



Registration of a Charge

Company name: **HARTLEPOOL UNITED FOOTBALL CLUB LIMITED**

Company number: **00098191**



XA33H6JK

Received for Electronic Filing: **24/04/2021**

Details of Charge

Date of creation: **21/04/2021**

Charge code: **0009 8191 0009**

Persons entitled: **THE ENGLISH SPORTS COUNCIL**

Brief description:

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

Contains negative pledge.

Authentication of Form

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

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:

BATES WELLS



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 98191

Charge code: 0009 8191 0009

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st April 2021 and created by HARTLEPOOL UNITED FOOTBALL CLUB LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th April 2021 .

Given at Companies House, Cardiff on 26th April 2021

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**

Hartlepool Guarantee and Debenture – Confidential

DATED

21 April

2021

**HARTLEPOOL UNITED FOOTBALL CLUB LIMITED
AS CHARGOR**

and

**THE ENGLISH SPORTS COUNCIL
(as Programme Manager)**

GUARANTEE AND DEBENTURE

*Hartlepool Guarantee and Debenture – Confidential***CONTENTS**

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THIS GUARANTEE AND DEBENTURE made on

21 April

2021

BETWEEN:

- (1) **Hartlepool United Football Club Limited** a company limited by shares, incorporated under the laws of England and Wales (company number 00098191) whose registered office is at Victoria Park, Clarence Road, Hartlepool, TS24 8BZ as **Chargor**; and
- (2) **The English Sports Council**, a body corporate with registration number RC000766, whose address is at 21 Bloomsbury Street, London WC1B 3HF as **Programme Manager**.

WITNESSES as follows:

1. **DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions:** Unless the context otherwise requires, words or expressions defined in the Facility Agreement shall have the same meaning in this Guarantee and Debenture and, in addition, the following words and expressions shall have the following meanings:

"**Act**" means the Companies Act 2006;

"**Assets**" means, in relation to a Chargor, all its undertaking, property, assets, revenues and rights of every description, or any part of them;

"**Beneficiary**" means each Finance Party and any Receiver or Delegate.

"**Chargor**" means the Chargor and (with effect from its accession) each other company which executes a Deed of Accession and Charge;

"**Declared Default**" means that an Event of Default has occurred and as a result any Finance Party has taken steps to exercise its rights under clause 10.2 of the Facility Agreement;

"**Deed of Accession and Charge**" means a Deed of Accession and Charge substantially in the form set out in Schedule 2 (*Form of Deed of Accession and Charge for a New Chargor*);

"**Existing Security**" means the charges created on 10 February 2021 in favour of Clarence 18 Limited and registered at Companies House with charge codes 000981910007 and 000981910008;

"**Facility Agreement**" means the loan facility agreement dated on or about the date of this Guarantee and Debenture and made between the Programme Manager, The Secretary of State for the Department for Digital, Culture, Media and Sport as the lender and Hartlepool United Football Club Limited as the borrower;

"**Floating Charge Asset**" means an Asset for the time being comprised within the floating charge created by clause 3.1 (*Creation of floating charge*) (or by the equivalent provision of any Deed of Accession and Charge) but, in relation to Assets situated in Scotland and charged by clause 3.1(b) (or by the equivalent provision of any Deed of Accession and Charge) only insofar as concerns the floating charge over that Asset;

"**Guarantor**" means the Chargor and (with effect from its accession) each other company which executes a Deed of Accession and Charge;

"**Liability**" means any liability, damage, loss, cost, claim or expense of any kind or nature,

whether direct, indirect, special, consequential or otherwise;

"New Chargor" means a member of the Group which becomes a guarantor and chargor under this Guarantee and Debenture in accordance with clause 22 (*Accession of a New Chargor*);

"New Subsidiary" means, in relation to a Chargor, any Subsidiary which is incorporated or becomes a Subsidiary of such Chargor after the date of this Guarantee and Debenture;

"Party" means a party to this Guarantee and Debenture;

"Programme Manager" means the English Sports Council acting as agent and trustee for the Beneficiaries and includes any successor appointed by the Lender or the Programme Manager pursuant to the Finance Documents;

"Receiver" means a receiver or a receiver and manager appointed under clause 9.1 (*Appointment of a Receiver or an administrator*) and (where the context requires or permits) includes any substituted receiver or receiver and manager;

"Secured Sums" means all present and future obligations and liabilities (whether actual or contingent and whether incurred jointly or severally and whether as principal or surety or in any other capacity whatsoever and whether incurred originally by a Chargor or by some other person) of each Chargor to all or any of the Beneficiaries under each or any of the Finance Documents, in each case together with:

- (a) all costs, charges and expenses incurred by any Beneficiary in connection with the protection, preservation or enforcement of its rights under any Finance Document; and
- (b) all moneys, obligations and liabilities due, owing or incurred in respect of any variations or increases in the amount or composition of the facilities provided under any Finance Document or the obligations and liabilities imposed under such documents; and

"Security Interest" includes any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, title retention or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

1.2 **Interpretation:** Unless the context otherwise requires clause 1.2 (*Interpretation*) of the Facility Agreement shall be deemed to be incorporated in full in this Guarantee and Debenture with any necessary changes, in this Guarantee and Debenture:

- (a) references to a **"Party"** shall be construed so as to include that Party's respective successors in title, permitted assigns and permitted transferees;
- (b) **"including"** and **"in particular"** shall not be construed restrictively but shall mean respectively "including, without prejudice to the generality of the foregoing" and "in particular, but without prejudice to the generality of the foregoing";
- (c) **"property"** includes any interest (legal or equitable) in real or personal property and any thing in action;
- (d) **"variation"** includes any variation, amendment, accession, novation, restatement, modification, assignment, transfer, supplement, extension, deletion or replacement however effected and **"vary"** and **"varied"** shall be construed accordingly; and
- (e) subject to clause 28.4 (*Variations*) references to this Guarantee and Debenture or

to any other document (including any Finance Document) include references to this Guarantee and Debenture or such other document as varied in any manner from time to time, even if changes are made to the composition of the parties to this Guarantee and Debenture or such other document or to the nature or amount of any facilities made available under such other document and, in addition, references to this Guarantee and Debenture shall include (with effect from the date on which it comes into force) each Deed of Accession and Charge executed pursuant to it.

1.3 **Companies Acts:** Expressions defined in the Act (and not redefined in this Guarantee and Debenture) shall have the same meanings in this Guarantee and Debenture, except that the expression "**company**" shall include a body corporate established outside Great Britain.

1.4 **Statutes:** Any reference to any statute or statutory instrument or any section of it shall be deemed to include a reference to any statutory modification or re-enactment of it for the time being in force in relation to the particular circumstances.

