



**Registration of a Charge**

Company Name: **CARPETRIGHT LIMITED**

Company Number: **02294875**



Received for filing in Electronic Format on the: **18/03/2024**

XCZ4FIYQ

**Details of Charge**

Date of creation: **14/03/2024**

Charge code: **0229 4875 0026**

Persons entitled: **NESTWARE HOLDINGS LIMITED**

Brief description: **FIXED CHARGE OVER ALL RIGHTS, TITLE AND INTEREST BOTH PRESENT AND FUTURE IN THE INTELLECTUAL PROPERTY RIGHTS INCLUDING WITHOUT LIMITATION IN UK TRADE MARK UK00002357112 DESCRIBED IN PART B OF THE SCHEDULE. FOR FURTHER DETAILS, PLEASE REFER TO THE INSTRUMENT.**

**Contains fixed charge(s).**

**Contains negative pledge.**

**Authentication of Form**

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

**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **WOMBLE BOND DICKINSON (UK) LLP**



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

Company number: 2294875

Charge code: 0229 4875 0026

The Registrar of Companies for England and Wales hereby certifies that a charge dated 14th March 2024 and created by CARPETRIGHT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18th March 2024 .

Given at Companies House, Cardiff on 22nd March 2024

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**

## Supplemental assignment of intellectual property by way of security

14 March 2024

- (1) Carpetright Limited
- (2) Nestware Holdings Limited

## Contents

|    |  |    |
|----|--|----|
| 1  | Interpretation .....                                   | 1  |
| 2  | Payment of the secured obligations .....               | 5  |
| 3  | Assignment .....                                       | 5  |
| 4  | Use of Intellectual Property Rights .....              | 7  |
| 5  | Perfection of security and registration .....          | 8  |
| 6  | Representations and warranties .....                   | 8  |
| 7  | Information, documents and reporting obligations ..... | 10 |
| 8  | Further assurance provisions .....                     | 11 |
| 9  | Events of Default .....                                | 12 |
| 10 | Enforcement of security .....                          | 14 |
| 11 | Receivers .....  | 14 |
| 12 | Application of proceeds .....                          | 17 |
| 13 | Variation and extension of statutory powers .....      | 18 |
| 14 | Continuation and preservation of security .....        | 21 |
| 15 | Power of attorney .....                                | 23 |
| 16 | Indemnities .....                                      | 24 |
| 17 | Waivers and remedies .....                             | 25 |
| 18 | Reinstatement and release .....                        | 25 |
| 19 | Currency .....   | 26 |
| 20 | Notices .....  | 26 |
| 21 | Set off .....  | 27 |
| 22 | Contracts (Rights of Third Parties) Act 1999 .....     | 27 |
| 23 | Consideration .....                                    | 27 |
| 24 | Assignments and transfers .....                        | 28 |
| 25 | Governing law .....                                    | 28 |
| 26 | Jurisdiction .....                                     | 28 |

|   |    |
|---|----|
| The Schedule Intellectual Property Rights and Form of Notice to Counterparties of Licence ..... | 29 |
|---|----|

THIS ASSIGNMENT is made as a deed on 14 March 2024.

## PARTIES

- (1) Carpetright Limited (No. 02294875), a company incorporated in England and Wales and having its registered office at Nestware House, Purfleet Bypass, Purfleet, Essex, RM19 1TT (the **Borrower**); and
- (2) Nestware Holdings Limited (No. 12685918), a company incorporated in England and Wales and having its registered office at Nestware House, Purfleet Bypass, Purfleet, Essex, RM19 1TT (the **Lender**).

## BACKGROUND

- A. The Borrower and the Lender entered into assignment of intellectual property by way of security dated 21 December 2023 whereby the Borrower assigned all of the Intellectual Property Rights (as defined therein) to the Lender (**Original Assignment**).
- B. The Original Assignment was executed electronically and the Lender has since become aware that the Intellectual Property Office of Ireland does not accept electronically executed documents for registerable transactions.
- C. The Borrower and the Lender have also become aware that five of the trademark numbers were incorrectly transcribed in the schedule of the Original Assignment and three trade marks were erroneously omitted from the schedule of the Original Assignment.
- D. As such, in accordance with Clause 8 (*Further Assurance*) of the Original Assignment, the Borrower and the Lender have agreed to enter into this Assignment (and to execute this Assignment in wet-ink) to enable registration of the transaction at the Intellectual Property Office of Ireland and correct the incorrectly transcribed trademark numbers.
- E. It is noted and agreed by the Borrower and the Lender that this Assignment is supplemental to the Original Assignment and is being entered into to enable registration of the transactions that were contemplated and intended by each Party at the time of entering into the Original Assignment.
- F. The Borrower and Lender desire that the Intellectual Property Rights be assigned by the Borrower to the Lender on the terms set out in this Assignment in accordance with the terms of the Finance Documents (as defined herein).

## THE PARTIES AGREE:

### 1 Interpretation

#### 1.1 Definitions

Save as otherwise provided in this Assignment, the following words and phrases have the following meanings throughout this Assignment:

|                     |   |
|---------------------|---|
| <b>Business Day</b> | a day, other than a Saturday or a Sunday, on which banks are open for general business in London;                   |
| <b>Collateral</b>   | means all the assets of the Borrower which from time to time are the subject of the Security and the trusts created |

|                                     |   |
|-------------------------------------|---|
|                                     | hereby;   |
| <b>Default Rate</b>                 | 12 per cent per annum;  |
| <b>Delegate</b>                     | any delegate, agent, attorney or trustee appointed by the Lender;   |
| <b>Domain Names</b>                 | means the domain names listed in Part E of the schedule;  |
| <b>Encumbrance</b>                  | means any mortgage, charge, pledge, lien, assignment, limitation on terms of payment, right of set-off, security deposit, trust arrangement, encumbrance or other security interest securing any obligation of any person or any arrangement having a similar effect;   |
| <b>Enforcement Party</b>            | any of the Lender, a Receiver or a Delegate;  |
| <b>Event of Default</b>             | any event or circumstance specified as such in clause 9.  |
| <b>Facility Agreement</b>           | means the facility agreement dated 21 June 2022 and made between the Borrower and the Lender (as amended or amended and restated from time to time including as amended on 21 December 2023);   |
| <b>Finance Document</b>             | means each of this Assignment, the Original Assignment, the Facility Agreement and any other document designated as such by the Lender and the Borrower (together the <b>Finance Documents</b> );   |
| <b>IP Registry</b>                  | means any state, government or other public legal authority or body attending to the filing, registration, issuing, renewal or certification of Intellectual Property Rights and processing applications for any of the foregoing;  |
| <b>Indebtedness</b>                 | 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;  |
| <b>Intellectual Property Rights</b> | means: (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, know-how, source codes in any software and other intellectual property rights and interests arising anywhere in the world (which may now or in the future subsist), in each case whether registered or unregistered, belonging to the Borrower or to which the Borrower is legally and/or beneficially entitled from time to time; and (b) the benefit of all applications and rights to use such assets of each Borrower and licences for use of such assets granted by each Borrower (which in each case may now or in the future subsist), including but not limited to the Intellectual Property Rights, if any, listed in the schedule; |



|                            |  |
|----------------------------|--|
| <b>Licences</b>            | means the intellectual property licences listed in Part F of The Schedule;   |
| <b>Party</b>               | means a party to this Assignment (together the <b>Parties</b> );   |
| <b>Patents</b>             | means the patents and the applications listed in Part A of the schedule;   |
| <b>Permitted Security</b>  | means any security (whether by way of mortgage, charge, pledge, lien, assignment or other security interest in any jurisdiction) created prior to the date of this Assignment.   |
| <b>Receiver</b>            | means a receiver or receiver and manager or, where permitted by law, an administrative receiver of the whole or any part of the Collateral however appointed under or in connection with this Assignment;  |
| <b>Registered Designs</b>  | means the registered designs and the applications listed in Part C of the schedule;  |
| <b>Secured Obligations</b> | means all money, obligations or liabilities due, owing or incurred to the Lender by the Borrower at present or in the future, whether actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, together with all interest accruing thereon (both before and after judgment) and all losses incurred by the Lender in connection therewith except for any money or liability which, if it were so included, would cause the infringement of any of sections 677 to 683 (inclusive) of the Companies Act 2006 (and for this purpose 'losses' includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including fees) and liabilities); |
| <b>Security</b>            | means the security (whether by way of mortgage, charge, pledge, lien, assignment or other security interest in any jurisdiction) created by (or purported to be created by) this Assignment;   |
| <b>Trade Marks</b>         | means the registered trade marks, the applications, the unregistered trade marks and trade names listed in Part B of the schedule.   |

