



**Registration of a Charge**

Company name: **BIRMINGHAM CHAMBER OF COMMERCE AND INDUSTRY**

Company number: **00078731**

Received for Electronic Filing: **03/11/2020**



X9H2CQ5K

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**Details of Charge**

Date of creation: **19/10/2020**

Charge code: **0007 8731 0003**

Persons entitled: **BIRMINGHAM C.O.C. PENSION FUND TRUSTEE COMPANY LIMITED**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**PINSENT MASONS LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 78731

Charge code: 0007 8731 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th October 2020 and created by BIRMINGHAM CHAMBER OF COMMERCE AND INDUSTRY was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd November 2020 .

Given at Companies House, Cardiff on 4th November 2020

The above information was communicated by electronic means and authenticated  
by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

STRICTLY CONFIDENTIAL

DATED 19 October 2020

- (1) BIRMINGHAM CHAMBER OF COMMERCE AND INDUSTRY
- (2) BIRMINGHAM C.O.C. PENSION FUND TRUSTEE COMPANY LIMITED

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CHARGE  
OVER BANK ACCOUNT

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We hereby certify that this is a  
true and correct copy of the original  
Dated 30 October 2020

SPB(LU) LLP  
SQUIRE PATTON BOGGS (UK) LLP  
RUTLAND HOUSE  
148 EDMUND STREET  
BIRMINGHAM  
B3 2JR



Pinsent Masons

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THIS CHARGE is made on

19 October

2020

**BETWEEN:-**

- (1) **BIRMINGHAM CHAMBER OF COMMERCE AND INDUSTRY**, a company limited by guarantee with registered number 00078731 with its registered office at Chamber of Commerce House, 75 Harborne Road, Edgbaston, Birmingham B15 3DH] (the "**Chargor**"); and
- (2) **BIRMINGHAM C.O.C. PENSION FUND TRUSTEE COMPANY LIMITED**, with its registered office at Chamber of Commerce House, 75 Harborne Road, Edgbaston, Birmingham B15 3DH (the "**Chargee**").

**IT IS AGREED** as follows:-

**1. DEFINITIONS AND INTERPRETATION**

**1.1 In this Deed:-**

"Account Bank"	means National Westminster Bank plc or such other bank with which any Collections Account is maintained from time to time
"Act"	means the Law of Property Act 1925
"Agreement"	means the agreement between the Chargor and the Chargee in relation to the Birmingham Chamber of Commerce Pension Fund dated on or around 30 September 2020
"Business Day"	means a day (other than Saturday and Sunday) on which banks are open for general business in London
"Collections Account"	means each account or investment fund opened in the name of the Chargor which is designated by the Chargor as the Escrow Account into which all Net Proceeds from the sale of the Property must be paid and all additions to or renewals or replacements of any of the foregoing accounts (in whatever currency), all sums now or in future deposited in such accounts, all interest or investment returns which may accrue from time to time on such accounts and all rights of the Chargor to repayment of any of the foregoing
"Encumbrance"	means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignation in security, bond and floating charge or other security interest of any kind, and any right of set-off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having a similar effect to the provision of security
"Event of Default"	means the Chargee agreeing to dissolve and wind-up the Pension Fund following the occurrence and continuation of an event specified in Clause 19(4) of the Trust Deed and Rules, or Clause 2.10 of the Agreement
"Receiver"	means any receiver or receiver and manager or administrator appointed by the Chargee under this Deed



**"Secured Obligations"**

means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or alone or in any other capacity whatsoever) of the Chargor to pay into the Pension Fund the Buyout Deficit as defined in the Agreement (including all monies covenanted to be paid under this Deed)

**"Security Assets"**

means:-

- (i) the Collections Account; and
- (ii) all other rights, benefits and advantages of all kinds accruing, offered or otherwise derived from the Collections Account (including, without limitation, the right to receive interest)

**"Security Period"**

means the period beginning on the date of this Deed and ending on the date on which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full

**1.1 Interpretation**

In this Deed:-

- 1.1.1 the singular includes the plural and vice versa, and reference to any gender includes the other genders;
- 1.1.2 references to persons include bodies corporate, associations, partnerships, organisations, states, state agencies and any other entity, whether or not having separate legal personality;
- 1.1.3 words and phrases defined in the Companies Act 2006 have the same meanings in this Deed but the word "**Chargor**" includes any body corporate;
- 1.1.4 references to Clauses are to clauses or sub-clauses of this Deed and references to the Schedule are to the schedule to this Deed; and
- 1.1.5 references to any rate of interest shall be construed as meaning that rate as from time to time in force, calculated from day to day, and compounded on National Westminster Bank PLC's usual days for charging interest in each year, both before and after judgment; and references to a base lending rate shall, if there is no such published or determinable rate at the appropriate time, be construed as meaning such reasonably equivalent rate as National Westminster Bank PLC shall select.

**1.2 Further interpretation**

In this Deed:-

- 1.2.1 any reference to any statute or statutory instrument or any section or part thereof includes any enactment (present or future) replacing or amending it or any instrument, order or regulation made under it and also includes any past statutory provisions (as from time to time modified or re-enacted) which such provision has directly or indirectly replaced;
- 1.2.2 headings are for reference purposes only and shall not affect the construction of anything in this Deed;
- 1.2.3 references to this Deed (or to any specified provision of this Deed) or any other document shall be construed as references to this Deed, that provision or that document as in force for the time being and as amended in accordance with its terms, or, as the case may be,



with the agreement of the relevant parties and, if so required in the relevant document, with the prior written consent of the Chargee;

1.2.4 the "Chargor" shall include its successors and permitted assigns; and

1.2.5 the "Chargee" shall include its respective successors and assigns.

### 1.3 **Schedule**

The Schedule shall be treated as an integral part of this Deed and references to this Deed shall include the Schedule.

### 1.4 **Incorporation of terms**

Unless otherwise defined herein, capitalised terms defined in the Agreement shall have the same meaning when used in this Deed.

## 2. **COVENANT TO PAY**

### 2.1 **Covenant to pay**

The Chargor hereby covenants to pay or discharge to the Chargee on demand when due for payment any and all of the Secured Obligations.

### 2.2 **Default interest**

2.2.1 Any amount which is not paid under this Deed when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the rate of 2 per cent. above National Westminster Bank PLC base rate from time to time.

2.2.2 Default interest will accrue from day to day and will be compounded at such intervals as the Chargee considers appropriate.

## 3. **GRANT OF SECURITY**

All mortgages, charges, assignments and other security made or created under this Deed are made or created:-

3.1 in favour of the Chargee;

3.2 with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994; and

3.3 as a continuing security for payment of all of the Secured Obligations.

## 4. **FIXED SECURITY**

As security for the payment of the Secured Obligations, the Chargor hereby charges to the Chargee the Security Assets with the intent that such charge shall take effect as a first fixed charge.

## 5. **CHARGE OVER BANK ACCOUNT**

5.1 The Chargor charges and agrees to charge by way of first floating charge the Security Assets which are not effectively charged by way of first fixed charge pursuant to Clause 4 (*Fixed Security*) or any other provision of this Deed.

5.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 will apply to any floating charge created by this Deed.

## **6. CONVERSION OF CHARGE OVER BANK ACCOUNT**

### **6.1 Conversion by notice**

The Chargee may, by written notice to the Chargor, convert the charge created under this Deed into a fixed charge as regards all or any of the Chargor's assets specified in the notice if:-

6.1.1 an Event of Default has occurred and is continuing; or

6.1.2 the Chargee (in its reasonable opinion) considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

### **6.2 Automatic conversion**

The floating charge created under this Deed shall (in addition to the circumstances in which the same will occur under general law) automatically be converted into a fixed charge in relation to any of the Security Assets which are subject to a floating charge if:-

6.2.1 the Chargor creates (or attempts or purports to create) any Encumbrance (other than an Encumbrance to which the Chargee has consented in writing) on or over the relevant asset without the prior consent in writing of the Chargee; or

6.2.2 if any third party levies or attempts to levy any distress, execution, attachment or other legal process against any such asset.

### **6.3 Partial conversion**

The giving by the Chargee of a notice pursuant to clause 6.1 (*Conversion by notice*) in relation to any class of assets of the Chargor shall not be construed as a waiver or abandonment of the rights of the Chargee to serve similar notices in respect of any other class of assets or of any of the other rights of the Chargee.

## **7. COLLECTIONS ACCOUNT**

Notwithstanding any other terms on which moneys may have been deposited in the Collections Account, it is a condition of such deposit that, throughout the continuance of this Deed and so long as any Secured Obligations are or may become payable, unless the Chargee otherwise agrees in writing, neither the Collections Account nor any moneys standing to the credit thereof or any part thereof shall be in any way assignable or transferable and no Encumbrance or trust shall be capable of being created over or in respect of the Collections Account or any part of it and no moneys shall be capable of being withdrawn from the Collections Account (in whole or in part) by the Chargor other than as permitted under the Agreement a debt owed by the Chargee to the Chargor.

## **8. CONTINUING SECURITY**

### **8.1 Continuing security**

The security constituted by this Deed is continuing and will extend to the ultimate balance of all the Secured Obligations regardless of any intermediate payment or discharge in whole or in part. This Deed shall remain in full force and effect as a continuing security for the duration of the Security Period.

### **8.2 Additional and separate security**

This Deed is in addition to, and without prejudice to and shall not merge with, any other right, remedy, guarantee or Encumbrance which the Chargee may at any time hold for any of the Secured Obligations.

### **8.3 Right to enforce**

This Deed may be enforced against the Chargor without the Chargee first having recourse to any other right, remedy, guarantee or Encumbrance held by or available to it.

**9. UNDERTAKINGS BY THE CHARGOR**

The Chargor covenants with the Chargee that it will:-

**9.1 Negative pledge/non-disposals**

otherwise than as permitted under the Agreement:-

9.1.1 not create or permit to subsist any Encumbrance upon any of the Security Assets; or

9.1.2 not sell, transfer, lease, lend or otherwise dispose of or part with (whether by a single transaction or a number of transactions and whether related or not), the whole or any part of its interest in any Security Asset;

**9.2 Dealings with Collections Account**

otherwise than in accordance with the Escrow Account Terms:-

9.2.1 immediately upon receipt pay all moneys which it shall receive in respect of the Net Proceeds (as that term is defined in Clause 2.5.4 of the Agreement) into the Collections Account or other account(s) of the Chargor with the Chargee (or such other bank) as the Chargee may from time to time direct;

9.2.2 pending payment into the Collections Account, hold all moneys so received on trust for the Chargee;

9.2.3 not attempt or be entitled to withdraw all or any part of the moneys in the Collections Account without the prior written consent of the Chargee and, if there shall from time to time be any credit balance on the Collections Account (or such other bank with whom the Collections Account is opened), the Chargee shall be entitled in its absolute discretion to refuse to permit such credit balance to be utilised or withdrawn by the Chargor (whether in whole or in part) if at that time any of the Secured Obligations are outstanding;

**9.3 Account Bank**

on the date of this Deed immediately deliver a notice to the bank with which the Collections Account is or is to be maintained at such time and use its best endeavours to obtain an acknowledgement from such bank, in each case in the form set out in the Schedule (*Form of notice to and acknowledgement from the Account Bank*) and if the Collections Account is at any time not maintained with National Westminster Bank plc, or at any time when the Chargee so requires, immediately deliver a notice to the bank with which the Collections Account is or is to be maintained at such time and use its best endeavours to obtain an acknowledgement from such bank, in each case in the form set out in the Schedule (*Form of notice to and acknowledgement from the Account Bank*);

**9.4 Protection of Security Assets**

upon demand by the Chargee, take or defend all such legal proceedings, and take all such other steps, as the Chargee may think advisable for the protection of any Security Assets; and

**9.5 Not prejudice**

otherwise than as permitted under the Agreement not do, omit to do, cause or permit to occur, anything which would or might result in any Security Asset being surrendered, forfeited, cancelled or prejudiced in any manner whatsoever or reduced in value, or this Deed or any rights, powers or remedies of the Chargee under this Deed being prejudiced or adversely affected.



## **10. REPRESENTATIONS AND WARRANTIES**

### **10.1 Representations**

The Chargor makes the representations and warranties set out in this clause 10.1 (*Representations*) to the Chargee:-

10.1.1 the Security Assets are or when acquired will be beneficially owned by the Chargor free from any Encumbrance other than:-

- (i) as created by this Deed; and
- (ii) as permitted by the Agreement;

10.1.2 this Deed creates the Encumbrances which it purports to create and to the best of the Chargor's knowledge is not liable to be avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise; and

10.1.3 that it is not aware of any litigation, arbitration or administrative legal proceeding currently taking place in relation to any of the Security Assets.

### **10.2 Matters represented**

The representations and warranties in clause 10.1 (*Representations*) will be correct and complied with in all respects every six (6) months from the date of this Legal Mortgage during the Security Period with reference to the circumstances existing at the time at which they are repeated.