1.5 **Incorporation of terms:** The terms of the other Finance Documents and of any other agreement or instrument between any Parties in relation to any Finance Document are incorporated in this Guarantee and Debenture to the extent required to ensure that any purported disposition, or any agreement for the disposition, of any Land contained in this Guarantee and Debenture is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

2. COVENANT TO PAY

2.1 **Covenant to pay:** Each Chargor (as primary obligor and not merely as surety) covenants with the Programme Manager (as trustee for the Beneficiaries) that it will, on the Programme Manager's written demand, pay or discharge the Secured Sums when due at the times and in the manner provided in the relevant Finance Documents.

2.2 **Guarantee:** Each Chargor gives the guarantee contained in Schedule 1 (*Terms of Guarantee*) subject to, and with the benefit of, the provisions set out in Schedule 1 (*Terms of Guarantee*). The guarantee is given by each Chargor separately and jointly with every other Chargor.

2.3 **Binding nature:** Each Chargor agrees to be bound by the guarantee contained in Schedule 1 (*Terms of Guarantee*), even if another member of the Group which was intended to execute this Guarantee and Debenture may not do so or may not be effectively bound.

2.4 **Demands:** The making of one demand shall not preclude the Programme Manager from making any further demands.

2.5 **Proviso:** The covenants and guarantee contained in this clause and the security created by this Guarantee and Debenture shall not extend to or include any liability or sum which would otherwise cause any such covenant or security to be unlawful or prohibited by any applicable law.

3. CHARGING CLAUSE

3.1 **Creation of floating charge:** Each Chargor, with full title guarantee, charges to the Programme Manager (as trustee for the Beneficiaries) as security for the payment or discharge of all Secured Sums, by way of floating charge:

- (a) all its Assets including any Assets comprised within a charge which is reconverted under clause 4.4 (*Reconversion*), and
- (b) without exception, all its Assets insofar as they are for the time being situated in Scotland,

but in each case so that such Chargor shall not create any Security Interest over any such Asset (whether having priority over, or ranking *pari passu* with or subject to, this floating charge) or take any other step referred to in clause 5 (*Negative pledge and other restrictions*) with respect to any such Asset, and such Chargor shall not, without the consent of the Programme Manager, sell, transfer, part with or dispose of any such Asset except to the extent permitted under the Facility Agreement.

3.2 **Priority:** Any Security Interest created in the future by a Chargor (except in favour of the Programme Manager) shall be expressed to be subject to this Guarantee and Debenture and shall rank in order of priority behind the charges created by this Guarantee and Debenture.

3.3 **Right of redemption:** Upon the payment or discharge of all Secured Sums and the Beneficiaries having no further obligation (whether actual or contingent) to make advances or provide other financial accommodation under the Finance Documents or otherwise, the Programme Manager shall on request by a Chargor (at the Chargor's cost) release its Assets from the charges created by clause 3 of this Guarantee and Debenture. Such release shall not prejudice the rights of the Programme Manager under clause 13.3 (*Retention of Security*) and clause 17 (*Costs, expenses and liabilities*)

4. CRYSTALLISATION

4.1 **Crystallisation by notice:** The floating charge created by each Chargor in clause 3.1 (*Creation of floating charge*) may, subject to clause 4.5 (*Moratorium Assets*), be crystallised into a fixed charge by notice in writing given at any time by the Programme Manager to the relevant Chargor (or to the Borrower on its behalf) if:

- (a) a Declared Default has occurred and is continuing;
- (b) a Potential Event of Default under clause 13.1(f) (*Insolvency*) or Clause 13.1(g) (*Insolvency Proceedings*) of the Facility Agreement has occurred and is continuing; or
- (c) the Programme Manager in good faith considers that any of the Assets expressed to be charged to the Programme Manager by this Guarantee and Debenture may be in danger of being seized or sold pursuant to any form of legal process; or
- (d) a circumstance envisaged by paragraph (a) of clause 4.2 (*Automatic Crystallisation*) occurs and the Programme Manager in good faith considers that such crystallisation is desirable in order to protect the priority of its security.

Such crystallisation shall take effect over the Floating Charge Assets or class of Assets specified in the notice. If no Floating Charge Assets are specified, it shall take effect over all Floating Charge Assets of the relevant Chargor.

4.2 **Automatic crystallisation:** If, without the Programme Manager's prior written consent:

- (a) any Chargor, in contravention of any Finance Document, resolves to take or takes any step to:
 - (i) charge or otherwise encumber any of its Floating Charge Assets;

- (ii) create a trust over any of its Floating Charge Assets; or
- (iii) dispose of any Floating Charge Asset, except by way of sale in the ordinary course of such Chargor's business to the extent that such disposal is not otherwise prohibited by any Finance Document;
- (b) any person resolves to take or takes any step to seize or sell any Floating Charge Asset pursuant to any form of legal process; or
- (c) an Event of Default under clause 13.1(f) (*Insolvency*) or Clause 13.1(g) (*Insolvency Proceedings*) of the Facility Agreement has occurred,

then the floating charge created by clause 3.1 (*Creation of floating charge*) shall, subject to clause 4.5 (*Moratorium Assets*), be automatically and instantly crystallised (without the necessity of notice) into a fixed charge over such Floating Charge Asset or, in the case of paragraph (c) above into a fixed charge over all Floating Charge Assets of the relevant Chargor.

4.3 Future Floating Charge Assets: Except as otherwise stated in any notice given under clause 4.1 (*Crystallisation by notice*) or unless the crystallisation relates to all its Floating Charge Assets, prospective Floating Charge Assets acquired by any Chargor after crystallisation has occurred under clause 4.1 (*Crystallisation by notice*) or 4.2 (*Automatic crystallisation*) shall become subject to the floating charge created by clause 3.1 (*Creation of floating charge*), so that the crystallisation shall be effective only as to the relevant Floating Charge Assets in existence at the date of crystallisation.

4.4 Reconversion: Any charge which has crystallised under clause 4.1 (*Crystallisation by notice*) or 4.2 (*Automatic crystallisation*) may, by notice in writing given at any time by the Programme Manager to the relevant Chargor (or to the Borrower on its behalf), be reconverted into a floating charge in relation to the Assets specified in such notice.

4.5 Moratorium Assets: Notwithstanding clauses 4.1 and 4.2, and save as permitted by Part A1 of the Insolvency Act 1986:

- (a) where a Chargor obtains a moratorium under that Part A1, and whilst the moratorium continues, the floating charge created by that Chargor in Clause 3.1 (*Creation of floating charge*):
 - (i) may not be converted into a fixed charge by notice in writing under clause 4.1; and
 - (ii) shall not automatically convert into a fixed charge under clause 4.2;
- (b) nothing done for or by a Chargor with a view to obtaining a moratorium under that Part A1 shall give rise to any right to crystallise by notice under clause 4.1 or cause the automatic crystallisation under clause 4.2 of the floating charge created by that Chargor under clause 3.1 (*Creation of floating charge*).