## 1.2 Interpretation

1.2.1 Any reference in this Assignment to (or to any specified provision of) this 'Assignment', the 'Facility Agreement' or any other 'Finance Document' or to any other agreement or document shall, unless the context otherwise requires, be construed as a reference to this Assignment, the Facility Agreement or such other Finance Document or such other agreement or document (or that provision) as the same may from time to time be amended, varied, supplemented, restated, re-affirmed, extended, novated or replaced (including any such amendment or variation increasing or extending the maturity of all or any part of the Secured Obligations or changing the obligors in respect thereof). The reference shall include any document



which is supplemental to or is entered into pursuant to or in accordance with, and any certificate, instrument, notification or document which is entered into or delivered in connection with or pursuant to or in accordance with, the terms of this Assignment, the Facility Agreement or such other Finance Document or, as the case may be, such other agreement or document.

- 1.2.2 Any reference in this Assignment to the 'Lender' shall be construed so as to include its and any subsequent successors, transferees and assigns in accordance with their respective interests.

### **1.3 Incorporation of terms by reference**

Unless the context requires otherwise, words and expressions defined or construed in the Facility Agreement and which are not defined or construed in this Assignment shall bear the same meanings when used in this Assignment.

### **1.4 Use of lists and examples**

In construing this Assignment general words introduced by the word 'other' shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

### **1.5 Whole agreement**

This Assignment supersedes any previous agreement, whether written or oral, express or implied, between the Borrower and the Lender in relation to the subject matter of this Assignment.

### **1.6 Headings**

The headings in this Assignment are for convenience only and shall not affect its meaning and references to a clause, subclause, Schedule or paragraph are (unless otherwise stated and as the case may be) to a clause, subclause, Schedule or paragraph of this Assignment.

### **1.7 Counterparts, Execution and Ownership**

- 1.7.1 This Assignment may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this Assignment by signing any such counterpart.

- 1.7.2 This Assignment is intended to be a deed even if any Party's execution is not in accordance with the formalities required for the execution of deeds.

- 1.7.3 This Assignment and every counterpart of it is the property of the Lender.

### **1.8 No partnership**

Nothing in this Assignment shall operate, whether directly or indirectly, to constitute a partnership between the Borrower and the Lender.

## **1.9 Amount of Secured Obligations**

A certificate of the Lender as to the amount of any Secured Obligations due at any time will, in the absence of manifest error, be conclusive and binding on the Borrower.

## **1.10 Security enforceable**

The Security and the rights of the Lender under this Assignment shall be enforceable notwithstanding any change in the constitution of the Lender or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person.

## **1.11 Statutory references**

Unless the context otherwise requires, a reference to a legislation or any provision thereof is to be construed as a reference to that legislation or such provision thereof as it may be amended, modified, extended, consolidated, re-enacted or replaced from time to time and shall also include all bye-laws, instruments, orders and regulations for the time being made under them or otherwise deriving validity from them.

## **1.12 'Person'**

A reference in this Assignment to a 'person' includes any individual, company, firm, corporation, association, body (including a trust, fund, partnership, consortium or joint venture), government, state, agency or other entity whether or not having separate legal personality.

## **1.13 Schedule**

The fact that no details are included in the schedule does not affect the validity or enforceability of the Security.

# **2 Payment of the secured obligations**

## **2.1 Covenant to pay**

The Borrower hereby unconditionally and irrevocably, as primary obligor and not merely as surety, covenants with the Lender that it shall on demand of the Lender pay or discharge the Secured Obligations on the due date for payment therefor in the manner provided in the Finance Documents.

## **2.2 Interest**

Save to the extent otherwise agreed, interest may be added by the Lender to any amount not paid when due under this Assignment from such due date until the date such amount is unconditionally and irrevocably paid and discharged in full at the Default Rate.

# **3 Assignment**

## **3.1** The Borrower with full title guarantee and as continuing security for the payment, performance and discharge of the Secured Obligations hereby assigns absolutely to the fullest extent capable of assignment by way of security to the Lender all of its rights, title and interest from time to time in and to the Intellectual Property Rights (together with all damages, compensation, remuneration, profit, royalties, fees, rent or income which the Borrower may

derive from or be awarded or entitled to in respect of such Intellectual Property Rights), including (but without limitation):

- 3.1.1 the absolute entitlement to any registrations granted pursuant to any of the applications comprised in the Patents, Registered Designs and Trade Marks;
- 3.1.2 all rights to claim priority from the Patents, Registered Designs and Trade Marks;
- 3.1.3 all rights to any extensions, renewals or amendments to the Patents, Registered Designs and Trade Marks;
- 3.1.4 all goodwill attaching to or arising from any use by the Borrower of any Intellectual Property Rights including (but without limitation) the Trade Marks and in respect of the business relating to the goods or services in respect of which the Trade Marks are registered or used;
- 3.1.5 the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership or use, of any of the Intellectual Property Rights whether occurring before, on, or after the date of this Assignment;
- 3.1.6 the Licences; and
- 3.1.7 the Domain Names,

subject in each case to reassignment by the Lender to the Borrower of all such rights, title and interest upon the irrevocable payment or discharge in full of the Secured Obligations in accordance with clause 18.

### **3.2 Removal of impediments to assignment**

- 3.2.1 To the extent that any right, title or interest in relation to the Intellectual Property Rights is not capable of being assigned as purported to be assigned, pursuant to the terms and provisions of this Assignment that Borrower shall:
  - (a) immediately notify the Lender of the same; and
  - (b) use its best endeavours to obtain as soon as reasonably practicable any relevant consent to such assignment or to otherwise render the same capable of assignment.
- 3.2.2 Pending such interest becoming capable of assignment, the assignment purported to be effected by this Assignment shall only operate as an assignment by way of continuing security of any and all proceeds, damages, compensation, remuneration, profit, rent or income which that Borrower may derive therefrom or be awarded or entitled to in respect thereof, in each case as continuing security for the payment, discharge and performance of the Secured Obligations. Forthwith upon receipt of the relevant consent, the relevant right, title or interest shall stand assigned to the Lender under the relevant provisions of this clause 3 and that Borrower shall:
  - (a) immediately notify the Lender of the receipt of the relevant consent; and

- (b) if required by the Lender, forthwith execute a valid fixed charge or assignment in such form as the Lender shall require but on terms no more onerous than this Assignment.

### **3.3 Fixed charge**

To the extent the Intellectual Property Rights are not effectively assigned by clause 3.1, the Borrower, as continuing security for the payment of the Secured Obligations, charges in favour of the Lender with full title guarantee all of its right, title and interest in the Intellectual Property Rights (together with all damages, compensation, remuneration, profit, royalties, fees, rent or income which the Borrower may derive from or be awarded or entitled to in respect of such Intellectual Property Rights), both present and future from time-to-time owned by it or in which it has an interest.

## **4 Use of Intellectual Property Rights**

### **4.1 Grant of licence**

The Lender hereby grants to the Borrower a royalty-free, worldwide, sole licence to use the Intellectual Property Rights, which is non-assignable and non-transferrable, which the Lender may by notice in writing immediately terminate at any time whilst an Event of Default is continuing unwaived.

### **4.2 Protection of Intellectual Property Rights**

The Borrower shall use its best endeavours to promptly notify the Lender in writing on becoming aware of any actual, potential or threatened infringement, imitation, or counterfeiting of or by the Intellectual Property Rights, any third party use of, or applications or registrations for the Intellectual Property Rights or any third party applications or registrations confusingly similar thereto, and any suit, proceeding or action involving or likely to involve the Intellectual Property Rights.