## **11. POWER TO REMEDY**

If at any time the Chargor does not comply with any of its obligations under this Deed, the Chargee (without prejudice to any other rights arising as a consequence of such non-compliance) shall be entitled (but not bound) to rectify that default. The Chargor irrevocably authorises the Chargee and its employees and agents by way of security to do all such things (including entering the property of the Chargor) necessary to rectify that default which is continuing, following not less than fourteen (14) days notice by the Chargee to the Chargor to remedy the default unless the Chargee acting reasonably, determines that this notice should be no greater than three (3) days in order to protect its security interest in the Security Assets or the value of the Security Assets. The exercise of the powers of the Chargee under this clause shall not render it liable as a mortgagee in possession. The Chargor shall pay to the Chargee on demand any moneys which are expended by the Chargee in doing so together with Default Interest from the date on which those moneys were expended by the Chargee (both before and after judgment) and otherwise in accordance with clause 2.2 (*Default interest*).

## **12. WHEN SECURITY BECOMES ENFORCEABLE**

### **12.1 When enforceable**

The security constituted by or pursuant to this Deed shall become immediately enforceable upon the occurrence of an Event of Default and shall remain so for as long as the same is continuing. The power of sale and other powers conferred by section 101 of the Act (as varied or amended by this Deed) shall be immediately exercisable upon and at any time notice demanding payment of any sum in respect of the Secured Obligations shall have been given by the Chargee to the Chargor.

### **12.2 Enforcement**

After the security constituted by or pursuant to this Deed has become enforceable the Chargee may in its absolute discretion enforce all or any part of this security in such manner as it sees fit.

### **13. ENFORCEMENT OF SECURITY**

#### **13.1 General**

For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed. Sections 93 (*restricting the right of consolidation*) and 103 (*restricting the power of sale*) of the Act shall not apply to the security created by or pursuant to this Deed.

#### **13.2 Powers of Chargee**

At any time after this security becomes enforceable, the Chargee may:-

13.2.1 (or if so requested by the Chargor by written notice at any time may) without further notice appoint any person (or persons) to be a Receiver of all or any part of the Security Assets and/or of the income of the Security Assets; and/or

13.2.2 exercise all or any of the powers conferred on mortgagees by the Act (as varied or extended by this Deed) and/or all or any of the powers which are conferred by this Deed on a Receiver, in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver.

### **14. RECEIVER**

#### **14.1 Removal and replacement**

The Chargee may from time to time remove any Receiver appointed by it and, whenever it may deem appropriate, may appoint a new Receiver in the place of any Receiver whose appointment has terminated.

#### **14.2 Multiple Receivers**

If at any time there is more than one Receiver of all or any part of the Security Assets and/or the Income of the Security Assets, such persons shall have power to act individually (unless otherwise stated in the appointment document).

#### **14.3 Remuneration**

Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Chargee (or, failing such agreement, to be fixed by the Chargee).

#### **14.4 Payment by Receiver**

Only moneys actually paid by a Receiver to the Chargee in satisfaction or discharge of the Secured Obligations shall be capable of being applied by the Chargee in satisfaction of the Secured Obligations.

#### **14.5 Agent of Chargor**

Any Receiver shall be the agent of the Chargor. The Chargor shall (subject to the provisions of the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of his remuneration. The Chargee shall not incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

### **15. POWERS OF RECEIVER**

#### **15.1 General powers**

Any Receiver shall have (1) all the powers which are conferred by the Act on mortgagees in possession and receivers appointed under the Act, (2) all the powers which are listed in schedule 1

of the Insolvency Act 1986 and (3) all powers which are conferred by any other law conferring power on receivers.

## **15.2 Additional powers**

In addition, a Receiver shall have the following powers:-

- 15.2.1 to take possession of, collect and get in all or any part of the Security Assets and/or income in respect of which he was appointed;
- 15.2.2 to manage the Security Assets and the business of the Chargor as he thinks fit;
- 15.2.3 to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Secured Obligations for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- 15.2.4 to sell or concur in selling, leasing or otherwise disposing of all or any part of the Security Assets in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the Act. The consideration for any such transaction may consist of cash, charges or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party). Any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit;
- 15.2.5 to carry out any sale, lease or other disposal of all or any part of the Security Assets by conveying, transferring, assigning or leasing the same in the name of the Chargor and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, the Chargor;
- 15.2.6 to take any such proceedings (in the name of the Chargor or otherwise) as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed (including proceedings for recovery of rent or other moneys in arrears at the date of his appointment);
- 15.2.7 to enter into or make any such agreement, arrangement or compromise as he shall think fit;
- 15.2.8 to insure, and renew any insurances in respect of, the Security Assets as he shall think fit (or as the Chargee shall direct);
- 15.2.9 to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ his partners and firm);
- 15.2.10 to form one or more subsidiaries of the Chargor, and to transfer to any such subsidiary all or any part of the Security Assets; and
- 15.2.11 to:-
  - (i) give valid receipts for all moneys and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any Security Assets;
  - (ii) exercise in relation to the Security Assets or any part of them all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Security Assets; and
  - (iii) use the name of the Chargor for any of the above purposes.



