



Registration of a Charge

Company name: **OWEN PUGH & COMPANY LIMITED**

Company number: **00415592**



X6C266E0

Received for Electronic Filing: **03/08/2017**

Details of Charge

Date of creation: **28/07/2017**

Charge code: **0041 5592 0020**

Persons entitled: **MERINO INDUSTRIES LTD (AS SECURITY AGENT)**

Brief description:

Contains fixed charge(s).

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:

ANDREW DODDS



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 415592

Charge code: 0041 5592 0020

The Registrar of Companies for England and Wales hereby certifies that a charge dated 28th July 2017 and created by OWEN PUGH & COMPANY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd August 2017 .

Given at Companies House, Cardiff on 7th August 2017

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

STEVENS&BOLTON

DATED

28 July

2017

(1) THE COMPANIES IDENTIFIED IN SCHEDULE 1 (AS CHARGORS)

(2) MERINO INDUSTRIES LTD (AS SECURITY AGENT)

DEBENTURE

This Debenture is subject to the HSBC Intercreditor Agreement and the Merino Intercreditor Deed (each as defined in this Debenture)

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THIS DEBENTURE is made on

28 July

2017

BETWEEN

- (1) **THE COMPANIES** whose names, registered numbers and registered offices are set out in Schedule 1 (*The Chargors*) (the "**Chargors**"); and
- (2) **MERINO INDUSTRIES LTD**, acting through its office at Golden Cross House, 8 Duncannon Street, London, England, WC2N 4JF as agent and trustee for the Secured Parties (the "**Security Agent**").

IT IS AGREED AS FOLLOWS

1 DEFINITIONS AND INTERPRETATION

- 1.1 Unless otherwise provided in this Debenture, terms defined in the Facility Agreement shall have the same meanings where used in this Debenture. In addition, in this Debenture:

Agent means the Agent (as such term is defined in the Facility Agreement);

Blocked Account means any account which the Security Agent and a Chargor have so designated;

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

Charged Account means each Blocked Account and each other account with a bank or financial institution or other person charged by or pursuant to this Debenture;

Charged Assets means the property, undertaking and assets of the Chargors mortgaged, charged or assigned (or expressed to be mortgaged, charged or assigned) by way of security to the Security Agent now or hereafter under or pursuant to this Debenture (and references to the "Charged Assets" include references to any part of them);

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

Declared Default means the occurrence of an Event of Default under clause 18 (*Events of Default*) of the Facility Agreement which has resulted in the Agent exercising any of its rights under clause 18.17 (*Acceleration*) of the Facility Agreement;

Equipment means all plant, machinery, fixtures, fittings, furniture computers, vehicles, office equipment and other equipment, and all rights, title and interest under any agreements, licences and warranties relating to any of the foregoing, including in respect of their purchase, lease, hire purchase or maintenance;

Facility Agreement means the sterling term facility agreement dated on or around the date of this Debenture and made between, among others, the Parent as borrower and Merino Industries Ltd as original lender;

Finance Documents means the Finance Documents (as such term is defined in the Facility Agreement);

Finance Parties means the Finance Parties (as such term is defined in the Facility Agreement);

Floating Charge Asset means all the assets for the time being subject to the floating charge created by this Debenture (and references to Floating Charge Assets include references to any part of it);

HSBC Intercreditor Agreement means the intercreditor agreement dated on or around the date of this Debenture and made between HSBC Bank plc, HSBC Equipment Finance (UK) Ltd, HSBC Asset Finance (UK) Ltd, Grahame White and Mary White as Noteholders, Grahame White as Noteholder Trustee, Merino Industries Limited in its capacity as Junior Agent, Junior Security Agent and Junior Lender, the Parent and each other Obligor;

Intellectual Property Rights means any present or future interests (whether legal or equitable, and including the benefit of all licences) relating to any registered or unregistered trademarks, patents, copyrights, design rights, domain names, business names, confidential information, know-how and other intellectual property rights together with the rights to use any of the foregoing;

Lender means the Lender (as such term is defined in the Facility Agreement);

LPA means the Law of Property Act 1925;

Material Contracts means:

- (a) any agreement, document, instrument or contract having an aggregate value or revenue stream during its term of £25,000 or more; and
- (b) any other agreement, document, instrument or contract which the Security Agent and the Parent have so designated,

and in each case all claims under and proceeds of such agreements, documents, instruments or contracts;

Merino Intercreditor Deed means the intercreditor deed dated on or around the date of this Debenture and made between, among others, the Lender, Grahame White and Mary White;

Obligor means each Obligor as defined in the Facility Agreement;

Parent means Owen Pugh Holdings Limited, a company incorporated in England and Wales with registered number 05314796 whose registered office is at Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR;

Party means a party to this Debenture;

Real Property means all registered or unregistered estates and interests in freehold and leasehold properties now or in the future owned by any Chargor or in which any Chargor has an interest from time to time together with all buildings, fixtures and fixed plant and machinery thereon, all easements, rights and agreements in respect thereof and the benefit of all covenants in respect thereof and the proceeds of sale of any part of that property;

Receivables means all actual or contingent book debts and other debts, receivables, rentals, royalties, fees, VAT, monetary claims and other amounts now and in the future due or owing to any Chargor, together with the benefit of all claims, rights, guarantees, security and remedies relating thereto and all proceeds of any of the foregoing;

Receiver has the meaning given to that term in clause 10.3.1 (*Powers of the Security Agent*);

Secured Obligations means:

- (a) all the moneys, obligations and liabilities of any kind which may now or at any time in the future be due, owing or incurred by each Obligor to any Secured Party (in any currency or currencies, whether present or future, actual or contingent, and whether incurred alone or jointly with another and whether as principal or surety) under or in connection with the Finance Documents;
- (b) all costs, charges, legal expenses and other amounts which any Obligor is liable to pay pursuant to clause 13.2 (*Costs and expenses; indemnity*) of this Debenture; and
- (c) interest as set out in clause 13.3 (*Interest*);

Secured Parties means the Secured Parties (as such term is defined in the Facility Agreement);

Securities has the meaning given to that term in clause 7.5.1 (*Charged shares*);

Security Interest means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

Security Period means the period starting on the date of this Debenture and ending on the date on which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full, whether or not as a result of enforcement;

Senior Discharge Date has the meaning given to it in the HSBC Intercreditor Agreement;

Short Leasehold Real Property means all leasehold properties for a term of less than 15 years unexpired at the date of acquisition of the lease whether registered or unregistered and owned by any Chargor, save where the continuing occupation of the relevant land or, as the case may be, property is required in order to carry on the business and operations of the relevant Chargor;

VAT means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere; and

VAT Act means the Value Added Tax Act 1994.

- 1.2 Unless otherwise provided in this Debenture, the provisions of clauses 1.2 to 1.19 (*Definitions and interpretation*) of the Facility Agreement apply to this Debenture as though there were set out in this Debenture in full, *mutatis mutandis*.
- 1.3 In this Debenture (unless the context otherwise requires) any reference to:
- 1.3.1 **"assets"** includes any present and future properties, rights and revenues of every description;
 - 1.3.2 each **"Chargor"**, each **"Obligor"**, each **"Secured Party"**, the **"Security Agent"**, any **"Receiver"** or any other person shall be construed so as to include his or its personal representatives, successors in title, permitted assigns and permitted transferees;
 - 1.3.3 **"this Debenture"**, the **"Facility Agreement"**, any other **"Finance Document"** (or any specified provision of it) or any other instrument, agreement or document is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - 1.3.4 **"including"** or **"includes"** means including or includes without limitation;
 - 1.3.5 **"in writing"** or **"written"** includes faxes but does not include electronic mail;
 - 1.3.6 **"owned"** includes having legal or equitable title to or a right to have legal or equitable title transferred;
 - 1.3.7 **"Secured Obligations"** includes obligations and liabilities which would be treated as such but for the liquidation, administration, bankruptcy or similar event affecting any of the Chargors. In addition, references to **"Secured Obligations"** shall be construed so as to include (i) any increase or reduction in any amount due, owing or incurred by any Obligor to any Secured Party and/or any alteration and/or addition to the purposes for which any such amount, or increased or reduced amount, may be used (ii) any ancillary facilities provided in substitution for or in addition to the facilities originally made to the Obligors, (iii) any rescheduling of any indebtedness due, owing or incurred by any Obligor to any Secured Party, whether in isolation or in connection with any of the foregoing and (iv) any combination of any of the foregoing;
 - 1.3.8 a recital, clause, paragraph or Schedule is a reference to a recital, clause or paragraph of, or Schedule to, this Debenture, a reference to a sub-clause is a reference to a sub-clause of the relevant clause of this Debenture, and a reference to a sub-paragraph is a reference to a sub-paragraph of the relevant paragraph of this Debenture;
 - 1.3.9 the security constituted by this Debenture becoming **"enforceable"** shall mean that the security created under this Debenture has become enforceable under clause 9.1 (*Enforcement*); and
 - 1.3.10 the requirement or the consent (or cognate term) of the Security Agent shall be deemed to be in the absolute discretion of the Security Agent except where expressed to be otherwise.