5. NEGATIVE PLEDGE AND OTHER RESTRICTIONS

5.1 Negative Pledge and Other Restrictions: No Chargor shall, without the prior written consent of the Programme Manager, except as specifically permitted under the Facility Agreement:

- (a) create, or agree or attempt to create, or permit to subsist, any Security Interest (except under this Guarantee and Debenture and the Existing Security (if applicable)) or any trust over any of its Assets, or permit any lien (other than a lien

arising by operation of law in the ordinary course of such Chargor's business) to arise or subsist over any of its Assets;

- (b) sell, assign, lease, license or sub-license, or grant any interest in, any of its Assets, or part with possession or ownership of them, or purport or agree to do so; or
- (c) (where applicable) increase the amount secured by the Existing Security (whether of principal, interest, premium or otherwise) or alter the terms relating to the repayment of any sums secured by the Existing Security or the assets subject to the Existing Security.

5.2 Representation: Each Chargor hereby represents to the Programme Manager that:

- (a) the details of any Existing Security are accurate and complete, no other Security Interest exists over its Assets on the date hereof and it is under no legal commitment to grant any further Security Interest over all or any of its Assets; and
- (b) it has obtained all necessary Authorisations in relation to its entry into this Guarantee and Debenture.

6. FURTHER ASSURANCE

6.1 Each Chargor shall promptly, at its own cost, do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notarisations, registrations, notices and instructions) as the Programme Manager may reasonably specify (and in such form as the Programme Manager may reasonably require) in favour of the Programme Manager or its nominee(s):

- (a) to create, perfect and/or protect the Security Interests created or intended to be created in respect of the assets and undertaking of each Chargor which from time to time are the subject of any Security Interest created or expressed to be created by it in favour of the Programme Manager by or pursuant to this Guarantee and Debenture (the "**Charged Assets**") (which may include the execution by that Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Assets); and/or
- (b) to create, perfect and/or render legally valid and enforceable the guarantees provided for in this Guarantee and Guarantee and Debenture;
- (c) to facilitate the maintenance, preservation or enforcement of the rights of the Programme Manager or any Receiver against, or the realisation of, the Charged Assets.

6.2 Each Chargor shall take all such action as is available to it (including making all filings and registrations and applying for relief against forfeiture) as may be necessary or as may reasonably be requested by the Programme Manager for the purpose of the creation, perfection, protection or maintenance of any Security Interest conferred or intended to be conferred on the Programme Manager by or pursuant to this Guarantee and Debenture and the Assets.

7. CONTINUING SECURITY

This Guarantee and Debenture shall be a continuing security for the Beneficiaries, notwithstanding any intermediate payment or settlement of accounts or other matter whatever and shall be in addition to and shall not prejudice or be prejudiced by any right of set-off, combination, lien, or other rights exercisable by any Beneficiaries as banker

against any Chargor or any security, guarantee, indemnity and/or negotiable instrument now or in the future held by any Beneficiaries.

8. **OPENING OF NEW ACCOUNTS**

8.1 **Creation of new account:** On receiving notice that any Chargor has created a Security Interest over or otherwise encumbered or disposed of any of its Assets, a Beneficiary may rule off all its accounts and open new accounts with such Chargor.

8.2 **Credits to new account:** If a Beneficiary does not open a new account immediately on receipt of such notice, it shall nevertheless be treated as if it had done so on that day. From that day, all payments made by the Chargor to such Beneficiary shall be treated as having been credited to a new account and shall not operate to reduce the amount owing from the Chargor to such Beneficiary at the time when it received such notice.

9. **APPOINTMENT OF A RECEIVER OR AN ADMINISTRATOR**

9.1 **Appointment:** Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to this Guarantee and Debenture and the floating charges contained in this Guarantee and Debenture. At any time after:

- (a) the occurrence of a Declared Default;
- (b) in relation to any Chargor, a step or proceeding is taken, or a proposal made, for the appointment of an administrator or for a voluntary arrangement under Part I of the Insolvency Act 1986; or
- (c) a request has been made by the Borrower and/or a Chargor to the Programme Manager for the appointment of a Receiver or an administrator over its Assets or in respect of a Chargor,

then this Guarantee and Debenture shall become enforceable and, notwithstanding the terms of any other agreement between such Chargor and any Beneficiary, the Programme Manager may, unless precluded by law, appoint in writing any person or persons to be a receiver or a receiver and manager, receivers or receivers and managers of all or any part of the Assets of such Chargor or an administrator or administrators of such Chargor, as the Programme Manager may choose in its entire discretion. Notwithstanding anything to the contrary in this Guarantee and Debenture, neither the obtaining of a moratorium by a Chargor under Part A1 of the Insolvency Act 1986 nor the doing of anything for or by a Chargor with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as, a ground under this Guarantee and Debenture for the appointment of a Receiver save where such an appointment would be permitted under that Part A1.

9.2 **Power to act separately:** Where more than one Receiver or administrator is appointed, the appointees shall have power to act separately unless the Programme Manager shall specify to the contrary.

9.3 **Receiver's remuneration:** The Programme Manager may from time to time determine the remuneration of a Receiver.

9.4 **Removal of Receiver:** The Programme Manager may (subject to section 45 of the Insolvency Act 1986) remove a Receiver from all or any of the Assets of which he is the Receiver.

9.5 **Further appointments of a Receiver:** Such an appointment of a Receiver shall not preclude:

- (a) the Programme Manager from making any subsequent appointment of a Receiver over all or any Assets over which a Receiver has not previously been appointed or has ceased to act; or
- (b) the appointment of an additional Receiver to act while the first Receiver continues to act.

9.6 **Receiver's agency:** The Receiver shall be the agent of the relevant Chargor (which shall be solely liable for his acts, defaults and remuneration) unless and until such Chargor goes into liquidation, after which time he shall act as principal and shall not become the agent of the Programme Manager or any other Beneficiary.

9.7 **Power of Sale:** Section 103 of the Law of Property Act 1925 shall not apply to this Guarantee and Debenture and the statutory power of sale shall arise on, and be exercisable at any time after the execution of this Guarantee and Debenture. However, The Programme Manager shall not exercise such power of sale until this Guarantee and Debenture has become enforceable.

10. POWERS OF A RECEIVER

10.1 **General:** The Receiver may exercise, in relation to each Chargor over whose Assets he is appointed, all the powers, rights and discretions set out in Schedules 1 and 2 to the Insolvency Act 1986 and in particular, by way of addition to and without limiting such powers, the Receiver may, with or without the concurrence of others:

- (a) sell, lease, let, license, grant options over and vary the terms of, terminate or accept surrenders of leases, licences or tenancies of, all or any of the Assets of the relevant Chargor, without the need to observe any of the provisions of sections 99 and 100 of the Law of Property Act 1925, in such manner and generally on such terms and conditions as he shall think fit in his absolute and unfettered discretion and any such sale or disposition may be for cash, securities or other valuable consideration (in each case payable in a lump sum or by instalments) and carry any such transactions into effect in the name of and on behalf of such Chargor;
- (b) promote the formation of a Subsidiary of the relevant Chargor with a view to such Subsidiary purchasing, leasing, licensing or otherwise acquiring interests in all or any of the Assets of such Chargor;
- (c) sever any fixtures from land and/or sell them separately;
- (d) exercise all voting and other rights attaching to securities owned by the relevant Chargor;
- (e) arrange for the purchase, lease, licence or acquisition of all or any Assets of the relevant Chargor by any such Subsidiary contemplated by paragraph (b) above on a basis whereby the consideration may be for cash, securities, shares of profits or sums calculated by reference to profits or turnover or royalties or licence fees or otherwise, whether or not secured on the assets of such Subsidiary and whether or not such consideration is payable or receivable in a lump sum or by instalments over such period as the Receiver may think fit;
- (f) make any arrangement or compromise with any Beneficiary or others as he shall think fit;

- (g) make and effect all repairs, renewals and improvements to the Assets of the relevant Chargor and effect, renew or increase insurances on such terms and against such risks as he shall think fit;
- (h) appoint managers, officers and agents for the above purposes at such remuneration as the Receiver may determine;
- (i) receive all book debts and other debts and claims, on payment given an effectual discharge for them and on non-payment take and institute all steps and proceedings for their recovery;
- (j) redeem any prior encumbrance and settle and pass the accounts of the encumbrancer and any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the relevant Chargor and the money so paid shall be deemed an expense properly incurred by the Receiver;
- (k) pay the proper administrative charges of any Beneficiaries in respect of time spent by their agents and employees in dealing with matters raised by the Receiver or relating to the receivership of the relevant Chargor;
- (l) commence and/or complete any building operations upon any land of the relevant Chargor and apply for and obtain any planning permissions, building regulation consents or licences, in each case as he may in his absolute discretion think fit;
- (m) take all steps necessary to effect all registrations, renewals, applications and notifications as the Receiver may in his discretion think prudent to maintain in force or protect any of the relevant Chargor's intellectual property rights; and
- (n) do all such other acts and things as may be considered by the Receiver to be incidental or conducive to any of the above matters or powers or otherwise incidental or conducive to the preservation, improvement or realisation of the relevant Assets.

11. POWER OF ATTORNEY

11.1 Appointment of attorney: Each Chargor, by way of security, hereby irrevocably appoints the Programme Manager (whether or not a Receiver or administrator has been appointed) and separately, any nominee and/or any Receiver to be its attorney (with full power to appoint substitutes and to delegate) with power in its name and on its behalf, and as its act and deed or otherwise to:

- (a) do anything which that Chargor is obliged to do (but has not done within 5 Business Days of being notified by the Programme Manager of such failure and being requested to comply) in accordance with the terms of the Guarantee and Debenture, including to execute and deliver and otherwise perfect any agreement, assurance, deed, instrument or document; and
- (b) enable the Programme Manager or any such nominee and/or Receiver to exercise (or to delegate) all or any of the rights conferred on it by the Guarantee and Debenture or by statute in relation to the Guarantee and Debenture or the Assets charged, or purported to be charged, by it.

11.2 Ratification: Each Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause.

11.3 Sums recoverable: All sums expended by the Programme Manager, nominee and/or any Receiver under this clause 11 shall be recoverable from each relevant Chargor under clause 17 (*Costs, expenses and liabilities*).

12. OTHER POWERS EXERCISABLE BY THE PROGRAMME MANAGER

- 12.1 **Receiver's powers:** All powers of the Receiver conferred by this Guarantee and Debenture may be exercised by the Programme Manager after this Guarantee and Debenture has become enforceable. In that event, clause 10.1(i) (*Powers of Receiver*) shall be read and construed as if the words "be charged on the Assets of the relevant Chargor" were substituted for the words "be deemed an expense properly incurred by the Receiver".
- 12.2 **Programme Manager's powers:** The Programme Manager shall have no liability or responsibility to any Chargor arising out of the exercise or non-exercise of the powers conferred on it by this clause 12, except for gross negligence or wilful default.
- 12.3 **No duty of enquiry:** The Programme Manager need not enquire as to the sufficiency of any sums received by it in respect of any book debt or other debt or claim so assigned to it or make any claim or take any other action to collect in or enforce them.

13. APPLICATION OF MONEY RECEIVED BY THE PROGRAMME MANAGER OR A RECEIVER

- 13.1 **Order of priority:** Any money received or realised under the powers conferred by this Guarantee and Debenture shall be paid or applied in the following order of priority, subject to the discharge of any prior-ranking claims:
- (a) in or towards satisfaction of the Secured Sums and (where an Intercreditor Agreement applies) in the manner applicable under the terms of the Intercreditor Agreement; and
 - (b) as to the surplus (if any), to the person or persons entitled to it.
- 13.2 **Suspense account:** The Programme Manager may, at any time after demand and until the irrevocable and unconditional payment to the Programme Manager of all Secured Sums, place and keep to the credit of a suspense account any money received or realised by the Programme Manager by virtue of this Guarantee and Debenture. The Programme Manager shall have no intermediate obligation to apply such money in or towards the discharge of any Secured Sum.
- 13.3 **Retention of security:** If the Programme Manager considers in good faith that any amount received in payment or purported payment of the Secured Sums is capable of being avoided or reduced by virtue of any insolvency, bankruptcy, liquidation or other similar laws, the liability of each Chargor under this Guarantee and Debenture and the Security Interests constituted by this Guarantee and Debenture shall continue and such amount shall not be considered to have been irrevocably paid.
- 14. PROTECTION OF THIRD PARTIES**
- 14.1 **No duty to enquire:** No purchaser from, or other person dealing with, the Programme Manager its nominee or any Receiver or administrator shall be concerned to enquire whether any of the powers which the Programme Manager has exercised or purported to exercise has arisen or become exercisable, or whether this Guarantee and Debenture has become enforceable, or whether any nominee, Receiver or administrator has been validly appointed, or whether any event or cause has happened to authorise the Programme Manager, any nominee or a Receiver or administrator to act or as to the propriety or validity of the exercise or purported exercise of any such power, and the title of such a purchaser and the position of such a person shall not be impeachable by reference to any of those matters.

- 14.2 **Receipt:** The receipt of the Programme Manager shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any money paid to or by the direction of the Programme Manager.
15. **PROTECTION OF THE PROGRAMME MANAGER, ANY NOMINEE AND RECEIVER**
- 15.1 **Limitation:** Neither the Programme Manager nor any nominee or Receiver shall be liable in respect of any Liability which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise, any of their respective powers under or by virtue of this Guarantee and Debenture, except if and insofar as such Liability results from its or his own gross negligence or wilful default.
- 15.2 **Entry into possession:** Without prejudice to the generality of clause 15.1 (*Limitation*), none of the Programme Manager, any nominee or any Receiver shall be liable to account as mortgagee in possession or otherwise for any sum not actually received by it or him respectively. If and whenever the Programme Manager or any nominee enters into possession of any Assets, it shall be entitled at any time at its discretion to go out of possession.
16. **PROGRAMME MANAGER**
- 16.1 **Programme Manager as trustee:** The Programme Manager declares itself to be a trustee of this Guarantee and Debenture (and any other Security Interest created in its favour pursuant to this Guarantee and Debenture) for the Beneficiaries. The retirement of the person for the time being acting as security trustee and the appointment of a successor shall be effected in each case in accordance with the Facility Agreement.
- 16.2 **Trustee Act 2000:** The Parties agree that the Programme Manager shall not be subject to the duty of care imposed on trustees by the Trustee Act 2000.
- 16.3 **No partnership:** Nothing in this Guarantee and Debenture shall constitute or be deemed to constitute a partnership between any of the Beneficiaries and the Programme Manager.
17. **COSTS, EXPENSES AND LIABILITIES**
- 17.1 **Costs and expenses:** Each Chargor will, promptly on the Programme Manager's written demand from time to time, reimburse the Programme Manager for all reasonable costs and expenses (including legal fees) on a full indemnity basis, together with VAT thereon, incurred by it in connection with:
- (a) the negotiation, preparation and execution of this Guarantee and Debenture; and
 - (b) the completion of the transactions and perfection of the Security Interests contemplated in this Guarantee and Debenture.
- 17.2 **Enforcement costs:** Each Chargor will, within three Business Days of the Programme Manager's written demand, pay to the Programme Manager, for each Beneficiary on a full indemnity basis, the amount of all costs and expenses (including legal, valuation, accountancy and consultancy fees and disbursements and out-of-pocket expenses) and any VAT thereon incurred by the Programme Manager and/or any other Beneficiary in connection with the exercise, enforcement and/or preservation of any of its rights under this Guarantee and Debenture (or any document contemplated therein) or any proceedings instituted by or against the Programme Manager, in any jurisdiction.
- 17.3 **Indemnity for Liabilities:** Each Chargor shall also, within three Business Days of the Programme Manager's written demand, reimburse or pay to the Programme Manager, its employees or agents and any nominee, on demand (on the basis of a full indemnity) the

amount of all Liabilities incurred by the Programme Manager, its employees or agents or any nominee, in connection with:

- (a) any default or delay by such Chargor in the performance of any of its obligations under this Guarantee and Debenture;
- (b) the exercise, or the attempted or purported exercise, by or on behalf of the Programme Manager of any of its powers or any other action taken by or on behalf of the Programme Manager with a view to or in connection with the recovery of the Secured Sums, the enforcement of the Security Interests created by this Guarantee and Debenture or for any other purpose contemplated in this Guarantee and Debenture;
- (c) the carrying out or consideration of any other act or matter which the Programme Manager may consider to be conducive to the preservation, improvement or benefit of any Asset; and
- (d) any stamp duty, stamp duty reserve tax or similar tax which may be payable as a result of the execution or performance of this Guarantee and Debenture.

18. INTEREST ON OVERDUE AMOUNTS

Any amount not paid in accordance with this Guarantee and Debenture when due shall carry interest at the rate and in accordance with the terms contained in the Facility Agreement or at such other rate as may be agreed between the relevant Chargor and the Programme Manager from time to time.

19. SET-OFF

A Finance Party may retain any money standing to the credit of any Chargor with such Finance Party in any currency upon any account or otherwise (whether or not in such Chargor's name) as cover for any Secured Sums and/or at any time or times without notice to such Chargor combine or consolidate all or any of such money with all or such part of the Secured Sums due or owing by it as such Finance Party may select and such Finance Party may purchase with any such money any other currency required to effect such combination or consolidation.

20. INFORMATION

The Programme Manager may from time to time seek from any other finance provider to any Chargor such information about such Chargor and its affairs as the Programme Manager may think fit. Each Chargor directs any such third party to provide such information to the Programme Manager and agrees to provide such further authority for this purpose as the Programme Manager may from time to time require.

21. TRANSFER BY A BENEFICIARY

21.1 Transfer: Any Beneficiary may at any time:

- (a) assign any of its rights under the Finance Documents; or
- (b) transfer by novation any of its rights and obligations under the Finance Documents;

to any person to the extent permitted by the Facility Agreement. Upon an assignment or transfer by the Programme Manager to a successor Programme Manager becoming effective, the replacement Programme Manager shall be, and be deemed to be, acting as

agent and trustee for each of the Beneficiaries (including itself) for the purposes of this Guarantee and Debenture in replacement of the previous Programme Manager.

21.2 **Disclosure:** Each Chargor irrevocably authorises each Beneficiary, at its discretion, at any time or from time to time, to disclose any information concerning such Chargor, this Guarantee and Debenture and the Secured Sums:

- (a) to any person and in any of the circumstances referred to in Clause 19 (*Confidentiality and Freedom of Information*) of the Facility Agreement;
- (b) to any prospective assignee or transferee referred to in clause 21.1 (*Transfer*) and any other person considered by such Beneficiary to be concerned in the prospective transaction; and
- (c) to any person who, as part of the arrangements made in connection with any transaction referred to in clause 21.1 (*Transfer*), requires such information after the transaction has been effected.

The above authority is without prejudice to a Beneficiary's right of disclosure implied by law or otherwise permitted under any other Finance Document.

22. ACCESSION OF A NEW CHARGOR

22.1 **Method:** Any member of the Group may at any time, with the prior written approval of the Programme Manager, become a party to this Guarantee and Debenture by delivering to the Programme Manager in form and substance satisfactory to it:

- (a) a Deed of Accession and Charge; and
- (b) certified extracts from the minutes of a meeting of its Board of Directors evidencing the due authorisation and execution of the Deed of Accession and Charge (in substantially the form set out in Part 2 (*Form of Resolution for Deed of Accession and Charge*) of Schedule 2 (*Form of Deed of Accession and Charge*) and any other conditions precedent required by the Finance Documents.

22.2 **New Chargor bound:** The New Chargor shall become a guarantor and chargor under this Guarantee and Debenture with effect from the time when the Deed of Accession and Charge takes effect, at which point:

- (a) the New Chargor shall become bound by all the terms of this Guarantee and Debenture and shall assume the same obligations as "Guarantor" and "Chargor" as if it were an original party to this Guarantee and Debenture; and
- (b) the other Chargors shall assume the same obligations in respect of the New Chargor as if it were an original party to this Guarantee and Debenture.

23. AUTHORITY OF THE BORROWER

23.1 **Authority to act for the Chargors:** The Borrower is irrevocably authorised by each Chargor and each Guarantor (other than the Borrower) at any time, with the Programme Manager's prior written agreement:

- (a) to add any further member of the Group as a Chargor and Guarantor under this Guarantee and Debenture;
- (b) to appoint another member of the Group to act as its successor as agent for the Chargors and the Guarantors under this clause;

- (c) to give or receive on behalf of the Chargors and the Guarantors any notice pursuant to this Guarantee and Debenture;
- (d) to vary the terms of this Guarantee and Debenture; and/or
- (e) to sign any document and perform any act on behalf of each or any Chargor and Guarantor required to effect or implement any of these matters.

23.2 **Borrower's action assumed to be valid:** Each act so performed and each document so signed by the Borrower shall be binding on each Chargor and Guarantor and the Programme Manager may assume that any requisite approvals have been obtained by the Borrower from all Chargors and Guarantors.

24. **NEW CHARGORS**

Each Chargor shall, if and whenever required by the Programme Manager, promptly cause:

- (a) any New Subsidiary of such Chargor; or
- (b) any other member of the Group,

to become a party to this Guarantee and Debenture as a Chargor and a Guarantor in accordance with clause 22 (*Accession of a New Chargor*).

25. **EVIDENCE OF SECURED SUMS**

A certificate signed (or, where reliance is being placed on it by any third party, appearing to be signed) by an officer of the Programme Manager as to the Secured Sums for the time being due or owing from a Chargor to a Beneficiary shall be treated, in favour of such Beneficiary or any person to whom such certificate is issued, as conclusive evidence for all purposes against the relevant Chargor and binding on it (save in the case of manifest error) and such certificate may be relied upon by any Beneficiary and any other such person in all circumstances without further enquiry.

26. **THIRD PARTY RIGHTS**

26.1 **Directly enforceable rights:** Pursuant to the Contracts (Rights of Third Parties) Act 1999:

- (a) the provisions of clause 19 (*Set-off*) and clause 21 (*Transfer by a Beneficiary*) shall be directly enforceable by a Beneficiary;
- (b) the provisions of clause 9 (*Appointment of a Receiver or an administrator*) to clause 15 (*Protection of the Programme Manager and Receiver*) inclusive shall be directly enforceable by any nominee or Receiver;
- (c) the provisions of clause 14 (*Protection of third parties*) shall be directly enforceable by any purchaser; and
- (d) clause 25 (*Evidence of Secured Sums*) shall be directly enforceable by any person to whom a certificate is issued under clause 25.

26.2 **Exclusion of Contracts (Rights of Third Parties) Act 1999:** Save as otherwise expressly provided in clause 26.1 (*Directly enforceable rights*), no person other than a Party shall have any right by virtue of the Contracts (Rights of Third Parties) Act 1999 to enforce any term (express or implied) of this Guarantee and Debenture, but without

prejudice to any right or remedy of the third party which may exist or be available apart from that Act.

- 26.3 **Rights of the Parties to vary:** The Parties (or the Borrower, on behalf of the Chargors, and the Programme Manager on behalf of the Beneficiaries) may by agreement vary any term of this Guarantee and Debenture (including this clause 26) without the necessity of obtaining any consent from any other person.

27. **JOINT AND SEPARATE LIABILITY**

All covenants, agreements, representations and warranties on the part of the Chargors contained in this Guarantee and Debenture are given by them jointly and separately and shall be construed accordingly.

28. **FORBEARANCE, SEVERABILITY, VARIATIONS AND CONSENTS**

- 28.1 **Delay etc:** All rights, powers and privileges under this Guarantee and Debenture shall continue in full force and effect, regardless of any Beneficiary, nominee or Receiver exercising, delaying in exercising or omitting to exercise any of them.
- 28.2 **Severability:** No provision of this Guarantee and Debenture shall be avoided or invalidated by reason only of one or more other provisions being invalid or unenforceable.
- 28.3 **Illegality, invalidity, unenforceability:** Any provision of this Guarantee and Debenture which is or becomes illegal, invalid or unenforceable shall be ineffective only to the extent of such illegality, invalidity and unenforceability, without invalidating the remaining provisions of this Guarantee and Debenture.
- 28.4 **Variations:** No variation of this Guarantee and Debenture shall be valid and constitute part of this Guarantee and Debenture, unless such variation shall have been made in writing and signed by the Programme Manager (on behalf of the Beneficiaries) and the Borrower (on behalf of the Chargors) or by all Parties.
- 28.5 **Consents:** Save as otherwise expressly specified in this Guarantee and Debenture, any consent of the Programme Manager may be given absolutely or on any terms and subject to any conditions as the Programme Manager may determine in its entire discretion.

29. **COUNTERPARTS**

This Guarantee and Debenture may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which when taken together shall constitute a single document.

30. **SERVICE OF DEMANDS AND NOTICES**

- 30.1 **Addresses:** Any communication to be made under or in connection with this Guarantee and Debenture may be made or given by any manager, officer or agent of the Programme Manager in writing addressed to the relevant Chargor and served on it at the address for service of such Chargor set out in the signature pages of this Debenture (or any substitute address as such Chargor (or the Borrower on its behalf) may notify to the Programme Manager by not less than five Business Days' notice).
- 30.2 **Delivery:** A notice or demand shall be deemed to be duly served on a Chargor:
- (a) if delivered by hand, on the Business Day on which it is delivered; or
 - (b) if sent by pre-paid post, five Business Days following the day of posting and shall be effective even if it is misdelivered or returned undelivered.

- 30.3 **Programme Manager:** Any communication or document to be made or delivered to the Programme Manager will be effective only when actually received by the Programme Manager and then only if it is expressly marked for the attention of any department or officer identified as part of its address details at the end of this Guarantee and Debenture (or any substitute department or officer that the Programme Manager shall specify for this purpose).
- 30.4 **Notice or demand to Chargors:** A notice or demand duly served on the Borrower by the Programme Manager shall constitute effective notice to or demand on all Chargors.
- 30.5 **Electronic mail:** Any communication or document to be made or delivered by one Party to another under or in connection with the Guarantee and Debenture may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties notify each other of any change to their email address by not less than five Business Days' notice. Any such electronic communication or delivery as specified in this clause 30.5 to be made between any Chargor and the Programme Manager may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery. Any such electronic communication or document as specified in this clause 30.5 made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by any Chargor to the Programme Manager only if it is addressed in such a manner as the Programme Manager shall specify for this purpose.
- 30.6 **Notification of change:** Promptly upon receipt of notification of an address or email address or change of address or email address pursuant to clause 30 or changing its own address or email address, the Programme Manager shall notify the other parties.
- 30.7 **Effectiveness:** Any communication or document which becomes effective, in accordance with this clause 30, after 5.00 p.m. on a Business Day or on a day which is not a Business Day, shall be deemed only to become effective at 9.00 am on the next Business Day.

31. **GOVERNING LAW**

This Guarantee and Debenture and all non-contractual obligations arising in any way whatsoever out of or in connection with this Guarantee and Debenture shall be governed by, construed and take effect in accordance with English law.

THIS GUARANTEE AND DEBENTURE has been executed by each Chargor as a deed and signed by the Programme Manager and it shall take effect on the date stated at the beginning of this document.

SCHEDULE 1**Terms of Guarantee****1. Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party the punctual performance by each other Guarantor of all that Guarantor's obligations under the Finance Documents (whether primary or secondary obligations);
- (b) undertakes with each Finance Party that whenever another Guarantor does not pay any amount of the Secured Sums 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 an Guarantor 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 Schedule 1 if the amount claimed had been recoverable on the basis of a guarantee.

2. Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Guarantor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

3. Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Guarantor 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 Schedule 1 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

4. Waiver of defences

The obligations of each Guarantor under this Schedule 1 will not be affected by an act, omission, matter or thing which, but for this Schedule 1, would reduce, release or prejudice any of its obligations under this Schedule 1 (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 Guarantor or other person;
- (b) the release of any other Guarantor 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 Guarantor 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 incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Guarantor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

5. Guarantor intent

Without prejudice to the generality of paragraph 4 (*Waiver of defences*) of this Schedule 1, 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: business 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.

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 Schedule 1. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

7. Appropriations

Until all amounts which may be or become payable by the Guarantors 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 Schedule.

8. Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Guarantors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Programme Manager 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 Schedule 1:

- (a) to be indemnified by an Guarantor;
- (b) to claim any contribution from any other guarantor of any Guarantor'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 Guarantor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under paragraph 1 (*Guarantee and indemnity*) of this Schedule 1;
- (e) to exercise any right of set-off against any Guarantor; and/or
- (f) to claim or prove as a creditor of any Guarantor in competition with any Finance Party.

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 Guarantors 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 Programme Manager or as the Programme Manager may direct for application in accordance with the Finance Documents.

9. **Resignation of a Guarantor**

A Guarantor (other than the Borrower) may cease to be a Guarantor if a resignation letter is delivered by it to the Programme Agent and the Programme Agent confirms its acceptance of the resignation letter. Any such resignation will be effective from the date on which the Programme Agent's acceptance is received by the relevant Guarantor in accordance with the terms of this Guarantee and Debenture.

10. **Release of Guarantors' right of contribution**

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.

11. **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.

SCHEDULE 2

Form of Deed of Accession and Charge for a New Chargor

THIS DEED OF ACCESSION AND CHARGE is made on

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BETWEEN:

- (1) *****Insert the name of the New Chargor***** (registered in England and Wales under number [•]) (the "**New Chargor**");
- (2) *****Insert the name of the Borrower[***]** (registered in England and Wales under number [•]) (the "**Borrower**"); and
- (3) *****Insert the name of the Programme Manager***** (the "**Programme Manager**").

WHEREAS:

- (A) This Deed is supplemental to a Guarantee and Debenture (the "**Guarantee and Debenture**") dated *****insert date***** between (1) the *****Insert the names of the original Chargors***** and (2) the Programme Manager as agent and trustee for the Beneficiaries (as defined in the Guarantee and Debenture).

*****Note: Set out details of any previous Deed of Accession and Charge.*****

- (B) The New Chargor has agreed to grant a floating charge in favour of the Programme Manager (acting as security agent and trustee for the Beneficiaries), on the terms contained in the Guarantee and Debenture, over all of its property, undertaking and assets to secure the Secured Sums, and to accede to the Guarantee and Debenture as a Guarantor and a Chargor.

THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Words and phrases defined in the Guarantee and Debenture and principles of interpretation provided for in the Guarantee and Debenture shall, unless the context otherwise requires or unless otherwise re-defined below, have the same meaning and shall apply (as the case may be) in this Deed.
- 1.2 In addition, the term "**New Chargor Existing Security**" means *[details to be inserted if the New Chargor has granted security not already referred to in the main Guarantee and Debenture]*/[Not used].

2. ACCESSION BY THE NEW CHARGOR TO THE GUARANTEE AND DEBENTURE

- 2.1 **Accession:** The New Chargor agrees to be bound by all the terms of the Guarantee and Debenture and to perform all obligations of a Chargor and Guarantor under and in accordance with the Guarantee and Debenture with effect from the date of this Deed as if it had been an original party to the Guarantee and Debenture as a Chargor and Guarantor.
- 2.2 **Covenant to pay:** The New Chargor (as primary obligor and not merely as surety) covenants with the Programme Manager (as trustee for the Beneficiaries) that it will, on the Programme Manager's written demand, pay or discharge the Secured Sums when due at the times and in the manner provided in the relevant Finance Documents.
- 2.3 **Guarantee:** The New Chargor gives the guarantee contained in Schedule 1 (*Terms of Guarantee*) to the Guarantee and Debenture subject to, and with the benefit of, the

provisions set out in Schedule 1 (*Terms of Guarantee*) to the Guarantee and Debenture. The guarantee is given by the New Chargor separately and jointly with every other Chargor.

- 2.4 **Terms of guarantee:** The nature and extent of the New Chargor's liability as Guarantor shall be as stated in the Guarantee and Debenture as if all its guarantee provisions were set out in full in this Deed.
- 2.5 **Borrower's agreement to the accession:** The Borrower (on behalf of itself and the other members of the Group which are parties to the Guarantee and Debenture) hereby agrees to the New Chargor's accession.
- 2.6 **Authorisation of the Borrower:** The New Chargor irrevocably authorises the Borrower to perform all acts and to sign all documents on its behalf under clause 23 (*Authority of the Borrower*) of the Guarantee and Debenture in the same terms as if the New Chargor were an original party to it.

3. CREATION OF FLOATING CHARGE

- 3.1 **Creation of floating charge:** The New Chargor, with full title guarantee, charges to the Programme Manager (as trustee for the Beneficiaries) as security for the payment or discharge of all Secured Sums, by way of floating charge:

- (a) all its Assets including any Assets comprised within a charge which is reconverted under clause 4.4 (*Reconversion*) of the Guarantee and Debenture, and
- (b) without exception, all its Assets insofar as they are for the time being situated in Scotland,

but in each case so that the New Chargor shall not create any Security Interest over any such Asset (whether having priority over, or ranking *pari passu* with or subject to, this floating charge) or take any other step referred to in clause 4 (*Negative pledge and other restrictions*) with respect to any such Asset, and the New Chargor shall not, without the consent of the Programme Manager, sell, transfer, part with or dispose of any such Asset except to the extent permitted under the Facility Agreement.

- 3.2 The parties agree (without limitation to the general nature of the New Chargor's accession to the Guarantee and Debenture contained in clause 2) that the crystallisation provisions contained in clause 4 of the Guarantee and Debenture shall equally apply to the floating charge contained in this Deed as if set out in full in this Deed.

4. NEGATIVE PLEDGE AND OTHER RESTRICTIONS

- 4.1 **Negative Pledge and Other Restrictions:** The New Chargor shall not, without the prior written consent of the Programme Manager, except as specifically permitted under the Facility Agreement:

- (a) create, or agree or attempt to create, or permit to subsist, any Security Interest (except under the Guarantee and Debenture and the New Chargor (if applicable)) or any trust over any of its Assets, or permit any lien (other than a lien arising by operation of law in the ordinary course of the New Chargor's business) to arise or subsist over any of its Assets;
- (b) sell, assign, lease, license or sub-license, or grant any interest in, any of its Assets, or part with possession or ownership of them, or purport or agree to do so; or

- (c) (where applicable) increase the amount secured by the Existing Security or New Chargor Existing Security (whether of principal, interest, premium or otherwise) or alter the terms relating to the repayment of any sums secured by the Existing Security or New Chargor Existing Security.

4.2 **Representation:** Each Chargor hereby represents to the Programme Manager that:

- (a) the details of all Existing Security and New Chargor Existing Security are accurate and complete, no other Security Interest exists over its Assets on the date hereof and it is under no legal commitment to grant any further Security Interest over all or any of its Assets; and
- (b) it has obtained all necessary Authorisations in relation to its entry into this Guarantee and Debenture.

5. **POWER OF ATTORNEY**

5.1 **Appointment of attorney:** The New Chargor shall, by way of security, hereby irrevocably appoints the Programme Manager (whether or not a Receiver or administrator has been appointed) and separately, any nominee and/or any Receiver to be its attorney (with full power to appoint substitutes and to delegate) with power in its name and on its behalf, and as its act and deed or otherwise to:

- (a) do anything which the New Chargor is obliged to do (but has not done within 5 Business Days of being notified by the Programme Manager of such failure and being requested to comply) in accordance with the terms of the Guarantee and Debenture, including to execute and deliver and otherwise perfect any agreement, assurance, deed, instrument or document; and
- (b) enable the Programme Manager or any such nominee and/or Receiver to exercise (or to delegate) all or any of the rights conferred on it by the Guarantee and Debenture or by statute in relation to the Guarantee and Debenture or the Assets charged, or purported to be charged, by it.

5.2 **Ratification:** The New Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause.

5.3 **Sums recoverable:** All sums expended by the Programme Manager, nominee and/or any Receiver under this clause 6 shall be recoverable from the New Chargor under clause 17 (*Costs, expenses and liabilities*) of the Guarantee and Debenture.

6. **NOTICES**

All notices or demands to be given or made pursuant to this Deed shall be given or made in the manner set out in clause 30 (*Service of Demand and Notices*) of the Guarantee and Debenture. The New Chargor's address for service is set out in the schedule hereto (*Notice Details*).

7. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which when taken together shall constitute a single document.

8. **GOVERNING LAW**

This Deed and all non-contractual obligations arising in any way whatsoever out of or in connection with this Deed shall be governed by, construed and take effect in accordance with English law.

THIS DEED OF ACCESSION AND CHARGE has been executed by the New Chargor and the Borrower as a deed and signed by the Programme Manager and it shall take effect on the date stated at the beginning of this document.

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Schedule to Deed of Accession

Notice Details

*****Set out here the notice details for the New Chargor*****

SIGNATURES

THE NEW CHARGOR

Executed and Delivered as a deed)
by **[insert name of New Chargor]**)
(pursuant to a resolution of its Board)
of Directors) acting by:)

Director

Director/Secretary

THE BORROWER

Executed and Delivered as a deed)
by **[insert name of Borrower]**)
(pursuant to a resolution of its Board)
of Directors) acting by:)

Director

Director/Secretary

THE PROGRAMME MANAGER

Signed by **[name of authorised**)
signatory] for and on behalf of)
[name of company])

Authorised Signatory

Part 2

Form of Resolution for Deed of Accession and Charge

At a Board Meeting of

(Company Registered Number: [●]) (the "**Company**"),

held on the [●] (date)

It was resolved:

1. THAT (after full and careful consideration of the terms of the Guarantee and Debenture to [*** insert Programme Manager's name[***]] dated [***]] and the form of Deed of Accession and Charge each produced to the meeting, the nature and scale of the liabilities to be undertaken by the Company and the commercial and financial consequences, direct and indirect, of executing or declining to execute the Deed of Accession and Charge so far as they affect the Company), the accession by the Company to the Guarantee and Debenture by entering into the Deed of Accession and Charge will promote the success of the Company for the benefit of the members as a whole or will achieve its other authorised purposes and is for the purposes of its business.
2. THAT the Deed of Accession and Charge, in which the Company accedes to the Guarantee and Debenture (by virtue of which all parties named in it and all acceding parties (other than those previously released by the Programme Manager) guarantee to the Programme Manager (for the benefit of the Beneficiaries) the liabilities of each Chargor to each Beneficiary and create fixed and floating charges over all their assets and undertaking present and future as security for their liabilities including their guarantee liabilities) be approved.
3. THAT the Company execute the Deed of Accession and Charge by affixing its common seal in the presence of one director and the company secretary who are hereby authorised to affix and attest the seal or, acting by two directors or one director and the company secretary, sign the Deed of Accession and Charge as a deed.

Certified to be a true extract from the minutes of a meeting of the Board held on the above date.

..... Chair of the Meeting

..... Secretary of the Meeting

Execution Page

THE CHARGOR

Executed and Delivered as a deed by
Hartlepool United Football Club Limited
(pursuant to a resolution of its Board of
Directors) acting by a director in the presence
of:

} Sukhraj Singh

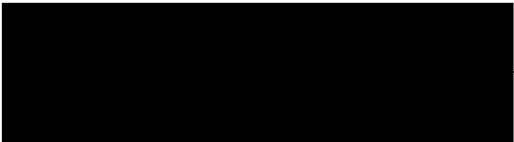
Witness signature

Andy Johnson

Name
(in block capitals)

Andy Johnson

Address



Occupation

Group General Manager

THE PROGRAMME MANAGER

Signed by **Tim Hollingsworth** for
and on behalf of **The English
Sports Council**

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)
)
)

Tim Hollingsworth

Address: 21 Bloomsbury Street,
London WC1B 3HF
Contact: Chief Executive
Email: 