16. **OTHER PROVISIONS RELATING TO ENFORCEMENT**

16.1 **No liability**

Neither the Chargee nor any Receiver shall be liable (1) in respect of all or any part of the Security Assets or (2) for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, its or his respective powers (unless such loss or damage is caused by its or his gross negligence or wilful misconduct).

16.2 **Not mortgagee in possession**

Without prejudice to the generality of clause 16.1 (*No liability*), entry into possession of the Security Assets shall not render the Chargee or the Receiver liable to account as mortgagee in possession or liable for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable. If and whenever the Chargee enters into possession of the Security Assets, it shall be entitled any time at its discretion to go out of such possession.

16.3 **Rights**

Each Receiver and the Chargee is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers (when such receivers have been duly appointed under the Act) except that section 103 of the Act does not apply.

17. **PROTECTION OF THIRD PARTIES**

No person (including a purchaser) shall be concerned to enquire whether the right of the Chargee to appoint a Receiver, or whether any power which the Chargee or any Receiver is purporting to exercise, has arisen or become exercisable, nor be concerned with notice to the contrary or with the propriety of the exercise or purported exercise of any such powers. The position of such a person and their title (if a purchaser) shall not be impeachable by reference to any of those matters.

18. **APPLICATION OF PROCEEDS**

18.1 **Application**

All moneys received by the Chargee or any Receiver under or in connection with this Deed after the security created by or pursuant to this Deed has become enforceable shall (subject to the rights and claims of any person having a security ranking in priority to the security constituted by this Deed) be applied in the following order:-

18.1.1 **firstly** in satisfaction of or provision for all costs, charges and expenses incurred and payments made by the Chargee or any Receiver and of all remuneration due to the Receiver;

18.1.2 **secondly** in or towards the satisfaction of the remaining Secured Obligations; and

18.1.3 **thirdly** in payment of any surplus to the Chargor or other person entitled to it.

18.2 **Contingencies**

If the security constituted by or pursuant to this Deed is enforced at a time when no amounts are due (but at a time when amounts may become so due), the Chargee or a Receiver may pay the proceeds of any recoveries effected by it into a blocked suspense account.

19. **APPROPRIATION AND SUSPENSE ACCOUNT**

19.1 **Right of appropriation**

Subject to clause 26.2 (*Currency indemnity*), the Chargee may apply all payments received for the Secured Obligations to reduce any part of the Secured Obligations as it thinks fit. Any such appropriation shall override any appropriation by the Chargor.

19.2 **Suspense account**

All moneys received, recovered or realised by the Chargee under or in connection with this Deed may at the discretion of the Chargee be credited to any suspense account for so long as the Chargee determines (with interest accruing thereon at such rate, if any, as the Chargee may determine for the account of the Chargor) without the Chargee having any obligation to apply the same or any part thereof in or towards the discharge of any of the Secured Obligations.

20. **DELEGATION**

Each of the Chargee and any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by them under this Deed upon any terms (including power to sub-delegate) which it may think fit. Neither the Chargee nor any Receiver will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

21. **FURTHER ASSURANCE**

21.1 **Further assurance**

Whenever requested by the Chargee the Chargor will at its own expense, promptly execute any deeds or documents and take any action required by the Chargee:-

21.1.1 to perfect or protect the security created (or intended to be created) by or pursuant to this Deed; or

21.1.2 following the occurrence of the Event of Default to facilitate the realisation of any Security Asset or otherwise to enforce the security created by or pursuant to this Deed; or

21.1.3 to exercise any of the rights of the Chargee or any Receiver or any delegate or sub-delegate thereof under this Deed,

including (without limitation) (1) the execution of any transfer, conveyance, assignment or assurance of any property or assets (whether to the Chargee or its nominees) and (2) the giving of any notice, order or direction and the making of any registration which, in any such case, the Chargee may think expedient.

21.2 **Cost and terms**

Any security document required to be executed by the Chargor pursuant to this clause 21 (*Further assurance*) will be prepared at the cost of the Chargor and will contain terms and conditions which are no more onerous than those contained in this Deed, save where required due to the nature of the specific asset over which such security is to be taken.

22. **POWER OF ATTORNEY**

22.1 **Appointment**

The Chargor hereby irrevocably and by way of security appoints the Chargee and any person nominated for the purpose by the Chargee in writing under hand by an officer of the Chargee severally as its attorney and in its name and on its behalf and as its act and deed to execute, seal and deliver (using the Chargor seal where appropriate) and otherwise perfect and do any deed, assurance, agreement, instrument, act or thing which it ought to execute and do under the terms

of this Deed or which may be required or deemed proper in the exercise of any rights or powers hereunder or otherwise for any of the purposes of this Deed.