- 1.4 The ejusdem generis rule shall not apply and accordingly:
- 1.4.1 general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- 1.4.2 general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.
- 1.5 The headings in this Debenture are for ease of reference only and shall not in any way affect its construction or interpretation.
- 1.6 Words denoting the singular include the plural and vice versa, words denoting any one gender include all genders, and references to persons include individuals, partnerships, bodies corporate and unincorporated associations.
- 1.7 The Schedules form part of this Debenture and shall be construed and have the same full force and effect as if expressly set out in the main body of this Debenture.
- 1.8 For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Finance Documents or any side letters between any of the parties to the Finance Documents are incorporated into this Debenture.
- 1.9 The Parties intend that this Debenture shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand.
- 1.10 This Debenture is, prior to the Senior Discharge Date, subject to the terms of the HSBC Intercreditor Agreement. If there is any conflict or inconsistency between any provision of this Debenture and any provision of the HSBC Intercreditor Agreement prior to the Senior Discharge Date, the provisions of the HSBC Intercreditor Agreement shall prevail.
- 1.11 This Debenture is, on or after the Senior Discharge Date, subject to the terms of the Merino Intercreditor Deed. If there is any conflict or inconsistency between any provision of this Debenture and any provision of the Merino Intercreditor Deed on or after the Senior Discharge Date, the provisions of the Merino Intercreditor Deed shall prevail.
- 1.12 All security and dispositions made or created, and all obligations and undertakings contained, in this Debenture to, in favour of, or for the benefit of the Security Agent are made, created and entered into in favour of the Security Agent as trustee for the Secured Parties from time to time on the terms of the Facility Agreement.
- 1.13 The liabilities and obligations of each Chargor under this Debenture are joint and several. Each Chargor agrees to be bound by this Debenture notwithstanding that any other Chargor did not so sign or is not bound by this Debenture.

2 COVENANT TO PAY

2.1 Covenant to pay

Each Chargor hereby covenants with the Security Agent that it will on demand pay or discharge the Secured Obligations from time to time owing or incurred from or by it to the Secured Parties.

2.2 Potential invalidity

Neither the covenant to pay in clause 2.1 (*Covenant to pay*) nor the security constituted by this Debenture shall extend to or include any liability or sum which

would, but for this clause, cause such covenant or security to be unlawful under any applicable law.

2.3 Further advances

This Debenture secures further advances made under or pursuant to the terms of the Finance Documents and the Lender is, subject to and upon the terms and conditions of the Finance Documents, under an obligation to make further advances.

3 GRANT OF SECURITY

3.1 Legal mortgage

Each Chargor hereby charges to the Security Agent by way of first legal mortgage all Real Property in which it holds an interest.

3.2 Fixed charges

Each Chargor hereby charges to the Security Agent by way of first fixed charge the following assets (wherever located) now or in the future vested in or belonging to it or in which it from time to time has an interest:

3.2.1 all other Real Property not effectively mortgaged or charged by clause 3.1 (*Legal mortgage*), together with all licences to enter upon or use such land and the proceeds of sale of all Real Property;

3.2.2 all Equipment;

3.2.3 all the goodwill and uncalled capital of such Chargor;

3.2.4 all stocks, shares, loan capital and other securities, all dividends, distributions and other income paid or payable upon the foregoing and all rights, money or property accruing or offered at any time in relation to the foregoing;

3.2.5 any money standing to the credit of any present or future account of such Chargor with a bank or financial institution, together with that account and all interest accrued or accruing on such money or account, any investment made out of such money or account and all rights to repayment of any of the foregoing;

3.2.6 all Intellectual Property Rights;

3.2.7 all Receivables;

3.2.8 any assets expressed to be assigned under clause 3.4 (*Security assignments*) which are not effectively assigned under clause 3.4 (*Security assignments*); and

3.2.9 the benefit of all agreements, licences, consents and authorisations relating to the business and/or assets of such Chargor not otherwise charged under this clause or assigned under clause 3.4 (*Security assignments*).

3.3 Floating charge

Each Chargor hereby charges to the Security Agent by way of floating charge:

3.3.1 all its present and future undertaking, property, assets and rights (wherever located) not otherwise effectively mortgaged, charged or assigned pursuant to clauses 3.1 (*Legal mortgage*) and 3.2 (*Fixed charges*) above and clause 3.4 (*Security assignments*) below; and

3.3.2 all its assets situated in Scotland.

3.4 Security assignments

With effect on and from the Senior Discharge Date, each Chargor hereby assigns to the Security Agent by way of security all of its present and future right, title and interest in and to the following:

3.4.1 all insurance policies held by or in its favour or in which it has an interest and all claims under and proceeds of such insurance policies (excluding, in each case, contracts and policies of insurance or assurance which relate to liabilities of third parties); and

3.4.2 all Material Contracts.

3.5 Nature of security

All security created pursuant to this Debenture is created or made:

3.5.1 in favour of the Security Agent;

3.5.2 subject to Permitted Security Interests, with full title guarantee (in accordance with the Law of Property (Miscellaneous Provisions) Act 1994); and

3.5.3 as continuing security for the payment of the Secured Obligations.

4 CONVERSION OF FLOATING CHARGE

4.1 Conversion by notice

Notwithstanding anything express or implied in this Debenture (save for clause 4.4 (*Reconversion of fixed charge assets in floating charge assets*) below) if:

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

4.1.2 the Security Agent (acting reasonably) considers that any Floating Charge Assets are in jeopardy,

the Security Agent may, at any time thereafter, by written notice to a Chargor convert the floating charge created by this Debenture with immediate effect into a fixed charge over all or any of the Floating Charge Assets of the relevant Chargor specified in such notice (but without prejudice to the Security Agent's rights to serve a notice in respect of any other Floating Charge Assets and any other rights of the Security Agent whatsoever).

4.2 Automatic conversion

Notwithstanding anything express or implied in this Debenture (save for clause 4.4 (*Reconversion of fixed charge assets in floating charge assets*) below) and without prejudice to any law which may have similar effect, the floating charge created in this Debenture shall automatically and immediately without notice be converted into a fixed charge over all the Floating Charge Assets (or, in the cases of clauses 4.2.2 and 4.2.3 below, over the relevant Floating Charge Asset) if:

4.2.1 a Declared Default has occurred and is continuing; or

4.2.2 any Chargor creates or attempts to create any Security Interest (other than Permitted Security Interests) or any trust in favour of any other person over any Floating Charge Asset which trust does not constitute a Permitted Security Interest; or

4.2.3 any Chargor disposes or attempts to dispose of any Floating Charge Asset other than pursuant to a Permitted Disposal or in the ordinary course of its trading.

4.3 Assets acquired after floating charge conversion

Any asset acquired by a Chargor after any conversion into a fixed charge of the floating charge created under this Debenture which, but for such conversion, would be subject to a floating charge, shall be charged to the Security Agent by way of first fixed charge.

4.4 Reconversion of fixed charge assets in floating charge assets

The Security Agent may at any time after any conversion of the floating charge created under this Debenture over any Charged Assets into a fixed charge in accordance with clauses 4.1 (*Conversion by notice*) or 4.2 (*Automatic conversion*) above reconvert such fixed charge into a floating charge by notice to the relevant Chargor.

4.5 Small company moratorium

The floating charge created under this Debenture may not be converted into a fixed charge solely by reason of:

4.5.1 the obtaining of a moratorium; or

4.5.2 anything done with a view to obtaining a moratorium (including any preliminary decision or investigation),
under section 1A of the Insolvency Act 1986 (as amended).

5 LAND REGISTRY REQUIREMENTS

5.1 Each Chargor consents to an application being made by the Security Agent to the Land Registrar for the following restriction to be registered against its title to any Real Property charged pursuant to this Debenture.

"No disposition of the registered estate by the proprietor of the registered estate is to be registered or noted without a written consent signed by the proprietor for the time being of the charge dated [] 20[] in favour of [] referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its conveyancer".

