



**Registration of a Charge**

Company name: **ARCADIA GROUP LIMITED**

Company number: **00237511**



X88H8U2W

Received for Electronic Filing: **27/06/2019**

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**Details of Charge**

Date of creation: **12/06/2019**

Charge code: **0023 7511 0028**

Persons entitled: **ARCADIA GROUP PENSION TRUST LIMITED**

Brief description: **N/A**

**Contains fixed charge(s).**

**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: **TRAVERS SMITH LLP**



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

Company number: 237511

Charge code: 0023 7511 0028

The Registrar of Companies for England and Wales hereby certifies that a charge dated 12th June 2019 and created by ARCADIA GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th June 2019 .

Given at Companies House, Cardiff on 28th June 2019

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

DATED 12 June 2019

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**ARCADIA GROUP LIMITED**  
(as Chargor)

- and -

**ARCADIA GROUP PENSION TRUST LIMITED AS SECURITY  
TRUSTEE FOR THE PENSION TRUSTEES**  
(as Chargee)

**LIMITED RECOURSE SHARE CHARGE  
RELATING TO THE ENTIRE ISSUED SHARE CAPITAL OF  
REDCASTLE (TCR) LIMITED**

**THIS CHARGE IS SUBJECT TO THE TERMS OF THE PRIORITY DEED**



Matter Ref: 303480.000010  
Ref: F3A/PRENDERF/6404843

Hogan Lovells International LLP  
Atlantic House, Holborn Viaduct, London EC1A 2FG

## CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION	2
2. COVENANT TO PAY	ERROR! BOOKMARK NOT DEFINED.
3. CHARGING CLAUSE	11
4. DEPOSIT OF DOCUMENTS	12
5. VOTING POWERS AND DIVIDENDS	13
6. WARRANTIES	13
7. NEGATIVE PLEDGE AND OTHER RESTRICTIONS	14
8. POSITIVE COVENANTS	14
9. FURTHER ASSURANCE	14
10. RIGHT OF APPROPRIATION	15
11. CONTINUING SECURITY	15
12. CONSOLIDATION OF MORTGAGES	15
13. STAMP DUTY	16
14. ADDITIONAL OR FUTURE SECURITY	16
15. POWERS OF THE CHARGEES	16
16. APPOINTMENT OF A RECEIVER	16
17. POWERS OF A RECEIVER	17
18. POWER OF ATTORNEY	17
19. OTHER POWERS EXERCISABLE BY THE CHARGEES	18
20. APPLICATION OF MONEY RECEIVED BY THE CHARGEES OR A RECEIVER	18
21. PROTECTION OF THIRD PARTIES	18
22. PROTECTION OF THE CHARGEES AND RECEIVER	19
23. COSTS, EXPENSES AND LIABILITIES	19
25. TRANSFER BY THE CHARGEES	19
26. RELEASE OF SECURITY	19
27. THIRD PARTY RIGHTS	20
28. FORBEARANCE, SEVERABILITY, VARIATIONS AND CONSENTS	21
29. COUNTERPARTS	21
30. NOTICES	21
31. GOVERNING LAW	22
32. ENFORCEMENT	22

THIS CHARGE is made on 12 June 2019

**BETWEEN:**

- (1) **Arcadia Group Limited**, a company incorporated in England and Wales with registered number 00237511 (the "**Chargor**"); and
- (2) **ARCADIA GROUP PENSION TRUST LIMITED** as security trustee for the Pension Trustees on the terms and conditions set out in the Pension Security Trust Deed (the "**Chargee**")

**WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions:** In this Charge:

"**AGL CVA**" means the CVA in respect of the Chargor in the respect of which the nominees submitted a report to the Court under section 2 of the Insolvency Act 1986 on 22 May 2019 (as amended from time to time).

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"**Charged Assets**" means in relation to the Chargor, its property, assets and rights of every description, or any part of them, for the time being subject to Security created by Clause 3.1 (*Mortgages and Charges*) or within an assignment created by Clause 3.2 (*Assignment*).

"**Company**" means Redcastle (TCR) Limited, a limited liability company incorporated in England and Wales with registered number 10878770.

"**Derivative Assets**" includes:

- (a) allotments, rights, money or property arising at any time in relation to any of the Shares by way of conversion, exchange, redemption, bonus, preference, option or otherwise;
- (b) dividends, distributions, interest and other income paid or payable in relation to any of the Shares; and
- (c) stock, shares and securities offered in addition to or substitution for any of the Shares.

"**Document**" includes any transfer, renunciation, proxy, mandate, legal or other charge, mortgage, assignment, deed or other document.

"**Enforcement Event**" means the occurrence of:

- (a) an Insolvency Event in relation to the Chargor;
- (b) an enforcement of any Security over the Charged Assets by any party holding any Security ranking in priority to the Chargee pursuant to the Priority Deed; and
- (c) after the Senior Discharge Date, any event specified as an Enforcement Event in the VLN Security Agreement.

"**Existing Charges**" means each and all of the following:

- (a) the share charge in respect of the entire issued share capital of the Company dated 3 May 2018 and made between the Chargor and HSBC UK Bank PLC; and

- (b) the charge over subordinated debt in the Company dated 3 May 2018 and made between the Chargor and HSBC UK Bank PLC.

**"Facility Agreement"** means the facility agreement between the Chargor as Borrower and HSBC UK Bank PLC as Lender dated 2 May 2018 (and as further amended and/or restated from time to time).

**"Financial Collateral"** in relation to the Chargor, means any of its Charged Assets comprising financial collateral within the meaning of the Financial Collateral Regulations.

**"Financial Collateral Regulations"** means the Financial Collateral Arrangements (No.2) Regulations 2003 as amended.

**"First Ranking Security"** means the Senior Security Documents as defined in the Priority Deed.

**"Group CVAs"** means the company voluntary arrangements in respect of each of the Chargor; Burton/Dorothy Perkins Properties Limited; Outfit Retail Properties Limited; Redcastle Limited; Top Shop/Top Man Limited; Top Shop/Top Man Properties Limited; and Wallis Retail Properties Limited, in the respect of which the nominees submitted a report to the court under section 2 of the Insolvency Act 1986 on 22 May 2019 (as amended from time to time), with each being a **"Group CVA"**.

**"Initial Priority Deed"** means the priority deed dated on or about the date of this Deed and made between HSBC UK Bank PLC as Lender, the Chargee and Arcadia Group Pension Trust Limited as trustee of the Arcadia Group Pension Scheme and AG Senior Executives Pension Trust Limited as trustee of the Arcadia Group Senior Executives Pension Scheme as Subordinated Creditors, the Chargor and Redcastle (TCR) Limited as Debtors.

**"Initial Senior Discharge Date"** has the meaning given to the term "Senior Discharge Date" in the Initial Priority Deed.

**"Insolvency Event"** has the meaning given to that term in the Priority Deed.

**"Legal Reservations"** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors; and
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim; and
- (c) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered to the Chargee in respect of this Charge;

**"Lender"** means HSBC UK Bank plc as Lender under the Facility Agreement.

**"Liability"** means any liability, damage, loss, costs, claim or expense of any kind or nature, whether direct, indirect, special, consequential or otherwise.

**"Limitation Acts"** means the Limitation Act 1980.

**"Maximum Secured Amount"** means an amount equal to £25 million (twenty five million pounds sterling) plus the amount of all costs and expenses incurred by the Chargee or the Pension Trustees in connection with any enforcement under or in relation to the Pension Trustee Security

Agreements, provided that if a liquidator or administrator is appointed in respect of the Chargor within 21 days following either:

- (i) any of the Group CVAs (other than the AGL CVA) failing to be approved by the requisite majority of the relevant CVA Creditors at the relevant Creditors' Meeting (each such term as defined in the relevant Group CVA); or
- (ii) any of the Group CVAs being revoked or terminated as a result of an application being brought under, and in accordance with, section 6(1) of the Insolvency Act 1986, where such revocation or termination was ordered pursuant to judgment by the Court or by agreement between the relevant company and the party bringing the application,

the Maximum Secured Amount shall be a lesser amount equal to, as at the date of such appointment, the difference between:

- (a) the aggregate deficit reduction contributions which would have been payable to the Pension Trustees (or either of them) in the period from the vote of the CVA Creditors in respect of the AGL CVA to (and including) the date a liquidator or administrator is appointed in respect of the Chargor, pursuant to the Schedule of Contributions in place for each Pension Scheme immediately prior to the date of the Pension Agreement had the Pension Agreement not been entered into; and
- (b) the aggregate amount of deficit reduction contributions payable to the Pension Trustees (or either of them) in the period from the vote of the CVA Creditors in respect of the AGL CVA to (and including) the date a liquidator or administrator is appointed in respect of the Chargor, pursuant to the revised Schedule of Contributions in place for each Pension Scheme entered into pursuant to the Pension Agreement and actually received by each of the Pension Trustees,

plus the amount of all costs and expenses incurred by the Chargee or the Pension Trustees in connection with any enforcement under or in relation to the Pension Trustee Security Agreements.

**"Mitigation Release Date"** shall have the meaning given to it in the Pension Agreement.

**"Original Shares"** means the 1 share of £1 in the issued share capital of the Company owned by the Chargor.

**"Party"** means a party to this Charge.

**"Pension Agreement"** means the pensions deed entered into on or about the date of this Charge between, amongst others, the Chargor and certain members of the Chargor's group and each of the Pension Trustees.

**"Pension Protection Fund"** means the Board of the Pension Protection Fund.

**"Pension Schemes"** means the Arcadia Group Pension Scheme and the Arcadia Group Senior Executives Pension Scheme, each being a **"Pension Scheme"**.

**"Pension Security Trust Deed"** means the security trust deed dated on or about the date of this Charge between each of the Pension Trustees and the Chargee.

**"Pension Trustees"** means:

- (a) Arcadia Group Pension Trust Limited as trustee of the Arcadia Group Pension Scheme; and

- (b) AG Senior Executives Pension Trustee Limited as trustee of the Arcadia Group Senior Executives Pension Scheme,

with each being a **"Pension Trustee"**.

**"Priority Deed"** means:

- (a) the Initial Priority Deed; or
- (b) after the Initial Senior Discharge Date, any subsequent or replacement priority deed subordinating the Chargee's Security in respect of the Charged Assets.

**"Receiver"** means a receiver and manager appointed under Clause 16 (*Appointment of a Receiver*) and (where the context requires or permits) includes any substituted receiver and manager.

**"Redcastle (TCR) Charge"** means the legal charge dated on or about the date of this Charge created by the Company in favour of the Chargee.

**"Relevant System"** has the meaning given to that term by the Uncertificated Securities Regulations 2001 and includes the CREST system and also any other system or facility (whether or not established in the United Kingdom or elsewhere) providing means for the deposit of and clearance of transactions in shares, stock and other investments.

**"Schedule of Contributions"** means any Schedule of Contributions (as defined in Section 227 of the Pensions Act 2004) from time to time in place in relation to a Pension Scheme.

**"Scheme Actuary"** for a Pension Scheme means the scheme actuary from time to time appointed in relation to that Pension Scheme in accordance with Section 47 of the Pensions Act 1995.

**"Secured Sums"** means subject to Clauses 2.3 (*Calculation of Pension Debt*) and 2.6 (*Limited Recourse*), all amounts payable by the Chargor pursuant to Clause 2.1 (*Covenant to pay*).

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Senior Discharge Date"** has the meaning given to that term in the Priority Deed or if no Priority Deed is at that time in place, in the Priority Deed most recently in place.

**"Shares"** means the Original Shares and all other shares, stock and securities in the Company owned by the Chargor while any Secured Sums are outstanding.

**"Subordinated Debt"** means any monies, obligations and liabilities (whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety) now or in the future due, owing or incurred by the Company to the Chargor in any currency, together with all interest on any of the same, and all costs, charges and expenses incurred in connection with any of the same.

**"Subordinated Debt Documentation"** all agreements and/or security evidencing or recording the terms of the Subordinated Debt from time to time.

**"VLN Security Agreement"** means the VLN security agreement dated on or about the date of this Charge created by AGL in favour of the Chargee.

- 1.2 **Interpretation:** Unless the context otherwise requires, the interpretative provisions set out in the paragraphs below shall apply in this Charge.



- (a) Unless the contrary intention is expressed, all defined terms in the Priority Deed have the same meaning here.
- (b) References to any Party shall be construed so as to include that Party's respective successors in title, permitted assigns and permitted transferees.
- (c) **"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".
- (d) A **"person"** includes any person, firm, company, corporation, government, state or agency of a state or any association, joint venture, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing.
- (e) **"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.
- (f) **"Writing"** includes facsimile transmission legibly received except in relation to any certificate, notice or other document which is expressly required by this Charge to be signed and **"written"** has a corresponding meaning.
- (g) Subject to Clause 28.4 (*Variations*), references to this Charge or to any other document include references to this Charge or such other document (including the Pension Agreement) as varied in any manner from time to time, even if changes are made to the composition of the parties to this Charge or such other document or to the nature or amount of any Liabilities under such other document.
- (h) References to uncertificated shares are to shares the title to which can be transferred by means of an electronic or other entry in a Relevant System and references to certificated shares are to shares which are not uncertificated shares.
- (i) The singular shall include the plural and vice versa and any gender shall include the other genders.
- (j) Clauses, paragraphs and Schedules shall be construed as references to Clauses and paragraphs of, and Schedules to, this Charge.
- (k) 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.
- (l) Headings in this Charge are inserted for convenience and shall not affect its interpretation.
- (m) **"Blank stock transfer form"** means a stock transfer form executed by two directors or a director and the secretary of the Chargor or by a director of the Chargor in the presence of a witness but with the sections relating to the consideration and the transferee left blank.

### 1.3 **Priority Deed:**

- (a) This Charge is subject to the terms of the Priority Deed.
- (b) In the event of any conflict or inconsistency between any provision of this Charge and any provision of the Priority Deed the provision of the Priority Deed shall prevail.

- (c) Notwithstanding the terms of this Charge, the Parties agree that the Chargor will not be in breach of any obligation or undertaking or have made a misrepresentation, in each case, under this Charge, if such breach or misrepresentation (as applicable) has arisen as a result of the existence of the Security granted under the First Ranking Security and/or the terms of the Priority Deed.
- (d) Any claim by the Chargee against the Chargor for the breach of any obligation or undertaking under this Charge arising prior to the Senior Discharge Date shall not be made until after the Senior Discharge Date.

1.4 **Companies Acts:** Expressions defined in the Companies Act 2006 (and not redefined in this Charge) shall have the same meanings in this Charge, except that the expression "company" shall include a body corporate established outside Great Britain.

## 2. COVENANT TO PAY

2.1 **Covenant to pay:** Subject to Clause 2.6 (*Limited Recourse*), the Chargor (as primary obligor and not merely as surety) hereby covenants with the Chargee that, upon the occurrence of an Enforcement Event and subject to the terms of the Priority Deed, it will be immediately liable to pay to the Chargee an amount equal to the Maximum Secured Amount and such sum shall be immediately due and payable to the Chargee.

2.2 **Maximum aggregate recoveries:** Notwithstanding anything to the contrary in this Charge, the Priority Deed or the Pension Security Trust Deed (other than Clause 2.6 (*Limited recourse*)), the maximum aggregate amount that the Chargee and the Pension Trustees may recover against:

- (a) the Chargor under this Charge; and
- (b) the Company under the Redcastle (TCR) Charge,

(together, the "**Pension Trustee Security Agreements**") shall not exceed the Maximum Secured Amount less any amount applied towards the deficit in the Pension Schemes in accordance with clause 6 (*Application of receipts*) of the Priority Deed following a Direct Disposal Event with a formal release of Permitted Security (as defined in the Priority Deed).

## 2.3 Calculation of Pension Debt:

- (a) The Chargee shall, at a time after an Enforcement Event but prior to the date on which the proceeds of any enforcement under this Charge are to be applied by the Chargee towards payment of the Secured Sums in accordance with Clause 20 (such time selected by the Chargee a "**Nominated Valuation Date**"), subject to paragraph (c) below, request the Scheme Actuary for each Pension Scheme to calculate and certify (with a copy to the Chargor) the following amount with respect to that Scheme (the "**Section 75 Liability**"):
  - (i) if a winding up of a Pension Scheme has not commenced prior to the Nominated Valuation Date, the amount that would become payable by the Chargor to the relevant Pension Trustee under Section 75 of the Pensions Act 1995 if such a debt had unconditionally become due on that Nominated Valuation Date as certified in writing by the Scheme Actuary for that Pension Scheme (for the avoidance of doubt ignoring the value of any debt that has actually become due under Section 75 of the Pensions Act 1995 but has not been paid on or before that date); or
  - (ii) if a winding up of a Pension Scheme has commenced prior to the Nominated Valuation Date, the amount owed by the Chargor to the relevant Pension Trustee under Section 75 of the Pensions Act 1995 as at the calculation date for debt due under Section 75 of the Pensions Act 1995 as nominated by the trustee for the

relevant Pension Scheme following the start of the winding up of that Pension Scheme.

- (b) If the aggregate of the Section 75 Liability for each Pension Scheme as most recently certified under this clause 2.3 together with the amount of all recoveries already made by the Pension Trustees pursuant to the Pension Trustee Security Agreements which were taken into account when calculating such Section 75 Liability (the "**Gross Section 75 Liability**") is lower than the Maximum Secured Amount, notwithstanding any other provision of this Charge other than Clause 2.6 (*Limited recourse*), the Secured Sums shall be deemed to be an amount equal to the aggregate of that Gross Section 75 Liability for each Pension Scheme.
- (c) If the Scheme Actuary for each Pension Scheme certifies in writing (with a copy to the Chargor) that the aggregate deficit with respect to each Scheme, calculated in accordance with Section 75 of the Pension Act 1995, is greater than the Maximum Secured Amount, the Scheme Actuary shall not be required to calculate the Section 75 Liability in accordance with paragraph (a) above and this clause 2.3 shall not apply in respect of the application of the relevant proceeds of enforcement.

2.4 **Application of recoveries:** For the avoidance of doubt, any recoveries under the Pension Trustee Security Agreements received by a Pension Trustee pursuant to the Pension Security Trust Deed shall be treated as discharging the equivalent amount of any debt that is or becomes due and payable by the Chargor to the relevant Pension Trustee pursuant to section 75 of the Pensions Act 1995 to the extent that such recoveries (or the right to receive such recoveries) were not already taken into account in the calculation of such debt. If any such recovery is subsequently voided or reduced by reason of any law relating to insolvency, bankruptcy, liquidation or other similar such law, then any such discharge referable to such recovery shall be correspondingly deemed not to have occurred.

2.5 **Mitigation Release Date:** If the Mitigation Release Date has occurred in relation to one of the Pension Schemes (the "**Affected Pension Scheme**"), but not the other Pension Scheme and the Chargee is notified of that Mitigation Release Date, then with effect from the Mitigation Release Date, this Charge shall cease to have any effect with respect to the Affected Pension Scheme save in respect of any accrued rights to proceeds of the Affected Pension Scheme and any reference in this Charge to:

- (a) a "Pension Scheme" or the "Pension Schemes", shall exclude the Affected Pension Scheme;
- (b) a "Pension Trustee" or the "Pension Trustees", shall exclude the trustee of the Affected Pension Scheme;
- (c) the "Schedule of Contributions", shall exclude the Schedule of Contributions relating to the Affected Pension Scheme;
- (d) a "Deficit Reduction Contribution", shall not include a Deficit Reduction Contribution with respect to the Affected Pension Scheme;
- (e) "Section 75 Liability", shall exclude the Section 75 Liability with respect to the Affected Pension Scheme; and
- (f) "Gross Section 75 Liability" in clause 2.3(b) will continue to include all recoveries by both Pension Trustees including the Affected Pension Scheme,

save as may be required to give effect to such accrued rights to proceeds.

## 2.6 Limited Recourse:

### (a) Charged Assets

It is agreed that:

- (i) the aggregate of all of the Chargor's liabilities under this Charge (including for the avoidance of doubt under Clause 2.1) shall at all times and for all purposes be limited to the proceeds recovered from the Charged Assets;
- (ii) in no circumstances shall any liability attach to or be enforced or be enforceable under this Charge against the assets of the Chargor other than the Charged Assets; and
- (iii) the Chargee has no recourse under this Charge to the assets, undertakings, obligations and property held by the Chargor other than the Charged Assets,

and consequently (and for the avoidance of doubt) the Chargor's payment and repayment obligations under this Charge are limited accordingly.

### (b) CGT liabilities

The total amount recoverable in respect of the Chargor's liabilities under this Charge (including for the avoidance of doubt under Clause 2.1) shall at all times and for all purposes be limited to the proceeds recovered from the Charged Assets PROVIDED THAT if, as a result of (a) any enforcement under this Charge or the First Ranking Security or (b) any Direct Disposal Event (as defined in the Priority Deed), any capital gains tax or corporation tax liability ("**CGT Liability**") is payable by the Chargor by reason of the relevant disposal(s), the total amount recoverable in respect of the Chargor's liabilities under this Charge (including for the avoidance of doubt under Clause 2.1) shall at all times and for all purposes be limited to the proceeds recovered from the Charged Assets less an amount of those proceeds equal to that CGT liability (but only to the extent that the proceeds recovered from the Charged Assets are not received net of that CGT Liability).

2.7 **Proviso:** The covenants contained in this Clause and the security created by this Charge 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.

## 2.8 Third Party Charge Protections:

- (a) **Reinstatement:** If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or the Company or any security for those obligations or otherwise) is made by the Chargee or any Pension Trustee 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 the Chargor under this Charge will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- (b) **Waiver of defences:** The obligations of the Chargor under this Charge will not be affected by an act, omission, matter or thing which, but for this Clause 2.8, would reduce, release or prejudice any of its obligations under this Charge (without limitation and whether or not known to it or the Chargee) including:
  - (i) any time, waiver or consent granted to, or composition with, the Chargor, the Company or other person;

- (ii) the release of the Chargor, the Company or any other person under the terms of any composition or arrangement with any creditor of any member of the group;
  - (iii) 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, the Chargor, the Company 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;
  - (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor, the Company or any other person;
  - (v) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of the Pension Agreement, this Charge or of any other document or Security including without limitation, any change in the purpose of; any extension of or increase in any Liability under this Charge or any other document or Security;
  - (vi) any unenforceability, illegality or invalidity of any obligation of any person under the Pension Agreement, this Charge or any other document or Security; or
  - (vii) any insolvency or similar proceedings.
- (c) **Guarantor Intent:** Without prejudice to the generality of Clause 2.8(b) (*Waiver of Defences*), the Chargor expressly confirms that it intends that the Secured Sums for which it grants security under this Charge shall extend from time to time to any (however fundamental) variation, increase, extension or addition of any Liability under the Pension Agreement or this Charge.
- (d) **Immediate recourse:** The Chargor waives any right it may have of first requiring the Chargee or any Pension Trustee (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 enforcing this Charge. This waiver applies irrespective of any law to the contrary.
- (e) **Appropriations:** Until all Secured Sums have been irrevocably paid in full, the Chargee or any Pension Trustee (or any trustee or agent on its behalf) may refrain from applying or enforcing any other moneys, security or rights held or received by the Chargee or that Pension Trustee (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 the Chargor shall not be entitled to the benefit of the same.
- (f) **Deferral of the Chargor's rights:** Until all Secured Sums have been irrevocably paid in full and unless the Chargee otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations or of a liability arising under this Charge:
- (i) to be indemnified by the Company;
  - (ii) to claim any contribution from any other guarantor of the Chargor or the Company's obligations under this Charge or the Pension Agreement;
  - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Chargee or any Pension Trustee under this Charge, any Priority Deed or the Pension Agreement or of any other guarantee or security

taken pursuant to, or in connection with, the Priority Deed, the Pension Agreement or this Charge by the Chargee or any Pension Trustee;

- (iv) to bring legal or other proceedings for an order requiring the Company to make any payment, or perform any obligation, in respect of which any Security, guarantee, undertaking or indemnity has been given pursuant to, or in connection with, this Charge, the Priority Deed or the Pension Agreement;
- (v) to exercise any right of set-off against the Company; and/or
- (vi) to claim or prove as a creditor of the Company in competition with the Chargee or any Pension Trustee.

If the Chargor 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 the Secured Sums to be repaid in full on trust for the Chargee and shall promptly pay or transfer the same to the Chargee or as the Chargee may direct for application in accordance with this Charge.

## 2.9 Demands:

- (a) The making of one demand shall not preclude the Chargee from making any further demands.
- (b) Any third party dealing with the Chargee or any Receiver shall not be concerned to see or enquire as to the validity of any demand under this Charge.

## 3. CHARGING CLAUSE

3.1 **Mortgages and Charges:** Subject to any Security created by way of mortgage or charge under the First Ranking Security and to Clause 3.3 (*First Ranking Security*), the Chargor, with full title guarantee, charges to the Chargee as continuing security for the payment and discharge of all Secured Sums:

- (a) by way of mortgage, the Original Shares, including all proceeds of sale derived from them;
- (b) by way of mortgage, all Shares in which the Chargor may in the future acquire any interest (legal or equitable), including all proceeds of sale derived from them;
- (c) by way of fixed charge, all Derivative Assets of a capital nature now or in the future accruing to the Chargor (whether at law or in equity) or offered to it at any time in respect of the Shares;
- (d) by way of fixed charge, all Derivative Assets of an income nature now or in the future accruing to the Chargor (whether at law or in equity) or offered to it at any time in respect of the Shares;
- (e) by way of a fixed charge (to the extent the same are not capable of assignment under Clause 3.2 (*Assignment*)) all its rights, title, benefit and interest (both present and future) in, to and under:
  - (i) the Subordinated Debt;
  - (ii) the Subordinated Debt Documentation; and
  - (iii) all present and future claims, causes of action, payments and proceeds in respect thereof.



To the extent that any such right, title, benefit and interest described in paragraph (e) of this Clause 3.1 is not chargeable or capable of being charged, such charge purported to be effected by Clause 3.1 (e) shall operate, as continuing security for the payment, discharge, performance and satisfaction of the Secured Sums, as a charge of any and all proceeds of such right, title, benefit or interest paid or payable thereunder save for any proceeds or other amounts properly payable to any third party and to which the Chargor has no right, title, benefit or interest.

3.2 **Assignment:** Subject to any Security created by way of assignment under the First Ranking Security and to Clause 3.3 (*First Ranking Security*), the Chargor assigns and agrees to assign (subject to a proviso for re-assignment on redemption) to the Chargee absolutely, as continuing security for the payment, performance and discharge of the Secured Sums all of its right, title, benefit and interest (both present and future) in, to and under:

- (a) the Subordinated Debt;
- (b) the Subordinated Debt Documentation; and
- (c) all present and future claims, causes of action, payments and proceeds in respect thereof.

To the extent that any such right, title, benefit and interest described in Clause 3.2 is not assignable or capable of assignment, such assignment purported to be effected by Clause 3.2 shall operate, as continuing security for the payment, discharge, performance and satisfaction of the Secured Sums, as an assignment of any and all proceeds of such right, title, benefit or interest paid or payable thereunder save for any proceeds or other amounts properly payable to any third party and to which the Chargor has no right, title, benefit or interest.

3.3 **First Ranking Security:** To the extent that the Security created by this Charge would otherwise extend to any asset that is not expressed to be the subject of a legal assignment, fixed charge or legal mortgage under the First Ranking Security until the Senior Discharge Date that asset shall be excluded from the Security created by this Charge.

3.4 **Financial Collateral Arrangement:** The Parties acknowledge and intend that the security provided over the Chargor's Financial Collateral will constitute a "security financial collateral arrangement" for the purposes of the Financial Collateral Regulations.

### 3.5 **Notice of Security**

As soon as reasonably practicable (and in any event within 2 Business Days) after the Senior Discharge Date, the Chargor shall give notice of the grant of the Security to the Company in the form set out in the Schedule 1 (*Form of notice of assignment*), and it shall use its reasonable endeavours to procure that the recipient of that notice acknowledges it in writing.

## 4. **DEPOSIT OF DOCUMENTS**

Following the Senior Discharge Date, the Chargor shall deposit with the Chargee:

- (a) all original share certificates in respect of the Original Shares together with appropriate blank stock transfer forms. The Chargee may at any time after the occurrence of an Enforcement Event, without notice to the Chargor, complete such transfers and present them for registration; and
- (b) promptly as and when received from time to time, original share certificates together with appropriate blank stock transfer forms relating to any other Shares and any other documents of title relating to any Derivative Assets.

## 5. VOTING POWERS AND DIVIDENDS

### 5.1 **Before enforcement:** Unless and until the occurrence of an Enforcement Event:

- (a) the Chargor shall, for so long as it remains the beneficial owner of any Charged Assets, determine how all voting powers and rights attaching to such Charged Assets are to be exercised, provided that no voting powers and rights may be exercised so as to jeopardise the value of the Charged Assets, this Charge or the interests of the Chargee or any Pension Trustee under this Charge; and
- (b) all cash dividends received by the Chargee or its nominee shall be paid to the Chargor.

### 5.2 **After enforcement:** Following the Senior Discharge Date, at any time after the occurrence of an Enforcement Event:

- (a) the Chargee may, for the purpose of protecting its interests in relation to the Secured Sums, exercise (but is not obliged to exercise) in the name of the Chargor or otherwise and without any further consent or authority on the part of the Chargor, all voting powers and rights attaching to the Charged Assets as it sees fit, including any rights to nominate or remove a director, as if the Chargee were the sole beneficial owner of the Charged Assets;
- (b) all Derivative Assets shall, if received by the Chargor or any nominee of the Chargor, be held on trust for and forthwith paid or transferred to the Chargee; and
- (c) the Chargor shall (and shall procure that its nominees shall) accept short notice for and attend any meeting of the Company, appoint proxies and exercise voting powers and rights exercisable by the holders of the Charged Assets as the Chargee may direct from time to time, as it sees fit for the purpose of protecting its interests in relation to the Secured Sums.

For the avoidance of doubt, unless and until the Chargee takes any step to exercise any voting powers or rights attaching to the Charged Assets after becoming entitled (but not obliged) to do so under this Clause, all such powers and rights remain with the Chargor.

## 6. WARRANTIES

The Chargor represents and warrants to the Chargee and each Pension Trustee on the date of this Charge and on each date on which the Chargor acquires any additional Shares that:

- (a) **Called up and paid up:** the Original Shares are, and any Shares deposited after the date of this Charge will be, fully called up and fully paid-up and the Original Shares represent the entire issued share capital of the Company at the date of this Charge;
- (b) **Legal and beneficial owner:** (subject to this Charge and the Existing Charges) the Original Shares are legally and beneficially owned by the Chargor, and any Shares acquired by the Chargor after the date of this Charge shall be beneficially owned by it, in each case free from any option, equity, trust or Security;
- (c) **Proper execution:** this Charge has been properly executed by it and it has taken all necessary action to authorise the execution and delivery of this Charge, which is valid and binding upon it and, subject to the Legal Reservations, enforceable in accordance with its terms; and
- (d) **No restrictions:** there are no provisions in the Company's Articles of Association or any other agreement, which restrict the transfer of any Shares or its ability to enter into this Charge, including any rights of first refusal, pre-emption rights, requirements for consent or



any rights restricting or affecting the voting rights on or the disposal of any of the Shares, or (if such provisions exist) they have been varied or waived to enable this Charge to be enforced free from any such restriction or right.

## 7. **NEGATIVE PLEDGE AND OTHER RESTRICTIONS**

Save as permitted under the Priority Deed, the Pension Agreement, the Facility Agreement (or after the Initial Senior Discharge Date, the terms of any replacement facility agreement), the Chargor shall not, without the prior written consent of the Chargee:

- (a) create, or agree or attempt to create, or permit to subsist, any Security or any trust over any of the Charged Assets;
- (b) sell or assign, or grant any interest in, any of the Charged Assets, or part with possession or ownership of them, or purport or agree to do so;
- (c) cause or permit any rights attaching to the Charged Assets to be varied or abrogated (and in particular, not permit the Company's constitutional documents to be amended so as to restrict the transfer of any Shares, including any rights of first refusal, pre-emption rights, requirements for consent or any rights restricting or affecting the voting rights on or the disposal of any of the Shares);
- (d) cause or permit any of the Charged Assets to be consolidated or sub-divided (unless, no later than 5 Business Days after such consolidation or conversion, revised original share certificates and original blank executed stock transfer forms have been delivered to the Chargee) or converted or the other capital of the Company to be re-organised, exchanged or repaid; or
- (e) give an instruction for any of its certificated Shares to be converted into uncertificated form.

## 8. **POSITIVE COVENANTS**

The Chargor covenants that it shall:

- (a) **Calls:** promptly pay direct to the Company any calls on any Charged Assets which (despite Clause 6(a) (*Warranties*)) are not fully paid and if it defaults the Chargee may (but is not obliged to) do so on behalf of the Chargor (and any amount so expended shall be deemed an expense);
- (b) **Notices:** forward to the Chargee any notices, reports, accounts, circulars and other documents relating to the Charged Assets as soon as they are received; and
- (c) **Dematerialisation:** after the occurrence of the Senior Discharge Date, execute and deliver to the Chargee or as it directs such documents, transfers and powers of attorney, give such instructions and perform such other acts as the Chargee may reasonably require at any time to convert any of the Chargor's certificated Shares into uncertificated form (or vice versa).

## 9. **FURTHER ASSURANCE**

The Chargor shall at any time (and from time to time) if required by the Chargee, promptly sign, seal, deliver and complete all documents and do all acts and things which the Chargee is entitled by the terms of this Charge to require for:

- (a) perfecting or improving its title to and security over any Charged Assets; or

- (b) vesting or enabling the Chargee to vest any Charged Assets in itself or its nominee or in any purchaser or to facilitate the sale or other disposal of any of the Charged Assets; or
- (c) the exercise of any of the rights or powers attaching to any Charged Assets conferred on the Chargee by this Charge,

such documents to be prepared by or on behalf of the Chargee (at the cost of the Chargor) and to be in such form as the Chargee may require (acting reasonably).

## 10. RIGHT OF APPROPRIATION

**10.1 Right of Appropriation:** The Chargee may, after the security constituted by this Charge becomes enforceable in accordance with Clause 15.1 (*Appointment*), by notice in writing to the Chargor appropriate with immediate effect all or any Charged Assets comprising financial collateral which is subject to a security financial collateral arrangement (within the meaning of the Financial Collateral Regulations) in or towards the discharge of the Secured Sums, whether such Charged Assets are held by the Chargee or otherwise.

**10.2 Value:** The value of any financial collateral appropriated under clause 10.1 shall be:

- (a) in the case of cash, its face value at the time of appropriation; and
- (b) in the case of financial instruments or other financial collateral, their market value at the time of appropriation as determined (after appropriation) by the Chargee by reference to a public index or other applicable generally recognised price source or such other process as the Chargee may select, including a valuation carried out by an independent firm of accountants or valuers appointed by the Chargee,

as converted, where necessary, into sterling at a market rate of exchange prevailing at the time of appropriation selected by the Chargee.

**10.3 Surplus or shortfall:** The Chargee will account to the Chargor for any amount by which the value of the appropriated Charged Assets exceeds the Secured Sums and the Chargor shall remain liable to the Chargee for any amount by which the value of the appropriated Charged Assets is less than the Secured Sums.

**10.4 Confirmation:** The Chargor agrees that, subject to the Priority Deed and any prior ranking Security, (a) all Charged Assets referred to in Clause 10.1 have been delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the Chargee or a person acting on its behalf; and (b) the method of valuing such Charged Assets under Clause 10.2 is commercially reasonable.

## 11. CONTINUING SECURITY

This Charge shall be a continuing security for the Chargee and each Pension Trustee, 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 the Chargee or any Pension Trustee against the Chargor or any security, guarantee, indemnity and/or negotiable instrument now or in the future held by the Chargee or any Pension Trustee.

## 12. CONSOLIDATION OF MORTGAGES

Section 93 of the Law of Property Act 1925 (restriction on consolidation of mortgages) shall not apply to this Charge.

13. **STAMP DUTY**

The Chargor shall pay all present and future stamp, registration and similar taxes or charges which may be payable or determined to be payable in any jurisdiction in connection with the execution, delivery, performance or enforcement of this Charge or any judgment given in connection with this Charge and shall indemnify the Chargee, each Pension Trustee and any Receiver against any and all liabilities including penalties with respect to or resulting from its delay or omission to pay any such stamp, registration and similar taxes or charges.

14. **ADDITIONAL OR FUTURE SECURITY**

This Charge is in addition to and shall not affect (or be affected by) any guarantees, indemnities or Security whatsoever which the Chargee may hold now or in the future for any part of the Secured Sums and may be enforced without first having recourse to any such guarantee, indemnity or Security.

15. **POWERS OF THE CHARGE**

15.1 This security shall be immediately enforceable at any time after:

- (a) consent has been provided in writing:
  - (i) prior to the Initial Senior Discharge Date, by the Lender in accordance with the terms of the Initial Priority Deed; or
  - (ii) following the Initial Senior Discharge Date, after consent has been provided in writing under any subsequent or replacement priority deed subordinating the Chargee's Security in respect of the Charged Assets; or
- (b) the later of the Senior Discharge Date and the occurrence of an Enforcement Event.

15.2 The provisions of the Law of Property Act 1925 relating to the power of sale conferred by that Act are:

- (a) varied so that Section 103 shall not apply to this Charge; and
- (b) extended to authorise the Chargee at any time after this Charge becomes enforceable in accordance with Clause 15.1 (*Appointment*) to sell or otherwise dispose of (or instruct any nominee to do so) the Charged Assets or any part of them or (as it may elect and without prejudice to any later exercise of this power) the whole or part of the equitable interest divested of the legal title for such consideration (which may comprise or include shares or debentures), upon such terms and generally in such manner as the Chargee thinks fit.

16. **APPOINTMENT OF A RECEIVER**

16.1 **Appointment:**

Once this Charge has become enforceable in accordance with Clause 15.1 (*Appointment*) and, notwithstanding the terms of any other agreement between the Chargor, the Chargee or any Pension Trustee, the Chargee may (unless precluded by law) appoint in writing any person or persons to be a receiver and manager or receivers and managers of all or any part of the Charged Assets as the Chargee may choose in its entire discretion.

16.2 **Power to act separately:** Where more than one Receiver is appointed, the appointees shall have power to act separately unless the Chargee shall specify to the contrary.

- 16.3 **Receiver's remuneration:** The Chargee may from time to time determine the remuneration of a Receiver.
- 16.4 **Removal of Receiver:** The Chargee may (subject to section 45 of the Insolvency Act 1986) remove a Receiver from all or any of the Charged Assets of which he is the Receiver.
- 16.5 **Further appointments of a Receiver:** Such an appointment of a Receiver shall not preclude:
- (a) the Chargee from making any subsequent appointment of a Receiver over all or any Charged 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.
- 16.6 **Receiver's agency:** The Receiver shall be the agent of the Chargor (which shall be solely liable for his acts, defaults and remuneration) unless and until the Chargor goes into liquidation, after which time he shall act as principal and shall not become the agent of the Chargee or any Pension Trustee.
17. **POWERS OF A RECEIVER**

After this Charge has become enforceable in accordance with Clause 15.1 (*Appointment*), the Receiver may exercise all the powers, rights and discretions set out in Schedules 1 and 2 to the Insolvency Act 1986 to the extent applicable to the Charged Assets and in particular, by way of addition to and without limiting such powers, the Receiver may, with or without the concurrence of others:

- (a) exercise all voting and other rights attaching to the Charged Assets;
- (b) make any arrangement or compromise with the Chargee or any Pension Trustee or others as he shall think fit;
- (c) appoint managers, officers and agents for the above purposes at such remuneration as the Receiver may determine;
- (d) 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 Chargor and the money so paid shall be deemed an expense properly incurred by the Receiver;
- (e) pay the proper administrative charges of the Chargee or any Pension Trustee 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 Chargor; and
- (f) 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 Charged Assets.

18. **POWER OF ATTORNEY**

- 18.1 **Appointment of attorney:** The Chargor, by way of security and to more fully secure the performance of its obligations under this Charge, irrevocably appoints the Chargee (whether or not a Receiver has been appointed) and any Receiver separately 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 Chargor is obliged to do (but has not done) in accordance with this Charge, including to execute and deliver and otherwise perfect any agreement, assurance, deed, instrument or document; and
- (b) enable the Chargee or any Receiver to exercise (or to delegate) all or any of the rights conferred on it by this Charge or by statute in relation to this Charge or the Charged Assets.

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

18.3 **Sums recoverable:** All sums expended by the Chargee or any Receiver acting in accordance with this Clause 18 shall be recoverable from the Chargor under Clause 23 (*Costs, expenses and liabilities*).

## 19. OTHER POWERS EXERCISABLE BY THE CHARGE

19.1 **Receiver's powers:** All powers of the Receiver conferred by this Charge may be exercised by the Chargee after the Senior Discharge Date after this Charge has become enforceable in accordance with Clause 15.1 (*Appointment*). In that event, Clause 17(d) (*Powers of a Receiver*) shall be read and construed as if the words "be charged on the Charged Assets" were substituted for the words "be deemed an expense properly incurred by the Receiver".

19.2 **Chargee's powers:** The Chargee shall have no liability or responsibility to the Chargor arising out of the exercise or non-exercise of the powers conferred on it by this Clause 19, except for gross negligence or wilful default.

## 20. APPLICATION OF MONEY RECEIVED BY THE CHARGE OR A RECEIVER

20.1 **Order of priority:** Any money received or realised under the powers conferred by this Charge shall be paid or applied:

- (a) if on or prior to the Senior Discharge Date, in accordance with the terms of the Priority Deed; or
- (b) if after the Senior Discharge Date, in the following order of priority, subject to the discharge of any prior ranking claims and Clause 2.2 (*Maximum aggregate recoveries*), Clause 2.3 (*Calculation of Pension Debt*) and Clause 2.6 (*Limited Recourse*):
  - (i) first, in or towards satisfaction of the Secured Sums in the manner prescribed in the Pension Security Trust Deed; and
  - (ii) second, as to the surplus (if any), to the Chargor or other persons entitled to it.

20.2 **Suspense account:** The Chargee may, at any time after demand and until the irrevocable and unconditional payment to the Chargee of all Secured Sums, place and keep to the credit of a suspense account any money received or realised by the Chargee by virtue of this Charge. The Chargee shall have no intermediate obligation to apply such money in or towards the discharge of any Secured Sum.

## 21. PROTECTION OF THIRD PARTIES

21.1 **No duty to enquire:** No purchaser from, or other person dealing with, the Chargee or any Receiver shall be concerned to enquire whether any of the powers which the Chargee has exercised or purported to exercise has arisen or become exercisable, or whether this Charge has become enforceable, or whether a Receiver has been validly appointed, or whether any event or

cause has happened to authorise the Chargee or a Receiver 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.

- 21.2 **Receipt:** The receipt of the Chargee or Receiver 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 Chargee or Receiver.

## 22. PROTECTION OF THE CHARGE AND RECEIVER

Neither the Chargee nor any Receiver shall be liable for any Liability which arises out of the exercise of, or purported exercise of, or the failure to exercise, any of their respective powers under or by virtue of this Charge, except if and to the extent that such Liability results from its own gross negligence or wilful default. Neither the Chargee nor any Receiver shall be liable to account as mortgagee in possession for any of the Charged Assets.

## 23. COSTS, EXPENSES AND LIABILITIES

- 23.1 **Enforcement costs:** After the Senior Discharge Date, the Chargor will, within three Business Days of the Chargee's written demand, pay to the Chargee for itself and each Pension Trustee 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 Chargee or any Pension Trustee in connection with the exercise, enforcement and/or preservation of any of its rights under this Charge (or any documents contemplated by this Charge) or any proceedings instituted by or against the Chargee, in any jurisdiction.

- 23.2 **Indemnity for Liabilities:** After the Senior Discharge Date, the Chargor shall also, within three Business Days of the Chargee's written demand, reimburse or pay to the Chargee, its employees or agents, on demand (on the basis of a full indemnity) the amount of all Liabilities incurred by the Chargee, its employees or agents (otherwise than by reason of the gross negligence or wilful misconduct of the Chargee, its employees or agents), in connection with:

- (a) any default or delay by the Chargor in the performance of any of its obligations under this Charge;
- (b) the exercise, or the attempted or purported exercise, by or on behalf of the Chargee of any of its powers or any other action taken by or on behalf of the Chargee with a view to or in connection with the recovery of the Secured Sums, the enforcement of the Security created by this Charge or for any other purpose contemplated in this Charge; and
- (c) the carrying out or consideration of any other act or matter which the Chargee may consider to be conducive, after the occurrence of an Enforcement Event, to the preservation, improvement or benefit of any Charged Asset.

## 24. TRANSFER BY THE CHARGE AND ANY PENSION TRUSTEE

Neither the Chargee nor any Pension Trustee may assign transfer or otherwise part with its rights or obligations under this Charge prior to the Senior Discharge Date without the prior written consent of the Lender (or such replacement lender after the Initial Discharge Date). For the avoidance of doubt, no such consent will be required for a statutory transfer of rights and obligations to the Pension Protection Fund.

## 25. RELEASE OF SECURITY

- 25.1 **Redemption:** Subject to clause 25.2 (*Avoidance of Payments*) and the terms of the Priority Deed,

- (a) if all Secured Sums have been unconditionally and irrevocably paid in full; or
- (b) if required pursuant to the terms of the Priority Deed,

the Chargee must (at the request and cost of the Chargor) execute and do all such reasonable acts as may be necessary to release the Charged Assets from the security constituted by this Charge. Such release shall not prejudice the rights of the Chargee under clause 23 (*Costs, Expenses and Liabilities*).

- 25.2 **Avoidance of Payments:** If the Chargee 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 the Chargor under this Charge and the Security constituted by this Charge shall continue and such amount shall not be considered to have been irrevocably paid (and any corresponding discharge of the liability owed the Chargor to the relevant Pension Trustee pursuant to section 75 of the Pensions Act 1995 shall not be considered to have been made).

## 26. SECURITY TRUSTEE

- 26.1 **The Chargee as trustee:** The Chargee declares itself to be a trustee of the Security created in its favour pursuant to this Charge for the Pension Trustees. The retirement of the person for the time being acting as the Chargee and the appointment of a successor shall be effected in the manner provided for in the Pension Security Trust Deed.

- 26.2 **Trustee Act 2000:** The Parties agree that the Chargee shall not be subject to the duty of care imposed on trustees by the Trustee Act 2000.

- 26.3 **No partnership:** Nothing in this Charge shall constitute or be deemed to constitute a partnership between any of the Pension Trustees and the Chargee.

## 27. THIRD PARTY RIGHTS

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

- (a) the provisions of Clause 16 (*Appointment of a Receiver*) to Clause 22 (*Protection of the Chargee and Receiver*) inclusive shall be directly enforceable by any Receiver;
- (b) the provisions of Clause 21 (*Protection of third parties*) shall be directly enforceable by any purchaser; and
- (c) the provisions of Clause 24 (*Transfer by the Chargee or any Pension Trustee*) shall be directly enforceable by any Lender.

- 27.2 **Exclusion of Contracts (Rights of Third Parties) Act 1999:** Save as otherwise expressly provided in Clause 27.1 (*Directly enforceable rights*), no person other than a Party shall have any right by virtue of either the Contracts (Rights of Third Parties) Act 1999 or any other provision of English law under which rights might accrue to persons other than a party, to enforce any term (express or implied) of this Charge.

- 27.3 **Rights of the Parties to vary:** The Parties may by agreement vary any term of this Charge (including this Clause 27) with the consent of the Lender (or such replacement lender after the Initial Discharge Date) (whose consent shall not be required if the variation is to occur after the Senior Discharge Date).



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

- 28.1 **Delay etc:** All rights, powers and privileges under this Charge shall continue in full force and effect, regardless of the Chargee or any Pension Trustee exercising, delaying in exercising or omitting to exercise any of them.
- 28.2 **Severability:** No provision of this Charge 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 Charge 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 Charge.
- 28.4 **Variations:** No variation of this Charge shall be valid and constitute part of this Charge, unless such variation shall have been made in writing and signed by the Chargee (on behalf of itself and the Pension Trustees) and the Chargor.
- 28.5 **Consents:** Save as otherwise expressly specified in this Charge, any consent of the Chargee may be given absolutely or on any terms and subject to any conditions as the Chargee may determine in its entire discretion.
- 28.6 **Liability:** The liability of the Chargee and each Pension Trustee is limited to the value of those assets of its relevant Pension Scheme available to it to meet its liabilities.

29. **COUNTERPARTS**

This Charge may be executed in any number of counterparts, and this has the same effect as if the signatures were on a single copy of this Charge.

30. **NOTICES**

- 30.1 **Communications in writing:** Any communication to be made under or in connection with this Charge shall be made in writing and, unless otherwise stated, may be made by fax or letter.
- 30.2 **Addresses:** The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Charge is that identified with its name at the end of this Charge, or any substitute address, fax number or department or officer as the Chargor may notify to the Chargee (or the Chargee may notify to the Chargor if a change is made by the Chargee) by not less than five Business Days' notice.
- 30.3 **Delivery:**
- (a) Any communication or document made or delivered by one person to another under or in connection with this Charge will only be effective:
    - (i) if by way of fax, when received in legible form; or
    - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;and, if a particular department or officer is specified as part of its address details provided under Clause 30.2 (*Addresses*), if addressed to that department or officer.
  - (b) Any communication or document to be made or delivered to the Chargee will be effective only when actually received by the Chargee and then only if it is expressly marked for the



attention of the department or officer identified with the Chargee's signature below (or any substitute department or officer as the Chargee shall specify for this purpose).

30.4 **Electronic Mail.** Notices under this Charge may not be served by electronic mail or other electronic means of communication, other than facsimile.

31. **GOVERNING LAW**

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

32. **ENFORCEMENT**

32.1 **Jurisdiction of English courts**

- (a) The courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise in any way whatsoever out of or in connection with this Charge (including a dispute regarding the existence, validity or termination of this Charge or any claim for set-off) or the legal relationships established by this Charge (a "**Dispute**"), only where such Dispute is the subject of proceedings commenced by the Company and/or the Chargor.
- (b) Where a Dispute is the subject of proceedings commenced by one or more of the Chargee and/or any Pension Trustee, the Chargee or any Pension Trustee is entitled to bring such proceedings in any court or courts of competent jurisdiction (including but not limited to the courts of England). If the Company and/or Chargor raises a counter-claim in the context of proceedings commenced by the Chargee and/or any Pension Trustee, that the Company and/or Chargor shall bring such counter-claim before the court seized of the Chargee or any Pension Trustee's claim and no other court.
- (c) The commencement of legal proceedings in one or more jurisdictions shall not, to the extent allowed by law, preclude the Chargee and/or any Pension Trustee from commencing legal actions or proceedings in any other jurisdiction, whether concurrently or not.
- (d) To the extent allowed by law, the Company and/or Chargor irrevocably waives any objection it may now or hereafter have on any grounds whatsoever to the laying of venue of any legal proceeding, and any claim it may now or hereafter have that any such legal proceeding has been brought in an inappropriate or inconvenient forum.

32.2 **Agreement:** The Chargor expressly agrees and consents to the provisions of this Clause 32.

**THIS CHARGE** has been executed by the Chargor as a deed and signed by the Chargee and it shall take effect on the date stated at the beginning of this document.

## SCHEDULE 1

### FORM OF NOTICE OF ASSIGNMENT

To: Redcastle (TCR) Limited

Date: \_\_\_\_\_ 2019

Dear Sirs

We (the "**Company**") give you notice that we have assigned and charged to [Pension Security Trustee] in its capacity as ("**Chargee**") pursuant to a charge entered into by us in favour of the Chargee dated \_\_\_\_\_ 2019 (the "**Charge**") all our right and remedies in connection with the subordinated loan made on [date] between (1) the Company and (2) you, (the "**Agreement**") including all moneys which may be payable in respect of the Agreement.

With effect from your receipt of this notice:-

1. following receipt of the Lender's written notification:
  - 1.1.1 all payments by you to us under or arising from the Agreement should be made to the Lender or to its order as it may specify in writing from time to time;
  - 1.1.2 all remedies provided for in the Agreement or available at law or in equity are exercisable by the Lender;
  - 1.1.3 all rights to compel performance of the Agreement are exercisable by the Lender although the Company shall remain liable to perform all the obligations assumed by it under the Agreement; and
  - 1.1.4 all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Agreement belong to the Lender and no changes may be made to the terms of the Agreement nor may the Agreement be terminated unless in accordance with the terms of the Charge or otherwise without the Lender's consent; and
2. you are authorised and instructed, without requiring further approval from us, to provide the Lender with such information relating to the Agreement as it may from time to time request and to send it copies of all notices issued by you under the Agreement to the Lender as well as to us.

These instructions may not be revoked.

This notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning it to the Chargee at [address] marked for the attention of [name].

Yours faithfully

for and on behalf of  
**Arcadia Group Limited**

[On copy only:]

To: [Pension Security Trustee]

FAO: [Name]

We acknowledge receipt of a notice in the terms set out above and confirm that we have not received notice of any previous assignments or charges of or over any of the right and remedies in connection with the Agreement and that we will comply with the terms of that notice.

This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

**For and on behalf of Redcastle (TCR) Limited**

By: \_\_\_\_\_

Dated: \_\_\_\_\_ 2019

Execution Pages

THE CHARGOR

Executed and Delivered as a Deed by )  
**Arcadia Group Limited** (pursuant to a )  
resolution of its Board of Directors) )  
acting by a director in the ) Director  
presence of )

Witness signatures:

Witness name: PHILIPPA GOULDE

Witness address: COLEGRAVE HOUSE, 70 BERNERS STREET, LONDON, W1T 3NL

Witness occupation:

Chargor address details: Colegrave House, 70 Berners Street, London W1T 3NL

Chargor attention: Richard Burchill

Chargor fax: 020 7291 2606

**THE CHARGE**

Executed and Delivered as a  
Deed by **Arcadia Group Pension  
Trust Limited** as security trustee  
for the Pension Trustees acting  
by:

*in the presence of:*

Director

Director/Secretary

Witness:

Witness name:

Natalie Margaret Scoones

~~Address details:~~

Attention:

Occupation:

Fax:

Address:

TRAVERS SMITH LLP  
10 SNOW HILL  
LONDON EC1A 2AL  
TEL: 020 7295 3000

Address details:

Colegrave House, 70 Berners Street  
London, W1T 3NL

Attention:

Margaret Hannell

Fax: