



Registration of a Charge

Company name: **BMI HEALTHCARE LIMITED**

Company number: **02164270**



X7KY1PHT

Received for Electronic Filing: **17/12/2018**

Details of Charge

Date of creation: **13/12/2018**

Charge code: **0216 4270 0029**

Persons entitled: **GHG 9 (BATH CLINIC) LIMITED (REGISTERED AT COMPANIES HOUSE WITH COMPANY NUMBER 05783447)**

Brief description: **N/A**

Contains fixed charge(s).

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: **ISABEL KATY VICKERS**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2164270

Charge code: 0216 4270 0029

The Registrar of Companies for England and Wales hereby certifies that a charge dated 13th December 2018 and created by BMI HEALTHCARE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th December 2018 .

Given at Companies House, Cardiff on 18th December 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 13 December 2018

BMI HEALTHCARE LIMITED
AS CHARGOR

IN FAVOUR OF

GHG 9 (BATH CLINIC) LIMITED

FIXED CHARGE IN RELATION TO A CALL OPTION

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THIS FIXED CHARGE is made by way of deed on 13 December 2018 by:

- (1) **BMI HEALTHCARE LIMITED**, a company incorporated in England and Wales with registration number 02164270 (the “**Chargor**”);

in favour of:

- (2) **GHG 9 (BATH CLINIC) LIMITED**, a company incorporated in England and Wales with registration number 05783447 (the “**Secured Landlord**”).

THIS DEED WITNESSES as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Terms defined**

In this Fixed Charge:

“**Acceleration Event**” means:

- (a) the Tenant’s failure to comply with any of its obligations under schedule 7 of the Lease upon the exercise of the Call Option by the Secured Landlord; or
- (b) the occurrence of an Act of Insolvency in respect of the Tenant; or
- (c) any security granted under the terms of a Tenant Facility Agreement by the Tenant over any of its assets becomes enforceable and the Security Agent (or equivalent representative) under the Tenant Facility Agreements has given notice to the Secured Landlord of its intention to enforce security over the Charged Assets.

“**Call Option**” means the call option granted by the Chargor to the Secured Landlord in schedule 7 of the Lease as that schedule may be amended, varied, restated and/or supplemented from time to time.

“**Charged Assets**” means each of the assets of the Chargor which from time to time are the subject of any Security created or expressed to be created by it in favour of the Secured Landlord by or pursuant to this Fixed Charge.

“**Deed of Variation**” means a deed of variation to the Lease dated on or about the date hereof and made between the Secured Landlord and the Chargor.

“**Lease**” means the occupational lease (including the reversionary lease dated on or around the date of the Deed of Variation) granted by the Secured Landlord to the Chargor, as amended, varied and/or supplemented from time to time.

“**Lease Document**” means each of:

- (a) the Lease (including the Call Option); and
- (b) this Fixed Charge.

“**Receiver**” means a receiver, receiver and manager (as the Secured Landlord may specify at any time in any relevant appointment) and that term will include any appointee made

under a joint or several appointment by the Secured Landlord (but shall not for the avoidance of doubt include an administrator or an administrative receiver).

“Secured Obligations” means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by the Chargor or by some other person) of the Chargor to the Secured Landlord under the relevant Lease Document.

“Security Period” means the date on which the Secured Landlord is satisfied that the Secured Obligations have irrevocably been discharged in full and it is not under any further actual or contingent liability to the Chargor or any other person under the Lease Documents.

“Tenant Facility Agreement” means the senior facilities agreement between, among others, the Chargor and Barclays Bank plc as Security Agent dated on or around the date of this Fixed Charge as amended, supplemented, varied, novated, restated, replaced, renewed and/or refinanced from time to time.

1.2 Terms defined in the Lease

Unless defined in this Fixed Charge, or the context otherwise requires, a term defined in the Lease has the same meaning in this Fixed Charge, or any notice given under or in connection with this Fixed Charge, as if all references in those defined terms to the Lease were a reference to this Fixed Charge or that notice.

1.3 Interpretation

Clause 2 (*Interpretation*) of the Lease will apply as if incorporated in this Fixed Charge, or in any notice given under or in connection with this Fixed Charge, as if all references in that Clause to the Lease were a reference to this Fixed Charge or that notice.

1.4 Application of provisions in Lease

Clauses 7.8 (*Service of Notices*), 7.10 (*Proper Law and Jurisdiction*), 7.13 (*Invalidity*) and 9 (*The Contracts (Rights of Third Parties) Act 1999*) of the Lease are deemed to form part of this Fixed Charge as if expressly incorporated into it and as if all references in those clauses to the Lease were references to this Fixed Charge.

1.5 Clawback

If the Secured Landlord considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Chargor under this Fixed Charge and the Security constituted by those documents will continue and such amount will not be considered to have been irrevocably paid or credited.

2. FIXED SECURITY

- (a) The Chargor charges with full title guarantee in favour of the Secured Landlord for the payment and discharge of the Secured Obligations, by way of first fixed charge, all of its rights, title and interest from time to time in and to each of the Call Option Assets relating to the Premises.

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- (b) For the avoidance of any doubt the charge created under this deed does not constitute a qualifying floating charge for the purposes of paragraph 14 of schedule B1 of the Insolvency Act 1986.

3. FURTHER ASSURANCE

3.1 Further assurance

- (a) The Chargor shall promptly, at its own cost, do all such acts or execute all such documents (including assignments, transfers, charges, registrations, notices and instructions) as the Secured Landlord may reasonably specify (and in such form as the Secured Landlord may reasonably require) in favour of the Secured Landlord or its nominee(s):
- (i) to perfect the security created or intended to be created in respect of the Charged Assets or for the exercise of any the rights, powers and remedies of the Secured Landlord provided by or pursuant to this Fixed Charge or by law;
 - (ii) to confer on the Secured Landlord security over any asset of the Chargor located in any jurisdiction outside England and Wales equivalent or similar to the security intended to be conferred by or pursuant to this Fixed Charge to which it is a party; and/or
 - (iii) while an Acceleration Event is continuing, to facilitate the realisation of the Charged Assets.

3.2 Necessary Action

The Chargor shall take all such action as is available to it (including making all filings and registrations and applying for relief against forfeiture) as may be necessary or as may reasonably be requested by the Secured Landlord for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Secured Landlord by or pursuant to this Fixed Charge to which it is a party.

4. ENFORCEMENT OF SECURITY

4.1 Enforcement

Any time after the occurrence of an Acceleration Event or if the Chargor requests the Secured Landlord to exercise any of its powers under this Fixed Charge, the Security created by or pursuant to this Fixed Charge is immediately enforceable and the Secured Landlord may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

- (a) 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 Charged Assets; and
- (b) whether or not it has appointed a Receiver, exercise all or any of the powers, authorisations and discretions conferred by the Law of Property Act 1925 (as varied

or extended by this Fixed Charge) on mortgagees and by this Fixed Charge on any Receiver or otherwise conferred by law on mortgagees or Receivers.

4.2 Effect of Moratorium

The Secured Landlord shall not be entitled to exercise its rights under Clause 4.1 (*Enforcement*) where the right arises as a result of an Acceleration Event occurring solely due to any person obtaining or taking steps to obtain a moratorium pursuant to Schedule A1 of the Insolvency Act 1986.

5. EXTENSION OF POWERS AND RIGHT OF APPROPRIATION

5.1 Extension of powers

The power of sale or other disposal conferred on the Secured Landlord and on any Receiver by this Fixed Charge shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Fixed Charge.

5.2 Restrictions

The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Fixed Charge or to the exercise by the Secured Landlord of its right to consolidate all or any of the security created by or pursuant to this Fixed Charge with any other security in existence at any time or to its power of sale, which powers may be exercised by the Secured Landlord without notice to the Chargor on or at any time after this Fixed Charge has become enforceable in accordance with Clause 4 (*Enforcement of Security*).

6. APPOINTMENT OF RECEIVER

6.1 Appointment and removal

After this Fixed Charge becomes enforceable in accordance with Clause 4 (*Enforcement of Security*), the Secured Landlord may by deed or otherwise (acting through an authorised officer of the Secured Landlord), without prior notice to any person:

- (a) appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets; or
- (b) appoint two or more Receivers of separate parts of the Charged Assets; or
- (c) remove (so far as it is lawfully able) any Receiver so appointed; or
- (d) appoint another person(s) as an additional or replacement Receiver(s).

6.2 Capacity of Receivers

Each person appointed to be a Receiver pursuant to Clause 6.1 (*Appointment and removal*) shall be:

- (a) entitled to act individually or together with any other person appointed or substituted as Receiver;

-
- (b) for all purposes deemed to be the agent of the Chargor which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Secured Landlord; and
 - (c) entitled to remuneration for his services at a rate to be fixed by the Secured Landlord from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

6.3 Statutory powers of appointment

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Secured Landlord under the Law of Property Act 1925 (as extended by this Fixed Charge) or otherwise and such powers shall remain exercisable from time to time by the Secured Landlord in respect of any part of the Charged Assets.

7. POWERS OF RECEIVERS

Every Receiver shall (subject to any restrictions in the instrument appointing him but notwithstanding any winding-up or dissolution of the Chargor) have and be entitled to exercise, in relation to the Charged Assets (and any asset of the Chargor which, when got in, would be a Charged Asset in respect of which he was appointed), and as varied and extended by the provisions of this Fixed Charge (in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor):

- (a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
- (b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (c) all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor itself could do or omit to do; and
- (d) the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to: any of the functions, powers, authorities or discretions conferred on or vested in him; the exercise of any rights, powers and remedies of the Secured Landlord provided by or pursuant to this Fixed Charge or by law (including realisation of all or any part of the assets in respect of which that Receiver was appointed); or bringing to his hands any assets of the Chargor forming part of, or which when got in would be, Charged Assets.

8. APPLICATION OF MONEYS

All moneys received or recovered by the Secured Landlord or any Receiver pursuant to this Fixed Charge or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Law of Property Act 1925) be applied first in the payment of the costs, charges and expenses incurred and payments made by the Receiver, the payment of his remuneration and the

discharge of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be paid to the Secured Landlord (notwithstanding any purported appropriation by the Chargor) for application against the Secured Obligations.

9. PROTECTION OF PURCHASERS

9.1 Consideration

The receipt of the Secured Landlord or any Receiver shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Assets or making any acquisition, the Secured Landlord or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

9.2 Protection of purchasers

No purchaser or other person dealing with the Secured Landlord or any Receiver shall be bound to inquire whether the right of the Secured Landlord or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Secured Landlord or such Receiver in such dealings.

10. POWER OF ATTORNEY

10.1 Appointment and powers

The Chargor by way of security irrevocably appoints the Secured Landlord and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all other documents and do all things which the attorney may consider to be required or desirable for:

- (a) carrying out any obligation imposed on the Chargor by this Fixed Charge or any other agreement binding on the Chargor to which the Secured Landlord is party (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Assets and perfecting the security created or intended to be created in respect of the Charged Assets); and
- (b) enabling the Secured Landlord and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Fixed Charge or by law (including, after this Fixed Charge has become enforceable in accordance with Clause 4 (*Enforcement of Security*), the exercise of any right of a legal or beneficial owner of the Charged Assets).

10.2 Ratification

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

11. EFFECTIVENESS OF SECURITY

11.1 Continuing security

- (a) The security created by or pursuant to this Fixed Charge shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Secured Landlord.
- (b) No part of the Security from time to time intended to be constituted by this Fixed Charge will be considered satisfied or discharged by an intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

11.2 Cumulative rights

The security created by or pursuant to this Fixed Charge shall be cumulative, in addition to and independent of every other Security which the Secured Landlord may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law. No prior Security held by the Secured Landlord over the whole or any part of the Charged Assets shall merge into the Security constituted by this Fixed Charge.

11.3 No prejudice

The security created by or pursuant to this Fixed Charge shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person, or the Secured Landlord or by any other thing which might otherwise prejudice that Security.

11.4 Remedies and waivers

No failure on the part of the Secured Landlord to exercise, or any delay on its part in exercising, any rights, powers and remedies of the Secured Landlord provided by or pursuant to this Fixed Charge, shall operate as a waiver of those rights, powers and remedies, nor shall any single or partial exercise of any such rights, powers and remedies preclude any further or other exercise of that or any other rights, powers and remedies.

11.5 No liability

None of the Secured Landlord, its nominee(s) or any Receiver shall be liable:

- (a) to account as a mortgagee or mortgagee in possession; or
- (b) for any loss arising by reason of taking any action permitted by this Fixed Charge or any neglect or default in connection with the Charged Assets or taking possession of or realising all or any part of the Charged Assets, except in the case of gross negligence or wilful default upon its part.

11.6 Partial invalidity

If, at any time, any provision of this Fixed Charge is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Fixed Charge nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Fixed Charge

is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

11.7 Waiver of defences

The obligations of, and the Security created by, the Chargor under this Fixed Charge will not be affected by any act, omission, matter or thing which, but for this Clause 11.7 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under, or the Security created by, this Fixed Charge and whether or not known to the Chargor or the Secured Landlord including:

- (a) any time, waiver or consent granted to, or composition with, the Chargor or other person;
- (b) the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor or the Chargor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, the Chargor or other person or any non-presentment or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any Security;
- (d) any incapacity or lack of powers, authority or legal personality of or dissolution or change in the members or status of, the Chargor or any other person;
- (e) any amendment (however fundamental) or replacement of any document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any document or Security; and
- (g) any insolvency or similar proceedings.

11.8 Immediate recourse

The Chargor waives any right it may have of first requiring the Secured Landlord to proceed against or enforce any other rights or Security or claim payment from any other person before claiming from the Chargor under this Fixed Charge. This waiver applies irrespective of any law or any provision of this Fixed Charge to the contrary.

11.9 Collateral Security

Where any Security constituted under this Fixed Charge initially takes effect as a collateral or further Security to another Security intended to be constituted under this Fixed Charge or which otherwise secures all or any part of the Secured Obligations to which the Chargor is a party then, despite any receipt, release or discharge endorsed on or given in respect of or under the second mentioned Security, the first mentioned Security will operate as an independent Security.

11.10 Liquidated damages

Without prejudice to any award or judgement made in arbitration or by the courts, in the event that a Lease is forfeited or otherwise terminated for reason of breach or other default by the Chargor, the Chargor and the Secured Landlord agree that, for the purposes of this Fixed Charge only:

- (a) the Chargor agrees to pay to the Secured Landlord as liquidated damages an aggregate amount equal to not less than the aggregate of: all rent then due but not paid and all rent payable in the future, in each case, under the existing terms of the Lease (ignoring, for this purpose only, rent reviews) for the remaining term of the Lease;
- (b) the liquidated damages referred to in paragraph (a) above are in all respects fair and reasonable and represent a genuine pre-estimate of the losses likely to be suffered by the Secured Landlord arising out of the Lease being forfeited or otherwise terminated for reason of breach or other default by the Chargor and that loss shall be limited to an amount equal to the aggregate value of the Call Option Assets that have not been acquired by the Secured Landlord under the Call Option or otherwise disposed of or transferred in accordance with paragraph 2.11 (*Assignment*) of schedule 7 of the Lease;
- (c) the amount and enforceability of the said liquidated damages have been carefully negotiated between the Secured Landlord and the Chargor and represent a liability which the Chargor willingly undertakes in order to compensate the Secured Landlord in respect of any forfeited or terminated Lease for reason of breach or other default by the Chargor including, without limitation, loss of future rent;
- (d) they have entered into the obligations in relation to the said liquidated damages with the intention that it is a legal, binding, valid and enforceable contractual provision against the Chargor in accordance with its terms; and
- (e) the Chargor excludes and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a contract upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts.

11.11 Lease and Reversionary Lease

The Chargor and Secured Landlord agree and acknowledge that this Fixed Charge is not supplemental nor collateral to the Lease and the covenants contained within this Fixed Charge do not constitute landlord and tenant covenants for the purposes of the Landlord and Tenant (Covenants) Act 1995, and the Fixed Charge will accordingly survive any termination of the Lease.

12. PRIOR SECURITY INTERESTS

- (a) In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security against any of the Charged

Assets or in case of exercise by the Secured Landlord or any Receiver of any power of sale under this Fixed Charge, the Secured Landlord may redeem such prior Security or procure the transfer thereof to itself.

- (b) The Secured Landlord may settle and agree the accounts of the prior Security and any accounts so settled and passed will be conclusive and binding on the Chargor.
- (c) All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer referred to in paragraph (a) above will be paid by the Chargor to the Secured Landlord on demand together with accrued interest thereon as well as before judgement at the rate from time to time applicable to unpaid sums specified in schedule 7 in the Lease from the time or respective times of the same having been paid or incurred until payment thereof (as well as after as before judgement).

13. SUBSEQUENT SECURITY INTERESTS

If the Secured Landlord at any time receives or is deemed to have received notice of any subsequent Security, assignment or transfer affecting the Charged Assets or any part of the Charged Assets which is prohibited by the terms of any Lease Document, all payments thereafter by or on behalf of the Chargor to the Secured Landlord will (in the absence of any express contrary appropriation by the Chargor) be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations at the time that notice was received.

14. SUSPENSE ACCOUNTS

All monies received, recovered or realised by the Secured Landlord under this Fixed Charge (including the proceeds of any conversion of currency) may in the discretion of the Secured Landlord be credited to any interest bearing suspense or impersonal account(s) maintained with a financial institution (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Secured Landlord's discretion, in or towards the discharge of any of the Secured Obligations.

15. RELEASE OF SECURITY

- (a) Upon the expiry of the Security Period, the Secured Landlord shall, at the request and cost of the Chargor, release and cancel the security constituted by this Fixed Charge and procure the reassignment to the Chargor of the property and assets assigned to the Secured Landlord pursuant to this Fixed Charge, in each case without recourse to, or any representation or warranty by, Secured Landlord or any of its nominees.
- (b) If any Call Option Assets are transferred or otherwise disposed of by the Chargor pursuant to paragraph 2.11 (*Assignment*) of schedule 7 of the Lease, the Secured Landlord shall, at the request and cost of the Chargor, provide a partial release and cancel the security constituted by this Fixed Charge in respect of those Call Option Assets and procure the reassignment to the Chargor of such property and assets

relating to the Premises assigned to the Secured Landlord pursuant to this Fixed Charge.

16. GOVERNING LAW

This Fixed Charge and all non-contractual obligations arising out of or in connection with it shall be governed by English law.

17. ENFORCEMENT – JURISDICTION OF ENGLISH COURTS

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Fixed Charge (including a dispute relating to its existence, validity or termination or any non-contractual obligation arising out of or in connection with it) (a “**Dispute**”).
- (b) The parties hereto agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly none of them will argue to the contrary.

18. COUNTERPARTS

This Fixed Charge may be executed in any number of counterparts, each of which is an original and all of which together evidence the same deed.

THIS FIXED CHARGE has been executed as, and is intended to take effect as, a deed by the Chargor and has been signed by the Secured Landlord on the date written on the first page of this Fixed Charge.

SIGNATURE PAGES

EXECUTED AS A DEED

for and on behalf of

GHG 9 (BATH CLINIC) LIMITED

acting by David Duggins

.....
[Redacted Signature]

Title: Director

in the presence of:

.....
[Redacted Signature]

Witness name: *Isabel Vickers*

Witness address: 10 Gresham Street,
London, EC2V 7JD

[Signature Page to GHG 9 (Bath Clinic) Limited Call Option Charge]

EXECUTED AS A DEED

for and on behalf of

BMI HEALTHCARE LIMITED

acting by HENRY DAVIES

Title: Director

in the presence of:

Witness name: CAROLINE PLATT

Witness address:



FRESHFIELDS BRUCKHAUS DERINGER

65 Fleet Street
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