5.2 If the title to any Real Property owned by a Chargor is not registered at the Land Registry, such Chargor shall ensure that no person (other than itself) shall be registered under the Land Registration Act 2002 as the proprietor of all or any part of such Real Property, without the prior written consent of the Security Agent (such consent not to be unreasonably withheld or delayed).

6 REPRESENTATIONS

Each Chargor represents and warrants to the Security Agent on the date of this Debenture as follows:

6.1 Ownership of Charged Assets

Each Chargor is the sole legal and beneficial owner of all of the Charged Assets except as permitted under the terms of the Finance Documents.

6.2 No Security Interests

The Charged Assets are not subject to any Security Interests (other than Permitted Security Interests).

6.3 Avoidance of security

No security expressed to be created pursuant to this Debenture is liable to be avoided or otherwise set aside on the liquidation or administration of any Chargor or otherwise.

The representations and warranties in this clause 6 are deemed to be made by each Chargor on each day on which any representations in the Facility Agreement are deemed to be repeated by reference to the facts and circumstances then existing.

7 COVENANTS

7.1 Negative Pledge

No Chargor shall during the Security Period except as permitted under the terms of the Finance Documents:

- 7.1.1 create or permit to subsist any Security Interest on or over the Charged Assets or any part of them; or
- 7.1.2 sell, transfer or otherwise dispose of the Charged Assets or any part of them, whether by a single transaction or a series of transactions related or not.

7.2 Protection of Charged Assets

7.2.1 No Chargor shall during the Security Period except as permitted under the terms of the Finance Documents:

- (a) do, or permit to be done, any act or thing which would or might depreciate, jeopardise or otherwise prejudice the security held by the Security Agent or materially diminish the value of any of the Charged Assets or the effectiveness of the security created by this Debenture; or
- (b) enter into any onerous or restrictive obligations affecting the whole or any part of the Charged Assets or create or permit to arise any overriding interest, easement or right in or over the whole or any part of any Real Property which, in each case, would jeopardise or otherwise materially prejudice the security held by the Security Agent or materially diminish the value of any of the Charged Assets or the effectiveness of the security created by this Debenture.

7.2.2 Each Chargor shall comply in all respects with all obligations under any law, regulation, order or instrument at any time applicable to the Charged Assets if failure to so comply would jeopardise or otherwise materially prejudice the security held by the Security Agent or materially diminish the value of any of the Charged Assets or the effectiveness of the security created by this Debenture.

7.3 Notices and title documents

Each Chargor shall:

- 7.3.1 in respect of any insurance policy entered into or taken out by such Chargor and/or any Material Contract entered into by such Chargor, give upon request by the Security Agent (which request may not be made until on or after the Senior Discharge Date) written notice to:
 - (a) the relevant insurers of the assignment of its rights and interest in and under its insurance policies pursuant to this Debenture, and use its reasonable endeavours to procure that each addressee of such notice promptly provides an acknowledgement of the

Security Agent's interest to the Security Agent in each case substantially in the form set out in Schedule 2 (*Form of Notice and Acknowledgement – Insurance Policies*) or with such amendments thereto as the Security Agent (acting reasonably) may agree; and/or

- (b) the other parties to such Material Contracts of the assignment pursuant to this Debenture of its rights and interest in and under the Material Contracts, and use its reasonable endeavours to procure that each addressee of such notice promptly provides an acknowledgement of the Security Agent's interest to the Security Agent, in each case substantially in the form set out in Schedule 3 (*Form of Notice and Acknowledgement – Material Contracts*) or with such amendments thereto as the Security Agent (acting reasonably) may agree;

7.3.2 in respect of any existing bank account of a Chargor or new bank account opened by a Chargor, give upon request by the Security Agent, written notice to any bank, financial institution or other person with whom it has such account, of the charging to the Security Agent pursuant to this Debenture of its rights and interests under such accounts, and use its reasonable endeavours to procure that each addressee of such notice promptly provides an acknowledgement of the Security Agent's interest to the Security Agent, in each case substantially in the form set out in Schedule 4 (*Form of Notice and Acknowledgement – Accounts*) or with such amendments thereto as the Security Agent (acting reasonably) may agree; and

7.3.3 within 15 Business Days of the date of this Debenture (or, if later, within 15 Business Days of the date of acquisition of the relevant Charged Asset):

- (a) deposit with the Security Agent all deeds and documents of title (including share and other securities certificates) relating to the Charged Assets that the Security Agent (acting reasonably) may from time to time require; and
- (b) execute and deliver to the Security Agent instruments of transfer (executed in blank and undated) in respect of any shares or securities charged pursuant to this Debenture as the Security Agent (acting reasonably) may from time to time require for the perfection of its title to such shares or securities in accordance with the terms of this Debenture.

7.4 Real Property

Each Chargor shall during the Security Period:

7.4.1 not without the prior consent of the Security Agent pull down or remove all or any part of the buildings forming part of the Real Property, nor change their use or develop them, nor sever, unfix or remove any of the fixtures on the Real Property, nor remove any plant and machinery from the Real Property;

7.4.2 not grant, or accept a surrender of, any lease or licence of the Real Property, or exercise the statutory powers of leasing (or agreeing to

lease), or of accepting (or agreeing to accept) surrenders under sections 99 or 100 of the LPA, or part with or share possession or occupation of the Real Property or any part of it, or create any legal or equitable estate or interest in the whole or any part of the Real Property, or vary any lease or tenancy agreement relating to the Real Property or reduce any sum payable thereunder, except in each case as permitted by the Finance Documents;

- 7.4.3 keep all buildings and fixed and moveable plant, machinery, fixtures and fittings on each Real Property in a good state of repair and in good working order and condition (fair wear and tear excepted) and permit the Security Agent and its representatives to enter and view their state and condition on reasonable prior notice (being at least 24 hours);
- 7.4.4 notify the Security Agent within 14 days of receipt of every material notice, order, direction or proposal given or made in relation to any Real Property by any competent authority, and (if so requested by the Security Agent) promptly provide it with a copy of the same and either comply in all material respects with such notice, order, direction or proposal or make such objections to the same as the Security Agent (acting reasonably) may require or approve;
- 7.4.5 perform and observe all covenants and stipulations affecting the Real Property, and punctually pay all rents, licence fees, duties, registration charges and outgoings of whatever nature due in respect of it;
- 7.4.6 promptly notify the Security Agent if acquires any estate or interest in any Real Property after the date of this Debenture (other than Short Leasehold Real Property), and upon request from the Security Agent execute over all or any such property a charge by way of legal mortgage in favour of the Security Agent in such form as the Security Agent (acting reasonably) may require (and on terms no more onerous than those in this Debenture);
- 7.4.7 procure that no person shall be registered under the Land Registration Acts 1925 to 2002 as proprietor of any Real Property without the prior written consent of the Security Agent; and
- 7.4.8 not, without the prior written consent of the Security Agent, carry out or permit or suffer to be carried out on any Real Property any development as defined in the Town and Country Planning Act 1990 or change or permit or suffer to be changed the use of any Real Property.

7.5 **Charged shares**

- 7.5.1 The Security Agent may at any time after an Event of Default which is continuing cause any of the shares or securities forming part of the Charged Assets (the "**Securities**") to be registered in the name of the Security Agent or its nominee. Each Chargor agrees promptly to execute and deliver to the Security Agent all such transfers and other documents and do all such things as may be required by the Security Agent and which are necessary to achieve such registration.
- 7.5.2 Each Chargor hereby:
 - (a) grants and agrees to procure as necessary all consents, waivers and approvals which are necessary, under the articles of association of any issuer of Securities, for the transfer of the

- Securities to the Security Agent or its nominee or to a purchaser upon enforcement of the security created by this Debenture; and
- (b) agrees to procure the amendment of the share transfer provisions of each issuer of Securities' articles of association in such manner as the Security Agent may require in order to permit such a transfer.

7.5.3 Until the security created by this Debenture has become enforceable:

- (a) all cash dividends or other cash distributions paid or payable in respect of the Securities may be paid directly to the relevant Chargor which shall be permitted to apply them as it deems fit to the extent permitted by the Facility Agreement;
- (b) any cash dividends or other cash distributions paid in respect of the Securities and received by the Security Agent or its nominee shall be promptly released and paid to the relevant Chargor;
- (c) the relevant Chargor may exercise all voting and other rights and powers attaching to the Securities and exercisable by the relevant Chargor provided that the exercise of such voting and other rights and powers would not materially prejudice the Security Agent's security under this Debenture or the value of the Securities or contravene any Finance Document; and
- (d) the Security Agent will (to the extent that it has or will acquire any such rights or powers) exercise all voting and other rights and powers attaching to the Securities and exercisable by the Security Agent or its nominee as the relevant Chargor may from time to time direct provided that acting in accordance with such directions would not materially prejudice the Security Agent's security under this Debenture or the value of the Securities or contravene any Finance Document.

7.5.4 After the security created by this Debenture has become enforceable:

- (a) all dividends or other distributions paid in respect of the Securities and received by a Chargor shall be held on trust for the Security Agent and promptly paid into a Blocked Account or such other bank account as the Security Agent may designate or, if received by the Security Agent or its nominee, shall be retained by the Security Agent for application in or towards discharge of the Secured Obligations; and
- (b) the Security Agent may exercise or direct the exercise (or refrain from exercising or directing the exercise) of all voting and other rights and powers attaching to the Securities as the Security Agent (acting reasonably) may think fit and each Chargor shall, and shall procure that its nominees shall, comply with any such reasonable directions from the Security Agent concerning the exercise of such rights and powers.

7.5.5 Each Chargor further undertakes to the Security Agent that it shall duly and promptly pay all calls, instalments and other monies which may be payable from time to time in respect of the shares or securities charged pursuant to this Debenture. Each Chargor acknowledges that the Security

Agent shall not be under any liability in respect of any such calls, instalments or other monies.

7.6 Insurance

Each Chargor shall:

- 7.6.1 keep the Charged Assets insured against all risks that are normally insured against by prudent companies owning or possessing similar assets or carrying on similar businesses to the relevant Chargor;
- 7.6.2 pay all premiums and other moneys necessary for maintaining the insurances charged pursuant to this Debenture;
- 7.6.3 if requested by the Security Agent, procure that the Security Agent's interest is noted on all policies required under this clause;
- 7.6.4 hold on trust for the Security Agent all money received under any insurance of the Charged Assets and apply the same in making good the relevant loss or damage or, as the Security Agent may require, in or towards discharge of the Secured Obligations; and
- 7.6.5 not do or omit to do or permit to be done or omitted anything that may invalidate or otherwise materially prejudice any policy of insurance in respect of the Charged Assets.

7.7 Receivables and Bank Accounts

During the Security Period, each Chargor shall not, except as set out in this clause 7.7 or as permitted by the Finance Documents or as otherwise agreed by the Security Agent, release, exchange, compound, set-off, charge, assign, sell, factor, discount, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Receivables, and shall during the Security Period:

- 7.7.1 collect in and realise all Receivables as agent for the Security Agent, pay into the relevant Charged Account(s) all monies which it may receive in respect of the Receivables and pending this payment hold such monies on trust for the Security Agent (in each case, unless otherwise agreed with the Security Agent or as provided for in, or as permitted by, the Facility Agreement);
- 7.7.2 after the security created by this Debenture has become enforceable and if requested by the Security Agent, execute a legal assignment of the Receivables to the Security Agent in such terms as the Security Agent may require and promptly give notice thereof to the debtors from whom the Receivables are owing or incurred and take such other steps as the Security Agent may require to perfect such legal assignment;
- 7.7.3 permit any bank maintaining such account(s) to furnish directly to the Security Agent full statements and particulars of the account(s); and
- 7.7.4 not withdraw any of the monies standing to the credit of a Blocked Account except as permitted by the Finance Documents and, after the security created by this Debenture has become enforceable, not withdraw any of the monies standing to the credit of its bank accounts and deal with such monies in accordance with any directions from time to time given in writing by the Security Agent.

7.8 Material Contracts

Each Chargor shall not during the Security Period except as permitted by the Finance Documents:

- 7.8.1 waive any of its rights and remedies under any Material Contract; or

7.8.2 supplement, amend, novate, terminate or permit termination of any Material Contract, other than, in each case, in a way which could not reasonably be expected to materially and adversely affect the interests of the Finance Parties under the Finance Documents.

7.9 Information

Each Chargor shall promptly:

7.9.1 notify the Security Agent of any meeting to discuss or any proposal or application for, the appointment of an administrator, receiver, liquidator or similar official in respect of such Chargor or any of its Charged Assets and, if any such official is appointed, their appointment;

7.9.2 notify the Security Agent of any breach of a warranty, representation or covenant of any Chargor under this Debenture; and

7.9.3 provide the Security Agent with all information that it may reasonably request in relation to the Charged Assets.

7.10 HSBC Finance Documents compliance

The Security Agent agrees and acknowledges that none of the Chargors shall be deemed to be in default under any of the provisions of this clause 7 to the extent that such Obligor is at such time in compliance with the corresponding or similar covenants in the HSBC Finance Documents.

8 POWER TO REMEDY

Subject to clause 16.11, if a Chargor fails to perform any of its obligations under this Debenture, the Security Agent may (without the prejudice to any of its other rights under this Debenture) take any such action as it may deem appropriate to remedy such failure (including taking out or renewing insurance or effecting repairs) and may recover the expenses so incurred from such Chargor on demand, and the exercise of such rights by the Security Agent shall not render it liable as mortgagee in possession. Each Chargor irrevocably authorises the Security Agent to do all such things (including entering the Real Property) as are necessary or desirable for that purpose.

9 POWERS OF THE SECURITY AGENT AND ENFORCEMENT

9.1 Enforcement

9.1.1 This Debenture shall become immediately enforceable if an Event of Default occurs and for so long as it is continuing.

9.1.2 When this Debenture is enforceable, the power of sale and other powers conferred by section 101 of the LPA will be immediately exercisable without the restrictions contained in the LPA as to the giving of notice or otherwise with respect to the whole or any part of the Charged Assets. After the security constituted by this Debenture has become enforceable, the Security Agent may (in its absolute discretion) enforce all or any part of the security in any manner it sees fit.

9.2 Secured Obligations deemed due

For the purposes of all powers implied by statute, the Secured Obligations will be deemed to have become due and payable on the date of this Debenture, and sections 93, 103 and 109 of the LPA shall not apply.

9.3 Statutory powers

The statutory powers of leasing conferred on the Security Agent will be extended so as to authorise the Security Agent to lease, make agreements for leases, accept surrenders of leases, vary or reduce sums payable under leases and grant options as the Security Agent may think fit and without the need to comply with sections 99 and 100 of the LPA.

9.4 Prior Security Interests

At any time after the security constituted by this Debenture has become enforceable, or after any powers conferred by any Security Interest having priority to this Debenture shall have become exercisable, the Security Agent may:

9.4.1 redeem any prior Security Interest, or procure its transfer to itself; and

9.4.2 settle any account of the holder of any prior Security Interest.

The settlement of any such account shall be conclusive and binding on each Chargor. All principal, interest, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the relevant Chargor to the Security Agent on demand.

9.5 Right of appropriation

To the extent that any of the Charged Assets constitute "financial collateral", and this Debenture and the obligations of any Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226)), the Security Agent and any Receiver or Delegate shall have the right, at any time after the security constituted this Debenture has become enforceable, to appropriate all or any of those Charged Assets in or towards the payment and/or discharge of the Secured Obligations in such order as the Security Agent or any Receiver or Delegate in its absolute discretion may from time to time determine. The value of any Charged Assets appropriated in accordance with this clause shall be the price of those Charged Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Security Agent or any Receiver or Delegate may reasonably select. Each Chargor agrees that the methods of valuation provided for in this clause are commercially reasonable.

10 ADMINISTRATOR, RECEIVER, LIABILITY

10.1 Appointment of administrator

At any time after the security created pursuant to this Debenture has become enforceable, the Security Agent shall be entitled to appoint an administrator under paragraph 14 of Schedule B1 to the Insolvency Act 1986 (as amended).

10.2 Qualifying floating charge

Each floating charge created by or pursuant to this Debenture is a qualifying floating charge for the purposes of the Insolvency Act 1986.

10.3 Powers of the Security Agent

At any time after the security created pursuant to this Debenture has become enforceable or at the request of any Chargor, the Security Agent may:

10.3.1 appoint any person or persons to be a receiver or an administrative receiver (if permissible) or a receiver and manager or receivers and managers of all or any part of the Charged Assets and/or of the income of the Charged Assets ("**Receiver**"); and

10.3.2 exercise any of the powers conferred on mortgagees by the LPA (as amended or extended by this Debenture) and/or any of the powers that are conferred by this Debenture on a Receiver (in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver),

and for these purposes each Chargor authorises the Security Agent to opt to charge VAT under schedule 10 paragraph 2(1) of the VAT Act on its behalf in respect of the Real Property.

10.4 Remuneration of Receiver/agent of Chargors

10.4.1 The Security Agent may from time to time determine the remuneration of the Receiver and may remove the Receiver and appoint another in his place. If at any time there is more than one Receiver of all or any part of the Charged Assets or the income of the Charged Assets, each Receiver shall have the power to act individually.

10.4.2 Any Receiver shall be the agent of the Chargors and the Chargors alone shall be responsible for his acts and omissions and for his remuneration.

10.4.3 Any exercise of powers by a Receiver may be on behalf of a Chargor, the directors of a Chargor or the Receiver.

10.5 Powers of Receiver

Any Receiver appointed by the Security Agent shall have the powers set out in the LPA and in Schedule 1 to the Insolvency Act 1986, the powers which are conferred on the Security Agent under this Debenture, all powers conferred by any other law conferring powers on receivers, and the following powers:

10.5.1 to take possession of, collect and get in all or any part of the Charged Assets and/or the income thereon and for that purpose to bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in any Chargor's name or otherwise as he shall think fit;

10.5.2 to carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of any Chargor;

10.5.3 to sell, exchange, convert into money and realise all or any of the Charged Assets in any manner (including without limitation, by public auction or private sale) and generally on any terms and conditions as the Receiver thinks fit;

10.5.4 to sell and assign all or any of the Receivables in any manner, and generally on any terms and conditions, that the Receiver thinks fit;

10.5.5 to raise money by borrowing either unsecured or on the security of all or any of the Charged Assets on any terms that the Receiver thinks fit (including, if the Security Agent consents, terms under which that security ranks in priority to this deed) and to redeem any existing Security Interests on the security of all or any part of the Charged Assets;

10.5.6 to sell, let and/or terminate or otherwise dispose of or to accept surrenders of leases or tenancies of or to grant options and licences and

any other interest or right over, all or any part of the Charged Assets, in such manner and on such terms as he thinks fit;

10.5.7 to bring, prosecute, enforce, defend and abandon all actions, suits and proceedings and enter into any agreement, settlement, arrangement or compromise which the Receiver shall think fit in respect of the Charged Assets and/or the income thereon;

10.5.8 to undertake or complete any works of repair, improvement and alteration, building or development of the Charged Assets and to apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out the same and to insure such assets as he thinks fit;

10.5.9 to appoint such managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, as he shall think fit, at such salaries as the Receiver may determine and to discharge any such person or any such person appointed by any Chargor;

10.5.10 to sever and sell separately any fixtures or fittings from any Real Property without the consent of any Chargor;

10.5.11 to promote the formation of a subsidiary company or companies of any Chargor, so that such subsidiary may purchase, lease, license or otherwise acquire interests in all or any part of the Charged Assets;

10.5.12 to make substitutions of, or improvements to, the Equipment as the Receiver may think expedient;

10.5.13 to make calls conditionally or unconditionally on the members of any Chargor in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the relevant Chargor on its directors in respect of calls authorised to be made by them;

10.5.14 to operate any rent review clause in respect of any Real Property in relation to which he was appointed and to apply for any new or extended lease;

10.5.15 to give valid receipts for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Assets;

10.5.16 to make, exercise or revoke such VAT options in relation to any Real Property as he thinks fit;

10.5.17 to exercise in relation to each Charged Asset all powers, authorisations and rights as he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of all or any part of such Charged Asset; and

10.5.18 to do all other acts and things which he may consider to be incidental or conducive to any of the above powers or which he considers to be necessary or desirable for the realisation of any Charged Asset, and to use the name of any Chargor for any of the above purposes.

10.6 Application of proceeds

Any moneys received under this Debenture shall be applied:

10.6.1 first, in satisfaction of all costs, charges and expenses properly incurred and payments properly made by the Security Agent, any Secured Party or the Receiver and of the remuneration of the Receiver;

10.6.2 secondly, in or towards satisfaction of the Secured Obligations in such order as the Security Agent shall determine; and

10.6.3 thirdly, the surplus (if any) shall be paid to any Chargor or to any other person or persons entitled to it.

Neither the Security Agent nor any Receiver shall be bound (whether by virtue of section 109(8) of the LPA, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Obligations. Any such appropriation shall override any appropriation by any Chargor.

10.7 Suspense account

All monies received by the Security Agent or any Receiver under or in connection with this Debenture (including monies received at a time when no amounts are due in respect of the Secured Obligations) may at the discretion of the Security Agent or such Receiver be credited to a suspense account for so long as the Security Agent or the Receiver thinks fit.

10.8 No liability

10.8.1 Neither the Security Agent nor any Receiver shall be liable in respect of the Charged Assets or any part thereof, or for any loss or damage arising out of the exercise or the attempted or purported exercise of any of its powers or the failure to exercise any of its powers, or for any other reason whatsoever, and whether as mortgagee in possession or on any other basis.

10.8.2 Notwithstanding any of the provisions of this Debenture, each Chargor shall remain liable to perform all obligations assumed by it in relation to the Charged Assets, and neither the Security Agent nor any Receiver shall be obliged to perform any such obligation or make any payment in respect thereof.

10.9 No duty to enquire

No purchaser or other person shall be obliged or concerned to enquire:

10.9.1 whether the Secured Obligations have become payable;

10.9.2 whether any right of the Security Agent or any Receiver to exercise any of its powers has arisen or become exercisable or not;

10.9.3 whether any sums remain due from any Chargor to the Security Agent;

10.9.4 how any money paid to the Security Agent or a Receiver is to be applied, or

10.9.5 as to the propriety of the exercise or purported exercise of such powers.

10.10 Conclusive discharge to purchasers

The receipt of the Security Agent or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Assets or in making any acquisition in the exercise of their respective powers, the Security Agent and every Receiver may do so for such consideration, in such manner and on such terms as it or he thinks fit.

11 FURTHER ASSURANCE

Subject to clause 16.11, each Chargor shall, at its own expense, immediately do all acts and execute all documents as the Security Agent or a Receiver may

reasonably specify (and in such form as the Security Agent or a Receiver may reasonably require) for:

- 11.1 creating, perfecting or protecting the security intended to be created by this Debenture (including any notice which may be required to be executed and delivered by a Chargor pursuant to clause 7.3) at any time after the Senior Discharge Date;
- 11.2 facilitating the realisation of any Charged Asset;
- 11.3 facilitating the exercise of any rights, powers and remedies exercisable by the Security Agent, any other Secured Party or any Receiver in respect of any Charged Asset or under this Debenture;
- 11.4 creating and perfecting security in favour of the Security Agent or any other Secured Party over any of its property and assets located in any jurisdiction outside England and Wales (provided that such security is on terms no more onerous than those provided for in this Debenture).

This includes:

- 11.4.1 the re-execution of this Debenture;
- 11.4.2 the execution of any legal mortgage, charge, transfer, conveyance, assignment, assignation or assurance of any property; and
- 11.4.3 the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the Security Agent or a Receiver may think expedient.

12 POWER OF ATTORNEY

Each Chargor by way of security irrevocably appoints the Security Agent and any Receiver jointly and severally as its attorney, with full power of substitution and delegation, for it and in its name and on its behalf and as its act and deed or otherwise, to execute any documents and do any acts and things which such Chargor is required to execute and do under this Debenture, and/or which the attorney may deem necessary or desirable in exercising any of the powers, authorities and discretions conferred on the Security Agent or any Receiver. Each Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause.

13 PAYMENTS

13.1 Payment without deductions

All amounts due by any Chargor to the Security Agent pursuant to this Debenture shall be paid in full without any set-off, abatement, cross claim, deduction or withholding of any kind other than as required by law. If a Chargor is compelled by law to make any deduction or withholding from any sum payable under this Debenture the sum so payable by that Chargor shall be increased so as to result in the receipt by the Security Agent of a net amount equal to the full amount expressed to be payable under this Debenture.

13.2 Costs and expenses; indemnity

- 13.2.1 The provisions of clause 9 (*Fees, costs and expenses*) of the Facility Agreement shall be incorporated into this Debenture as if they were set out in full in this Debenture, *mutatis mutandis*.

13.2.2 Each Chargor hereby agrees to indemnify and hold harmless the Security Agent and any Receiver from and against all actions, claims, expenses, demands and liabilities, whether arising out of contract or in tort or in any other way, which may at any time be incurred by him or any manager, agent, officer, servant, workman for those debt, default or miscarriage he may be answerable for anything done or omitted to be done in the exercise or purported exercise of his powers pursuant to this Debenture.

13.3 Default interest

Each Chargor shall pay default interest on any amounts due under this Debenture calculated day by day from demand until full and final discharge (as well after as before judgment) at the rate of 4% per annum above the rate then applicable to the Loan under the Facility Agreement, provided that in relation to such costs, charges, indemnity amounts, expenses and remuneration as are mentioned in clause 13.2, interest shall accrue and be payable as from the dates on which the same are incurred by the Security Agent or by any such Receiver or become due to such Receiver under the terms of his appointment without the necessity for any demand being made for payment thereof. No default interest shall accrue under this clause if such default interest is accruing under clause 8.5 (*Default interest*) of the Facility Agreement.

13.4 Currency Conversion

For the purpose of, or pending the discharge of, any of the Secured Obligations, the Security Agent may convert any monies received, recovered or realised by the Security Agent under this Debenture from their existing currencies of denomination into such other currencies of denomination as the Security Agent may think fit. Any such conversion shall be effected at the rate of exchange for such other currency against the existing currency available to the Security Agent at the relevant time. The Security Agent shall not have any liability to any Chargor in respect of any loss resulting from any such conversion.

14 SET-OFF

14.1 The Security Agent and any other Secured Party may set-off any obligation which is due and payable by any Chargor to the Security Agent and/or any other Secured Party and unpaid (to the extent beneficially owned by such person) against any matured obligation owed by the Security Agent or any other Secured Party to such Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Security Agent or other Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

14.2 If the obligations are in different currencies, the Security Agent or any other Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

14.3 If either of the obligations is unliquidated or unascertained, the Security Agent or any other Secured Party may set-off in an amount estimated by it in good faith to be the amount of that obligation.

15 NOTICES

The provisions of clause 27 (*Notices*) of the Facility Agreement shall be incorporated into this Debenture as if they were set out in full in this Debenture, *mutatis mutandis*.

16 GENERAL

16.1 Continuing and independent security

This Debenture shall be:

- 16.1.1 a continuing security to the Security Agent and shall extend to the ultimate balance of the Secured Obligations, notwithstanding any settlement of account or intermediate payment or discharge in whole or in part, and secures present and future advances from time to time;
- 16.1.2 without prejudice and in addition to any other security for the Secured Obligations (whether by way of mortgage, equitable charge or otherwise) which the Security Agent may hold now or hereafter on all or any part of the Charged Assets;
- 16.1.3 in addition to any rights, powers and remedies at law available to the Security Agent; and
- 16.1.4 enforceable against each Chargor without the Security Agent first having recourse to any other right, remedy, guarantee or security held by or available to it.

16.2 New accounts

If the Security Agent receives notice of any subsequent charge or other interest affecting any part of the Charged Assets, the Security Agent may open a new account for any Chargor. If the Security Agent does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received notice, and as from that time all payments made by such Chargor to the Security Agent shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount due from such Chargor to the Security Agent at the time when it received notice as specified above.

16.3 Delay

No failure or delay by the Security Agent in the exercise of any of its rights under this Debenture or at law shall operate or be construed as a waiver. No waiver of any of the Security Agent's rights shall preclude any further or other exercise of that right or of any other right.

16.4 Indulgence

The Security Agent may give time or other indulgence, or make any other arrangement, variation or release with any person in respect of the Secured Obligations, and each Chargor may enter into any other security or guarantee for the Secured Obligations, in each case without derogating from its liabilities or the Security Agent's rights under this Debenture.

16.5 Liability not discharged

The Chargers' liability under this Debenture in respect of the Secured Obligations shall not be discharged, prejudiced or affected by any security, guarantee, indemnity, remedy or other right held by, or available to, the Security Agent that is or becomes wholly or partially illegal, void or unenforceable on any ground, or

any other act or omission which but for this clause might have discharged, or otherwise prejudiced or affected the liability of any Chargor.

16.6 Avoidance of payments

If the Security Agent considers that an amount paid to it may be avoided or otherwise set aside on the liquidation or administration or bankruptcy of a Chargor then that amount shall not be considered to have been irrevocably paid for the purposes of this Debenture. Any release, discharge or settlement between the a Chargor and the Security Agent shall be deemed conditional on no payment or security received by the Security Agent in respect of the Secured Obligations being avoided, reduced or ordered to be refunded pursuant to any law, and despite any such release, discharge or settlement the Security Agent may retain this Debenture and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Charged Assets, for such period as the Security Agent deems necessary to provide the Security Agent with security against any such avoidance, reduction or order for refund.

16.7 Waiver of set-off rights by Chargors

Each Chargor waives any present or future right of set-off it may have in respect of the Secured Obligations (including sums payable by such Chargor under this Debenture).

16.8 Security Period

Each obligation of a Chargor (other than a payment obligation) contained in this Debenture must be complied with at all times during the Security Period and is given for the benefit of the Security Agent and each other Secured Party.

16.9 Trustee Act 2000

The Chargors and the Security Agent agree that the Security Agent shall not be subject to the duty of care imposed on trustees by the Trustee Act 2000.

16.10 Notice of assignment

This Debenture constitutes notice in writing to each Chargor of any charge or assignment of a debt owed by that Chargor to any other member of the Group and contained in any Finance Document.

16.11 Inconsistency with HSBC Finance Documents

The Security Agent hereby agrees with the Chargors that:

16.11.1 it shall not prior to the Senior Discharge Date take any action or exercise any right which it is permitted to so take or exercise under clause 8 (*Power to remedy*) if the taking of such action or exercise of such rights is inconsistent in any material respect with the provisions of the HSBC Finance Documents; and/or

16.11.2 it shall only require a Chargor to comply with its obligations in clause 11 (*Further assurance*) above if and to the extent that such compliance is not inconsistent in any material respect with the provisions of the HSBC Finance Documents.

17 DELEGATION

The Security Agent may delegate in any manner to any person, any right, power or discretion exercisable by it under this Debenture upon any terms which it may think fit. The Security Agent shall not be in any way liable or responsible for any

loss or liability arising from any act, default, omission or misconduct on the part of any such delegate.

18 PERPETUITY PERIOD

If the rule against perpetuities applies to any trust created by this Debenture, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

19 FRAUD

Notwithstanding the other provisions of this Debenture, nothing in it shall have the effect of limiting or restricting any liability arising as a result of any fraud or fraudulent misrepresentation.

20 PARTIAL INVALIDITY

If, at any time, any provision of this Debenture is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

21 ASSIGNMENT

21.1.1 The Security Agent may assign or transfer the whole or any part of the Security Agent's rights and/or obligations under this Debenture to any person without the consent of any Chargor. Each Chargor shall, promptly upon request by the Security Agent, enter into such documents as may be necessary or desirable to effect such assignment or transfer.

21.1.2 No Chargor may assign any of its rights, or transfer any of its obligations, under this Debenture or enter into any transaction which would result in any of those rights or obligations passing to another person.

22 CERTIFICATES

Any certificate of or determination by the Security Agent or a rate or specifying the amount of any Secured Obligations due from any Chargor shall be, in the absence of manifest error, *prima facie* evidence of the matters to which it relates.

23 AMENDMENTS

The provisions of this Debenture may be amended only if the Security Agent and the Chargors so agree in writing and any breach of this Debenture may be waived only if the Security Agent so agrees in writing.

24 RESTRICTIONS ON NOTICES

- 24.1 The Security Agent shall not be entitled to give a Blocking Notice (as defined in paragraph 2.2 of Schedule 4 (*Form of Notice and Acknowledgement – Accounts*) to this Debenture) in respect of any Charged Account which is not a Blocked Account until an Event of Default has occurred and is continuing or any of the circumstances described in clauses 4.1 (*Conversion by notice*) or 4.2 (*Automatic conversion*) of this Debenture above have arisen.
- 24.2 Subject to clause 7.3.1 (*Notices and title documents*), the Security Agent shall not be entitled to give any notice or instruction (as the case may be) referred to in paragraph 2.5 of the notice in the form set out in Schedule 2 (*Form of Notice and Acknowledgement – Insurance Policies*) to this Debenture and/or paragraph 2.5 of the notice in the form set out in Schedule 3 (*Form of Notice and Acknowledgement – Material Contracts*) to this Debenture until an Event of Default has occurred and is continuing.

25 COUNTERPARTS

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

26 GOVERNING LAW

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

27 ENFORCEMENT

- 27.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Debenture (including a dispute relating to the existence, validity or termination of this Debenture or any non-contractual obligation arising out of or in connection with this Deed) (a "Dispute").
- 27.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 27.3 This clause 27 is for the benefit of the Security Agent only. As a result, the Security Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.

28 THIRD PARTY RIGHTS

No provision of this Debenture shall be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person (except any Receiver or Delegate) who is not a party to it.

IN WITNESS whereof this Debenture has been executed as a deed and delivered on the date first above written

SCHEDULE 1

THE CHARGORS

Name	Registered number	Registered office
Owen Pugh Holdings Limited	05314796	Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR
Owen Pugh Contracts Limited	00445590	Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR
Owen Pugh Civil Engineering Limited	03104421	Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR
Owen Pugh & Company Limited	00415592	Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR
Owen Pugh Aggregates Limited	01277269	Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR
H C S Drain Services Limited	04758344	Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR
Owen Pugh Properties Limited	06252475	Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR

SCHEDULE 2

FORM OF NOTICE AND ACKNOWLEDGEMENT – INSURANCE POLICIES

NOTICE

From: [Company] (the “Company”)

To: [insurer]

Date: []

Dear Sirs

We refer to the [*describe policy and its number*] together with any other agreement supplementing or amending the same (the “Policy”).

- 1 We hereby give notice that, pursuant to a debenture dated [] (the “**Debenture**”), we have assigned to [] (the “**Security Agent**”) all our present and future right, title and interest in and to the Policy including all rights and remedies in connection with the Policy and all proceeds and claims arising from the Policy.
- 2 We further notify you that:
 - 2.1 [we will remain liable under the Policy to perform all obligations imposed on us under the Policy and none of the Security Agent, its agent, any receiver, administrator or other person will at any time be under any obligation or liability to you under or in respect of the Policy;]
 - 2.2 [you are irrevocably authorised to hold all sums from time to time due and payable by you to us under the Policy to the order of the Security Agent;]
 - 2.3 [to pay or release all or any part of the sums from time to time due and payable by you to us under the Policy only in accordance with the written instructions given to you by the Security Agent from time to time;]
 - 2.4 [to comply with any written notice or instructions in any way relating to (or purporting to relate to) the Debenture, the Policy, the sums payable to us from time to time under the Policy or the debts represented by them which you may receive from the Security Agent (without any reference to or further authority from us and without any enquiry by you as to the justification for or validity of such notice or instruction);]
 - 2.5 [we will remain entitled to exercise all of our rights under the Policy and you should continue to give notices under the Policy to us until such time as the Security Agent provides written notification to you to the contrary. Thereafter:
 - 2.5.1 all amounts payable under the Policy should be paid to the Security Agent or as it may direct; and
 - 2.5.2 all rights in respect of the Policy will be exercisable by the Security Agent.]
 - 2.6 you are authorised to disclose to the Security Agent at our expense (without any reference to or further authority from us and without any enquiry by you as to the

- justification for such disclosure) such information relating to the Policy as the Security Agent may from time to time request; and
- 2.7 to send copies of all notices and other information given or received under the Policy to the Security Agent.
- 3 [We irrevocably instruct you, with effect from the date of this notice, to note on the relevant Policy the Security Agent's interest [(as loss payee and as first priority assignee of the Policy)] and the rights, remedies, proceeds and claims referred to above.]
- 4 [We are not permitted to receive from you, otherwise than through the Security Agent, any amount in respect of or on account of the sums payable to us from time to time under the Policy or to agree any amendment or supplement to, or waive any obligation under, the Policy without the prior written consent of the Security Agent.]
- 5 This notice may only be revoked or amended with the prior written consent of the Security Agent.
- 6 Please confirm by completing the enclosed copy of this notice and returning it to the Security Agent (with a copy to us) that you agree to the above and that:
- 6.1 you accept the instructions and authorisations contained in this notice and you undertake to comply with this notice;
- 6.2 you have not, at the date this notice is returned to the Security Agent, received notice of the assignment or charge, the grant of any security or the existence of any other interest of any third party in or to the Policy or any proceeds of them or any breach of the terms of any Policy;
- 6.3 [[after receipt of written notice in accordance with paragraph 2.5 above,][you will not permit any sums to be paid to us or any other person under or pursuant to the Policy without the prior written consent of the Security Agent]; and
- 6.4 you will not exercise any right to terminate, cancel, vary or waive the Policy or take any action to amend or supplement the Policy without the prior written consent of the Security Agent.
- 7 This notice, and any acknowledgement in connection with it, and any non-contractual obligations arising out of or in connection with any of them, shall be governed by English law

Yours faithfully

.....
for and on behalf of
• Limited

ACKNOWLEDGEMENT

From: [Company] (the "Company")

To: [Security Agent] (the "Security Agent")

Date: []

Dear Sirs

We acknowledge receipt of a notice dated [] (the "Notice") and addressed to us by [] (the "Company") regarding the Policy (as defined in the Notice) and confirm and agree to the matters set out in paragraph [6] in the Notice and [the Security Agent's interest as mortgagee is noted on the Policy.]

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

Yours faithfully

[insurer]

SCHEDULE 3

FORM OF NOTICE AND ACKNOWLEDGEMENT – MATERIAL CONTRACTS

NOTICE

From: [Company]

To: [counterparty]

Date:

Dear Sirs

We refer to the [*describe relevant Material Contract*] (the "**Agreement**").

- 1 We hereby notify you that pursuant to a debenture dated [] (the "**Debenture**") we have assigned to [] (the "**Security Agent**") all our present and future right, title and interest in and to the Agreement including all rights and remedies in connection with the Agreement.
- 2 We further notify you that:
 - 2.1 [we will remain liable under the Agreement to perform all obligations imposed on us under the Agreement and none of the Security Agent, its agent, any receiver, administrator or other person will at any time be under any obligation or liability to you under or in respect of the Agreement;]
 - 2.2 [you are irrevocably authorised to hold all sums from time to time due and payable by you to us under the Agreement to the order of the Security Agent;]
 - 2.3 [to pay or release all or any part of the sums from time to time due and payable by you to us under the Agreement only in accordance with the written instructions given to you by the Security Agent from time to time;]
 - 2.4 [to comply with any written notice or instructions in any way relating to (or purporting to relate to) the Debenture, the Agreement, the sums payable to us from time to time under the Agreement or the debts represented by them which you may receive from the Security Agent (without any reference to or further authority from us and without any enquiry by you as to the justification for or validity of such notice or instruction);]
 - 2.5 [we will remain entitled to exercise all of our rights under the Agreement and you should continue to give notices under the Agreement to us until such time as the Security Agent provides written notification to you to the contrary. Thereafter:
 - 2.5.1 all amounts payable under the Agreement should be paid to the Security Agent or as it may direct; and
 - 2.5.2 all rights in respect of the Agreement will be exercisable by the Security Agent.]
 - 2.6 you are authorised to disclose to the Security Agent at our expense (without any reference to or further authority from us and without any enquiry by you as to the justification for such disclosure) such information relating to the Agreement as the Security Agent may from time to time request; and

- 2.7 to send copies of all notices and other information given or received under the Agreement to the Security Agent.
- 3 [We are not permitted to receive from you, otherwise than through the Security Agent, any amount in respect of or on account of the sums payable to us from time to time under the Agreement or to agree any amendment or supplement to, or waive any obligation under, the Agreement without the prior written consent of the Security Agent except to the extent such amendment, supplement or waiver is such that it could not reasonably be expected to materially and adversely affect the interests of the Finance Parties (as defined in the Debenture) under the Debenture and certain other finance documents.]
- 4 This notice may only be revoked or amended with the prior written consent of the Security Agent.
- 5 Please confirm by completing the enclosed copy of this notice and returning it to the Security Agent (with a copy to us) that you agree to the above and that:
- 5.1 you accept the instructions and authorisations contained in this notice and you undertake to comply with this notice;
- 5.2 you have not, at the date this notice is returned to the Security Agent, received notice of the assignment or charge, the grant of any security or the existence of any other interest of any third party in or to the Agreement or any proceeds of them or any breach of the terms of the Agreement;
- 5.3 [[after receipt of written notice in accordance with paragraph 2.5 above,][you will not permit any sums to be paid to us or any other person under or pursuant to the Agreement without the prior written consent of the Security Agent]; and
- 5.4 you will not exercise any right to terminate, cancel, vary or waive the Agreement or take any action to amend or supplement the Agreement without the prior written consent of the Security Agent except where such termination, cancellation, variation or waiver could not reasonably be expected to materially and adversely affect the interests of the Finance Parties under and as defined in the Debenture and certain other finance documents.
- 6 This notice, and any acknowledgement in connection with it, and any non-contractual obligations arising out of or in connection with any of them, shall be governed by English law.

Yours faithfully

.....
for and on behalf of
● Limited

ACKNOWLEDGEMENT

From: [counterparty]

To: [Security Agent]

Copy to: [Company]

Date:

We hereby acknowledge receipt of the notice dated [], a copy of which is attached to the acknowledgment (the "**Notice**") and confirm the matters set out in paragraph [5] of the Notice.

.....
for and on behalf of
[counterparty]

SCHEDULE 4

FORM OF NOTICE AND ACKNOWLEDGEMENT – ACCOUNTS

NOTICE

To: [name and address of third party bank]

Attention: []

Date:

Dear Sirs

7 We hereby give you notice that by a debenture dated [] (the "**Debenture**") we have charged to [] (the "**Security Agent**") all our right, title and interest in and to the following accounts in our name with you and all sums of money which are now or may from time to time in the future be held in such accounts, all interest from time to time accrued or accruing on the Charged Accounts, any investment made out of any such moneys or account and all rights to repayment of any of the foregoing by you:

7.1 [•], [•], [•] and [•] (the "**Blocked Accounts**");

7.2 [•], [•], [•] and [•]; and

7.3 all other accounts from time to time maintained with you by us and all moneys at any time standing to the credit of such accounts, (together the "**Charged Accounts**").

8 We advise you that, under the terms of the Debenture, we are:

8.1 [In respect of *Blocked Accounts* – not entitled to withdraw any moneys from the Blocked Accounts without first having obtained the prior written consent of the Security Agent];

8.2 [In respect of *Charged Accounts which are not Blocked Accounts* – entitled to withdraw all moneys from any Charged Account which is not a Blocked Account and that you may debit to any Charged Account which is not a Blocked Account amounts due to you from us until you receive notice from the Security Agent (such notice, a "**Blocking Notice**") that it or you may no longer do so. By countersigning this notice the Security Agent confirms that we may make withdrawals from any Charged Account which is not a Blocked Account and that you may debit to any Charged Account which is not a Blocked Account amounts due to you from us until such time as the Security Agent delivers a Blocking Notice.

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

9.1 unless the Security Agent so authorises you in writing, not to permit withdrawals from any Charged Account except to the extent that any withdrawal is expressly permitted by this notice and such permissions have not been withdrawn;

9.2 to hold all moneys from time to time standing to the credit of the Charged Accounts to the order of the Security Agent;

- 9.3 to pay all or any part of the moneys standing to the credit of the Charged Accounts to the Security Agent (or as it may direct) promptly following receipt of written instructions from the Security Agent to that effect; and
- 9.4 to disclose to the Security Agent such information relating to us and the Charged Accounts as the Security Agent may from time to time request you to provide.
- 10 This notice may only be revoked or amended with the prior written consent of the Security Agent.
- 11 Please confirm by completing the enclosed copy of this notice and returning it to the Security Agent (with a copy to us) that you agree to the above and that:
- 11.1.1 you accept the authorisations and instructions contained in this notice and you undertake to comply with this notice;
- 11.1.2 you have not, at the date this notice is returned to the Security Agent, received notice of any assignment or charge of or claim to the monies standing to the credit of any Charged Account or the grant of any security or other interest over those monies or any Charged Account in favour of any third party and you will notify the Security Agent promptly if you should do so in the future; and
- 11.1.3 you do not at the date of this notice and will not in the future exercise any right to combine accounts or any rights of set-off or lien or any similar rights in relation to the monies standing to the credit of the Charged Accounts.
- 12 This notice, and any acknowledgement in connection with it, and any non-contractual obligations arising out of or in connection with any of them, shall be governed by English law.

Yours faithfully

By.....
for and on behalf of
• Limited

By.....
for and on behalf of
Merino Industries Ltd

ACKNOWLEDGEMENT

To: [name and address of Security Agent]

Date:

Dear Sirs

We hereby acknowledge receipt of the notice dated [], a copy of which is attached to the acknowledgment (the "**Notice**") and confirm the matters set out in paragraph [5] of the Notice.

Yours faithfully

.....
for and on behalf of
[third party bank]

SIGNATURE PAGES TO DEBENTURE

The Chargors

EXECUTED as a **DEED** by **OWEN**)
PUGH HOLDINGS LIMITED acting by)
a director in the presence of:)

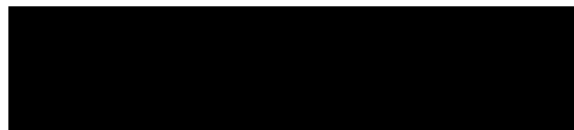


W Signature
I Name *OLIVIA COULSON*
T Address
N
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S
S Occupation *TRAINEE SOLICITOR*

WATSON BURTON LLP
1 ST JAMES' GATE
NEWCASTLE UPON TYNE NE99 1YQ

Address: Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR
Fax: To be advised
E-mail: To be advised
Attention: The Directors

EXECUTED as a **DEED** by **OWEN**)
PUGH CONTRACTS LIMITED acting)
by a director in the presence of:)



W Signature
I Name *OLIVIA COULSON*
T Address
N
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S Occupation *TRAINEE SOLICITOR*

WATSON BURTON LLP
1 ST JAMES' GATE
NEWCASTLE UPON TYNE NE99 1YQ

Address: Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR
Fax: To be advised
E-mail: To be advised
Attention: The Directors

EXECUTED as a DEED by OWEN)
PUGH CIVIL ENGINEERING LIMITED)
acting by a director in the presence of:)

W Signature [REDACTED]
I Name OLIVIA COULSON
T Address
N
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S
S Occupation TRAINEE SOLICITOR

WATSON BURTON LLP
1 ST JAMES' GATE
NEWCASTLE UPON TYNE NE99 1YQ

Address: Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR
Fax: To be advised
E-mail: To be advised
Attention: The Directors

EXECUTED as a DEED by OWEN)
PUGH & COMPANY LIMITED acting)
by a director in the presence of:)

W Signature [REDACTED]
I Name OLIVIA COULSON
T Address
N
E
S
S Occupation TRAINEE SOLICITOR

WATSON BURTON LLP
1 ST JAMES' GATE
NEWCASTLE UPON TYNE NE99 1YQ

Address: Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR
Fax: To be advised
E-mail: To be advised
Attention: The Directors

EXECUTED as a DEED by OWEN)
PUGH AGGREGATES LIMITED)
acting by a director in the presence of:)

W Signature

I Name

T Address

N

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S Occupation

OLIVIA COULSON

TRANCE SOLICITOR

WATSON BURTON LLP
1 ST JAMES' GATE
NEWCASTLE UPON TYNE NE99 1YQ

Address: Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR
Fax: To be advised
E-mail: To be advised
Attention: The Directors

EXECUTED as a DEED by H C S)
DRAIN SERVICES LIMITED acting by)
a director in the presence of:)

W Signature

I Name

T Address

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S Occupation

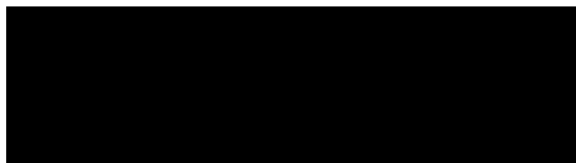
OLIVIA COULSON

TRANCE SOLICITOR

WATSON BURTON LLP
1 ST JAMES' GATE
NEWCASTLE UPON TYNE NE99 1YQ

Address: Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR
Fax: To be advised
E-mail: To be advised
Attention: The Directors

EXECUTED as a DEED by OWEN)
PUGH PROPERTIES LIMITED acting)
by a director in the presence of:)



W Signature



I Name

OLIVIA COULSON

T Address

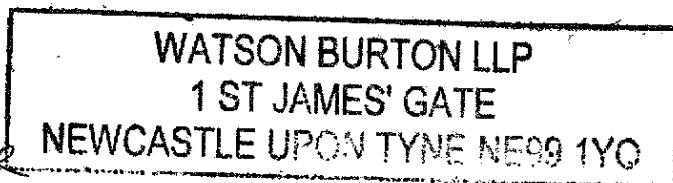
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S Occupation

TRANCE SOUTHER



Address: Cramlington Road, Dudley, Cramlington, Northumberland, NE23 7PR

Fax: To be advised

E-mail: To be advised

Attention: The Directors

The Security Agent

EXECUTED as a **DEED** by **MERINO**)
INDUSTRIES LTD acting by a director)
in the presence of: [REDACTED])

W Signature

I Name

T Address

N

E

S

S Occupation

Andrew Jones
Stevens & Bolton LLP
Wey House
Farnham Road
Guildford GU1 4YD
Solicitor

Address: Golden Cross House, 8 Duncannon Street, London, WC2N 4JF

Fax: (0)20 7788 3428

E-mail: mark.colley@merinope.com

Attention: Mark Colley