



**Registration of a Charge**

Company name: **ALTODIGITAL UK LIMITED**

Company number: **02030904**

Received for Electronic Filing: **27/09/2018**



X7FE5SAJ

---

**Details of Charge**

Date of creation: **27/09/2018**

Charge code: **0203 0904 0010**

Persons entitled: **JAMES ABRAHART**

Brief description: **DEBENTURE - SUBJECT TO THE TERMS OF AN INTER-CREDITOR DEED**

**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 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **CHARLOTTE STOJAK**



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

Company number: 2030904

Charge code: 0203 0904 0010

The Registrar of Companies for England and Wales hereby certifies that a charge dated 27th September 2018 and created by ALTODIGITAL UK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th September 2018 .

Given at Companies House, Cardiff on 1st October 2018

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 *27 September* 2018

(1) ALTODIGITAL UK LIMITED

and

(2) JAMES ABRAHART

**DEBENTURE**

**THIS DEBENTURE IS SUBJECT TO THE TERMS OF AN INTER-CREDITOR DEED.**

## **CONTENTS**

---

### **CLAUSE**

REPRESENTATIONS AND WARRANTIES .....	11
GENERAL COVENANTS.....	15
EQUIPMENT COVENANTS .....	21
BOOK DEBTS COVENANTS .....	22
INTELLECTUAL PROPERTY COVENANTS .....	22
POWERS OF THE LENDER .....	23
WHEN SECURITY BECOMES ENFORCEABLE .....	25
ENFORCEMENT OF SECURITY .....	25
RECEIVER 28	
POWERS OF RECEIVER.....	29
DELEGATION 32	
APPLICATION OF PROCEEDS .....	32
COSTS AND INDEMNITY .....	33
FURTHER ASSURANCE.....	34
POWER OF ATTORNEY .....	34
ASSIGNMENT AND TRANSFER .....	35
SET-OFF 35	
AMENDMENTS, WAIVERS AND CONSENTS .....	36
FURTHER PROVISIONS.....	37
NOTICES 38	
GOVERNING LAW AND JURISDICTION .....	39

THIS DEBENTURE is made as a deed on **27 September** 2018

**PARTIES**

- (1) **ALTODIGITAL UK LIMITED** a company incorporated in England and Wales under number 02030904 whose registered office is at Summit House, Cherrycourt Way, Leighton Buzzard, Bedfordshire, LE7 4UH (the **Obligor**);
- (2) **JAMES ABRAHART** of 31 Belgrave Court, 36 Westferry Circus, London, E14 8RJ (the **Lender**).

(each of the **Lender** and the **Obligor** being a **Party** and together the **Lender** and the **Obligor** are the **Parties**).

**BACKGROUND**

- (A) The Lender has agreed to provide Altodigital Networks Limited (Company Number: 06380200) with the loan on the terms of a Facility Agreement.
- (B) It is a condition precedent to the provision of the loan that Altodigital Networks Limited provides security over the Group to the Lender to secure the payment and discharge of the Secured Liabilities.
- (C) The Obligor has agreed to create the security required by entering into this Deed.

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 Words and expressions defined in the Facility Agreement (defined below) will have the same meanings in this Deed unless they are expressly defined in this Deed.

1.2 In this Deed, unless otherwise provided:

**Administrator:** an administrator appointed to manage the affairs, business and property of the Obligor pursuant to clause 71.

**Book Debts:** all present and future book and other debts, and monetary claims due or owing to the Obligor, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Obligor in relation to any of them.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charged Assets:** means all the Land, assets, goodwill and undertakings of the Obligor and Group present or future for the time being subject to the security interests created by this Deed;

<b>Delegate:</b>	any person appointed by the Lender or any Receiver pursuant to clause 113 to 115 (inclusive) and any person appointed as attorney of the Lender, Receiver or Delegate.
<b>Designated Account:</b>	any account of the Obligor nominated by the Lender as a designated account for the purposes of this deed.
<b>Environment:</b>	the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.
<b>Environmental Law:</b>	all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.  Environmental Licence: any authorisation, permit or licence necessary under Environmental Law in respect of any of the Secured Assets.
<b>Equipment:</b>	all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property owned by the Obligor or in which it has an interest, including any part of it and all spare parts, replacements, modifications and additions.
<b>Event of Default:</b>	any of the following events: <ul style="list-style-type: none"> <li>i. the Obligor fails to pay any of the Secured Liabilities when due, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within three Business Days of its due date or by a Disruption Event and payment is made within three Business Days of its due date;</li> <li>ii. the Obligor fails (other than a failure to pay referred to in paragraph (a) of this definition) to comply with any provision of this deed or any document under which the Obligor owes obligations to the Lender and (if the Lender considers, acting reasonably, that the default is capable of remedy) such default is not remedied</li> </ul>

within 14 days of the earlier of the Lender notifying the Obligor of the default and the remedy required and the Obligor becoming aware of the default;

- iii. any representation, warranty or statement made, repeated or deemed made by the Obligor to the Lender is (or proves to have been) incomplete, untrue, incorrect or misleading in any material respect when made, repeated or deemed made;
- iv. the Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business;
- v. any Borrowed Money is not paid when due or within any originally applicable grace period;
- vi. any Borrowed Money becomes due, or capable of being declared due and payable, before its stated maturity by reason of an event of default (however described);
- vii. any commitment for any Borrowed Money is cancelled or suspended by a creditor of the Obligor by reason of an event of default (however described);
- viii. any creditor of the Obligor becomes entitled to declare any Borrowed Money due and payable before its stated maturity by reason of an event of default (however described);
- ix. the Obligor stops or suspends payment of any of its debts or is unable to, or admits its inability to, pay its debts as they fall due;
- x. The Obligor commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors (excluding the Lender) with a view to rescheduling any of its Indebtedness (because of actual or anticipated financial difficulties);
- xi. a moratorium is declared in respect of any Indebtedness of the Obligor;
- xii. any action, proceedings, procedure or step is taken in relation to the suspension of payments, a moratorium of any Indebtedness, winding up, dissolution, administration or reorganisation

- (using a voluntary arrangement, scheme of arrangement or otherwise) of the Obligor;
- xiii. any action, proceedings, procedure or step is taken in relation to a composition, compromise, assignment or arrangement with any creditor of the Obligor;
  - xiv. any action, proceedings, procedure or step is taken in relation to the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Obligor or any of its assets;
  - xv. the value of the Obligor's assets is less than its liabilities (taking into account contingent and prospective liabilities);
  - xvi. any event occurs in relation to the Obligor similar to those set out in paragraphs (i) to (o) (inclusive) under the laws of any applicable jurisdiction;
  - xvii. control of the Obligor's goods is taken or a distress, attachment, execution, expropriation, sequestration or other analogous legal process in any jurisdiction is levied, enforced or sued out on, or against, the Obligor's assets;
  - xviii. any Security on or over the assets of the Obligor becomes enforceable;
  - xix. all or any part of this deed or any document under which the Obligor owes obligations to the Lender is or becomes invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect or it becomes unlawful for any party to this deed or any document under which the Obligor owes obligations to the Lender (other than the Lender) to perform any obligation under this deed or that document;
  - xx. the Obligor repudiates or rescinds or shows an intention to repudiate or rescind this deed or any document under which the Obligor owes obligations to the Lender; or

xxi. any event occurs (or circumstances exist) that, in the opinion of the Lender, has or is likely to have a Material Adverse Effect.

**Facility Agreement:**

means the facility agreement dated the same date as this Deed between Altodigital Networks Limited and the Lender;

**Group:**

Altodigital Networks Limited, any subsidiary or any holding company from time to time of Altodigital Networks Limited, and any subsidiary from time to time of a holding company of that company. Each company in the Group is a **member of the Group**

**Indebtedness:**

any obligation to pay or repay money, present or future, whether actual or contingent, sole or joint and any guarantee or indemnity of any of those obligations.

**Insurance Policy:**

each contract and policy of insurance effected or maintained by the Obligor from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the Charged Assets or the Equipment).

**Intellectual Property:**

the Obligor's present and future patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Inter-Creditor Deed:**

document entered into on even date between Lloyds Bank Plc, Bank of Scotland Plc, James Abrahart, Kyocera Document Solutions (UK) Limited, Altodigital Managed Services Ltd, Altodigital Networks Limited and their respective subsidiaries.

**Investments:**

all certificated shares, stock, debentures, bonds or other securities or investments (whether or not

marketable) from time to time legally or beneficially owned by or on behalf of the Borrower

**Land:** means any right or interest in or over land wherever situated, including without limitation any buildings and fixtures on land, and the benefit of any covenants or rights owed to any person or enforceable by such person by virtue of the ownership, possession or occupation of land and/or all freehold and leasehold properties (whether registered or unregistered) and all common hold properties, now or in the future (and from time to time) owned by the Obligor or in which the Obligor holds an interest (including (but not limited to) the properties.

**LPA 1925:** the Law of Property Act 1925.

**Permitted Security:** being the debenture in favour of Lloyds Bank plc in addition to the Bank of Scotland and Kyocera Document Solutions (UK) Limited debentures.

**Receiver:** means a receiver appointed pursuant to this Deed or to any applicable law, whether alone or jointly, and includes a receiver and/or manager and an administrative receiver (if the Lender is permitted to appoint such administrative receiver);

**Secured Assets:** all the assets, property and undertaking of the Obligor which are, or are expressed to be, subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them).

**Secured Liabilities:** all money, liabilities and obligations now or in the future owed or incurred by the Obligor to the Lender (including those under the Facility Agreement, Guarantee or this Deed) whether actual or contingent, sole or joint, as principal or as surety, including (without limitation) any liability of the Obligor to a third party which subsequently becomes payable to the Lender by assignment or otherwise and any interest, commission, costs, charges and expenses of the Lender;

**Security Financial Collateral Arrangement:** has the meaning given to that expression in the Financial Collateral Regulations.

**Security:** 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:**

the period starting on the date of this deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**VAT:**

value added tax or any equivalent tax chargeable in the UK or elsewhere.

**1.3 Unless the context otherwise requires:**

- (a) each gender includes the others;
- (b) the singular and the plural are interchangeable;
- (c) references to clauses, Schedules or Appendices mean to clauses or Schedules of and Appendices to this Deed;
- (d) references to this Deed include its Schedules, as amended;
- (e) references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
- (f) including means including without limitation and general words are not limited by example;
- (g) clause headings do not affect their interpretation; and
- (h) references to legislation include any modification or re-enactment thereof before the date of this Deed

**1.4 Writing includes manuscript, facsimiles, emails and communications in Braille.**

**2. COVENANT TO PAY**

**2.1** The Obligor shall, on demand, pay to the Lender and discharge the Secured Liabilities when they become due.

**3. INTER-CREDITOR DEED**

**3.1** This Debenture is subject to an Inter-creditor Deed in place.

**4. FIXED CHARGES**

**4.1** As a continuing security for the payment and discharge of the Secured Liabilities, the Obligor with full title guarantee charges to the Lender by way of a third fixed charge:

- (a) all present and future estates or interests of the Obligor in, or over, any freehold, leasehold or commonhold property;

- (b) the benefit of all other contracts, guarantees, appointments and warranties relating to each Charged Assets and other documents to which the Obligor is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of any Charged Assets or otherwise relating to any Charged Assets (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them);
- (c) all licences, consents and authorisations (statutory or otherwise) held or required in connection with its business or the use of any Secured Asset, and all rights in connection with them;
- (d) all its present and future goodwill;
- (e) all its uncalled capital;
- (f) all the Equipment;
- (g) all the Intellectual Property;
- (h) all the Book Debts;
- (i) all the Investments;
- (j) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account), together with all other rights and benefits accruing to or arising in connection with each account;
- (k) all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, to the extent not effectively assigned under clause 5; and
- (l) all its rights in respect of each and all other agreements, instruments and rights relating to the Secured Assets, to the extent not effectively assigned under clause 5.

## **5. ASSIGNMENT**

5.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Obligor with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

- (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and
- (b) the benefit of all other agreements, instruments and rights relating to the Secured Assets.

## **6. FLOATING CHARGE**

- 6.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Obligor with full title guarantee charges to the Lender, by way of third floating charge, all its undertaking, property, assets and rights not otherwise effectively mortgaged, charged or assigned under clause 2.1 to clause 5 inclusive.
- 6.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 6.

## **7. AUTOMATIC CRYSTALLISATION OF FLOATING CHARGE**

- 7.1 The floating charge created by clause 6 shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:
- (a) the Obligor:
    - (i) creates, or attempts to create, without the prior written consent of the Lender, Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this deed or the Permitted Security); or
    - (ii) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);
  - (b) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or
  - (c) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Obligor.

## **8. CRYSTALLISATION OF FLOATING CHARGE BY NOTICE**

- 8.1 The Lender may, in its sole discretion, by written notice to the Obligor, convert the floating charge created under this deed into a fixed charge as regards any part of the Secured Assets specified by the Lender in that notice if:
- (a) an Event of Default is continuing; or
  - (b) the Lender considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

## **9. ASSETS ACQUIRED AFTER ANY FLOATING CHARGE HAS CRYSTALLISED**

- 9.1 Any asset acquired by the Obligor after any crystallisation of the floating charge created under this deed that, but for that crystallisation, would be subject to a floating charge under this deed, shall (unless the Lender confirms otherwise to the Obligor in writing) be charged to the Lender by way of fixed charge ranking behind the Permitted Security.

## **LIABILITY OF THE OBLIGOR**

### **10. LIABILITY NOT DISCHARGED**

- 10.1 The Obligor's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:
- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
  - (b) the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
  - (c) any other act or omission that, but for this clause 10, might have discharged, or otherwise prejudiced or affected, the liability of the Obligor.

### **11. IMMEDIATE RECOURSE**

- 11.1 The Obligor waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Obligor.

## **REPRESENTATIONS AND WARRANTIES**

### **12. TIMES FOR MAKING REPRESENTATIONS AND WARRANTIES**

- 12.1 The Obligor makes the representations and warranties set out in clause 12 to 32 (inclusive) to the Lender on the date of this deed are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

### **13. OWNERSHIP OF SECURED ASSETS**

- 13.1 The Obligor is the sole legal and beneficial owner of, and has good, valid and marketable title to, the Secured Assets.

### **14. NO SECURITY**

- 14.1 The Secured Assets are free from any Security other than Permitted Security and the Security created by this deed.

### **15. NO ADVERSE CLAIMS**

- 15.1 The Obligor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

**16. NO ADVERSE COVENANTS**

16.1 There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

**17. NO BREACH OF LAWS**

17.1 There is no breach of any law or regulation that materially and adversely affects the Secured Assets.

**18. NO INTERFERENCE IN ENJOYMENT**

18.1 No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.

**19. NO OVERRIDING INTERESTS**

19.1 Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Charged Assets .

**20. AVOIDANCE OF SECURITY**

20.1 No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Obligor or otherwise.

**21. NO PROHIBITIONS OR BREACHES**

21.1 There is no prohibition on assignment in any Insurance Policy and the entry into this deed by the Obligor does not, and will not, constitute a breach of any Insurance Policy or any other policy, agreement, document, instrument or obligation binding on the Obligor or its assets.

**22. ENVIRONMENTAL COMPLIANCE**

22.1 The Obligor has, at all times, complied in all material respects with all applicable Environmental Law and Environmental Licences.

**23. INVESTMENTS**

23.1 The Investments are fully paid and are not subject to any option to purchase or similar rights.

23.2 No constitutional document of an issuer of an Investment, nor any other agreement:

- (a) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this deed; or
- (b) contains any rights of pre-emption in relation to the Investments.

23.3 The Obligor has complied with all notices relating to all or any of the Investments received by it pursuant to sections 790D and 790E of the Companies Act 2006.

23.4 No warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of all or any of the Investments.

## **24. DUE INCORPORATION**

24.1 The Obligor:

- (a) is a duly incorporated limited liability company validly existing under the law of its jurisdiction of incorporation; and
- (b) has the power to own its assets and carry on its business as it is being conducted.

## **25. POWERS**

25.1 The Obligor has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of this deed and the transactions contemplated by it.

25.2 No limit on its powers will be exceeded as a result of the grant of Security contemplated by this deed.

## **26. NON-CONTRAVENTION**

26.1 The entry into and performance by the Obligor of, and the transactions contemplated by, this deed do not and will not contravene or conflict with:

- (a) its constitutional documents;
- (b) any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
- (c) any law or regulation or judicial or official order applicable to it.

## **27. AUTHORISATIONS**

27.1 The Obligor has obtained all required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations in this deed. Any such authorisations are in full force and effect.

## **28. BINDING OBLIGATIONS**

28.1 The Obligor's obligations under this deed are legal, valid, binding and enforceable.

28.2 This deed creates (or, once entered into, will create):

- (a) valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and
- (b) subject to registration in accordance with the Companies Act 2006 and, in the case of real property, registration at the Land Registry, perfected Security over the assets expressed to be subject to Security in it,

in favour of the Lender, having the priority and ranking expressed to be created by this deed and ranking ahead of all (if any) Security and rights of third parties except those preferred by law.

## **29. NO FILING OR STAMP TAXES**

- 29.1 It is not necessary to file, record or enrol this deed (other than as provided in clause 28) with any court or other authority in that jurisdiction or pay any stamp, registration or similar taxes in relation to this deed or any transaction contemplated by it (other than in connection with registrations at Companies House and the Land Registry).

## **30. NO DEFAULT**

- 30.1 No Event of Default or, on the date of this deed, event or circumstance which would, on the giving of notice, expiry of any grace period, making of any determination under this deed or any document under which the Obligor owes obligations to the Lender, satisfaction of any other condition (or any combination thereof) become an Event of Default is continuing.
- 30.2 No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, making of any determination or satisfaction of any other condition (or any combination thereof), would become) a default or termination event (however described) under any other agreement or instrument that is binding on it or to which any of its assets is subject which has or is likely to have a Material Adverse Effect.

## **31. LITIGATION**

- 31.1 No litigation, arbitration or administrative proceedings or investigations are taking place, pending or, to the Obligor's knowledge, threatened against it, any of its directors or any of the Secured Assets.

## **32. INFORMATION**

- 32.1 The information, in written or electronic format, supplied by, or on behalf of, the Obligor to the Lender in connection with this deed was, at the time it was supplied or at the date it was stated to be given (as the case may be), to the best of the Obligor's knowledge and belief:
- (a) if it was factual information, complete, true and accurate in all material respects;
  - (b) if it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was arrived at after careful consideration;

- (c) if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and
- (d) not misleading in any material respect nor rendered misleading by a failure to disclose other information,

except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Obligor to the Lender.

## **GENERAL COVENANTS**

### **33. NOTIFICATION OF DEFAULT**

- 33.1 The Obligor shall notify the Lender of any Event of Default or any event or circumstance which would, on the giving of notice, expiry of any grace period, making of any determination under this deed or any document under which the Obligor owes obligations to the Lender or satisfaction of any other condition (or any combination thereof), become an Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- 33.2 The Obligor shall, promptly on request by the Lender, supply a certificate signed by two of its directors or senior officers on its behalf certifying that no Event of Default is continuing (or, if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy it).

### **34. AUTHORISATIONS**

- 34.1 The Obligor shall promptly obtain all consents and authorisations necessary under any law or regulation (and do all that is needed to maintain them in full force and effect) to enable it to perform its obligations under this deed and to ensure the legality, validity, enforceability and admissibility in evidence of this deed in its jurisdiction of incorporation.

### **35. COMPLIANCE WITH LAW**

- 35.1 The Obligor shall comply in all respects with all laws to which it may be subject, if failure to do so would materially impair its ability to perform its obligations under this deed.

### **36. CHANGE OF BUSINESS**

- 36.1 The Obligor shall not make any substantial change to the general nature or scope of its business as carried on at the date of this deed.

### **37. INFORMATION**

- 37.1 The Obligor shall supply to the Lender:
  - (a) all documents dispatched by the Obligor to its shareholders (or any class of them), or its creditors generally, at the same time as they are dispatched;

- (b) details of any litigation, arbitration or administrative proceedings that are current, threatened or pending against the Obligor as soon as it becomes aware of them and which might, if adversely determined, have a Material Adverse Effect; and
- (c) promptly, any further information about the financial condition, assets, business and operations of the Obligor as the Lender may reasonably request.

### **38. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

38.1 The Obligor shall not at any time, except with the prior written consent of the Lender:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this deed or any Permitted Security;
- (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or
- (c) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

### **39. PRESERVATION OF SECURED ASSETS**

39.1 The Obligor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this deed.

### **40. COMPLIANCE WITH LAWS AND REGULATIONS**

40.1 The Obligor shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.

40.2 The Obligor shall:

- (a) comply with the requirements of any law or regulation relating to or affecting the Secured Assets or the use of it or any part of them;
- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
- (c) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

### **41. ENFORCEMENT OF RIGHTS**

41.1 The Obligor shall use its best endeavours to:

- (a) procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Obligor and forming part of the Secured Assets of the covenants and other obligations imposed on such counterparty (including each counterparty in respect of a each insurer in respect of an Insurance Policy); and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Lender may require from time to time.

## **42. INSURANCE**

42.1 The Obligor shall insure and keep insured the Secured Assets against:

- (a) loss or damage by fire or terrorist acts, including any third party liability arising from such acts;
- (b) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Obligor; and
- (c) any other risk, perils and contingencies as the Lender may reasonably require.

42.2 Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender, and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Secured Assets (meaning in the case of any premises on any Charged Assets , the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and, in the case of any Charged Assets , loss of rents payable by the tenants or other occupiers of any Charged Assets for a period of at least three years, including provision for increases in rent during the period of insurance.

42.3 The Obligor shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to any insurance as is required by clause 42.1.

42.4 The Obligor shall, if requested by the Lender, procure that each insurance policy (other than public liability and third party liability insurances) effected or maintained by it or any person on its behalf in accordance with clause 42.1 but without the Lender having any liability for any premium in relation to those insurance policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.

42.5 The Obligor shall ensure that each insurance policy effected or maintained by it or any person on its behalf in accordance with clause 42.1 contains:

- (a) terms ensuring that it cannot be avoided or vitiated as against the Lender by reason of the act or default of any other insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any other insured party;

- (b) a waiver of each insurer's rights of subrogation against the Obligor, the Lender and the tenants of any Charged Assets other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of any Charged Assets or any insurance policy; and
- (c) terms ensuring that no insurer can repudiate, rescind or cancel it, treat it as avoided in whole or in part nor treat it as expired due to non-payment of premium without giving at least 30 days' prior written notice to the Lender.

#### **43. INSURANCE PREMIUMS**

43.1 The Obligor shall:

- (a) promptly pay all premiums in respect of each insurance policy as is required by clause 42.1 and do all other things necessary to keep that policy in full force and effect; and
- (b) (if the Lender so requires) give to the Lender copies of the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy as is required by clause 42.1 (or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Obligor is entitled to obtain from the landlord under the terms of the relevant lease).

#### **44. NO INVALIDATION OF INSURANCE**

44.1 The Obligor shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy as is required by clause 42.1.

#### **45. PROCEEDS FROM INSURANCE POLICIES**

45.1 All monies payable under any insurance policy maintained by the Obligor in accordance with clause 42.1 at any time (whether or not the security constituted by this deed has become enforceable) shall be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this deed has become enforceable and if the Lender so directs, in or towards discharge or reduction of the Secured Liabilities.

#### **46. INFORMATION**

46.1 The Obligor shall:

- (a) give the Lender such information concerning the location, condition, use and operation of the Secured Assets as the Lender may require;
- (b) permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- (c) promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact,

matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Obligor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

#### **47. PAYMENT OF OUTGOINGS**

- 47.1 The Obligor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Lender.

#### **INVESTMENTS COVENANTS**

#### **48. NOMINATIONS**

- 48.1 The Obligor shall terminate with immediate effect all nominations it may have made (including, without limitation, any nomination made under section 145 or section 146 of the Companies Act 2006) in respect of any Investments and, pending that termination, procure that any person so nominated:

- (a) does not exercise any rights in respect of any Investments without the prior written approval of the Lender; and
- (b) immediately on receipt by it, forward to the Lender all communications or other information received by it in respect of any Investments for which it has been so nominated.

- 48.2 The Obligor shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments.

#### **49. PRE-EMPTION RIGHTS AND RESTRICTIONS ON TRANSFER**

- 49.1 The Obligor shall:

- (a) obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association (or otherwise) of an issuer of any Investments, for the transfer of the Investments to the Lender or its nominee, or to a purchaser on enforcement of the security constituted by this deed; and
- (b) procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) under the articles of association, other constitutional document or otherwise of each issuer of the Investments in any manner that the Lender may require in order to permit the transfer of the Investments to the Lender or its nominee, or to a purchaser on enforcement of the security constituted by this deed.

**50. DIVIDENDS AND VOTING RIGHTS BEFORE ENFORCEMENT**

50.1 Before the security constituted by this deed becomes enforceable, the Obligor may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Lender of any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:

- (a) it shall not do so in any way that would breach any provision of this deed or for any purpose inconsistent with this deed; and
- (b) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Lender's opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Lender's security under this deed.

**51. DIVIDENDS AND VOTING RIGHTS AFTER ENFORCEMENT**

51.1 After the security constituted by this deed has become enforceable:

- (a) all dividends and other distributions paid in respect of the Investments and received by the Obligor shall be held by the Obligor on trust for the Lender and immediately paid into a Designated Account or, if received by the Lender, may be applied by the Lender in accordance with clause 116; and
- (b) all voting and other rights and powers attaching to the Investments may be exercised by, or at the direction of, the Lender and the Obligor shall, and shall procure that its nominees shall, comply with any directions the Lender may give, in its absolute discretion, concerning the exercise of those rights and powers.

**52. CALLS ON INVESTMENTS**

52.1 Notwithstanding the security created by this deed, the Obligor shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. The Obligor acknowledges that the Lender shall not be under any liability in respect of any such calls, instalments or other payments.

**53. NO ALTERATION OF CONSTITUTIONAL DOCUMENTS OR RIGHTS ATTACHING TO INVESTMENTS**

53.1 The Obligor shall not, without the prior written consent of the Lender, amend, or agree to the amendment of:

- (a) the memorandum or articles of association, or any other constitutional documents, of any issuer of the Investments that is not a public company; or
- (b) the rights or liabilities attaching to, or conferred by, all or any of the Investments.

#### **54. PRESERVATION OF INVESTMENTS**

- 54.1 The Obligor shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer of any of the Investments (that is not a public company) shall not:
- (a) consolidate or subdivide any of the Investments, or re-organise, exchange, repay or reduce its share capital in any way;
  - (b) issue any new shares or stock; or
  - (c) refuse to register any transfer of any of the Investments that may be lodged with it for registration by, or on behalf of, the Lender or the Obligor in accordance with this deed.

#### **55. INVESTMENTS INFORMATION**

- 55.1 The Obligor shall, promptly following receipt, send to the Lender copies of any notice, circular, report, accounts and any other document received by it that relates to the Investments.

#### **56. COMPLIANCE WITH REQUESTS FOR INFORMATION**

- 56.1 The Obligor shall promptly send a copy to the Lender of, and comply with, all requests for information which is within its knowledge and which are made under any law or regulation or any similar provision in any articles of association or other constitutional document, or by any listing or other authority, relating to any of the Investments. If it fails to do so, the Lender may elect to provide such information as it may have on behalf of the Obligor.

### **EQUIPMENT COVENANTS**

#### **57. MAINTENANCE OF EQUIPMENT**

- 57.1 The Obligor shall:
- (a) maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules;
  - (b) at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value; and
  - (c) not permit any Equipment to be:
    - (i) used or handled other than by properly qualified and trained persons; or
    - (ii) overloaded or used for any purpose for which it is not designed or reasonably suitable.

**58. PAYMENT OF EQUIPMENT TAXES**

- 58.1 The Obligor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Equipment and, on demand, produce evidence of such payment to the Lender.

**BOOK DEBTS COVENANTS**

**59. REALISING BOOK DEBTS**

- 59.1 The Obligor shall as an agent for the Lender, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Lender;
- 59.2 The Obligor shall not, without the prior written consent of the Lender, withdraw any amounts standing to the credit of any Designated Account.
- 59.3 The Obligor shall, if called on to do so by the Lender, execute a legal assignment of the Book Debts to the Lender on such terms as the Lender may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

**60. PRESERVATION OF BOOK DEBTS**

- 60.1 The Obligor shall not (except as provided by clause 59 or with the prior written consent of the Lender) release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

**INTELLECTUAL PROPERTY COVENANTS**

**61. PRESERVATION OF RIGHTS**

- 61.1 The Obligor shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including (without limitation) by observing all covenants and stipulations relating to those rights, and by paying all applicable renewal fees, licence fees and other outgoings.

**62. REGISTRATION OF INTELLECTUAL PROPERTY**

- 62.1 The Obligor shall use all reasonable efforts to register applications for the registration of any Intellectual Property, and shall keep the Lender informed of all matters relating to each such registration.

**63. MAINTENANCE OF INTELLECTUAL PROPERTY**

- 63.1 The Obligor shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.

## **POWERS OF THE LENDER**

### **64. POWER TO REMEDY**

- 64.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Obligor of any of its obligations contained in this deed.
- 64.2 The Obligor irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.
- 64.3 Any monies expended by the Lender in remedying a breach by the Obligor of its obligations contained in this deed shall be reimbursed by the Obligor to the Lender on a full indemnity basis.

### **65. EXERCISE OF RIGHTS**

- 65.1 The rights of the Lender under clause 64 are without prejudice to any other rights of the Lender under this deed.
- 65.2 The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

### **66. POWER TO DISPOSE OF CHATTELS**

- 66.1 At any time after the security constituted by this deed has become enforceable, the Lender or any Receiver may, as agent for the Obligor, dispose of any chattels or produce found on any Charged Assets .
- 66.2 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 66.1, the Obligor shall indemnify the Lender and any Receiver against any liability arising from any disposal made under clause 66.1.

### **67. LENDER HAS RECEIVER'S POWERS**

- 67.1 To the extent permitted by law, any right, power or discretion conferred by this deed (either expressly or impliedly) or by law on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Lender in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

### **68. CONVERSION OF CURRENCY**

- 68.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 68) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.

68.2 Any such conversion shall be effected at the Lender's then prevailing spot selling rate of exchange for such other currency against the existing currency.

68.3 Each reference in this clause 68 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

## **69. NEW ACCOUNTS**

69.1 If the Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Lender may open a new account for the Obligor in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Obligor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

69.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 69.1, then, unless the Lender gives express written notice to the contrary to the Obligor, all payments made by the Obligor to the Lender shall be treated as having been credited to a new account of the Obligor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

## **70. INDULGENCE**

70.1 The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Obligor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this deed or to the liability of the Obligor for the Secured Liabilities.

## **71. APPOINTMENT OF AN ADMINISTRATOR**

71.1 The Lender may, without notice to the Obligor, appoint any one or more persons to be an Administrator of the Obligor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.

71.2 Any appointment under this clause 71 shall:

- (a) be in writing signed by a duly authorised signatory of the Lender; and
- (b) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

71.3 The Lender may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 71 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

**72. FURTHER ADVANCES**

72.1 The Lender covenants with the Obligor that it shall perform its obligations to make advances under any document to which the Lender and Obligor are party (including any obligation to make available further advances).

**WHEN SECURITY BECOMES ENFORCEABLE**

**73. SECURITY BECOMES ENFORCEABLE ON EVENT OF DEFAULT**

73.1 The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

**74. DISCRETION**

74.1 After the security constituted by this deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

**ENFORCEMENT OF SECURITY**

**75. ENFORCEMENT POWERS**

75.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.

75.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 73.

75.3 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

**76. EXTENSION OF STATUTORY POWERS OF LEASING**

76.1 The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Obligor, to:

- (a) grant a lease or agreement for lease;
- (b) accept surrenders of leases; or
- (c) grant any option in respect of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Obligor, and on such terms and conditions (including the payment of money to a lessee or tenant on a

surrender) as the Lender or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

## **77. ACCESS ON ENFORCEMENT**

77.1 At any time after the Lender has demanded payment of the Secured Liabilities or if the Obligor defaults in the performance of its obligations under this deed or an Event of Default is continuing, the Obligor will allow the Lender or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Lender or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Obligor for, or by any reason of, that entry.

77.2 At all times, the Obligor must use its best endeavours to allow the Lender or its Receiver access to any premises for the purpose of clause 77.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

## **78. REDEMPTION OF PRIOR SECURITY**

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

- (a) redeem any prior Security over any Secured Asset;
- (b) procure the transfer of that Security to itself; and
- (c) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Obligor).

78.2 The Obligor shall pay to the Lender immediately on demand all principal, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

## **79. PROTECTION OF THIRD PARTIES**

79.1 No purchaser, mortgagee or other person dealing with the Lender, any Receiver or any Delegate shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- (c) how any money paid to the Lender, any Receiver or any Delegate is to be applied.

**80. PRIVILEGES**

80.1 Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

**81. NO LIABILITY AS MORTGAGEE IN POSSESSION**

81.1 Neither the Lender nor any Receiver or Delegate shall be liable, by reason of entering into possession of a Secured Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, default or omission for which a mortgagee in possession might be liable.

**82. CONCLUSIVE DISCHARGE TO PURCHASERS**

82.1 The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

**83. RIGHT OF APPROPRIATION**

83.1 To the extent that:

- (a) the Secured Assets constitute Financial Collateral; and
- (b) this deed and the obligations of the Obligor under it constitute a Security Financial Collateral Arrangement,

the Lender shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Lender may, in its absolute discretion, determine.

83.2 The value of any Secured Assets appropriated in accordance with this clause shall be:

- (a) in the case of cash, the amount standing to the credit of each of the Obligor's accounts with any bank, financial institution or other person, at the time the right of appropriation is exercised; and
- (b) in the case of Investments, the market price of those Investments at the time the right of appropriation is exercised determined by the Lender by reference to a recognised market index or by any other method that the Lender may select (including independent valuation).

83.3 The Obligor agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

## **RECEIVER**

### **84. APPOINTMENT**

84.1 At any time after the security constituted by this deed has become enforceable, or at the request of the Obligor, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

### **85. REMOVAL**

85.1 The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **86. REMUNERATION**

86.1 The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

### **87. POWER OF APPOINTMENT ADDITIONAL TO STATUTORY POWERS**

87.1 The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

### **88. POWER OF APPOINTMENT EXERCISABLE DESPITE PRIOR APPOINTMENTS**

88.1 The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Secured Assets.

### **89. AGENT OF THE OBLIGOR**

89.1 Any Receiver appointed by the Lender under this deed shall be the agent of the Obligor and the Obligor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Obligor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

## **POWERS OF RECEIVER**

### **90. GENERAL**

- 90.1 Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on it by statute, have the rights, powers and discretions set out in clause 91 to clause 112.
- 90.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether it is an administrative receiver or not.
- 90.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- 90.4 Any exercise by a Receiver of any of the powers given by clause 90 -112 may be on behalf of the Obligor, the directors of the Obligor (in the case of the power contained in clause 105) or itself.

### **91. REPAIR AND DEVELOP CHARGED PROPERTIES**

- 91.1 A Receiver may undertake or complete any works of repair, alteration, building or development on the Charged Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

### **92. GRANT OR ACCEPT SURRENDERS OF LEASES**

- 92.1 A Receiver may grant, or accept, surrenders of any leases or tenancies affecting any Secured Asset on any terms, and subject to any conditions, that it thinks fit.

### **93. EMPLOY PERSONNEL AND ADVISERS**

- 93.1 A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that it thinks fit.
- 93.2 A Receiver may discharge any such person or any such person appointed by the Obligor.

### **94. MAKE AND REVOKE VAT OPTIONS TO TAX**

- 94.1 A Receiver may make, exercise or revoke any VAT option to tax as it thinks fit.

**95. REMUNERATION**

95.1 A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by it) that the Lender may prescribe or agree with it.

**96. POSSESSION**

96.1 A Receiver may take immediate possession of, get in and realise any Secured Asset.

**97. MANAGE OR RECONSTRUCT THE OBLIGOR'S BUSINESS**

97.1 A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Obligor.

**98. DISPOSE OF SECURED ASSETS**

98.1 A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

**99. SEVER FIXTURES AND FITTINGS**

99.1 A Receiver may sever and sell separately any fixtures or fittings from any Charged Assets without the consent of the Obligor.

**100. SELL BOOK DEBTS**

100.1 A Receiver may sell and assign all or any of the Book Debts in respect of which it is appointed in any manner, and generally on any terms and conditions, that it thinks fit.

**101. VALID RECEIPTS**

101.1 A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.

**102. MAKE SETTLEMENTS**

102.1 A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Obligor or relating in any way to any Secured Asset.

**103. LEGAL ACTION**

103.1 A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as it thinks fit.

**104. IMPROVE THE EQUIPMENT**

104.1 A Receiver may make substitutions of, or improvements to, the Equipment as it may think expedient.

**105. MAKE CALLS ON OBLIGOR MEMBERS**

105.1 A Receiver may make calls conditionally or unconditionally on the members of the Obligor 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 Obligor on its directors in respect of calls authorised to be made by them.

**106. INSURE**

106.1 A Receiver may, if it thinks fit, but without prejudice to the indemnity clauses 119 - 120, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Obligor under this deed.

**107. SUBSIDIARIES**

107.1 A Receiver may form a subsidiary of the Obligor and transfer to that subsidiary any Secured Asset

**108. BORROW**

108.1 A Receiver may, for whatever purpose it thinks fit, raise and borrow money either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this deed).

**109. REDEEM PRIOR SECURITY**

109.1 A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Obligor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

**110. DELEGATION**

110.1 A Receiver may delegate its powers in accordance with this deed.

## **111. ABSOLUTE BENEFICIAL OWNER**

111.1 A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights it would be capable of exercising as, and do all those acts and things, an absolute beneficial owner could exercise or do, in the ownership and management of the Secured Assets or any part of the Secured Assets.

## **112. INCIDENTAL POWERS**

112.1 A Receiver may do any other acts and things that it:

- (a) may consider desirable or necessary for realising any of the Secured Assets;
- (b) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or
- (c) lawfully may or can do as agent for the Obligor.

## **DELEGATION**

### **113. DELEGATION**

113.1 The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 122).

### **114. TERMS**

114.1 The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

### **115. LIABILITY**

115.1 Neither the Lender nor any Receiver shall be in any way liable or responsible to the Obligor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

## **APPLICATION OF PROCEEDS**

### **116. ORDER OF APPLICATION OF PROCEEDS**

116.1 All monies received or recovered by the Lender, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Lender's right to recover any shortfall from the Obligor):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;
- (b) in or towards payment of the Secured Liabilities in any order and manner that the Lender determines; and
- (c) in payment of the surplus (if any) to the Obligor or other person entitled to it.

#### **117. APPROPRIATION**

117.1 Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, 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 Liabilities.

#### **118. SUSPENSE ACCOUNT**

118.1 All monies received by the Lender, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

- (a) may, at the discretion of the Lender, Receiver or Delegate, be credited to a suspense account; and
- (b) may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

#### **COSTS AND INDEMNITY**

##### **119. COSTS**

119.1 The Obligor shall, promptly on demand, pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

- (a) this deed or the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed; or
- (c) taking proceedings for, or recovering, any of the Secured Liabilities.

##### **120. INDEMNITY**

120.1 The Obligor shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of

reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
- (c) any default or delay by the Obligor in performing any of its obligations under this deed.

120.2 Any past or present employee or agent may enforce the terms of this clause 120 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

#### **FURTHER ASSURANCE**

##### **121. FURTHER ASSURANCE**

121.1 The Obligor shall promptly, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security created or intended to be created by this deed;
- (b) facilitating the realisation of any Secured Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Secured Asset,

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.

#### **POWER OF ATTORNEY**

##### **122. APPOINTMENT OF ATTORNEYS**

122.1 By way of security, the Obligor irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Obligor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- (a) the Obligor is required to execute and do under this deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender, any Receiver or any Delegate.

**123. RATIFICATION OF ACTS OF ATTORNEYS**

123.1 The Obligor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 122.

**124. RELEASE**

124.1 Subject to clause 137, at the end of the Security Period, the Lender shall, at the request and cost of the Obligor, take whatever action is necessary to:

- (a) release the Secured Assets from the security constituted by this deed; and
- (b) reassign the Secured Assets to the Obligor.

**ASSIGNMENT AND TRANSFER**

**125. ASSIGNMENT BY LENDER**

125.1 At any time, without the consent of the Obligor, the Lender may assign or transfer any or all of its rights and obligations under this deed.

125.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Obligor, the Secured Assets and this deed that the Lender considers appropriate.

**126. ASSIGNMENT BY OBLIGOR**

126.1 The Obligor may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

**SET-OFF**

**127. LENDER'S RIGHT OF SET-OFF**

127.1 The Lender may at any time set off any liability of the Obligor to the Lender against any liability of the Lender to the Obligor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 127 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

**128. EXCLUSION OF OBLIGOR'S RIGHT OF SET-OFF**

- 128.1 All payments made by the Obligor to the Lender under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**AMENDMENTS, WAIVERS AND CONSENTS**

**129. AMENDMENTS**

- 129.1 No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

**130. WAIVERS AND CONSENTS**

- 130.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 130.2 A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

**131. RIGHTS AND REMEDIES**

- 131.1 The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

**132. SEVERANCE**

- 132.1 If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

### **133. COUNTERPARTS**

133.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

(a) Transmission of an executed counterpart of this deed (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

(b) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

### **134. THIRD PARTY RIGHTS**

134.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

134.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

### **FURTHER PROVISIONS**

#### **135. INDEPENDENT SECURITY**

135.1 The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Secured Assets shall merge in the security created by this deed.

#### **136. CONTINUING SECURITY**

136.1 The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this deed in writing.

#### **137. DISCHARGE CONDITIONAL**

137.1 Any release, discharge or settlement between the Obligor and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to

insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Lender or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and
- (b) the Lender may recover the value or amount of such security or payment from the Obligor subsequently as if the release, discharge or settlement had not occurred.

### **138. CONSOLIDATION**

138.1 The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

### **139. SMALL COMPANY MORATORIUM**

139.1 Notwithstanding anything to the contrary in this deed, neither the obtaining of a moratorium by the Obligor under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Obligor with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:

- (a) an event under this deed which causes any floating charge created by this deed to crystallise;
- (b) an event under this deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Obligor; or
- (c) a ground under this deed for the appointment of a Receiver.

## **NOTICES**

### **140. DELIVERY**

140.1 Any notice or other communication given to a party under or in connection with this deed shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- (c) sent to:
  - (i) the Obligor at, their registered address
  - (ii) Attention: Stewart Abrahart
  - (iii) the Lender at, 31 Belgrave Court, 36 Westferry Circus, London, E14 8RJ
  - (iv) Attention: James Abrahart

- (v) or to any other address as is notified in writing by one party to the other from time to time.

**141. RECEIPT BY OBLIGOR**

141.1 Any notice or other communication that the Lender gives to the Obligor shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given as described in clause (a) or clause (b) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

**142. RECEIPT BY LENDER**

142.1 Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

**143. SERVICE OF PROCEEDINGS**

143.1 Clause 140 - 143 does not apply to the service of any proceedings or other documents in any legal action or, where applicable any arbitration or other method of dispute resolution.

**GOVERNING LAW AND JURISDICTION**

**144. GOVERNING LAW**

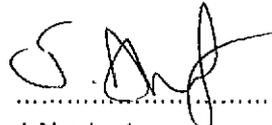
144.1 This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**145. JURISDICTION**

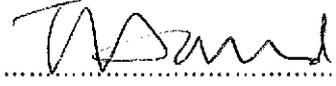
145.1 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Obligor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

This agreement has been entered into on the date stated at the beginning of it.

EXECUTED and DELIVERED )  
as a DEED by JAMES ABRAHART )  
in the presence of: )

  
.....  
J Abrahart

Witness:

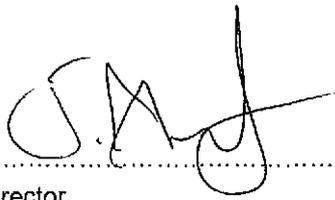
Signature  .....

Name T. HARROD .....

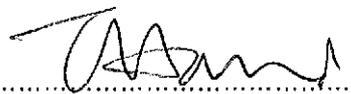
Address 31 CROWTONE RD .....

GRAYS RM16 2LR .....

EXECUTED and DELIVERED )  
as a DEED by ALTODIGITAL UK )  
LIMITED )  
acting by director )  
in the presence of: )

  
.....  
Director

Witness:

Signature  .....

Name T. HARROD .....

Address 31 CROWTONE RD .....

GRAYS RM16 2LR .....

Occupation P.A. ....