**22.2 Ratification**

The Chargor hereby ratifies and confirms and agrees to ratify and confirm whatever any such attorney as is mentioned in Clause 22.1 (*Appointment*) shall do or purport to do in the exercise or purported exercise of all or any of the powers, acts or other matters referred to in Clause 22.1 (*Appointment*).

**23. NOTICE OF SUBSEQUENT ENCUMBRANCE**

If the Chargee receives notice (whether actual or otherwise) of any subsequent Encumbrance affecting any part of the Security Assets and/or the proceeds of sale thereof, it may open a new account or accounts for the Chargor in its books. If it does not do so then, as from the time of receipt of such notice by the Chargee, all payments made by the Chargor to the Chargee shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations.

**24. PAYMENTS**

**24.1 Payments**

Subject to clause 24.2 (*Gross-up*), all payments to be made by the Chargor in respect of this Deed must be made:-

24.1.1 in immediately available funds to the credit of such account as the Chargee may designate; and

24.1.2 free and clear of, and without any deduction for, or on account of, any set-off or counterclaim or, except to the extent compelled by law, any deduction on account of any taxes.

**24.2 Gross-up**

If the Chargor is compelled by law to make any deduction or withholding from any sum payable under this Deed to the Chargee, the sum so payable by the Chargor shall be increased so as to result in the receipt by the Chargee of a net amount equal to the full amount expressed to be payable under this Deed.

**25. COSTS AND EXPENSES**

**25.1 Indemnity**

The Chargor agrees to indemnify the Chargee against and on demand to pay to the Chargee all the Chargee's legal and other costs, losses, charges and expenses (on a full indemnity basis) arising in connection with the negotiation, preparation, execution, modification, amendment, release and/or enforcement or attempted enforcement of, or preservation of the Chargee's rights under, this Deed, including any present or future stamp or other taxes or duties and any penalties or interest with respect thereto which may be imposed by any competent jurisdiction in connection with the execution or enforcement of this Deed or in consequence of any payment made under this Deed (whether made by the Chargor or a third person) being impeached or declared void for any reason whatsoever and all such costs, losses, charges and expenses may be debited by the Chargee at any time to any account of the Chargor.

**25.2 Default interest**

The amounts payable under clause 25.1 (*Indemnity*) shall carry Default Interest, as well after as before judgment, from the dates on which they were paid, incurred or charged by the Chargee, and shall form part of the Secured Obligations and accordingly be secured on the Secured Assets



under the charges contained in this Deed. All such default interest shall be compounded with monthly rests.

## **26. CURRENCIES**

### **26.1 Conversion**

All moneys received or held by the Chargee or any Receiver under this Deed may be converted from their existing currency into such other currency as the Chargee or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the prevailing spot rate of exchange of the Chargee. The Chargor shall indemnify the Chargee against all costs, charges and expenses incurred in relation to such sale. Neither the Chargee nor any Receiver shall have any liability to the Chargor in respect of any loss resulting from any fluctuation in exchange rates after any such sale.

### **26.2 Currency Indemnity**

No payment to the Chargee (whether under any judgment or court order or in the liquidation or dissolution of the Chargor or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made, unless and until the Chargee shall have received payment in full in the currency in which the obligation or liability was incurred and, to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability expressed in that currency, the Chargee shall have a further separate cause of action against the Chargor and shall be entitled to enforce the security constituted by this Deed to recover the amount of the shortfall.

## **27. INDEMNITY**

The Chargor shall indemnify the Chargee, any Receiver and any attorney, agent or other person appointed by the Chargee under this Deed and the Chargee's officers and employees (each an "Indemnified Party") in respect of any cost, loss, liability or expense (however arising) which may be sustained or incurred by any of the Indemnified Parties as a result of or in connection with:-

- 27.1 anything done or omitted in the exercise or purported exercise of the powers contained in this Deed (other than by reason of wilful default or gross negligence by that Indemnified Party above);
- 27.2 the Security Assets or the use or occupation of them by any person; or
- 27.3 any breach by the Chargor of any of its obligations under this Deed.

## **28. PROVISIONS RELATING TO THE CHARGE**

The rights, powers and discretions given to the Chargee in this Deed:-

- 28.1 may be exercised as often as and in such manner as, the Chargee thinks fit;
- 28.2 are cumulative, and are not exclusive of any of its rights under the general law; and
- 28.3 may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.

## **29. PROTECTIVE CLAUSES**

This Deed and the liability of the Chargor shall not be affected or prejudiced by reason of:-

- 29.1 (1) the winding-up, dissolution, administration or reorganisation, (2) any incapacity or (3) any change in the name, status, ownership or constitution, of the Chargor or any other person;
- 29.2 the Chargee (1) granting any time, indulgence or concession to the Chargor or any other person liable or (2) compounding with, discharging, releasing or varying the liability of the Chargor or any

other person liable or (3) omitting to claim or enforce payment from the Chargor or any other person liable; or

- 29.3 (1) the Chargee renewing, terminating, varying or increasing any facility or transaction or (2) any amendment or supplement to, or restatement, novation or replacement of the Trust Deed and Rules governing the Birmingham Chamber of Commerce Pension Fund as set out in a Deed of Amendment dated 31 December 1999 and subsequently amended prior to the date hereof (in each case whether or not the liability of the Chargor is increased thereby).

### 30. REDEMPTION OF PRIOR MORTGAGES

The Chargee may, at any time after the security created by this Deed has become enforceable, redeem any prior Encumbrance against all or any part of the Security Assets or procure the transfer of that Encumbrance to itself, and may settle and pass the accounts of the holder of any prior Encumbrance. Any accounts so settled and passed shall be conclusive and binding on the Chargor. All principal, interest, costs, charges and expenses of and incidental to such redemption and transfer shall be paid by the Chargor to the Chargee on demand.

### 31. RELEASE

#### 31.1 Obligation to release

Upon the expiry of the Security Period (but not otherwise), the Chargee shall, at the request and cost of the Chargor, do all things necessary to release the Security Assets from the security constituted by this Deed. Such release shall be subject to clause 31.2 (*Reinstatement*).

#### 31.2 Reinstatement

Where any discharge (whether in respect of the obligations of the Chargor or any security for those obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise (without limitation), the liability of the Chargor under this Deed shall continue as if the discharge or arrangement had not occurred. The Chargee may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

#### 31.3 Partial release

The Chargee may release any Security Assets from the security created by or pursuant to this Deed at any time and any such release shall not in any way affect, prejudice or invalidate the security created by or pursuant to this Deed over any other Security Assets, any other obligations of the Chargor under this Deed or the Agreement or the Trust Deed and Rules.

### 32. AMENDMENTS AND WAIVERS

Any provision of this Deed may be amended only if the Chargee and the Chargor so agree in writing and any breach of this Deed may be waived before or after it occurs only if the Chargee so agrees in writing. A waiver given or consent granted by the Chargee under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

### 33. ASSIGNMENT

The Chargor may not assign any of its rights under this Deed.

### 34. CALCULATIONS AND CERTIFICATES

A certificate of the Chargee specifying the amount of any Secured Liability due from the Chargor (including details of any relevant calculation thereof) shall be *prima facie* evidence of such amount against the Chargor in the absence of manifest error.

35. **NOTICES**

Save as specifically otherwise provided in this Deed, any notice, demand or other communication to be served under this Deed shall be in writing and may, in the case of the Chargee, be signed by any official of the Chargee and, in the case of the Chargor, by any director of the Chargor, and may be made or given to either party to this Deed at its address or fax number shown immediately after its name on the signature page of this Deed (or at such other address or number in the United Kingdom as it may from time to time notify in writing to the other party):-

35.1 by delivering it to any such address; or

35.2 by sending it by first class post to any such address (in which case it shall be deemed received at 10.00am on the next Business Day after posting, and proof of posting shall be proof of delivery); or

35.3 by sending it by fax to such number (in which case it shall be deemed received when sent, and proof of sending shall be proof of receipt).

36. **MISCELLANEOUS**

36.1 **No waiver**

No failure to exercise, nor any delay in exercising, on the part of the Chargee, any right, power or privilege under this Deed shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof, or the exercise of any other power or right.

36.2 **Remedies cumulative**

The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law.

36.3 **Third Party Rights**

None of the terms of this Deed is enforceable by any person other than the Chargor, the Chargee, any Finance Party and any person to whom a Finance Party has assigned its rights pursuant to a Finance Document.

36.4 **Counterparts**

This Deed may be executed in any number of counterparts, all of which taken together shall constitute a single Deed.

37. **GOVERNING LAW**

This Deed shall be governed by and construed in accordance with the laws of England.

**IN WITNESS** of which this Deed has been duly executed by the Chargor as a deed and duly executed by the Chargee and has been delivered on the date written at the beginning of this Deed.



## SCHEDULE

### Form of notice to and acknowledgement from bank operating Collections Account

To: [◆insert *Account Bank name*]

Dated: ◆ ◆

Dear Sirs

Re: Account Holder: ( the "Chargor")

Account Nos: [◆insert numbers] (the "Collections Account[◆s]")

Account Branch: [◆insert branch address]

We give notice that, by a Charge dated [◆DATE] 2020 (the "Security Document"), the Chargor has charged to Birmingham C.O.C. Pension Fund Trustee Company Limited (the "Chargee") all its present and future right, title and interest in and to the Collections Account[s], all moneys from time standing to the credit of the Collections Account[s] and all additions to or renewals or replacements thereof (in whatever currency) and to all interest from time to time accrued or accruing on the Collection Account[s], any investment made out of any such moneys or account and all rights to repayment of any of the foregoing by you.

We advise you that, under the terms of the Security Document, we are not entitled to withdraw any moneys from the Collections Account[s] without first having obtained the prior written consent of the Chargee (except in the event that the Pension Fund has been wound up in circumstances set out in paragraph 8 of Schedule 2 to the Agreement).

We irrevocably authorise and instruct you from time to time:-

- (a) unless the Chargee so authorises you, not to permit withdrawals from the Collections Account[s];
- (b) to hold all moneys from time to time standing to the credit of the Collections Account[s] to the order of the Chargee;
- (c) to pay all or any part of the moneys standing to the credit of the Collection[s] Accounts to the Chargee (or as it may direct) promptly following receipt of written instructions from the Chargee to that effect; and
- (d) to disclose to the Chargee such information relating to the Chargor and the Collections Account[s] as the Chargee may from time to time request you to provide.

We agree that you are not bound to enquire whether the right of the Chargee to withdraw any moneys from any Collection Account[s] has arisen or be concerned with the propriety or regularity of the exercise of that right or to be concerned with notice to the contrary or be concerned with or responsible for the application of any moneys received by the Chargee.

The provisions of this notice may only be revoked or amended with the prior written consent of the Chargee.

Please confirm by completing the enclosed copy of this notice and returning it to the Chargee (with a copy to the Chargor) that:-

1. you agree to act in accordance with the provisions of this notice;

2. you have not, at the date this notice is returned to the Chargee, received notice of any assignment or charge of or claim to the moneys standing to the credit of any of the Collection Account[s] or the grant of any security or other interest over those moneys in favour of any third party and you will notify the Chargee promptly if you should do so in the future; and
3. you do not now and will not in the future exercise any right to combine accounts or any rights of set-off or lien or any similar rights in relation to the moneys standing to the credit of the Collections Account[s].

This notice (and any acknowledgement) shall be governed by and construed in accordance with the laws of England.

Yours faithfully,

.....  
for and on behalf of  
**BIRMINGHAM CHAMBER OF COMMERCE AND INDUSTRY**

[On copy]

To: **BIRMINGHAM C.O.C. PENSION FUND TRUSTEE COMPANY LIMITED**

Copy to: **BIRMINGHAM CHAMBER OF COMMERCE AND INDUSTRY**

We acknowledge receipt of the above notice. We confirm:-

- (a) that the matters referred to in it do not conflict with the terms which apply to any Collection Account[s]; and
- (b) the matters set out in paragraphs 1 to 3 in the above notice.

.....  
for and on behalf of  
[◆insert **Account Bank name**]  
Dated: ◆ ◆



**EXECUTION PAGE**

**THE CHARGOR**

Executed as a Deed (but not delivered until the date of this Agreement) by **BIRMINGHAM CHAMBER OF COMMERCE AND INDUSTRY** acting by



.....  
Signature of Director

PAUL JOHN FAULKNER

Full Name (Director)

HELEN ELIZABETH BATES

Full Name (Director/Secretary)



.....  
Signature of Director/Secretary

**Address:**

Chamber of Commerce House,  
75 Harborne Road,  
Edgbaston,  
Birmingham,  
B15 3DH

**THE CHARGE**

Executed as a Deed (but not delivered until the date of this Agreement) by **BIRMINGHAM C.O.C. PENSION FUND TRUSTEE COMPANY LIMITED** acting by

.....  
Full Name (Trustee Director)  
in the presence of:

.....  
Signature of Trustee Director

.....  
Full Name (Witness)  
.....  
.....

.....  
Address

.....  
Signature of Witness

Chamber of Commerce House,  
75 Harborne Road,  
Edgbaston,  
Birmingham,  
B15 3DH