period	<u>\$ —</u>	<u>\$ —</u>
Treasury Shares		
Balance, beginning and end of period	<u>\$(421,559)</u>	<u>\$(421,559)</u>
Additional Paid-in Capital		
Balance, beginning of period	\$ 667,907	\$ 721,120
Share awards granted/vested	168	5,286
Issue of shares and warrants, net	105,310	318
Amortization of share awards	1,252	599
Balance, end of period	<u>\$ 774,637</u>	<u>\$ 727,323</u>
Accumulated Other Comprehensive Income Attributable to Enstar Group Limited		
Balance, beginning of period	\$ 35,017	\$ 8,709
Foreign currency translation adjustments	9,152	(12,103)
Net movement in unrealized holdings gains (losses) on investments	5,895	(3,022)
Decrease in defined benefit pension liability	272	—
Balance, end of period	<u>\$ 50,336</u>	<u>\$ (6,416)</u>
Retained Earnings		
Balance, beginning of period	\$ 651,143	\$ 477,057
Net earnings attributable to Enstar Group Limited	12,878	28,351
Balance, end of period	<u>\$ 664,021</u>	<u>\$ 505,408</u>
Noncontrolling Interest		
Balance, beginning of period	\$ 267,400	\$ 274,271
Return of capital	(16,200)	(13,579)
Contribution of capital	—	28,742
Dividends paid	—	(7,000)
Net earnings attributable to noncontrolling interest	7,210	12,745
Foreign currency translation adjustments	3,103	(5,013)
Net movement in unrealized holding gains (losses) on investments	48	(606)
Balance, end of period	<u>\$ 261,561</u>	<u>\$ 289,560</u>

See accompanying notes to the unaudited condensed consolidated financial statements

ENSTAR GROUP LIMITED

UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
For the Six Month Periods Ended June 30, 2011 and 2010

	Six Months Ended June 30,	
	2011	2010
	(expressed in thousands of U.S. dollars)	
OPERATING ACTIVITIES:		
Net earnings	\$ 20,088	\$ 41,096
Adjustments to reconcile net earnings to cash flows used in operating activities:		
Gain on bargain purchase	(13,105)	—
Share of undistributed net earnings of partly owned company	—	(9,353)
Net realized and unrealized investment (gain) loss	(8,632)	2,025
Share of net gain from other investments	(6,863)	(9,410)
Other items	2,353	(1,155)
Depreciation and amortization	771	374
Amortization of bond premiums and discounts	8,866	2,507
Net movement of trading securities held on behalf of policyholders	448	23,306
Sales and maturities of trading securities	630,961	64,695
Purchases of trading securities	(980,455)	(755,925)
Changes in assets and liabilities:		
Reinsurance balances receivable	(40,238)	(68,415)
Other assets	60,005	(104,969)
Losses and loss adjustment expenses	(41,924)	166,148
Reinsurance balances payable	(7,412)	11,284
Accounts payable and accrued liabilities	(52,667)	(24,558)
Other liabilities	(44,937)	(33,293)
Net cash flows used in operating activities	<u>(472,741)</u>	<u>(695,643)</u>
INVESTING ACTIVITIES:		
Acquisitions, net of cash acquired	(7,949)	157,184
Sales and maturities of available-for-sale securities	261,977	54,872
Purchase of held-to-maturity securities	—	(608,680)
Maturity of held-to-maturity securities	—	461,810
Movement in restricted cash and cash equivalents	143,408	87,052
Funding of other investments	(23,581)	(66,245)
Redemption of bond funds	12,535	—
Sale of investment in partly owned company	—	29,400
Other investing activities	(297)	278
Net cash flows provided by investing activities	<u>386,093</u>	<u>115,671</u>
FINANCING ACTIVITIES:		
Net proceeds from issuance of shares	105,703	—
Distribution of capital to noncontrolling interest	(16,200)	(13,579)
Contribution to surplus of subsidiary by noncontrolling interest	—	28,742
Dividends paid to noncontrolling interest	—	(7,000)
Receipt of loans	167,650	21,400
Repayment of loans	(207,016)	—
Net cash flows provided by financing activities	<u>50,137</u>	<u>29,563</u>
TRANSLATION ADJUSTMENT	<u>(2,919)</u>	<u>7,699</u>
NET DECREASE IN CASH AND CASH EQUIVALENTS	(39,430)	(542,710)
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	799,154	1,266,445
CASH AND CASH EQUIVALENTS, END OF PERIOD	<u>\$ 759,724</u>	<u>\$ 723,735</u>
Supplemental Cash Flow Information		
Net income taxes paid	\$ 55,927	\$ 41,089
Interest paid	\$ 3,848	\$ 5,738

See accompanying notes to the unaudited condensed consolidated financial statements

ENSTAR GROUP LIMITED

NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2011 and December 31, 2010
(Tabular information expressed in thousands of U.S. dollars except share and per share data)
(unaudited)

1. BASIS OF PREPARATION AND CONSOLIDATION

The Company's condensed consolidated financial statements have not been audited. These statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("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 the Company's 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. The results of operations for any interim period are not necessarily indicative of the results for a full year. 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 should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 2010.

Adoption of New Accounting Standards

Effective January 1, 2011, the Company adopted the new guidance issued by the U.S. Financial Accounting Standards Board ("FASB"), which provides additional guidance for performing Step 1 of the test for goodwill impairment when an entity has reporting units with zero or negative carrying values. As of June 30, 2011, none of the Company's reporting units were at risk of failing Step 1 of the test for goodwill impairment. Under the new guidance, Step 2 of the goodwill impairment test must be performed when adverse qualitative factors indicate that goodwill is more likely than not impaired. The adoption of the revised guidance did not have a material impact on the consolidated financial statements.

Effective January 1, 2011, the Company adopted the new guidance issued by FASB, which specifies that if a public entity presents comparative financial statements, the entity should disclose, in its supplementary pro-forma information, revenue and earnings of the combined entity as though the business combination that occurred during the current year had occurred as of the beginning of the comparable prior annual reporting period only. The adoption of the revised guidance did not have a material impact on the consolidated financial statements.

Recently Issued Accounting Standards Not Yet Adopted

In May 2011, FASB issued amendments to disclosure requirements for common fair value measurement. These amendments, effective for the interim and annual periods beginning on or after December 15, 2011 (early adoption is prohibited), result in a common definition of fair value and common requirements for measurement of and disclosure requirements under U.S. GAAP and International Financial Reporting Standards. Consequently, the amendments change some fair value measurement principles and disclosure requirements. The implementation of this amended accounting guidance is not expected to have a material impact on the consolidated financial statements.

In June 2011, FASB issued amendments to disclosure requirements for presentation of comprehensive income. This guidance, effective retrospectively for the interim and annual periods beginning on or after December 15, 2011 (early adoption is permitted), requires presentation of total comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The implementation of this amended accounting guidance is not expected to have a material impact on the consolidated financial statements.

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

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

The Company has determined that all other recently issued accounting pronouncements do not apply to its operations.

2. ACQUISITIONS

The Company accounts for acquisitions using the purchase method of accounting, which requires that the acquirer record the assets and liabilities acquired at their estimated fair value. The fair values of reinsurance assets and liabilities acquired are derived from probability weighted ranges of the associated projected cash flows, based on actuarially prepared information and management's run-off strategy. Any amendment to the fair values resulting from changes in such information or strategy will be recognized when the changes occur.

Laguna

On March 25, 2011, the Company, through its wholly-owned subsidiary, Kenmare Holdings Ltd., completed the acquisition of Laguna Life Limited, formerly known as CitiLife Financial Limited ("Laguna"), from Citigroup Insurance Holding Corporation ("Citigroup"), an affiliate of Citigroup Inc. Laguna is an Ireland-based life insurer that is in run-off. The purchase price was €15.0 million (approximately \$21.2 million) and was funded from available cash on hand. The previously disclosed purchase price of €30.0 million (approximately \$42.4 million) was reduced, prior to completion of the acquisition, after Citigroup received approval from Laguna's regulator to distribute €15.0 million (approximately \$21.2 million) to its shareholders.

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

Purchase price	<u>\$ 21,223</u>
Net assets acquired at fair value	<u>\$ 34,328</u>
Excess of net assets over purchase price (gain on bargain purchase)	<u>\$ (13,105)</u>

The gain on bargain purchase of approximately \$13.1 million, relating to the acquisition of Laguna, arose primarily as a result of the reassessment by the Company, upon acquisition, of the total required estimated costs to manage the business to expiry. The Company's assessment of costs was lower than the acquired costs recorded by the vendor in the financial statements of Laguna.

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

Cash	\$ 13,274
Investments:	
Short-term investments, trading	1,154
Fixed maturities, trading	<u>30,765</u>
Total investments	31,919
Reinsurance balances receivable	1,459
Other assets	1,325
Losses and loss adjustment expenses	(11,898)
Accounts payable	<u>(1,751)</u>
Net assets acquired at fair value	<u>\$ 34,328</u>

From March 25, 2011, the date of acquisition, to June 30, 2011, the Company has recorded \$0.7 million in revenues and \$nil net earnings related to Laguna in its consolidated statement of earnings.

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

2. ACQUISITIONS — (cont'd)

Clarendon

On July 12, 2011, the Company, through its wholly-owned subsidiary, Clarendon Holdings, Inc., completed the acquisition of 100% of the shares of Clarendon National Insurance Company ("Clarendon") from Clarendon Insurance Group, Inc., an affiliate of Hannover Re. Clarendon is a New Jersey-domiciled insurer that is in run-off. Clarendon owns three other insurers, two domiciled in New Jersey and one domiciled in Florida, that are also in run-off. The purchase price was \$219.1 million and was financed in part by \$106.5 million from a four-year term loan facility provided by National Australia Bank Limited ("NAB") and the remainder from available cash on hand. The accounting for this business combination has not been completed at the time of issuance of these financial statements.

3. SIGNIFICANT NEW BUSINESS

Shelbourne RITC Transactions

In December 2007, the Company, in conjunction with JCF FPK I L.P. ("JCF FPK") and a newly-hired executive management team, formed U.K.-based Shelbourne Group Limited ("Shelbourne") to invest in Reinsurance to Close or "RITC" transactions (the transferring of liabilities from one Lloyd's syndicate to another) with Lloyd's of London insurance and reinsurance syndicates in run-off. The Company owns approximately 56.8% of 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 RITC transactions with Lloyd's syndicates in run-off.

JCF FPK is a joint investment program between Fox-Pitt, Kelton, Cochran, Caronia & Waller (USA) LLC ("FPK") and J.C. Flowers II, L.P. (the "Flowers Fund"). The Flowers Fund is a private investment fund advised by J.C. Flowers & Co. LLC. J. Christopher Flowers, one of the Company's largest shareholders and formerly a member of the Company's board of directors, is the Chairman and Chief Executive Officer of J.C. Flowers & Co. LLC. In addition, an affiliate of the Flowers Fund controlled approximately 41% of FPK until its sale of FPK in December 2009.

In February 2011, Lloyd's Syndicate 2008 entered into RITC agreements with two Lloyd's syndicates with total gross insurance reserves of approximately \$129.6 million. The capital commitment to Lloyd's Syndicate 2008 with respect to these two RITC agreements amounted to £21.3 million (approximately \$34.1 million), which was fully funded by the Company from available cash on hand.

4. RESTRICTED CASH AND CASH EQUIVALENTS

Restricted cash and cash equivalents were \$512.8 million and \$656.2 million as of June 30, 2011 and December 31, 2010, 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)

5. INVESTMENTS*Available-for-sale*

The amortized cost and estimated fair values of the Company's fixed maturity securities and short-term investments classified as available-for-sale were as follows:

	Amortized Cost	Gross Unrealized Holding Gain	Gross Unrealized Holding Losses Non-OTTI	Fair Value
As at June 30, 2011				
U.S. government and agency	\$ 36,618	\$ 673	\$ (11)	\$ 37,280
Non-U.S. government	182,641	12,617	(53)	195,205
Corporate	541,111	19,515	(445)	560,181
Residential mortgage-backed	17,059	345	(104)	17,300
Commercial mortgage-backed	14,681	2,913	(175)	17,419
Asset backed	25,174	489	(238)	25,425
	<u>\$817,284</u>	<u>\$ 36,552</u>	<u>\$ (1,026)</u>	<u>\$852,810</u>

	Amortized Cost	Gross Unrealized Holding Gain	Gross Unrealized Holding Losses Non-OTTI	Fair Value
As at December 31, 2010				
U.S. government and agency	\$ 65,115	\$ 766	\$ (92)	\$ 65,789
Non-U.S. government	248,487	8,832	(314)	257,005
Corporate	695,372	16,513	(1,615)	710,270
Residential mortgage-backed	20,036	305	(234)	20,107
Commercial mortgage-backed	19,667	2,083	(11)	21,739
Asset backed	27,072	574	(346)	27,300
	<u>\$1,075,749</u>	<u>\$ 29,073</u>	<u>\$ (2,612)</u>	<u>\$1,102,210</u>

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

5. INVESTMENTS — (cont'd)

The following tables summarize the Company's fixed maturity securities and short-term investments classified as available-for-sale in an unrealized loss position as well as 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
As at June 30, 2011						
U.S. government and agency	\$ 7,013	\$ (11)	\$ —	\$ —	\$ 7,013	\$ (11)
Non-U.S. government	—	—	6,364	(53)	6,364	(53)
Corporate	36,228	(246)	18,402	(199)	54,630	(445)
Residential mortgage-backed	11,307	(103)	38	(1)	11,345	(104)
Commercial mortgage-backed	—	—	1,638	(175)	1,638	(175)
Asset backed	10,662	(179)	4,936	(59)	15,598	(238)
	<u>\$65,210</u>	<u>\$ (539)</u>	<u>\$31,378</u>	<u>\$ (487)</u>	<u>\$96,588</u>	<u>\$ (1,026)</u>

	12 Months or Greater		Less Than 12 Months		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
As at December 31, 2010						
U.S. government and agency	\$ 801	\$ —	\$ 22,976	\$ (92)	\$ 23,777	\$ (92)
Non-U.S. government	7,710	(32)	31,128	(282)	38,838	(314)
Corporate	22,039	(318)	107,735	(1,297)	129,774	(1,615)
Residential mortgage-backed	2,368	(168)	11,274	(66)	13,642	(234)
Commercial mortgage-backed	530	(10)	1,516	(1)	2,046	(11)
Asset backed	10,554	(346)	87	—	10,641	(346)
	<u>\$44,002</u>	<u>\$ (874)</u>	<u>\$174,716</u>	<u>\$ (1,738)</u>	<u>\$218,718</u>	<u>\$ (2,612)</u>

As at June 30, 2011 and December 31, 2010, the number of securities classified as available-for-sale in an unrealized loss position was 74 and 136, respectively, with a fair value of \$96.6 million and \$218.7 million, respectively. Of these securities, the number of securities that had been in an unrealized loss position for twelve months or longer was 46 and 32, respectively. As of June 30, 2011, 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 fair values recover above the adjusted cost. The unrealized losses from these securities were not as a result of credit, collateral or structural issues.

The contractual maturities of the Company's fixed maturity securities and short-term investments 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.

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5. INVESTMENTS — (cont'd)

	<u>Amortized Cost</u>	<u>Fair Value</u>	<u>% of Total Fair Value</u>
As at June 30, 2011			
Due in one year or less	\$346,170	\$356,636	41.8%
Due after one year through five years	407,730	428,877	50.3%
Due after five years through ten years	3,589	3,934	0.5%
Due after ten years	<u>2,881</u>	<u>3,219</u>	<u>0.4%</u>
	760,370	792,666	93.0%
Residential mortgage-backed	17,059	17,300	2.0%
Commercial mortgage-backed	14,681	17,419	2.0%
Asset backed	<u>25,174</u>	<u>25,425</u>	<u>3.0%</u>
	<u>\$817,284</u>	<u>\$852,810</u>	<u>100.0%</u>
As at December 31, 2010			
Due in one year or less	\$ 373,683	\$ 379,203	34.4%
Due after one year through five years	625,463	643,252	58.3%
Due after five years through ten years	5,307	5,539	0.5%
Due after ten years	<u>4,521</u>	<u>5,070</u>	<u>0.5%</u>
	1,008,974	1,033,064	93.7%
Residential mortgage-backed	20,036	20,107	1.8%
Commercial mortgage-backed	19,667	21,739	2.0%
Asset backed	<u>27,072</u>	<u>27,300</u>	<u>2.5%</u>
	<u>\$1,075,749</u>	<u>\$1,102,210</u>	<u>100.0%</u>

The following tables set forth certain information regarding the credit ratings (provided by major rating agencies) of the Company's fixed maturity securities and short-term investments classified as available-for-sale:

	<u>Amortized Cost</u>	<u>Fair Value</u>	<u>% of Total Fair Value</u>
As at June 30, 2011			
AAA	\$295,445	\$313,744	36.8%
AA	211,064	219,468	25.7%
A	257,740	264,831	31.0%
BBB or lower	52,655	54,254	6.4%
Not Rated	<u>380</u>	<u>513</u>	<u>0.1%</u>
	<u>\$817,284</u>	<u>\$852,810</u>	<u>100.0%</u>

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

5. INVESTMENTS — (cont'd)

	<u>Amortized Cost</u>	<u>Fair Value</u>	<u>% of Total Fair Value</u>
As at December 31, 2010			
AAA	\$ 405,682	\$ 416,526	37.8%
AA	267,917	273,500	24.8%
A	332,401	341,447	31.0%
BBB or lower	69,359	70,274	6.4%
Not Rated	390	463	0.0%
	<u>\$1,075,749</u>	<u>\$1,102,210</u>	<u>100.0%</u>

Trading

The estimated fair values of the Company's investments in fixed maturity securities, short-term investments and equities classified as trading securities were as follows:

	<u>June 30, 2011</u>	<u>December 31, 2010</u>
U.S. government and agency	\$ 174,422	\$ 162,014
Non-U.S. government	188,942	129,861
Corporate	927,237	637,114
Municipal	1,599	2,297
Residential mortgage-backed	77,713	82,399
Commercial mortgage-backed	37,638	17,102
Asset backed	10,619	1,313
Equities	65,890	60,082
	<u>\$1,484,060</u>	<u>\$ 1,092,182</u>

The following tables set forth certain information regarding the credit ratings (provided by major rating agencies) of the Company's fixed maturity securities and short-term investments classified as trading:

	<u>Fair Value</u>	<u>% of Total Fair Value</u>
As at June 30, 2011		
AAA	\$ 542,416	38.2%
AA	265,877	18.7%
A	509,512	36.0%
BBB or lower	76,713	5.4%
Not Rated	23,652	1.7%
	<u>\$1,418,170</u>	<u>100.0%</u>

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

5. INVESTMENTS — (cont'd)

	Fair Value	% of Total Fair Value
As at December 31, 2010		
AAA	\$ 395,881	38.4%
AA	177,302	17.2%
A	400,314	38.8%
BBB or lower	51,983	5.0%
Not Rated	6,620	0.6%
	<u>\$1,032,100</u>	<u>100.0%</u>

Other Investments

The estimated fair values of the Company's other investments were as follows:

	June 30, 2011	December 31, 2010
Private equities	\$118,682	\$ 104,109
Bond funds	106,779	102,279
Hedge fund	23,884	22,037
Other	6,274	6,289
	<u>\$255,619</u>	<u>\$ 234,714</u>

At June 30, 2011 and December 31, 2010, the Company had \$118.7 million and \$104.1 million, respectively, of other investments recorded in private equities, which represented 3.1% and 2.4% of total investments and cash and cash equivalents at June 30, 2011 and December 31, 2010, respectively. All of the Company's investments in private equities 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 at estimated fair value determined by the Company's proportionate share of the net asset value of the investee reduced by any impairment charges. As at June 30, 2011 and December 31, 2010, the Company had unfunded capital commitments relating to its other investments of \$74.5 million and \$84.7 million, respectively. See Note 12 for details of other investments with related parties.

Our bond fund holdings comprise a number of positions in diversified bond mutual funds managed by third-party managers.

Other-Than-Temporary Impairment Process

The Company assesses whether declines in the fair value of its fixed maturity investments classified as available-for-sale represent impairments that are other-than-temporary by reviewing each fixed maturity investment that is impaired and: (1) determining if the Company has the intent to sell the fixed maturity investment or (2) determining 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 is 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 as at June 30, 2011. 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

ENSTAR GROUP LIMITED
NOTES TO THE UNAUDITED CONDENSED
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5. INVESTMENTS — (cont'd)

flow requirements, legal and regulatory requirements, the level of its cash, cash equivalents, short-term investments and fixed maturity investments classified as available-for-sale in an unrealized gain position, and other relevant factors. For the six months ended June 30, 2011, 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 June 30, 2011, no credit losses existed.

Fair Value of Financial Instruments

Fair value is defined as the price at which to sell an asset or transfer a liability (i.e. the “exit price”) in an orderly transaction between market participants. The Company uses a fair value hierarchy that gives the highest priority to quoted prices in active markets and the lowest priority to unobservable data. The hierarchy is broken down into three levels as follows:

- Level 1 — Valuations based on unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access. Valuation adjustments and block discounts are not applied to Level 1 instruments.
- Level 2 — Valuations based on quoted prices in active markets for similar assets or liabilities, quoted prices for identical assets or liabilities in inactive markets, or for which significant inputs are observable (e.g. interest rates, yield curves, prepayment speeds, default rates, loss severities, etc.) or can be corroborated by observable market data.
- Level 3 — Valuations based on inputs that are unobservable and significant to the overall fair value measurement. The unobservable inputs reflect the Company’s own assumptions about assumptions that market participants might use.

The following is a summary of valuation techniques or models the Company uses to measure fair value by asset and liability classes.

Fixed Maturity Investments

The Company’s fixed maturity portfolio is managed by the Company’s Chief Investment Officer and outside investment advisors. The Company uses inputs from nationally recognized pricing services, including pricing vendors, index providers and broker-dealers to estimate fair value measurements for all of its fixed maturity investments. These pricing services include FT Interactive Data, Barclays Capital Aggregate Index (formerly Lehman Index), Reuters Pricing Service and others.

In general, the pricing services use observable market inputs including, but not limited to, investment yields, credit risks and spreads, benchmark curves, benchmarking of like securities, non-binding broker-dealer quotes, reported trades and sector groupings to determine the fair value. In addition, pricing services use valuation models, such as an Option Adjusted Spread model, to develop prepayment and interest rate scenarios. The Option Adjusted Spread model is commonly used to estimate fair value for securities such as mortgage-backed and asset backed securities.

ENSTAR GROUP LIMITED
NOTES TO THE UNAUDITED CONDENSED
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5. INVESTMENTS — (cont'd)

The following describes the techniques generally used to determine the fair value of the Company's fixed maturities by asset class.

- U.S. government and agency securities consist of securities issued by the U.S. Treasury and mortgage pass-through agencies such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and other agencies. The significant inputs include the spread above the risk-free yield curve, reported trades and broker-dealer quotes. These are considered to be observable market inputs and, therefore, the fair values of these securities are classified within Level 2.
- Non-U.S. government securities consist of bonds issued by non-U.S. governments and agencies along with supranational organizations. The significant inputs include the spread above the risk-free yield curve, reported trades and broker-dealer quotes. These are considered to be observable market inputs and, therefore, the fair values of these securities are classified within Level 2.
- Corporate securities consist primarily of investment-grade debt of a wide variety of corporate issuers and industries. The fair values of these securities are determined using the spread above the risk-free yield curve, reported trades, broker-dealer quotes, benchmark yields, and industry and market indicators. These are considered observable market inputs and, therefore, the fair values of these securities are classified within Level 2. Where pricing is unavailable from pricing services, the Company obtains non-binding quotes from broker-dealers. This is generally the case when there is a low volume of trading activity and current transactions are not orderly. In this event, securities are classified within Level 3. As at June 30, 2011, the Company had one corporate security classified as Level 3.
- Municipal securities consist primarily of bonds issued by U.S.-domiciled state and municipal entities. The fair values of these securities are determined using the spread above the risk-free yield curve, reported trades, broker-dealer quotes and benchmark yields. These are considered observable market inputs and, therefore, the fair values of these securities are classified within Level 2.
- Asset backed securities consist primarily of investment-grade bonds backed by pools of loans with a variety of underlying collateral. The significant inputs used to determine the fair value of these securities include the spread above the risk-free yield curve, reported trades, benchmark yields, broker-dealer quotes, prepayment speeds, and default rates. These are considered observable market inputs and, therefore, the fair values of these securities are classified within Level 2.
- Residential and commercial mortgage-backed securities include both agency and non-agency originated securities. The significant inputs used to determine the fair value of these securities include the spread above the risk-free yield curve, reported trades, benchmark yields, broker-dealer quotes, prepayment speeds, and default rates. These are considered observable market inputs and, therefore, the fair values of these securities are classified within Level 2. Where pricing is unavailable from pricing services, the Company obtains non-binding quotes from broker-dealers. This is generally the case when there is a low volume of trading activity and current transactions are not orderly. In this event, securities are classified within Level 3. As at June 30, 2011, the Company had one commercial mortgage-backed security classified as Level 3.

To validate the techniques or models used by the pricing services, the Company compares the fair value estimates to its knowledge of the current market and challenges any prices deemed not to be representative of fair value.

As of June 30, 2011, there were no material differences between the prices obtained from the pricing services and the fair value estimates developed by the Company.

ENSTAR GROUP LIMITED
NOTES TO THE UNAUDITED CONDENSED
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5. INVESTMENTS — (cont'd)

Equity Securities

The Company's equity securities are managed by two external advisors. The Company uses nationally recognized pricing services, including pricing vendors, index providers and broker-dealers to estimate fair value measurements for all of its equity securities. These pricing services include FT Interactive Data and others.

The Company has categorized all of its investments in common stock as Level 1 investments because the fair values of these securities are based on quoted prices in active markets for identical assets or liabilities. The Company has categorized all of its investments in preferred stock as Level 2 (except one which was categorized as Level 3) because their fair value estimates are based on observable market data. As at June 30, 2011 the Company did not have any investments in preferred stock categorized as Level 2.

Other Investments

For its investments in private equities, the Company measures fair value by obtaining the most recently published net asset value as advised by the external fund manager or third-party administrator. The use of net asset value as an estimate of the fair value for investments in certain entities that calculate net asset value is a permitted practical expedient. The Company's private equity investments are mainly in the financial services industry. The fund advisors continue to evaluate the overall market environment, as well as specific areas in the financial services sector, in order to identify segments they believe will offer the most attractive investment opportunities. The financial statements of each fund generally are audited annually under U.S. GAAP, using fair value measurement for the underlying investments. For all publicly-traded companies within the funds, the Company has valued those investments based on the latest share price. The value of Affirmative Investment LLC (in which the Company owns a non-voting 7% membership interest) is based on the market value of the shares of Affirmative Insurance Holdings, Inc., a publicly-traded company.

All of the Company's investments in private equities are subject to restrictions on redemptions and sales that are determined by the governing documents and limit the Company's ability to liquidate those investments in the short term. These restrictions have been in place since the initial investments. The capital commitments are discussed in detail in Note 12 to the unaudited condensed consolidated financial statements. The Company has classified private equities as Level 3 investments because they reflect the Company's own judgment about the assumptions that market participants might use.

For its investment in the hedge fund, the Company measures fair value by obtaining the most recently published net asset value as advised by the external fund manager or third-party administrator. The use of net asset value as an estimate of the fair value for investments in certain entities that calculate net asset value is a permitted practical expedient. The adviser of the fund intends to seek attractive risk-adjusted total returns for the fund's investors by acquiring, originating, and actively managing a diversified portfolio of debt securities, with a focus on various forms of asset backed securities and loans. The fund will focus on investments that the adviser believes to be fundamentally undervalued with current market prices that are believed to be compelling relative to intrinsic value. The units of account that are valued by the Company are its interests in the fund and not the underlying holdings of such fund. Thus, the inputs used by the Company to value its investment in the fund may differ from the inputs used to value the underlying holdings of such fund. The hedge fund is not currently eligible for redemption due to imposed lock-up periods of three years from the time of the initial investment. Once eligible, redemptions will be permitted quarterly with 90 days notice. There are no unfunded capital commitments in relation to the hedge fund. The investment in the fund is classified as Level 3 in the fair value hierarchy.

The bond funds in which the Company invests have been classified as Level 2 investments because their fair value is estimated using the net asset value reported by Bloomberg and they have daily liquidity.

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5. INVESTMENTS — (cont'd)

Fair Value Measurements

In accordance with the provisions of the Fair Value Measurements and Disclosures topic of the FASB Accounting Standards Codification, the Company has categorized its investments that are recorded at fair value among levels as follows:

	June 30, 2011			Total Fair Value
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
U.S. government and agency	\$ —	\$ 211,702	\$ —	\$ 211,702
Non-U.S. government	—	384,147	—	384,147
Corporate	—	1,486,875	543	1,487,418
Municipal	—	1,599	—	1,599
Residential mortgage-backed	—	95,013	—	95,013
Commercial mortgage-backed	—	55,048	9	55,057
Asset backed	—	36,044	—	36,044
Equities	61,459	—	4,431	65,890
Other investments	—	106,779	148,840	255,619
Total investments	<u>\$ 61,459</u>	<u>\$ 2,377,207</u>	<u>\$ 153,823</u>	<u>\$2,592,489</u>

	December 31, 2010			Total Fair Value
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
U.S. government and agency	\$ —	\$ 227,803	\$ —	\$ 227,803
Non-U.S. government	—	386,866	—	386,866
Corporate	—	1,346,854	530	1,347,384
Municipal	—	2,297	—	2,297
Residential mortgage-backed	—	102,506	—	102,506
Commercial mortgage-backed	—	37,927	914	38,841
Asset backed	—	28,613	—	28,613
Equities	56,369	138	3,575	60,082
Other investments	—	102,279	132,435	234,714
Total investments	<u>\$ 56,369</u>	<u>\$ 2,235,283</u>	<u>\$ 137,454</u>	<u>\$2,429,106</u>

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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 June 30, 2011:

	<u>Fixed Maturity Investments</u>	<u>Other Investments</u>	<u>Equity Securities</u>	<u>Total</u>
Level 3 investments as of April 1, 2011	\$ 1,513	\$ 139,962	\$ 3,975	\$145,450
Purchases	—	6,407	—	6,407
Sales	(1,043)	(1,617)	—	(2,660)
Total realized and unrealized gains (losses) through earnings	82	4,088	456	4,626
Net transfers in and/or (out) of Level 3	—	—	—	—
Level 3 investments as of June 30, 2011	<u>\$ 552</u>	<u>\$ 148,840</u>	<u>\$ 4,431</u>	<u>\$153,823</u>

The amount of net gains/(losses) for the three months ended June 30, 2011 included in earnings attributable to the fair value of changes in assets still held at June 30, 2011 was \$3.9 million. Of this amount, \$0.5 million was included in net realized and unrealized gains and \$3.4 million was included 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 three months ended June 30, 2010:

	<u>Fixed Maturity Investments</u>	<u>Other Investments</u>	<u>Equity Securities</u>	<u>Total</u>
Level 3 investments as of April 1, 2010	\$ 1,336	\$ 91,294	\$ 3,450	\$ 96,080
Net purchases (sales and distributions)	—	13,197	—	13,197
Total realized and unrealized gains (losses) through earnings	58	(412)	(212)	(566)
Net transfers in and/or (out) of Level 3	—	—	—	—
Level 3 investments as of June 30, 2010	<u>\$ 1,394</u>	<u>\$ 104,079</u>	<u>\$ 3,238</u>	<u>\$108,711</u>

The amount of net gains/(losses) for the three months ended June 30, 2010 included in earnings attributable to the fair value of changes in assets still held at June 30, 2010 was \$1.5 million. Of this amount, \$(0.2) million was included in net realized and unrealized gains and \$1.7 million was included 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 six months ended June 30, 2011:

	<u>Fixed Maturity Investments</u>	<u>Other Investments</u>	<u>Equity Securities</u>	<u>Total</u>
Level 3 investments as of January 1, 2011	\$ 1,444	\$ 132,435	\$ 3,575	\$137,454
Purchases	—	10,564	—	10,564
Sales	(1,043)	(1,666)	—	(2,709)
Total realized and unrealized gains (losses) through earnings	151	7,507	856	8,514
Net transfers in and/or (out) of Level 3	—	—	—	—
Level 3 investments as of June 30, 2011	<u>\$ 552</u>	<u>\$ 148,840</u>	<u>\$ 4,431</u>	<u>\$153,823</u>

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5. INVESTMENTS — (cont'd)

The amount of net gains/(losses) for the six months ended June 30, 2011 included in earnings attributable to the fair value of changes in assets still held at June 30, 2011 was \$6.4 million. Of this amount, \$1.0 million was included in net realized and unrealized gains and \$5.4 million was included 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 six months ended June 30, 2010:

	<u>Fixed Maturity Investments</u>	<u>Other Investments</u>	<u>Equity Securities</u>	<u>Total</u>
Level 3 investments as of January 1, 2010	\$ 641	\$ 81,801	\$ 3,300	\$ 85,742
Net purchases (sales and distributions)	579	16,246	—	16,825
Total realized and unrealized gains (losses) through earnings	174	6,032	(62)	6,144
Net transfers in and/or (out) of Level 3	—	—	—	—
Level 3 investments as of June 30, 2010	<u>\$ 1,394</u>	<u>\$ 104,079</u>	<u>\$ 3,238</u>	<u>\$108,711</u>

The amount of net gains/(losses) for the six months ended June 30, 2010 included in earnings attributable to the fair value of changes in assets still held at June 30, 2010 was \$9.4 million. Of this amount, \$0.1 million was included in net realized and unrealized gains and \$9.3 million was included in net investment income.

During the six months ended June 30, 2011 and 2010, proceeds from the sales and maturities of available-for-sale securities were \$262.0 million and \$54.9 million, respectively. Gross realized gains on the sale of available-for-sale securities were, for the six months ended June 30, 2011 and 2010, \$0.6 million and \$0.1 million, respectively, and gross realized losses on the sale of available-for-sale securities, were \$0.3 million and \$nil, respectively. Net unrealized gains and (losses) on trading securities were \$3.1 million and \$(2.5) million as at June 30, 2011 and 2010, 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 held in trust as collateral are primarily highly rated fixed maturity securities. The carrying value of the Company's restricted investments as of June 30, 2011 and December 31, 2010 was as follows:

	<u>June 30, 2011</u>	<u>December 31, 2010</u>
Assets used for collateral in trust for third-party agreements	\$486,955	\$ 371,834
Deposits with regulatory authorities	35,317	33,970
Others	62,939	62,437
	<u>\$585,211</u>	<u>\$ 468,241</u>

6. DERIVATIVE INSTRUMENTS

In October 2010, the Company entered into a foreign currency forward exchange contract as part of its overall foreign currency risk management strategy. On the value date, June 30, 2011, the Company sold Australian Dollars ("AUS") 45.0 million for \$42.5 million. The contract exchange rate was AUS\$1 for \$0.9439. On June 15, 2011, the Company effectively closed out the contract by entering into a forward exchange contract, with a value date of

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June 30, 2011, where it bought AU\$45.0 million for \$48.0 million. For the three and six months ended June 30, 2011, the change in the fair value of the contract was \$(1.5) million and \$(1.9) million, the effect of which the Company has recognized as a foreign exchange loss included as part of its net earnings.

7. REINSURANCE BALANCES RECEIVABLE

	June 30, 2011	December 31, 2010
Recoverable from reinsurers on:		
Outstanding losses	\$ 454,402	\$ 425,336
Losses incurred but not reported	140,248	141,118
Fair value adjustments	(38,276)	(41,014)
Total reinsurance reserves recoverable	556,374	525,440
Paid losses	447,737	436,002
	<u>\$ 1,004,111</u>	<u>\$ 961,442</u>

The fair value adjustment, determined on acquisition of reinsurance subsidiaries, was based on the estimated timing of loss and loss adjustment expense recoveries and an assumed interest rate equivalent to a risk free rate for securities with similar duration to the reinsurance receivables acquired plus a spread to reflect credit risk, and is amortized over the estimated recovery period, as adjusted for accelerations on commutation settlements, using the constant yield method.

The Company's acquired reinsurance subsidiaries, prior to acquisition, used retrocessional agreements to reduce their exposure to the risk of reinsurance assumed. The Company remains liable to the extent that retrocessionaires do not meet their obligations under these agreements, and therefore, the Company evaluates and monitors concentration of credit risk among its reinsurers. Provisions are made for amounts considered potentially uncollectible.

At June 30, 2011, the Company's top 10 reinsurers accounted for 73.9% (December 31, 2010: 75.5%) of reinsurance recoverables (which includes loss reserves recoverable and recoverables on paid losses) and included \$101.5 million of incurred but not reported ("IBNR") recoverable (December 31, 2010: \$99.6 million). Reinsurance recoverables by reinsurer were as follows:

	June 30, 2011		December 31, 2010	
	Reinsurance Recoverable	% of Total	Reinsurance Recoverable	% of Total
Top 10 reinsurers	\$ 741,837	73.9%	\$ 726,201	75.5%
Other reinsurers' balances > \$1 million	242,424	24.1%	198,737	20.7%
Other reinsurers' balances < \$1 million	19,850	2.0%	36,504	3.8%
Total	<u>\$ 1,004,111</u>	<u>100.0%</u>	<u>\$ 961,442</u>	<u>100.0%</u>

At June 30, 2011 and December 31, 2010, the provision for uncollectible reinsurance relating to losses recoverable was \$421.5 million and \$381.4 million, respectively. To estimate the provision for uncollectible reinsurance recoverables, the reinsurance recoverables are first allocated to applicable reinsurers. This determination is based on a detailed process rather than an estimate, although an element of judgment is applied. As part of this process, ceded IBNR is allocated by reinsurer.

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

7. REINSURANCE BALANCES RECEIVABLE — (cont'd)

The Company uses a detailed analysis to estimate uncollectible reinsurance. The primary components of the analysis are reinsurance recoverable balances by reinsurer and bad debt provisions applied to these balances to determine the portion of a reinsurer's balance deemed to be uncollectible. These provisions require considerable judgment and are determined using the current rating, or rating equivalent, of each reinsurer (in order to determine their ability to settle the reinsurance balances), as well as other key considerations and assumptions, such as claims and coverage issues.

As at June 30, 2011 and December 31, 2010, reinsurance receivables with a carrying value of \$405.4 million and \$398.8 million, respectively, were each associated with two reinsurers which represented 10% or more of total reinsurance balances receivable. As at June 30, 2011, the two reinsurers had credit ratings of AA- or higher. In the event that all or any of the reinsuring companies are unable to meet their obligations under existing reinsurance agreements, the Company will be liable for such defaulted amounts.

8. LOSSES AND LOSS ADJUSTMENT EXPENSES

The table below provides a reconciliation of the beginning and ending reserves for losses and loss adjustment expenses for the three months ended June 30, 2011 and 2010. Losses incurred and paid are reflected net of reinsurance recoverables.

	Three Months Ended June 30,	
	2011	2010
Balance as at April 1	\$3,394,988	\$2,890,723
Less: total reinsurance reserves recoverable	583,478	435,680
	<u>2,811,510</u>	<u>2,455,043</u>
Effect of exchange rate movement	(1,020)	(26,454)
Net reduction in ultimate loss and loss adjustment expense liabilities	(34,315)	(42,366)
Net losses paid	(65,208)	(47,863)
Retroactive reinsurance contracts assumed	—	134,129
Net balance as at June 30	2,710,967	2,472,489
Plus: total reinsurance reserves recoverable	556,374	421,864
Balance as at June 30	<u>\$3,267,341</u>	<u>\$2,894,353</u>

The following table shows the components of the movement in the net reduction in ultimate loss and loss adjustment expense liabilities for the three months ended June 30, 2011 and 2010:

	Three Months Ended June 30,	
	2011	2010
Net losses paid	\$(65,208)	\$(47,863)
Net reduction in case and loss adjustment expense reserves	65,074	53,718
Net reduction in IBNR	<u>27,963</u>	<u>29,249</u>
Reduction in estimates of net ultimate losses	27,829	35,104
Reduction in provisions for bad debt	1,672	7,768
Reduction in provisions for unallocated loss adjustment expense liabilities	11,783	11,696
Amortization of fair value adjustments	<u>(6,969)</u>	<u>(12,202)</u>
Net reduction in ultimate loss and loss adjustment expense liabilities	<u>\$ 34,315</u>	<u>\$ 42,366</u>

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

8. LOSSES AND LOSS ADJUSTMENT EXPENSES — (cont'd)

Net reduction in case and loss adjustment expense reserves, or LAE reserves, comprises the movement during the quarter in specific case reserve liabilities as a result of claims settlements or changes advised to the Company by its policyholders and attorneys, less changes in case reserves recoverable advised by the Company to its reinsurers as a result of the settlement or movement of assumed claims. Net reduction in IBNR represents the change in the Company's actuarial estimates of losses incurred but not reported.

The net reduction in ultimate loss and loss adjustment expense liabilities for the three months ended June 30, 2011 of \$34.3 million was attributable to a reduction in estimates of net ultimate losses of \$27.8 million, a reduction in provisions for bad debt of \$1.7 million and a reduction in provisions for unallocated loss adjustment expense liabilities of \$11.8 million, relating to 2011 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$7.0 million.

The reduction in estimates of net ultimate losses of \$27.8 million, comprised of net incurred loss development of \$0.1 million and reductions in IBNR reserves of \$28.0 million, primarily related to the completion of two commutations of the Company's largest ten exposures. The reductions in provisions for bad debt of \$1.7 million resulted from the collection of receivables against which bad debt provisions had been provided for in earlier periods.

The net reduction in ultimate loss and loss adjustment expense liabilities for the three months ended June 30, 2010 of \$42.4 million was attributable to a reduction in estimates of net ultimate losses of \$35.1 million, a reduction in provisions for bad debt of \$7.8 million and a reduction in provisions for unallocated loss adjustment expense liabilities of \$11.7 million, relating to 2010 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$12.2 million.

The reduction in estimates of net ultimate losses of \$35.1 million comprised net favorable incurred loss development of \$5.9 million along with reductions in IBNR reserves of \$29.2 million. Subsequent to June 30, 2010, claims liabilities of certain policyholders within a number of the Company's insurance and reinsurance subsidiaries were commuted at levels that required the reduction in IBNR reserves for those subsidiaries. The reductions in provisions for bad debt of \$7.8 million resulted from the collection of receivables against which bad debt provisions had been provided for in earlier periods.

The table below provides a reconciliation of the beginning and ending reserves for losses and loss adjustment expenses for the six months ended June 30, 2011 and 2010. Losses incurred and paid are reflected net of reinsurance recoverables.

	Six Months Ended June 30,	
	2011	2010
Balance as at January 1	\$3,291,275	\$2,479,136
Less: total reinsurance reserves recoverable	525,440	347,728
	2,765,835	2,131,408
Effect of exchange rate movement	33,352	(62,429)
Net reduction in ultimate loss and loss adjustment expense liabilities	(38,387)	(51,962)
Net losses paid	(153,339)	(131,088)
Acquired on purchase of subsidiaries	10,439	222,042
Retroactive reinsurance contracts assumed	93,067	364,518
Net balance as at June 30	2,710,967	2,472,489
Plus: total reinsurance reserves recoverable	556,374	421,864
Balance as at June 30	<u>\$3,267,341</u>	<u>\$2,894,353</u>

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

8. LOSSES AND LOSS ADJUSTMENT EXPENSES — (cont'd)

The following table shows the components of the movement in the net reduction in ultimate loss and loss adjustment expense liabilities for the six months ended June 30, 2011 and 2010:

	<u>Six Months Ended June 30,</u>	
	<u>2011</u>	<u>2010</u>
Net losses paid	\$(153,339)	\$(131,088)
Net reduction in case and LAE reserves	148,504	132,572
Net reduction in IBNR	<u>35,276</u>	<u>35,562</u>
Reduction in estimates of net ultimate losses	30,441	37,046
Reduction in provisions for bad debt	1,672	13,107
Reduction in provisions for unallocated loss adjustment expense liabilities	23,320	20,661
Amortization of fair value adjustments	<u>(17,046)</u>	<u>(18,852)</u>
Net reduction in ultimate loss and loss adjustment expense liabilities	<u>\$ 38,387</u>	<u>\$ 51,962</u>

The net reduction in ultimate loss and loss adjustment expense liabilities for the six months ended June 30, 2011 of \$38.4 million was attributable to a reduction in estimates of net ultimate losses of \$30.4 million, a reduction in provisions for bad debt of \$1.7 million and a reduction in provisions for unallocated loss adjustment expense liabilities of \$23.3 million, relating to 2011 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$17.0 million.

The reduction in estimates of net ultimate losses of \$30.4 million, comprised of net incurred loss development of \$4.8 million and reductions in IBNR reserves of \$35.3 million, primarily related to the completion of two commutations of the Company's largest ten exposures. The reductions in provisions for bad debt of \$1.7 million resulted from the collection of receivables against which bad debt provisions had been provided for in earlier periods.

The net reduction in ultimate loss and loss adjustment expense liabilities for the six months ended June 30, 2010 of \$52.0 million was attributable to a reduction in estimates of net ultimate losses of \$37.0 million, a reduction in provisions for bad debt of \$13.1 million and a reduction in provisions for unallocated loss adjustment expense liabilities of \$20.7 million, relating to 2010 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$18.9 million.

The reduction in estimates of net ultimate losses of \$37.0 million comprised net favorable incurred loss development of \$1.5 million and reductions in IBNR reserves of \$35.6 million. Subsequent to June 30, 2010, claims liabilities of certain policyholders within a number of the Company's insurance and reinsurance subsidiaries were commuted at levels that required the reduction in IBNR reserves for those subsidiaries. The reductions in provisions for bad debts of \$13.1 million resulted from the collection of receivables against which bad debt provisions had been provided for in earlier periods.

9. LOANS PAYABLE

The Company's long-term debt consists of loan facilities used to partially finance certain of the Company's acquisitions or significant new business transactions along with a loan outstanding in relation to the share repurchase agreements (the "Repurchase Agreements") entered into with three of its executives and certain trusts and a corporation affiliated with the executives. The Unionamerica, Knaption and Enstar Group Facilities and the Repurchase Agreements are described in Note 11 to the consolidated financial statements contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2010.

ENSTAR GROUP LIMITED
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9. LOANS PAYABLE — (cont'd)

Total amounts of loans payable outstanding, including accrued interest, as of June 30, 2011 and December 31, 2010 totaled \$205.6 million and \$245.3 million, respectively, and were comprised as follows:

Facility	Date of Facility	June 30, 2011	December 31, 2010
EGL Revolving Credit Facility	June 30, 2011	\$ 167,650	\$ —
Unionamerica — Facility A	December 30, 2008	—	71,259
Unionamerica — Facility B	December 30, 2008	—	154
Knapton	April 20, 2010	—	21,532
Enstar Group — Facility A	December 29, 2010	—	52,100
Enstar Group — Facility B	December 29, 2010	—	62,900
Total long-term bank debt		167,650	207,945
Repurchase agreements	October 1, 2010	37,986	37,333
Total loans payable		<u>\$ 205,636</u>	<u>\$ 245,278</u>

EGL Revolving Credit Facility; Prepayment of Certain Subsidiary Debt Facilities

On June 13, 2011, the Company, as borrower, and certain of its subsidiaries, as guarantors, entered into a Revolving Credit Facility Agreement with NAB and Barclays Corporate, the corporate banking division of Barclays Bank PLC, as bookrunners and mandated lead arrangers, certain financial institutions, as lenders, and NAB as agent (the "EGL Credit Agreement"). The EGL Credit Agreement provides for a three-year revolving credit facility pursuant to which the Company is permitted to borrow up to an aggregate of \$250.0 million (the "EGL Revolving Credit Facility"), which will be available to prepay certain existing credit facilities of the Company and certain of its subsidiaries, to fund permitted acquisitions and for general corporate purposes. The Company's ability to draw on the EGL Revolving Credit Facility is subject to customary conditions.

On June 30, 2011, the Company borrowed \$167.7 million under the EGL Revolving Credit Facility, which was used to prepay \$167.7 million representing the total amounts owing by the Company under the Knapton, Unionamerica and Enstar Group facilities. The prepayment of these existing credit facilities was a condition to the Company's initial borrowing under the EGL Revolving Credit Facility. As of June 30, 2011, the outstanding EGL Revolving Credit Facility loan balance was \$167.7 million.

The EGL Revolving Credit Facility is secured by a first priority lien on the stock of certain of the Company's subsidiaries and certain bank accounts held with Barclays Bank PLC in the name of the Company and into which amounts received in respect of any capital release from certain of the Company's subsidiaries are required to be paid. Interest is payable at the end of each interest period chosen by the Company or, at the latest, each six months. The interest rate is LIBOR plus 2.75%, plus an incremental amount tied to certain regulatory costs that may be incurred by the lenders, if any. The unused portion of the EGL Revolving Credit Facility will be subject to a commitment fee of 1.10%. The EGL Revolving Credit Facility is subject to various financial and business covenants applicable to the Company, the guarantors and certain other material subsidiaries, including limitations on mergers and consolidations, acquisitions, indebtedness and guarantees, restrictions as to dispositions of stock and dividends, and limitations on liens on stock. As of June 30, 2011, all of the covenants relating to the EGL Revolving Credit Facility were met.

During the existence of any payment default, the interest rate is increased by 1.0%. During the existence of any event of default as specified in the EGL Credit Agreement, the agent may cancel the commitments of the lenders, declare all or a portion of outstanding amounts immediately due and payable, declare all or a portion of outstanding

ENSTAR GROUP LIMITED
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9. LOANS PAYABLE — (cont'd)

amounts payable upon demand or proceed against the security. The EGL Credit Agreement terminates and all amounts borrowed must be repaid on June 13, 2014, the third anniversary of the date of the EGL Credit Agreement.

The fair value of the Company's floating rate loan approximates its book value.

Clarendon

On March 4, 2011, the Company, through Clarendon Holdings, Inc., entered into a \$106.5 million term facility agreement (the "Clarendon Facility") with NAB. The Clarendon Facility provides for a four-year term loan facility available to be drawn to fund up to 50% of the purchase price of Clarendon. As of June 30, 2011, Clarendon Holdings, Inc. had not borrowed any of the amount available under the Clarendon Facility. On July 12, 2011, the Company fully drew down the Clarendon Facility in connection with the acquisition of Clarendon.

The Clarendon Facility is secured by a security interest in all of the assets of Clarendon Holdings, Inc., as well as a first priority lien on the stock of both Clarendon Holdings, Inc. and Clarendon. Interest is payable at the end of each interest period chosen by Clarendon Holdings, Inc. or, at the latest, each six months. The interest rate is LIBOR plus 2.75%. The Clarendon Facility is subject to various financial and business covenants, including limitations on mergers and consolidations, restrictions as to disposition of stock and limitations on liens on the stock.

During the existence of any payment default, the interest rate is increased by 1.0%. During the existence of any event of default (as specified in the term facility agreement), the lenders may declare all or a portion of outstanding amounts immediately due and payable, declare all or a portion of borrowed amounts payable upon demand, or proceed against the security. The Clarendon Facility terminates and all amounts borrowed must be repaid on July 12, 2015.

10. EMPLOYEE BENEFITS

The Company's share-based compensation plans provide for the grant of various awards to its employees and to members of the board of directors. These are described in Note 14 to the consolidated financial statements contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2010. The information below includes both the employee and director components of the Company's share-based compensation.

(a) Employee share plans

Employee stock awards for the six months ended June 30, 2011 are summarized as follows:

	<u>Number of Shares</u>	<u>Weighted Average Fair Value of the Award</u>
Nonvested — January 1, 2011	153,930	\$ 13,019
Granted	69,003	5,736
Vested	<u>(19,003)</u>	<u>(1,686)</u>
Nonvested — June 30, 2011	<u>203,930</u>	\$ 21,309

(i) 2006-2010 Annual Incentive Compensation Program, 2011-2015 Annual Incentive Compensation Program and 2006 Equity Incentive Plan

For the six months ended June 30, 2011 and 2010, 16,328 and 78,664 shares were awarded to directors, officers and employees under the 2006 Equity Incentive Plan. The total value of the awards for the six months ended June 30, 2011 and 2010 was \$1.5 million and \$5.4 million, respectively, and was charged against the 2006-2010 Annual Incentive Compensation Program (the "2006 Program") accrual established for the years ended

ENSTAR GROUP LIMITED
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10. EMPLOYEE BENEFITS — (cont'd)

December 31, 2010 and 2009, respectively. The 2006 Program ended effective December 31, 2010. On February 23, 2011, the Company adopted the Enstar Group Limited 2011-2015 Annual Incentive Compensation Program (the "2011 Program").

In addition, for the six months ended June 30, 2011 and 2010, 50,000 and 153,930 restricted shares were awarded to certain employees under the 2006 Equity Incentive Plan. The total unrecognized compensation cost related to the Company's non-vested share awards as at June 30, 2011 and 2010 was \$11.8 million and \$9.9 million, respectively. This cost is expected to be recognized over the next 4.2 years. Compensation costs of \$0.7 million and \$1.2 million relating to these share awards were recognized in the Company's statement of earnings for the three and six months ended June 30, 2011, respectively, as compared to \$0.4 million and \$0.6 million, respectively, for the three and six months ended June 30, 2010.

The accrued expense relating to the 2011 Program for the three and six months ended June 30, 2011 was \$0.9 million and \$1.1 million, respectively as compared to \$2.2 million and \$5.0 million, respectively, for three and six months ended June 30, 2010 relating to the 2006 Program.

(ii) *Enstar Group Limited Employee Share Purchase Plan*

Compensation costs of less than \$0.1 million and \$0.2 million, respectively, relating to the shares issued have been recognized in the Company's statement of earnings for both the three and six months ended June 30, 2011 and 2010. As at June 30, 2011, 16,829 shares have, in total, been issued to employees under the Amended and Restated Enstar Group Limited Employee Share Purchase Plan.

(b) *Options*

	Number of Shares	Weighted Average Exercise Price	Intrinsic Value of Shares
Outstanding — January 1, 2011	152,015	\$ 34.55	\$ 7,606
Granted	—	—	—
Exercised	(49,037)	19.63	(3,709)
Forfeited	—	—	—
Outstanding — June 30, 2011	<u>102,978</u>	<u>\$ 41.65</u>	<u>\$ 6,471</u>

Stock options outstanding and exercisable as of June 30, 2011 were as follows:

Ranges of Exercise Prices	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life
\$40 - \$60	102,978	\$ 41.65	2.2 years

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

For the six months ended June 30, 2011 and 2010, 2,407 and 3,134 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 J. Christopher Flowers' resignation from the Board of Directors, 3,610 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 May 24, 2011, with fractional shares paid in cash. Also on May 24, 2011, 4,515

ENSTAR GROUP LIMITED
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10. EMPLOYEE BENEFITS — (cont'd)

restricted stock units previously credited to Mr. Flowers' account under a deferred compensation plan assumed in the Company's merger with Enstar USA, Inc., now a wholly-owned subsidiary of the Company, were converted into the same number of the Company's ordinary shares.

(d) Pension plan

The Company provides pension benefits to eligible employees through various plans sponsored by the Company. All pension plans, except as disclosed below, are structured as defined contribution plans. Pension expense for the three and six months ended June 30, 2011 was \$1.0 million and \$2.1 million, respectively, as compared to \$1.0 million and \$1.8 million, respectively, for three and six months ended June 30, 2010.

The Company acquired, as part of the acquisition of PW Acquisition Company ("PWAC") on July 20, 2010, a noncontributory defined benefit pension plan (the "PWAC Plan") that covers substantially all PWAC employees hired before April 1, 2003 and provides pension and certain death benefits. Effective April 1, 2004, PWAC froze the PWAC Plan. As at the date of acquisition of PWAC by the Company, the PWAC Plan had an unfunded liability of \$6.7 million that had been accrued by PWAC. Subsequent to acquisition, an actuarial review was performed of the PWAC Plan which determined that the PWAC Plan's unfunded liability was \$8.1 million. As at June 30, 2011, PWAC had an accrued liability of \$7.9 million for the unfunded PWAC Plan liability.

The Company recorded pension expense relating to the PWAC Plan, for the three and six months ended June 30, 2011, of \$0.2 million and \$0.3 million, respectively.

ENSTAR GROUP LIMITED
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CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

11. EARNINGS PER SHARE

The following table sets forth the comparison of basic and diluted earnings per share for the three and six-month periods ended June 30, 2011 and 2010:

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2011</u>	<u>2010</u>	<u>2011</u>	<u>2010</u>
Basic earnings per share:				
Net earnings attributable to Enstar Group Limited	\$ 9,375	\$ 12,430	\$ 12,878	\$ 28,351
Weighted average shares outstanding — basic	13,999,179	13,702,832	13,475,418	13,661,516
Earnings per share attributable to Enstar Group Limited — basic	<u>\$ 0.67</u>	<u>\$ 0.91</u>	<u>\$ 0.96</u>	<u>\$ 2.08</u>
Diluted earnings per share:				
Net earnings attributable to Enstar Group Limited	\$ 9,375	\$ 12,430	\$ 12,878	\$ 28,351
Weighted average shares outstanding — basic	13,999,179	13,702,832	13,475,418	13,661,516
Share equivalents:				
Unvested shares	203,930	154,088	189,289	97,018
Restricted share units	17,106	16,059	17,297	15,233
Options	65,470	146,510	73,619	151,784
Weighted average shares outstanding — diluted	14,285,685	14,019,489	13,755,623	13,925,551
Earnings per share attributable to Enstar Group Limited — diluted	<u>\$ 0.66</u>	<u>\$ 0.89</u>	<u>\$ 0.94</u>	<u>\$ 2.04</u>

12. RELATED PARTY TRANSACTIONS

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

During the six months ended June 30, 2011, the Company funded \$6.4 million of its remaining outstanding capital commitment to entities affiliated with Mr. Flowers. The Company had, as of June 30, 2011 and December 31, 2010, excluding its investment in Varadero International Ltd. (a hedge fund affiliated with the Company and Mr. Flowers with respect to which the Company has funded 100% of its capital commitment), investments in entities affiliated with Mr. Flowers with a total value of \$111.4 million and \$96.1 million, respectively, and outstanding commitments to entities managed by Mr. Flowers, as of those same dates, of \$74.3 million and \$84.6 million, respectively. The Company's outstanding commitments may be drawn down over approximately the next five years.

As at June 30, 2011, related party investments associated with Mr. Flowers accounted for 99.8% of the total unfunded capital commitments of the Company and 52.9% of the total amount of investments classified as other investments by the Company.

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13. TAXATION

Income tax expense for the three and six months ended June 30, 2011 was \$1.0 million and \$1.6 million, respectively, as compared to \$16.1 million and \$22.0 million, respectively, for the three and six months ended June 30, 2010.

Under current Bermuda law, the Company and its Bermuda subsidiaries are not required to pay any taxes in Bermuda on their income or capital gains. On March 25, 2011, the Company received confirmation from the Minister of Finance in Bermuda that, in the event of any taxes being imposed, the period for which the Company and its Bermuda subsidiaries will be exempt from taxation in Bermuda would be extended until March 2035.

The Company has operating subsidiaries and branch operations in the United Kingdom, Australia, the United States and Europe and is subject to federal, foreign, state and local taxes in those jurisdictions. In addition, certain distributions from some foreign sources may be subject to withholding taxes.

The expected income tax provision for the foreign operations computed on pre-tax income at the weighted average tax rate has been calculated as the sum of the pre-tax income in each jurisdiction multiplied by that jurisdiction's applicable statutory tax rate.

The actual income tax rate for the three and six months ended June 30, 2011 and 2010 differed from the amount computed by applying the effective rate of 0% under Bermuda law to earnings before income taxes as shown in the following reconciliation:

	Three Months Ended		Six Months Ended	
	June 30, 2011	June 30, 2010	June 30, 2011	June 30, 2010
Earnings before income tax	<u>\$10,350</u>	<u>\$28,545</u>	<u>\$14,470</u>	<u>\$50,388</u>
Expected tax rate	0.0%	0.0%	0.0%	0.0%
Foreign taxes at local expected rates	70.9%	52.2%	65.2%	53.1%
Benefit of loss carryovers	0.0%	(1.5)%	0.0%	(6.0)%
Change in uncertain tax positions	0.5%	0.2%	0.7%	0.3%
Change in valuation allowance	(63.5)%	4.2%	(49.0)%	(4.1)%
Impact of Australian tax consolidation	0.0%	0.0%	(6.2)%	0.0%
Other	1.5%	1.3%	0.3%	0.4%
Effective tax rate	<u>9.4%</u>	<u>56.4%</u>	<u>11.0%</u>	<u>43.7%</u>

The Company had net deferred tax assets of approximately \$14.9 million and \$3.2 million as of June 30, 2011 and December 31, 2010, respectively. Deferred income taxes arise from the recognition of temporary differences between income determined for financial reporting purposes and income tax purposes. The temporary differences that give rise to significant portions of the deferred tax assets and liabilities are net operating loss carryforwards, claims reserves due principally to the discounting for tax, and investments.

The Company has estimated future taxable income of its foreign subsidiaries and has provided a valuation allowance in respect of those loss carryforwards where it does not expect to realize a benefit. The Company has considered all available evidence using a "more likely than not" standard in determining the amount of the valuation allowance.

As of June 30, 2011 and December 31, 2010, the Company had unrecognized tax benefits of \$5.7 million and \$5.6 million, respectively, relating to uncertain tax positions.

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

13. TAXATION — (cont'd)

The Company's operating subsidiaries in specific countries may be subject to audit by various tax authorities and may have different statutes of limitations expiration dates. With limited exceptions, the Company's major subsidiaries that operate in the United States, United Kingdom and Australia are no longer subject to tax examinations for years before 2005, 2008 and 2005, respectively.

Because the Company operates in many jurisdictions, its net earnings are subject to risk due to changing tax laws and tax rates around the world. The current, rapidly changing economic environment may increase the likelihood of substantial changes to tax laws in the jurisdictions in which it operates. The Company cannot predict what, if any, legislation will actually be proposed or enacted, or what the effect of any such legislation might be on the Company's financial condition and results of operations.

14. SHARE CAPITAL

On April 20, 2011, the Company entered into an Investment Agreement (the "Investment Agreement") with GSCP VI AIV Navi, Ltd., GSCP VI Offshore Navi, Ltd., GSCP VI Parallel AIV Navi, Ltd., GSCP VI Employee Navi, Ltd., and GSCP VI GmbH Navi, L.P. (collectively, the "Purchasers"), each of which is an affiliate of Goldman, Sachs & Co. Under the Investment Agreement, the Company agreed to issue and sell, and the Purchasers agreed to purchase, at several different closings described immediately below, securities representing 19.9% of the Company's outstanding share capital pro forma for all the issuances, with the right to acquire an additional 2.0% on a fully diluted basis pro forma for all the issuances through the exercise of warrants as described below, although the Purchasers' voting interest in the Company purchased pursuant to the Investment Agreement will be less than 4.9%. The securities that the Purchasers have acquired or, subject to certain conditions, will be acquiring at these closings can be further summarized as follows:

- At the first closing, which occurred on April 20, 2011, 531,345 of the Company's voting ordinary shares, par value \$1.00 per share ("Voting Common Shares"), and 749,869 of the Company's newly created Series A convertible non-voting preference shares, par value \$1.00 per share (the "Non-Voting Preferred Shares"), at a purchase price of \$86.00 per share, or approximately \$110.2 million in the aggregate. Upon the receipt of shareholder approval to create three new classes of non-voting ordinary shares at the Company's Annual General Meeting on June 28, 2011 (the "Shareholder Approval"), the Non-Voting Preferred Shares automatically converted on a share-for-share basis into non-voting ordinary shares of the Company, par value \$1.00 (the "Non-Voting Common Shares"). At the first closing, the Company also issued to the Purchasers warrants to acquire 340,820 Non-Voting Preferred Shares (which converted to the right to acquire Non-Voting Common Shares upon receipt of the Shareholder Approval) for an exercise price of \$115.00 per share, subject to certain adjustments. The Purchasers may, at their election, satisfy the exercise price of the warrants on a cashless basis by surrender of shares otherwise issuable upon exercise of the warrants in accordance with a formula set forth in the warrants. The warrants expire on the ten year anniversary of the first closing.
- At the second closing, which is expected to occur after receipt of applicable regulatory approvals and satisfaction of other closing conditions (but not before December 23, 2011), 134,184 Voting Common Shares and 827,504 Non-Voting Common Shares, at a purchase price of \$86.00 per share, or approximately \$82.7 million in the aggregate.
- At the third closing, which was approved by the Company's shareholders at the Annual General Meeting of Shareholders on June 28, 2011 and which is expected to occur after receipt of applicable regulatory approvals and satisfaction of other closing conditions, 1,148,264 Non-Voting Common Shares, at a purchase price of \$86.00 per share, or approximately \$98.7 million in the aggregate. If the third closing occurs, it is expected to occur simultaneously with the second closing.

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

14. SHARE CAPITAL — (cont'd)

The Purchasers may elect, at their option, to receive Series B Non-Voting Common Shares in lieu of Voting Common Shares that might otherwise be issuable to them at any of the closings discussed above. Any such Series B Non-Voting Common Shares would be convertible on a share-for-share basis, subject to certain adjustments, into Voting Common Shares at the option of the Purchasers. All other Non-Voting Common Shares received by the Purchasers under the Investment Agreement, including those received upon conversion of the Non-Voting Preferred Shares received at the first closing, are Series C Non-Voting Common Shares. The Purchasers may also elect to receive Series B Non-Voting Common Shares, Series C Non-Voting Common Shares or Series D Non-Voting Common Shares upon conversion of Voting Common Shares held by them. In addition, the Purchasers may elect to receive Series D Non-Voting Common Shares upon conversion of Series B Non-Voting Common Shares or Series C Non-Voting Common Shares held by them. There is no economic difference in the sub-series of Non-Voting Common Shares, but there are slight differences in the limited voting rights of each sub-series that are designed to address certain regulatory matters affecting the Purchasers.

The total investment expected to be made by the Purchasers for the purchase of the Voting Common Shares, the Non-Voting Common Shares and the warrants is approximately \$291.6 million. The Company has accounted for the Purchaser's investment under the Investment Agreement as equity under the applicable U.S. GAAP.

On June 28, 2011 at the Company's Annual General Meeting, the Company's shareholders approved the reallocation of the Company's authorized share capital as follows:

	<u>June 28,</u> <u>2011</u>	<u>Pre-June 28,</u> <u>2011</u>
	<u>(expressed in thousands)</u>	
Ordinary shares, par value \$1.00 per share	90,000	100,000
Non-voting convertible ordinary shares, par value \$1.00 per share	21,000	6,000
Preference shares, par value \$1.00 per share	<u>45,000</u>	<u>50,000</u>
Total authorized share capital	<u>156,000</u>	<u>156,000</u>

15. SEGMENT INFORMATION

Due to the growing insignificance of the Company's consulting activities in relation to its core reinsurance operations, the Company has reevaluated its segment reporting and concluded that it has one reportable segment. As a result of the decreasing relative significance of consulting activities and the associated revenues and earnings, the Company no longer monitors the results of consulting activities separately for evaluating business performance and for making resource allocation decisions. Accordingly, effective January 1, 2011, the Company will no longer report separately the results of its consulting activities. Prior to 2011, the Company reported two segments: reinsurance and consulting.

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 June 30, 2011, and the related condensed consolidated statements of earnings and comprehensive income for the three-month and six-month periods ended June 30, 2011 and 2010 and changes in shareholders' equity and cash flows for the six-month periods ended June 30, 2011 and 2010. 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, 2010 and the related consolidated statements of earnings, comprehensive income, changes in shareholders' equity, and cash flows for the year then ended; and in our report dated March 4, 2011, we expressed an unqualified opinion on those consolidated financial statements. In our opinion, the information set forth in the accompanying condensed consolidated balance sheet as of December 31, 2010 is fairly stated, in all material respects, in relation to the consolidated balance sheet from which it has been derived.

/s/ Deloitte & Touche Ltd.

Hamilton, Bermuda
August 5, 2011

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 six months ended June 30, 2011 and 2010. 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, 2010.

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 portfolios of insurance and reinsurance business in run-off, and to provide management, consulting and other services to the insurance and reinsurance industry.

Since our formation, we have acquired 31 insurance and reinsurance companies (excluding Clarendon National Insurance Company, or Clarendon, which was acquired subsequent to the end of our second quarter as discussed below) and 15 portfolios of insurance and reinsurance business and are now administering those businesses in run-off. Insurance and reinsurance companies and portfolios of insurance and reinsurance business we acquire that are in run-off no longer underwrite new policies. We derive our net earnings from the ownership and management of these companies and portfolios of business in run-off primarily by settling insurance and reinsurance claims below the acquired value of loss reserves and from returns on the portfolio of investments retained to pay future claims. In addition, we 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

Clarendon

On July 12, 2011, we, through our wholly-owned subsidiary, Clarendon Holdings, Inc., completed the acquisition of 100% of the shares of Clarendon from Clarendon Insurance Group, Inc., an affiliate of Hannover Re. Clarendon is a New Jersey-domiciled insurer that is in run-off. Clarendon owns three other insurers, two domiciled in New Jersey and one domiciled in Florida, that are also in run-off. Clarendon and its subsidiaries reported combined total assets of \$2,102.6 million and combined total liabilities of \$1,845.8 million in their statutory financial statements as of March 31, 2011. The purchase price was \$219.1 million and was financed in part by borrowing \$106.5 million under a four-year term loan facility provided by National Australia Bank Limited, or NAB, and the remainder from available cash on hand.

Laguna

On March 25, 2011, we, through our wholly-owned subsidiary, Kenmare Holdings Ltd., completed the acquisition of Laguna Life Limited, formerly known as CitiLife Financial Limited, or Laguna, from Citigroup Insurance Holding Corporation, or Citigroup, an affiliate of Citigroup Inc. Laguna is an Ireland-based life insurer that is in run-off. The purchase price was €15.0 million (approximately \$21.2 million) and was funded from available cash on hand. The previously disclosed purchase price of €30.0 million (approximately \$42.4 million) was reduced, prior to completion of the acquisition, after Citigroup received approval from Laguna's regulator to distribute €15.0 million (approximately \$21.2 million) to its shareholders.

Significant New Business

Shelbourne RITC Transactions

In December 2007, we, in conjunction with JCF FPK I L.P., or JCF FPK, and a newly-hired executive management team, formed U.K.-based Shelbourne Group Limited, or Shelbourne, to invest in Reinsurance to Close or "RITC" transactions (the transferring of liabilities from one Lloyd's syndicate to another) with Lloyd's of London insurance and reinsurance syndicates in run-off. We own approximately 56.8% of 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 RITC transactions with Lloyd's syndicates in run-off.

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JCF FPK is a joint investment program between Fox-Pitt, Kelton, Cochran, Caronia & Waller (USA) LLC, or FPK, and J.C. Flowers II, L.P., or the Flowers Fund. The Flowers Fund is a private investment fund advised by J.C. Flowers & Co. LLC. J. Christopher Flowers, one of our largest shareholders and formerly a member of our board of directors, is the Chairman and Chief Executive Officer of J.C. Flowers & Co. LLC. In addition, an affiliate of the Flowers Fund controlled approximately 41% of FPK until its sale of FPK in December 2009.

In February 2011, Lloyd's Syndicate 2008 entered into RITC agreements with two Lloyd's syndicates with total gross insurance reserves of approximately \$129.6 million. The capital commitment to Lloyd's Syndicate 2008 with respect to these two RITC agreements amounted to £21.3 million (approximately \$34.1 million), which was fully funded from available cash on hand.

Results of Operations

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
	(in thousands of U.S. dollars)			
INCOME				
Consulting fees	\$ 2,045	\$ 3,500	\$ 6,081	\$ 17,628
Net investment income	22,928	22,998	41,470	49,119
Net realized and unrealized gains (losses)	5,264	(4,227)	8,632	(2,025)
Gain on bargain purchase	—	—	13,105	—
	<u>30,237</u>	<u>22,271</u>	<u>69,288</u>	<u>64,722</u>
EXPENSES				
Net reduction in ultimate loss and loss adjustment expense liabilities:				
Reduction in estimates of net ultimate losses	(27,829)	(35,104)	(30,441)	(37,046)
Reduction in provisions for bad debt	(1,672)	(7,768)	(1,672)	(13,107)
Reduction in provisions for unallocated loss adjustment expense liabilities	(11,783)	(11,696)	(23,320)	(20,661)
Amortization of fair value adjustments	6,969	12,202	17,046	18,852
	<u>(34,315)</u>	<u>(42,366)</u>	<u>(38,387)</u>	<u>(51,962)</u>
Salaries and benefits	16,723	14,254	27,105	29,444
General and administrative expenses	28,211	15,801	45,961	26,288
Interest expense	1,697	2,805	3,663	5,199
Net foreign exchange losses (gains)	1,932	(5,615)	9,266	1,973
	<u>14,248</u>	<u>(15,121)</u>	<u>47,608</u>	<u>10,942</u>
Earnings before income taxes and share of net earnings of partly owned company	15,989	37,392	21,680	53,780
Income taxes	(975)	(16,115)	(1,592)	(22,037)
Share of net earnings of partly owned company	—	2,203	—	9,353
NET EARNINGS	15,014	23,480	20,088	41,096
Less: Net earnings attributable to noncontrolling interest	(5,639)	(11,050)	(7,210)	(12,745)
NET EARNINGS ATTRIBUTABLE TO ENSTAR GROUP LIMITED	<u>\$ 9,375</u>	<u>\$ 12,430</u>	<u>\$ 12,878</u>	<u>\$ 28,351</u>

Comparison of the Three Months Ended June 30, 2011 and 2010

We reported consolidated net earnings, before net earnings attributable to noncontrolling interest, of approximately \$15.0 million and \$23.5 million for the three months ended June 30, 2011 and 2010, respectively. The decrease in earnings of approximately \$8.5 million was attributable primarily to the following:

- (i) an increase in general and administrative expenses of \$12.4 million due primarily to increased professional fees, certain non-recurring expenses associated with legal fees and settlement costs related to certain litigation along with arrangement and agency fees related to our revolving credit facility;
- (ii) lower net reduction in ultimate loss and loss adjustment expense liabilities of \$8.1 million;
- (iii) an increase in net foreign exchange losses of \$7.5 million;
- (iv) a decrease of \$2.2 million in income earned from our investment in our partly owned company;
- (v) an increase in salary and benefit costs of \$2.5 million due primarily to increased staff;
- (vi) a decrease in consulting fees of \$1.5 million; partially offset by
- (vii) a decrease in income tax expense of \$15.1 million due in large part to lower net earnings within our taxable subsidiaries; and
- (viii) an increase in net investment income and net realized and unrealized gains of \$9.4 million.

We recorded noncontrolling interest in earnings of \$5.6 million and \$11.1 million for the three months ended June 30, 2011 and 2010, respectively. Net earnings attributable to Enstar Group Limited decreased from \$12.4 million for the three months ended June 30, 2010 to \$9.4 million for the three months ended June 30, 2011.

We no longer report our results of operations by segments. We previously reported our results of operations under the consulting and reinsurance business segments, but we believe the consulting business no longer meets the criteria of an operating segment, as more fully described in Note 15 to our unaudited condensed consolidated financial statements.

Consulting Fees:

	<u>Three Months Ended June 30,</u>		
	<u>2011</u>	<u>2010</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Total	<u>\$2,045</u>	<u>\$3,500</u>	<u>\$ (1,455)</u>

We earned consulting fees of approximately \$2.0 million and \$3.5 million for the three months ended June 30, 2011 and 2010, respectively. The decrease in consulting fees related primarily to the decrease in management fees earned from third-party agreements. Consulting fee income as a percentage of net earnings has declined in recent periods, and we would expect it to remain at or around current levels in future periods, excluding the impact of any one time incentive based fees that we might receive. While we intend to continue to provide management and consultancy services, claims inspection services and reinsurance collection services to third-party clients in limited circumstances, our core focus continues to be acquiring and managing insurance and reinsurance companies and portfolios of business in run-off.

Net Investment Income and Net Realized and Unrealized Gains (Losses):

	<u>Three Months Ended June 30,</u>					
	<u>Net Investment Income</u>			<u>Net Realized and Unrealized Gains (Losses)</u>		
	<u>2011</u>	<u>2010</u>	<u>Variance</u>	<u>2011</u>	<u>2010</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>					
Total	<u>\$22,928</u>	<u>\$22,998</u>	<u>\$ (70)</u>	<u>\$5,264</u>	<u>\$(4,227)</u>	<u>\$9,491</u>

Net investment income for the three months ended June 30, 2011 decreased by \$0.1 million to \$22.9 million, as compared to \$23.0 million for the same period in 2010.

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The average annualized return on our cash and fixed maturities for the three months ended June 30, 2011 was 2.44%, as compared to the average annualized return of 1.46% for the three months ended June 30, 2010. The average credit rating of our fixed maturity investments at June 30, 2011 was AA-

Net realized and unrealized gains (losses) for the three months ended June 30, 2011 and 2010 were \$5.3 million and \$(4.2) million, respectively. The net realized and unrealized gains (losses) relate predominantly to mark-to-market changes in the market value of our equity investments and fixed maturity trading securities.

Fair Value Measurements

In accordance with the provisions of the Fair Value Measurements and Disclosures topic of the U.S. Financial Accounting Standards Board (FASB) Codification, we have categorized our investments that are recorded at fair value among levels as follows:

	June 30, 2011			Total Fair Value
	(in thousands of U.S. dollars)			
	Quoted Prices in Active Markets for Identified Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
U.S. government and agency	\$ —	\$ 211,702	\$ —	\$ 211,702
Non-U.S. government	—	384,147	—	384,147
Corporate	—	1,486,875	543	1,487,418
Municipal	—	1,599	—	1,599
Residential mortgage-backed	—	95,013	—	95,013
Commercial mortgage-backed	—	55,048	9	55,057
Asset backed	—	36,044	—	36,044
Equities	61,459	—	4,431	65,890
Other investments	—	106,779	148,840	255,619
Total investments	<u>\$ 61,459</u>	<u>\$ 2,377,207</u>	<u>\$ 153,823</u>	<u>\$ 2,592,489</u>

Net Reduction in Ultimate Loss and Loss Adjustment Expense Liabilities:

The following table shows the components of the movement in the net reduction in ultimate loss and loss adjustment expense liabilities for the three months ended June 30, 2011 and 2010:

	Three Months Ended June 30,	
	2011	2010
	(in thousands of U.S. dollars)	
Net losses paid	\$ (65,208)	\$ (47,863)
Net reduction in case and loss adjustment expense reserves	65,074	53,718
Net reduction in incurred but not reported reserves	<u>27,963</u>	<u>29,249</u>
Reduction in estimates of net ultimate losses	27,829	35,104
Reduction in provisions for bad debt	1,672	7,768
Reduction in provisions for unallocated loss adjustment expense liabilities	11,783	11,696
Amortization of fair value adjustments	<u>(6,969)</u>	<u>(12,202)</u>
Net reduction in ultimate loss and loss adjustment expense liabilities	<u>\$ 34,315</u>	<u>\$ 42,366</u>

Net reduction in case and loss adjustment expense reserves, or LAE reserves, comprises the movement during the quarter in specific case reserve liabilities as a result of claims settlements or changes advised to us by our policyholders and attorneys, less changes in case reserves recoverable advised by us to our reinsurers as a result of the settlement or movement of assumed claims. Net reduction in incurred but not reported, or IBNR, represents the change in our actuarial estimates of losses incurred but not reported.

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The net reduction in ultimate loss and loss adjustment expense liabilities for the three months ended June 30, 2011 of \$34.3 million was attributable to a reduction in estimates of net ultimate losses of \$27.8 million, a reduction in provisions for bad debt of \$1.7 million and a reduction in provisions for unallocated loss adjustment expense liabilities of \$11.8 million, relating to 2011 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$7.0 million.

The reduction in estimates of net ultimate losses of \$27.8 million, comprised of net incurred loss development of \$0.1 million and reductions in IBNR reserves of \$28.0 million, primarily related to the completion of two commutations of our largest ten exposures. The reductions in provisions for bad debt of \$1.7 million resulted from the collection of receivables against which bad debt provisions had been provided for in earlier periods.

The net reduction in ultimate loss and loss adjustment expense liabilities for the three months ended June 30, 2010 of \$42.4 million was attributable to a reduction in estimates of net ultimate losses of \$35.1 million, a reduction in provisions for bad debt of \$7.8 million and a reduction in provisions for unallocated loss adjustment expense liabilities of \$11.7 million, relating to 2010 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$12.2 million.

The reduction in estimates of net ultimate losses of \$35.1 million comprised net favorable incurred loss development of \$5.9 million along with reductions in IBNR reserves of \$29.2 million. The reductions in provisions for bad debt of \$7.8 million resulted from the collection of receivables against which bad debt provisions had been provided for in earlier periods.

The table below provides a reconciliation of the beginning and ending reserves for losses and loss adjustment expenses for the three months ended June 30, 2011 and 2010. Losses incurred and paid are reflected net of reinsurance recoverables.

	Three Months Ended June 30,	
	2011	2010
	(in thousands of U.S. dollars)	
Balance as at April 1	\$ 3,394,988	\$ 2,890,723
Less: total reinsurance reserves recoverable	583,478	435,680
	2,811,510	2,455,043
Effect of exchange rate movement	(1,020)	(26,454)
Net reduction in ultimate loss and loss adjustment expense liabilities	(34,315)	(42,366)
Net losses paid	(65,208)	(47,863)
Retroactive reinsurance contracts assumed	—	134,129
Net balance as at June 30	2,710,967	2,472,489
Plus: total reinsurance reserves recoverable	556,374	421,864
Balance as at June 30	<u>\$ 3,267,341</u>	<u>\$ 2,894,353</u>

Salaries and Benefits:

	Three Months Ended June 30,		
	2011	2010	Variance
	(in thousands of U.S. dollars)		
Total	<u>\$16,723</u>	<u>\$14,254</u>	<u>\$ (2,469)</u>

Salaries and benefits, which include expenses relating to our discretionary bonus and employee share plans, were \$16.7 million and \$14.3 million for the three months ended June 30, 2011 and 2010, respectively. The increase in salaries and benefits was attributable to:

- (i) increased staff costs due to an increase in average staff numbers from 309 for the three months ended June 30, 2010 to 348 for the three months ended June 30, 2011; and

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- (ii) increased U.S. dollar costs of our U.K.-based staff following an increase in the average British pound exchange rate from approximately 1.5256 for the three months ended June 30, 2010 to 1.6173 for the three months ended June 30, 2011. Of our total headcount as at June 30, 2010 and 2011, approximately 68% and 64%, respectively, had their salaries paid in British pounds; partially offset by
- (iii) a decrease in the discretionary bonus expense, for the three months ended June 30, 2011, as a result of lower earnings. Expenses relating to our discretionary bonus plan will be variable and are dependent on our overall profitability.

General and Administrative Expenses:

	<u>Three Months Ended June 30,</u>		
	<u>2011</u>	<u>2010</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Total	<u>\$28,211</u>	<u>\$15,801</u>	<u>\$ (12,410)</u>

General and administrative expenses increased by \$12.4 million during the three months ended June 30, 2011, as compared to the three months ended June 30, 2010. The increase was due principally to:

- (i) increased bank costs of \$3.5 million primarily associated with the arrangement and agency fees paid in relation to the establishment of our revolving credit facility;
- (ii) increased expenses of approximately \$5.2 million due primarily to legal fees and settlement costs associated with certain litigation; and
- (iii) increased actuarial consulting fees of approximately \$2.0 million due to costs associated with ongoing and completed due diligence projects.

Interest Expense:

	<u>Three Months Ended June 30,</u>		
	<u>2011</u>	<u>2010</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Total	<u>\$1,697</u>	<u>\$2,805</u>	<u>\$ 1,108</u>

Interest expense of \$1.7 million and \$2.8 million was recorded for the three months ended June 30, 2011 and 2010, respectively. The decrease in interest expense was attributable predominantly to the decrease in the total loans outstanding during the three months ended June 30, 2011 as compared to the three months ended June 30, 2010. As at June 30, 2010, we had approximately \$270.9 million of outstanding loans as compared to approximately \$205.6 million as at June 30, 2011.

Net Foreign Exchange Losses (Gains):

	<u>Three Months Ended June 30,</u>		
	<u>2011</u>	<u>2010</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Total	<u>\$1,932</u>	<u>\$(5,615)</u>	<u>\$(7,547)</u>

We recorded net foreign exchange losses of \$1.9 million and gains of \$5.6 million for the three months ended June 30, 2011 and 2010, respectively. The net foreign exchange losses for the three months ended June 30, 2011 arose primarily as a result of a decrease in the fair value of our Australian dollar forward exchange contract, which expired on June 30, 2011, resulting in \$1.5 million being recorded as part of net foreign exchange losses.

The net foreign exchange gains for the three months ended June 30, 2010 arose primarily 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 was appreciating against the Australian dollar, partially offset by foreign exchange losses arising as a result of our holding surplus British pounds at a time when the British pound was depreciating against the U.S. dollar.

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In addition to the net foreign exchange losses recorded in our consolidated statement of earnings for the three months ended June 30, 2011, we recorded in our condensed consolidated statement of comprehensive income currency translation adjustment gains, net of noncontrolling interest, of \$7.6 million as compared to losses, net of noncontrolling interest, of \$16.0 million for the same period in 2010. For the three months ended June 30, 2011 and 2010, the currency translation adjustments related primarily to our Australian based subsidiaries. As the functional currency of these subsidiaries is Australian dollars, we are required to record any U.S. dollar gains or losses on the translation of their net Australian dollar assets through accumulated other comprehensive income.

Income Tax Expense:

	<u>Three Months Ended June 30,</u>		
	<u>2011</u>	<u>2010</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Total	<u>\$975</u>	<u>\$16,115</u>	<u>\$15,140</u>

We recorded income tax expense of \$1.0 million and \$16.1 million for the three months ended June 30, 2011 and 2010, respectively. The decrease in taxes for the three months ended June 30, 2011 was due predominantly to lower overall net earnings in our tax paying subsidiaries as compared to those earned in the same period in 2010.

Share of Net Earnings of Partly Owned Company:

	<u>Three Months Ended June 30,</u>		
	<u>2011</u>	<u>2010</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Total	<u>\$ —</u>	<u>\$2,203</u>	<u>\$ (2,203)</u>

For the three months ended June 30, 2011, we recorded \$nil as our share of net earnings of partly owned company as compared to \$2.2 million for the three months ended June 30, 2010. The decrease was attributable to the fact that we no longer have an investment in a partly owned company; during 2010, we disposed of our 44.4% indirect interest in Stonewall Insurance Company and we acquired a 100% interest in Seaton Insurance Company.

Noncontrolling Interest:

	<u>Three Months Ended June 30,</u>		
	<u>2011</u>	<u>2010</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Total	<u>\$5,639</u>	<u>\$11,050</u>	<u>\$ (5,411)</u>

We recorded a noncontrolling interest in earnings of \$5.6 million and \$11.1 million for the three months ended June 30, 2011 and 2010, respectively. The decrease for the three months ended June 30, 2011 in noncontrolling interest was due primarily to a decrease in earnings for those companies where there exists a noncontrolling interest.

Comparison of the Six Months Ended June 30, 2011 and 2010

We reported consolidated net earnings, before net earnings attributable to noncontrolling interest, of approximately \$20.1 million and \$41.1 million for the six months ended June 30, 2011 and 2010, respectively. The decrease in earnings of approximately \$21.0 million was primarily attributable to the following:

- (i) a decrease in the net reduction in ultimate loss and loss adjustment expense liabilities of \$13.6 million;
- (ii) an increase in general and administrative expenses of \$19.7 million due primarily to an increase in professional fees, legal fees and settlement costs related to certain litigation and arrangement and agency fees associated with our revolving credit facility;
- (iii) an increase in net foreign exchange losses of \$7.3 million;
- (iv) a decrease of \$9.4 million in income earned from our investment in our partly owned company;

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- (v) a decrease in consulting fees of \$11.5 million mainly related to lower fees earned from incentive based engagements; partially offset by
- (vi) a decrease in income tax expense of \$20.4 million due in large part to lower net earnings within our taxable subsidiaries;
- (vii) the gain on bargain purchase of \$13.1 million in 2011, which arose in relation to our acquisition of Laguna;
- (viii) a decrease in salary and benefit costs of \$2.3 million due primarily to the release back to earnings of the unallocated portion of the 2010 year end bonus accrual provision; and
- (ix) an increase of \$3.0 million in net investment income and net realized and unrealized gains (losses).

We recorded noncontrolling interest in earnings of \$7.2 million and \$12.7 million for the six months ended June 30, 2011 and 2010, respectively. Net earnings attributable to Enstar Group Limited decreased from \$28.4 million for the six months ended June 30, 2010 to \$12.9 million for the six months ended June 30, 2011.

Consulting Fees:

	Six Months Ended June 30,		
	2011	2010	Variance
	(in thousands of U.S. dollars)		
Total	<u>\$6,081</u>	<u>\$17,628</u>	<u>\$(11,547)</u>

We earned consulting fees of approximately \$6.1 million and \$17.6 million for the six months ended June 30, 2011 and 2010, respectively. The decrease in consulting fees primarily related to the decrease in incentive fees earned from third-party agreements. Consulting fee income as a percentage of net earnings has declined in recent periods, and we would expect it to remain at or around current levels in future periods, excluding the impact of any one time incentive based fees that we might receive. While we intend to continue to provide management and consultancy services, claims inspection services and reinsurance collection services to third-party clients in limited circumstances, our core focus continues to be acquiring and managing insurance and reinsurance companies and portfolios of business in run-off.

Net Investment Income and Net Realized and Unrealized Gains (Losses):

	Six Months Ended June 30,					
	Net Investment Income			Net Realized and Unrealized Gains (Losses)		
	2011	2010	Variance	2011	2010	Variance
	(in thousands of U.S. dollars)					
Total	<u>\$41,470</u>	<u>\$49,119</u>	<u>\$(7,649)</u>	<u>\$8,632</u>	<u>\$(2,025)</u>	<u>\$10,657</u>

Net investment income for the six months ended June 30, 2011 decreased by \$7.6 million to \$41.5 million, as compared to \$49.1 million for the same period in 2010. The decrease was attributable largely to lower unrealized gains in our private equity portfolio, classified as other investments, from \$9.3 million for the six months ended June 30, 2010 to \$3.6 million for the six months ended June 30, 2011.

The average annualized return on our cash and fixed maturities for the six months ended June 30, 2011 was 2.15%, as compared to the average annualized return of 1.84% for the six months ended June 30, 2010. The average credit rating of our fixed maturity investments at June 30, 2011 was AA-.

Net realized and unrealized gains (losses) for the six months ended June 30, 2011 and 2010 were \$8.6 million and \$(2.0) million, respectively. The net realized and unrealized gains (losses) relate predominantly to mark-to-market changes in the market value of our equity investments and fixed maturity trading securities.

[Table of Contents](#)*Gain on Bargain Purchase:*

	Six Months Ended June 30,		
	2011	2010	Variance
	(in thousands of U.S. dollars)		
Total	<u>\$13,105</u>	<u>\$ —</u>	<u>\$13,105</u>

Gain on bargain purchase of \$13.1 million and \$nil, was recorded for the six months ended June 30, 2011 and 2010, respectively. The gain on bargain purchase was earned in connection with our acquisition of Laguna and represents the excess of the cumulative fair value of net assets acquired of \$34.3 million over the cost of \$21.2 million. This excess has, in accordance with the provisions of the Business Combinations topic of the FASB Codification, been recognized as income for the six months ended June 30, 2011. The gain on bargain purchase arose mainly as a result of our reassessment, upon acquisition, of the total required estimated costs to manage the business to expiry. Our assessment of costs was lower than the acquired costs recorded by the vendor in the financial statements of Laguna.

Net Reduction in Ultimate Loss and Loss Adjustment Expense Liabilities:

The following table shows the components of the movement in the net reduction in ultimate loss and loss adjustment expense liabilities for the six months ended June 30, 2011 and 2010:

	Six Months Ended	
	June 30,	
	2011	2010
	(in thousands of U.S. dollars)	
Net losses paid	\$ (153,339)	\$ (131,088)
Net reduction in case and LAE reserves	148,504	132,572
Net reduction in IBNR	<u>35,276</u>	<u>35,562</u>
Reduction in estimates of net ultimate losses	30,441	37,046
Reduction in provisions for bad debt	1,672	13,107
Reduction in provisions for unallocated loss adjustment expense liabilities	23,320	20,661
Amortization of fair value adjustments	<u>(17,046)</u>	<u>(18,852)</u>
Net reduction in ultimate loss and loss adjustment expense liabilities	<u>\$ 38,387</u>	<u>\$ 51,962</u>

The net reduction in ultimate loss and loss adjustment expense liabilities for the six months ended June 30, 2011 of \$38.4 million was attributable to a reduction in estimates of net ultimate losses of \$30.4 million, a reduction in provisions for bad debt of \$1.7 million and a reduction in provisions for unallocated loss adjustment expense liabilities of \$23.3 million, relating to 2011 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$17.0 million.

The reduction in estimates of net ultimate losses of \$30.4 million, comprised of net incurred loss development of \$4.8 million and reductions in IBNR reserves of \$35.3 million, primarily related to the completion of two commutations of our largest ten exposures. The reductions in provisions for bad debt of \$1.7 million resulted from the collection of receivables against which bad debt provisions had been provided for in earlier periods.

The net reduction in ultimate loss and loss adjustment expense liabilities for the six months ended June 30, 2010 of \$52.0 million was attributable to a reduction in estimates of net ultimate losses of \$37.0 million, a reduction in provisions for bad debt of \$13.1 million and a reduction in provisions for unallocated loss adjustment expense liabilities of \$20.7 million, relating to 2010 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$18.9 million.

The reduction in estimates of net ultimate losses of \$37.0 million comprised net favorable incurred loss development of \$1.5 million along with reductions in IBNR reserves of \$35.6 million. The reductions in provisions for bad debt of \$13.1 million resulted from the collection of receivables against which bad debt provisions had been provided for in earlier periods.

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The table below provides a reconciliation of the beginning and ending reserves for losses and loss adjustment expenses for the six months ended June 30, 2011 and 2010. Losses incurred and paid are reflected net of reinsurance recoverables.

	Six Months Ended June 30,	
	2011	2010
	(in thousands of U.S. dollars)	
Balance as at January 1	\$ 3,291,275	\$ 2,479,136
Less: total reinsurance reserves recoverable	525,440	347,728
	2,765,835	2,131,408
Effect of exchange rate movement	33,352	(62,429)
Net reduction in ultimate loss and loss adjustment expense liabilities	(38,387)	(51,962)
Net losses paid	(153,339)	(131,088)
Acquired on purchase of subsidiaries	10,439	222,042
Retroactive reinsurance contracts assumed	93,067	364,518
Net balance as at June 30	2,710,967	2,472,489
Plus: total reinsurance reserves recoverable	556,374	421,864
Balance as at June 30	<u>\$ 3,267,341</u>	<u>\$ 2,894,353</u>

Salaries and Benefits:

	Six Months Ended June 30,		
	2011	2010	Variance
	(in thousands of U.S. dollars)		
Total	\$27,105	\$29,444	\$ 2,339

Salaries and benefits, which include expenses relating to our discretionary bonus and employee share plans, were \$27.1 million and \$29.4 million for the six months ended June 30, 2011 and 2010, respectively.

The decrease in salaries and benefits was attributable to:

- (i) the reduction in the discretionary bonus accrual of \$7.2 million due to the release back to earnings in 2011 of approximately \$4.0 million relating to the unallocated portion of the 2010 year end bonus accrual provision and the reduction in net earnings for the six months ended June 30, 2011 as compared to 2010. Expenses relating to our discretionary bonus plan will be variable and are dependent on our overall profitability; partially offset by
- (ii) increased staff costs due to an increase in the average staff numbers from 302 for the six months ended June 30, 2010 to 344 for the six months ended June 30, 2011; and
- (iii) increased U.S. dollar costs of our U.K.-based staff following an increase in the average British pound exchange rate from approximately 1.5269 for the six months ended June 30, 2010 to 1.6171 for the six months ended June 30, 2011. Of our total headcount as at June 30, 2010 and 2011, approximately 68% and 64%, respectively, had their salaries paid in British pounds.

General and Administrative Expenses:

	Six Months Ended June 30,		
	2011	2010	Variance
	(in thousands of U.S. dollars)		
Total	<u>\$45,961</u>	<u>\$26,288</u>	<u>\$ (19,673)</u>

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General and administrative expenses increased by \$19.7 million during the six months ended June 30, 2011, as compared to the six months ended June 30, 2010. The increase was due principally to:

- (i) increased bank costs of \$4.2 million primarily associated with the costs of establishing and maintaining our letters of credit, along with the arrangement and agency fees paid in relation to the establishment of our revolving credit facility;
- (ii) increased legal expenses of approximately \$7.9 million due primarily to legal fees and settlement costs associated with certain litigation along with legal fees associated with ongoing due diligence projects;
- (iii) increased rent and rent-related expense of \$1.0 million due largely to rent recoveries reflected in 2010;
- (iv) an increase in third-party management fees paid of \$2.3 million related to transition fees paid in respect of recently completed acquisitions; and
- (v) an increase in actuarial consulting fees of approximately \$2.0 million due to costs associated with ongoing and completed due diligence projects.

Interest Expense:

	Six Months Ended June 30,		
	2011	2010	Variance
	(in thousands of U.S. dollars)		
Total	<u>\$3,663</u>	<u>\$5,199</u>	<u>\$ 1,536</u>

Interest expense of \$3.7 million and \$5.2 million was recorded for the six months ended June 30, 2011 and 2010, respectively. The decrease in interest expense was primarily attributable to the reduction in loans outstanding along with an overall lower interest rate on those loan amounts that were outstanding during the six months ended June 30, 2011 as compared to the six months ended June 30, 2010. As at June 30, 2010, we had approximately \$270.9 million of outstanding loans as compared to approximately \$205.6 million as at June 30, 2011.

Net Foreign Exchange Losses:

	Six Months Ended June 30,		
	2011	2010	Variance
	(in thousands of U.S. dollars)		
Total	<u>\$9,266</u>	<u>\$1,973</u>	<u>\$ (7,293)</u>

We recorded net foreign exchange losses of \$9.3 million and \$2.0 million for the six months ended June 30, 2011 and 2010, respectively. For the six months ended June 30, 2011, the net foreign exchange losses arose primarily as a result of: (i) holding surplus British pound liabilities at a time when the British pound was appreciating against the U.S. dollar; (ii) the currency mismatch that is created by the holding of foreign currency available-for-sale security assets whereby any net foreign currency translation gains or losses on those assets are reflected in the balance sheet as part of accumulated other comprehensive income, but the net foreign currency gains or losses on the corresponding liabilities impact the statement of earnings; (iii) net foreign exchange losses arising as a result of holding surplus U.S. dollar assets in one of our subsidiaries whose functional currency is Australian dollars at a time when the U.S. dollar was depreciating against the Australian dollar; and (iv) a decrease in the fair value of our Australian dollar foreign currency forward exchange contract, which was recognized as part of the net foreign exchange losses.

The net foreign exchange losses for the six months ended June 30, 2010 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 at a time when the British pound was depreciating against the U.S. dollar, partially offset by foreign exchange gains 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 was appreciating against the Australian dollar.

In addition to the net foreign exchange losses recorded in our consolidated statement of earnings for the six months ended June 30, 2011, we recorded in our condensed consolidated statement of comprehensive income

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currency translation adjustment gains, net of noncontrolling interest, of \$9.2 million as compared to losses, net of noncontrolling interest, of \$12.1 million for the same period in 2010. For the six months ended June 30, 2011 and 2010, the currency translation adjustments related primarily to our Australian based subsidiaries. As the functional currency of these subsidiaries is Australian dollars, we are required to record any U.S. dollar gains or losses on the translation of their net Australian dollar assets through accumulated other comprehensive income.

Income Tax Expense:

	<u>Six Months Ended June 30,</u>		
	<u>2011</u>	<u>2010</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Total	<u>\$1,592</u>	<u>\$22,037</u>	<u>\$20,445</u>

We recorded income tax expense of \$1.6 million and \$22.0 million for the six months ended June 30, 2011 and 2010, respectively. The decrease in taxes for the six months ended June 30, 2011 was due predominantly to lower overall net earnings in our tax paying subsidiaries as compared to those earned in the same period in 2010.

Share of Net Earnings of Partly Owned Company:

	<u>Six Months Ended June 30,</u>		
	<u>2011</u>	<u>2010</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Total	<u>\$ —</u>	<u>\$9,353</u>	<u>\$ (9,353)</u>

For the six months ended June 30, 2011, we recorded \$nil as our share of net earnings of partly owned company as compared to \$9.4 million for the six months ended June 30, 2010. The decrease was attributable to the fact that we no longer have an investment in a partly owned company; during 2010, we disposed of our 44.4% indirect interest in Stonewall Insurance Company and we acquired a 100% interest in Seaton Insurance Company.

Noncontrolling Interest:

	<u>Six Months Ended June 30,</u>		
	<u>2011</u>	<u>2010</u>	<u>Variance</u>
	<u>(in thousands of U.S. dollars)</u>		
Total	<u>\$7,210</u>	<u>\$12,745</u>	<u>\$ (5,535)</u>

We recorded a noncontrolling interest in earnings of \$7.2 million and \$12.7 million for the six months ended June 30, 2011 and 2010, respectively. The decrease for the six months ended June 30, 2011 in noncontrolling interest was due primarily to a decrease in earnings for those companies where there exists a noncontrolling interest.

Liquidity and Capital Resources

Long-term Debt

On June 13, 2011, we, as borrower, and certain of our subsidiaries, as guarantors, entered into a Revolving Credit Facility Agreement with NAB and Barclays Corporate, the corporate banking division of Barclays Bank PLC, as bookrunners and mandated lead arrangers, certain financial institutions, as lenders, and NAB as agent, or the EGL Credit Agreement. The EGL Credit Agreement provides for a three-year revolving credit facility pursuant to which we are permitted to borrow up to an aggregate of \$250.0 million, or the EGL Revolving Credit Facility, which will be available to prepay certain existing credit facilities of ours and certain of our subsidiaries, to fund permitted acquisitions and for general corporate purposes. Our ability to draw on the EGL Revolving Credit Facility is subject to customary conditions.

On June 30, 2011, we borrowed \$167.7 million under the EGL Revolving Credit Facility, which was used to prepay \$167.7 million representing the total amounts owing by us under the Knapton, Unionamerica and Enstar Group facilities. The prepayment of these existing credit facilities was a condition to our initial borrowing under the

EGL Revolving Credit Facility. As of June 30, 2010, the outstanding EGL Revolving Credit Facility loan balance was \$167.7 million.

The EGL Revolving Credit Facility is secured by a first priority lien on the stock of certain of our subsidiaries and certain bank accounts held with Barclays Bank PLC in our name and into which amounts received in respect of any capital release from certain of our subsidiaries are required to be paid. Interest is payable at the end of each interest period chosen by us or, at the latest, each six months. The interest rate is LIBOR plus 2.75%, plus an incremental amount tied to certain regulatory costs that may be incurred by the lenders, if any. The unused portion of the EGL Revolving Credit Facility will be subject to a commitment fee of 1.10%. The EGL Revolving Credit Facility is subject to various financial and business covenants applicable to us, the guarantors and certain other material subsidiaries, including limitations on mergers and consolidations, acquisitions, indebtedness and guarantees, restrictions as to dispositions of stock and dividends, and limitations on liens on stock. As of June 30, 2011, all of the covenants relating to the EGL Revolving Credit Facility were met.

During the existence of any payment default, the interest rate is increased by 1.0%. During the existence of any event of default as specified in the EGL Credit Agreement, the agent may cancel the commitments of the lenders, declare all or a portion of outstanding amounts immediately due and payable, declare all or a portion of outstanding amounts payable upon demand or proceed against the security. The EGL Credit Agreement terminates and all amounts borrowed must be repaid on June 13, 2014, the third anniversary of the date of the EGL Credit Agreement.

Clarendon

On March 4, 2011, we, through Clarendon Holdings, Inc., entered into a \$106.5 million term facility agreement, or the Clarendon Facility, with NAB. The Clarendon Facility provides for a four-year term loan facility, available to be drawn to fund up to 50% of the purchase price of Clarendon. As of June 30, 2011, Clarendon Holdings, Inc. had not borrowed any of the amount available under the Clarendon Facility. On July 12, 2011, we fully drew down the Clarendon Facility in connection with the acquisition of Clarendon.

The Clarendon Facility is secured by a security interest in all of the assets of Clarendon Holdings, Inc., as well as a first priority lien on the stock of both Clarendon Holdings, Inc. and Clarendon. Interest is payable at the end of each interest period chosen by Clarendon Holdings, Inc. or, at the latest, each six months. The interest rate is LIBOR plus 2.75%. The Clarendon Facility is subject to various financial and business covenants, including limitations on mergers and consolidations, restrictions as to disposition of stock and limitations on liens on the stock.

During the existence of any payment default, the interest rate is increased by 1.0%. During the existence of any event of default (as specified in the term facility agreement), the lenders may declare all or a portion of outstanding amounts immediately due and payable, declare all or a portion of borrowed amounts payable upon demand, or proceed against the security. The Clarendon Facility terminates and all amounts borrowed must be repaid on July 12, 2015.

Private Placement

On April 20, 2011, we entered into an Investment Agreement, or the Investment Agreement, with GSCP VI AIV Navi, Ltd., GSCP VI Offshore Navi, Ltd., GSCP VI Parallel AIV Navi, Ltd., GSCP VI Employee Navi, Ltd., and GSCP VI GmbH Navi, L.P., or, collectively, the Purchasers, each of which is an affiliate of Goldman, Sachs & Co. Under the Investment Agreement, we agreed to issue and sell, and the Purchasers agreed to purchase, at several different closings described below, securities representing 19.9% of our outstanding share capital pro forma for all the issuances, with the right to acquire an additional 2.0% on a fully diluted basis pro forma for all the issuances through the exercise of warrants as described below, although the Purchasers' voting interest in us purchased pursuant to the Investment Agreement will be less than 4.9%. The securities that the Purchasers have acquired or, subject to certain conditions, will be acquiring at these closings can be further summarized as follows:

At the first closing, which occurred on April 20, 2011, we issued to the Purchasers 531,345 of our voting ordinary shares, par value \$1.00 per share, or the Voting Common Shares, and 749,869 of our Series A convertible non-voting preference shares, par value \$1.00 per share, or the Non-Voting Preferred Shares, at a purchase price of \$86.00 per share, and warrants to acquire 340,820 Non-Voting Preferred Shares for an exercise price of \$115.00 per

share, for aggregate proceeds of approximately \$110.2 million. Upon the receipt of shareholder approval to create three new classes of non-voting ordinary shares at our Annual General Meeting on June 28, 2011, or the Shareholder Approval, the Non-Voting Preferred Shares automatically converted on a share-for-share basis into our non-voting ordinary shares, par value \$1.00, or the Non-Voting Common Shares, and the warrants became exercisable for Non-Voting Common Shares rather than Non-Voting Preferred Shares.

At the second closing, which is expected to occur after receipt of applicable regulatory approvals and satisfaction of other closing conditions (but not before December 23, 2011), we will issue to the Purchasers 134,184 Voting Common Shares and 827,504 Non-Voting Common Shares, at a purchase price of \$86.00 per share, for aggregate proceeds of approximately \$82.7 million.

At the third closing, which was approved by our shareholders at the Annual General Meeting of Shareholders on June 28, 2011 and which is expected to occur after receipt of applicable regulatory approvals and satisfaction of other closing conditions, we will issue to the Purchasers 1,148,264 Non-Voting Common Shares, at a purchase price of \$86.00 per share, for aggregate proceeds of approximately \$98.7 million. If the third closing occurs, it is expected to occur simultaneously with the second closing.

The Purchasers may elect, at their option, to receive Series B Non-Voting Common Shares in lieu of Voting Common Shares that might otherwise be issuable to them at any of the closings discussed above. Any such Series B Non-Voting Common Shares would be convertible on a share-for-share basis, subject to certain adjustments, into Voting Common Shares at the option of the Purchasers. All other Non-Voting Common Shares received by the Purchasers under the Investment Agreement, including those received upon conversion of the Non-Voting Preferred Shares received at the first closing, are Series C Non-Voting Common Shares. The Purchasers may also elect to receive Series B Non-Voting Common Shares, Series C Non-Voting Common Shares or Series D Non-Voting Common Shares upon conversion of Voting Common Shares held by them. In addition, the Purchasers may elect to receive Series D Non-Voting Common Shares upon conversion of Series B Non-Voting Common Shares or Series C Non-Voting Common Shares held by them. There is no economic difference in the sub-series of Non-Voting Common Shares, but there are slight differences in the limited voting rights of each sub-series that are designed to address certain regulatory matters affecting the Purchasers.

The total investment expected to be made by the Purchasers for the purchase of the Voting Common Shares, the Non-Voting Common Shares and the warrants is approximately \$291.6 million.

We believe that the proceeds received and to be received in connection with the closings under the Investment Agreement will provide us with capital and financial flexibility to pursue desirable acquisitions of insurance and reinsurance companies in run-off and portfolios of insurance and reinsurance business in run-off.

Other than the above, there have been no material changes to our liquidity position or capital resource requirements since December 31, 2010. 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, 2010.

Cash Flows

With respect to the six month periods ended June 30, 2011 and 2010, net cash used in our operating activities was \$472.7 million and \$695.6 million, respectively. The decrease in cash used of \$222.9 million was attributable primarily to:

(i) an increase in the sales and maturities of trading securities of \$566.3 million partially offset by an increase in purchases of trading securities of \$224.5 million. The increase in sales, maturities and purchases of trading securities reflects the decision of our investment committee to increase the allocation of our investment portfolio to trading securities; partially offset by

(ii) an increase in the net changes in assets and liabilities of \$73.4 million.

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Net cash provided by investing activities for the six month periods ended June 30, 2011 and 2010 was \$386.1 million and \$115.7 million, respectively. The increase in cash provided by investing activities of \$270.4 million was attributable primarily to:

- (i) an increase of \$207.1 million in the sales and maturities of available-for-sale securities due to the decision of our investment committee to increase the allocation of our investment portfolio to trading securities;
- (ii) a decrease in the net amount of purchases and maturities of held-to-maturity securities of \$146.9 million due to the decision of our investment committee, discussed above, to increase the allocation of our investment portfolio to trading securities;
- (iii) a decrease of \$42.7 million in funding of other investments; and
- (iv) an increase of \$56.4 million in transfers out of restricted cash and cash equivalents arising as a result of the purchase of restricted investments classified as trading securities; partially offset by
- (v) a reduction in both the number and size of acquisitions for the six months ended June 30, 2011 as compared to the six months ended June 30, 2010 resulting in a net reduction in cash flows related to acquisitions of \$165.1 million.

Net cash provided by financing activities for the six month periods ended June 30, 2011 and 2010 was \$50.1 million and \$29.6 million, respectively. The increase of \$20.5 million in cash provided by financing activities was attributable primarily to the following:

- (i) net proceeds of \$105.7 million received from the completion of the private placement; partially offset by
- (ii) a net increase in the repayment of outstanding bank loans of \$60.8 million; and
- (iii) a decrease in net capital contributions (including dividends) of \$24.4 million received from noncontrolling interest.

Commitments and Contingencies

In February 2011, Lloyd's Syndicate 2008 entered into RITC agreements with two Lloyd's syndicates with total gross insurance reserves of approximately \$129.6 million. Our capital commitment to Lloyd's Syndicate 2008 with respect to these two RITC agreements amounted to £21.3 million (approximately \$34.1 million).

There have been no other material changes in our commitments or contingencies since December 31, 2010. Refer to Item 7 included in our Annual Report on Form 10-K for the year ended December 31, 2010.

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, 2010.

Off-Balance Sheet and Special Purpose Entity Arrangements

At June 30, 2011, we did not have 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 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;
- risks that we may require additional capital in the future which may not be available or may be available only on unfavorable terms;
- changes and uncertainty in economic conditions, including interest rates, inflation, currency exchange rates, equity markets and credit conditions, which could affect our investment portfolio, our ability to finance future acquisitions and our profitability;
- operational risks as a result of our past and future acquisitions, such as cash flow shortages, personnel recruitment challenges, additional integration costs and excessive management time and effort;
- 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;
- 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 year ended December 31, 2010, as well as in the other materials filed and to be filed with the U.S. Securities and Exchange Commission. 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 DISCLOSURE ABOUT MARKET RISK*

In October 2010, we entered into a foreign currency forward exchange contract as part of our overall foreign currency risk management strategy. On the value date, June 30, 2011, we sold Australian Dollars (AU\$) 45.0 million for \$42.5 million. The contract exchange rate was AU\$1 for \$0.9439. On June 15, 2011, we effectively closed out the contract by entering into a forward exchange contract, with a value date of June 30, 2011, where we bought AU\$45.0 million for \$48.0 million. As at June 30, 2011, we did not have any foreign currency forward exchange contracts outstanding. Other than the foregoing, there have been no material changes in our market risk exposures since December 31, 2010. 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, 2010.

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 June 30, 2011. 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 U.S. Securities and Exchange Commission 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 June 30, 2011. Based upon that evaluation there were no changes in our internal control over financial reporting that occurred during the three months ended June 30, 2011 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.

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 year ended December 31, 2010. The risk factors identified therein have not materially changed.

Item 6. EXHIBITS

Exhibit No.	Description
3.1(a)*	Third Amended and Restated Bye-Laws of Enstar Group Limited, marked as amended.
3.1(b)*	Third Amended and Restated Bye-Laws of Enstar Group Limited.
3.2	Certificate of Designations for the Series A Convertible Participating Non-Voting Perpetual Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, as filed with the Securities and Exchange Commission on April 21, 2011).
10.1	Investment Agreement, dated as of April 20, 2011, by and among Enstar Group Limited, GSCP VI AIV Navi, Ltd., GSCP VI Offshore Navi, Ltd., GSCP VI Parallel AIV Navi, Ltd., GSCP VI Employee Navi, Ltd., and GSCP VI GmbH Navi, L.P. (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K, as filed with the Securities and Exchange Commission on April 21, 2011).
10.2	Form of Warrant (incorporated by reference to Exhibit 99.2 to the Company's Current Report on Form 8-K, as filed with the Securities and Exchange Commission on April 21, 2011).
10.3	Registration Rights Agreement, dated as of April 20, 2011, by and among Enstar Group Limited, GSCP VI AIV Navi, Ltd., GSCP VI Offshore Navi, Ltd., GSCP VI Parallel AIV Navi, Ltd., GSCP VI Employee Navi, Ltd., and GSCP VI GmbH Navi, L.P. (incorporated by reference to Exhibit 99.3 to the Company's Current Report on Form 8-K, as filed with the Securities and Exchange Commission on April 21, 2011).
10.4	Form of Voting Agreement (incorporated by reference to Exhibit 99.4 to the Company's Current Report on Form 8-K, as filed with the Securities and Exchange Commission on April 21, 2011).
10.5+	Letter Agreement, effective January 1, 2011, by and between Enstar Group Limited and Dominic F. Silvester, amending Amended and Restated Employment Agreement by and between Enstar Group Limited and Dominic F. Silvester (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q, as filed with the Securities and Exchange Commission on May 6, 2011).
10.6+	Letter Agreement, effective January 1, 2011, by and between Enstar Group Limited and Paul J. O'Shea, amending Employment Agreement by and between Enstar Group Limited and Paul J. O'Shea (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q, as filed with the Securities and Exchange Commission on May 6, 2011).
10.7+	Letter Agreement, effective January 1, 2011, by and between Enstar Group Limited and Nicholas A. Packer, amending Employment Agreement by and between Enstar Group Limited and Nicholas A. Packer (incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q, as filed with the Securities and Exchange Commission on May 6, 2011).
10.8+	Letter Agreement, effective January 1, 2011, by and between Enstar Group Limited and Richard J. Harris, amending Employment Agreement by and between Enstar Group Limited and Richard J. Harris (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q, as filed with the Securities and Exchange Commission on May 6, 2011).
10.9*	Revolving Credit Facility Agreement dated June 13, 2011 among Enstar Group Limited and certain of its Subsidiaries, National Australia Bank Limited and Barclays Corporate as Arrangers, and National Australia Bank Limited as Agent and Security Agent.
15.1*	Deloitte & Touche Ltd. 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.
101**	Interactive Data Files.

* Filed herewith

** Furnished herewith

+ Denotes management contract or compensatory arrangement

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 August 5, 2011.

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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~~SECOND~~THIRD AMENDED AND RESTATED
BYE-LAWS OF
ENSTAR GROUP LIMITED
(formerly known as Castlewood Holdings Limited)

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INTERPRETATION**1. Definitions**

1.1 In these Bye-laws, the following words and expressions shall, where not inconsistent with the context, have the following meanings, respectively:

Act	the Companies Act 1981 as amended from time to time;
Auditor	includes an individual or partnership;
<u>BHC Affiliates</u>	<u>with respect to any Member, all “affiliates” as defined in the U.S. Bank Holding Company Act of 1956, as amended, or Regulation Y of the Board of Governors of the U.S. Federal Reserve System;</u>
Board	the board of directors appointed or elected pursuant to these Bye-laws and acting by resolution in accordance with the Act and these Bye-laws or the directors present at a meeting of directors at which there is a quorum;
Company	the company for which these Bye-laws are approved and confirmed;
Director	a director of the Company;
Group	the Company and every company and other entity which is for the time being controlled by or under common control with the Company (for these purposes, “control” means the power to direct management or policies of the person in question, whether by means of an ownership interest or otherwise);
<u>GSCP</u>	<u>GSCP VI AIV Navi, Ltd., GSCP VI Offshore Navi, Ltd., GSCP VI Parallel AIV Navi, Ltd. and GSCP VI Employee</u>

Navi, Ltd., each a Cayman Islands exempted company, and GSCP VI GmbH Navi, L.P., a Cayman Islands limited partnership;

Investment Agreement

the Investment Agreement dated as of April 20, 2011 between GSCP and the Company;

Member

the person registered in the Register of Members as the holder of shares in the Company and, when two or more persons are so registered as joint holders of shares, means the person whose name stands first in the Register of Members as one of such joint holders or all of such persons, as the context so requires;

notice

written notice as further provided in these Bye-laws unless otherwise specifically stated;

Officer

any person appointed by the Board to hold an office in the Company;

Register of Directors and Officers

the register of directors and officers referred to in these Bye-laws;

Register of Members

the register of members referred to in these Bye-laws;

Reorganization Event

(i) any consolidation, merger, tender or exchange offer, amalgamation or other similar business combination of the Company with or into another person, in each case pursuant to which the Common Shares or Non-Voting Convertible Common Shares will be converted into cash, securities or other property of the Company or another person;

(ii) any sale, transfer, lease or conveyance to another person of all or substantially all of the property and assets of the Company, in each case pursuant to which the

Common Shares or Non-Voting Convertible Common Shares will be converted into cash, securities or other property of the Company or another person;

(iii) any reclassification of the Common Shares or Non-Voting Convertible Common Shares into securities including securities other than the Common Shares or Non-Voting Convertible Common Shares, as applicable;
or

(iv) any statutory exchange of the outstanding Common Shares or Non-Voting Convertible Common Shares for securities of another person (other than in connection with a merger or acquisition);

Resident Representative

any person appointed to act as resident representative and includes any deputy or assistant resident representative; and

Secretary

the person appointed to perform any or all of the duties of secretary of the Company and includes any deputy or assistant secretary and any person appointed by the Board to perform any of the duties of the Secretary.

1.2 In these Bye-laws, where not inconsistent with the context:

- (a) words denoting the plural number include the singular number and vice versa;
 - (b) words denoting the masculine gender include the feminine and neuter genders;
 - (c) words importing persons include companies, associations or bodies of persons whether corporate or not;
 - (d) the words:
 - (i) “may” shall be construed as permissive; and
 - (ii) “shall” shall be construed as imperative; and
-

(e) unless otherwise provided herein, words or expressions defined in the Act shall bear the same meaning in these Bye-laws.

- 1.3 In these Bye-laws expressions referring to writing or its cognates shall, unless the contrary intention appears, include facsimile, printing, lithography, photography, electronic mail and other modes of representing words in visible form.
- 1.4 Headings used in these Bye-laws are for convenience only and are not to be used or relied upon in the construction hereof.

SHARES

2. Power to Issue Shares

- 2.1 Subject to these Bye-laws and to any resolution of the Members to the contrary, and without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, the Board shall have the power to issue any unissued shares of the Company on such terms and conditions as it may determine.
- 2.2 Without limitation to the provisions of Bye-law 4, subject to the provisions of the Act, any preference shares may be issued or converted into shares that (at a determinable date or at the option of the Company or the holder) are liable to be redeemed on such terms and in such manner as may be determined by the Board (before the issue or conversion).

3. Power of the Company to Purchase its Shares

The Company may purchase its own shares in accordance with the provisions of the Act on such terms as the Board shall think fit. The Board may exercise all the powers of the Company to purchase all or any part of its own shares in accordance with the Act.

4. Rights Attaching to Shares

- 4.1 At the date ~~these~~ ~~this~~ ~~Bye-laws are~~ ~~law 4.1 is~~ adopted, the share capital of the Company shall be divided into three classes: (i) ~~100,000,000~~ 90,000,000 ordinary shares of par value US\$1.00 each (the "Common Shares"), (ii) ~~6,000,000~~ 2,000,000 non-voting convertible ordinary shares of par
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value US\$1.00 each (the “Non-Voting Convertible Common Shares”) and (iii) ~~50,000,000~~45,000,000 preference shares of par value US\$1.00 each (the “Preference Shares”).

- 4.2 The holders of Common Shares shall, subject to the provisions of these Bye-laws (including, without limitation, the rights attaching to Preference Shares):
- (a) be entitled to one vote per share;
 - (b) be entitled to such dividends as the Board may from time to time declare on a pari passu basis with the Non-Voting Convertible Common Shares;
 - (c) in the event of a winding-up or dissolution of the Company, whether voluntary or involuntary or for the purpose of a reorganisation or otherwise or upon any distribution of capital, be entitled to the surplus assets of the Company on a pari passu basis with the Non-Voting Convertible Common Shares; and
 - (d) generally be entitled to enjoy all of the rights attaching to shares.

Any Common Shares held by GSCP or its BHC Affiliates shall, for the sake of clarity, vote together with all other Common Shares, but may be converted at any time at the option of the holder in its sole discretion into Series B Non-Voting Common Shares, Series C Non-Voting Common Shares or Series D Non-Voting Common Shares, at a one-for-one exchange ratio, subject in each case to any necessary adjustments for any share splits, dividends, recapitalizations, consolidations or similar transactions occurring in respect of the Common Shares or the Non-Voting Convertible Common Shares after the date of the adoption of these Bye-laws.

- 4.3 (a) The Non-Voting Convertible Common Shares shall be divided into the following series: (i) Series A Non-Voting Common Shares, (ii) Series B Non-Voting Common Shares, (iii) Series C Non-Voting Common Shares and (iv) Series D Non-Voting Common Shares, each with the respective rights hereinafter specified. All Non-Voting Convertible Common Shares issued as of December 31, 2010 shall be designated Series A Non-Voting Common Shares. All Non-Voting Convertible Common Shares issued to GSCP or its BHC Affiliates (x) pursuant to Section 2.03(b) of the Investment Agreement or (y)
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upon the conversion of Common Shares into Non-Voting Convertible Common Shares pursuant to Bye-law 4.2, in each case, shall be Series B Non-Voting Common Shares. All other Non-Voting Convertible Common Shares issued to GSCP or its BHC Affiliates pursuant to the Investment Agreement shall be Series C Non-Voting Common Shares. Series D Non-Voting Common Shares may be issued upon conversion of (i) Common Shares in accordance with Bye-law 4.2, (ii) Series B Non-Voting Common Shares in accordance with Bye-law 4.3(g) or (iii) Series C Non-Voting Common Shares in accordance with Bye-law 4.3(h).

- (b) ~~4.3~~ The holders of Non-Voting Convertible Common Shares shall, subject to the provisions of these Bye-laws (including, without limitation, the rights attaching to Preference Shares):
- (a) be entitled to such dividends as the Board may from time to time declare on a pari passu basis with the Common Shares;
 - (b) in the event of a winding-up or dissolution of the Company, whether voluntary or involuntary or for the purpose of a reorganisation or otherwise or upon any distribution of capital, be entitled to the surplus assets of the Company on a pari passu basis with the Common Shares; and
 - (c) generally be entitled to enjoy all of the rights attaching to Common Shares, but shall ~~not be entitled to vote~~ be non-voting, except (1) as required by law, (2) in accordance with Bye-law 15 or (3) for the limited voting rights specified in Bye-law 4.3(c).
- (c) The holders of the Series B Non-Voting Common Shares, voting together as a separate class, and the holders of the Series C Non-Voting Common Shares, voting together as a separate class, shall be entitled to vote such shares, but only with respect to the following limited matters, which shall constitute a variation of class rights for the purposes of Bye-law 15:
- (i) any amendment, alteration or repeal of any provision of the Company's memorandum of association or these Bye-laws (including any amendment).
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alteration or repeal by means of a merger, amalgamation, consolidation or otherwise) so as to significantly and adversely affect the rights, preferences, privileges or limited voting rights of the Series B Non-Voting Common Shares or the Series C Non-Voting Common Shares, as applicable;

- (ii) any consummation of a binding share exchange or reclassification involving the Series B Non-Voting Common Shares or the Series C Non-Voting Common Shares or of a merger, consolidation or amalgamation of the Company with another corporation or other entity (except for any such merger, consolidation or amalgamation in which the consideration paid to shareholders is entirely in cash), unless in each case (x) the shares of Series B Non-Voting Common Shares or the Series C Non-Voting Common Shares, as applicable, remain outstanding or, in the case of any such merger or consolidation with respect to which the Company is not the surviving or resulting entity, are converted into or exchanged for securities of the surviving or resulting entity or its ultimate parent, and (y) such shares have such rights, preferences, privileges and limited voting rights, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and limited voting rights, and limitations and restrictions thereof, of the Series B Non-Voting Common Shares or the Series C Non-Voting Common Shares, as applicable, immediately prior to such consummation, taken as a whole.

provided, for the sake of clarity, that the holders of the Series A Non-Voting Common Shares and the Series D Non-Voting Common Shares shall not be entitled to vote such shares, except as required under Bermuda law.

- (d) Each Series A Non-Voting ~~Convertible~~ Common Share and Series B Non-Voting Common Share shall be automatically converted into one Common Share, subject to any necessary adjustments for any share splits, dividends, recapitalizations, consolidations or similar transactions occurring in respect of the Common Shares or the Non-Voting
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Convertible Common Shares after the date of the adoption of these Bye-laws, immediately prior to any transfer by the registered holder of ~~such Non-Voting Convertible Common Share~~, whether or not for value, to a third party, except for transfers to a nominee or Affiliate of such holder in a transfer that will not result in a change of beneficial ownership (as determined under Rule 13d-3 under the United States Securities Exchange Act of 1934, as amended) or to a person that already holds Series A Non-Voting Convertible Common Shares or Series B Non-Voting Common Shares.

- (e) Each Series C Non-Voting Common Share and Series D Non-Voting Common Share shall be automatically converted into one Common Share, subject to any necessary adjustments for any share splits, dividends, recapitalizations, consolidations or similar transactions occurring in respect of the Common Shares or the Non-Voting Convertible Common Shares after the date of the adoption of these Bye-laws, only upon the transfer by the registered holder thereof, whether or not for value, to a third party in a Widely Dispersed Offering. As used herein, "Widely Dispersed Offering" means (i) a widespread public distribution, (ii) a transfer in which no transferee (or group of associated transferees) would receive 2% or more of any class of voting shares of the Company or (iii) a transfer to a transferee that would control more than 50% of the voting shares of the Company without any transfer from the holder. For purposes of the Series C Non-Voting Common Shares and Series D Non-Voting Common Shares, the term "registered holder" or "holder" means GSCP or its BHC Affiliates and any direct or indirect transferee of GSCP or its BHC Affiliates except a direct or indirect transferee that receives the Series C Non-Voting Common Shares or Series D Non-Voting Common Shares in a Widely Dispersed Offering.
- (f) The holders of the Series A Non-Voting Common Shares shall not be permitted to convert such shares into any other class of the Company's share capital or into any other series of Non-Voting Convertible Common Shares, except pursuant to a transfer permitted by clause (d) of this Bye-law 4.3.
- (g) The holders of the Series B Non-Voting Common Shares shall have the right to convert all or any number of such shares into Series C Non-Voting Common Shares, Series D
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Non-Voting Common Shares or Common Shares at any time, in the sole discretion of such holder.

- (h) The holders of the Series C Non-Voting Common Shares shall have the right to convert all or any number of such shares into Series D Non-Voting Common Shares at any time, in the sole discretion of such holder. The holders of the Series D Non-Voting Common Shares shall have no right to convert such shares, except that, upon the receipt of all applicable regulatory approvals, all or any number of such shares may be converted into Series C Non-Voting Common Shares at any time, in the sole discretion of such holder.
- (i) If at any time the Company declares or pays a dividend or distribution to any holder of Common Shares in the form of Common Shares or other voting security of the Company, the Company shall declare and pay to each holder of Non-Voting Convertible Common Shares a proportional dividend or distribution in the form of the same series of Non-Voting Convertible Common Shares.
- (j) Notwithstanding anything herein to the contrary, if the consideration payable to GSCP or its BHC Affiliates as holders of Non-Voting Convertible Common Shares upon a Reorganization Event consists (in whole or in part) of property or securities that would, in the sole judgment of any holder thereof, create, aggravate or exacerbate any issue, problem or concern for any such holder or any of its affiliates, then the consideration payable to such holder shall be adjusted (e.g., by the issuance of non-voting securities that are economically equivalent to the voting securities they replaced and would convert into such voting securities on transfer to an unaffiliated third party, subject, if applicable, to the conversion restrictions set forth in Bye-law 4.3(e)) to the maximum extent practicable to eliminate or address such issue, problem or concern, so long as such adjusted or different securities have the same value as, and are pari passu with, the securities that they replaced.

- 4.4 The Board is authorised to provide for the issuance of the Preference Shares in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations, or restrictions thereof (and, for the avoidance of doubt, such
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matters and the issuance of such Preference Shares shall not be deemed to vary the rights attached to the Common Shares or the Non-Voting Convertible Common Shares or, subject to the terms of any other series of Preference Shares, to vary the rights attached to any other series of Preference Shares). The authority of the Board with respect to each series shall include, but not be limited to, determination of the following:

- (a) the number of shares constituting that series and the distinctive designation of that series;
 - (b) the dividend rate on the shares of that series, whether dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of the payment of dividends on shares of that series;
 - (c) whether that series shall have voting rights, in addition to the voting rights provided by law, and if so, the terms of such voting rights;
 - (d) whether that series shall have conversion or exchange privileges (including, without limitation, conversion into Common Shares), and, if so, the terms and conditions of such conversion or exchange, including provision for adjustment of the conversion or exchange rate in such events as the Board shall determine;
 - (e) whether or not the shares of that series shall be redeemable or repurchaseable, and, if so, the terms and conditions of such redemption or repurchase, including the manner of selecting shares for redemption or repurchase if less than all shares are to be redeemed or repurchased, the date or dates upon or after which they shall be redeemable or repurchaseable, and the amount per share payable in case of redemption or repurchase, which amount may vary under different conditions and at different redemption or repurchase dates;
 - (f) whether that series shall have a sinking fund for the redemption or repurchase of shares of that series, and, if so, the terms and amount of such sinking fund;
 - (g) the right of the shares of that series to the benefit of conditions and restrictions upon the creation of indebtedness of the Company or any subsidiary, upon the issue of any additional shares (including additional shares of such series or any other series) and upon
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the payment of dividends or the making of other distributions on, and the purchase, redemption or other acquisition by the Company or any subsidiary of any issued shares of the Company;

- (h) the rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Company, and the relative rights of priority, if any, of payment of shares of that series; and
- (i) any other relative participating, optional or other special rights, qualifications, limitations or restrictions of that series.

- 4.5** Any Preference Shares of any series which have been redeemed (whether through the operation of a sinking fund or otherwise) or which, if convertible or exchangeable, have been converted into or exchanged for shares of any other class or classes shall have the status of authorised and unissued Preference Shares of the same series and may be reissued as a part of the series of which they were originally a part or may be reclassified and reissued as part of a new series of Preference Shares to be created by resolution or resolutions of the Board or as part of any other series of Preference Shares, all subject to the conditions and the restrictions on issuance set forth in the resolution or resolutions adopted by the Board providing for the issue of any series of Preference Shares.
- 4.6** At the discretion of the Board, whether or not in connection with the issuance and sale of any shares or other securities of the Company, the Company may issue securities, contracts, warrants or other instruments evidencing any shares, option rights, securities having conversion or option rights, or obligations on such terms, conditions and other provisions as are fixed by the Board, including, without limiting the generality of this authority, conditions that preclude or limit any person or persons owning or offering to acquire a specified number or percentage of the issued Common Shares, other shares, option rights, securities having conversion or option rights, or obligations of the Company or transferee of the person or persons from exercising, converting, transferring or receiving the shares, option rights, securities having conversion or option rights, or obligations.
- 4.7** (a) The voting power of all shares is hereby adjusted (and shall be automatically adjusted in the future) to the extent necessary so that there is no 9.5% U.S. Shareholder or 9.5%
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Direct Foreign Shareholder Group. The Board shall implement the foregoing in the manner provided herein; provided, that the foregoing provision and the remainder of this Bye-law 4.7 shall not apply in the event that one Member of the Company owns greater than 75% of the issued and outstanding shares of the Company.

- (b) The Board shall from time to time, including prior to any time at which a vote of Members is taken, take all reasonable steps, including those specified in Bye-law 4.9, necessary to ascertain, through communications with Members or otherwise, whether there exists, or will exist at the time any vote of Members is taken, a Tentative 9.5% U.S. Shareholder or a Tentative 9.5% Direct Foreign Shareholder Group.
- (c) In the event that a Tentative 9.5% U.S. Shareholder exists, (i) the aggregate votes conferred by shares Common Shares held by a Member and treated as Controlled Shares of that Tentative 9.5% U.S. Shareholder shall be reduced to the extent necessary such that the combined voting power conferred by the Common Shares and the voting power that would be conferred by the Common Shares into which the Series B Non-Voting Common Shares are then convertible, in each case that are treated as Controlled Shares of the Tentative 9.5% U.S. Shareholder, will constitute 9.5% of the voting power of all shares Common Shares (taking into account the reduction effected by clause (ii) of this Bye-law 4.7(c) and (ii) the aggregate votes conferred by the Common Shares held by GSCP and its affiliates and treated as Controlled Shares of such Members shall be correspondingly reduced to the extent necessary such that the ratio of (x) the voting power represented by the sum of (A) the votes conferred by such Common Shares and (B) the votes that would be conferred by any Common Shares into which the Series B Non-Voting Common Shares are then convertible to (y) the voting power of all Common Shares (taking into account the reduction effected by clause (i) of this Bye-law 4.7(c) is not greater than the ratio as if the adjustment described in clause (i) of this Bye-law 4.7(c) had not occurred. In applying the previous sentence where shares held by more than one Member are treated as Controlled Shares of such Tentative 9.5% U.S. Shareholder, the reduction in votes shall apply to such Members in descending order according to their respective Attribution Percentages, provided, that in the event of a tie, the reduction shall apply first to the Member whose shares are Controlled Shares of the Tentative 9.5% U.S. Shareholder by virtue of the Tentative 9.5% U.S. Shareholder's economic interest in (as opposed to voting control with respect to) such shares. The adjustments of voting power described in this Bye-law shall apply repeatedly until there is no 9.5% U.S. Shareholder. The Board of Directors may deviate from any of the principles described in this Bye-law
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and determine that shares held by a Member shall carry different voting rights as it determines appropriate (1) to avoid the existence of any 9.5% U.S. Shareholder or (2) to avoid adverse tax, legal or regulatory consequences to the Company, any subsidiary of the Company, or any other Member or its affiliates. For the avoidance of doubt, in applying the provisions of Bye-laws 4.7 through 4.10, a share may carry a fraction of a vote. In the event any Non-Voting Convertible Common Shares of any registered holder are entitled to vote on any matter under Bermuda law (including, but not limited to, any Reorganization Event), such shares shall be deemed for purposes of this Bye-law 4.7(c) to be that number of Common Shares into which such Non-Voting Convertible Common Shares may be converted upon a qualified transfer, and the voting power adjustments set forth in this Bye-law 4.7(c) shall apply to Common Shares and such Non-Voting Convertible Common Shares, collectively, on such basis. Notwithstanding anything herein to the contrary, the aggregate voting power of the holders of Series C Non-Voting Common Shares and Series D Non-Voting Common Shares with respect to any merger, consolidation or amalgamation of the Company with another corporation or other entity shall in no event exceed 0.01% of the aggregate voting power of the Company's issued share capital, and this sentence shall not be amended without the affirmative vote (or written consent) of the holders representing a majority of each of the Series C Non-Voting Common Shares and Series D Non-Voting Common Shares. For the avoidance of doubt, the voting power adjustments set forth in this Bye-law 4.7(c) shall not apply to the voting rights set forth in Bye-law 4.3(c).

- (d) Immediately after completing the adjustment of voting power provided for in Bye-law 4.7(c), in the event that a Tentative 9.5% Direct Foreign Shareholder Group exists, the aggregate votes conferred by shares held by the Tentative 9.5% Direct Foreign Shareholder Group shall be reduced to the extent necessary to cause such Shareholder or Shareholders to no longer constitute a 9.5% Direct Foreign Shareholder Group.
 - (e) "9.5% Direct Foreign Shareholder Group" means a shareholder that is not a U.S. Person or a group of commonly controlled shareholders that are not U.S. Persons, in either case who owns shares that constitute more than nine and one-half percent (9.5%) of the voting power of all shares of the Company and that are attributable to a U.S. Person under Section 958 of the Code.
 - (f) "Attribution Percentage" shall mean, with respect to a Member, the percentage of the Member's shares that are treated as Controlled Shares of a Tentative 9.5% Shareholder.
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- (g) “Controlled Shares” in reference to any person means all shares of the Company directly, indirectly or constructively owned by such person as determined pursuant to Section 958 of the Code.
 - (h) “9.5% U.S. Shareholder” means a “United States person” as defined in the Code (a “U.S. Person”) whose Controlled Shares constitute more than nine and one-half percent (9.5%) of the voting power of all shares of the Company and who would be generally required to recognize income with respect to the Company under Section 951(a)(1) of the Code, if the Company were a controlled foreign corporation as defined in Section 957 of the Code and if the ownership threshold under Section 951(b) of the Code were 9.5%.
 - (i) “Tentative 9.5% U.S. Shareholder” means a U.S. Person that, but for adjustments to the voting rights of shares pursuant to Bye-laws 4.7 through 4.8, would be a 9.5% U.S. Shareholder.
 - (j) “Tentative 9.5% Direct Foreign Shareholder Group” means a shareholder that is not a U.S. Person or a group of commonly controlled shareholders that are not U.S. Persons that, but for adjustments to the voting rights of shares pursuant to Bye-laws 4.7 through 4.8, would be a 9.5% Direct Foreign Shareholder Group.
- 4.8** In addition to the provisions of Bye-law 4.7, any shares shall not carry any right to vote to the extent that the Board of Directors determines, in its reasonable discretion, that it is necessary that such shares should not carry the right to vote in order to avoid adverse tax, legal or regulatory consequences to the Company, any subsidiary of the Company, or any other Member or its affiliates, provided, that no adjustment pursuant to this sentence shall cause any person to become a 9.5% U.S. Shareholder or a 9.5% Direct Foreign Shareholder Group.
- 4.9** Prior to any date on which Members shall vote on any matter, the Board of Directors shall (a) retain the services of an internationally recognized accounting firm or organization with comparable professional capabilities in order to assist the Company in applying the principles of Bye-laws 4.7 through 4.10, (b) obtain from such firm or organization a statement describing the information obtained and procedures followed and setting forth the determinations made with respect to Bye-laws 4.7 through 4.10 and (c) notify each Member of the voting power conferred by its shares determined in accordance with Bye-laws 4.7 through 4.10.
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- 4.10** (a) Subject to the provisions of this Bye-law 4.10, the Company shall have the authority to reasonably request from any Member, and such Member shall promptly provide to the Company, such information as the Company may reasonably request for the purpose of (i) determining whether any Member's voting rights are to be adjusted pursuant to Bye-laws 4.7 through 4.10, (ii) determining whether the Company would realize any income that would be included in the income of any Member (or any interest holder, whether direct or indirect, of any Member) by operation of Section 953(c) of the Code and (iii) determining whether the Company or any of its subsidiaries would be entitled to the benefits of a tax treaty.
- (b) Any information provided by each Member to the Company pursuant to this Bye-law 4.10 shall be deemed "confidential information" (the "Confidential Information") and shall be used by the Company solely for the purposes contemplated by this Bye-law 4.10 (except as otherwise may be required by applicable law or regulation). The Company shall hold such Confidential Information in strict confidence and shall not disclose any Confidential Information that it receives, except (i) to the U.S. Internal Revenue Service (the "Service") if and to the extent the Confidential information is required by the Service, (ii) to any outside legal counsel or accounting firm engaged by the Company to make determinations pursuant to Bye-laws 4.7 through 4.10, (iii) to directors, officers and employees of the Company and (iv) as otherwise required by law or regulation. The Company shall take measures reasonably practicable to provide for the continued confidentiality of the Confidential Information and shall grant the persons referred to in the preceding clauses (ii) and (iii) access to the Confidential Information only (x) to the extent necessary, as appropriate, to allow them to assist the Company in any analysis required pursuant to Bye-laws 4.7 through 4.10, (y) to determine whether the Company would realize any income that would be included in the income of any Member (or any interest holder, whether direct or indirect, of any Member) by operation of Section 953(e) of the Code and (z) to determine whether the Company or any of its subsidiaries would be entitled to the benefits of a tax treaty. Prior to granting access to the Confidential Information to any such persons, the Company shall inform them of the information's confidential nature and of the provisions of this Bye-law 4.10 and shall require them to abide by all the provisions hereof. For the avoidance of doubt, the Company shall be permitted to disclose to the Members and others the relative voting percentages of the Members after application of Bye-laws 4.7 through 4.10. At the written request of a Member, the Confidential Information of such Member shall be destroyed or returned to
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such Member after the later to occur of (i) such Member no longer being a Member or (ii) the expiration of the applicable statute of limitations with respect to any Confidential Information obtained for purposes of engaging in any tax related analysis.

- (c) The Company shall (i) notify a Member of the existence, terms and circumstances surrounding any request made to the Company to disclose any Confidential Information provided by or with respect to such Member and, prior to such disclosure, shall permit, if practicable, such Member a reasonable period of time to seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Bye-law 4.10, and (ii) if, in the absence of a protective order, such disclosure is required in the reasonable opinion of counsel to the Company, the Company shall make such disclosure without liability hereunder; provided that the Company shall use commercially reasonable efforts to furnish only that portion of the Confidential Information that is legally required, shall give such Member notice of the information to be disclosed as far in advance of its disclosure as practicable and, upon the reasonable request of such Member and at its expense, shall use commercially reasonable efforts to ensure that confidential treatment will be accorded to all such disclosed information.
 - (d) The Board may rely in good faith exclusively on the analysis, deliberation, reports and other communications of those persons specified in Bye-law 4.10(b) with respect to the collection, disclosure or use of the Confidential Information, including, but not limited to (i) determining whether the Company would realize any income that would be included in the income of any Member (or any interest holder, whether direct or indirect, of any Member) by operation of Section 953(c) of the Code or implementing any provisions of these Bye-laws and (ii) determining whether the Company or any of its subsidiaries would be entitled to the benefits of a tax treaty.
 - (e) If any Member fails to respond to a reasonable request for information by the Company pursuant to Bye-law 4.10(a) within seven business days of such request, or submits incomplete or inaccurate information in response to such a reasonable request, the Directors may in their reasonable discretion (after considering the circumstances described in any response to the request by the Member and providing the Member with a cure period of such length as the Board may reasonably determine under the circumstances) determine that such Member's shares shall carry no voting rights in which case such shares shall not carry any voting rights until otherwise determined by the Directors in their reasonable discretion.
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- (f) Any holder of shares that is a corporation, partnership, limited liability company or other entity or a U.S. Person shall give notice to the Company within ten days following the date that such holder acquires actual knowledge that it is the owner of Controlled Shares that constitute 9.5% or more of the voting power of all shares.
- (g) Notwithstanding the foregoing, no Member shall be liable to any other Member or the Company for any losses or damages resulting from such Member's failure to respond to, or submission of incomplete or inaccurate information in response to, a request under subparagraph (a) of this Bye-law or from such Member's failure to give notice under subparagraph (b) of this Bye-law.

5. Calls on Shares

- 5.1** The Board may make such calls as it thinks fit upon the Members in respect of any monies (whether in respect of nominal value or premium) unpaid on the shares allotted to or held by such Members (and not made payable at fixed times by the terms and conditions of issue) and, if a call is not paid on or before the day appointed for payment thereof, the Member may at the discretion of the Board be liable to pay the Company interest on the amount of such call at such rate as the Board may determine, from the date when such call was payable up to the actual date of payment. The Board may differentiate between the holders as to the amount of calls to be paid and the times of payment of such calls.
- 5.2** Any sum which by the terms of allotment of a share becomes payable upon issue or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for all the purposes of these Bye-laws be deemed to be a call duly made and payable, on the date on which, by the terms of issue, the same becomes payable, and in case of non-payment all the relevant provisions of these Bye-laws as to payment of interest, costs, charges and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
- 5.3** The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
- 5.4** The Company may accept from any Member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up.

6. Prohibition on Financial Assistance

The Company shall not give, whether directly or indirectly, whether by means of loan, guarantee, provision of security or otherwise, any financial assistance for the purpose of the acquisition or proposed acquisition by any person of any shares in the Company, but nothing in this Bye-law shall prohibit transactions permitted under the Act.

7. Forfeiture of Shares

- 7.1 If any Member fails to pay, on the day appointed for payment thereof, any call in respect of any share allotted to or held by such Member, the Board may, at any time thereafter during such time as the call remains unpaid, direct the Secretary to forward such Member a notice in writing in the form, or as near thereto as circumstances admit, of the following:

Notice of Liability to Forfeiture for Non-Payment of Call

Enstar Group Limited (the "Company")

You have failed to pay the call of [amount of call] made on the [] day of [], 20[], in respect of the [number] share(s) [number in figures] standing in your name in the Register of Members of the Company, on the [] day of [], 20[], the day appointed for payment of such call. You are hereby notified that unless you pay such call together with interest thereon at the rate of [] per annum computed from the said [] day of [], 20[] at the registered office of the Company the share(s) will be liable to be forfeited.

Dated this [] day of [], 20[]

[Signature of Secretary] By Order of the Board

- 7.2 If the requirements of such notice are not complied with, any such share may at any time thereafter before the payment of such call and the interest due in respect thereof be forfeited by a resolution of the Board to that effect, and such share shall thereupon become the property of the Company and may be disposed of as the Board shall determine.
 - 7.3 A Member whose share or shares have been forfeited as aforesaid shall, notwithstanding such forfeiture, be liable to pay to the Company all calls owing on such share or shares at the time of the forfeiture and all interest due thereon.
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7.4 The Board may accept the surrender of any shares which it is in a position to forfeit on such terms and conditions as may be agreed. Subject to those terms and conditions, a surrendered share shall be treated as if it had been forfeited.

8. Share Certificates

8.1 Every Member shall be entitled to a certificate under the seal of the Company (or a facsimile thereof) specifying the number and, where appropriate, the class of shares held by such Member and whether the same are fully paid up and, if not, specifying the amount paid on such shares. The Board may by resolution determine, either generally or in a particular case, that any or all signatures on certificates may be printed thereon or affixed by mechanical means.

8.2 The Company shall be under no obligation to complete and deliver a share certificate unless specifically called upon to do so by the person to whom the shares have been allotted.

8.3 If any share certificate shall be proved to the satisfaction of the Board to have been worn out, lost, mislaid, or destroyed the Board may cause a new certificate to be issued and request an indemnity for the lost certificate if it sees fit.

9. Fractional Shares

The Company may issue its shares in fractional denominations and deal with such fractions to the same extent as its whole shares and shares in fractional denominations shall have in proportion to the respective fractions represented thereby all of the rights of whole shares including (but without limiting the generality of the foregoing) the right to vote, to receive dividends and distributions and to participate in a winding-up.

REGISTRATION OF SHARES

10. Register of Members

10.1 The Board shall cause to be kept in one or more books a Register of Members and shall enter therein the particulars required by the Act.

10.2 The Register of Members shall be open to inspection at the registered office of the Company on every business day, subject to such reasonable restrictions as the Board may impose, so that not

less than two hours in each business day be allowed for inspection. The Register of Members may, after notice has been given in accordance with the Act, be closed for any time or times not exceeding in the whole thirty days in each year.

11. Registered Holder Absolute Owner

The Company shall be entitled to treat the registered holder of any share as the absolute owner thereof and accordingly shall not be bound to recognise any equitable claim or other claim to, or interest in, such share on the part of any other person.

12. Transfer of Registered Shares

12.1 An instrument of transfer shall be in writing in the form of the following, or as near thereto as circumstances admit, or in such other form as the Board may accept:

Transfer of a Share or Shares

Enstar Group Limited (the "Company")

FOR VALUE RECEIVED.....[amount], I, [name of transferor] hereby sell, assign and transfer unto [transferee] of [address], [number] of shares of the Company.

DATED this [] day of [], 20[]

Signed by:

In the presence of:

Transferor

Witness

Transferee

Witness

12.2 Such instrument of transfer shall be signed by or on behalf of the transferor and transferee, provided that, in the case of a fully paid share, the Board may accept the instrument signed by or on behalf of the transferor alone. The transferor shall be deemed to remain the holder of such share until the same has been transferred to the transferee in the Register of Members.

12.3 The Board may refuse to recognise any instrument of transfer unless it is accompanied by the certificate in respect of the shares to which it relates and by such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.



- 12.4** The joint holders of any share may transfer such share to one or more of such joint holders, and the surviving holder or holders of any share previously held by them jointly with a deceased Member may transfer any such share to the executors or administrators of such deceased Member.
- 12.5** The Board may in its absolute discretion and without assigning any reason therefor refuse to register the transfer of a share which is not fully paid. The Board shall refuse to register a transfer unless all applicable consents, authorisations and permissions of any governmental body or agency in Bermuda have been obtained. If the Board refuses to register a transfer of any share the Secretary shall, within three months after the date on which the transfer was lodged with the Company, send to the transferor and transferee notice of the refusal.
- 12.6** Shares may be transferred without a written instrument if transferred by an appointed agent or otherwise in accordance with the Act.
- 12.7** (a) The Directors may decline to register any transfer of shares if it appears to the Directors, in their reasonable discretion, after taking into account, among other things, the limitation on voting rights contained in these Bye-laws, that any non-de minimis adverse tax, regulatory or legal consequence to the Company, any subsidiary of the Company, or any other holder of shares or its Affiliates would result from such transfer (including if such consequence arises as a result of any such U.S. Person owning Controlled Shares that constitute 9.5% or more of the value of the Company or the voting shares of the Company (but subject to the provisions of Bye-laws 4.7 through 4.10)). The Directors shall have the authority to reasonably request from any holder of shares, and such holder of shares shall provide, such information as the Directors may reasonably request for the purpose of determining whether any transfer should be permitted.
- (b) Subject to any applicable requirements of the Nasdaq National Market or other quotation system or exchange, the Directors (a) may decline to register any transfer of shares, unless (i) a written opinion from counsel reasonably acceptable to the Company shall have been obtained to the effect that registration of such shares under the U.S. Securities Act of 1933, as amended, is not required or (ii) an effective registration statement under the U.S. Securities Act of 1933, as amended, is in place covering the shares to be
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transferred and (b) shall decline to register any transfer of shares if the transferee shall not have been approved by applicable governmental authorities if such approval is required in respect of such transfer.

- (c) If the Board refuses to register a transfer of any share the Secretary shall, within ten business days after the date on which the transfer was lodged with the Company, send to the transferor and transferee notice detailing the nature of the refusal.

13. Transmission of Registered Shares

- 13.1** In the case of the death of a Member, the survivor or survivors where the deceased Member was a joint holder, and the legal personal representatives of the deceased Member where the deceased Member was a sole holder, shall be the only persons recognised by the Company as having any title to the deceased Member's interest in the shares. Nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by such deceased Member with other persons. Subject to the provisions of the Act, for the purpose of this Bye-law, legal personal representative means the executor or administrator of a deceased Member or such other person as the Board may, in its reasonable discretion, decide as being properly authorised to deal with the shares of a deceased Member.
- 13.2** Any person becoming entitled to a share in consequence of the death or bankruptcy of any Member may be registered as a Member upon such evidence as the Board may deem sufficient or may elect to nominate some person to be registered as a transferee of such share, and in such case the person becoming entitled shall execute in favour of such nominee an instrument of transfer in writing in the form, or as near thereto as circumstances admit, of the following:

Transfer by a Person Becoming Entitled on Death/Bankruptcy of a Member

Enstar Group Limited (the "Company")

I/We, having become entitled in consequence of the [death/bankruptcy] of [name and address of deceased/bankrupt Member] to [number] share(s) standing in the Register of Members of the Company in the name of the said [name of deceased/bankrupt Member] instead of being registered myself/ourselves, elect to have [name of transferee] (the "Transferee") registered as a transferee of such share(s) and I/we do hereby accordingly transfer the said share(s) to the Transferee to hold the same unto the Transferee, his or her executors, administrators and assigns, subject to the conditions on which the same were held at the time

of the execution hereof; and the Transferee does hereby agree to take the said share(s) subject to the same conditions.

DATED this [] day of [], 20[]

Signed by:

In the presence of:

Transferor

Witness

Transferee

Witness

- 13.3 On the presentation of the foregoing materials to the Board, accompanied by such evidence as the Board may require to prove the title of the transferor, the transferee shall be registered as a Member. Notwithstanding the foregoing, the Board shall, in any case, have the same right to decline or suspend registration as it would have had in the case of a transfer of the share by that Member before such Member's death or bankruptcy, as the case may be.
 - 13.4 Where two or more persons are registered as joint holders of a share or shares, then in the event of the death of any joint holder or holders the remaining joint holder or holders shall be absolutely entitled to the said share or shares and the Company shall recognise no claim in respect of the estate of any joint holder except in the case of the last survivor of such joint holders.
 - 13.5 If the Directors in their reasonable discretion determine that share ownership by any person may result in a non-de minimis adverse tax, legal or regulatory consequence to the Company, any subsidiary of the Company, or any other holder of shares or its Affiliates (including if such consequence arises as a result of any such U.S. Person owning Controlled Shares that constitute 9.5% or more of the value of the Company or the voting shares of the Company (but subject to the provisions of Bye-laws 4.7 through 4.10)), the Company will have the option but not the obligation to repurchase or assign to a third party the right to purchase the minimum number of shares held by such person which is necessary to eliminate such non-de minimis adverse tax, legal or regulatory consequence at a price determined in the good faith discretion of the Directors to represent such shares' fair market value; provided, that (a) if the shares are not traded on a quotation system or securities exchange in or outside the United States, the fair market value per
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share shall be determined by the Directors without a minority discount and without a liquidity discount or (b) if the shares are traded on a quotation system or securities exchange, the fair market value per share shall be determined by the Directors based on the average of the last sales price per share or if there is none, the average of the bid and asked price per share, without a minority discount and without a liquidity discount, in each case for the eight business days prior to the repurchase date. If a Member disagrees with any price so determined by the Board, the fair market value per share will be determined by an independent appraiser retained by the Company at its expense and reasonably acceptable to such Member.

ALTERATION OF SHARE CAPITAL

14. Power to Alter Capital

14.1 The Company may if authorised by resolution of the Members increase, divide, consolidate, subdivide, change the currency denomination of, diminish or otherwise alter or reduce its share capital in any manner permitted by the Act.

14.2 Where, on any alteration or reduction of share capital, fractions of shares or some other difficulty would arise, the Board may deal with or resolve the same in such manner as it thinks fit.

15. Variation of Rights Attaching to Shares

If, at any time, the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound-up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of a resolution passed by a majority of the votes cast at a separate general meeting of the holders of the shares of the class at which meeting the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking pari passu therewith.

Notwithstanding the foregoing, with respect to the Series C Non-Voting Common Shares and Series D Non-Voting Common Shares only, the rights attached to such Series C Non-Voting Common Shares or

such Series D Non-Voting Common Shares may, whether or not the Company is being wound-up, be varied with the consent in writing of each registered holder thereof holding such Series C Non-Voting Common Shares or Series D Non-Voting Common Shares to the extent such variation significantly and adversely affects the rights, preferences, privileges or voting powers of the Series C Non-Voting Common Shares or Series D Non-Voting Common Shares set forth in Bye-law 4.3.

DIVIDENDS AND CAPITALISATION

16. Dividends

- 16.1** The Board may, subject to these Bye-laws and in accordance with the Act, declare a dividend to be paid to the Members, in proportion to the number of shares held by them, and such dividend may be paid in cash or wholly or partly in specie in which case the Board may fix the value for distribution in specie of any assets. No unpaid dividend shall bear interest as against the Company.
- 16.2** The Board may fix any date as the record date for determining the Members entitled to receive any dividend.
- 16.3** The Company may pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.
- 16.4** The Board may declare and make such other distributions (in cash or in specie) to the Members as may be lawfully made out of the assets of the Company. No unpaid distribution shall bear interest as against the Company.

17. Power to Set Aside Profits

The Board may, before declaring a dividend, set aside out of the surplus or profits of the Company, such sum as it thinks proper as a reserve to be used to meet contingencies or for equalising dividends or for any other purpose.

18. Method of Payment

- 18.1** Any dividend or other monies payable in respect of a share may be paid by cheque or warrant sent through the post directed to the address of the Member in the Register of Members (in the case of joint Members, the senior joint holder, seniority being determined by the order in which the names stand in the Register of Members), or by direct transfer to such bank account as such Member may direct. Every such cheque shall be made payable to the order of the person to whom it is sent or to such persons as the Member may direct, and payment of the cheque or warrant shall be a good discharge to the Company. Every such cheque or warrant shall be sent at the risk of the person entitled to the money represented thereby. If two or more persons are registered as joint holders of any shares any one can give an effectual receipt for any dividend paid in respect of such shares.
- 18.2** The Board may deduct from the dividends or distributions payable to any Member all monies due from such Member to the Company on account of calls or otherwise.
- 18.3** Any dividend and or other monies payable in respect of a share which has remained unclaimed for 7 years, or such other period of time as may be required pursuant to the listing standard of the Nasdaq National Market or such other quotation system or exchange applicable to the Company's shares from the date when it became due for payment shall, if the Board so resolves, be forfeited and cease to remain owing by the Company. The payment of any unclaimed dividend or other moneys payable in respect of a share may (but need not) be paid by the Company into an account separate from the Company's own account. Such payment shall not constitute the Company a trustee in respect thereof.
- 18.4** The Company shall be entitled to cease sending dividend cheques and warrants by post or otherwise to a Member if those instruments have been returned undelivered to, or left uncashed by, that Member on at least two consecutive occasions, or, following one such occasion, reasonable enquiries have failed to establish the Member's new address. The entitlement conferred on the Company by this Bye-law 18.4 in respect of any Member shall cease if the Member claims a dividend or cashes a dividend cheque or warrant.
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19. Capitalisation

19.1 The Board may resolve to capitalise any sum for the time being standing to the credit of any of the Company's share premium or other reserve accounts or to the credit of the profit and loss account or otherwise available for distribution by applying such sum in paying up unissued shares to be allotted as fully paid bonus shares pro-rata (except in connection with the conversion of shares of one class to shares of another class) to the Members.

19.2 The Board may resolve to capitalise any sum for the time being standing to the credit of a reserve account or sums otherwise available for dividend or distribution by applying such amounts in paying up in full partly paid or nil paid shares of those Members who would have been entitled to such sums if they were distributed by way of dividend or distribution.

MEETINGS OF MEMBERS

20. Annual General Meetings

The annual general meeting of the Company shall be held in each year (other than the year of incorporation) at such time and place as the President or the Chairman or the Board shall appoint.

21. Special General Meetings

The President or the Chairman or the Board may convene a special general meeting of the Company whenever in their judgment such a meeting is necessary.

22. Requisitioned General Meetings

The Board shall, on the requisition of Members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid up share capital of the Company as at the date of the deposit carries the right to vote at general meetings of the Company, forthwith proceed to convene a special general meeting of the Company and the provisions of the Act shall apply.

23. Notice

23.1 At least ten days' notice of an annual general meeting shall be given to each Member entitled to attend and vote thereat, stating the date, place and time at which the meeting is to be held, that

the election of Directors will take place thereat, and as far as practicable, the other business to be conducted at the meeting.

- 23.2 At least ten days' notice of a special general meeting shall be given to each Member entitled to attend and vote thereat, stating the date, time, place and the general nature of the business to be considered at the meeting.
- 23.3 The Board may fix any date as the record date for determining the Members entitled to receive notice of and to vote at any general meeting of the Company.
- 23.4 A general meeting of the Company shall, notwithstanding that it is called on shorter notice than that specified in these Bye-laws, be deemed to have been properly called if it is so agreed by (i) all the Members entitled to attend and vote thereat in the case of an annual general meeting; and (ii) by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than 95% in nominal value of the shares giving a right to attend and vote thereat in the case of a special general meeting.
- 23.5 The accidental omission to give notice of a general meeting to, or the non-receipt of a notice of a general meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

24. Giving Notice

24.1 A notice may be given by the Company to any Member ~~either:~~

- (a) by delivering it to such Member in person ~~or by sending it;~~ or
- (b) by sending it by letter mail or courier service to such Member's address in the Register of Members or to such other address given for the purpose. ~~For the purposes of this Bye-law, a notice may be sent by letter mail, courier service;~~ or
- (c) by sending it by electronic means (including cable, telex, telecopier, facsimile, electronic mail or other mode of representing words in a legible form, but not by telephone) in accordance with such directions as may be given by such Member to the Company for the purpose;
or
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(d) by delivering it in accordance with the provisions of the Act pertaining to delivery of electronic records by publication on a website.

- 24.2** Any notice required to be given to a Member shall, with respect to any shares held jointly by two or more persons, be given to whichever of such persons is named first in the Register of Members and notice so given shall be sufficient notice to all the holders of such shares.
- 24.3** Save as provided by ~~Bye-law 24.4~~, laws 24.4 and 24.5, any notice delivered in accordance with Bye-law 24.1(a), (b) or (c) shall be deemed to have been served at the time when the same would be delivered in the ordinary course of transmission and, in proving such service, it shall be sufficient to prove that the notice was properly addressed and prepaid, if posted, at the time when it was posted, delivered to the courier or to the cable company or transmitted by telex, facsimile, electronic mail, or such other method as the case may be.
- 24.4** Mail notice shall be deemed to have been served seven days after the date on which it is deposited, with postage prepaid, in the mail of any member state of the European Union, the United States, or Bermuda.
- 24.5** Notice delivered in accordance with Bye-law 24.1(d) shall be deemed to have been served at the time when the requirements of the Act in that regard have been met.
- 24.6** ~~24.5~~ The Company shall be under no obligation to send a notice or other document to the address shown for any particular Member in the Register of Members if the Board considers that the legal or practical problems under the laws of, or the requirements of any regulatory body or stock exchange in, the territory in which that address is situated are such that it is necessary or expedient not to send the notice or document concerned to such Member at such address and may require a Member with such an address to provide the Company with an alternative acceptable address for delivery of notices by the Company.

25. Postponement or Cancellation of General Meeting

The Chairman or the President may, and the Secretary on instruction from the Chairman or the President shall, postpone or cancel any general meeting called in accordance with the provisions of these Bye-laws (other than a meeting requisitioned under these Bye-laws) provided that notice of postponement or

cancellation is given to each Member before the time for such meeting. Fresh notice of the date, time and place for the postponed or cancelled meeting shall be given to the Members in accordance with the provisions of these Bye-laws.

26. Attendance and Security at General Meetings

- 26.1** Members may participate in any general meeting by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting.
- 26.2** The Board may, and at any general meeting, the chairman of such meeting may, make any arrangement and impose any requirement or restriction it or he considers appropriate to ensure the security of a general meeting including, without limitation, requirements for evidence of identity to be produced by those attending the meeting, the searching of their personal property and the restriction of items that may be taken into the meeting place. The Board is, and at any general meeting, the chairman of such meeting is, entitled to refuse entry to a person who refuses to comply with any such arrangements, requirements or restrictions.

27. Quorum at General Meetings

- 27.1** At any general meeting of the Company two or more persons present in person throughout the meeting and representing in person or by proxy in excess of 50% of the total issued voting shares in the Company shall form a quorum for the transaction of business.
- 27.2** If within half an hour from the time appointed for the meeting a quorum is not present, then, in the case of a meeting convened on a requisition, the meeting shall be deemed cancelled and, in any other case, the meeting shall stand adjourned to the same day one week later, at the same time and place or to such other day, time or place as the Secretary may determine. If the meeting shall be adjourned to the same day one week later or the Secretary shall determine that the meeting is adjourned to a specific date, time and place, it is not necessary to give notice of the adjourned meeting other than by announcement at the meeting being adjourned. If the Secretary shall determine that the meeting be adjourned to an unspecified date, time or place, fresh notice
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of the resumption of the meeting shall be given to each Member entitled to attend and vote thereat in accordance with the provisions of these Bye-laws.

28. Chairman to Preside

Unless otherwise agreed by a majority of those attending and entitled to vote thereat, the Chairman, if there be one, and if not the President, shall act as chairman at all meetings of the Members at which such person is present. In their absence, the Deputy Chairman or Vice President, if present, shall act as chairman and in the absence of all of them a chairman shall be appointed or elected by those present at the meeting and entitled to vote.

29. Voting on Resolutions

- 29.1** Subject to the provisions of the Act and these Bye-laws, any question proposed for the consideration of the Members at any general meeting shall be decided by the affirmative votes of a majority of the votes cast in accordance with the provisions of these Bye-laws and in the case of an equality of votes the resolution shall fail.
 - 29.2** No Member shall be entitled to vote at a general meeting unless such Member has paid all the calls on all shares held by such Member.
 - 29.3** At any general meeting a resolution put to the vote of the meeting shall, in the first instance, be voted upon by a show of hands and, subject to any rights or restrictions for the time being lawfully attached to any class of shares and subject to the provisions of these Bye-laws, every Member present in person at such meeting and every person holding a valid proxy at such meeting shall have one vote for each share entitled to vote at the meeting of which such person is the holder or for which such person holds a proxy and shall cast such vote by raising his or her hand.
 - 29.4** At any general meeting if an amendment shall be proposed to any resolution under consideration and the chairman of the meeting shall rule on whether the proposed amendment is out of order, the proceedings on the substantive resolution shall not be invalidated by any error in such ruling.
 - 29.5** At any general meeting a declaration by the chairman of the meeting that a question proposed for consideration has, on a show of hands, been carried, or carried unanimously, or by a particular
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majority, or lost, and an entry to that effect in a book containing the minutes of the proceedings of the Company shall, subject to the provisions of these Bye-laws, be conclusive evidence of that fact.

30. Power to Demand a Vote on a Poll

30.1 Notwithstanding the foregoing, a poll may be demanded by any of the following persons:

- (a) the chairman of such meeting; or
- (b) at least three Members present in person or represented by proxy; or
- (c) any Member or Members present in person or represented by proxy and holding between them not less than one-tenth of the total voting rights of all the Members having the right to vote at such meeting; or
- (d) any Member or Members present in person or represented by proxy holding shares in the Company conferring the right to vote at such meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all such shares conferring such right.

30.2 Where a poll is demanded, subject to any rights or restrictions for the time being lawfully attached to any class of shares and subject to the provisions of these Bye-laws, every Member present in person at such meeting and every person holding a valid proxy at such meeting shall have one vote for each share entitled to vote at the meeting of which such person is the holder or for which such person holds a proxy and such vote shall be counted by ballot as described herein, or in the case of a general meeting at which one or more Members are present by telephone, in such manner as the chairman of the meeting may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded and shall replace any previous resolution upon the same matter which has been the subject of a show of hands. A person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

30.3 A poll demanded for the purpose of electing a chairman of the meeting or on a question of adjournment shall be taken forthwith and a poll demanded on any other question shall be taken in

such manner and at such time and place at such meeting as the chairman (or acting chairman) of the meeting may direct and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

30.4 Where a vote is taken by poll, each person present and entitled to vote shall be furnished with a ballot paper on which such person shall record his vote in such manner as shall be determined at the meeting having regard to the nature of the question on which the vote is taken, and each ballot paper shall be signed or initialed or otherwise marked so as to identify the voter and the registered holder in the case of a proxy. At the conclusion of the poll, the ballot papers shall be examined and counted by a committee of not less than two Members or proxy holders appointed by the chairman for the purpose and the result of the poll shall be declared by the chairman.

31. Voting by Joint Holders of Shares

In the case of joint holders, the vote of the senior who tenders a vote (whether in person or by proxy) shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register of Members.

32. Instrument of Proxy

32.1 A Member may appoint a proxy by (a) an instrument appointing a proxy in writing in substantially the following form or such other form as the Board may determine from time to time:

Proxy

Enstar Group Limited (the "Company")

I/We, [insert names here], being a Member of the Company with [number] shares, HEREBY APPOINT [name] of [address] or failing him, [name] of [address] to be my/our proxy to vote for me/us at the meeting of the Members to be held on the [] day of [], 200[] and at any adjournment thereof. (Any restrictions on voting to be inserted here.)

Signed this [] day of [], 20[]

Member(s)



or (b) such telephonic, electronic or other means as may be approved by the Board from time to time.

32.2 The appointment of a proxy must be received by the Company at the registered office or at such other place or in such manner as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting at which the person named in the appointment proposes to vote, and an appointment of proxy which is not received in the manner so permitted shall be invalid.

32.3 A Member who is the holder of two or more shares may appoint more than one proxy to represent him and vote on his behalf.

32.4 The decision of the chairman of any general meeting as to the validity of any appointment of a proxy shall be final.

33. Representation of Corporate Member

33.1 A corporation which is a Member may, by written instrument, authorise such person or persons as it thinks fit to act as its representative at any meeting of the Members and any person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as that corporation could exercise if it were an individual Member, and that Member shall be deemed to be present in person at any such meeting attended by its authorised representative or representatives.

33.2 Notwithstanding the foregoing, the chairman of the meeting may accept such assurances as he thinks fit as to the right of any person to attend and vote at general meetings on behalf of a corporation which is a Member.

34. Adjournment of General Meeting

34.1 The chairman of any general meeting at which a quorum is present may with the consent of Members holding a majority of the voting rights of those Members present in person or by proxy (and shall if so directed by Members holding a majority of the voting rights of those Members present in person or by proxy), adjourn the meeting.

- 34.2** In addition, the chairman may adjourn the meeting to another time and place without such consent or direction if it appears to him that:
- (a) it is likely to be impracticable to hold or continue that meeting because of the number of Members wishing to attend who are not present; or
 - (b) the unruly conduct of persons attending the meeting prevents, or is likely to prevent, the orderly continuation of the business of the meeting; or
 - (c) an adjournment is otherwise necessary so that the business of the meeting may be properly conducted.
- 34.3** Unless the meeting is adjourned to a specific date, place and time announced at the meeting being adjourned, fresh notice of the date, place and time for the resumption of the adjourned meeting shall be given to each Member entitled to attend and vote thereat in accordance with the provisions of these Bye-laws.

35. Written Resolutions

- 35.1** Subject to the following, anything which may be done by resolution of the Company in general meeting or by resolution of a meeting of any class of the Members may, without a meeting and without any previous notice being required, be done by resolution in writing signed by, or in the case of a Member that is a corporation whether or not a company within the meaning of the Act, on behalf of, all the Members who at the date of the resolution would be entitled to attend the meeting and vote on the resolution.
- 35.2** A resolution in writing may be signed by, or in the case of a Member that is a corporation whether or not a company within the meaning of the Act, on behalf of, all the Members, or all the Members of the relevant class thereof, in as many counterparts as may be necessary.
- 35.3** A resolution in writing made in accordance with this Bye-law is as valid as if it had been passed by the Company in general meeting or by a meeting of the relevant class of Members, as the case may be, and any reference in any Bye-law to a meeting at which a resolution is passed or to Members voting in favour of a resolution shall be construed accordingly.
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35.4 A resolution in writing made in accordance with this Bye-law shall constitute minutes for the purposes of the Act.

35.5 This Bye-law shall not apply to:

- (a) a resolution passed to remove an auditor from office before the expiration of his term of office; or
- (b) a resolution passed for the purpose of removing a Director before the expiration of his term of office.

35.6 For the purposes of this Bye-law, the date of the resolution is the date when the resolution is signed by, or in the case of a Member that is a corporation whether or not a company within the meaning of the Act, on behalf of, the last Member to sign and any reference in any Bye-law to the date of passing of a resolution is, in relation to a resolution made in accordance with this Bye-law, a reference to such date.

36. Directors Attendance at General Meetings

The Directors of the Company shall be entitled to receive notice of, attend and be heard at any general meeting.

DIRECTORS AND OFFICERS

37. Election of Directors

37.1 The Board shall consist of such number of Directors being not less than five Directors and not more than such maximum number of Directors, not exceeding fifteen Directors, as the Board may from time to time determine. A majority of the Board shall consist of Directors who are not residents of the United Kingdom or Switzerland. Subject to the Companies Act and these Bye-laws, the Directors shall be elected or appointed by the Company by resolution and shall serve for such term as the Company by resolution may determine, or in the absence of such determination, until the termination of the next annual general meeting following their appointment. All Directors, upon election or appointment (except upon re-election at an annual general meeting) must provide written acceptance of their appointment, in such form as the

Board may think fit, by notice in writing to the Company's registered office within thirty (30) days of their appointment.

37.2 The Board may propose any person for election as a Director and may from time to time establish procedures to receive nominations from a Member of persons for election as Directors. Only persons who are proposed or nominated in accordance with this Bye-law shall be eligible for election as Directors.

37.3 Where the number of persons validly proposed for re-election or election as a Director is greater than the number of Directors to be elected, the persons receiving the most votes (up to the number of Directors to be elected) shall be elected as Directors, and an absolute majority of the votes cast shall not be a prerequisite to the election of such Directors.

37.4 At any general meeting the Board may fill any vacancy left unfilled at such general meeting.

38. Classes of Directors

The Directors shall be divided into three classes designated Class I, Class II and Class III. Each class of Directors shall consist, as nearly as possible, of one third of the total number of Directors constituting the entire Board.

39. Term of Office of Directors

Each Director shall serve for a term ending on the date of the third annual general meeting of shareholders next following the annual general meeting at which such Director was elected, provided, that (i) Directors initially designated by the Board as Class I Directors shall serve for an initial term ending on the date of the first annual general meeting of Members next following the effectiveness of their designation as Class I Directors, (ii) Directors initially designated by the Board as Class II Directors shall serve for an initial term ending on the date of the second annual general meeting of Members next following the effectiveness of their designation as Class II Directors, and (iii) Directors initially designated by the Board as Class III Directors shall serve for an initial term ending on the date of the third annual general meeting of Members next following the effectiveness of their designation as Class III Directors. If the number of Directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of Directors in each class as nearly equal as possible,

and any Director of any class elected to fill a vacancy shall hold office for a term that shall coincide with the remaining term of the other Directors of that class, but in no case shall a decrease in the number of Directors shorten the term of any Director then in office. A Director shall hold office until the annual general meeting for the year in which his term expires, subject to his office being vacated pursuant to Bye-law 42.

40. Alternate Directors

There shall be no alternate Directors, and no Member or Director shall have a right to designate any person to attend meetings of the Board or Board committees as a non-voting observer, except with the concurrence of a majority of the Board or committee members in attendance at such meeting.

41. Removal of Directors

41.1 Subject to any provision to the contrary in these Bye-laws, the Members entitled to vote for the election of Directors may, at any special general meeting convened and held in accordance with these Bye-laws, remove a Director, only with cause, by the affirmative vote of Members holding at least a majority of the total combined voting power of all issued and outstanding Common Shares after giving effect to any reduction in voting power acquired under Bye-laws 4.7 and 4.8, provided that the notice of any such meeting convened for the purpose of removing a Director shall contain a statement of the intention so to do and be served on such Director not less than 14 days before the meeting and at such meeting the Director shall be entitled to be heard on the motion for such Director's removal.

41.2 If a Director is removed from the Board under the provisions of this Bye-law, the Members may fill the vacancy at the meeting at which such Director is removed. In the absence of such election or appointment, the Board may fill the vacancy.

41.3 For the purpose of Bye-law 41.1, "cause" shall mean a conviction for a criminal offence involving dishonesty or engaging in conduct which brings the Director or the Company into disrepute and which results in material financial detriment to the Company.

42. Vacancy in the Office of Director

42.1 The office of Director shall be vacated if the Director:

- (a) is removed from office pursuant to these Bye-laws or is prohibited from being a Director by law;
- (b) is or becomes of unsound mind or dies; or
- (c) resigns his office by notice in writing to the Company.

42.2 Subject to Bye-law 41.2, the Board shall have the power to appoint any person as a Director to fill a vacancy on the Board occurring as a result of the death, disability, disqualification or resignation of any Director or as a result of an increase in the size of the Board as permitted by these Bye-laws.

43. Remuneration of Directors

The remuneration (if any) of the Directors shall be deemed to accrue from day to day and shall be determined by the Board or a committee thereof. The Directors may also be paid all travel, hotel and other expenses properly incurred by them in attending and returning from the meetings of the Board, any committee appointed by the Board, general meetings of the Company, or in connection with the business of the Company or their duties as Directors generally.

44. Defect in Appointment of Director

All acts done in good faith by the Board or by a committee of the Board or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

45. Directors to Manage Business

The business of the Company shall be managed and conducted by the Board. In managing the business of the Company, the Board may exercise all such powers of the Company as are not, by statute or by

these Bye-laws, required to be exercised by the Company in general meeting subject, nevertheless, to these Bye-laws and the provisions of any statute.

46. Powers of the Board of Directors

The Board may:

- (a) appoint, suspend, or remove any manager, secretary, clerk, agent or employee of the Company and may fix their remuneration and determine their duties;
 - (b) exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and may issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or any third party;
 - (c) appoint one or more Directors to the office of managing director or chief executive officer of the Company, who shall, subject to the control of the Board, supervise and administer all of the general business and affairs of the Company;
 - (d) appoint a person to act as manager of the Company's day-to-day business and may entrust to and confer upon such manager such powers and duties as it deems appropriate for the transaction or conduct of such business;
 - (e) by power of attorney, appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Board, to be an attorney of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board) and for such period and subject to such conditions as it may think fit and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions so vested in the attorney. Such attorney may, if so authorised under the seal of the Company, execute any deed or instrument under such attorney's personal seal with the same effect as the affixation of the seal of the Company;
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- (f) procure that the Company pays all expenses incurred in promoting and incorporating the Company;
- (g) delegate any of its powers (including the power to sub-delegate) to a committee appointed by the Board which may consist partly or entirely of non-Directors, provided that every such committee shall conform to such directions as the Board shall impose on them and provided further that the meetings and proceedings of any such committee shall be governed by the provisions of these Bye-laws regulating the meetings and proceedings of the Board, so far as the same are applicable and are not superseded by directions imposed by the Board;
- (h) delegate any of its powers (including the power to sub-delegate) to any person on such terms and in such manner as the Board may see fit;
- (i) present any petition and make any application in connection with the liquidation or reorganisation of the Company;
- (j) in connection with the issue of any share, pay such commission and brokerage as may be permitted by law; and
- (k) authorise any company, firm, person or body of persons to act on behalf of the Company for any specific purpose and in connection therewith to execute any agreement, document or instrument on behalf of the Company.

47. Register of Directors and Officers

The Board shall cause to be kept in one or more books at the registered office of the Company a Register of Directors and Officers and shall enter therein the particulars required by the Act.

48. Officers

The Officers shall consist of a President and a Vice President or a Chairman and a Deputy Chairman, a Secretary and such additional Officers as the Board may determine all of whom shall be deemed to be Officers for the purposes of these Bye-laws.

49. Appointment of Officers

The Board shall appoint a President and Vice President or a Chairman and Deputy Chairman. The Secretary (and additional Officers, if any) shall be appointed by the Board from time to time.

50. Duties of Officers

The Officers shall have such powers and perform such duties in the management, business and affairs of the Company as may be delegated to them by the Board from time to time.

51. Remuneration of Officers

The Officers shall receive such remuneration as the Board may determine.

52. Conflicts of Interest

52.1 Any Director, or any Director's firm, partner or any company with whom any Director is associated, may act in any capacity for, be employed by or render services to the Company and such Director or such Director's firm, partner or company shall be entitled to remuneration as if such Director were not a Director. Nothing herein contained shall authorise a Director or Director's firm, partner or company to act as Auditor to the Company.

52.2 A Director who is directly or indirectly interested in a contract or proposed contract or arrangement with the Company shall declare the nature of such interest as required by the Act.

52.3 Following a declaration being made pursuant to this Bye-law, and unless disqualified by the chairman of the relevant Board meeting, a Director may vote in respect of any contract or proposed contract or arrangement in which such Director is interested and may be counted in the quorum for such meeting.

53. Indemnification and Exculpation of Directors and Officers

53.1 The Directors, Secretary and other Officers (such term to include any person appointed to any committee by the Board) for the time being acting in relation to any of the affairs of the Company, any subsidiary thereof and the liquidator or trustees (if any) for the time being acting in relation to any of the affairs of the Company or any subsidiary thereof and every one of them,

and their heirs, executors and administrators, shall be indemnified and secured harmless out of the assets of the Company from and against all actions, costs, charges, losses, damages and expenses which they or any of them, their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act done, concurred in or omitted in or about the execution of their duty, or supposed duty, or in their respective offices or trusts, and none of them shall be answerable for the acts, receipts, neglects or defaults of the others of them or for joining in any receipts for the sake of conformity, or for any bankers or other persons with whom any moneys or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for insufficiency or deficiency of any security upon which any moneys of or belonging to the Company shall be placed out on or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto, provided that this indemnity shall not extend to any matter in which any of such persons is found, in a final judgment or decree not subject to appeal, to have committed fraud or dishonesty. Each Member agrees to waive any claim or right of action such Member might have, whether individually or by or in the right of the Company, against any Director or Officer on account of any action taken by such Director or Officer, or the failure of such Director or Officer to take any action in the performance of his duties with or for the Company or any subsidiary thereof, provided that such waiver shall not extend to any matter in respect of any fraud or dishonesty which may attach to such Director or Officer.

53.2 The Company may purchase and maintain insurance for the benefit of any Director or Officer of the Company against any liability incurred by him under the Act in his capacity as a Director or Officer of the Company or indemnifying such Director or Officer in respect of any loss arising or liability attaching to him by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which the Director or Officer may be guilty in relation to the Company or any subsidiary thereof.

53.3 The rights conferred under this Bye-law 53 shall not be exclusive of any other right that any individual may have or hereafter acquire under any statute, Bye-law, resolution of Members or Directors, agreement, or otherwise and shall continue as to an individual who has ceased to be a Director, Officer, employee or agent, as applicable, and shall inure to the benefit of his or her heirs, executors, administrators, and personal representatives.

53.4 The Company hereby acknowledges that the Director designated by GSCP pursuant to Section 7.02 of the Investment Agreement may have certain rights to indemnification, advancement of expenses and/or insurance provided by GSCP and certain of their affiliates (collectively, the "Fund Indemnitors"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to such person are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such person are secondary) with respect to any actions, costs, charges, losses, damages or expenses incurred or sustained in connection with the execution by such person of his or her duties as a Director of the Company, (ii) that it shall be required to advance the full amount of such expenses incurred by such person and shall be liable for the full amount of all such expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of these Bye-laws of the Company (or any other agreement between the Company and such person), without regard to any rights such person may have, or may be pursuing, against the Fund Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of such person with respect to any claim for which such person has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of such person against the Company. The Company and such person agree that the Fund Indemnitors are express third party beneficiaries of the terms of this Bye-law 53.4.

53A Corporate Opportunity

The provisions of this Bye-law 53A are set forth to regulate and define the conduct of certain affairs of the Company as they may involve GSCP, its affiliates and their officers and directors, and the powers, rights, duties and liabilities of the Company, its affiliates and their officers, directors, employees and shareholders in connection therewith:

- (a) Subject to any express contractual provisions to the contrary, GSCP, its affiliates and its and their respective directors, officers, partners and employees (collectively the "GSCP Parties") shall have the right to, and shall have no duty not to: (i) engage in the same or similar business activities or lines of business as the Company, (ii) do business with any client or customer of the Company and (iii) employ or otherwise engage any Officer, Director or employee of the Company; and, in each case, to the extent permitted under Bermuda law, no GSCP Party shall be liable to the Company or its Members for breach of any fiduciary duty by reason of any such activities of any GSCP Party or of such person's participation therein. In the event that any GSCP Party acquires knowledge of a potential transaction or matter (other than knowledge acquired through a GSCP Party acting in his or her capacity as Director from the Company or its Directors, Officers or employees) that may be a corporate opportunity for both a GSCP Party and the Company, none of the GSCP Parties shall have any duty whatsoever to communicate or present such corporate opportunity to the Company and, to the extent permitted under Bermuda law, shall not be liable to the Company or its Members for breach of any fiduciary duty as a Member of the Company by reason of the fact that a GSCP Party pursues or acquires such corporate opportunity for itself, directs such corporate opportunity to another person or entity or does not present such corporate opportunity to the Company;
- (b) For the purposes of this Bye-law 53A "corporate opportunities" shall include, but not be limited to, business opportunities that the Company is financially able to undertake, which are, from their nature, in the line of the Company's business, are of practical advantage to it and are ones in which the Company has an interest or a reasonable expectancy, and with respect to which the interest of any GSCP Party, could be brought into conflict with that of the Company;
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- (c) Any person or entity purchasing or otherwise acquiring any interest in Shares of the Company shall be deemed to have notice of and consented to the provisions of this Bye-law 53A;
- (d) Notwithstanding anything in these Bye-laws to the contrary and in addition to any vote of the Board required by these Bye-laws or the Act, until the occurrence of the Operative Date, the affirmative vote of at least three-quarters of the votes of all the Common Shares then outstanding entitled to be cast thereon shall be required to alter, amend or repeal, or adopt any provision inconsistent with, any provision of this Bye-law 53A. "Operative Date" shall mean the later of (i) the first date on which GSCP ceases to own beneficially (excluding for such purposes any shares of the Company beneficially owned by GSCP but not for its own account, including (in such exclusion) beneficial ownership which arises by virtue of some entity that is an affiliate of GSCP being a sponsor or advisor of a mutual or similar fund that beneficially owns Common Shares) at least 5% of the outstanding shares of the Company and (ii) the first date on which no Director is a GSCP Party.

MEETINGS OF THE BOARD OF DIRECTORS

54. Board Meetings

The Board may meet for the transaction of business, adjourn and otherwise regulate its meetings as it sees fit, provided any such meetings shall occur in Bermuda. Subject to the provisions of these Bye-laws, a resolution put to the vote at a meeting of the Board shall be carried by the affirmative votes of a majority of the votes cast and in the case of an equality of votes the resolution shall fail.

55. Notice of Board Meetings

The Chairman or a majority of the Directors may, and the Secretary on the requisition of such Directors shall, at any time summon a meeting of the Board upon at least five days' prior notice, stating the date, place and time at which the meeting is to be held. Notice of a meeting of the Board shall be deemed to be duly given to a Director if it is given to such Director verbally (in person or by telephone) or otherwise communicated or sent to such Director by post, cable, telex, telecopier, facsimile, electronic

mail or other mode of representing words in a legible form at such Director's last known address or any other address given by such Director to the Company for this purpose.

56. Participation in Meetings by Telephone

Directors may participate in any meeting of the Board by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, provided, that no Director may participate by telephone, electronic or other communication facilities from the United Kingdom, the United States or Switzerland, and participation in such a meeting shall constitute presence in person at such meeting.

57. Quorum at Board Meetings

The quorum necessary for the transaction of business at a meeting of the Board shall be a majority of the Directors.

58. Board to Continue in the Event of Vacancy

The Board may act notwithstanding any vacancy in its number but, if and so long as its number is reduced below the number fixed by these Bye-laws as the quorum necessary for the transaction of business at meetings of the Board, the continuing Directors or Director may act for the purpose of (i) summoning a general meeting of the Company; or (ii) preserving the assets of the Company.

59. Chairman to Preside

Unless otherwise agreed by a majority of the Directors attending, the Chairman, if there be one, and if not, the President shall act as chairman at all meetings of the Board at which such person is present. In their absence the Deputy Chairman or Vice President, if present, shall act as chairman and in the absence of all of them a chairman shall be appointed or elected by the Directors present at the meeting.

60. Written Resolutions

A resolution signed by all the Directors, which may be in counterparts, shall be as valid as if it had been passed at a meeting of the Board duly called and constituted, such resolution to be effective on the date on which the last Director signs the resolution.

61. Validity of Prior Acts of the Board

No regulation or alteration to these Bye-laws made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation or alteration had not been made.

CORPORATE RECORDS

62. Minutes

The Board shall cause minutes to be duly entered in books provided for the purpose:

- (a) of all elections and appointments of Officers;
- (b) of the names of the Directors present at each meeting of the Board and of any committee appointed by the Board; and
- (c) of all resolutions and proceedings of general meetings of the Members, meetings of the Board, and meetings of committees appointed by the Board.

63. Place Where Corporate Records Kept

Minutes prepared in accordance with the Act and these Bye-laws shall be kept by the Secretary at the registered office of the Company.

64. Form and Use of Seal

- 64.1** The seal of the Company shall be in such form as the Board may determine. The Board may adopt one or more duplicate seals for use in or outside Bermuda.
 - 64.2** The seal of the Company shall not be affixed to any instrument except attested by the signature of a Director and the Secretary or any two Directors, or any person appointed by the Board for that purpose, provided that any Director, Officer or Resident Representative, may affix the seal of the Company attested by such Director, Officer or Resident Representative's signature to any authenticated copies of these Bye-laws, the incorporating documents of the Company, the minutes of any meetings or any other documents required to be authenticated by such Director, Officer or Resident Representative.
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ACCOUNTS

65. Books of Account

65.1 The Board shall cause to be kept proper records of account with respect to all transactions of the Company and in particular with respect to:

- (a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure relates;
- (b) all sales and purchases of goods by the Company; and
- (c) all assets and liabilities of the Company.

65.2 Such records of account shall be kept at the registered office of the Company, or subject to the provisions of the Act, at such other place as the Board thinks fit and shall be available for inspection by the Directors during normal business hours.

66. Financial Year End

The financial year end of the Company may be determined by resolution of the Board and failing such resolution shall be 31st December in each year.

AUDITS

67. Annual Audit

Subject to any rights to waive laying of accounts or appointment of an Auditor pursuant to the Act, the accounts of the Company shall be audited at least once in every year.

68. Appointment of Auditors

68.1 Subject to the provisions of the Act, at the annual general meeting or at a subsequent special general meeting in each year, the Members shall appoint an independent representative of the Members to serve as the registered independent accounting firm that acts as Auditor of the accounts of the Company.

68.2 The Auditor may be a Member but no Director, Officer or employee of the Company shall, during his continuance in office, be eligible to act as an Auditor of the Company.

69. Remuneration of Auditors

The remuneration of the Auditor shall be fixed by the Audit Committee of the Board or in such manner as the Members may determine.

70. Duties of Auditors

70.1 The financial statements provided for by these Bye-laws shall be audited by the Auditor in accordance with generally accepted auditing standards. The Auditor shall make a written report thereon in accordance with generally accepted auditing standards.

70.2 The generally accepted auditing standards referred to in this Bye-law may be those of a country or jurisdiction other than Bermuda or such other generally accepted auditing standards as may be provided for in the Act. If so, the financial statements and the report of the Auditor shall identify the generally accepted auditing standards used.

71. Access to Records

The Auditor shall at all reasonable times have access to all books kept by the Company and to all accounts and vouchers relating thereto, and the Auditor may call on the Directors or Officers of the Company for any information in their possession relating to the books or affairs of the Company.

72. Financial Statements

Subject to any rights to waive laying of accounts pursuant to the provisions of the Act, financial statements as required by the Act shall be laid before the Members in general meeting.

73. Distribution of Auditors Report

The report of the Auditor shall be submitted to the Members in general meeting.

74. Vacancy in the Office of Auditor

If the office of Auditor becomes vacant by the resignation or death of the Auditor, or by the Auditor becoming incapable of acting by reason of illness or other disability at a time when the Auditor's services are required, the vacancy thereby created shall be filled in accordance with the Act.

VOLUNTARY WINDING-UP AND DISSOLUTION

75. Winding-Up

If the Company shall be wound up the liquidator may, with the sanction of a resolution of the Members, divide amongst the Members in specie or in kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like sanction, vest the whole or any part of such assets in the trustees upon such trusts for the benefit of the Members as the liquidator shall think fit, but so that no Member shall be compelled to accept any shares or other securities or assets whereon there is any liability.

CHANGES TO CONSTITUTION

76. Changes to Bye-laws

No Bye-law shall be rescinded, altered or amended and no new Bye-law shall be made until the same has been approved by a resolution of the Board and by a resolution of the Members.

77. Discontinuance

The Board may exercise all the powers of the Company to discontinue the Company to a jurisdiction outside Bermuda pursuant to the Act.

CERTAIN SUBSIDIARIES**78. Voting of Subsidiary Shares**

Notwithstanding any other provision of these Bye-laws to the contrary, if the Company or a Subsidiary of the Company, as the case may be, is required or entitled to vote at a general meeting of any direct or indirect subsidiary of the Company, the Directors shall refer the subject matter of any vote regarding the appointment, removal or remuneration of directors to the Members of the Company on a poll (subject to Bye-laws 4.7 through 4.10) and seek authority from the Members for the Company's or the Subsidiary's, as the case may be, corporate representative or proxy to vote in favour of the resolution proposed by the subsidiary. The Directors shall cause the Company's or the Subsidiary's, as the case may be, corporate representative or proxy to vote the Company's or the Subsidiary's shares in the subsidiary (with respect to a resolution covered by the foregoing sentence) pro rata to the votes received at the general meeting of the Company, with votes for or against the directing resolution being taken, respectively, as an instruction for the Company's or the Subsidiary's, as the case may be, corporate representative or proxy to vote the appropriate proportion of its shares for and the appropriate proportion of its shares against the resolution proposed by the subsidiary.

79. Bye-laws or Articles of Association of Certain Subsidiaries

The Board in its discretion shall require that the Bye-laws or Articles of Association of each subsidiary of the Company, organized under the laws of a jurisdiction outside the United States of America, shall contain provisions substantially similar to Bye-law 78. The Company shall enter into agreements with each such subsidiary, as reasonably necessary, to effectuate or implement this Bye-law.

**THIRD AMENDED AND RESTATED
BYE-LAWS OF
ENSTAR GROUP LIMITED
(formerly known as Castlewood Holdings Limited)**

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INTERPRETATION**1. Definitions**

1.1 In these Bye-laws, the following words and expressions shall, where not inconsistent with the context, have the following meanings, respectively:

Act	the Companies Act 1981 as amended from time to time;
Auditor	includes an individual or partnership;
BHC Affiliates	with respect to any Member, all “affiliates” as defined in the U.S. Bank Holding Company Act of 1956, as amended, or Regulation Y of the Board of Governors of the U.S. Federal Reserve System;
Board	the board of directors appointed or elected pursuant to these Bye-laws and acting by resolution in accordance with the Act and these Bye-laws or the directors present at a meeting of directors at which there is a quorum;
Company	the company for which these Bye-laws are approved and confirmed;
Director	a director of the Company;
Group	the Company and every company and other entity which is for the time being controlled by or under common control with the Company (for these purposes, “control” means the power to direct management or policies of the person in question, whether by means of an ownership interest or otherwise);
GSCP	GSCP VI AIV Navi, Ltd., GSCP VI Offshore Navi, Ltd., GSCP VI Parallel AIV Navi, Ltd. and GSCP VI Employee

Navi, Ltd., each a Cayman Islands exempted company, and GSCP VI GmbH Navi, L.P., a Cayman Islands limited partnership;

Investment Agreement the Investment Agreement dated as of April 20, 2011 between GSCP and the Company;

Member the person registered in the Register of Members as the holder of shares in the Company and, when two or more persons are so registered as joint holders of shares, means the person whose name stands first in the Register of Members as one of such joint holders or all of such persons, as the context so requires;

notice written notice as further provided in these Bye-laws unless otherwise specifically stated;

Officer any person appointed by the Board to hold an office in the Company;

Register of Directors and Officers the register of directors and officers referred to in these Bye-laws;

Register of Members the register of members referred to in these Bye-laws;

Reorganization Event (i) any consolidation, merger, tender or exchange offer, amalgamation or other similar business combination of the Company with or into another person, in each case pursuant to which the Common Shares or Non-Voting Convertible Common Shares will be converted into cash, securities or other property of the Company or another person;

(ii) any sale, transfer, lease or conveyance to another person of all or substantially all of the property and assets of the Company, in each case pursuant to which the

Common Shares or Non-Voting Convertible Common Shares will be converted into cash, securities or other property of the Company or another person;

(iii) any reclassification of the Common Shares or Non-Voting Convertible Common Shares into securities including securities other than the Common Shares or Non-Voting Convertible Common Shares, as applicable; or

(iv) any statutory exchange of the outstanding Common Shares or Non-Voting Convertible Common Shares for securities of another person (other than in connection with a merger or acquisition);

Resident Representative any person appointed to act as resident representative and includes any deputy or assistant resident representative; and

Secretary the person appointed to perform any or all of the duties of secretary of the Company and includes any deputy or assistant secretary and any person appointed by the Board to perform any of the duties of the Secretary.

1.2 In these Bye-laws, where not inconsistent with the context:

- (a) words denoting the plural number include the singular number and vice versa;
 - (b) words denoting the masculine gender include the feminine and neuter genders;
 - (c) words importing persons include companies, associations or bodies of persons whether corporate or not;
 - (d) the words:
 - (i) “may” shall be construed as permissive; and
 - (ii) “shall” shall be construed as imperative; and
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(e) unless otherwise provided herein, words or expressions defined in the Act shall bear the same meaning in these Bye-laws.

- 1.3 In these Bye-laws expressions referring to writing or its cognates shall, unless the contrary intention appears, include facsimile, printing, lithography, photography, electronic mail and other modes of representing words in visible form.
- 1.4 Headings used in these Bye-laws are for convenience only and are not to be used or relied upon in the construction hereof.

SHARES

2. Power to Issue Shares

- 2.1 Subject to these Bye-laws and to any resolution of the Members to the contrary, and without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, the Board shall have the power to issue any unissued shares of the Company on such terms and conditions as it may determine.
- 2.2 Without limitation to the provisions of Bye-law 4, subject to the provisions of the Act, any preference shares may be issued or converted into shares that (at a determinable date or at the option of the Company or the holder) are liable to be redeemed on such terms and in such manner as may be determined by the Board (before the issue or conversion).

3. Power of the Company to Purchase its Shares

The Company may purchase its own shares in accordance with the provisions of the Act on such terms as the Board shall think fit. The Board may exercise all the powers of the Company to purchase all or any part of its own shares in accordance with the Act.

4. Rights Attaching to Shares

- 4.1 At the date this Bye-law 4.1 is adopted, the share capital of the Company shall be divided into three classes: (i) 90,000,000 ordinary shares of par value US\$1.00 each (the "Common Shares"), (ii) 21,000,000 non-voting convertible ordinary shares of par value US\$1.00 each (the "Non-
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Voting Convertible Common Shares”) and (iii) 45,000,000 preference shares of par value US\$1.00 each (the “Preference Shares”).

- 4.2 The holders of Common Shares shall, subject to the provisions of these Bye-laws (including, without limitation, the rights attaching to Preference Shares):
- (a) be entitled to one vote per share;
 - (b) be entitled to such dividends as the Board may from time to time declare on a pari passu basis with the Non-Voting Convertible Common Shares;
 - (c) in the event of a winding-up or dissolution of the Company, whether voluntary or involuntary or for the purpose of a reorganisation or otherwise or upon any distribution of capital, be entitled to the surplus assets of the Company on a pari passu basis with the Non-Voting Convertible Common Shares; and
 - (d) generally be entitled to enjoy all of the rights attaching to shares.

Any Common Shares held by GSCP or its BHC Affiliates shall, for the sake of clarity, vote together with all other Common Shares, but may be converted at any time at the option of the holder in its sole discretion into Series B Non-Voting Common Shares, Series C Non-Voting Common Shares or Series D Non-Voting Common Shares, at a one-for-one exchange ratio, subject in each case to any necessary adjustments for any share splits, dividends, recapitalizations, consolidations or similar transactions occurring in respect of the Common Shares or the Non-Voting Convertible Common Shares after the date of the adoption of these Bye-laws.

- 4.3 (a) The Non-Voting Convertible Common Shares shall be divided into the following series: (i) Series A Non-Voting Common Shares, (ii) Series B Non-Voting Common Shares, (iii) Series C Non-Voting Common Shares and (iv) Series D Non-Voting Common Shares, each with the respective rights hereinafter specified. All Non-Voting Convertible Common Shares issued as of December 31, 2010 shall be designated Series A Non-Voting Common Shares. All Non-Voting Convertible Common Shares issued to GSCP or its BHC Affiliates (x) pursuant to Section 2.03(b) of the Investment Agreement or
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- (y) upon the conversion of Common Shares into Non-Voting Convertible Common Shares pursuant to Bye-law 4.2, in each case, shall be Series B Non-Voting Common Shares. All other Non-Voting Convertible Common Shares issued to GSCP or its BHC Affiliates pursuant to the Investment Agreement shall be Series C Non-Voting Common Shares. Series D Non-Voting Common Shares may be issued upon conversion of (i) Common Shares in accordance with Bye-law 4.2, (ii) Series B Non-Voting Common Shares in accordance with Bye-law 4.3(g) or (iii) Series C Non-Voting Common Shares in accordance with Bye-law 4.3(h).
- (b) The holders of Non-Voting Convertible Common Shares shall, subject to the provisions of these Bye-laws (including, without limitation, the rights attaching to Preference Shares):
- (i) be entitled to such dividends as the Board may from time to time declare on a pari passu basis with the Common Shares;
 - (ii) in the event of a winding-up or dissolution of the Company, whether voluntary or involuntary or for the purpose of a reorganisation or otherwise or upon any distribution of capital, be entitled to the surplus assets of the Company on a pari passu basis with the Common Shares; and
 - (iii) generally be entitled to enjoy all of the rights attaching to Common Shares, but shall be non-voting, except (1) as required by law, (2) in accordance with Bye-law 15 or (3) for the limited voting rights specified in Bye-law 4.3(c).
- (c) The holders of the Series B Non-Voting Common Shares, voting together as a separate class, and the holders of the Series C Non-Voting Common Shares, voting together as a separate class, shall be entitled to vote such shares, but only with respect to the following limited matters, which shall constitute a variation of class rights for the purposes of Bye-law 15:
- (i) any amendment, alteration or repeal of any provision of the Company's memorandum of association or these Bye-laws (including any amendment,
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alteration or repeal by means of a merger, amalgamation, consolidation or otherwise) so as to significantly and adversely affect the rights, preferences, privileges or limited voting rights of the Series B Non-Voting Common Shares or the Series C Non-Voting Common Shares, as applicable;

- (ii) any consummation of a binding share exchange or reclassification involving the Series B Non-Voting Common Shares or the Series C Non-Voting Common Shares or of a merger, consolidation or amalgamation of the Company with another corporation or other entity (except for any such merger, consolidation or amalgamation in which the consideration paid to shareholders is entirely in cash), unless in each case (x) the shares of Series B Non-Voting Common Shares or the Series C Non-Voting Common Shares, as applicable, remain outstanding or, in the case of any such merger or consolidation with respect to which the Company is not the surviving or resulting entity, are converted into or exchanged for securities of the surviving or resulting entity or its ultimate parent, and (y) such shares have such rights, preferences, privileges and limited voting rights, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and limited voting rights, and limitations and restrictions thereof, of the Series B Non-Voting Common Shares or the Series C Non-Voting Common Shares, as applicable, immediately prior to such consummation, taken as a whole.

provided, for the sake of clarity, that the holders of the Series A Non-Voting Common Shares and the Series D Non-Voting Common Shares shall not be entitled to vote such shares, except as required under Bermuda law.

- (d) Each Series A Non-Voting Common Share and Series B Non-Voting Common Share shall be automatically converted into one Common Share, subject to any necessary adjustments for any share splits, dividends, recapitalizations, consolidations or similar transactions occurring in respect of the Common Shares or the Non-Voting Convertible
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Common Shares after the date of the adoption of these Bye-laws, immediately prior to any transfer by the registered holder, whether or not for value, to a third party, except for transfers to a nominee or Affiliate of such holder in a transfer that will not result in a change of beneficial ownership (as determined under Rule 13d-3 under the United States Securities Exchange Act of 1934, as amended) or to a person that already holds Series A Non-Voting Common Shares or Series B Non-Voting Common Shares.

- (e) Each Series C Non-Voting Common Share and Series D Non-Voting Common Share shall be automatically converted into one Common Share, subject to any necessary adjustments for any share splits, dividends, recapitalizations, consolidations or similar transactions occurring in respect of the Common Shares or the Non-Voting Convertible Common Shares after the date of the adoption of these Bye-laws, only upon the transfer by the registered holder thereof, whether or not for value, to a third party in a Widely Dispersed Offering. As used herein, "Widely Dispersed Offering" means (i) a widespread public distribution, (ii) a transfer in which no transferee (or group of associated transferees) would receive 2% or more of any class of voting shares of the Company or (iii) a transfer to a transferee that would control more than 50% of the voting shares of the Company without any transfer from the holder. For purposes of the Series C Non-Voting Common Shares and Series D Non-Voting Common Shares, the term "registered holder" or "holder" means GSCP or its BHC Affiliates and any direct or indirect transferee of GSCP or its BHC Affiliates except a direct or indirect transferee that receives the Series C Non-Voting Common Shares or Series D Non-Voting Common Shares in a Widely Dispersed Offering.
 - (f) The holders of the Series A Non-Voting Common Shares shall not be permitted to convert such shares into any other class of the Company's share capital or into any other series of Non-Voting Convertible Common Shares, except pursuant to a transfer permitted by clause (d) of this Bye-law 4.3.
 - (g) The holders of the Series B Non-Voting Common Shares shall have the right to convert all or any number of such shares into Series C Non-Voting Common Shares, Series D Non-Voting Common Shares or Common Shares at any time, in the sole discretion of such holder.
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- (h) The holders of the Series C Non-Voting Common Shares shall have the right to convert all or any number of such shares into Series D Non-Voting Common Shares at any time, in the sole discretion of such holder. The holders of the Series D Non-Voting Common Shares shall have no right to convert such shares, except that, upon the receipt of all applicable regulatory approvals, all or any number of such shares may be converted into Series C Non-Voting Common Shares at any time, in the sole discretion of such holder.
 - (i) If at any time the Company declares or pays a dividend or distribution to any holder of Common Shares in the form of Common Shares or other voting security of the Company, the Company shall declare and pay to each holder of Non-Voting Convertible Common Shares a proportional dividend or distribution in the form of the same series of Non-Voting Convertible Common Shares.
 - (j) Notwithstanding anything herein to the contrary, if the consideration payable to GSCP or its BHC Affiliates as holders of Non-Voting Convertible Common Shares upon a Reorganization Event consists (in whole or in part) of property or securities that would, in the sole judgment of any holder thereof, create, aggravate or exacerbate any issue, problem or concern for any such holder or any of its affiliates, then the consideration payable to such holder shall be adjusted (e.g., by the issuance of non-voting securities that are economically equivalent to the voting securities they replaced and would convert into such voting securities on transfer to an unaffiliated third party, subject, if applicable, to the conversion restrictions set forth in Bye-law 4.3(e)) to the maximum extent practicable to eliminate or address such issue, problem or concern, so long as such adjusted or different securities have the same value as, and are pari passu with, the securities that they replaced.
- 4.4 The Board is authorised to provide for the issuance of the Preference Shares in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations, or restrictions thereof (and, for the avoidance of doubt, such matters and the issuance of such Preference Shares shall not be deemed to vary the rights attached to the Common Shares or the Non-Voting Convertible Common Shares or, subject to the terms of any other series of Preference Shares, to vary the rights attached to any other series
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of Preference Shares). The authority of the Board with respect to each series shall include, but not be limited to, determination of the following:

- (a) the number of shares constituting that series and the distinctive designation of that series;
 - (b) the dividend rate on the shares of that series, whether dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of the payment of dividends on shares of that series;
 - (c) whether that series shall have voting rights, in addition to the voting rights provided by law, and if so, the terms of such voting rights;
 - (d) whether that series shall have conversion or exchange privileges (including, without limitation, conversion into Common Shares), and, if so, the terms and conditions of such conversion or exchange, including provision for adjustment of the conversion or exchange rate in such events as the Board shall determine;
 - (e) whether or not the shares of that series shall be redeemable or repurchaseable, and, if so, the terms and conditions of such redemption or repurchase, including the manner of selecting shares for redemption or repurchase if less than all shares are to be redeemed or repurchased, the date or dates upon or after which they shall be redeemable or repurchaseable, and the amount per share payable in case of redemption or repurchase, which amount may vary under different conditions and at different redemption or repurchase dates;
 - (f) whether that series shall have a sinking fund for the redemption or repurchase of shares of that series, and, if so, the terms and amount of such sinking fund;
 - (g) the right of the shares of that series to the benefit of conditions and restrictions upon the creation of indebtedness of the Company or any subsidiary, upon the issue of any additional shares (including additional shares of such series or any other series) and upon the payment of dividends or the making of other distributions on, and the purchase, redemption or other acquisition by the Company or any subsidiary of any issued shares of the Company;
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- (h) the rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Company, and the relative rights of priority, if any, of payment of shares of that series; and
 - (i) any other relative participating, optional or other special rights, qualifications, limitations or restrictions of that series.
- 4.5** Any Preference Shares of any series which have been redeemed (whether through the operation of a sinking fund or otherwise) or which, if convertible or exchangeable, have been converted into or exchanged for shares of any other class or classes shall have the status of authorised and unissued Preference Shares of the same series and may be reissued as a part of the series of which they were originally a part or may be reclassified and reissued as part of a new series of Preference Shares to be created by resolution or resolutions of the Board or as part of any other series of Preference Shares, all subject to the conditions and the restrictions on issuance set forth in the resolution or resolutions adopted by the Board providing for the issue of any series of Preference Shares.
- 4.6** At the discretion of the Board, whether or not in connection with the issuance and sale of any shares or other securities of the Company, the Company may issue securities, contracts, warrants or other instruments evidencing any shares, option rights, securities having conversion or option rights, or obligations on such terms, conditions and other provisions as are fixed by the Board, including, without limiting the generality of this authority, conditions that preclude or limit any person or persons owning or offering to acquire a specified number or percentage of the issued Common Shares, other shares, option rights, securities having conversion or option rights, or obligations of the Company or transferee of the person or persons from exercising, converting, transferring or receiving the shares, option rights, securities having conversion or option rights, or obligations.
- 4.7** (a) The voting power of all shares is hereby adjusted (and shall be automatically adjusted in the future) to the extent necessary so that there is no 9.5% U.S. Shareholder or 9.5% Direct Foreign Shareholder Group. The Board shall implement the foregoing in the manner provided herein; provided, that the foregoing provision and the remainder of this
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Bye-law 4.7 shall not apply in the event that one Member of the Company owns greater than 75% of the issued and outstanding shares of the Company.

- (b) The Board shall from time to time, including prior to any time at which a vote of Members is taken, take all reasonable steps, including those specified in Bye-law 4.9, necessary to ascertain, through communications with Members or otherwise, whether there exists, or will exist at the time any vote of Members is taken, a Tentative 9.5% U.S. Shareholder or a Tentative 9.5% Direct Foreign Shareholder Group.
 - (c) In the event that a Tentative 9.5% U.S. Shareholder exists, (i) the aggregate votes conferred by Common Shares held by a Member and treated as Controlled Shares of that Tentative 9.5% U.S. Shareholder shall be reduced to the extent necessary such that the combined voting power conferred by the Common Shares and the voting power that would be conferred by the Common Shares into which the Series B Non-Voting Common Shares are then convertible, in each case that are treated as Controlled Shares of the Tentative 9.5% U.S. Shareholder, will constitute 9.5% of the voting power of all Common Shares (taking into account the reduction effected by clause (ii) of this Bye-law 4.7(c)) and (ii) the aggregate votes conferred by the Common Shares held by GSCP and its affiliates and treated as Controlled Shares of such Members shall be correspondingly reduced to the extent necessary such that the ratio of (x) the voting power represented by the sum of (A) the votes conferred by such Common Shares and (B) the votes that would be conferred by any Common Shares into which the Series B Non-Voting Common Shares are then convertible to (y) the voting power of all Common Shares (taking into account the reduction effected by clause (i) of this Bye-law 4.7(c)) is not greater than the ratio as if the adjustment described in clause (i) of this Bye-law 4.7(c) had not occurred. In applying the previous sentence where shares held by more than one Member are treated as Controlled Shares of such Tentative 9.5% U.S. Shareholder, the reduction in votes shall apply to such Members in descending order according to their respective Attribution Percentages, provided, that in the event of a tie, the reduction shall apply first to the Member whose shares are Controlled Shares of the Tentative 9.5% U.S. Shareholder by virtue of the Tentative 9.5% U.S. Shareholder's economic interest in (as opposed to voting control with respect to) such shares. The adjustments of voting power described in this Bye-law shall apply repeatedly until there is no 9.5% U.S. Shareholder. The Board may deviate from any of the principles described in this Bye-law and determine that shares held by a Member shall carry different voting rights as it determines appropriate (1) to avoid the existence of any 9.5% U.S. Shareholder or (2) to
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avoid adverse tax, legal or regulatory consequences to the Company, any subsidiary of the Company, or any other Member or its affiliates. For the avoidance of doubt, in applying the provisions of Bye-laws 4.7 through 4.10, a share may carry a fraction of a vote. In the event any Non-Voting Convertible Common Shares of any registered holder are entitled to vote on any matter under Bermuda law (including, but not limited to, any Reorganization Event), such shares shall be deemed for purposes of this Bye-law 4.7(c) to be that number of Common Shares into which such Non-Voting Convertible Common Shares may be converted upon a qualified transfer, and the voting power adjustments set forth in this Bye-law 4.7(c) shall apply to Common Shares and such Non-Voting Convertible Common Shares, collectively, on such basis. Notwithstanding anything herein to the contrary, the aggregate voting power of the holders of Series C Non-Voting Common Shares and Series D Non-Voting Common Shares with respect to any merger, consolidation or amalgamation of the Company with another corporation or other entity shall in no event exceed 0.01% of the aggregate voting power of the Company's issued share capital, and this sentence shall not be amended without the affirmative vote (or written consent) of the holders representing a majority of each of the Series C Non-Voting Common Shares and Series D Non-Voting Common Shares. For the avoidance of doubt, the voting power adjustments set forth in this Bye-law 4.7(c) shall not apply to the voting rights set forth in Bye-law 4.3(c).

- (d) Immediately after completing the adjustment of voting power provided for in Bye-law 4.7(c), in the event that a Tentative 9.5% Direct Foreign Shareholder Group exists, the aggregate votes conferred by shares held by the Tentative 9.5% Direct Foreign Shareholder Group shall be reduced to the extent necessary to cause such Shareholder or Shareholders to no longer constitute a 9.5% Direct Foreign Shareholder Group.
 - (e) "9.5% Direct Foreign Shareholder Group" means a shareholder that is not a U.S. Person or a group of commonly controlled shareholders that are not U.S. Persons, in either case who owns shares that constitute more than nine and one-half percent (9.5%) of the voting power of all shares of the Company and that are attributable to a U.S. Person under Section 958 of the Code.
 - (f) "Attribution Percentage" shall mean, with respect to a Member, the percentage of the Member's shares that are treated as Controlled Shares of a Tentative 9.5% Shareholder.
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- (g) “Controlled Shares” in reference to any person means all shares of the Company directly, indirectly or constructively owned by such person as determined pursuant to Section 958 of the Code.
 - (h) “9.5% U.S. Shareholder” means a “United States person” as defined in the Code (a “U.S. Person”) whose Controlled Shares constitute more than nine and one-half percent (9.5%) of the voting power of all shares of the Company and who would be generally required to recognize income with respect to the Company under Section 951(a)(1) of the Code, if the Company were a controlled foreign corporation as defined in Section 957 of the Code and if the ownership threshold under Section 951(b) of the Code were 9.5%.
 - (i) “Tentative 9.5% U.S. Shareholder” means a U.S. Person that, but for adjustments to the voting rights of shares pursuant to Bye-laws 4.7 through 4.8, would be a 9.5% U.S. Shareholder.
 - (j) “Tentative 9.5% Direct Foreign Shareholder Group” means a shareholder that is not a U.S. Person or a group of commonly controlled shareholders that are not U.S. Persons that, but for adjustments to the voting rights of shares pursuant to Bye-laws 4.7 through 4.8, would be a 9.5% Direct Foreign Shareholder Group.
- 4.8** In addition to the provisions of Bye-law 4.7, any shares shall not carry any right to vote to the extent that the Board of Directors determines, in its reasonable discretion, that it is necessary that such shares should not carry the right to vote in order to avoid adverse tax, legal or regulatory consequences to the Company, any subsidiary of the Company, or any other Member or its affiliates, provided, that no adjustment pursuant to this sentence shall cause any person to become a 9.5% U.S. Shareholder or a 9.5% Direct Foreign Shareholder Group.
- 4.9** Prior to any date on which Members shall vote on any matter, the Board of Directors shall (a) retain the services of an internationally recognized accounting firm or organization with comparable professional capabilities in order to assist the Company in applying the principles of Bye-laws 4.7 through 4.10, (b) obtain from such firm or organization a statement describing the information obtained and procedures followed and setting forth the determinations made with respect to Bye-laws 4.7 through 4.10 and (c) notify each Member of the voting power conferred by its shares determined in accordance with Bye-laws 4.7 through 4.10.
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- 4.10** (a) Subject to the provisions of this Bye-law 4.10, the Company shall have the authority to reasonably request from any Member, and such Member shall promptly provide to the Company, such information as the Company may reasonably request for the purpose of (i) determining whether any Member's voting rights are to be adjusted pursuant to Bye-laws 4.7 through 4.10, (ii) determining whether the Company would realize any income that would be included in the income of any Member (or any interest holder, whether direct or indirect, of any Member) by operation of Section 953(c) of the Code and (iii) determining whether the Company or any of its subsidiaries would be entitled to the benefits of a tax treaty.
- (b) Any information provided by each Member to the Company pursuant to this Bye-law 4.10 shall be deemed "confidential information" (the "Confidential Information") and shall be used by the Company solely for the purposes contemplated by this Bye-law 4.10 (except as otherwise may be required by applicable law or regulation). The Company shall hold such Confidential Information in strict confidence and shall not disclose any Confidential Information that it receives, except (i) to the U.S. Internal Revenue Service (the "Service") if and to the extent the Confidential information is required by the Service, (ii) to any outside legal counsel or accounting firm engaged by the Company to make determinations pursuant to Bye-laws 4.7 through 4.10, (iii) to directors, officers and employees of the Company and (iv) as otherwise required by law or regulation. The Company shall take measures reasonably practicable to provide for the continued confidentiality of the Confidential Information and shall grant the persons referred to in the preceding clauses (ii) and (iii) access to the Confidential Information only (x) to the extent necessary, as appropriate, to allow them to assist the Company in any analysis required pursuant to Bye-laws 4.7 through 4.10, (y) to determine whether the Company would realize any income that would be included in the income of any Member (or any interest holder, whether direct or indirect, of any Member) by operation of Section 953(e) of the Code and (z) to determine whether the Company or any of its subsidiaries would be entitled to the benefits of a tax treaty. Prior to granting access to the Confidential Information to any such persons, the Company shall inform them of the information's confidential nature and of the provisions of this Bye-law 4.10 and shall require them to abide by all the provisions hereof. For the avoidance of doubt, the Company shall be permitted to disclose to the Members and others the relative voting percentages of the Members after application of Bye-laws 4.7 through 4.10. At the written request of a Member, the Confidential Information of such Member shall be destroyed or returned to
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- such Member after the later to occur of (i) such Member no longer being a Member or (ii) the expiration of the applicable statute of limitations with respect to any Confidential Information obtained for purposes of engaging in any tax related analysis.
- (c) The Company shall (i) notify a Member of the existence, terms and circumstances surrounding any request made to the Company to disclose any Confidential Information provided by or with respect to such Member and, prior to such disclosure, shall permit, if practicable, such Member a reasonable period of time to seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Bye-law 4.10, and (ii) if, in the absence of a protective order, such disclosure is required in the reasonable opinion of counsel to the Company, the Company shall make such disclosure without liability hereunder; provided that the Company shall use commercially reasonable efforts to furnish only that portion of the Confidential Information that is legally required, shall give such Member notice of the information to be disclosed as far in advance of its disclosure as practicable and, upon the reasonable request of such Member and at its expense, shall use commercially reasonable efforts to ensure that confidential treatment will be accorded to all such disclosed information.
 - (d) The Board may rely in good faith exclusively on the analysis, deliberation, reports and other communications of those persons specified in Bye-law 4.10(b) with respect to the collection, disclosure or use of the Confidential Information, including, but not limited to (i) determining whether the Company would realize any income that would be included in the income of any Member (or any interest holder, whether direct or indirect, of any Member) by operation of Section 953(c) of the Code or implementing any provisions of these Bye-laws and (ii) determining whether the Company or any of its subsidiaries would be entitled to the benefits of a tax treaty.
 - (e) If any Member fails to respond to a reasonable request for information by the Company pursuant to Bye-law 4.10(a) within seven business days of such request, or submits incomplete or inaccurate information in response to such a reasonable request, the Directors may in their reasonable discretion (after considering the circumstances described in any response to the request by the Member and providing the Member with a cure period of such length as the Board may reasonably determine under the circumstances) determine that such Member's shares shall carry no voting rights in which case such shares shall not carry any voting rights until otherwise determined by the Directors in their reasonable discretion.
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- (f) Any holder of shares that is a corporation, partnership, limited liability company or other entity or a U.S. Person shall give notice to the Company within ten days following the date that such holder acquires actual knowledge that it is the owner of Controlled Shares that constitute 9.5% or more of the voting power of all shares.
- (g) Notwithstanding the foregoing, no Member shall be liable to any other Member or the Company for any losses or damages resulting from such Member's failure to respond to, or submission of incomplete or inaccurate information in response to, a request under subparagraph (a) of this Bye-law or from such Member's failure to give notice under subparagraph (b) of this Bye-law.

5. Calls on Shares

- 5.1** The Board may make such calls as it thinks fit upon the Members in respect of any monies (whether in respect of nominal value or premium) unpaid on the shares allotted to or held by such Members (and not made payable at fixed times by the terms and conditions of issue) and, if a call is not paid on or before the day appointed for payment thereof, the Member may at the discretion of the Board be liable to pay the Company interest on the amount of such call at such rate as the Board may determine, from the date when such call was payable up to the actual date of payment. The Board may differentiate between the holders as to the amount of calls to be paid and the times of payment of such calls.
- 5.2** Any sum which by the terms of allotment of a share becomes payable upon issue or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for all the purposes of these Bye-laws be deemed to be a call duly made and payable, on the date on which, by the terms of issue, the same becomes payable, and in case of non-payment all the relevant provisions of these Bye-laws as to payment of interest, costs, charges and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
- 5.3** The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
- 5.4** The Company may accept from any Member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up.

6. Prohibition on Financial Assistance

The Company shall not give, whether directly or indirectly, whether by means of loan, guarantee, provision of security or otherwise, any financial assistance for the purpose of the acquisition or proposed acquisition by any person of any shares in the Company, but nothing in this Bye-law shall prohibit transactions permitted under the Act.

7. Forfeiture of Shares

7.1 If any Member fails to pay, on the day appointed for payment thereof, any call in respect of any share allotted to or held by such Member, the Board may, at any time thereafter during such time as the call remains unpaid, direct the Secretary to forward such Member a notice in writing in the form, or as near thereto as circumstances admit, of the following:

Notice of Liability to Forfeiture for Non-Payment of Call

Enstar Group Limited (the "Company")

You have failed to pay the call of [amount of call] made on the [] day of [], 20[], in respect of the [number] share(s) [number in figures] standing in your name in the Register of Members of the Company, on the [] day of [], 20[], the day appointed for payment of such call. You are hereby notified that unless you pay such call together with interest thereon at the rate of [] per annum computed from the said [] day of [], 20[] at the registered office of the Company the share(s) will be liable to be forfeited.

Dated this [] day of [], 20[]

[Signature of Secretary] By Order of the Board

- 7.2** If the requirements of such notice are not complied with, any such share may at any time thereafter before the payment of such call and the interest due in respect thereof be forfeited by a resolution of the Board to that effect, and such share shall thereupon become the property of the Company and may be disposed of as the Board shall determine.
- 7.3** A Member whose share or shares have been forfeited as aforesaid shall, notwithstanding such forfeiture, be liable to pay to the Company all calls owing on such share or shares at the time of the forfeiture and all interest due thereon.
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7.4 The Board may accept the surrender of any shares which it is in a position to forfeit on such terms and conditions as may be agreed. Subject to those terms and conditions, a surrendered share shall be treated as if it had been forfeited.

8. Share Certificates

8.1 Every Member shall be entitled to a certificate under the seal of the Company (or a facsimile thereof) specifying the number and, where appropriate, the class of shares held by such Member and whether the same are fully paid up and, if not, specifying the amount paid on such shares. The Board may by resolution determine, either generally or in a particular case, that any or all signatures on certificates may be printed thereon or affixed by mechanical means.

8.2 The Company shall be under no obligation to complete and deliver a share certificate unless specifically called upon to do so by the person to whom the shares have been allotted.

8.3 If any share certificate shall be proved to the satisfaction of the Board to have been worn out, lost, mislaid, or destroyed the Board may cause a new certificate to be issued and request an indemnity for the lost certificate if it sees fit.

9. Fractional Shares

The Company may issue its shares in fractional denominations and deal with such fractions to the same extent as its whole shares and shares in fractional denominations shall have in proportion to the respective fractions represented thereby all of the rights of whole shares including (but without limiting the generality of the foregoing) the right to vote, to receive dividends and distributions and to participate in a winding-up.

REGISTRATION OF SHARES

10. Register of Members

10.1 The Board shall cause to be kept in one or more books a Register of Members and shall enter therein the particulars required by the Act.

10.2 The Register of Members shall be open to inspection at the registered office of the Company on every business day, subject to such reasonable restrictions as the Board may impose, so that not

less than two hours in each business day be allowed for inspection. The Register of Members may, after notice has been given in accordance with the Act, be closed for any time or times not exceeding in the whole thirty days in each year.

11. Registered Holder Absolute Owner

The Company shall be entitled to treat the registered holder of any share as the absolute owner thereof and accordingly shall not be bound to recognise any equitable claim or other claim to, or interest in, such share on the part of any other person.

12. Transfer of Registered Shares

12.1 An instrument of transfer shall be in writing in the form of the following, or as near thereto as circumstances admit, or in such other form as the Board may accept:

Transfer of a Share or Shares
Enstar Group Limited (the "Company")

FOR VALUE RECEIVED.....[amount], I, [name of transferor] hereby sell, assign and transfer unto [transferee] of [address], [number] of shares of the Company.

DATED this [] day of [], 20[]

Signed by:

In the presence of:

Transferor

Witness

Transferee

Witness

12.2 Such instrument of transfer shall be signed by or on behalf of the transferor and transferee, provided that, in the case of a fully paid share, the Board may accept the instrument signed by or on behalf of the transferor alone. The transferor shall be deemed to remain the holder of such share until the same has been transferred to the transferee in the Register of Members.

12.3 The Board may refuse to recognise any instrument of transfer unless it is accompanied by the certificate in respect of the shares to which it relates and by such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.



- 12.4** The joint holders of any share may transfer such share to one or more of such joint holders, and the surviving holder or holders of any share previously held by them jointly with a deceased Member may transfer any such share to the executors or administrators of such deceased Member.
- 12.5** The Board may in its absolute discretion and without assigning any reason therefor refuse to register the transfer of a share which is not fully paid. The Board shall refuse to register a transfer unless all applicable consents, authorisations and permissions of any governmental body or agency in Bermuda have been obtained. If the Board refuses to register a transfer of any share the Secretary shall, within three months after the date on which the transfer was lodged with the Company, send to the transferor and transferee notice of the refusal.
- 12.6** Shares may be transferred without a written instrument if transferred by an appointed agent or otherwise in accordance with the Act.
- 12.7** (a) The Directors may decline to register any transfer of shares if it appears to the Directors, in their reasonable discretion, after taking into account, among other things, the limitation on voting rights contained in these Bye-laws, that any non-de minimis adverse tax, regulatory or legal consequence to the Company, any subsidiary of the Company, or any other holder of shares or its Affiliates would result from such transfer (including if such consequence arises as a result of any such U.S. Person owning Controlled Shares that constitute 9.5% or more of the value of the Company or the voting shares of the Company (but subject to the provisions of Bye-laws 4.7 through 4.10)). The Directors shall have the authority to reasonably request from any holder of shares, and such holder of shares shall provide, such information as the Directors may reasonably request for the purpose of determining whether any transfer should be permitted.
- (b) Subject to any applicable requirements of the Nasdaq National Market or other quotation system or exchange, the Directors (a) may decline to register any transfer of shares, unless (i) a written opinion from counsel reasonably acceptable to the Company shall have been obtained to the effect that registration of such shares under the U.S. Securities Act of 1933, as amended, is not required or (ii) an effective registration statement under the U.S. Securities Act of 1933, as amended, is in place covering the shares to be
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transferred and (b) shall decline to register any transfer of shares if the transferee shall not have been approved by applicable governmental authorities if such approval is required in respect of such transfer.

- (c) If the Board refuses to register a transfer of any share the Secretary shall, within ten business days after the date on which the transfer was lodged with the Company, send to the transferor and transferee notice detailing the nature of the refusal.

13. Transmission of Registered Shares

- 13.1** In the case of the death of a Member, the survivor or survivors where the deceased Member was a joint holder, and the legal personal representatives of the deceased Member where the deceased Member was a sole holder, shall be the only persons recognised by the Company as having any title to the deceased Member's interest in the shares. Nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by such deceased Member with other persons. Subject to the provisions of the Act, for the purpose of this Bye-law, legal personal representative means the executor or administrator of a deceased Member or such other person as the Board may, in its reasonable discretion, decide as being properly authorised to deal with the shares of a deceased Member.
- 13.2** Any person becoming entitled to a share in consequence of the death or bankruptcy of any Member may be registered as a Member upon such evidence as the Board may deem sufficient or may elect to nominate some person to be registered as a transferee of such share, and in such case the person becoming entitled shall execute in favour of such nominee an instrument of transfer in writing in the form, or as near thereto as circumstances admit, of the following:

Transfer by a Person Becoming Entitled on Death/Bankruptcy of a Member

Enstar Group Limited (the "Company")

I/We, having become entitled in consequence of the [death/bankruptcy] of [name and address of deceased/bankrupt Member] to [number] share(s) standing in the Register of Members of the Company in the name of the said [name of deceased/bankrupt Member] instead of being registered myself/ourselves, elect to have [name of transferee] (the "Transferee") registered as a transferee of such share(s) and I/we do hereby accordingly transfer the said share(s) to the Transferee to hold the same unto the Transferee, his or her executors, administrators and assigns, subject to the conditions on which the same were held at the time

of the execution hereof; and the Transferee does hereby agree to take the said share(s) subject to the same conditions.

DATED this [] day of [], 20[]

Signed by:

In the presence of:

Transferor

Witness

Transferee

Witness

- 13.3 On the presentation of the foregoing materials to the Board, accompanied by such evidence as the Board may require to prove the title of the transferor, the transferee shall be registered as a Member. Notwithstanding the foregoing, the Board shall, in any case, have the same right to decline or suspend registration as it would have had in the case of a transfer of the share by that Member before such Member's death or bankruptcy, as the case may be.
 - 13.4 Where two or more persons are registered as joint holders of a share or shares, then in the event of the death of any joint holder or holders the remaining joint holder or holders shall be absolutely entitled to the said share or shares and the Company shall recognise no claim in respect of the estate of any joint holder except in the case of the last survivor of such joint holders.
 - 13.5 If the Directors in their reasonable discretion determine that share ownership by any person may result in a non-de minimis adverse tax, legal or regulatory consequence to the Company, any subsidiary of the Company, or any other holder of shares or its Affiliates (including if such consequence arises as a result of any such U.S. Person owning Controlled Shares that constitute 9.5% or more of the value of the Company or the voting shares of the Company (but subject to the provisions of Bye-laws 4.7 through 4.10)), the Company will have the option but not the obligation to repurchase or assign to a third party the right to purchase the minimum number of shares held by such person which is necessary to eliminate such non-de minimis adverse tax, legal or regulatory consequence at a price determined in the good faith discretion of the Directors to represent such shares' fair market value; provided, that (a) if the shares are not traded on a quotation system or securities exchange in or outside the United States, the fair market value per
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share shall be determined by the Directors without a minority discount and without a liquidity discount or (b) if the shares are traded on a quotation system or securities exchange, the fair market value per share shall be determined by the Directors based on the average of the last sales price per share or if there is none, the average of the bid and asked price per share, without a minority discount and without a liquidity discount, in each case for the eight business days prior to the repurchase date. If a Member disagrees with any price so determined by the Board, the fair market value per share will be determined by an independent appraiser retained by the Company at its expense and reasonably acceptable to such Member.

ALTERATION OF SHARE CAPITAL

14. Power to Alter Capital

- 14.1** The Company may if authorised by resolution of the Members increase, divide, consolidate, subdivide, change the currency denomination of, diminish or otherwise alter or reduce its share capital in any manner permitted by the Act.
- 14.2** Where, on any alteration or reduction of share capital, fractions of shares or some other difficulty would arise, the Board may deal with or resolve the same in such manner as it thinks fit.

15. Variation of Rights Attaching to Shares

If, at any time, the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound-up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of a resolution passed by a majority of the votes cast at a separate general meeting of the holders of the shares of the class at which meeting the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

Notwithstanding the foregoing, with respect to the Series C Non-Voting Common Shares and Series D Non-Voting Common Shares only, the rights attached to such Series C Non-Voting Common Shares or

such Series D Non-Voting Common Shares may, whether or not the Company is being wound-up, be varied with the consent in writing of each registered holder thereof holding such Series C Non-Voting Common Shares or Series D Non-Voting Common Shares to the extent such variation significantly and adversely affects the rights, preferences, privileges or voting powers of the Series C Non-Voting Common Shares or Series D Non-Voting Common Shares set forth in Bye-law 4.3.

DIVIDENDS AND CAPITALISATION

16. Dividends

- 16.1** The Board may, subject to these Bye-laws and in accordance with the Act, declare a dividend to be paid to the Members, in proportion to the number of shares held by them, and such dividend may be paid in cash or wholly or partly in specie in which case the Board may fix the value for distribution in specie of any assets. No unpaid dividend shall bear interest as against the Company.
- 16.2** The Board may fix any date as the record date for determining the Members entitled to receive any dividend.
- 16.3** The Company may pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.
- 16.4** The Board may declare and make such other distributions (in cash or in specie) to the Members as may be lawfully made out of the assets of the Company. No unpaid distribution shall bear interest as against the Company.

17. Power to Set Aside Profits

The Board may, before declaring a dividend, set aside out of the surplus or profits of the Company, such sum as it thinks proper as a reserve to be used to meet contingencies or for equalising dividends or for any other purpose.

18. Method of Payment

- 18.1** Any dividend or other monies payable in respect of a share may be paid by cheque or warrant sent through the post directed to the address of the Member in the Register of Members (in the case of joint Members, the senior joint holder, seniority being determined by the order in which the names stand in the Register of Members), or by direct transfer to such bank account as such Member may direct. Every such cheque shall be made payable to the order of the person to whom it is sent or to such persons as the Member may direct, and payment of the cheque or warrant shall be a good discharge to the Company. Every such cheque or warrant shall be sent at the risk of the person entitled to the money represented thereby. If two or more persons are registered as joint holders of any shares any one can give an effectual receipt for any dividend paid in respect of such shares.
- 18.2** The Board may deduct from the dividends or distributions payable to any Member all monies due from such Member to the Company on account of calls or otherwise.
- 18.3** Any dividend and or other monies payable in respect of a share which has remained unclaimed for 7 years, or such other period of time as may be required pursuant to the listing standard of the Nasdaq National Market or such other quotation system or exchange applicable to the Company's shares from the date when it became due for payment shall, if the Board so resolves, be forfeited and cease to remain owing by the Company. The payment of any unclaimed dividend or other moneys payable in respect of a share may (but need not) be paid by the Company into an account separate from the Company's own account. Such payment shall not constitute the Company a trustee in respect thereof.
- 18.4** The Company shall be entitled to cease sending dividend cheques and warrants by post or otherwise to a Member if those instruments have been returned undelivered to, or left uncashed by, that Member on at least two consecutive occasions, or, following one such occasion, reasonable enquiries have failed to establish the Member's new address. The entitlement conferred on the Company by this Bye-law 18.4 in respect of any Member shall cease if the Member claims a dividend or cashes a dividend cheque or warrant.
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19. Capitalisation

19.1 The Board may resolve to capitalise any sum for the time being standing to the credit of any of the Company's share premium or other reserve accounts or to the credit of the profit and loss account or otherwise available for distribution by applying such sum in paying up unissued shares to be allotted as fully paid bonus shares pro-rata (except in connection with the conversion of shares of one class to shares of another class) to the Members.

19.2 The Board may resolve to capitalise any sum for the time being standing to the credit of a reserve account or sums otherwise available for dividend or distribution by applying such amounts in paying up in full partly paid or nil paid shares of those Members who would have been entitled to such sums if they were distributed by way of dividend or distribution.

MEETINGS OF MEMBERS

20. Annual General Meetings

The annual general meeting of the Company shall be held in each year (other than the year of incorporation) at such time and place as the President or the Chairman or the Board shall appoint.

21. Special General Meetings

The President or the Chairman or the Board may convene a special general meeting of the Company whenever in their judgment such a meeting is necessary.

22. Requisitioned General Meetings

The Board shall, on the requisition of Members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid up share capital of the Company as at the date of the deposit carries the right to vote at general meetings of the Company, forthwith proceed to convene a special general meeting of the Company and the provisions of the Act shall apply.

23. Notice

23.1 At least ten days' notice of an annual general meeting shall be given to each Member entitled to attend and vote thereat, stating the date, place and time at which the meeting is to be held, that

the election of Directors will take place thereat, and as far as practicable, the other business to be conducted at the meeting.

- 23.2** At least ten days' notice of a special general meeting shall be given to each Member entitled to attend and vote thereat, stating the date, time, place and the general nature of the business to be considered at the meeting.
- 23.3** The Board may fix any date as the record date for determining the Members entitled to receive notice of and to vote at any general meeting of the Company.
- 23.4** A general meeting of the Company shall, notwithstanding that it is called on shorter notice than that specified in these Bye-laws, be deemed to have been properly called if it is so agreed by (i) all the Members entitled to attend and vote thereat in the case of an annual general meeting; and (ii) by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than 95% in nominal value of the shares giving a right to attend and vote thereat in the case of a special general meeting.
- 23.5** The accidental omission to give notice of a general meeting to, or the non-receipt of a notice of a general meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

24. Giving Notice

24.1 A notice may be given by the Company to any Member:

- (a) by delivering it to such Member in person; or
 - (b) by sending it by letter mail or courier service to such Member's address in the Register of Members or to such other address given for the purpose; or
 - (c) by sending it by electronic means (including cable, telex, telecopier, facsimile, electronic mail or other mode of representing words in a legible form, but not by telephone) in accordance with such directions as may be given by such Member to the Company for the purpose; or
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(d) by delivering it in accordance with the provisions of the Act pertaining to delivery of electronic records by publication on a website.

- 24.2** Any notice required to be given to a Member shall, with respect to any shares held jointly by two or more persons, be given to whichever of such persons is named first in the Register of Members and notice so given shall be sufficient notice to all the holders of such shares.
- 24.3** Save as provided by Bye-laws 24.4 and 24.5, any notice delivered in accordance with Bye-law 24.1(a), (b) or (c) shall be deemed to have been served at the time when the same would be delivered in the ordinary course of transmission and, in proving such service, it shall be sufficient to prove that the notice was properly addressed and prepaid, if posted, at the time when it was posted, delivered to the courier or to the cable company or transmitted by telex, facsimile, electronic mail, or such other method as the case may be.
- 24.4** Mail notice shall be deemed to have been served seven days after the date on which it is deposited, with postage prepaid, in the mail of any member state of the European Union, the United States, or Bermuda.
- 24.5** Notice delivered in accordance with Bye-law 24.1(d) shall be deemed to have been served at the time when the requirements of the Act in that regard have been met.
- 24.6** The Company shall be under no obligation to send a notice or other document to the address shown for any particular Member in the Register of Members if the Board considers that the legal or practical problems under the laws of, or the requirements of any regulatory body or stock exchange in, the territory in which that address is situated are such that it is necessary or expedient not to send the notice or document concerned to such Member at such address and may require a Member with such an address to provide the Company with an alternative acceptable address for delivery of notices by the Company.

25. Postponement or Cancellation of General Meeting

The Chairman or the President may, and the Secretary on instruction from the Chairman or the President shall, postpone or cancel any general meeting called in accordance with the provisions of these Bye-laws (other than a meeting requisitioned under these Bye-laws) provided that notice of postponement or

cancellation is given to each Member before the time for such meeting. Fresh notice of the date, time and place for the postponed or cancelled meeting shall be given to the Members in accordance with the provisions of these Bye-laws.

26. Attendance and Security at General Meetings

- 26.1** Members may participate in any general meeting by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting.
- 26.2** The Board may, and at any general meeting, the chairman of such meeting may, make any arrangement and impose any requirement or restriction it or he considers appropriate to ensure the security of a general meeting including, without limitation, requirements for evidence of identity to be produced by those attending the meeting, the searching of their personal property and the restriction of items that may be taken into the meeting place. The Board is, and at any general meeting, the chairman of such meeting is, entitled to refuse entry to a person who refuses to comply with any such arrangements, requirements or restrictions.

27. Quorum at General Meetings

- 27.1** At any general meeting of the Company two or more persons present in person throughout the meeting and representing in person or by proxy in excess of 50% of the total issued voting shares in the Company shall form a quorum for the transaction of business.
- 27.2** If within half an hour from the time appointed for the meeting a quorum is not present, then, in the case of a meeting convened on a requisition, the meeting shall be deemed cancelled and, in any other case, the meeting shall stand adjourned to the same day one week later, at the same time and place or to such other day, time or place as the Secretary may determine. If the meeting shall be adjourned to the same day one week later or the Secretary shall determine that the meeting is adjourned to a specific date, time and place, it is not necessary to give notice of the adjourned meeting other than by announcement at the meeting being adjourned. If the Secretary shall determine that the meeting be adjourned to an unspecified date, time or place, fresh notice
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of the resumption of the meeting shall be given to each Member entitled to attend and vote thereat in accordance with the provisions of these Bye-laws.

28. Chairman to Preside

Unless otherwise agreed by a majority of those attending and entitled to vote thereat, the Chairman, if there be one, and if not the President, shall act as chairman at all meetings of the Members at which such person is present. In their absence, the Deputy Chairman or Vice President, if present, shall act as chairman and in the absence of all of them a chairman shall be appointed or elected by those present at the meeting and entitled to vote.

29. Voting on Resolutions

- 29.1** Subject to the provisions of the Act and these Bye-laws, any question proposed for the consideration of the Members at any general meeting shall be decided by the affirmative votes of a majority of the votes cast in accordance with the provisions of these Bye-laws and in the case of an equality of votes the resolution shall fail.
 - 29.2** No Member shall be entitled to vote at a general meeting unless such Member has paid all the calls on all shares held by such Member.
 - 29.3** At any general meeting a resolution put to the vote of the meeting shall, in the first instance, be voted upon by a show of hands and, subject to any rights or restrictions for the time being lawfully attached to any class of shares and subject to the provisions of these Bye-laws, every Member present in person at such meeting and every person holding a valid proxy at such meeting shall have one vote for each share entitled to vote at the meeting of which such person is the holder or for which such person holds a proxy and shall cast such vote by raising his or her hand.
 - 29.4** At any general meeting if an amendment shall be proposed to any resolution under consideration and the chairman of the meeting shall rule on whether the proposed amendment is out of order, the proceedings on the substantive resolution shall not be invalidated by any error in such ruling.
 - 29.5** At any general meeting a declaration by the chairman of the meeting that a question proposed for consideration has, on a show of hands, been carried, or carried unanimously, or by a particular
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majority, or lost, and an entry to that effect in a book containing the minutes of the proceedings of the Company shall, subject to the provisions of these Bye-laws, be conclusive evidence of that fact.

30. Power to Demand a Vote on a Poll

30.1 Notwithstanding the foregoing, a poll may be demanded by any of the following persons:

- (a) the chairman of such meeting; or
- (b) at least three Members present in person or represented by proxy; or
- (c) any Member or Members present in person or represented by proxy and holding between them not less than one-tenth of the total voting rights of all the Members having the right to vote at such meeting; or
- (d) any Member or Members present in person or represented by proxy holding shares in the Company conferring the right to vote at such meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all such shares conferring such right.

30.2 Where a poll is demanded, subject to any rights or restrictions for the time being lawfully attached to any class of shares and subject to the provisions of these Bye-laws, every Member present in person at such meeting and every person holding a valid proxy at such meeting shall have one vote for each share entitled to vote at the meeting of which such person is the holder or for which such person holds a proxy and such vote shall be counted by ballot as described herein, or in the case of a general meeting at which one or more Members are present by telephone, in such manner as the chairman of the meeting may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded and shall replace any previous resolution upon the same matter which has been the subject of a show of hands. A person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

30.3 A poll demanded for the purpose of electing a chairman of the meeting or on a question of adjournment shall be taken forthwith and a poll demanded on any other question shall be taken in

such manner and at such time and place at such meeting as the chairman (or acting chairman) of the meeting may direct and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

30.4 Where a vote is taken by poll, each person present and entitled to vote shall be furnished with a ballot paper on which such person shall record his vote in such manner as shall be determined at the meeting having regard to the nature of the question on which the vote is taken, and each ballot paper shall be signed or initialed or otherwise marked so as to identify the voter and the registered holder in the case of a proxy. At the conclusion of the poll, the ballot papers shall be examined and counted by a committee of not less than two Members or proxy holders appointed by the chairman for the purpose and the result of the poll shall be declared by the chairman.

31. Voting by Joint Holders of Shares

In the case of joint holders, the vote of the senior who tenders a vote (whether in person or by proxy) shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register of Members.

32. Instrument of Proxy

32.1 A Member may appoint a proxy by (a) an instrument appointing a proxy in writing in substantially the following form or such other form as the Board may determine from time to time:

Proxy

Enstar Group Limited (the "Company")

I/We, [insert names here], being a Member of the Company with [number] shares, HEREBY APPOINT [name] of [address] or failing him, [name] of [address] to be my/our proxy to vote for me/us at the meeting of the Members to be held on the [] day of [], 200[] and at any adjournment thereof. (Any restrictions on voting to be inserted here.)

Signed this [] day of [], 20[]

Member(s)

or (b) such telephonic, electronic or other means as may be approved by the Board from time to time.

32.2 The appointment of a proxy must be received by the Company at the registered office or at such other place or in such manner as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting at which the person named in the appointment proposes to vote, and an appointment of proxy which is not received in the manner so permitted shall be invalid.

32.3 A Member who is the holder of two or more shares may appoint more than one proxy to represent him and vote on his behalf.

32.4 The decision of the chairman of any general meeting as to the validity of any appointment of a proxy shall be final.

33. Representation of Corporate Member

33.1 A corporation which is a Member may, by written instrument, authorise such person or persons as it thinks fit to act as its representative at any meeting of the Members and any person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as that corporation could exercise if it were an individual Member, and that Member shall be deemed to be present in person at any such meeting attended by its authorised representative or representatives.

33.2 Notwithstanding the foregoing, the chairman of the meeting may accept such assurances as he thinks fit as to the right of any person to attend and vote at general meetings on behalf of a corporation which is a Member.

34. Adjournment of General Meeting

34.1 The chairman of any general meeting at which a quorum is present may with the consent of Members holding a majority of the voting rights of those Members present in person or by proxy (and shall if so directed by Members holding a majority of the voting rights of those Members present in person or by proxy), adjourn the meeting.

- 34.2** In addition, the chairman may adjourn the meeting to another time and place without such consent or direction if it appears to him that:
- (a) it is likely to be impracticable to hold or continue that meeting because of the number of Members wishing to attend who are not present; or
 - (b) the unruly conduct of persons attending the meeting prevents, or is likely to prevent, the orderly continuation of the business of the meeting; or
 - (c) an adjournment is otherwise necessary so that the business of the meeting may be properly conducted.
- 34.3** Unless the meeting is adjourned to a specific date, place and time announced at the meeting being adjourned, fresh notice of the date, place and time for the resumption of the adjourned meeting shall be given to each Member entitled to attend and vote thereat in accordance with the provisions of these Bye-laws.

35. Written Resolutions

- 35.1** Subject to the following, anything which may be done by resolution of the Company in general meeting or by resolution of a meeting of any class of the Members may, without a meeting and without any previous notice being required, be done by resolution in writing signed by, or in the case of a Member that is a corporation whether or not a company within the meaning of the Act, on behalf of, all the Members who at the date of the resolution would be entitled to attend the meeting and vote on the resolution.
- 35.2** A resolution in writing may be signed by, or in the case of a Member that is a corporation whether or not a company within the meaning of the Act, on behalf of, all the Members, or all the Members of the relevant class thereof, in as many counterparts as may be necessary.
- 35.3** A resolution in writing made in accordance with this Bye-law is as valid as if it had been passed by the Company in general meeting or by a meeting of the relevant class of Members, as the case may be, and any reference in any Bye-law to a meeting at which a resolution is passed or to Members voting in favour of a resolution shall be construed accordingly.
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35.4 A resolution in writing made in accordance with this Bye-law shall constitute minutes for the purposes of the Act.

35.5 This Bye-law shall not apply to:

- (a) a resolution passed to remove an auditor from office before the expiration of his term of office; or
- (b) a resolution passed for the purpose of removing a Director before the expiration of his term of office.

35.6 For the purposes of this Bye-law, the date of the resolution is the date when the resolution is signed by, or in the case of a Member that is a corporation whether or not a company within the meaning of the Act, on behalf of, the last Member to sign and any reference in any Bye-law to the date of passing of a resolution is, in relation to a resolution made in accordance with this Bye-law, a reference to such date.

36. Directors Attendance at General Meetings

The Directors of the Company shall be entitled to receive notice of, attend and be heard at any general meeting.

DIRECTORS AND OFFICERS

37. Election of Directors

37.1 The Board shall consist of such number of Directors being not less than five Directors and not more than such maximum number of Directors, not exceeding fifteen Directors, as the Board may from time to time determine. A majority of the Board shall consist of Directors who are not residents of the United Kingdom or Switzerland. Subject to the Companies Act and these Bye-laws, the Directors shall be elected or appointed by the Company by resolution and shall serve for such term as the Company by resolution may determine, or in the absence of such determination, until the termination of the next annual general meeting following their appointment. All Directors, upon election or appointment (except upon re-election at an annual general meeting) must provide written acceptance of their appointment, in such form as the

Board may think fit, by notice in writing to the Company's registered office within thirty (30) days of their appointment.

- 37.2** The Board may propose any person for election as a Director and may from time to time establish procedures to receive nominations from a Member of persons for election as Directors. Only persons who are proposed or nominated in accordance with this Bye-law shall be eligible for election as Directors.
- 37.3** Where the number of persons validly proposed for re-election or election as a Director is greater than the number of Directors to be elected, the persons receiving the most votes (up to the number of Directors to be elected) shall be elected as Directors, and an absolute majority of the votes cast shall not be a prerequisite to the election of such Directors.
- 37.4** At any general meeting the Board may fill any vacancy left unfilled at such general meeting.

38. Classes of Directors

The Directors shall be divided into three classes designated Class I, Class II and Class III. Each class of Directors shall consist, as nearly as possible, of one third of the total number of Directors constituting the entire Board.

39. Term of Office of Directors

Each Director shall serve for a term ending on the date of the third annual general meeting of shareholders next following the annual general meeting at which such Director was elected, provided, that (i) Directors initially designated by the Board as Class I Directors shall serve for an initial term ending on the date of the first annual general meeting of Members next following the effectiveness of their designation as Class I Directors, (ii) Directors initially designated by the Board as Class II Directors shall serve for an initial term ending on the date of the second annual general meeting of Members next following the effectiveness of their designation as Class II Directors, and (iii) Directors initially designated by the Board as Class III Directors shall serve for an initial term ending on the date of the third annual general meeting of Members next following the effectiveness of their designation as Class III Directors. If the number of Directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of Directors in each class as nearly equal as possible,

and any Director of any class elected to fill a vacancy shall hold office for a term that shall coincide with the remaining term of the other Directors of that class, but in no case shall a decrease in the number of Directors shorten the term of any Director then in office. A Director shall hold office until the annual general meeting for the year in which his term expires, subject to his office being vacated pursuant to Bye-law 42.

40. Alternate Directors

There shall be no alternate Directors, and no Member or Director shall have a right to designate any person to attend meetings of the Board or Board committees as a non-voting observer, except with the concurrence of a majority of the Board or committee members in attendance at such meeting.

41. Removal of Directors

41.1 Subject to any provision to the contrary in these Bye-laws, the Members entitled to vote for the election of Directors may, at any special general meeting convened and held in accordance with these Bye-laws, remove a Director, only with cause, by the affirmative vote of Members holding at least a majority of the total combined voting power of all issued and outstanding Common Shares after giving effect to any reduction in voting power acquired under Bye-laws 4.7 and 4.8, provided that the notice of any such meeting convened for the purpose of removing a Director shall contain a statement of the intention so to do and be served on such Director not less than 14 days before the meeting and at such meeting the Director shall be entitled to be heard on the motion for such Director's removal.

41.2 If a Director is removed from the Board under the provisions of this Bye-law, the Members may fill the vacancy at the meeting at which such Director is removed. In the absence of such election or appointment, the Board may fill the vacancy.

41.3 For the purpose of Bye-law 41.1, "cause" shall mean a conviction for a criminal offence involving dishonesty or engaging in conduct which brings the Director or the Company into disrepute and which results in material financial detriment to the Company.

42. Vacancy in the Office of Director

42.1 The office of Director shall be vacated if the Director:

- (a) is removed from office pursuant to these Bye-laws or is prohibited from being a Director by law;
- (b) is or becomes of unsound mind or dies; or
- (c) resigns his office by notice in writing to the Company.

42.2 Subject to Bye-law 41.2, the Board shall have the power to appoint any person as a Director to fill a vacancy on the Board occurring as a result of the death, disability, disqualification or resignation of any Director or as a result of an increase in the size of the Board as permitted by these Bye-laws.

43. Remuneration of Directors

The remuneration (if any) of the Directors shall be deemed to accrue from day to day and shall be determined by the Board or a committee thereof. The Directors may also be paid all travel, hotel and other expenses properly incurred by them in attending and returning from the meetings of the Board, any committee appointed by the Board, general meetings of the Company, or in connection with the business of the Company or their duties as Directors generally.

44. Defect in Appointment of Director

All acts done in good faith by the Board or by a committee of the Board or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

45. Directors to Manage Business

The business of the Company shall be managed and conducted by the Board. In managing the business of the Company, the Board may exercise all such powers of the Company as are not, by statute or by

these Bye-laws, required to be exercised by the Company in general meeting subject, nevertheless, to these Bye-laws and the provisions of any statute.

46. Powers of the Board of Directors

The Board may:

- (a) appoint, suspend, or remove any manager, secretary, clerk, agent or employee of the Company and may fix their remuneration and determine their duties;
 - (b) exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and may issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or any third party;
 - (c) appoint one or more Directors to the office of managing director or chief executive officer of the Company, who shall, subject to the control of the Board, supervise and administer all of the general business and affairs of the Company;
 - (d) appoint a person to act as manager of the Company's day-to-day business and may entrust to and confer upon such manager such powers and duties as it deems appropriate for the transaction or conduct of such business;
 - (e) by power of attorney, appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Board, to be an attorney of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board) and for such period and subject to such conditions as it may think fit and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions so vested in the attorney. Such attorney may, if so authorised under the seal of the Company, execute any deed or instrument under such attorney's personal seal with the same effect as the affixation of the seal of the Company;
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- (f) procure that the Company pays all expenses incurred in promoting and incorporating the Company;
- (g) delegate any of its powers (including the power to sub-delegate) to a committee appointed by the Board which may consist partly or entirely of non-Directors, provided that every such committee shall conform to such directions as the Board shall impose on them and provided further that the meetings and proceedings of any such committee shall be governed by the provisions of these Bye-laws regulating the meetings and proceedings of the Board, so far as the same are applicable and are not superseded by directions imposed by the Board;
- (h) delegate any of its powers (including the power to sub-delegate) to any person on such terms and in such manner as the Board may see fit;
- (i) present any petition and make any application in connection with the liquidation or reorganisation of the Company;
- (j) in connection with the issue of any share, pay such commission and brokerage as may be permitted by law; and
- (k) authorise any company, firm, person or body of persons to act on behalf of the Company for any specific purpose and in connection therewith to execute any agreement, document or instrument on behalf of the Company.

47. Register of Directors and Officers

The Board shall cause to be kept in one or more books at the registered office of the Company a Register of Directors and Officers and shall enter therein the particulars required by the Act.

48. Officers

The Officers shall consist of a President and a Vice President or a Chairman and a Deputy Chairman, a Secretary and such additional Officers as the Board may determine all of whom shall be deemed to be Officers for the purposes of these Bye-laws.

49. Appointment of Officers

The Board shall appoint a President and Vice President or a Chairman and Deputy Chairman. The Secretary (and additional Officers, if any) shall be appointed by the Board from time to time.

50. Duties of Officers

The Officers shall have such powers and perform such duties in the management, business and affairs of the Company as may be delegated to them by the Board from time to time.

51. Remuneration of Officers

The Officers shall receive such remuneration as the Board may determine.

52. Conflicts of Interest

52.1 Any Director, or any Director's firm, partner or any company with whom any Director is associated, may act in any capacity for, be employed by or render services to the Company and such Director or such Director's firm, partner or company shall be entitled to remuneration as if such Director were not a Director. Nothing herein contained shall authorise a Director or Director's firm, partner or company to act as Auditor to the Company.

52.2 A Director who is directly or indirectly interested in a contract or proposed contract or arrangement with the Company shall declare the nature of such interest as required by the Act.

52.3 Following a declaration being made pursuant to this Bye-law, and unless disqualified by the chairman of the relevant Board meeting, a Director may vote in respect of any contract or proposed contract or arrangement in which such Director is interested and may be counted in the quorum for such meeting.

53. Indemnification and Exculpation of Directors and Officers

53.1 The Directors, Secretary and other Officers (such term to include any person appointed to any committee by the Board) for the time being acting in relation to any of the affairs of the Company, any subsidiary thereof and the liquidator or trustees (if any) for the time being acting in relation to any of the affairs of the Company or any subsidiary thereof and every one of them,

and their heirs, executors and administrators, shall be indemnified and secured harmless out of the assets of the Company from and against all actions, costs, charges, losses, damages and expenses which they or any of them, their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act done, concurred in or omitted in or about the execution of their duty, or supposed duty, or in their respective offices or trusts, and none of them shall be answerable for the acts, receipts, neglects or defaults of the others of them or for joining in any receipts for the sake of conformity, or for any bankers or other persons with whom any moneys or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for insufficiency or deficiency of any security upon which any moneys of or belonging to the Company shall be placed out on or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto, provided that this indemnity shall not extend to any matter in which any of such persons is found, in a final judgment or decree not subject to appeal, to have committed fraud or dishonesty. Each Member agrees to waive any claim or right of action such Member might have, whether individually or by or in the right of the Company, against any Director or Officer on account of any action taken by such Director or Officer, or the failure of such Director or Officer to take any action in the performance of his duties with or for the Company or any subsidiary thereof, provided that such waiver shall not extend to any matter in respect of any fraud or dishonesty which may attach to such Director or Officer.

- 53.2** The Company may purchase and maintain insurance for the benefit of any Director or Officer of the Company against any liability incurred by him under the Act in his capacity as a Director or Officer of the Company or indemnifying such Director or Officer in respect of any loss arising or liability attaching to him by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which the Director or Officer may be guilty in relation to the Company or any subsidiary thereof.
- 53.3** The rights conferred under this Bye-law 53 shall not be exclusive of any other right that any individual may have or hereafter acquire under any statute, Bye-law, resolution of Members or Directors, agreement, or otherwise and shall continue as to an individual who has ceased to be a Director, Officer, employee or agent, as applicable, and shall inure to the benefit of his or her heirs, executors, administrators, and personal representatives.
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53.4 The Company hereby acknowledges that the Director designated by GSCP pursuant to Section 7.02 of the Investment Agreement may have certain rights to indemnification, advancement of expenses and/or insurance provided by GSCP and certain of their affiliates (collectively, the "Fund Indemnitors"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to such person are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such person are secondary) with respect to any actions, costs, charges, losses, damages or expenses incurred or sustained in connection with the execution by such person of his or her duties as a Director of the Company, (ii) that it shall be required to advance the full amount of such expenses incurred by such person and shall be liable for the full amount of all such expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of these Bye-laws of the Company (or any other agreement between the Company and such person), without regard to any rights such person may have, or may be pursuing, against the Fund Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of such person with respect to any claim for which such person has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of such person against the Company. The Company and such person agree that the Fund Indemnitors are express third party beneficiaries of the terms of this Bye-law 53.4.

53A Corporate Opportunity

The provisions of this Bye-law 53A are set forth to regulate and define the conduct of certain affairs of the Company as they may involve GSCP, its affiliates and their officers and directors, and the powers, rights, duties and liabilities of the Company, its affiliates and their officers, directors, employees and shareholders in connection therewith:

- (a) Subject to any express contractual provisions to the contrary, GSCP, its affiliates and its and their respective directors, officers, partners and employees (collectively the “GSCP Parties”) shall have the right to, and shall have no duty not to: (i) engage in the same or similar business activities or lines of business as the Company, (ii) do business with any client or customer of the Company and (iii) employ or otherwise engage any Officer, Director or employee of the Company; and, in each case, to the extent permitted under Bermuda law, no GSCP Party shall be liable to the Company or its Members for breach of any fiduciary duty by reason of any such activities of any GSCP Party or of such person’s participation therein. In the event that any GSCP Party acquires knowledge of a potential transaction or matter (other than knowledge acquired through a GSCP Party acting in his or her capacity as Director from the Company or its Directors, Officers or employees) that may be a corporate opportunity for both a GSCP Party and the Company, none of the GSCP Parties shall have any duty whatsoever to communicate or present such corporate opportunity to the Company and, to the extent permitted under Bermuda law, shall not be liable to the Company or its Members for breach of any fiduciary duty as a Member of the Company by reason of the fact that a GSCP Party pursues or acquires such corporate opportunity for itself, directs such corporate opportunity to another person or entity or does not present such corporate opportunity to the Company;
 - (b) For the purposes of this Bye-law 53A “corporate opportunities” shall include, but not be limited to, business opportunities that the Company is financially able to undertake, which are, from their nature, in the line of the Company’s business, are of practical advantage to it and are ones in which the Company has an interest or a reasonable expectancy, and with respect to which the interest of any GSCP Party, could be brought into conflict with that of the Company;
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- (c) Any person or entity purchasing or otherwise acquiring any interest in Shares of the Company shall be deemed to have notice of and consented to the provisions of this Bye-law 53A;
- (d) Notwithstanding anything in these Bye-laws to the contrary and in addition to any vote of the Board required by these Bye-laws or the Act, until the occurrence of the Operative Date, the affirmative vote of at least three-quarters of the votes of all the Common Shares then outstanding entitled to be cast thereon shall be required to alter, amend or repeal, or adopt any provision inconsistent with, any provision of this Bye-law 53A. "Operative Date" shall mean the later of (i) the first date on which GSCP ceases to own beneficially (excluding for such purposes any shares of the Company beneficially owned by GSCP but not for its own account, including (in such exclusion) beneficial ownership which arises by virtue of some entity that is an affiliate of GSCP being a sponsor or advisor of a mutual or similar fund that beneficially owns Common Shares) at least 5% of the outstanding shares of the Company and (ii) the first date on which no Director is a GSCP Party.

MEETINGS OF THE BOARD OF DIRECTORS

54. Board Meetings

The Board may meet for the transaction of business, adjourn and otherwise regulate its meetings as it sees fit, provided any such meetings shall occur in Bermuda. Subject to the provisions of these Bye-laws, a resolution put to the vote at a meeting of the Board shall be carried by the affirmative votes of a majority of the votes cast and in the case of an equality of votes the resolution shall fail.

55. Notice of Board Meetings

The Chairman or a majority of the Directors may, and the Secretary on the requisition of such Directors shall, at any time summon a meeting of the Board upon at least five days' prior notice, stating the date, place and time at which the meeting is to be held. Notice of a meeting of the Board shall be deemed to be duly given to a Director if it is given to such Director verbally (in person or by telephone) or otherwise communicated or sent to such Director by post, cable, telex, telecopier, facsimile, electronic

mail or other mode of representing words in a legible form at such Director's last known address or any other address given by such Director to the Company for this purpose.

56. Participation in Meetings by Telephone

Directors may participate in any meeting of the Board by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, provided, that no Director may participate by telephone, electronic or other communication facilities from the United Kingdom, the United States or Switzerland, and participation in such a meeting shall constitute presence in person at such meeting.

57. Quorum at Board Meetings

The quorum necessary for the transaction of business at a meeting of the Board shall be a majority of the Directors.

58. Board to Continue in the Event of Vacancy

The Board may act notwithstanding any vacancy in its number but, if and so long as its number is reduced below the number fixed by these Bye-laws as the quorum necessary for the transaction of business at meetings of the Board, the continuing Directors or Director may act for the purpose of (i) summoning a general meeting of the Company; or (ii) preserving the assets of the Company.

59. Chairman to Preside

Unless otherwise agreed by a majority of the Directors attending, the Chairman, if there be one, and if not, the President shall act as chairman at all meetings of the Board at which such person is present. In their absence the Deputy Chairman or Vice President, if present, shall act as chairman and in the absence of all of them a chairman shall be appointed or elected by the Directors present at the meeting.

60. Written Resolutions

A resolution signed by all the Directors, which may be in counterparts, shall be as valid as if it had been passed at a meeting of the Board duly called and constituted, such resolution to be effective on the date on which the last Director signs the resolution.

61. Validity of Prior Acts of the Board

No regulation or alteration to these Bye-laws made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation or alteration had not been made.

CORPORATE RECORDS

62. Minutes

The Board shall cause minutes to be duly entered in books provided for the purpose:

- (a) of all elections and appointments of Officers;
- (b) of the names of the Directors present at each meeting of the Board and of any committee appointed by the Board; and
- (c) of all resolutions and proceedings of general meetings of the Members, meetings of the Board, and meetings of committees appointed by the Board.

63. Place Where Corporate Records Kept

Minutes prepared in accordance with the Act and these Bye-laws shall be kept by the Secretary at the registered office of the Company.

64. Form and Use of Seal

- 64.1** The seal of the Company shall be in such form as the Board may determine. The Board may adopt one or more duplicate seals for use in or outside Bermuda.
 - 64.2** The seal of the Company shall not be affixed to any instrument except attested by the signature of a Director and the Secretary or any two Directors, or any person appointed by the Board for that purpose, provided that any Director, Officer or Resident Representative, may affix the seal of the Company attested by such Director, Officer or Resident Representative's signature to any authenticated copies of these Bye-laws, the incorporating documents of the Company, the minutes of any meetings or any other documents required to be authenticated by such Director, Officer or Resident Representative.
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ACCOUNTS

65. Books of Account

65.1 The Board shall cause to be kept proper records of account with respect to all transactions of the Company and in particular with respect to:

- (a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure relates;
- (b) all sales and purchases of goods by the Company; and
- (c) all assets and liabilities of the Company.

65.2 Such records of account shall be kept at the registered office of the Company, or subject to the provisions of the Act, at such other place as the Board thinks fit and shall be available for inspection by the Directors during normal business hours.

66. Financial Year End

The financial year end of the Company may be determined by resolution of the Board and failing such resolution shall be 31st December in each year.

AUDITS

67. Annual Audit

Subject to any rights to waive laying of accounts or appointment of an Auditor pursuant to the Act, the accounts of the Company shall be audited at least once in every year.

68. Appointment of Auditors

68.1 Subject to the provisions of the Act, at the annual general meeting or at a subsequent special general meeting in each year, the Members shall appoint an independent representative of the Members to serve as the registered independent accounting firm that acts as Auditor of the accounts of the Company.

68.2 The Auditor may be a Member but no Director, Officer or employee of the Company shall, during his continuance in office, be eligible to act as an Auditor of the Company.

69. Remuneration of Auditors

The remuneration of the Auditor shall be fixed by the Audit Committee of the Board or in such manner as the Members may determine.

70. Duties of Auditors

70.1 The financial statements provided for by these Bye-laws shall be audited by the Auditor in accordance with generally accepted auditing standards. The Auditor shall make a written report thereon in accordance with generally accepted auditing standards.

70.2 The generally accepted auditing standards referred to in this Bye-law may be those of a country or jurisdiction other than Bermuda or such other generally accepted auditing standards as may be provided for in the Act. If so, the financial statements and the report of the Auditor shall identify the generally accepted auditing standards used.

71. Access to Records

The Auditor shall at all reasonable times have access to all books kept by the Company and to all accounts and vouchers relating thereto, and the Auditor may call on the Directors or Officers of the Company for any information in their possession relating to the books or affairs of the Company.

72. Financial Statements

Subject to any rights to waive laying of accounts pursuant to the provisions of the Act, financial statements as required by the Act shall be laid before the Members in general meeting.

73. Distribution of Auditors Report

The report of the Auditor shall be submitted to the Members in general meeting.

74. Vacancy in the Office of Auditor

If the office of Auditor becomes vacant by the resignation or death of the Auditor, or by the Auditor becoming incapable of acting by reason of illness or other disability at a time when the Auditor's services are required, the vacancy thereby created shall be filled in accordance with the Act.

VOLUNTARY WINDING-UP AND DISSOLUTION

75. Winding-Up

If the Company shall be wound up the liquidator may, with the sanction of a resolution of the Members, divide amongst the Members in specie or in kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like sanction, vest the whole or any part of such assets in the trustees upon such trusts for the benefit of the Members as the liquidator shall think fit, but so that no Member shall be compelled to accept any shares or other securities or assets whereon there is any liability.

CHANGES TO CONSTITUTION

76. Changes to Bye-laws

No Bye-law shall be rescinded, altered or amended and no new Bye-law shall be made until the same has been approved by a resolution of the Board and by a resolution of the Members.

77. Discontinuance

The Board may exercise all the powers of the Company to discontinue the Company to a jurisdiction outside Bermuda pursuant to the Act.

CERTAIN SUBSIDIARIES**78. Voting of Subsidiary Shares**

Notwithstanding any other provision of these Bye-laws to the contrary, if the Company or a Subsidiary of the Company, as the case may be, is required or entitled to vote at a general meeting of any direct or indirect subsidiary of the Company, the Directors shall refer the subject matter of any vote regarding the appointment, removal or remuneration of directors to the Members of the Company on a poll (subject to Bye-laws 4.7 through 4.10) and seek authority from the Members for the Company's or the Subsidiary's, as the case may be, corporate representative or proxy to vote in favour of the resolution proposed by the subsidiary. The Directors shall cause the Company's or the Subsidiary's, as the case may be, corporate representative or proxy to vote the Company's or the Subsidiary's shares in the subsidiary (with respect to a resolution covered by the foregoing sentence) pro rata to the votes received at the general meeting of the Company, with votes for or against the directing resolution being taken, respectively, as an instruction for the Company's or the Subsidiary's, as the case may be, corporate representative or proxy to vote the appropriate proportion of its shares for and the appropriate proportion of its shares against the resolution proposed by the subsidiary.

79. Bye-laws or Articles of Association of Certain Subsidiaries

The Board in its discretion shall require that the Bye-laws or Articles of Association of each subsidiary of the Company, organized under the laws of a jurisdiction outside the United States of America, shall contain provisions substantially similar to Bye-law 78. The Company shall enter into agreements with each such subsidiary, as reasonably necessary, to effectuate or implement this Bye-law.



Enstar Group Limited
and certain of its Subsidiaries

and

National Australia Bank Limited
and
Barclays Corporate
as Arrangers

and

National Australia Bank Limited
as Agent and Security Agent

US\$250,000,000 Revolving Credit Facility Agreement

Execution Text

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Revolving Credit Facility Agreement

Dated June 13, 2011

Between:

- (1) **Enstar Group Limited**, a company incorporated under the laws of Bermuda with registered number EC30916 (the **Parent**);
- (2) **The members of the Group** listed in Part 2 of Schedule 1 (*The Original Parties*) as Original Guarantors (the **Original Guarantors**);
- (3) **National Australia Bank Limited** and **Barclays Corporate, the corporate banking division of Barclays Bank PLC**, as bookrunners and mandated lead arrangers (each an **Arranger** and together the **Arrangers**);
- (4) **The Financial Institutions** listed in Part 3 and Part 4 of Schedule 1 (*The Original Parties*) as lenders (the **Original Lenders**);
- (5) **National Australia Bank Limited** as agent of the other Finance Parties (the **Agent**); and
- (6) **National Australia Bank Limited** as Security Agent for the Secured Parties.

It is agreed:

1 Definitions and Interpretation

1.1 Definitions

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*).

Account Bank means Barclays Bank PLC.

Accounting Principles means:

- (a) in relation to any Obligor incorporated in Bermuda or in any state of the United States of America, generally accepted accounting principles in the United States of America;
- (b) in relation to any Obligor incorporated in the United Kingdom, generally accepted accounting principles in the United Kingdom; or
- (c) in relation to any Obligor other than those mentioned in paragraphs (a) and (b) above, generally accepted accounting principles in its place of incorporation.

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

Additional Borrower means a company which becomes an Additional Borrower in accordance with Clause 26 (*Changes to the Obligors*).

Additional Guarantor means a company which becomes an Additional Guarantor in accordance with Clause 26 (*Changes to the Obligors*).

Additional Obligor means an Additional Borrower or an Additional Guarantor.

Additional Security Agent has the meaning given to it in Schedule 11 (*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 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 one month prior to the Termination Date.

Available Commitment means a Lender's Commitment minus:

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

other than that Lender's participation in any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

Available Facility means the aggregate for the time being of each Lender's Available Commitment.

Base Currency means US Dollars.

Base Currency Amount means, in relation to a Loan, the amount specified in the Utilisation Request delivered by a Borrower for that Loan adjusted to reflect any repayment or prepayment of the Loan.

Borrower means the Parent or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 26 (*Changes to the Obligors*).

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

- (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.

Budget means:

- (a) in relation to the period beginning on 1 January 2011 and ending on 31 December 2014, the financial model including profit and loss, balance sheet and cashflow projections relating to the Group to be delivered by the Parent to the Agent pursuant to Clause 4.1 (Initial conditions precedent); and
- (b) in relation to any other period, any annual Capital Release Schedule delivered by the Parent to the Agent in respect of that period pursuant to Clause 21.5 (*Budget*).

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.

Capital Release Amount means, in respect of any member of the Group, any reduction in the amount of capital resources which that member of the Group is required to hold in accordance with applicable law and applicable rules and guidance given by any governmental or regulatory authority.

Capital Release Schedule means a schedule detailing the expected Capital Release Amounts in relation to each member of the Group.

Cash means, at any time, cash denominated in freely transferable and freely convertible currency in hand or at bank and (in the latter case) credited to an account in the name of a member of the Group with an Acceptable Bank and to which a member of the Group is alone (or together with other members of the Group) beneficially entitled and for so long as:

- (a) that cash is repayable on demand;
- (b) there is no Security over that cash except for Transaction Security or any Permitted Security constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements.

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 Ratings 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,

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).

Change of Control means any person or group of persons acting in concert gaining Control of the Parent (where "acting in concert" has the meaning given to it in the City Code on Takeovers and Mergers).

Charged Property means all of the assets of the Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

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

Close Links Report means a report submitted by an insurer to the FSA under SUP 16.5.4 or under any rules amending or replacing it.

Commitment means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Commitments" in Part 3 and Part 4 of Schedule 1 (*The Original Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount in the Base Currency of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

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

Confidential Information means all information relating to the Parent, any Obligor or the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group, or any of its advisers, or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, 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:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 37 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

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 Parent and the Agent.

Consolidated Tangible Net Worth has the meaning given to it in Clause 22.1 (*Financial definitions*).

Constitutional Documents means, in relation to an Obligor, the memorandum of association and the articles of association or bye-laws, and/or (as appropriate) such other constitutional documents as required from time to time by the law of the place of incorporation (or any internal requirements) of the relevant Obligor.

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 company;

- (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the company; or
 - (iii) give directions with respect to the operating and financial policies of the company with which the directors or other equivalent officers of the company are obliged to comply; or
- (b) the holding beneficially of more than 50% of the issued share capital of the company (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).

CRA Account Charge means a fixed charge given by the Parent over each CRA Account.

CRA Accounts means each US Dollar, Sterling and/or Australian Dollar bank account held with the Account Bank in the name of the Parent and into which amounts received in respect of any Capital Release Amount are paid.

CTA means the Corporation Tax Act 2009.

Debt Purchase Transaction means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of, any Commitment or amount outstanding under this Agreement.

Default means an Event of Default or any event or circumstance specified in Clause 24 (*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.

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 Facility (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,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

Event of Default means any event or circumstance specified as such in Clause 24 (*Events of Default*).

Existing Facilities means:

- (a) the US\$184,616,000 term facility agreement dated 3 October 2008 between, among others, Royston Run-off Limited as borrower, National Australia Bank Limited and Barclays Bank PLC as arrangers and original lenders and National Australia Bank Limited as agent and security agent, as amended and restated from time to time;
- (b) the US\$21,400,000 term facility agreement dated 19 April 2010 between, among others, Knapton Holdings Limited as borrower and National Australia Bank Limited as lender; and
- (c) the US\$115,000,000 term facility agreement dated 29 December 2010 between, among others, Enstar Group Limited as borrower, the subsidiaries of Enstar Group Limited listed therein as original guarantors, Barclays Corporate as mandated lead arranger and Barclays Bank PLC as original lender, agent and security agent.

Existing Security means the security granted by members of the Group prior to the date of this Agreement and listed in Schedule 13 (*Existing Security*).

Facility means the revolving credit facility made available under this Agreement as described in Clause 2.1 (*The Facility*).

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 and Barclays Corporate in its capacity as Arranger and the Parent (or the Agent and the Parent or the Security Agent and the Parent) 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, any Accession Letter, any Compliance Certificate, any Fee Letter, any Transaction Security Document, any Utilisation Request and any other document designated as a **Finance Document** by the Agent and the Parent.

Finance Party means the Agent, the Arrangers, the Security Agent 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;
- (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 22.1 (*Financial definitions*).

Financial Year has the meaning given to that term in Clause 22.1 (*Financial definitions*).

First Utilisation Date means the first Utilisation Date.

FSA means the UK Financial Services Authority and any body which from time to time replaces such authority or body.

FSA Returns means the documents required (taken together) to be filed by an insurer with the FSA under Rule 9.6(1) of IPRU(INS) or as may be defined in any rules amending or replacing it.

FSA Rules means the FSA's Handbook of Rules and Guidance as amended, varied, substituted or replaced from time to time including, without limitation, GENPRU, IPRU(INS), INSPRU and SUP and including the rules of any other regulator which is responsible from time to time for the prudential supervision of insurers authorised in the United Kingdom.

GENPRU means the General Prudential Sourcebook forming part of the FSA Rules.

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

Group Capital Resources Report means any group capital resources report submitted to the FSA in accordance with IPRU(INS), rule 9.40 or as may be defined in any rules amending or replacing it.

Group Structure Chart means the most recent group structure chart of the Group delivered to the Original Lender by the Parent prior to the First Utilisation Date.

Guarantor means an Original Guarantor or an Additional Guarantor.

Holding Account means any account designated as a **Holding Account** (in the name of the Parent and held with the Agent) by the Agent and the Parent as the same may be redesignated, substituted or replaced from time to time.

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

ICA Capital Requirement means, in respect of an insurer, the amount of capital resources which the board of that insurer considers are required by that insurer in order to have a 99.5% confidence level over a one year timeframe that the value of assets of that insurer will exceed the value of its liabilities, determined in accordance with INSPRU 7, and, following the implementation of Solvency II, shall mean the SCR (as defined in Solvency II) of that insurer as supplemented by any additional capital resources identified as required by that insurer's Own Risk and Solvency Assessment (as defined in Solvency II).

ICG Capital Requirement means, in respect of an insurer, the aggregate of: (a) the ICA Capital Requirement of that insurer; and (b) the amount of capital resources which the FSA indicates in any formal guidance given by it to that insurer or to any member of the Group that it considers that insurer should hold in addition to its ICA Capital Requirement, or which should be held by the Group as a whole in respect of that insurer in addition to that insurer's ICA Capital Requirement, and, following the implementation of Solvency II, shall mean the aggregate of any capital add-ons (as defined in Solvency II) prescribed by the FSA or any other regulator in respect of that insurer.

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

INSPRU means the Prudential Sourcebook for Insurers forming part of the FSA Rules.

INSPRU(INS) means the Interim Prudential Sourcebook for Insurers, forming part of the FSA Rules.

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*).

Investment Policy means the Group's investment policy as detailed in the document entitled 'Investment Policy and Procedures, Version 8.0 — February 3, 2010'.

ITA means the Income Tax Act 2007.

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 26 (*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 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 as a Lender in accordance with Clause 25 (*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 currency of that Loan and for a period comparable to the Interest Period for that Loan.

Limitation Acts means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

LMA means the Loan Market Association.

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

Majority Lenders means:

- (a) if there are no Loans outstanding, a Lender or Lenders whose Commitments aggregate more than 66²/₃% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66²/₃% of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than 66²/₃% of all the Loans then outstanding.

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 Parent held with the Agent at 88 Wood Street, London EC2V 7QQ, Sort Code: 16-55-90 and Account number: 3505-159727-501 (as the same may be redesignated, substituted or replaced from time to time).

Margin means 2.75 (two point seven five) per cent, per annum.

Material Adverse Effect means a material adverse effect on:

- (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 22.2 (*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.

Material Company means:

- (a) each company listed in Schedule 12 (*Material Companies*) whilst such company remains a member of the Group; and
- (b) any other member of the Group whose shares become subject to the Transaction Security pursuant to Clause 26.5 (*Additional Material Companies*).

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 a Borrower or a Guarantor.

Obligors' Agent means the Parent, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.3 (*Obligors' Agent*).

Original Financial Statements means:

- (a) the consolidated audited financial statements of Cumberland Holdings Limited and each Obligor for its Financial Year ended 31 December 2009 or, if such person is not required to produce consolidated audited financial statements and has not done so for its Financial Year ended 31 December 2009, its consolidated management schedules for such period which shall include, without limitation, a balance sheet, profit and loss account and cashflow statement; and
- (b) the audited financial statements of each Obligor and each Material Company for its Financial Year ended 31 December 2009.

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 Acquisition means:

- (a) any acquisition of a company, entity, business or undertaking (or in each case, any interest in any of them):
- (i) that is a Regulated Insurance Entity or an insurance portfolio;
 - (ii) that is acquired by a member of the Group wholly owned by the Parent;
 - (iii) whose underlying insurance exposures must be represented by recognised non-life business only; and
 - (iv) that would not cause the Net Worth Cover to be less than or equal to 2.0:1; or
- (b) any acquisition of new business effected through a portfolio transfer or reinsurance transaction involving the capitalisation of reinsurance segregated accounts in the non-life run-off sector (whether funded by way of subscription of share capital, by way of contributed surplus or otherwise).

Permitted Disposal means any sale, lease, licence, transfer or other disposal made on arm's length terms:

- (a) made by any member of the Group in the ordinary course of trading of the disposing entity (other than shares, businesses, real property or Intellectual Property);

- (b) of any asset by an Obligor or Material Company (the **Disposing Company**) to another Obligor or Material Company (the **Acquiring Company**), but if:
 - (i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;
 - (ii) the Disposing Company had given Transaction Security over the asset, the Acquiring Company must give equivalent Security to the Security Agent over that asset; and
 - (iii) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company;
- (c) of assets (other than shares, businesses, real property or Intellectual Property) in exchange for other assets comparable or superior as to type, value and quality);
- (d) of obsolete or redundant vehicles, plant and equipment for cash;
- (e) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments; or
- (f) arising as a result of any Permitted Security.

Permitted Financial Indebtedness means Financial Indebtedness arising under:

- (a) the Existing Facilities;
- (b) a Permitted Loan;
- (c) a Permitted Guarantee;
- (d) any Finance Document;
- (e) Financial Indebtedness incurred by a member of the Group to facilitate the transfer of any Capital Release Amount as required pursuant to Clause 23.29 (*Transfer of Capital Release Amount*), provided that the relevant loan is subordinated to the Facility on terms acceptable to the Agent; or
- (f) any Financial Indebtedness of any Target Group existing at the date of the relevant acquisition.

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 23.25 (*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 23.25 (*Intra-Group transactions*) is complied with;

- (b) any loan permitted by Clause 23.25 (*Intra-Group transactions*);
- (c) any loan made by a member of the Group to facilitate the transfer of any Capital Release Amount as required pursuant to Clause 23.29 (*Transfer of Capital Release Amount*), provided that such loan is subordinated to the Facility on terms acceptable to the Agent;
- (d) any loan made by an Obligor to an Obligor;
- (e) any loan made by a Material Company to a Material Company or an Obligor;
- (f) any loan provided by an Obligor to a member of the Group in order to effect a Permitted Acquisition or any other acquisition not prohibited under this Agreement the consideration for which is not being funded through the proceeds of the Facility;
- (g) any loan invested pursuant to Clause 22.4 (*Equity cure- Regulatory Cover*) or Clause 22.5 (*Equity cure- Net Worth Cover*); or
- (h) any loan made with the prior written consent of the Agent.

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;
 - (i) any Existing Security;
- (d) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group;
- (e) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
 - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
 - (iii) the Security or Quasi-Security is removed or discharged within 3 months of the date of acquisition of such asset;
- (f) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group if:

- (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
 - (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
 - (iii) the Security or Quasi-Security is removed or discharged within 3 months of that company being a member of the Group;
- (g) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group.

Permitted Share Issue means an issue of shares by a member of the Group (other than the Parent) which is a Subsidiary to its immediate Holding Company to the extent permitted by Clause 23.25 (*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.

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;
- (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;
- (c) any Permitted Acquisition; or
- (d) any Permitted Transfer,

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

Permitted Transfer means any of the proposed business or portfolio transfers listed in Schedule 14 (*Permitted Transfers*) provided that no Obligor or Material Company shall retain any exposure following the completion of such transfer.

Pillar 1 Capital Requirement means, in respect of an insurer, the capital resources requirement of that insurer as calculated under GENPRU 2.1, and, following the implementation of Solvency II, shall mean the SCR (as defined in Solvency II) of that insurer.

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 22.1 (*Financial definitions*).

Quarterly Financial Statement has the meaning given to that term in Clause 21 (*Information Undertakings*).

Quasi-Security has the meaning given to that term in Clause 23.11 (*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, Barclays Bank PLC and such other banks as may be appointed by the Agent in consultation with the Parent.

Regulated Insurance Entity means a company or any legal entity which:

- (a) operates in the insurance industry; and
- (b) is regulated by the relevant supervisory or regulatory body in the insurance market(s) in which it operates.

Regulatory Cover has the meaning given to it in Clause 22.1 (*Financial definitions*).

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 Interbank Market means the London interbank market.

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.

Relevant Period has the meaning given to that term in Clause 22.1 (*Financial definitions*).

Repeating Representations means each of the representations set out in Clauses 20.2 (*Status*) to Clause 20.7 (*Governing law and enforcement*), Clause 20.11 (*No default*), paragraph 20.12.5 of Clause 20.12 (*No misleading information*), Clause

20.13 (*Original Financial Statements*), Clause 20.18 (*Ranking*) to Clause 20.20 (*Legal and beneficial ownership*), Clause 20.22 (*Shares*) and Clause 20.27 (*Centre of main interests and establishments*).

Rollover Loan means one or more Loans:

- (a) made or to be made on the same day that one or more maturing Loans is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the amount of the maturing Loan(s); and
- (c) made or to be made to the same Borrower for the purpose of refinancing the maturing Loan(s).

Screen Rate means the British Bankers Association Interest Settlement Rate for the relevant currency and period displayed on the appropriate page of the Reuters 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 Company 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.

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

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

Solvency II means the directive of The European Parliament and of the Council of the European Union made in 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), or any implementing measures or guidance made or published thereunder.

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 and disregarding, for the purpose of this definition, the fact that any shares in that entity may be held by way of security, that the beneficiary of the security (or its nominee) may be registered as a member of the relevant undertaking and/or that such beneficiary of the

security (or its nominee) may be entitled to exercise voting powers and rights with respect to those charged shares.

SUP means the Supervision Manual forming part of the FSA Rules.

Target means any company or entity being acquired by a member of the Group in a Permitted Acquisition or other acquisition the consideration for which is not being funded through the proceeds of the Facility.

Target Group means a Target and its Subsidiaries.

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).

Termination Date means the date falling three years from the date of this Agreement.

Total Commitments means the aggregate of the Commitments, being US\$250,000,000 at the date of this Agreement.

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 each of the documents listed under paragraph 2.2 (*Transaction Security Documents*) of Part 1 of Schedule 2 (*Conditions Precedent*) or paragraph 11 of Part 2 of Schedule 2 (*Conditions Precedent*), and any original 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.

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 Parent.

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 **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.

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 Parent and the Agent or, if not so agreed, is in the form specified by the Agent;
- (c) **Barclays Corporate** means Barclays Corporate, the corporate banking division of Barclays Bank PLC;
- (d) **assets** includes present and future properties, revenues and rights of every description;
- (e) a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated (in any case, however fundamentally);
- (f) **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;
- (g) **Guarantor, Original Guarantor, Additional Guarantor** and **this guarantee** shall not be construed restrictively and shall include the payment undertakings and indemnities contained in Clause 18 (*Guarantee and Indemnity*);
- (h) **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;
- (i) **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**;
- (j) **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;

- (k) 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;
 - (l) 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;
 - (m) a provision of law is a reference to that provision as amended or re-enacted and any subordinate legislation made under it; and
 - (n) 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 20 (*Representations*), Clause 21 (*Information Undertakings*), Clause 22 (*Financial Covenants*), Clause 23 (*General Undertakings*) and/or Clause 24 (*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.
- 2 **The Facilities**
- 2.1 **The Facilities**
- Subject to the terms of this Agreement the Lenders make available to the Borrowers a revolving credit facility in an aggregate amount equal to the Total Commitments;
- 2.2 **Finance Parties' rights and obligations**
- 2.2.1 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.
- 2.2.2 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.

2.2.3 A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

2.3 **Obligors' Agent**

2.3.1 Each Obligor (other than the Parent) by its execution of this Agreement or an Accession Letter irrevocably appoints the Parent to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

- (a) the Parent 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 (including, in the case of a Borrower, Utilisation Requests), 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 Parent,

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.

2.3.2 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**

Each Borrower shall apply all amounts borrowed by it under the Facility towards:

- 3.1.1 prepayment of the Existing Facilities,
- 3.1.2 general corporate purposes of the Group; and
- 3.1.3 funding any acquisitions in the non-life run-off sector falling within the definition of "Permitted Acquisition".

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 1 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*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan and, in the case of any other Loan, no Default is continuing or would result from the proposed Loan;
- (b) the Repeating Representations to be made by each Obligor are true; and
- (c) the proposed Loan would not cause the Net Worth Cover to be less than or equal to 2.0:1.

4.3 Maximum number of Loans

A Borrower (or the Parent) may not deliver a Utilisation Request if as a result of the proposed Loan more than 15 Loans would be outstanding.

5 Loans

5.1 Delivery of a Utilisation Request

A Borrower (or the Parent on its behalf) may utilise the Facility 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) it identifies the Borrower of the proposed Loan;
- (c) the currency and amount of the Loan comply with Clause 5.3 (*Currency and amount*); and
- (d) 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 and amount

5.3.1 The currency specified in a Utilisation Request must be the Base Currency.

5.3.2 The amount of the proposed Loan must be a minimum of US\$5,000,000 or, if less, the Available Facility.

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**

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

6 **Repayment**

- 6.1.1 Each Borrower which has drawn a Loan shall repay that Loan on the last day of its Interest Period.
- 6.1.2 Any Loan remaining outstanding on the Termination Date shall be repaid in full on such date.

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) each Borrower shall repay that Lender's participation in the Loans made to that 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**

Subject to Clause 7.3 (*Voluntary prepayment of Loans*) the Parent 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 of the Lenders rateably.

7.3 **Voluntary prepayment of Loans**

A Borrower may, if it or the Parent gives the Agent not less than 7 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a 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\$5,000,000 or its equivalent).

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 for that increase 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.

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), each Borrower to whom a Loan is outstanding 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**

Upon the occurrence of a Change of Control the Facility 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 and Insurance Proceeds**

8.2.1 For the purposes of this Clause 8.2, Clauses 8.3 (*Application of mandatory prepayments*) and Clause 8.4 (*Mandatory Prepayment Accounts and Holding Accounts*):

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 Disposal Proceeds: means Disposal Proceeds which have been derived from a Disposal permitted by Clause 23.25 (*Intra-Group transactions*) or of a type described in paragraphs (a) or (b) or (c) of the definition of **Permitted Disposal**.

Excluded Insurance Proceeds: means any proceeds of an insurance claim which the Parent 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,

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 Parent shall ensure that the Borrowers 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 Disposal Proceeds; and
- (b) the amount of Insurance Proceeds.

8.3 Application of mandatory prepayments

8.3.1 A prepayment made under Clause 8.2 (*Disposal and Insurance Proceeds*) shall be applied in prepayment of the Loans.

8.3.2 Subject to Clause 8.3.3 below, the Obligors' Agent may elect that any prepayment under Clause 8.2 (*Disposal and Insurance Proceeds*) be applied in prepayment of a Loan on the last day of the Interest 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 and Insurance Proceeds 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, and Excluded Insurance Proceeds are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Group.

8.4.2 The Parent and each Borrower irrevocably authorise 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 Parent and each Borrower further irrevocably authorise the Agent to so apply amounts credited to the Holding Account in respect of Excluded Disposal Proceeds to be applied in replacement of assets and Excluded Insurance Proceeds whether or not 180 days have elapsed since receipt of those proceeds if a Default has occurred and is continuing. The Parent and each Borrower also irrevocably authorise 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 Disposal Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definition of 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 prepayment fee payable under Clause 9.3 (*Prepayment Fee*) and any Break Costs, without premium or penalty.

9.3 Prepayment Fee

In the event that all of the Loans are prepaid pursuant to Clause 7.3 (*Voluntary prepayment of Loans*) as a result of a refinancing with a third party funder on or

before the first anniversary of the date of this Agreement, the Parent shall pay to the Agent for the account of the Lenders a fee computed at the rate of one per cent. (1%) of the amount prepaid. Any such fee will be paid on the same date as the prepayment which causes the fee to be payable.

9.4 Reborrowing of a Facility

Unless a contrary indication appears in this Agreement, any part of the Facility which is prepaid (including any prepayment made pursuant to Clause 8.2.2) or repaid may be reborrowed in accordance with the terms of this Agreement.

9.5 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.

9.6 No reinstatement of Commitments

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

9.7 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
- (c) Mandatory Cost, if any,
(together the **Interest**).

10.2 Payment of Interest

The Borrower to which a Loan has been made 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 relevant Borrower (or the Parent) 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 A Borrower (or the Parent on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan.

11.1.2 Subject to this Clause 11, a Borrower (or the Parent) may select an Interest Period of two, three or six Months or any other period agreed between the Parent and the Agent (acting on the instructions of all the Lenders).

11.1.3 An Interest Period for a Loan shall not extend beyond the Termination Date.

11.1.4 Each Interest Period for a Loan shall start on the Utilisation Date.

11.1.5 A Loan has one Interest Period only.

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 Parent 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.

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 Each 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 that 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 Parent shall pay to the Agent (for the account of each Lender) a fee in the Base Currency computed at the rate of one point one per cent. (1.10%) per annum on the daily undrawn and uncanceled amount of the Facility during the Availability Period.

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 Parent shall pay to the Arrangers arrangement fees in the amount, manner and at the times agreed in a Fee Letter.

13.3 Agency fee

The Parent 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:
 - (i) 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:
 - (A) a Lender:
 - (1) which is a bank (as defined for the purpose of section 879 of the ITA) 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 the ITA) 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 brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;

- (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 that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
 - (C) a Treaty Lender; or
 - (ii) a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document).
 - (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 chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; 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 19 of the CTA) 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 (a **Treaty**) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.
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(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 4 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 Parent 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 it must make) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Parent 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 A payment shall not be increased under Clause 14.2.3 above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, 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 the Lender had been 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 published concession of any relevant taxing authority; or
- (b) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B) of the definition of Qualifying Lender and:
 - (i) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "Direction") under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Company a certified copy of that Direction; and
 - (ii) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or

- (c) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B) of the definition of Qualifying Lender and:
 - (i) the relevant Lender has not given a Tax Confirmation to the Company; and
 - (ii) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Company, on the basis that the Tax Confirmation would have enabled the Company to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA.
 - (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 made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- 14.2.7
- (a) Subject to paragraph (b) below, 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.
 - (b) Nothing in paragraph (a) above shall require a Treaty Lender to:
 - (i) register under the HMRC DT Treaty Passport scheme;
 - (ii) apply the HMRC DT Treaty Passport scheme to any Utilisation if it has so registered; or
 - (iii) file Treaty forms if it has:
 - (A) included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement; or
 - (B) notified the Parent of its scheme reference number and its jurisdiction of tax residence.
- 14.2.8 A Treaty Lender which becomes a Party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which then wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) by including its scheme reference number and its jurisdiction of tax residence opposite its name in Part 3 of Schedule 1 (*The Original Parties*).
- 14.2.9 If a Lender has not either:

- (a) included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with Clause 14.2.8 above or paragraph (a) of Clause 14.6 (HMRC DT Treaty Passport scheme confirmation); or
- (b) notified the Parent of its scheme reference number and its jurisdiction of tax residence pursuant to paragraph (l) above, no Obligor shall file any form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment or its participation in any Utilisation.

14.3 Tax indemnity

14.3.1 The Parent 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 by an increased payment under Clause 14.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in Clause 14.2.4 (*Tax gross-up*) applied.

14.3.3 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 Parent.

14.3.4 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:

- (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 **Lender Status Confirmation**

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:

- (a) not a Qualifying Lender;
- (b) a Qualifying Lender (other than a Treaty Lender); or
- (c) a Treaty Lender.

If a New Lender fails to indicate its status in accordance with this Clause 14.5 then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Parent). For the avoidance of doubt, a Transfer Certificate or Assignment Agreement shall not be invalidated by any failure of a Lender to comply with this Clause 14.5.

14.6 **HMRC DT Treaty Passport scheme confirmation**

14.6.1 A New Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which then wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) in the Transfer Certificate or Assignment Agreement which it executes by including its scheme reference number and its jurisdiction of tax residence in that Transfer Certificate or Assignment Agreement.

14.6.2 Where a New Lender includes the indication described in paragraph (a) above in the relevant Transfer Certificate or Assignment Agreement:

- (a) each Borrower which is a Party as a Borrower as at the relevant Transfer Date shall file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of that Transfer Date and shall promptly provide the Lender with a copy of that filing; and
- (b) each Additional Borrower which becomes an Additional Borrower after the relevant Transfer Date shall file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of becoming an Additional Borrower and shall promptly provide the Lender with a copy of that filing.

14.7 **Stamp taxes**

The Parent 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.

14.8 Value added tax

- 14.8.1 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 14.8.2 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).
- 14.8.2 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.

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 Parent 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 Facility 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,

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 Parent.
- 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 Mandatory Costs; 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.

16.2 Other indemnities

16.2.1 The Parent 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 Event of 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 29 (*Sharing among the Finance Parties*);
 - (c) funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of
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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 a Borrower or the Parent.

16.2.2 The Parent 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 funding of an acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning that 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 Parent 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 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 Parent, 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 Parent 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 **Guarantee and Indemnity**

18.1 Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each Borrower of all that Borrower's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever a Borrower does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of a Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 18 if the amount claimed had been recoverable on the basis of a guarantee.

18.2 **Continuing guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

18.3 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 18 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

18.4 **Waiver of defences**

18.4.1 The obligations of each Guarantor under this Clause 18 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or

prejudice any of its obligations under this Clause 18 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any legal limitation, incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality, invalidity or frustration of any obligation of any person under any Finance Document or any other document or security;
- (g) the failure of any member of the Group to enter into or be bound by any Finance Document;
- (h) any action (or decision not to act) taken by a Finance Party (or any trustee or agent on its behalf) in accordance with Clause 18.7 (*Appropriations*); or
- (i) any insolvency, dissolution or similar proceedings or from any law, regulation or order.

18.5 **Guarantor intent**

Without prejudice to the generality of Clause 18.4 (Waiver of defences), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

18.6 **Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor

under this Clause 18. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

18.7 Appropriations

18.7.1 Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 18.

18.8 Deferral of Guarantors' rights

18.8.1 Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 18:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 18 (*Guarantee and Indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

18.8.2 If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 31 (*Payment mechanics*).

18.9 Release of Guarantors' right of contribution

18.9.1 If any Guarantor (a **Retiring Guarantor**) ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other

disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and
- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

18.10 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

19 Costs And Expenses

19.1 Transaction expenses

The Parent 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.

19.2 Amendment costs

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 30.13 (*Change of currency*), the Parent 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.

19.3 Security Agent's ongoing costs

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

19.3.2 If the Security Agent and the Parent 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 Parent 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 Parent) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

19.4 **Enforcement and preservation costs**

The Parent 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.

20 **Representations**

20.1 **General**

Each Obligor makes the representations and warranties set out in this Clause 20 to each Finance Party in accordance with Clause 20.32 (*Times when representations made*).

20.2 **Status**

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

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

20.3 **Binding obligations**

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by it in each Finance 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.

20.4 **Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Finance 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.

20.5 Power and authority

20.5.1 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 Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.

20.5.2 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 Finance Documents to which it is a party.

20.6 Validity and admissibility in evidence

20.6.1 All Authorisations required:

(a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and

(b) to make the Finance 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 20.9 (*No filing or stamp taxes*), which Authorisations will be promptly obtained or effected as soon as practicable after the date of this Agreement.

20.6.2 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.

20.7 Governing law and enforcement

20.7.1 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.

20.7.2 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.

20.8 Insolvency

No:

(a) corporate action, legal proceeding or other procedure or step described in Clause 24.7.1 (*Insolvency proceedings*); or

(b) creditors' process described in Clause 24.8 (*Creditors' process*),

has been taken or, to the knowledge of the Parent, threatened in relation to a member of the Group; and none of the circumstances described in Clause 24.6 (*Insolvency*) applies to any member of the Group.

20.9 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.

20.10 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.

20.11 No default

20.11.1 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 Finance Document.

20.11.2 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.

20.12 No misleading information

20.12.1 Any written factual information provided to the Agent by any Obligor was true and accurate in all material respects as at the date the information is expressed to be given.

20.12.2 Any financial projection or forecast provided to the Agent by any Obligor has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date the projection or forecast was provided) and arrived at after careful consideration.

20.12.3 The expressions of opinion or intention provided by or on behalf of an Obligor to the Agent in any report or document were made after careful consideration and (as at the date of the report or document containing the expression of opinion or intention) were fair and based on reasonable grounds.

20.12.4 No event or circumstance has occurred or arisen and no information has been omitted from any report or document provided to the Agent by any Obligor and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the relevant report being untrue or misleading in any material respect.

20.12.5 All material information provided to a Finance Party by or on behalf of the Parent or any Obligor in connection with any acquisition permitted under this Agreement and/or the relevant Target Group at the time such information is provided and not superseded before that date is accurate and not misleading in any material respect and all projections provided to any Finance Party at the time such information is

provided have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied.

20.12.6 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.

20.12.7 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.

20.12.8 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.

20.13 **Original Financial Statements**

20.13.1 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.

20.13.2 Its Original Financial Statements prior to them having been audited fairly represent its financial condition and results of operations for the relevant period unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement.

20.13.3 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 Parent) since the date of the Original Financial Statements.

20.13.4 Its most recent financial statements delivered pursuant to Clause 21.2 (*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.

20.13.5 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.

20.13.6 Since the date of the most recent financial statements delivered pursuant to Clause 21.2 (*Financial statements*) there has been no material adverse change in the business, assets or financial condition of the Group.

20.14 **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.

20.15 **No breach of laws**

20.15.1 It has not (and none of its Subsidiaries has) has breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

20.15.2 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.

20.16 **Taxation**

20.16.1 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 US\$1,000,000 (or its equivalent in any other currency) or more.

20.16.2 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 US\$1,000,000 (or its equivalent in any other currency) or more is reasonably likely to arise.

20.16.3 It is resident for Tax purposes only in the jurisdiction of its incorporation.

20.17 **Security and Financial Indebtedness**

20.17.1 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.

20.17.2 No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.

20.18 **Ranking**

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

20.19 **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.

20.20 **Legal and beneficial ownership**

20.20.1 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.

20.20.2 All the issued shares of the relevant Target are legally and beneficially owned by the relevant member of the Group (following the completion of the relevant acquisition) free from any claims, third party rights or competing interests.

20.21 **Ownership**

Each of the Obligors is a direct or indirect wholly-owned subsidiary of the Parent.

20.22 **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 (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.

20.23 **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;
- (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 extent that failure to do so has or is reasonably likely to have a Material Adverse Effect.

20.24 **Group Structure Chart**

20.24.1 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 not a company with limited liability; and
- (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.

20.24.2 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.

20.25 **Financial Year end**

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

20.26 **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.

20.27 **Centre of main interests and establishments**

In relation to each Obligor incorporated in a member state of the European Union, for the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "Regulation"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation and it has no "establishment" (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction.

20.28 Immunity

20.28.1 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.

20.28.2 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.

20.29 No adverse consequences

20.29.1 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, that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.

20.29.2 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.

20.30 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.

20.31 Net Worth

On the date of this Agreement, the Consolidated Tangible Net Worth of the Parent is not less than US\$750,000,000.

20.32 Times when representations made

20.32.1 All the representations and warranties in this Clause 20 are made by each Original Obligor on the date of this Agreement.

20.32.2 The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date, on the first day of each Interest Period and, if an Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of that Interest Period (except that those contained in Clauses 20.13.1 to 20.13.4 (*Original Financial Statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement).

20.32.3 All the representations and warranties in this Clause 20:

- (a) are deemed to be made by the Parent and each Additional Obligor on the day on which that Additional Obligor becomes (or it is proposed that it becomes) an Additional Obligor;
- (b) (except Clause 20.12 (*No misleading information*), Clause 20.24 (*Group Structure Chart*), and Clause 20.29 (*No adverse consequences*)) are deemed to be made by any other Additional Obligor on the day on which it becomes (or it is proposed that it becomes) an Additional Obligor.

20.32.4 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.

21 Information Undertakings

21.1 General

The undertakings in this Clause 21 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 21:

- (a) **Annual Financial Statements:** means the financial statements for a Financial Year delivered pursuant to Clause 21.2 (*Financial statements*).
- (b) **Quarterly Financial Statements:** means the financial statements for a Financial Quarter delivered pursuant to Clause 21.2 (*Financial statements*).

21.2 Financial statements

21.2.1 The Parent shall procure that each Obligor and/or each Material Company, as applicable, 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 (or 75 days in respect of the Parent) after the end of each of its Financial Years:
 - (i) the audited consolidated financial statements of Cumberland Holdings Limited and each Obligor for that Financial Year or, if such person is not required to produce consolidated audited financial statements and has not done so for that Financial Year, its consolidated management schedules for such Financial Year provided that any such person must provide audited consolidated financial statements if the Agent so requests;
 - (ii) the audited financial statements of each Obligor and each Material Company 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 the consolidated and unconsolidated financial statements of each Obligor for that Financial Quarter, to include:

- (i) (in the case of the Parent only) details of all Disposal Proceeds as defined in Clause 8.2 (*Disposal and Insurance Proceeds*);
 - (ii) (in the case of the Parent only) details of all surpluses in any fund or funds of each member of the Group which is an insurance company;
 - (iii) (in the case of the Parent only) a summary of cash realisations of each member of each relevant Target Group (as appropriate) following the relevant acquisition;
 - (iv) (in the case of the Parent only) details of the proceeds of the cash realisations of each member of each relevant Target Group following the relevant acquisition;
 - (v) a discussion of major incurred claims movements with appropriate narrative;
- (c) 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 Group 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 a member of the Group 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;
- (d) as soon as it is available but in any event within 60 days after the start of each of its Financial Years an actuarial review conducted by a duly qualified independent actuarial company.

21.3 **Provision and contents of Compliance Certificate**

21.3.1 The Parent 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.

21.3.2 The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 22 (*Financial Covenants*) including confirmation that the Parent is in compliance with Clause 22.2.1(e) (*Requisite Rating*).

21.3.3 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 Parent, shall be reported on by the Parent's Auditors in the form agreed by the Parent and the Majority Lenders.

21.4 **Requirements as to financial statements**

21.4.1 The Parent 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 Parent shall procure that:

- (a) each set of Annual Financial Statements shall where required be audited by the Auditors;
- (b) each set of Quarterly Financial Statements of the Parent includes:
 - (i) a cashflow forecast (comprising the Capital Release Schedule) in respect of the Group relating to the twelve month period commencing at the end of the relevant Financial Quarter;
 - (ii) a statement by the directors of the Parent 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; and
 - (iii) a report setting out, in respect of each Regulated Insurance Entity: (i) its capital resources; (ii) its Pillar 1 Capital Requirement; (iii) its ICA Capital Requirement; (iv) its ICG Capital Requirement; and (v) any deductions made from its capital resources when determining its compliance with its ICA Capital Requirement or its ICG Capital Requirement.

21.4.2 Each set of financial statements delivered pursuant to Clause 21.2 (*Financial Statements*):

- (a) shall be certified by the Chief Financial Officer of the Parent 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), the financial condition and operations of the relevant person or persons covered by those financial statements 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 Parent comparing actual performance for the period to which the financial statements relate to:
 - (i) the projected performance for that period set out in the Budget; and
 - (ii) 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 Parent 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 22 (*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.

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.

21.4.3 If the Agent receives a report from the Parent's Auditors pursuant to Clause 21.4.2(c) above, the Majority Lenders (in consultation with the Parent and the Auditors) may require such changes to the covenants set out in Clause 22 (*Financial Covenants*) as are necessary solely to reflect the changes notified to them.

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

- (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 22 (*Financial covenants*).

21.5 **Budget**

- (a) The Parent shall supply to the Agent in sufficient copies for all the Lenders, as soon as the same become available but in any event not less than 60 days after the start of each of its Financial Years, an annual Budget for that Financial Year.
- (b) The Parent shall ensure that each Budget:
 - (i) is in a format reasonably acceptable to the Agent and includes a projected consolidated profit and loss, balance sheet and cashflow statement for the Group, projected financial covenant calculations, Capital Expenditure to be incurred and its anticipated timing and a Capital Release Schedule;
 - (ii) is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under Clause 21.2 (*Financial statements*); and
 - (iii) has been approved by the board of directors of the Parent.

- (c) If the Parent updates or changes the Budget, it shall promptly deliver to the Agent, in sufficient copies for each of the Lenders, such updated or changed Budget together with a written explanation of the main changes in that Budget.

21.6 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 Parent (one of whom shall be the Chief Financial Officer of the Parent) must give a presentation to the Finance Parties in London about the on-going business and financial performance of the Group.

21.7 Year-end

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

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

21.8 Information: miscellaneous

21.8.1 The Parent 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 including, without limitation, copies of: (i) FSA Returns; (ii) the Group Capital Resources Report; and (iii) Close Links Report;
- (b) at the same time as they are dispatched, copies of all documents dispatched by the Parent to its shareholders generally (or any class of them) or dispatched by the Parent or any Obligor to its creditors generally (or any class of them);
- (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 US\$2,000,000 (or its equivalent in other currencies);
- (d) written notice of any business or transaction undertaken by the Borrower or any member of the Group involving (directly or indirectly) any of Sudan, Iran, Myanmar (Burma), Cuba, North Korea or Syria, to the extent possible in advance of, and in any event promptly upon, the Borrower or such member of the Group commencing such business or transaction, together with sufficient details of such business or transaction as any Finance Party may require to satisfy any sanctions-related laws, regulations or requirements to which it is subject;
- (e) promptly, copies of any correspondence, documentation or other communication dispatched by or to the FSA or other relevant regulatory body in respect of any member of the Group's regulatory capital requirements

- (f) promptly, copies of any agreement for the acquisition or disposal of a Subsidiary or for an insurance business transfer to or from any member of the Group, together with copies of all documents sent to policyholders in connection with any such insurance business transfer;
- (g) 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
- (h) 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.

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

21.9 **Notification of default**

21.9.1 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).

21.9.2 Promptly upon a request by the Agent, the Parent 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).

21.10 **"Know your customer" checks**

21.10.1 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 21.10.1(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 Parent shall ensure 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 21.10.1(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 21.10.1(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.

- 21.10.2 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.
- 21.10.3 The Parent 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 26 (*Changes to the Obligors*).
- 21.10.4 Following the giving of any notice pursuant to Clause 21.10.3 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 Parent 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.

22 Financial Covenants

22.1 Financial definitions

In this Clause 22:

Consolidated Tangible Net Worth: means, at any time, the aggregate of the Equity Shareholders Funds of a company on the last day of the Relevant Period minus (i) the aggregate of the Permitted Financial Indebtedness; (ii) any liabilities incurred by the company in the ordinary course of its business but not paid on the last day of the Relevant Period; (iii) any assets or monies that may be required to cover the cost of forecast redundancies within the Group; (iv) any loans between members of the Group included as an asset on the balance sheet of that company; and (v) any goodwill, Intellectual Property or other intangible assets included in the calculation of Equity Shareholder Funds for that company.

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) directly or indirectly owned by an Obligor and of the amounts standing to the credit of revenue reserves of a company referable to the ownership of an Obligor, excluding in each case, for the avoidance of doubt, any minority interests.

Facility Debt: means on the last day of the Relevant Period, the aggregate of the Group’s consolidated Financial Indebtedness in respect of the Facility.

Financial Quarter: means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

Financial Year: means each period of twelve months ending on 31 December.

Gearing Ratio: means, in respect of any Relevant Period, the ratio of the consolidated Financial Indebtedness of the Parent on the last day of that Relevant Period to its Consolidated Tangible Net Worth in respect of that Relevant Period.

Net Worth Cover: means the ratio of the aggregate Consolidated Tangible Net Worth of all the Material Companies (except Enstar Australia Holdings Pty Limited and AG Australia Holdings Limited) to Facility Debt.

Quarter Date: means each of 31 March, 30 June, 30 September and 31 December.

Regulated Entity means each of the Material Companies which is a Regulated Insurance Entity.

Regulatory Cover: means, in relation a Regulated Entity, the ratio of the capital resources of the Regulated Entity 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) or, if appropriate, any equivalent documentation, guidance or regulation in any other jurisdiction to the capital resources requirement of the Regulated Entity 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) or, if appropriate, any equivalent documentation, guidance or regulation in any other jurisdiction.

Relevant Period: means:

- (a) for the purposes of any calculation in a Compliance Certificate to be delivered pursuant to Clause 21.3 (*Provision and contents of Compliance Certificate*) each period of twelve months (or, if shorter, the period from the date of this Agreement) ending on each Quarter Date; and
- (b) for all other purposes each period of twelve months ending on the relevant calculation date.

22.2 Financial condition

22.2.1 The Parent shall ensure that:

- (a) **Borrower Net Worth:** The Consolidated Tangible Net Worth of the Parent shall at all times be more than US\$750,000,000.
- (b) **Borrower Gearing Ratio:** The Gearing Ratio shall not at any time be more than 0.5:1.
- (c) **Regulatory Cover:** Regulatory Cover of each Regulated Entity shall at all time be more than 1.1:1;
- (d) **Net Worth Cover:** Net Worth Cover shall at all time be more than 2.0:1;
- (e) **Requisite Rating:**
 - (i) The average rating of the aggregate investment portfolio (determined by reference to the individual rating given by the Rating Agency to each investment) of the Material Companies shall not at any time be less than A-;

- (ii) the short term rating and/or long term rating of investments as determined by the Rating Agency for at least 87.5% of the total value of the investments held by the Material Companies have a rating of not less than BBB or are held in cash and no investments are advised by J.C. Flowers & Co. LLC or its associated parties,

and provided that in each case no investment shall be held in asset backed securities, CDOs or other structured products.

22.3 Financial testing

22.3.1 The financial covenants set out in Clauses 22.2.1(a) (*Borrower Net Worth*) to 22.2.1(e) (*Requisite Rating*) 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 21.2(a) and (b) (*Financial Statements*) and each Compliance Certificate delivered pursuant to Clause 21.3 (*Provision and contents of Compliance Certificate*)).

22.3.2 No item shall be deducted or credited more than once in any calculation.

22.3.3 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.

22.3.4 The financial covenants in Clauses 22.2.1(a) (*Borrower Net Worth*) to 22.2.1(e) (*Requisite Rating*) of Clause 22.2 (*Financial condition*) shall apply on a continuing basis but shall be tested on each Quarter Date commencing with the 30 June 2011 Quarter Date.

22.4 Equity cure-Regulatory Cover

22.4.1 No Event of Default under Clause 24.2 (*Financial Covenants and other obligations*) in relation to Clauses 22.2.1(c) (*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 Parent to the Agent as being provided for the purpose of this Clause 22.4 (*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 relevant Regulated Entity within 5 Business Days of the date on which the Parent becomes aware of a breach of Clause 22.2.1(c) (*Regulatory Cover*).
- (b) promptly following receipt by the relevant Regulated Entity 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 Parent is delivered to the Agent confirming that on recalculating the Regulatory Cover financial covenant set out in Clause 22.2.1(c) (*Regulatory Cover*) would be complied with and attaching reasonable details of such calculations.

22.5 Equity cure- Net Worth Cover

No Event of Default under Clause 24.2 (*Financial Covenants and other obligations*) in relation to Clauses 22.2.1(d) (*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 Parent to the Agent as being provided for the purpose of this Clause 22.5) and/or any debt (subordinated on terms approved by the Agent acting reasonably) (in each case the **New Investment**) is invested in a Material Company whose shares are subject to the Transaction Security within 5 Business Days of the date on which the Parent becomes aware of a breach of Clause 22.2.1(d) (*Net Worth Cover*).
- (b) promptly following receipt by the relevant Material Company 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 Parent is delivered to the Agent confirming that on recalculating the Net Worth Cover financial covenant set out in Clause 22.2.1(d) (*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.

23 **General Undertakings**

The undertakings in this Clause 23 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.

23.1 **Authorisations**

Each Obligor shall (and the Parent shall ensure that each Material Company 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 enable it to: (i) perform its obligations under the Finance Documents; (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and (iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

23.2 **Compliance with laws**

Each Obligor shall (and the Parent shall ensure that each Material Company 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.

23.3 **Taxation**

23.3.1 Each Obligor shall (and the Parent shall ensure that each Material Company 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:

- (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 21.2.1(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.

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

23.4 **Merger**

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

23.5 **Change of business and Investment Policy**

- (a) The Parent shall procure that no substantial change is made to the general nature of the business of the Parent or the Group taken as a whole from that carried on at the date of this Agreement.
- (b) The Parent shall procure that:
 - (i) no change is made to the Investment Policy in effect as at the date of this Agreement without the consent of the Agent; and
 - (ii) that all investments made by the Group comply with the Investment Policy (upon making the investment and thereafter).

23.6 **Acquisitions**

23.6.1 Except as permitted under Clause 23.6.2 below, no Obligor shall (and the Parent shall ensure that no Material Company will) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them).

23.6.2 Clause 23.6.1 above does not apply to:

- (a) a Permitted Acquisition; or
- (b) an acquisition of an insurance company, business or undertaking other than where the underlying insurance exposures of such insurance company, business or undertaking are represented by life business.

23.7 **Joint ventures**

No Obligor shall (and the Parent shall ensure that no Material Company 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).

23.8 **Holding Companies**

No Obligor other than the Parent shall 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 Cash Equivalent Investments;
- (c) incurring Financial Indebtedness in respect of a Permitted Loan falling within paragraph (d) of the definition of "Permitted Loan" and the making of loans falling with paragraphs (d) or (f) of the definition of "Permitted Loan"; or
- (d) any liabilities under the Finance 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 23.25 (*Intra-Group Transactions*).

23.9 **Preservation of assets**

Each Obligor shall (and the Parent shall ensure that each Material Company 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.

23.10 **Pari passu ranking**

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party 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.

23.11 **Negative pledge**

23.11.1 Except as permitted under Clause 23.11.2 below:

- (a) No Obligor shall (and the Parent shall ensure that no Material Company will) create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Parent shall ensure that no Material Company 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) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) 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

(iv) 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**.

23.11.2 Clause 23.11.1 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.

23.12 Disposals

23.12.1 Except as permitted under Clause 23.12.2 below, no Obligor shall (and the Parent shall ensure that no Material Company will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, surrender, set-off, transfer, licence or otherwise dispose of any asset.

23.12.2 Clause 23.12.1 above does not apply to any sale, lease, transfer or other disposal which is:

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

23.13 Arm's length basis

23.13.1 Except as permitted by Clause 23.13.2 below, no Obligor shall (and the Parent shall ensure no Material Company will) enter into any transaction with any person except on bona fide arm's length terms.

23.13.2 The following transactions shall not be a breach of Clause 23.13.1:

- (a) intra-Group transactions permitted under Clause 23.25 (*Intra-Group transactions*); and
- (b) fees, costs and expenses payable under the Finance Documents in the amounts set out in the Finance Documents delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or agreed by the Agent.

23.14 Loans or credit

23.14.1 Except as permitted under Clause 23.14.2 below, no Obligor shall (and the Parent shall ensure that no Material Company will) be a creditor in respect of any Financial Indebtedness.

23.14.2 Clause 23.14.1 above does not apply to:

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

23.15 No Guarantees or indemnities

23.15.1 Except as permitted under Clause 23.15.2 below, no Obligor shall (and the Parent shall ensure that no Material Company will) incur or allow to remain outstanding any guarantee, bond or indemnity in respect of any obligation of any person.

23.15.2 Clause 23.15.1 above does not apply to a guarantee which is:

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

23.16 Financial Indebtedness

23.16.1 Except as permitted under Clause 23.16.3 below, no Obligor shall (and the Parent shall ensure that no Material Company will) incur or allow to remain outstanding any Financial Indebtedness.

23.16.2 No Obligor may (and the Parent shall ensure that no Material Company shall) repay any Financial Indebtedness owed to any person that is not an Obligor or a Material Company (other than the Existing Facilities) with the proceeds of any loan, dividend, distribution or other payment received by it from any Obligor or Material Company.

23.16.3 Clause 23.16.1 above does not apply to Financial Indebtedness which is:

- (a) Permitted Financial Indebtedness;
- (b) contemplated by paragraph (a) of the definition of Permitted Transaction; or
- (c) incurred by the Parent.

23.17 Share capital

No Obligor shall (and the Parent shall ensure no Material Company will) issue any shares except pursuant to a Permitted Share Issue.

23.18 Pensions

23.18.1 The Parent 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).

23.18.2 Except for the pension schemes (if any) for the time being operated by the Parent or in which it participates, the Parent 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.

- 23.18.3 The Parent shall ensure that each member of the Group incorporated outside the United Kingdom 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.
- 23.18.4 The Parent 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 Parent), actuarial reports in relation to all pension schemes mentioned in Clause 23.18.1 and 23.18.3 above.
- 23.18.5 The Parent shall promptly notify the Agent of any material change in the rate of contributions to any pension schemes mentioned in Clause 23.18.1 or 23.18.3 above paid or recommended to be paid (whether by the scheme actuary or otherwise) or required (by law or otherwise).

23.19 **Access**

Each Obligor shall, and the Parent shall ensure that each Material Company 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, David Rocke and Gareth Nokes.

23.20 **Intellectual Property**

- 23.20.1 Each Obligor shall and the Parent shall procure that each Material Company 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 Clauses 23.20.1(a), 23.20.1(b) and 23.20.1(d) above, or, in the case of Clauses 23.20.1(e) and 23.20.1(f) above, such use, permission to use, omission or discontinuation is reasonably likely to have a Material Adverse Effect.

23.20.2 Failure to comply with any part of Clause 23.20.1 above shall not be a breach of Clause 23.20.1 to the extent that any dealing with Intellectual Property which would otherwise be a breach of Clause 23.20.1 is contemplated by paragraph (a) of the definition of Permitted Transaction.

23.21 **Amendments**

23.21.1 No Obligor shall (and the Parent shall ensure that no other Obligor or member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Finance Document, the constitutional documents of any company whose shares are subject to the Transaction Security or any other document delivered to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*) or Clause 26 (*Changes to the Obligors*) or enter into any agreement with any shareholders of the Parent except in writing in a way which could not reasonably be expected to materially and adversely affect the interests of the Lender and would not change the date, amount or method of payment of the dividends on the Parent's shares.

23.21.2 The Parent shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in Clause 23.21.1 above.

23.22 **Financial assistance**

Each Obligor shall (and the Parent shall procure each Material Company 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.

23.23 **Treasury Transactions**

No Obligor shall (and the Parent shall procure that no Material Company will) enter into any Treasury Transaction except for the forward exchange contract entered into between Cumberland Holdings Limited and National Australia Bank Limited prior to the date of this Agreement.

23.24 **Further assurance**

23.24.1 Each Obligor shall (and the Parent shall procure that each Material Company 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.

23.24.2 Each Obligor shall (and the Parent shall procure that each Material Company 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.

23.25 Intra-Group transactions

23.25.1 Without the prior consent of the Agent, no Obligor or Material Company 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, a Permitted Disposal, Permitted Financial Indebtedness, a Permitted Guarantee or a Permitted Loan and is not unlawful under any law or regulation in any relevant jurisdiction including under any applicable financial assistance legislation.

23.25.2 If the relevant intra-Group transaction contemplated by Clause 23.25.1 above 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.

23.26 Dividends and share redemption

No Obligor will (and the Parent will ensure that no Material Company 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 Material Company pay any management, advisory or other fee to or to the order of any of the shareholders of the Parent; or
- (d) redeem, repurchase, defease, retire, reduce, cancel or repay any of its share capital or resolve to do so,

except for:

- (i) a dividend, charge, fee or other distribution to the Parent or any of its wholly owned Subsidiaries; or
- (ii) a dividend or other distribution by the Parent provided that:
 - (A) at the time such dividend or distribution is declared no Default is continuing; and

- (B) the payment of that dividend or distribution would not cause (x) the Net Worth Cover to be less than or equal to 2.0:1 or (y) the Consolidated Tangible Net Worth of the Parent to be less than or equal to US\$750,000,000.

23.27 Regulatory Compliance

Each Obligor 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.

23.28 Insurance

- (a) Each Obligor shall (and the Parent shall ensure that each member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.
- (b) All insurances must be with reputable independent insurance companies or underwriters.

23.29 Transfer of Capital Release Amount

On each date on which the Capital Release Amount in relation to any relevant member of the Group is greater than zero, each Obligor shall (and shall procure that each member of the Group shall) procure that an amount equal to the relevant Capital Release Amount on that date is promptly transferred to the CRA Account of the Parent by way of dividend, loan or otherwise (subject to the other provisions of this Agreement).

24 Events Of Default

Each of the events or circumstances set out in this Clause 24 is an (*Event of Default*).

24.1 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.

24.2 Financial covenants and other obligations

24.2.1 Any requirement of Clause 22 (*Financial Covenants*) is not satisfied.

24.2.2 An Obligor does not comply with the provisions of Clauses 21 (*Information Undertakings*), Clause 23.4 (*Merger*) to 23.8 (*Holding Companies*) (inclusive), Clauses 23.11 (*Negative pledge*) to 23.18 (*Pensions*) (inclusive), or Clause 23.21 (*Amendments*).

24.2.3 An Obligor does not comply with any provision of any Transaction Security Document.

24.3 **Other obligations**

24.3.1 An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 24.1 (*Non-payment*) and Clause 24.2 (*Financial covenants and other obligations*)).

24.3.2 No Event of Default under Clause 24.3.1 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 Parent or relevant Obligor or the Parent or an Obligor becoming aware of the failure to comply.

24.4 **Misrepresentation**

24.4.1 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.

24.4.2 No Event of Default under Clause 24.4.1 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.

24.5 **Cross default**

24.5.1 Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.

24.5.2 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).

24.5.3 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).

24.5.4 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).

24.5.5 No Event of Default will occur under this Clauses 24.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses 24.5.1 to 24.5.4 above is less than:

- (a) US\$10,000,000, in respect of the Parent;
- (b) zero, in respect of any Obligor (other than the Parent) or Material Company; or
- (c) US\$5,000,000, in respect of any other member of the Group.

24.6 **Insolvency**

24.6.1 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.

24.6.2 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).

24.6.3 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.

24.7 **Insolvency proceedings**

24.7.1 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.

24.7.2 Clause 24.7.1 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.

24.8 **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 US\$5,000,000 or more and is not discharged within 7 days.

24.9 **Unlawfulness and invalidity**

24.9.1 It is or becomes unlawful for an Obligor, 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.

24.9.2 Any obligation or obligations of any Obligor under any Finance Document 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.

24.9.3 Any Finance Document ceases to be in full force and effect or any Transaction Security 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.

24.10 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.

24.11 Change of ownership

An Obligor (other than the Parent) ceases to be a wholly-owned Subsidiary of the Parent.

24.12 Amending Constitutional Documents

Any 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.

24.13 Audit qualification

The Auditors of the Group qualify the audited annual consolidated financial statements of the Parent.

24.14 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.

24.15 Repudiation and rescission of agreements

An Obligor (or any other relevant party other than a Finance Party) or the Shareholder 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.

24.16 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance 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.

24.17 Regulatory Sanctions

Any fine, levy or sanctions are imposed upon any member of the Group by the FSA or by any equivalent regulatory authority in any other jurisdiction or under FSMA or any equivalent legislation or regulation in any other jurisdiction which the Majority Lenders reasonably believe has or is reasonably likely to have a Material Adverse Effect.

24.18 Cessation of licences

- (a) The cessation, variation or imposition of limitations (for any reason) of any consent, authorisation, licence and/or exemption which is required to enable the Parent or any Subsidiary to carry on its business, or the taking by any governmental, regulatory or other authority of any action in relation to the

Parent or any Subsidiary which could, in the Agent's opinion, acting reasonably, have a material adverse effect on all or part of such business.

- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within twenty Business Days of the earlier of (1) the Agent giving notice to the Parent and (2) the Parent becoming aware of the failure to comply.

24.19 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.

24.20 Acceleration

24.20.1 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 Parent:

- (a) cancel the Total Commitments at which time they shall immediately be cancelled;
- (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.

25 Changes To The Lenders

25.1 Assignments and transfers by the Lenders

Subject to this Clause 25, 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**).

25.2 Conditions of assignment or transfer

25.2.1 The consent of the Parent is required for an assignment or transfer by an Existing Lender 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.

25.2.2 The consent of the Parent to an assignment or transfer by an Existing Lender must not be unreasonably withheld or delayed. The Parent will be deemed to have given its consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Parent within that time.

25.2.3 The consent of the Parent to an assignment or transfer by an Existing Lender must not be withheld solely because the assignment or transfer may result in an increase to the Mandatory Cost.

25.2.4 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.

25.2.5 A transfer will only be effective if the procedure set out in Clause 25.5 (*Procedure for transfer*) is complied with.

25.2.6 If:

- (a) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
- (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 change 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.

25.2.7 Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

25.3 **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 Facility,

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.

25.4 **Limitation of responsibility of Existing Lenders**

25.4.1 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 Finance 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 Finance Documents or any other documents; or
- (d) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

25.4.2 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 Finance 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.

25.4.3 Nothing in any Finance Document obliges an Existing Lender to:

- (a) accept a re-transfer or reassignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 25; 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 Finance Documents or otherwise.

25.5 **Procedure for transfer**

25.5.1 Subject to the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause 25.5.3 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.

25.5.2 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.

25.5.3 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**.

25.6 **Procedure for assignment**

25.6.1 Subject to the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with Clause 25.6.3 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 25.6.2 below, as soon as reasonably practicable after receipt by 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.

25.6.2 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.

25.6.3 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.
- 25.6.4 Lenders may utilise procedures other than those set out in this Clause 25 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 25.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*).
- 25.7 **Copy of Transfer Certificate or Assignment Agreement to Parent**
- The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Parent a copy of that Transfer Certificate or Assignment Agreement.
- 25.8 **Security Interests over Lenders' rights**
- 25.8.1 In addition to the other rights provided to Lenders under this Clause 25, 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,
- 25.8.2 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.
- 25.9 **Pro Rata Interest Settlement**
- If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 25.5 (*Procedure for transfer*) or any assignment pursuant to Clause 25.6 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but including the Transfer Date (**Accrued Amounts**) and shall become due and payable to the Existing Lender (without further interest accruing on them) until the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on

the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and

- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
 - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender, and
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 25.10, have been payable to it on that date, but after deduction of the Accrued Amounts.

25.10 Prohibition on Debt Purchase Transactions

The Parent shall not, and shall procure that each other member of the Group shall not, enter into any Debt Purchase Transaction or beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of Debt Purchase Transaction.

26 Changes To The Obligors

26.1 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.

26.2 Additional Borrowers

26.2.1 Subject to compliance with the provisions of Clause 21.10 (*"Know your customer" checks*), the Parent may request that any of its wholly owned Subsidiaries becomes an Additional Borrower. That Subsidiary shall become an Additional Borrower if:

- (a) it is incorporated in Bermuda, the United States of America or the United Kingdom or any other jurisdiction approved by the Lenders and all the Lenders approve the addition of that Subsidiary;
- (b) the Parent and that Subsidiary deliver to the Agent a duly completed and executed Accession Letter;
- (c) the Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;
- (d) the Parent confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
- (e) the Agent has received all of the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.

26.2.2 The Agent shall notify the Parent 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 of Schedule 2 (*Conditions precedent*).

26.3 Additional Guarantors

26.3.1 Subject to compliance with the provisions of Clause 21.10 (*"Know your customer" checks*), the Parent may request that any of its wholly owned Subsidiaries become an Additional Guarantor.

26.3.2 A member of the Group shall become an Additional Guarantor if:

- (a) the Parent and the proposed Obligor deliver to the Agent a duly completed and executed Accession Letter; and
- (b) the Agent has received all of the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.

26.3.3 The Agent shall notify the Parent 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 of Schedule 2 (*Conditions precedent*).

26.4 Repetition of Representations

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in Clause 20.32 (*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.

26.5 Resignation and release of security on disposal

26.5.1 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 23.12 (*Disposals*) or made with the approval of the Lenders (and the Parent has confirmed this is the case).

26.5.2 If a Borrower or a Guarantor is or is proposed to be the subject of a Third Party Disposal then:

- (a) the Parent shall confirm that no Default is continuing or would result from the Third Party Disposal;
- (b) if a Borrower is being disposed of then prior to such Third Party Disposal the Parent shall ensure that the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents;
- (c) where that Borrower or Guarantor 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 that Borrower or Guarantor, the Security Agent may, at the cost and request of the Parent, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation;
- (d) the resignation of that Borrower or Guarantor and related release of Transaction Security referred to in Clause 26.5.2(a) 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
- (e) if the disposal of that Borrower or Guarantor is not made, the release of Transaction Security referred to in Clause 26.5.2(a) above shall have no effect and the obligations of that Borrower or Guarantor and the Transaction

Security created or intended to be created by or over that Borrower or Guarantor shall continue in full force and effect.

26.6 Additional Material Companies

- 26.6.1 Subject to compliance with the provisions of Clause 21.10 (*"Know your customer" checks*), the Parent may request that any of its Subsidiaries become a Material Company.
- 26.6.2 The Parent shall procure that the immediate Holding Company of any entity that it wishes to become a Material Company shall (if it is not already an Obligor) become an Additional Guarantor in accordance with Clause 26.2 (*Additional Guarantors*) and grant such Security over its shares in the proposed Material Company as the Agent may require.
- 26.6.3 A member of the Group shall become a Material Company if:
- (a) the Agent has received all of the documents and other evidence that it may require the Parent to provide at its absolute discretion, and each is in form and substance satisfactory to the Agent; and
 - (b) the Holding Company of the proposed Material Company is an Obligor and it has granted such Security over its shares in the proposed Material Company as the Agent may require (in form and substance satisfactory to the Agent).
- 26.6.4 The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it in its absolute discretion) all the documents and other evidence required by it.

27 Role Of The Agent, The Arrangers, The Security Agent And Others

27.1 Appointment of the Agent

- 27.1.1 The Arrangers and each of the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- 27.1.2 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.

27.2 Duties of the Agent

- 27.2.1 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.
- 27.2.2 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.
- 27.2.3 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.
- 27.2.4 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.

27.2.5 The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

27.3 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.

27.4 No fiduciary duties

27.4.1 Nothing in this Agreement constitutes the Agent and/or the Arrangers as a trustee or fiduciary of any other person.

27.4.2 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.

27.5 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.

27.6 Rights and discretions

27.6.1 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.

27.6.2 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 24.1 (*Non-payment*));
- (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 Parent (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.

27.6.3 The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, actuaries or other experts.

27.6.4 The Agent may act in relation to the Finance Documents through its personnel and agents.

27.6.5 The Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.

- 27.6.6 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.
- 27.6.7 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.

27.7 Majority Lenders' instructions

- 27.7.1 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 so instructed by the Majority Lenders, 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.
- 27.7.2 Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties other than the Security Agent.
- 27.7.3 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.
- 27.7.4 The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) 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.
- 27.7.5 In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders), the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- 27.7.6 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 27.7 shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

27.8 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 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.

27.9 Exclusion of liability

- 27.9.1 Without limiting Clause 27.9.2 below and without prejudice to the provisions of Clause 30.14 (*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.
- 27.9.2 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 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.
- 27.9.3 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.
- 27.9.4 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.

27.10 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 30.14 (*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 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).

27.11 Resignation of the Agent

- 27.11.1 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 Parent.
- 27.11.2 Alternatively the Agent may resign by giving notice to the Lenders and the Parent, in which case the Majority Lenders (after consultation with the Parent) may appoint a successor Agent.
- 27.11.3 If the Majority Lenders have not appointed a successor Agent in accordance with Clause 27.11.2 above within 30 days after notice of resignation was given, the Agent (after consultation with the Parent) may appoint a successor Agent (acting through an office in the United Kingdom).
- 27.11.4 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.

27.11.5 The Agent's resignation notice shall only take effect upon the appointment of a successor.

27.11.6 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 27. 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.

27.11.7 After consultation with the Parent, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with Clause 27.11.2 above. In this event, the Agent shall resign in accordance with Clause 27.11.2 above.

27.12 **Confidentiality**

27.12.1 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.

27.12.2 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.

27.12.3 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.

27.13 **Relationship with the Lenders**

27.13.1 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.

27.13.2 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*).

27.13.3 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.

27.14 **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 any 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.

27.15 Reference Banks

27.15.1 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 Parent) appoint another Lender or another Affiliate of a Lender to replace that Reference Bank.

27.15.2 If a Reference Bank which was not a Lender subsequently becomes a Lender, the Agent may (in consultation with the Parent) appoint that Lender to replace any Reference Bank which is not then either a Lender or an Affiliate of a Lender.

27.16 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.

27.17 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.

27.18 Appointment of Security Agent

27.18.1 Each other Finance Party irrevocably appoints the Security Agent as its agent and trustee on the terms set out in Schedule 11 (*Security Agent*).

27.18.2 Each Obligor and each other Finance Party agrees to the terms set out in Schedule 11 (*Security Agent*). In the event of any conflict between the terms of Schedule 11 (*Security Agent*) and any other Finance Document, the terms of Schedule 11 (*Security Agent*) shall prevail.

27.19 Release of Security

27.19.1 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 27.20 (*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.

27.19.2 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
- (ii) the Security Agent has received instructions from the relevant Finance Parties that comply with Clause 27.20 (*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.

27.19.3 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.

27.20 Instructions:

27.20.1 The Security Agent shall act in accordance with:

- (a) the terms of this Agreement; or
- (b) instructions received from, or on behalf of, the Majority Lenders, or as the case may be, Lenders.

27.20.2 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 27.19 (*Release of Security*)) require the prior written consent of, or on behalf of, the Lenders).

27.20.3 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, this Clause 27.20 will prevail.

27.20.4 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.

27.20.5 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.

27.20.6 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.

27.20.7 The Finance Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Transaction Security Documents except through the Security Agent.

28 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.

29 **Sharing Among The Finance Parties**

29.1 **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 30 (*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 30.9 (*Partial payments*).

29.2 **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 30.9 (*Partial payments*).

29.3 **Recovering Finance Party's rights**

29.3.1 On a distribution by the Agent under Clause 29.2 (*Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.

29.3.2 If and to the extent that the Recovering Finance Party is not able to rely on its rights under Clause 29.3.1 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.

29.4 **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 29.2 (*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.

29.5 Exceptions

29.5.1 This Clause 29 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.

29.5.2 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.

30 Payment Mechanics

30.1 Payments to the Agent

30.1.1 On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall (and the Parent 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.

30.1.2 Payment shall be made to such account with such bank as the Agent specifies.

30.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 30.3 (*Distributions to an Obligor*) and Clause 30.4 (*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.

30.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 31 (*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.

30.4 Clawback

30.4.1 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.

30.4.2 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.

30.5 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 (in its capacity as 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, interest and other amounts outstanding under the Finance Documents in accordance with the order set out in paragraphs (a) to (d) of Clause 30.9 (*Partial payments*); and
- (d) Fourth, any surplus to such persons who may be entitled to them.

30.6 Waterfall

No such proceeds or amounts shall be applied in payment of any amounts specified in any of the paragraphs in Clause 30.5 (*Proceeds of Enforcement*) until all amounts specified in any earlier paragraph have been paid in full.

30.7 Good discharge

An acknowledgement of receipt signed by the relevant person to whom payments are to be made under Clause 30.5 (*Proceeds of Enforcement*) shall be a good discharge of the Security Agent.

30.8 Sums received by the Obligors

If an Obligor receives any sum which, pursuant to any of the Finance Documents, should have been paid to the Security Agent, that sum shall promptly be paid to the Security Agent for application in accordance with this Clause 30.

30.9 Partial payments

30.9.1 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 or the Security Agent under the Finance Documents;
- (b) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
- (c) **thirdly**, in or towards payment pro rata of 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.

30.9.2 The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a) to (d) above.

30.9.3 Clauses 30.9.1 and 30.9.2 above will override any appropriation made by an Obligor.

30.10 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.

30.11 Business Days

30.11.1 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).

30.11.2 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.

30.12 Currency of account

30.12.1 Subject to Clauses 30.12.2 to 30.12.5 below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.

30.12.2 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.

30.12.3 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.

30.12.4 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

30.12.5 Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

30.13 Change of currency

30.13.1 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 Parent); 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).

30.13.2 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 Parent) 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.

30.14 **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 Parent that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Parent in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to 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 Parent 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 36 (*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 30.14; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

31 **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 31.

32 Notices

32.1 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.

32.2 Addresses

32.2.1 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 Parent, 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.

32.3 Delivery

32.3.1 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 32.2 (*Addresses*), if addressed to that department or officer.

32.3.2 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).

32.3.3 All notices from or to an Obligor shall be sent through the Agent.

32.3.4 Any communication or document made or delivered to the Parent in accordance with this Clause 32 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.

32.4 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 32.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

32.5 Electronic communication

32.5.1 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.

32.5.2 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.

32.6 Use of websites

32.6.1 The Parent may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (**Website Lenders**) who accept this method of communication by posting this information onto an electronic website designated by the Parent 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 Parent 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 Parent and the Agent.

If any Lender (**Paper Form Lender**) does not agree to the delivery of information electronically then the Agent shall notify the Parent accordingly and the Parent 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 Parent 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.

32.6.2 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 Parent and the Agent.

32.6.3 The Parent 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 Parent 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 Parent notifies the Agent under paragraphs (a) to (e) above, all information to be provided by the Parent 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.

32.6.4 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 Parent shall at its own cost comply with any such request within ten Business Days.

32.7 English language

32.7.1 Any notice given under or in connection with any Finance Document must be in English.

32.7.2 All other documents provided under or in connection with any Finance Document must be:

- (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.

33 Calculations And Certificates

33.1 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.

33.2 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.

33.3 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.

34 **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.

35 **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.

36 **Amendments And Waivers**

36.1 **Required consents**

36.1.1 Subject to Clause 36.2 (*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.

36.1.2 The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 36.

36.1.3 Each Obligor agrees to any such amendment or waiver permitted by this Clause 36 which is agreed to by the Obligors' Agent.

36.2 **Exceptions**

36.2.1 An amendment or waiver that has the effect of changing or which relates to:

- (a) the definition of **Majority Lenders** in Clause 1.1 (*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 any Borrower or Guarantor other than in accordance with Clause 26 (*Changes to the Obligors*);
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) Clause 2.2 (*Finance Parties' rights and obligations*), Clause 8 (*Mandatory prepayment*), Clause 25 (*Changes to the Lenders*) or this Clause 36;
- (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) the nature or scope of the guarantee and indemnity granted under Clause 18 (*Guarantee and Indemnity*);
- (l) any amendment to Clause 30.5 (*Proceeds of Enforcement*); or
- (m) any extension of an Availability Period, shall not be made without the prior consent of all the Lenders,

36.2.2 An amendment or waiver which relates to the rights or obligations of the Agent, the Arrangers or the Security Agent may not be effected without the consent of the Agent, the Arrangers or the Security Agent.

37 Confidentiality

37.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 37.2 (*Disclosure of Confidential Information*) and Clause 37.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

37.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance

Documents and/or one or more Obligor and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

- (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph b(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction, any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.8 (*Security Interests over Lender's rights*);
- (vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (viii) who is a Party; or
- (ix) with the consent of the Parent;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (1) in relation to paragraphs (b)(i), (b)(ii) and b(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (2) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (3) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

- (c) to any person appointed by that Finance Party or by a person to whom sub paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Parent and the relevant Finance Party;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

37.3 Disclosure to numbering service providers

- (a) The Agent may disclose to any national or international numbering service provider appointed by the Agent to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
 - (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) date of this Agreement;
 - (v) the names of the Agent;
 - (vi) date of each amendment and restatement of this Agreement;
 - (vii) amount of Total Commitments;
 - (viii) currencies of the Facility;
 - (ix) type of the Facility;
 - (x) ranking of Facility;
 - (xi) Termination Date;
 - (xii) changes to any of the information previously supplied pursuant to sub paragraphs (i) to (xi) above; and
 - (xiii) such other information agreed between the Agent and the Parent, to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligors by a numbering service provider and the information associated with each such number may

be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

- (c) The Parent represents that none of the information set out in sub-paragraphs (i) to (xiii) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Parent and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligors; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.

37.4 Entire agreement

This Clause 37 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

37.5 Inside information

Each of the Finance Parties acknowledges 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 including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

37.6 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Parent of the circumstances of any disclosure by it of Confidential Information made pursuant to sub-paragraph (b)(v) of Clause 37.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function.

37.7 Continuing obligations

The obligations in this Clause 37 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

38 **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.

39 **Governing Law**

This Agreement and all non-contractual obligations arising in any way whatsoever out of or in connection with this Agreement shall be governed by, construed and take effect in accordance with English law.

40 **Enforcement**

40.1 **Jurisdiction of English courts**

- 40.1.1 The courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise in any way whatsoever 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 or any claim for set off) or the legal relationships established by any Finance Document (a **Dispute**), only where such Dispute is the subject of proceedings commenced by the Obligor.
- 40.1.2 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.
- 40.1.3 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.
- 40.1.4 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.

40.2 **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 Parent (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 Parent confirms that Enstar (EU) Limited has expressly agreed and consented to the provisions of Clause 39 (*Governing law*) and of Clause 40 (*Enforcement*).

40.3 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
- (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.

Schedule 1 The Original Parties

Part 1

The Original Borrower

Enstar Group Limited

Part 2

The Original Guarantors

<u>Name of Original Guarantor</u>	<u>Jurisdiction of Incorporation, Registration Number</u>
Enstar Group Limited	Bermuda, EC30916
Hillcot Holdings Ltd	Bermuda, EC32870
Virginia Holdings Limited	Bermuda, EC37001
Revir Limited	Bermuda, EC28913
Cavell Holdings Limited	England and Wales, 01095628
Kenmare Holdings Ltd	Bermuda, EC30917
Flatts Limited	England and Wales, 06239044
Knapton Holdings Limited	England and Wales, 07014132

Part 3

The Original Lenders — other than UK non-bank Lenders

<u>Name of Original Lender</u>	<u>Commitments US\$</u>
National Australia Bank Limited	125,000,000
Barclays Bank PLC	25,000,000

Part 4

The Original Lenders — UK non-bank Lenders

Name of Original Lender	Commitments US\$
None	

Schedule 2 Conditions Precedent

Part 1

Conditions precedent to Initial Utilisation

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 Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance 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) 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 copy of the resolution of the Parent's board of directors to be held on or about 18 June 2011.
 - 1.4 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.
 - 1.5 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.
 - 1.6 A copy of a resolution signed by all the holders of the issued shares in each of the companies listed below approving the amendment of their respective constitutional documents to remove from the directors any discretion to refuse to approve share transfers pursuant to enforcement of the Transaction Security:
 - (a) Cumberland Holdings Limited;
 - (b) Courtenay Holdings Limited; and
 - (c) Knapton Insurance Limited.
 - 1.7 A copy of the register of members of each of the Bermudian Obligors.
 - 1.8 A certificate of the Parent (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.
 - 1.9 A certificate of an authorised signatory of each Original Obligor certifying that each copy document relating to it specified in this Part 1 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
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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 This Agreement executed by the members of the Group party to this Agreement.

2.2 *Transaction Security Documents*

- 2.2.1 Bermudian law debenture (incorporating a fixed charge over its shares in Cumberland Holdings Limited and a floating charge only) granted by the Parent in favour of the Security Agent.
- 2.2.2 Bermudian law debenture (incorporating a fixed charge over its shares in Courtenay Holdings Limited and a floating charge only) granted by Kenmare Holdings Ltd in favour of the Security Agent.
- 2.2.3 English law debenture (incorporating a fixed charge over its shares in Fieldmill Insurance Company Limited, Hillcot Re Limited, Longmynd Insurance Company Limited and Mercantile Indemnity Company Limited and a floating charge only) granted by Kenmare Holdings Ltd in favour of the Security Agent.
- 2.2.4 English law debenture (incorporating a fixed charge over its shares in Brampton Insurance Company Limited and a floating charge only) granted by Hillcot Holdings Ltd in favour of the Security Agent.
- 2.2.5 English law debenture (incorporating a fixed charge over its shares in Unione Italiana (UK) Reinsurance Company Limited and a floating charge only) granted by Virginia Holdings Ltd in favour of the Security Agent.
- 2.2.6 English law debenture (incorporating a fixed charge over its shares in River Thames insurance Company Limited and a floating charge only) granted by Revir Ltd in favour of the Security Agent.
- 2.2.7 English law debenture (incorporating a fixed charge over its shares in Cavell Insurance Company Limited and a floating charge only) granted by Cavell Holdings Ltd in favour of the Security Agent.
- 2.2.8 English law debenture (incorporating a fixed charge over its shares in Marlon Insurance Company Limited and a floating charge only) granted by Flatts Limited in favour of the Security Agent.
- 2.2.9 English law debenture (incorporating a fixed charge over its shares in Knapton Insurance Limited and a floating charge only) granted by Knapton Holdings Limited in favour of the Security Agent.
- 2.2.10 The CRA Account Charge.

2.3 The Fee Letters executed by the Parent.

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 Facility, 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 Limited 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 40.2 (*Service of process*) and confirmed it agrees and consents to the provisions of Clause 39 (*Governing law*) and of Clause 40 (*Enforcement*).
- 4.2 The Group Structure Chart which shows the Group.
- 4.3 A copy, certified by an authorised signatory of the Parent to be a true copy, of the Original Financial Statements of each Original Obligor.
- 4.4 A copy of any other Authorisation or other document, opinion or assurance which the Agent notifies the Parent 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 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 Certificate of the Parent (signed by a director) certifying that all necessary or desirable Authorisations from any governmental authority or other regulatory body in connection with the entry into and performance of the transactions contemplated by any Finance 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.
- 4.7 A copy of the Budget.
- 4.8 The Parent shall have opened CRA Accounts and granted security in favour of and to the satisfaction of the Security Agent in respect of its CRA Accounts.
- 4.9 A copy of all notices required to be sent under the Transaction Security Documents.
- 4.10 Originals of all share certificates transfers and stock transfer forms or equivalent, duly executed by the relevant Obligor and other documents of title to be provided under the Transaction Security Documents. In relation to the shares of Obligors incorporated in England, all stock transfer forms are 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.
- 4.11 A certificate of the Parent (signed by a director):
 - (a) confirming that none of the financial covenants specified in Clause 22.2 (*Financial condition*) is breached as at the First Utilisation Date or will be

breached as a result of the proposed Loan to be made on the First Utilisation Date; and

(b) setting out a list of each Material Company and the Consolidated Tangible Net Worth of each Material Company as at the First Utilisation Date.

4.12 Evidence that the arrangement fee and initial agency fee was paid on or before the date of this Agreement.

4.13 Evidence that the outstanding commitment fees have or will on the First Utilisation Date be paid in full.

4.14 Evidence that the Existing Facilities have or will on the First Utilisation Date be repaid in full and all Security relating to the Existing Facilities has been released in full

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 Parent.
 - 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 (including, in relation to an Additional Borrower, any Utilisation Request) 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 Parent 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
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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 40.2 (*Service of process*) has accepted its appointment and confirmed it agrees and consents to the provisions of Clause 39 (*Governing law*) and of Clause 40 (*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 Finance 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 Parent 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 Finance Documents to which it is party.

Schedule 3 Requests

Utilisation Request

From: [Borrower]/[Parent]

To: National Australia Bank Limited (as Agent)

Dated:

Dear Sirs

Enstar Group Limited — Facility Agreement dated [] (Facility Agreement)

- 1 We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility 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 Borrower: []
 - 2.2 Proposed Utilisation Date: [] (or, if that is not a Business Day, the next Business Day)
 - 2.3 Amount: [] or, if less, the Available Facility
 - 2.4 Interest Period: []
 - 2.5 Purpose: []
- 3 We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
- 4 We confirm that the proposed Loan would not cause the Net Worth Cover to be less than or equal to 2.0:1.
- 5 This Utilisation Request is irrevocable.

Yours faithfully

authorised signatory for

[the Parent on behalf of *[insert name of relevant Borrower]*]/ *[insert name of Borrower]*

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 (the **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 Loan) 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 Sterling 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 annumwhere:
 - (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 Financial Services Authority Fees 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 Parent 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.

Schedule 5 Form of Transfer Certificate

To: National Australia Bank Limited as Agent

From: [The Existing Lender] (**Existing Lender**) and [The New Lender] (**New Lender**)

Dated:

Enstar Group Limited — Facility Agreement dated [] (Facility Agreement)

- 1 We refer to the Facility Agreement. This is a Transfer Certificate. Terms defined in the Facility Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
- 2 We refer to Clause 25.5 (*Procedure for transfer*):
 - 2.1 The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 25.5 (*Procedure for transfer*) [OR] [*** Each Existing Lender listed in Part 1 of the Schedule transfers by novation to each New Lender listed in Part 2 of the Schedule that portion of the outstanding Loans and Commitments in accordance with Clause 25.5 (*Procedure for transfer*), such that:
 - (a) each New Lender will become a Lender under the Agreement with the respective Commitment and portion of outstanding Loans set out opposite its name in Part 3 of the Schedule; and
 - (b) each Existing Lender's Commitment and portion of outstanding Loans will be reduced to the amounts set out opposite its name in Part 3 of the Schedule. ***]
 - 2.2 The proposed Transfer Date is [***].
 - 2.3 The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 32.2 (*Addresses*) are set out in the Schedule.
- 3 [*** The/Each ***] New Lender expressly acknowledges the limitations on the Existing Lender['s][s'] obligations set out in paragraph (c) of Clause 25.4 (*Limitation of responsibility of Existing Lenders*).
- 4 [*** The/Each ***] New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender falling within paragraph (i)(A) [or paragraph (ii)] of the definition of Qualifying Lender;]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].¹
- 5 [*** The/Each New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

¹ Delete as applicable — each New Lender is required to confirm which of these three categories it falls within.

- (a) a company resident in the United Kingdom for United Kingdom tax purposes; or
 - (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) 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 chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; 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 that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or ***]²
- 6 [The New Lender confirms (for the benefit of the Agent and without liability to any Obligor) that it is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme (reference number []) and is tax resident in []*, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and notifies the Parent that:
- (a) each Borrower which is a Party as a Borrower as at the Transfer Date must, to the extent that the New Lender becomes a Lender under a Facility which is made available to that Borrower pursuant to clause 2.1 (The Facilities) of the Facilities Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of the Transfer Date; and
 - (b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date must make an application to HM Revenue & Customs under form DTTP2 within 30 days of becoming an Additional Borrower.]³
- 7 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.
- 8 For the purpose of Clause 32.6 (*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. ***]
- 9 This Transfer Certificate is governed by English law.
- 10 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.

2 Include if New Lender comes within paragraph (i)(B) of the definition of Qualifying Lender in Clause 14.1 (*Definitions*)

3 This confirmation must be included if the New Lender holds a passport under the HMRC DT Treaty Passport scheme and, as at the Transfer Date, wishes that scheme to apply to the Facility Agreement.

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*] [***] [***] [***] [***]	[**]	[**]

Part 4
New Lenders' Administrative Details

New Lender	Facility office Address/Fax no.Attention of [***]	Address for service of notices (if different) [***]	Address for Payment [***]	Website or Paper Form Lender [***]
EXECUTED as a Deed by)				
[*** Each Existing Lender ***] Signatory)		Authorised		
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:				

Schedule 6 Form of Assignment Agreement

To: National Australia Bank Limited as Agent

From: [the Existing Lender] (**Existing Lender**) and [the New Lender] (**New Lender**)

Dated: [***]

Enstar Group Limited -Facility Agreement dated [] (Facility Agreement)

- 1 We refer to the Facility Agreement. This is an Assignment Agreement.
- 2 (a) We refer to Clause 25.6 (*Procedure for assignment*).
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facility Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitments and participations in Loans under the Facility Agreement as specified in the Schedule;
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitments and participations in Loans under the Facility Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (c) above.
- 3 The proposed Transfer Date is [***].
- 4 On the Transfer Date the New Lender becomes:
 - (a) Party to the Finance Documents as a Lender; and
 - (b) Party to [*** other relevant agreements in other relevant capacity***].
- 5 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 25.4 (*Limitation of responsibility of Existing Lenders*).
- 6 The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 32.2 (*Addresses*) are set out in the Schedule to this Assignment Agreement.
- 7 [*** The/Each ***] New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender falling within paragraph (i)(A) [or paragraph (ii)] of the definition of Qualifying Lender;]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].⁴

⁴ Delete as applicable — each New Lender is required to confirm which of these three categories it falls within.

- 8 [*** The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) a company resident in the United Kingdom for United Kingdom tax purposes; or
 - (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) 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 chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; 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 that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or ***].⁵
- 9 [The New Lender confirms (for the benefit of the Agent and without liability to any Obligor) that it is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme (reference number []) and is tax resident in []*, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and notifies the Parent that:
- (a) each Borrower which is a Party as a Borrower as at the Transfer Date must, to the extent that the New Lender becomes a Lender under a Facility which is made available to that Borrower pursuant to clause 2.1 (The Facilities) of the Facilities Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of the Transfer Date; and
 - (b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date must make an application to HM Revenue & Customs under form DTTP2 within 30 days of becoming an Additional Borrower.]⁶
- 10 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 ***].
- 11 For the purpose of Clause 32.6 (*Use of Websites*) the New Lender is a [*** Website Lender ***] [*** Paper Form Lender ***]
- 12 This Assignment Agreement is governed by English law.

⁵ Include if New Lender comes within paragraph (i)(B) of the definition of Qualifying Lender in Clause 14.1 (*Definitions*)

⁶ This confirmation must be included if the New Lender holds a passport under the HMRC DT Treaty Passport scheme and, as at the Transfer Date, wishes that scheme to apply to the Facility Agreement.

13 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 Enstar Group Limited

Dated:

Dear Sirs

Enstar Group Limited — Facility Agreement dated [] (Facility Agreement)

- 1 We refer to the Facility Agreement. This is an Accession Letter. Terms defined in the Facility 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 Borrower]/[Additional Guarantor] and to be bound by the terms of the Facility Agreement and the other Finance Documents as an [Additional Borrower]/[Additional Guarantor] pursuant to Clause [26.2 (*Additional Borrowers*)]/[26.3 (*Additional Guarantors*)] of the Facility Agreement 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
Enstar Group Limited

For and on behalf of
[Subsidiary]

Schedule 8 Form of Compliance Certificate

To: National Australia Bank Limited as Agent

From: Enstar Group Limited

Dated:

Dear Sirs

Enstar Group Limited -Facility Agreement dated [] (Facility Agreement)

1 We refer to the Facility Agreement. This is a Compliance Certificate. Terms defined in the Facility 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 ***]:

- (a) **Borrower Net Worth:** the Consolidated Tangible Net Worth of the Parent was [*] and therefore the requirements of Clause 22.2.1(a) (*Borrower Net Worth*) have been met;
- (b) **Borrower Gearing Ratio:** The consolidated Financial Indebtedness of the Parent was [*] and Consolidated Tangible Net Worth of the Parent was [*], therefore the Gearing Ratio was [*] and the requirements of Clause 22.2.1(b) (*Borrower Gearing Ratio*) have been met.
- (c) **Regulatory Cover:** the Regulatory Cover of each of the following Regulated Entities was as specified on the right-hand column below and therefore the requirements of Clause 22.2.1(c) (*Regulatory Cover*) have been met:

Regulated Entity	Regulatory Cover
[*]	[*]

- (d) **Net Worth Cover:** The Consolidated Tangible Net Worth of all the relevant Material Companies was [*] and Facility Debt was [*], therefore the Net Worth Cover was [*] and the requirements of Clause 22.2.1(d) (*Net Worth Cover*) have been met. For the purposes of calculating the Net Worth Cover percentage the Consolidated Tangible Net Worth of each relevant Material Company was as set out in the table below:

Material Company	Consolidated Tangible Net Worth
[*]	[*]

(e) **Requisite Rating:**

- (i) the average rating of the aggregate investment portfolio (determined by reference to the individual rating given by the Rating Agency to each investment) of the Material Companies is not less than A-; and
- (ii) the short term rating and/or long term rating of investments as determined by the Rating Agency for at least 87.5% of the total value of the investments held by the Material Companies have a rating of not less than BBB or are held in cash and no investments are advised by J.C. Flowers & Co. LLC or its associated parties,

in each case as demonstrated below. [attach details of calculations, including a breakdown of how the average rating of the aggregate investment portfolio is calculated setting out the % of the total value of investments held in each rating or category] and therefore the requirements of Clause 22.2.1(e) (*Requisite Rating*) have been met.

3. We confirm that no Default is continuing. ⁷

[insert applicable certification language]

for and on behalf of
[name of Auditors of Enstar Group Limited]

⁷ 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.

Schedule 9 LMA Form of Confidentiality Undertaking
LMA CONFIDENTIALITY LETTER
FOR PRIMARY SYNDICATION
[Letterhead of Arranger]

To: *[insert name of Potential Lender]*

Re: the Facility

Parent:

Amount:

Agent:

Dear Sirs

We understand that you are considering participating in the Facility. 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 Facility;
- 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 Facility.

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 Parent.

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 Parent, the Group and the Facility 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 Parent 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).

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 Facility.

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 [and Barclays Corporate] (as Arrangers)

To: National Australia Bank Limited [and Barclays Corporate] (as Arrangers)

The Parent, each other Obligor and each other member of the Group

We acknowledge and agree to the above:

For and on behalf of

[Potential Lender]

Schedule 10 Timetables

Loans

Loans in US Dollars

Delivery of a duly completed Utilisation Request (Clause 5 (*Delivery of a Utilisation Request*)) (Clause 11.1 (*Selection of Interest Periods and Terms*))

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 (*Lenders' participation*)

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.

Schedule 11 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.
- 2.5 The Security Agent shall promptly inform the Agent of:
 - 2.5.1 the contents of any notice or document received by it in its capacity as Security Agent from an Obligor under any Finance Document; and
 - 2.5.2 the occurrence of any Event of Default or any default by an Obligor in the due performance of or compliance with its obligations under any Finance Document of which the Security Agent has received notice from any other party to this Agreement.

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.

4 No Fiduciary Duties

4.1 Nothing in the Finance Documents makes the Security Agent a fiduciary for any other person.

5 Business with the Group

If the Security Agent is also a Lender, in its capacity as Lender it will retain the same rights and powers under the Finance Documents as any other Lender and will exercise those rights and powers as a Lender separately from its role as 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 24.1 (*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 Parent 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.
- 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 subject to Clause 1.8 (*Third Party Rights*) and the provisions of the Third Parties Act.
- 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 from time to time or if all Commitments have been reduced to zero, their respective aggregate Commitments 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 Parent.
- 10.2 Alternatively the Security Agent may resign by giving notice to the other Finance Parties and the Parent, in which case the Majority Lenders (after consultation with the Parent) 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 Parent) 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 Parent, 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.
- 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 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, any professional adviser of the Security Agent or a custodian or nominee to retain all such title deeds and other documents in its possession.

17 Investments

Prior to the application of the proceeds of the enforcement of the Transaction Security in accordance with Clause 30.5 (*Proceeds of enforcement*) and 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 27.20 (*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 30.5 (*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.
- 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 in the London foreign exchange market with the currency of the amount received. The obligations of the Obligors to pay in the relevant currency shall only be satisfied to the extent of the amount of the relevant currency purchased after deducting the costs of conversion.

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 (except in connection with its remuneration for performing its duties under this Agreement).

21 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 27.18 (*Appointment of Security Agent*) and in this Schedule 11 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.

Schedule 12 Material Companies

Brampton Insurance Company Limited
Unione Italiana (UK) Reinsurance Co. Limited
River Thames Insurance Company Limited
Cavell Insurance Company Limited
Mercantile Indemnity Company Limited
Fieldmill Insurance Company Limited
Longmynd Insurance Company Limited
Hillcot Re Limited
Marlon Insurance Company Limited
Knapton Insurance Limited
Unionamerica Insurance Company Limited
Cumberland Holdings Limited
Courtenay Holdings Limited
Enstar Australia Holdings Pty Limited
AG Australia Holdings Limited
Gordian RunOff Limited
TGI Limited
Church Bay Limited
Guildhall Insurance Limited
EPIC Insurance Limited
Rosemont Re Limited

Schedule 13 Existing Security

Guarantors

<u>Company Name</u>	<u>Registered Number</u>	<u>Security document registered at Companies House</u>	<u>Date created</u>	<u>Date registered</u>	<u>Person entitled</u>
Cavell Holdings Limited	1095628	Charge over shares	06.12.06	20.12.06	National Australia Bank Limited

Material Companies — Letter of credit / ordinary course security

<u>Company Name</u>	<u>Registered Number</u>	<u>Security document registered at Companies House</u>	<u>Date created</u>	<u>Date registered</u>	<u>Person entitled</u>
Cavell Insurance Company Limited	157661	Security agreement	17.12.92	30.12.92	Citibank N.A.
		Amendment letter	15.02.94	22.02.94	Citibank N.A.
		Security agreement	30.03.98	08.04.98	Citibank N.A.
		Reinsurance deposit agreement	30.03.98	14.04.98	Citibank N.A.
Marlon Insurance Company Limited	998720	Security agreement	15.11.95	24.11.95	Citibank N.A.
		Reinsurance deposit agreement	15.11.95	24.11.95	Citibank N.A.
Longmynd Insurance Company Limited	1454023	Charge	06.11.87	26.11.87	Citibank N.A.
Fieldmill Insurance Company Limited	1457354	Charge	06.11.87	14.11.87	Citibank N.A.
River Thames Insurance Company Limited	462838	Reinsurance deposit agreement	11.07.88	20.07.88	Citibank N.A.
		Security agreement	11.07.88	20.07.88	Citibank N.A.

Company Name	Registered Number	Security document registered at Companies House	Date created	Date registered	Person entitled
		Security agreement	06.01.89	11.01.89	Citibank N.A
		Security agreement	12.06.90	19.06.90	Citibank N.A
		Security agreement	02.01.96	09.01.96	Citibank N.A
Brampton Insurance Company Limited	1272965	Reinsurance deposit agreement	23.02.96	29.02.96	Citibank N.A.
Unione Italiana (UK) Reinsurance Company Limited	199059	Charge	02.12.87	09.12.87	Citibank N.A.
Hillcot Re Limited	1457317	Charge	19.11.87	02.12.87	Citibank N.A.
Knapton Insurance Limited	14644	Reinsurance deposit agreement	25.09.09	12.10.09	Citibank N.A.
Gordian Runoff Limited	052179647	Fixed (ASIC Charge No: 373330)	30.12.92	25.01.93	004325080, Citigroup Pty Limited
		Fixed (ASIC Charge No: 1344254)	16.08.06	25.08.06	004325080, Citigroup Pty Limited
		Fixed (ASIC Charge No: 1344258)	16.08.06	25.08.06	079478612. The Royal Bank of Scotland N.V.
		Fixed (ASIC Charge No: 1344262)	16.08.06	25.08.06	079478612. The Royal Bank of Scotland N.V.
		Floating (ASIC Charge No: 373432)	21.12.92	27.01.93	064874531, Bank of America, National Association
		Fixed (ASIC Charge No: 510034)	13.09.95	04.10.95	064874531, Bank of America, National Association

<u>Company Name</u>	<u>Registered Number</u>	<u>Security document registered at Companies House</u>	<u>Date created</u>	<u>Date registered</u>	<u>Person entitled</u>
Enstar Australia Holdings Pty Limited	128812546	Fixed (ASIC Charge No: 1596644)	28.02.08	29.02.08	004044937, National Australia Bank Limited
AG Australia Holdings Limited	054573401	Fixed (ASIC Charge No: 1614223)	25.03.08	03.04.08	004044937, National Australia Bank Limited

Schedule 14 Permitted Transfers

1. The proposed transfer of a portfolio of business from International Insurance Company of Hannover Limited to Brampton Insurance Company Limited by way of a part VII transfer.
2. The proposed transfer of a portfolio of business from Compagnie Europeene d'Assurances Industrielles (CEAI) to River Thames Insurance Company Limited by way of a Belgian law portfolio transfer.
3. The proposed transfer of all of Harper Insurance Limited's UK branch business to Mercantile Indemnity Company Limited, by way of a part VII transfer.
4. The proposed transfer of a portfolio of assumed reinsurance business from Allianz Global Corporate & Specialty AG (UK Branch) and Allianz SE to Knapton Insurance Limited, by way of German law portfolio transfers.
5. The proposed transfer by Church Bay Limited of its business to a QBE entity, by way of an Australian law portfolio transfer.

SIGNATURES

THE PARENT

Enstar Group Limited

By: /s/ Richard J. Harris

Address: Windsor Place
18 Queen Street
Hamilton
Bermuda HM 11

Fax: 001 441 296 0895

Attention: Richard Harris

THE ORIGINAL GUARANTORS

Enstar Group Limited

By: /s/ Richard J. Harris

Address: Windsor Place
18 Queen Street
Hamilton
Bermuda HM 11

Fax: 001 441 296 0895

Attention: Richard Harris

Hillcot Holdings Ltd

By: /s/ Richard J. Harris

Address: Windsor Place
18 Queen Street
Hamilton
Bermuda HM 11

Fax: 001 441 296 0895

Attention: Richard Harris

Virginia Holdings Ltd

By: /s/ Richard J. Harris

Address: Windsor Place
18 Queen Street
Hamilton
Bermuda HM 11

Fax: 001 441 296 0895

Attention: Richard Harris

Revir Ltd

By: /s/ Richard J. Harris

Address: Windsor Place
18 Queen Street
Hamilton
Bermuda HM 11

Fax: 001 441 296 0895

Attention: Richard Harris

Cavell Holdings Limited

By: /s/ Alan Turner

Address: Avaya House
2 Cathedral Hill
Guildford
Surrey GU2 7YL

Fax: +44(0)1483 452644

Attention: Gareth Nokes

Kenmare Holdings Ltd

By: /s/ Richard J. Harris

Address: Windsor Place
18 Queen Street
Hamilton
Bermuda HM 11

Fax: 001 441 296 0895

Attention: Richard Harris

Flatts Limited

By: /s/ Alan Turner

**Address: Avaya House
2 Cathedral Hill
Guildford
Surrey GU2 7YL**

Fax: +44 (0)1483 452644

Attention: Gareth Nokes

Knapton Holdings Limited

By: /s/ Alan Turner

**Address: Avaya House
2 Cathedral Hill
Guildford
Surrey GU2 7YL**

Fax: +44 (0)1483 452644

Attention: Gareth Nokes

THE ORIGINAL LENDERS

National Australia Bank Limited (ABN 12 004 440 937)

**By: /s/ Ray Catt
Managing Director**

**Address: 88 Wood Street
London
EC2V 7QQ**

Fax: +44 (0) 20 7410 0297

Attention: Ray Catt/Andrew Lloyd

Barclays Bank PLC

**By: /s/ John Atkinson
John Atkinson**

**Address: Barclays Corporate
Level 11
1 Churchill Place
Canary Wharf
London
EC 14 5HP**

THE ARRANGERS

National Australia Bank Limited (ABN 12 004 044 937)

**By: /s/ Ray Catt
Managing Director**

**Address: 88 Wood Street
London
EC2V 7QQ**

Fax: +44 (0) 20 7410 0297

Attention: Ray Catt/Andrew Lloyd

Barclays Corporate

**By: /s/ John Atkinson
John Atkinson**

**Address: Barclays Corporate
Level 28
1 Churchill Place
Canary Wharf
London
EC145HP**

Fax: +44 (0) 20 7116 7636

**Attention: John Atkinson
Transaction Management, Debt Finance, Barclays Corporate**

THE AGENT

National Australia Bank Limited (ABN 12 004 044 937)

**By: /s/ Ray Catt
Managing Director**

**Address: 88 Wood Street
London
EC2V 7QQ**

Fax: +44(0) 20 7410 0297

Attention: : Carole Palmer

THE SECURITY AGENT

National Australia Bank Limited (ABN 12 004 044 937)

**By: /s/ Ray Catt
Managing Director**

**Address: 88 Wood Street
London
EC2V 7QQ**

Fax: +44 (0) 20 7410 0297

Attention: Carole Palmer

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-month and six-month periods ended June 30, 2011 and 2010, as indicated in our report dated August 5, 2011; 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 June 30, 2011, 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 Ltd.
Hamilton, Bermuda
August 5, 2011

**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: August 5, 2011

/s/ Dominic F. Silvester

Dominic F. Silvester
Chairman and 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: August 5, 2011

/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 June 30, 2011, 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: August 5, 2011

/s/ Dominic F. Silvester

Dominic F. Silvester
Chairman and 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 June 30, 2011, 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: August 5, 2011

/s/ Richard J. Harris

Richard J. Harris

Chief Financial Officer