### **4.3 Maintaining validity of Intellectual Property Rights**

4.3.1 The Borrower agrees to take all reasonable steps to maintain the validity of the Intellectual Property Rights, including promptly paying all fees and other payments for the renewals, extensions and/or amendments of any Intellectual Property Rights as and when the same become due and obtaining all necessary certificates, licences, permits and authorisations from time to time required in relation to the Intellectual Property Rights anywhere in the world.

4.3.2 The Borrower will not do (or fail to do) anything or permit anything to be done, if that might infringe any Intellectual Property Rights owned or used by it or affect the existence or value of any such Intellectual Property Rights or its right or ability to use them.

### **4.4 Borrower obligations**

The Borrower shall not:

4.4.1 (without the prior written consent of the Lender):

- (a) permit any person other than the Borrower or the Lender to be registered as holder of any of the Intellectual Property Rights;

- (b) create or permit to purport to create or permit to subsist any mortgage, debenture, charge, lien or Encumbrance (other than in favour of the Lender or which constitutes Permitted Security) on or over any of the Intellectual Property Rights or any right or interest therein;
- (c) terminate or threaten to terminate any Licence; or
- (d) sell, transfer, grant licences in respect of or otherwise dispose of any of the Intellectual Property Rights or any right or interest therein or attempt or agree to do so.

4.4.2 do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value to the Lender of the Collateral.

## **5 Perfection of security and registration**

5.1 The Borrower shall perfect the Security in accordance with its obligations under clause 8, including without limitation:

5.1.1 by registering this Assignment or recording the existence of the restrictions on disposal imposed by this Assignment (where applicable) with:

- (a) the Patents, Trade Marks and Design Registries of the UK Intellectual Property Office;
- (b) all other intellectual property offices and/or other organisations in any jurisdiction where the relevant Intellectual Property Rights exist; and
- (c) the Registrar of Companies at Companies House.

5.1.2 by serving a notice to the counterparties of the Licences in the form set out in Part G of The Schedule and using reasonable endeavours to procure that the counterparties acknowledge the notice in the form set out in Part G of The Schedule.

5.1.3 by updating the registered owner through its account settings on the relevant registrar's website, or instructing the relevant registrar via email to update the registered owner.

5.2 The Borrower shall maintain, protect and preserve the Collateral and all necessary certificates, licences, permits and authorisations from time to time required in relation to the Collateral.

## **6 Representations and warranties**

### **6.1 General**

The Borrower represents and warrants to the Lender that:

6.1.1 it is a limited liability company, duly incorporated and validly existing under the laws of England and Wales and has the power to own its assets and carry on its business and other activities as they are being conducted;

6.1.2 it has the power to enter into this Assignment and to perform its obligations and exercise its rights under it and the obligations expressed to be assumed by it under this Assignment are (and at all relevant times have been) legal, valid, binding and



enforceable obligations (subject to the principle that equitable remedies are discretionary and subject to any applicable insolvency laws;

- 6.1.3 no Event of Default has occurred or is continuing or might reasonably be expected to result from the execution of this Assignment or from effect being given to its provisions and no person who holds any security over the Collateral or over any other asset of the Borrower has enforced or given notice of its intention to enforce such security;
- 6.1.4 neither the execution of this Assignment by the Borrower, nor the Borrower's compliance with its terms will:
  - (a) conflict with or result in any breach of any law or regulation applicable to it;
  - (b) cause any limitation on any of its powers or on the right or ability of its directors to exercise those powers to be exceeded; nor
  - (c) constitute a default, acceleration of payment or termination event (however described) under any agreement or instrument binding upon it;
- 6.1.5 all authorisations required or desirable for the execution, delivery, issue, validity or enforceability of this Assignment or of the performance of the Borrower's obligations or the exercise of its rights under this Assignment have been obtained and have not been (and the Borrower is not aware of any circumstance having arisen whereby they might be) withdrawn or varied in whole or part;
- 6.1.6 the Security constitutes first priority security over the assets which are expressed to be secured by such mortgages, charges or assignments and those assets are not subject to any security other than Permitted Security;
- 6.1.7 it is (A) (immediately before execution of this Assignment) the sole legal owner of the Intellectual Property Rights and (B) the sole beneficial owner of the Intellectual Property Rights, and (subject to this Assignment) owns all the rights and interests to and in, the Intellectual Property Rights and it is entitled to assign the Intellectual Property Rights to the Lender on the terms of this Assignment;
- 6.1.8 it is properly registered as the applicant or registered proprietor of the Intellectual Property Rights listed in the schedule as applications or registered Intellectual Property Rights, as the case may be;
- 6.1.9 all application, registration, renewal and other fees in respect of each of the Intellectual Property Rights listed in the schedule have been paid;
- 6.1.10 other than the Licences, it has not given any third party permission to use any of the Intellectual Property Rights or otherwise licensed or assigned any of the rights under the Intellectual Property Rights;
- 6.1.11 each Intellectual Property Right is free from any security interest, option, mortgage, charge or lien;
- 6.1.12 it has not acquiesced in any unauthorised use of any Intellectual Property Right;
- 6.1.13 each of the Intellectual Property Rights is valid and subsisting, is not subject to, or likely to be subject to, amendment, challenge to validity, removal or surrender and

have not lapsed, expired or terminated, and all renewals thereof have been effected in a timely and correct manner and there is nothing that might prevent any application in respect of any of the Intellectual Property Rights proceeding to a successful completion;

- 6.1.14 it is unaware of any infringement, or circumstances likely to result in any infringement of any Intellectual Property Right;
- 6.1.15 no claim has been made by a third party that disputes any right of the Borrower to use any Intellectual Property Right and it is unaware of any circumstances likely to give rise to a claim;
- 6.1.16 so far as it is aware, the use of the Intellectual Property Rights will not infringe the rights of any third party;
- 6.1.17 any payments to it related to any of the Intellectual Property Rights are not subject to any right of set-off or similar right;
- 6.1.18 it is not in default of any of its obligations relating to any of the Intellectual Property Rights;
- 6.1.19 there is no prohibition on assignment affecting any of the Intellectual Property Rights; and
- 6.1.20 its entry into and performance of this Assignment will not adversely affect any of the Intellectual Property Rights.

## **6.2 Times for making representations and warranties**

The representations and warranties set out in clause 6.1 are made on the date of this Assignment and are deemed to be repeated on each date on which there are Secured Obligations outstanding, with reference to the facts and circumstances then existing.

## **7 Information, documents and reporting obligations**

- 7.1 The Borrower shall promptly inform the Lender of any material Intellectual Property Rights accruing to it, any applications for Intellectual Property Rights it makes, and any registrations granted to it pursuant to such applications, and shall agree to any consequential amendments to the schedule with the Lender.
- 7.2 The Borrower shall promptly supply the Lender from time to time with any documentation relating to the Intellectual Property Right (including but without limitation copies of the software, related source codes and any updates thereof and relevant user guides) to enable the Lender and/or the Receiver fully to exploit and realise any of the Intellectual Property Rights upon enforcement (to the extent not already supplied under clause 8.1.4) and any information and further documentation from time to time reasonably requested by the Lender.
- 7.3 If the Borrower becomes aware of any action, event or circumstance which could adversely affect the value, saleability or use of any of the Collateral, it will promptly notify the Lender in writing and provide details of the same.
- 7.4 The Lender may retain any document delivered to it under this Assignment until the Security is released in accordance with the terms of this Assignment and, if for any reason it ceases to hold any such document before that time, it may by notice to the Borrower require that the



relevant document be redelivered to it and the Borrower shall promptly comply (or procure compliance) with that notice.

## **8 Further assurance provisions**

### **8.1 Further assurance**

8.1.1 The Borrower shall promptly (and at its own expense) do all such acts (including payment of all duties or fees) or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions as the Lender may reasonably specify (and in such form as the Lender may reasonably require):

- (a) to perfect the Security created or intended to be created under or evidenced by this Assignment or for the exercise of any rights, powers and remedies of the Lender or any Receiver provided by or pursuant to this Assignment or by law;
- (b) to confer on the Lender, Security over any property and assets of that Borrower located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Assignment; and/or
- (c) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created under this Assignment.

8.1.2 The Borrower shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Lender by or pursuant to this Assignment.

8.1.3 Without prejudice to the above provisions of this clause, the Borrower shall do the following as and when required by the Lender and at the Borrower's cost, pending formal registration of the assignment to the Lender at any IP Registries:

- (a) pay all applicable application, filing, registration, renewal and other fees as they fall due;
- (b) promptly satisfy all official actions issued by any relevant IP Registry;
- (c) provide the Lender with all information and other assistance required to enable the Lender to prepare, file or prosecute applications for registration of any Intellectual Property Right (including producing, in the appropriate form, any evidence of its use of such Intellectual Property Right);
- (d) ensure that copies of all correspondence that it, or its agents, receive (including any renewal advice or other notification received from any IP Registry) are promptly delivered to the Lender (for the attention of the person to whom notices should be sent under and in accordance with the Finance Documents); and
- (e) provide the Lender with all information and other assistance required by the Lender to conduct, defend or settle any relevant claims, actions or proceedings (including, if requested by the Lender, bringing proceedings in its own name or lending its name to any proceedings brought by the Lender).

8.1.4 The Borrower shall deliver to the Lender (or to the Lender's nominated representative) within 20 Business Days after the date of this Assignment all deeds and documents of title, certificated and other files and records relating to the Intellectual Property Rights including, but without limitation, copies of all software, related source codes and relevant user guides (including in each case those of its agent).

8.1.5 The Borrower shall if requested by the Lender (at the cost of the Borrower) promptly enter into an escrow agreement with an escrow agent (selected by the Lender) and the Lender (in such form as the Lender may require) to hold the software (including any source code) assigned under this Assignment in escrow and to release it to the Lender and/or the Receiver upon enforcement or to the Borrower upon irrevocable discharge of the Secured Obligations.

## **8.2 Form of documents**

The documents referred to in clause 8.1 above shall be in such form and contain such provisions as the Lender may require.

## **8.3 Section 2(1)(b)**

The covenant set out in Section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to include the obligations set out in clauses 8.1 and 8.2.

## **8.4 Consents**

The Borrower shall use all reasonable endeavours to obtain as soon as possible any consents (in form and content reasonably satisfactory to the Lender) necessary to carry out its obligations under this Assignment.

## **9 Events of Default**

Each of the events or circumstances set out in this clause 9 is an Event of Default.

9.1 the Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless failure to pay is caused by an administrative or technical error and payment is made within 3 Business Days of its due date;

9.2 the Borrower does not comply with any provision of the Finance Documents unless the non-compliance is capable of remedy and is remedied within 10 Business Days of the earlier of:

9.2.1 the Lender giving notice to the Borrower of non-compliance; and

9.2.2 the Borrower becoming aware of the non-compliance;

9.3 the Borrower ceases to be a member of the Lender's Group;

9.4 any representation or statement made or deemed to be made by the Borrower in the Finance Documents is or proves to have been incorrect or misleading when made or deemed to be made unless the misrepresentation or misstatement is capable of remedy and is remedied within 10 Business Days of the earlier of:

- 9.4.1 the Lender giving notice to the Borrower of such misrepresentation or misstatement; and
- 9.4.2 the Borrower becoming aware of such misrepresentation or misstatement;
- 9.5 if:
  - 9.5.1 any Indebtedness of the Borrower is not paid when due or within any originally applicable grace period;
  - 9.5.2 any Indebtedness of the Borrower becomes due, or capable of being declared due and payable prior to its stated maturity by reason of an event of default howsoever described;
  - 9.5.3 any commitments for Indebtedness of the Borrower is cancelled or suspended by a creditor of the Borrower by reason of an event of default howsoever described; or
  - 9.5.4 any creditor of the Borrower becomes entitled to declare any Indebtedness due and payable prior to its stated maturity by reason of an event of default (howsoever described);
- 9.6 it is or becomes unlawful for a Borrower to perform any of its obligations under the Finance Documents;
- 9.7 any obligation or obligations of the Borrower under any Finance Documents are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lender under the Finance Documents;
- 9.8 any Finance Document ceases to be in full force and effect or ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it to be ineffective;
- 9.9 the Borrower 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;
- 9.10 the value of the Borrower's assets is less than its liabilities (taking into account contingent and prospective liabilities);
- 9.11 a moratorium is declared in respect of any Indebtedness of the Borrower;
- 9.12 the Borrower commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of their creditors with a view to rescheduling any Indebtedness (because of actual or anticipated financial difficulties);
- 9.13 any action, proceedings, procedure or step is taken for:
  - 9.13.1 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 Borrower;
  - 9.13.2 the composition, compromise, assignment or arrangement with any creditor of the Borrower;
  - 9.13.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or its assets;

- 9.14 any event occurs in relation to the Borrower similar to those in clause 9.11 to clause 9.13 (inclusive) under the laws of any applicable jurisdiction;
- 9.15 a distress, attachment, execution, expropriation, sequestration or another analogous legal process is levied, enforced or sued out on, or against, the Borrower's assets and is not discharged or stayed within 21 Business Days;
- 9.16 the Borrowers ceases, or threatens to cease, to carry on all or a substantial part of its business;
- 9.17 the Borrower repudiates or shows an intention to repudiate any Finance Document; and
- 9.18 at any time an event occurs (or circumstances exist) in relation to the Borrower which, in the sole opinion of the Lender, has or is likely to materially and adversely affect the Borrower's ability to perform all or any of their obligations under, or otherwise comply with the terms of, the Finance Documents.

## **10 Enforcement of security**

### **10.1 Security in jeopardy**

If at any time it shall appear to the Lender that any of the Collateral is in danger of seizure, distress, attachment, execution, diligence or other legal process, or that the Security shall for any other reason be in jeopardy, the Lender shall be entitled without notice to the Borrower to take possession of and hold the same or to appoint a Receiver of such Collateral. The provisions of clause 11 shall govern the appointment, removal and powers of a Receiver appointed under this clause as if it were a Receiver appointed under clause 11 and the Borrower shall, at its own expense, promptly execute such deeds and other agreements and otherwise take whatever action the Lender may require in order to enable the Lender to exercise its rights contained in this clause.

## **11 Receivers**

### **11.1 Appointment of Receiver**

11.1.1 Subject to clause 11.1.3 below, at any time after notice demanding payment of any sum which is then due but unpaid in respect of the Secured Obligations has been given by the Lender to the Borrower, or if so requested by the Borrower, the Lender may by writing under hand signed by any officer or manager of the Lender, appoint any person (or persons) to be a Receiver of all or any part of the Collateral.

11.1.2 Section 109(1) of the Law of Property Act 1925 shall not apply to this Assignment.

11.1.3 At any time after the Lender shall have demanded payment of any money or discharge of any obligation or liability hereby secured or if any step is taken by the Borrower or any other person to appoint an administrator, liquidator, provisional liquidator, receiver or similar officer of or to commence a moratorium in respect of the Borrower or any subsidiary of the Borrower or any of its respective assets or if requested by the Borrower:

- (a) the Lender and any nominee of the Lender shall be entitled to appoint a Receiver save to the extent prohibited by section 72A of the Insolvency Act 1986 and (without so appointing) may without further notice and without the restrictions contained in sections 103 and 109 of the Law of Property Act

1925 in respect of all or any of the Intellectual Property Rights exercise all the powers or rights which may be exercisable by the registered proprietor of the Intellectual Property Rights and all powers conferred on mortgagees by the Law of Property Act 1925 as hereby varied or extended; and

- (b) any licence fees, royalties or other payments which may be received or receivable by the Lender or by any nominee in respect of any of the Intellectual Property Rights may be applied by the Lender as though they were proceeds of sale.

11.1.4 At any time after the powers of the Lender under this Assignment become enforceable the Lender may by writing under its Common Seal or under the hand of any authorised officer of the Lender appoint any person to be a receiver of the Intellectual Property Rights or any of them to the extent permitted by law.

## **11.2 Powers of Receiver**

Each Receiver appointed under this Assignment shall have (subject to any limitations or restrictions which the Lender may incorporate in the deed or instrument appointing it) all the powers conferred from time to time on receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (each of which is deemed incorporated in this Assignment), so that the powers set out in the schedule to the Insolvency Act 1986 shall extend to every Receiver, whether or not an administrative receiver. In addition, notwithstanding any liquidation of the relevant Borrower, each Receiver shall have power to:

- 11.2.1 manage, develop, reconstruct, restructure, amalgamate or diversify any part of the business of the Borrower;
- 11.2.2 access, recover, manage, take or give up possession or control of, and surrender or release, any Collateral;
- 11.2.3 receive the income and profits of the Collateral;
- 11.2.4 maintain, invest, deposit, improve or alter the Collateral to improve its value or saleability or to obtain income or returns from it;
- 11.2.5 enter into or cancel any contracts on any terms or conditions;
- 11.2.6 perform or observe the Borrower's obligations or enforce or exercise the Borrower's rights, powers, discretions or remedies (or refrain from doing so) under:
  - (a) a contract, instrument or arrangement forming part of the Collateral;
  - (b) a Finance Document (including to cure a Default) or other document entered into by Lender or a Receiver in the exercise of a power, and vary, terminate or rescind any of them or novate or otherwise transfer to any person the Borrower's obligations under any of them;
- 11.2.7 incur any liability on any terms, whether secured or unsecured, and whether to rank for payment in priority to this security or not;
- 11.2.8 grant, acquire, renew, vary accept the surrender of or terminate any option or licence over or otherwise deal with, all or any of the Collateral, without being responsible for loss or damage;



- 11.2.9 establish subsidiaries to acquire interests in any of the Collateral and/or arrange for those subsidiaries to trade or cease to trade and acquire any of the Collateral on any terms and conditions;
- 11.2.10 make and effect all renewals, registrations, recordations and improvements to any of the Collateral and maintain, renew, take out or increase insurances and settle and compromise insurance claims;
- 11.2.11 redeem any prior Security on or relating to the Collateral and settle and pass the accounts of the person entitled to that prior Security, so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the relevant Borrower and the money so paid shall be deemed to be an expense properly incurred by the Receiver;
- 11.2.12 appoint and discharge officers and others for any of the purposes of this Assignment and/or to guard or protect the Collateral upon terms as to remuneration or otherwise as they deem fit;
- 11.2.13 issue any proceedings, defend any proceedings, settle any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Borrower or relating to any of the Collateral;
- 11.2.14 in exercising its powers under this clause 11.2, the Collateral or any of it or any interest therein may be sold or disposed of at such times and in such manner and generally on such terms and conditions and for such consideration as the Lender or any Receiver may think fit. Any such sale may be for cash or other valuable consideration and may be payable immediately or by instalments spread over such period as the Lender or such receiver shall think fit;
- 11.2.15 apply for any authorisation, consent or licence which is necessary or desirable in connection with an exercise of a power under this clause 11.2; and
- 11.2.16 do all other acts and things (including signing and executing all documents and deeds) as the Receiver considers to be incidental, expedient or conducive to any of the matters or powers in this clause 11.2, or otherwise incidental or conducive to the preservation, improvement or realisation of the Collateral, and use the name of the relevant Borrower for all such purposes,

and in each case may use the name of the Borrower and exercise the relevant power in any manner which they deem fit.

### **11.3 Receiver as Agent**

Each Receiver shall be the agent of the relevant Borrower, which shall be solely responsible for his acts or defaults, and for his remuneration and expenses, and be liable on any agreements or engagements made or entered into by him. The Lender will not be responsible for any misconduct, negligence or default of a Receiver.

### **11.4 Removal of Receiver**

The Lender may by notice remove from time to time any Receiver appointed by it (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receivership) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated, for whatever reason.

### **11.5 Remuneration of Receiver**

The Lender may from time to time fix the remuneration of any Receiver appointed by it.

### **11.6 Several exercise of powers**

If at any time there is more than one Receiver, each Receiver may separately exercise all of the powers conferred by this Assignment (unless the document appointing such Receiver states otherwise).

## **12 Application of proceeds**

### **12.1 Order of application**

All moneys received or recovered by the Lender or any Receiver pursuant to this Assignment shall (subject to the claims of any person having prior rights thereto) be applied notwithstanding any purported appropriation by the Borrower in the following order:

12.1.1 the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of the Receiver's remuneration;

12.1.2 costs, charges, expenses, losses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers including all rents, taxes, rates and outgoings whatever affecting the Collateral, all premiums on Insurances properly payable under this Assignment or any applicable statute, the cost of executing necessary or proper repairs to the Collateral, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations;

12.1.3 the Secured Obligations in such order as the Lender may determine; and

12.1.4 the claims of those persons entitled to any surplus.

### **12.2 Insurance Proceeds**

12.2.1 If an Event of Default has occurred, all moneys received by virtue of any insurance maintained or effected in respect of the Collateral shall be paid to the Lender (or, if not paid by the insurers directly to the Lender, shall be held on trust for the Lender) and shall, at the option of the Lender, be applied in replacing or reinstating the assets destroyed, damaged or lost (any deficiency being made good by the relevant Borrower) or in reduction of the Secured Obligations.

12.2.2 Sections 109(6) and (8) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Assignment.

### **12.3 Application against Secured Obligations**

Subject to clause 12.1 above, any moneys or other value received or realised by the Lender from a Borrower or a Receiver under this Assignment may be applied by the Lender to any item of account or liability or transaction forming part of the Secured Obligations to which they may be applicable in any order or manner which the Lender may determine.



## **12.4 Suspense Account**

12.4.1 Until the Secured Obligations are paid in full, the Lender may place and keep (for such time as it shall determine) any money received, recovered or realised pursuant to this Assignment or on account of the Borrower's liability in respect of the Secured Obligations in an interest bearing separate suspense account (to the credit of either the relevant Borrower or the Lender as the Lender deems fit) and the Receiver may retain the same for the period which the Borrower and the Lender consider expedient without having any obligation to apply all or any part of that money in or towards discharge of the Secured Obligations.

12.4.2 If the Security created under this Assignment is enforced at a time when no amount is due under the Finance Documents but at the time when amounts may or will become due, the Lender (or Receiver) may pay the proceeds of recoveries into a suspense account.

## **13 Variation and extension of statutory powers**

### **13.1 Statutory powers generally**

The powers conferred on mortgagees or receivers (including administrative receivers) by the Law of Property Act 1925 and the Insolvency Act 1986 shall apply to this Assignment except insofar as they are expressly or impliedly excluded and where there is any ambiguity or conflict between the powers contained in the Law of Property Act 1925 and/or the Insolvency Act 1986 and those contained in this Assignment the terms of this Assignment shall (so far as the law allows) prevail.

### **13.2 Lender's powers**

13.2.1 The restrictions contained in sections 93 and 103 of the Law of Property Act 1925 shall not apply to the Security and the power of sale and other powers contained in section 101 of the Law of Property Act 1925 and all other enforcement powers conferred in this Assignment with regard to the Security shall be immediately exercisable at any time after the occurrence and during the continuation of an Event of Default and shall be varied and extended so that the Lender shall at any such time be entitled (without prejudice to any other rights or powers of a mortgagee) to exercise any of the powers conferred upon a Receiver by clause 11 and shall have the benefit of all the provisions of clause 11.

13.2.2 If the Security is enforceable, the Lender may subject to the provisions of the Finance Documents, enforce all or any part of the Security in any manner it sees fit.

13.2.3 The powers, trusts, authorities and discretion conferred upon the Lender by this Assignment shall be in addition to any which may from time to time be vested in it by any applicable law and those which are set out in any other Finance Document.

### **13.3 Protection for third parties**

No person (including a purchaser) dealing with the Lender, any Receiver or any of their respective agents or nominees will be concerned to enquire:

13.3.1 whether the Secured Obligations have become payable; or

13.3.2 whether any power which the Lender or any Receiver is purporting to exercise has become exercisable; or

13.3.3 whether any money remains due under the Finance Documents; or

13.3.4 how any money paid to the Lender or any Receiver is to be applied.

In the absence of bad faith on the part of such purchaser or other person, such dealings shall be deemed, so far as regards the safety and protection of such purchaser or other person, to be within the powers conferred by this Assignment and to be valid accordingly. The remedy of the Borrower in respect of any gross negligence or wilful misconduct in the exercise of such power shall be in damages only.

#### **13.4 Delegation**

The Lender or any Receiver may at any time delegate by power of attorney or in any other manner to any person or persons any of the powers (including the power of attorney contained in clause 15), authorities and discretions which are for the time being exercisable by the Lender or any Receiver under this Assignment in relation to the Collateral. Any such delegation may be made upon such terms (including power to sub-delegate) and subject to such regulations as the Lender or Receiver may think fit. Neither the Lender nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

#### **13.5 Lender's power to remedy breaches**

If at any time the Borrower fails to perform any of the covenants contained in this Assignment it shall be lawful for the Lender, but the Lender shall have no obligation, to take such action on behalf of the Borrower (including, without limitation, the payment of money) as may in the Lender's reasonable opinion be required to ensure that such covenants are performed. Any losses, costs, charges and expenses incurred by the Lender in taking such action shall be reimbursed by the Borrower immediately on written demand.

#### **13.6 No liability**

In the execution or purported execution of the trusts and powers conferred on it under this Assignment, none of the Lender, its nominee(s) or any Receiver shall have any liability for any loss or damage arising by reason of any mistake or omission made in good faith or of any other act or omission, neglect, or default in connection with the Collateral except for breach arising from fraud, gross negligence or wilful misconduct on the part of the Lender. Without prejudice to the foregoing, if the Lender enters into possession of the Collateral, it will not be liable to account as mortgagee in possession and may at any time at its discretion go out of such possession.

#### **13.7 Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in any Finance Document, neither the Lender nor any of its personnel or agents shall be bound to:

13.7.1 enquire as to the occurrence or continuation of any Event of Default;

13.7.2 enquire as to whether or not any representation made by any person in connection with any Finance Document is true;

- 13.7.3 enquire as to the performance, breach or default by any person of its obligations under any of the Finance Documents;
- 13.7.4 disclose to any person any confidential information or other information relating to the Borrower if such disclosure might or would in its opinion constitute a breach of any applicable law or be otherwise actionable at the suit of any person;
- 13.7.5 account to the Lender for any sum or the profit element of any sum received by it for its own account whether in connection with the Finance Documents or otherwise.

### **13.8 No responsibility to perfect Security**

The Lender shall not be liable for any failure, omission or defect in perfecting the Security, including without limitation any failure to:

- 13.8.1 record or file any document relating to any Finance Document;
- 13.8.2 require the deposit with it of any deed or document certifying, representing or constituting the title of any of the Borrower to any of the Collateral;
- 13.8.3 obtain any licence, consent or other authority for the execution, delivery, validity, legality, adequacy, performance, enforceability or admissibility in evidence of this Assignment;
- 13.8.4 register or notify any of the foregoing in accordance with the provisions of any of the documents of title of any of the Borrower;
- 13.8.5 effect or procure registration of or otherwise protect any of the Security by registering the same under any applicable registration laws in any territory and the Lender shall under no circumstances be deemed to have made representations as to the Security or as to the validity or sufficiency of any document relating thereto;
- 13.8.6 take, or to require any of the Borrower to take, any steps to render the Security effective as regards any property situate outside England and Wales or to secure the creation of any ancillary charge under the laws of any other jurisdiction; or
- 13.8.7 require any further assurances in relation to this Assignment.

### **13.9 Disclaimer**

Neither the Lender nor any Receiver shall accept responsibility or be liable for:

- 13.9.1 the adequacy, accuracy or completeness of any information supplied by any person in connection with the Finance Documents or the transactions contemplated thereby, or any other document arrangement or agreement entered into in connection with the Finance Documents;
- 13.9.2 the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other document, arrangement or agreement entered into in connection with the Finance Documents;
- 13.9.3 any losses to any person caused as a result of taking or omitting to take any action in relation to any of the Finance Documents or the Security;

- 13.9.4 any shortfall which arises on enforcement of the Security;
- 13.9.5 the use or application of any funds which the Lender has released or directed the release of under any Finance Document; or
- 13.9.6 maintaining, protecting and preserving the Intellectual Property Rights and all necessary certificates, licences, permits and authorisations from time to time required in relation to the Intellectual Property Rights including, without limitation any failure to make or renew any registrations in any public register of intellectual property rights anywhere in the world.

## **14 Continuation and preservation of security**

### **14.1 Subsequent Encumbrances**

If Lender receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent Encumbrance or other interests affecting the Collateral and/or the proceeds of sale thereof, the Lender may open a new account or accounts for the Borrower in its books. If the Lender does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice (unless it gives express notice to the contrary to the Borrower). As from that time all payments by or on behalf of the Borrower to the Lender will (in the absence of any express appropriation to the contrary) be credited or be treated as having been credited to the new account and will not operate to reduce the Secured Obligations.

### **14.2 Waiver of defences**

The Borrower shall be deemed to be a principal debtor and the sole, original and independent obligor for the Secured Obligations and the Collateral shall be deemed to be a principal security for the Secured Obligations. The liability of the Borrower under this Assignment shall not be discharged, impaired or otherwise affected by any circumstance, act, omission, matter or thing which but for this provision might operate to reduce, release, prejudice or otherwise exonerate the Borrower from its obligations under the Finance Documents in whole or in part, including without limitation and whether or not known to the Borrower, the Lender or any other person:

- 14.2.1 the winding-up, dissolution, administration, re-organisation, amalgamation, merger or reconstruction of the Borrower or any other person or any change in its status, function, control or ownership;
- 14.2.2 any time, indulgence, concession, waiver or consent granted to, or composition with, the Borrower or any other person;
- 14.2.3 the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor thereof;
- 14.2.4 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, the assets of the Borrower or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to release or to realise the full value of any security;



- 14.2.5 any legal limitation, disability, incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of, or other circumstance relating to, the Borrower or any other person;
- 14.2.6 any amendment or other variation (however fundamental including any amendment or variation increasing or extending the maturity of all or any part of the Secured Obligation or changing the obligors in respect thereof) or replacement of any Finance Document or any other document or security;
- 14.2.7 any unenforceability, illegality, invalidity or frustration of any obligation of the Borrower or any other person under any Finance Document or any other document or security, or any failure of the Borrower to become bound by the terms of any other Finance Document, in each case whether through any want of power or authority or otherwise; or
- 14.2.8 any postponement, discharge, reduction, non-provability or similar circumstances affecting any obligation of the Borrower under a Finance Document resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order,

so that the Borrower's obligations under this Assignment remain in full force and effect and that this Assignment shall be construed accordingly as if there were no such circumstance, act, omission, matter or thing.

#### **14.3 Immediate recourse**

The Borrower waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security in respect of the Secured Obligations or claim payment from any person before enforcing the Security. This waiver applies irrespective of any law or provision of the Finance Documents to the contrary.

#### **14.4 Non-competition**

- 14.4.1 Subject as provided below, until the Lender is satisfied that all of the Secured Obligations have been unconditionally and irrevocably paid and discharged in full, the Borrower shall not, by virtue of any payment made, security realised or moneys received or recovered under any of the Finance Documents for or on account of the liability of the Lender take the benefit (whether by way of subrogation or otherwise) of any rights, security or moneys held, received or receivable by the Lender or be entitled to any right of contribution or indemnity.
- 14.4.2 The Borrower shall hold in trust for and forthwith pay or transfer to the Lender (acting as agent and trustee as aforesaid) any payment or distribution or benefit of security received by it contrary to the above. If the Borrower exercises any right of set-off contrary to the above it will forthwith pay an amount equal to the amount set off to the Lender (acting as agent and trustee as aforesaid). Notwithstanding the foregoing, following any enforcement of the Security by the Lender under this Assignment, the Borrower will (at its own cost) promptly take such steps or actions as are referred to above as the Lender may from time to time stipulate.

#### **14.5 Security held by the Borrower**

The Borrower warrants that it has not taken, and agrees that it will not take, from any other party to any related security any Encumbrance, guarantee, indemnity, bond or other

assurance in respect of or in connection with its obligations under this Assignment. If the Borrower takes any such Encumbrance, guarantee, indemnity, bond or other assurance in contravention of this clause, it shall hold it on trust for the Lender until such time as all of the Secured Obligations have been satisfied in full (and the Lender is not under any further obligation, actual or contingent, to the Borrower) and shall on request promptly deposit the same with and/or charge the same to the Lender in such manner as the Lender may require as security for the due and punctual payment, performance and discharge by the Borrower of the Secured Obligations.

#### **14.6 Continuing Security**

The Security shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Lender and shall extend to the ultimate balance of the Secured Obligations notwithstanding any interim or intermediate payment, discharge or settlement of account or other matter of the whole or any part of the Secured Obligations.

#### **14.7 No prejudice**

The Security shall not be prejudiced or affected by the invalidity or unenforceability of any other document or agreement, or by the Lender now or hereafter dealing with, exchanging, releasing or abstaining from perfecting or enforcing any of the Security, or by any time or indulgence granted to the Borrower, the Lender, or by any other act or thing which might otherwise prejudice that Security.

#### **14.8 Tacking**

The Lender must perform its obligations under the Facility Agreement (including any obligation to make further advances (if any)).

#### **14.9 Cumulative Security**

The Security shall be cumulative, in addition to and independent of every other security which the Lender may at any time hold in respect of the Secured Obligations or any other obligations or any rights, powers and remedies provided by law. The Security shall not merge with any prior security held by the Lender over the whole or any part of the Collateral.

### **15 Power of attorney**

#### **15.1 Appointment**

The Borrower, by way of security, hereby irrevocably appoints the Lender and the persons deriving title under it and separately any Receiver jointly or severally to be its attorney or attorneys for them (with full power of substitution and delegation) and in the name and on behalf and as its act and deed to sign, seal, execute, deliver, perfect and do all deeds, instruments, acts and things which may be required:

15.1.1 for carrying out any obligations imposed on the Borrower by or pursuant to this Assignment where the Borrower has failed to perform such obligations and/or following the occurrence of an Event of Default that is continuing;

15.1.2 following the occurrence of an Event of Default that is continuing, for carrying any sale, lease or other dealing by the Lender or Receiver into effect;

- 15.1.3 following the occurrence of an Event of Default that is continuing, for conveying or transferring any legal estate or other interest in land or any other property;
- 15.1.4 following the occurrence of an Event of Default that is continuing, for getting in all or any part of the Collateral; and
- 15.1.5 generally for enabling the Lender and any Receiver to exercise the respective powers, authorities and discretions conferred on them by or pursuant to this Assignment or by law.

The provisions of this clause 15.1 shall take effect as and by way of variation to the provisions of sections 109(6) and 109(8) of the Law of Property Act 1925 which provisions as so varied and extended shall be deemed incorporated in this Assignment as if they related to a Receiver of the Collateral and not merely a Receiver of the income thereof.

## **15.2 Ratification**

The Borrower covenants with the Lender and separately with any Receiver that, on request, it will ratify and confirm all security agreements, documents and acts and all transactions entered into by the Lender or any Receiver (or by the Borrower at the request of the Lender (and the persons deriving title under it) or any Receiver) in the proper exercise of its or his powers set out in this Assignment and the Borrower irrevocably acknowledges and agrees that the power of attorney contained in this clause 15 is given to secure the proprietary interest of, and the performance of obligations owed to, the respective donees within the meaning of the Powers of Attorney Act 1971.

## **16 Indemnities**

### **16.1 General**

16.1.1 The Borrower shall, as primary obligor and not merely as surety, notwithstanding any release or discharge of all or any part of the Security, indemnify and hold harmless the Lender (and its nominees, delegates and sub-delegates) and any Receiver on demand against any losses, actions, claims, expenses, demands or liabilities (calculated on a full indemnity basis) suffered or incurred as a consequence of:

- (a) any breach by the Borrower of the provisions of this Assignment;
- (b) the exercise or purported exercise of any of the rights and powers conferred on them by this Assignment or otherwise relating to the Collateral or the Security (otherwise than as a result of its gross negligence or wilful misconduct);
- (c) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the Security or the Collateral;
- (d) any default or delay by the Borrower in performing any of its obligations under this Assignment; and
- (e) any failure to maintain, defend or preserve the Intellectual Property Rights and all necessary certificates, licences, permits and authorisations from time to time required in relation to the Intellectual Property Rights including, without limitation any failure to make, renew, extend or amend any registrations in any register anywhere in the world or perform any of its obligations under clause 4.3.



## **16.2 Taxes**

The Borrower agrees to indemnify the Lender and any Receiver on demand against all present or future stamp, withholding or other taxes or duties and any penalties or interest with respect thereto which may be imposed by any competent authority in connection with the execution or enforcement of this Assignment, repayment and discharge of the Secured Obligations or in consequence of any payment made pursuant hereto being impeached or declared void for any reason.

## **16.3 Costs and expenses**

Immediately upon demand, the Borrower shall pay all fees, costs and expenses (including registration fees, legal fees and any value added tax) on a full indemnity basis incurred from time to time in connection with the enforcement of or preservation of rights under this Assignment by the Lender, or any Receiver, attorney, manager, trustee or any other person appointed by the Lender under this Assignment or by legislation.

## **17 Waivers and remedies**

### **17.1 Waivers**

No failure or delay by the Lender in exercising any right or remedy shall operate as a waiver thereof, nor shall any single or any partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy as though no waiver had been made and no relaxation or indulgence granted.

### **17.2 Severability**

If any provision of this Assignment shall be prohibited, illegal, invalid or unenforceable under applicable law, it shall be ineffective only to such extent and in the relevant jurisdiction, without invalidating or otherwise detrimentally affecting the remainder of this Assignment.

## **18 Reinstatement and release**

### **18.1 Reinstatement**

Any settlement or discharge under this Assignment between the Borrower and the Lender shall be conditional upon no security or payment to the Lender by the Borrower or any other person on behalf of the Borrower being avoided or set aside or ordered to be refunded or reduced by or pursuant to any applicable law or regulation and, if such condition is not satisfied, the Lender shall be entitled to recover from the Borrower on demand the value of any such security or the amount of any such payment as if such settlement or discharge had not occurred. The Lender may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

### **18.2 Release**

18.2.1 Once all the Secured Obligations have been irrevocably paid in full and the Lender has no actual or contingent liability to advance further monies to, or incur liability on behalf of, the Borrower, the Lender shall, at the request and cost of the Borrower, promptly take any action which may be necessary to release and discharge the Security and reassign the Collateral to the Borrower.

18.2.2 On the completion of the sale or disposal of any Collateral in accordance with the terms of the Finance Documents, the Lender hereby agrees with the Borrower that, upon at least 5 Business Days' prior written request from the Borrower, it shall release, discharge or reassign (as the case may be) the Collateral being so sold or disposed of from the Security provided that the Borrower has certified to the Lender that the sale or disposition is made in compliance with the provisions of the Finance Documents, and that:

- (a) the Lender shall not be required to execute any such release, discharge or reassignment on terms which, in Lender's opinion, would expose the Lender to liability or create any obligation or entail any consequence other than the release of such Security without recourse or warranty; and
- (b) such release, discharge or reassignment shall not in any manner discharge, affect or impair the Secured Obligations or the Security upon (or obligations of the Borrower in respect of) all interests retained by the Borrower, including the proceeds of sale, all of which shall continue to form part of the Security.

## **19 Currency**

Any amount received or recovered by the Lender in respect of any sum expressed to be due to it from the Borrower under this Assignment in a currency other than the currency (the 'contractual currency') in which such sum is so expressed to be due (whether as a result of, or the enforcement of, any judgment or order of a court or tribunal of any jurisdiction, the winding-up of the Borrower or otherwise) shall only constitute a discharge to the Borrower to the extent of the amount of the contractual currency that the Lender is able, in accordance with its usual practice (acting reasonably), to purchase with the amount of the currency so received or recovered on the date of receipt or recovery (or, if later, the first date on which such purchase is practicable). If the amount of the contractual currency so purchased is less than the amount of the contractual currency so expressed to be due the Borrower shall indemnify the Lender against any loss sustained by it as a result, including the cost of making any such purchase.

## **20 Notices**

### **20.1 Communications in writing**

Any communication to be made under or in connection with this Assignment shall be made in writing and, unless otherwise stated, may be made by email or letter.

### **20.2 Addresses**

The address and email (and the department or officer, if any, for whose attention the communication is to be made) of each party to this Assignment for any communication or document to be made or delivered under or in connection with this Assignment is as shown immediately after its name on the execution pages of this Assignment or any substitute address or email address as one Party may notify to the other Party by not less than five Business Days' notice.

### **20.3 Delivery**

20.3.1 Any communication or document made or delivered by one person to another under or in connection with this Assignment will only be effective:

- (a) if by way of email, when received in legible form; or

(b) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under clause 20.2, if addressed to that department or officer.

20.3.2 Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).

## **21 Set off**

### **21.1 After an Event of Default**

The Lender may at any time after an Event of Default has occurred and is continuing (without giving notice to the Borrower):

21.1.1 set off or otherwise apply sums standing to the credit of the Borrower's accounts with the Lender (irrespective of the terms applicable to those accounts and whether or not those sums are then due for repayment to the Lender); and

21.1.2 set off any other obligations (whether or not then due for performance) owed by that the Lender to the Borrower, in each case against any liability of the Borrower to the Lender under the Finance Documents.

### **21.2 Different currencies**

The Lender may exercise its rights under clause 21.1 notwithstanding that the amounts concerned may be expressed in different currencies and the Lender is authorised to effect any necessary conversions at a market rate of exchange selected by it.

### **21.3 Unliquidated obligations**

If the relevant obligation or liability is unliquidated or unascertained, the Lender may set off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

## **22 Contracts (Rights of Third Parties) Act 1999**

Except as expressly provided in this Assignment, a party who is not a party hereto has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Assignment.

## **23 Consideration**

The Borrower has entered into this Assignment in consideration of the Lender agreeing to provide (or to continue to provide) finance facilities to it on the terms agreed between them.

**24 Assignments and transfers**

**24.1 No assignment**

The Borrower shall not be entitled to assign or transfer all or any of its rights or obligations under this Assignment.

**24.2 Assignment by Lender**

The Lender may at any time assign or otherwise transfer all or any part of its rights under this Assignment in accordance with the Finance Documents and the Borrower authorises the Lender to execute on its behalf any document required to effect the necessary transfer of rights and obligations.

**25 Governing law**

This Assignment and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

**26 Jurisdiction**

The courts of England and Wales shall have exclusive jurisdiction over all disputes and/or claims (including without limitation non-contractual disputes and/or claims) arising out of or in connection with this Assignment or its subject matter or formation (a **Dispute**). Each Party agrees that the courts of England are the most appropriate and convenient courts to settle any Dispute and accordingly neither Party will argue to the contrary.

**This Assignment has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.**

THE SCHEDULE  
INTELLECTUAL PROPERTY RIGHTS AND FORM OF NOTICE TO COUNTERPARTIES OF  
LICENCE

**Part A**  
**Patents and Patent Applications**

None at the date of this Assignment.

**Part B**  
**Trade Marks and Trade Mark Applications**

**UK Trade Marks**

1. UK00002357112 for "STOREY CARPETS" in classes 27 and 37, filed 28 February 2004
2. UK00915403645 for "LYNMOUTH TWIST" in classes 19, 27 and 37, filed 4 May 2016
3. UK00917097312 for "BLISSFUL" in classes 19 and 27, filed 14 August 2017
4. UK00003698999 for "EMPEROR" in classes 19, 27 and 37, filed 22 September 2021

**EU Trade Marks**

1. EUTM 015403611 for "SANDRINGHAM" in classes 19, 27 and 37, filed 4 May 2016

**Ireland Trade Marks**

1. 143354 for "CROSSLEY" in class 27, filed 18 April 1991
2. 223132 for "HARRIS CARPETS" in class 27, filed 22 December 2000
3. 223130 for "CarpetRIGHT logo (Series of 2)" in class 27, filed 22 December 2000

**Part C**  
**Registered Designs and Applications for Registered Designs**

Intentionally left blank.

**Part D**  
**Copyright Works and Unregistered Designs**

Intentionally left blank.

**Part E**  
**Domain Names**

Intentionally left blank.

**Part F**  
**Intellectual Property Licences**

Intentionally left blank.



**Part G**  
**Form of notice to counterparties of Licence**

To: [name and address of counterparty]

Dated: [date]

[here identify relevant Licence] (**Licence**) made between (1) [*Borrower*] (**Borrower**) and (2) [here insert name of counterparty]

We [*Borrower*] hereby notify you that by an assignment of intellectual property by way of security dated [date] made by the Borrower in favour of [*Lender*] (**Lender**), the Borrower has charged or assigned absolutely (subject to a proviso for reassignment on redemption) to the Lender all of the Borrower's rights, title and interest in the Licence as security for certain obligations now or hereafter owed by the Borrower to the Lender.

We further notify and irrevocably and unconditionally instruct and authorise you that:

1. you may continue to deal with the Borrower in relation to the Licence until you receive written notice to the contrary from the Lender, thereafter the Borrower will cease to have any right to deal with you in relation to the Licence and therefore from that time you should deal only with the Lender;
2. you are authorised to disclose information in relation to the Licence to the Lender on request without any enquiry by you as to the justification for such disclosure or reference to or further authority from the Borrower;
3. you must pay or release all monies to which the Borrower is entitled under the Licence into an account specified by the Lender from time to time unless the Lender otherwise agrees in writing;
4. you must supply copies of all notices and other information under the Licence to the Lender;
5. you must not agree to any termination of the Licence;
6. you must inform the Lender if the Borrower takes any action to terminate the Licence or any other event occurs which is reasonably likely to lead to termination of the Licence; and
7. the provisions of this notice may only be revoked with the written consent of the Lender.

Please sign and return the enclosed copy of this notice to the Lender (with a copy to the Borrower) by way of confirmation that:

- (a) you agree to the terms set out in this notice and to act in accordance with its provisions; and
- (b) you have not received notice that the Borrower has charged or assigned its rights under the Licence to a third party or created any other interest (whether by way of security or otherwise) in the Licence in favour of a third party.

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

Yours faithfully, for and on behalf of [*Borrower*]

**[to be endorsed on copy notice]**

To: Nestware Holdings Limited, Nestware House, Purfleet Bypass, Purfleet, Essex, RM19 1TT

Copy to: Carpetright Limited, Nestware House, Purfleet Bypass, Purfleet, Essex, RM19 1TT

We hereby acknowledge receipt of the above notice and confirm our agreement to the matters set out in paragraphs (a) and (b) above.

Signed:

for and on behalf of [name of counterparty]

Dated: [date]



**THE BORROWER**

Executed as a deed by **Carpetrigh Limited**

acting by PETER HARVEY, a

Director

director, and KEVIN BARRETT, a

director.

Director

Address:

FAO: Peter Harvey

Email:

**THE LENDER**

Executed as a deed by **Nestware Holdings Limited**

acting by PETER HARVEY, a

Director

director, and KEVIN BARRETT, a

director.

Director

Address:

FAO: Kevin Barrett

Email: