



**Registration of a Charge**

Company name: **PROPORTION LONDON LIMITED**

Company number: **02597122**



X3EMPPB6

Received for Electronic Filing: **19/08/2014**

---

**Details of Charge**

Date of creation: **31/07/2014**

Charge code: **0259 7 122 0015**

Persons entitled: **ANTONIA D'MARCO**

Brief description: **NOT APPLICABLE**

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

---

**Authentication of Form**

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

---

**Authentication of Instrument**

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

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**SGH MARTINEAU LLP**



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

Company number: 2597122

Charge code: 0259 7122 0015

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st July 2014 and created by PROPORTION LONDON LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th August 2014 .

Given at Companies House, Cardiff on 20th August 2014

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 3 July 2014

- (1) **BRIGHTSTAR CAPITAL (PROPORTION) LIMITED AND  
PROPORTION LONDON LIMITED AS CHARGORS**
- (2) **ANTONIA D'MARCO (as Security Trustee)**

---

**DEBENTURE**

---

PLEASE NOTE: This debenture is subject to the Deed of Priority, the Subordination Deed and the Intercreditor Deed (all as defined herein)

THIS DEED is made on

31 July

2014

BETWEEN:

- (1) **BRIGHTSTAR CAPITAL (PROPORTION) LIMITED** (incorporated and registered in England and Wales under number 0899 6499) the registered office of which is at 7<sup>th</sup> Floor, 20 Berkeley Square, London W1J 6EQ and **PROPORTION LONDON LIMITED** (incorporated and registered in England and Wales under number 02597122) the registered office of which is at 3 Blackhorse Lane, London E17 6DS, (each a "Chargor" and together the "Chargors"); and
- (2) **ANTONIA D'MARCO** of 212a Munster Road, Fulham SW6 6AX in her capacity as security trustee for the Security Beneficiaries (the "Security Trustee").

NOW THIS DEED WITNESSES as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Deed:

"Act" means the Law of Property Act 1925;

"Administrator" means an administrator appointed under Schedule B1 to the Insolvency Act 1986;

"Charged Assets" means the undertaking, property, rights and assets from time to time subject to the Security created by this Deed and includes any part thereof, interest therein and, where the context permits, the proceeds of sale of the same;

"Company" means Brightstar Capital (Proportion) Limited (incorporated and registered in England and Wales under number 0899 6499);

"Default Rate" means, at any time, the higher of the rate of 8% per annum and 4% above the Bank of England base rate from time to time;

"Deed of Priority: the deed of priority of even date between Leumi ABL Limited (1), Adam Knight (2), Peter Stephen Ferstendik (as security trustee) and others (3), Gordons Partnership LLP (as security trustee) and others (4), Antonia D'Marco (as security trustee) and others (5), Antonia D'Marco (6) and Proportion London Limited, Proportion Limited and Brightstar Capital (Proportion) Limited (7);

"Event of Default" means any event specified as such in the Loan Note Instrument;

"Finance Documents" means this Deed, the Loan Note Instrument, the Notes, the Security Trust Deed, any Deed of Accession (as defined in the Security Trust Deed) and any other document designated as a Finance Document by the Security Trustee and any Chargor;

"Guarantor" means Proportion London Limited;

"Intellectual Property Rights" means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, domain names, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests whether registered or unregistered (including Specified Intellectual Property); and
- (b) the benefit of all applications and rights to use such assets of each Chargor;

"Intercreditor Deed" means the intercreditor deed of even date between Adam Knight (1), Peter Stephen Ferstendik (2), Gordons Partnership LLP (as security trustee) (3), Antonia D'Marco (as security trustee) (4) Antonia D'Marco (5), Proportion London Limited (6) and Brightstar Capital (Proportion) Limited (7);

"Land" means any freehold or leasehold property, any licence and any other estate or interest in any immovable property and in each case all buildings and structures upon and all things affixed to such property (including trade, tenant's and other fixtures and fittings) from time to time;

**"Loan Note Instrument"** the instrument dated on or about the date of this Deed executed by the Company constituting the Notes;

**"Mortgaged Land"** means the Land from time to time mortgaged or charged by any Chargor under Clauses 3.1(a) or 3.1(b)(i) (Fixed and floating charges and assignments) and includes any part thereof;

**"Noteholders"** means the holders from time to time of the Notes;

**"Notes"** means the £317,704 deferred consideration loan notes of the Company constituted by the Loan Note Instrument or, as the case may be, the principal amount from time to time issued and paid up and outstanding, and "principal amount" shall be construed accordingly;

**"Permitted Encumbrance"** means any Security created by any Chargor with the consent of the Security Trustee (such consent not to be withheld reasonably);

**"Receiver"** means each person appointed by the Security Trustee as an administrative receiver, a receiver and manager or a receiver of any Charged Assets;

**"Secured Liabilities"** means all and any moneys, obligations and liabilities which may now or at any time in the future be due, owing or incurred by any Chargor to the Security Beneficiaries under the Finance Documents and/or this Deed, whether actual or contingent, together with interest, commissions, fees and all legal and other costs, charges and other expenses which any Security Beneficiary may charge any Chargor or incur under any Finance Document;

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

**"Security Period"** means the period beginning on the date of this Deed and continuing until the Security Trustee is satisfied (acting reasonably) that all the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full and no further Secured Liabilities are capable of being incurred or arising;

**"Security Trust Deed"** means the security trust deed entered into on the date of this Deed between the Chargors, the Security Trustee and the Original Noteholders (as defined therein) setting out, amongst other things, the terms pursuant to which the Security Trustee holds the benefit of this Deed, as the same may be varied, supplemented, restated or replaced from time to time;

**"Security Beneficiaries"** means the Security Trustee and the Noteholders and **"Security Beneficiary"** means any of them;

**"Specified Intellectual Property Rights"** means the Intellectual Property Rights specified in Schedule 2 (Specified Intellectual Property Rights);

**"Subsidiary"** has the meaning given to that term under section 1159 of the Companies Act 2006;

**"Subordination Deed"** the subordination deed of even date between, inter alios, Leumi ABL Limited (1), Adam Knight (2), Peter Stephen Ferstendik (as security trustee) and others (3), Gordons Partnership LLP (as security trustee) and others (4), Antonia D'Marco (as security trustee) and others (5), Antonia D'Marco (6) and Proportion London Limited, Proportion Limited and Brightstar Capital (Proportion) Limited (7); and

**"VAT"** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

## 1.2 Interpretation

In this Deed:

- (a) the terms of the other documents under which the Secured Liabilities arise and any side letters between any parties in relation to them are incorporated in this Deed to the extent required to ensure that any purported disposition of any Charged Asset contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989;

- (a) any grant of rights with full title guarantee shall be deemed to contain all of the covenants and warranties implied in respect of any conveyance with full title guarantee under section 1(2) of the Law of Property (Miscellaneous Provisions) Act 1994;
- (b) unless the context requires otherwise, references to Clauses are references to clauses of this Deed; and
- (c) any reference to this Deed or any other document includes references to this Deed or such other document as varied, novated, extended, supplemented or restated in any manner from time to time;
- (d) words importing the singular include the plural and vice versa and words importing a gender include every gender; and
- (e) all assignments, charges, agreements, undertakings, covenants, obligations, warranties and representations given, undertaken, made or assumed by the Chargors hereunder shall be deemed to have been given, undertaken, made or assumed by them jointly and severally and construed accordingly.

### **1.3 Trust**

- (a) The Security Trustee shall hold the benefit of this Deed on trust for the Security Beneficiaries in accordance with the terms of the Security Trust Deed.
- (b) Nothing in this Deed shall constitute or be deemed to constitute a partnership between the Security Trustee and any of the other Security Beneficiaries.

## **2. COVENANT TO PAY**

### **2.1 Covenant**

- 2.2 Subject to Clause 2.5, each Chargor, as primary obligor and not merely as surety, covenants with the Security Trustee that it will, on the Security Trustee's written demand, pay and discharge all Secured Liabilities when the same shall be or become due.

### **2.3 Demands**

The making of one demand shall not preclude the Security Trustee from making any further demands.

### **2.4 Interest**

Each Chargor shall pay to the Security Trustee interest on any amount not paid in accordance with this Deed when due from the due date to the date of payment or discharge (both before and after judgement) at the Default Rate. Any interest accruing under this Clause 2.4 is immediately payable by the Chargors on demand by the Security Trustee.

### **2.5 Limited Recourse**

Notwithstanding any other provision in this Deed, the recourse of each Security Beneficiary against the Guarantor in respect of the Secured Liabilities under this Deed is limited to its rights of enforcement and recovery against the Charged Assets and accordingly the total amount recoverable against the Guarantor under this Deed shall be limited to the proceeds received by the Security Beneficiaries in realising the Charged Assets in accordance with the terms of this Deed.

## **3. CHARGE**

- 3.1 As a continuing security for the payment and/or discharge of the Secured Liabilities, each Chargor:

- (a) charges to the Security Trustee (as trustee for the Security Beneficiaries) by way of legal mortgage all Land (if any) described in Schedule 1 (Mortgaged Land);
- (b) charges to the Security Trustee (as trustee for the Security Beneficiaries) by way of fixed charge:
  - (i) (to the extent it is not the subject of an effective legal mortgage under paragraph (a) above) all Land now or in the future belonging to it, whether or not title to that Land is registered at the Land Registry;

- (ii) all buildings, structures, trade, tenant's and other fixtures and fittings now or in the future belonging to it or on or annexed to any Land now or in the future belonging to it;
  - (iii) all plant and machinery now or in the future owned by it and its interest in any plant or machinery now or in the future in its possession or on or annexed to any Land now or in the future belonging to it;
  - (iv) all cash at bank, all book debts, other debts and monetary claims now or in the future due or owing to it and the benefit of all rights, securities or guarantees of any nature enjoyed or held by it in relation to any item mentioned above;
  - (v) in the case of the Company, all shares held by it in any Subsidiary at the date of this Deed and any future shares held by it in any Subsidiary together with all dividends and other rights deriving from such shares or pertaining to them and any right, money or property accruing or offered at any time in relation to the Subsidiary by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;
  - (vi) save as charged by paragraph (v) above, all stocks, shares and other securities now or in the future belonging to it together with all dividends and other rights deriving from them or pertaining to them and any right, money or property accruing or offered at any time in relation to it by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;
  - (vii) all its goodwill, all its uncalled capital from time to time and any beneficial interest, claim or entitlement it has in any pension fund;
  - (viii) all the Specified Intellectual Property Rights and all choses in action and claims and all fees, royalties and other rights of every kind deriving from such rights and now or in the future belonging to it;
  - (ix) save as charged by paragraph (viii) above, all other Intellectual Property Rights and choses in action and claims and all fees, royalties and other rights of every kind deriving from such rights and now or in the future belonging to it; and
  - (x) all its rights, title and interests not effectively assigned under paragraph (c) below;
- (c) assigns absolutely to the Security Trustee (as trustee for the Security Beneficiaries) all its rights, title and interest from time to time in and to all rights and interest in and claims under any and all present and future insurance policies to which the relevant Chargor is entitled and any payments paid or payable, claims or return of premium in relation thereto, provided that (without prejudice to paragraph (b)(x) above) to the extent that any rights, titles or interests assigned under this paragraph (c) are not assignable, such assignment will operate as an assignment of all proceeds received by the relevant Chargor in connection therewith; and
- (d) charges to the Security Trustee (as trustee for the Security Beneficiaries ) by way of floating charge its undertaking and all its property, rights, assets and income not effectively mortgaged, charged by way of fixed charge or assigned under paragraphs (a) to (c) above both present and future (including without limitation its stock in trade and its heritable and other property, assets and rights in Scotland).

### 3.2 General

- (a) The Security created by this Deed ranks as first charges, mortgages and assignments (as applicable) and is given with full title guarantee.
- (b) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies so that the floating charge created under Clause 3.1(d) (Fixed and floating charges and assignments) is a qualifying floating charge for the purposes of that paragraph 14.

### 3.3 Negative pledge



No Chargor shall create or permit to subsist or arise any Security over any of its Charged Assets other than that created by this Deed or a Permitted Encumbrance.

### **3.4 Restrictions on dealings**

- (a) No Chargor shall sell, transfer, assign, licence, lease, hire out, grant, lend, discount, factor, exchange, compound, set-off, grant any interest in, part with possession or ownership of, grant time or indulgence in respect of or otherwise dispose of any of its Charged Assets or the equity of redemption therein or permit any person to do any such thing.
- (b) Paragraph (a) shall not apply to any dealing made with the prior written consent of the Security Trustee or made in the ordinary course of trade (as carried on at the date of this Deed but excluding unprecedented and exceptional transactions) of any Charged Asset.

### **3.5 Conversion of floating charge**

Subject to Clause 3.7 (Moratorium), the Security Trustee may from time to time by notice in writing to any Chargor:

- (a) following the occurrence of an Event of Default; or
- (b) if the Security Trustee considers any Charged Asset to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or otherwise to be in jeopardy; or
- (c) if the Security Trustee considers it necessary in order to protect or preserve the Security created under this Deed or the priority of that Security,

convert the floating charge created by that Chargor under Clause 3.1(d) (Fixed and floating charges and assignments) into a fixed charge with immediate effect. Such conversion shall take effect in respect of each Charged Asset specified in such notice and if no Charged Assets are specified it shall take effect in respect of all Charged Assets of the relevant Chargor.

### **3.6 Automatic Conversion**

Subject to Clause 3.7 (Moratorium), if (without the prior written consent of the Security Trustee):

- (a) any Chargor creates any Security over or otherwise encumbers any Charged Asset or attempts to do so;
- (b) any person levies or attempts to levy any distress, execution, sequestration, expropriation, attachment or other process against any Charged Asset;
- (c) a resolution is passed or a petition is presented for the winding up, dissolution, administration or re-organisation of any Chargor;
- (d) a receiver, an administrative receiver or a receiver and manager is appointed over any Charged Asset or any person entitled to do so gives notice of its intention to appoint a receiver, an administrative receiver or a receiver and manager over any Charged Asset or files such a notice with the court;
- (e) an Administrator is appointed (or the Security Trustee receives notice of an intention to appoint an Administrator pursuant to paragraphs 15 or 26 of Schedule B1 to the Insolvency Act 1986) in respect of any Chargor,

the floating charge created by that Chargor under Clause 3.1(d) (Fixed and floating charges and assignments) shall with immediate effect and without notice automatically convert into a fixed charge over the relevant Charged Assets (or, in the case of paragraphs (c), (d) or (e) above, over all of the Charged Assets) of that Chargor.

### **3.7 Moratorium**

The floating charge created by Clause 3.1(d) (Fixed and floating charges and assignments) shall not be converted into a fixed charge solely by reason of the obtaining of a moratorium or anything done with a view to obtaining a moratorium under the Insolvency Act 2000.

### 3.8 Deposit of documents

Each Chargor shall:

- (a) on the date of this Deed or, if later, upon becoming entitled to them, deposit (or procure the deposit) with the Security Trustee and the Security Trustee shall be entitled to hold all original deeds and documents of title in that Chargor's control or possession relating to any Charged Asset together with, in the case of the stocks, shares and other securities referred to in Clauses 3.1(b)(v) and 3.1(b)(vi), stamped stock transfer forms in respect of the same executed in blank (except for the number and class of shares and the name of the transferor) and left undated. The Security Trustee may at any time after the date of this Deed complete the instruments of transfer on behalf of that Chargor in favour of itself, its nominee or such other person as it shall select; and
- (b) if, for any reason, the Security Trustee ceases to hold any such deeds or documents, it may by notice to any Chargor require that any deeds or documents in that Chargor's possession or control be redelivered to it and that Chargor shall immediately comply with that requirement or procure that it is complied with. In respect of any Mortgaged Land, if any such deeds or documents are at the relevant time held at the Land Registry, the Chargor to which that Mortgaged Land belongs shall promptly following a demand by the Security Trustee provide or procure the provision to the Security Trustee of such undertakings and such letters addressed to the Land Registry as the Security Trustee may require.

### 3.9 Release

Subject to Clause 18 (Reinstatement and avoidance of payments), upon the irrevocable and unconditional discharge in full of the Secured Liabilities the Security Trustee shall, at the cost and request of the Chargors, release the Charged Assets from the Security constituted by this Deed and reassign or retransfer the Charged Assets to the Chargors.

## 4. COVENANTS BY THE CHARGORS

4.1 Each Chargor shall:

- (a) upon receipt of five business days' notice, permit any person or persons nominated by the Security Trustee (acting reasonably) access between the hours of 9:00am – 5:00pm Monday to Friday (such day being a business day) to view the state and condition of Land and for that purpose to enter upon any land or buildings occupied or owned by that Chargor without being deemed to have gone into possession of them;
- (b) insure and keep insured such of its Charged Assets as is insurable with such reputable insurer and against such risks and in such amounts and otherwise in such terms as the Security Trustee may require and will maintain such other insurances as are normally maintained by prudent companies carrying on similar businesses (such insurances to contain such provisions for the protection of the Security Trustee as the Security Trustee may reasonably require and to be, if the Security Trustee shall require, in the composite names of the relevant Chargor and the Security Trustee and with the Security Trustee named as first loss payee) and will produce or deposit with the Security Trustee all such policies and receipts for all premium and other payments necessary for effecting and maintaining such insurances;
- (c) apply any insurance proceeds (other than in respect of employers or public liability) in making good the loss or damage or (at the Security Trustee's option) in or towards the payment and/or discharge of the Secured Liabilities and if not so applied, the relevant Chargor shall be the trustee of such proceeds for the Security Trustee and shall account to the Security Trustee accordingly;
- (d) punctually pay or cause to be paid (and indemnify the Security Trustee and any Receiver against) all rents, taxes, duties, assessments and other outgoings and observe and perform all restrictive and other covenants under which any of the Charged Assets is held;
- (e) collect and realise its book or other debts and all licence fees, royalties and other moneys deriving from its Intellectual Property Rights and pay all moneys which it may receive in respect of them into an account maintained by the relevant Chargor (or, once

the Security constituted by this deed has become enforceable into such account as the Security Trustee may specify and in such circumstances and until such payment will hold all such moneys on trust for the Security Trustee); and shall not, without the Security Trustee's prior written consent, release, factor, sell at discount, charge, assign or otherwise deal with such debts, licence fees, royalties or other moneys otherwise than by getting in and paying the same into such account;

- (f) take all necessary action to safeguard and maintain present and future rights in or relating to any Intellectual Property Rights including, without limitation, observing all covenants and obligations relating to such rights, paying all applicable renewal or licence fees, using reasonable efforts to register any Intellectual Property Rights and not permitting any Intellectual Property Rights to be abandoned, cancelled or to lapse;
  - (g) comply with the provisions of all present or future statutes, licences, regulations, consents and directives relating to the Charged Assets and every notice, order or direction made under any of the foregoing;
  - (h) provide the Security Trustee with all financial and other information with respect to the assets, liabilities and affairs of that Chargor and its subsidiaries and associated companies (if any) that the Security Trustee may from time to time reasonably require.
- 4.2 If any Chargor shall fail to satisfy the Security Trustee that it has performed any of its obligations under Clause 4.1 (Covenants by the Chargors) or otherwise, then the Security Trustee may (but shall not be obliged to) take such steps as it considers appropriate to procure the performance of such obligation and/or remedy the failure and shall not by any step be deemed to be a mortgagee in possession and the moneys expended by the Security Trustee shall be reimbursed by the Chargors on demand and until so reimbursed shall carry interest as mentioned in Clause 2 (Covenant to pay) from the date of payment to the date of reimbursement.
- 4.3 Each Chargor undertakes:
- (a) promptly to serve all such notices of the Security Trustee's interest in the Charged Assets as the Security Trustee may reasonably require from time to time and in such form as the Security Trustee may reasonably require; and
  - (b) to use its reasonable endeavours to procure that each notice served under paragraph (a) above is acknowledged by the recipient thereof to the satisfaction of the Security Trustee.

## **5. ENFORCEMENT OF SECURITY**

- 5.1 The Security created by this Deed shall become immediately enforceable and the statutory power of sale and all other statutory powers conferred on mortgagees by section 101 of the Act (as varied and extended by this Deed) shall be exercisable:
- (a) if any Chargor has failed to pay all or any Secured Liabilities following a demand for payment by the Security Trustee;
  - (b) on the occurrence of an Event of Default; and/or
  - (c) upon request by any Chargor.
- 5.2 For the purposes of all powers implied or conferred by statute (including, without limitation, the power of sale and other powers conferred by section 101 of the Act (as varied and extended by this Deed) and all other powers conferred on a mortgagee by law), the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- 5.3 Sections 93 (restricting the right of consolidation) and 103 (restricting the power of sale) and the restrictions contained in section 109(1) (restricting the appointment of a Receiver) of the Act shall not apply to this Deed.
- 5.4 After the Security created under this Deed has become enforceable, the Security Trustee and any Receiver may enforce all or any part of the Security created under this Deed in any manner it sees fit and neither the Security Trustee nor any Receiver will be liable by reason of entering into possession of any Charged Asset or the exercise of any right, to account as mortgagee in possession; or for any loss on realisation of any Charged Asset or arising from the manner in

which the Security Trustee or any Receiver enforces or refrains from enforcing the Security created under this Deed; or for any default or omission for which a mortgagee in possession might be liable.

5.5 At any time after the Security created under this Deed has become enforceable, the Security Trustee shall be entitled to:

- (a) to complete all instruments of transfer referred to in Clause 3.8 (Deposit of Documents) and otherwise have any stocks, shares and other securities referred to in Clauses 3.1(b)(v) or 3.1(b)(vi) registered in its name or the name of its nominee;
- (b) in the name of the relevant Chargor, exercise or direct (or refrain from exercising or directing) the exercise of the voting and other rights and powers attached to any stock, shares and securities charged by Clauses 3.1(b)(v) or 3.1(b)(vi) in such a manner as it considers fit (in its absolute discretion); and/or
- (c) receive and retain all dividends and other distributions payable in respect of such stock, shares and securities and applied such dividends and distributions in accordance with Clause 11 (Application of proceeds) and to the extent such dividends, distributions and/or other amounts are received by or on behalf of the relevant Chargor such amounts shall be held on trust for the Security Trustee.

## **6. PRIOR CHARGES**

The Security Trustee may at any time after the Security created under this Deed has become enforceable redeem (or procure the transfer to itself of the benefit of) any prior mortgage, charge or other Security over any Charged Asset and may settle and pass the accounts of the prior mortgagee, chargee or security holder. Any accounts so settled and passed shall (save in respect of any manifest error) be conclusive and binding on the Chargors. All principal moneys, interest, costs, charges and expenses of and incidental to the redemption and transfer shall be Secured Liabilities and shall be payable by the Chargors to the Security Trustee on demand.

## **7. RIGHT OF APPROPRIATION**

7.1 To the extent that any Charged Asset constitutes "financial collateral" and this Deed and the Security created and the obligations of any Chargor under it constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No 3226) (the "Regulations")) the Security Trustee shall have the right, at any time after the Security created under this Deed has become enforceable, to appropriate with immediate effect by notice in writing to the relevant Chargor all or any part of such financial collateral in or towards payment and/or discharge of the Secured Liabilities in such order as the Security Trustee in its absolute discretion may determine.

7.2 The Parties agree that the value of any financial collateral appropriated under Clause 7.1 shall be (i) in the case of cash, the amount standing to the credit of the relevant account, together with any accrued but unposted interest, and (ii) in other cases the price of the relevant Charged Asset as listed on any recognised market index, in each case at the time the right of appropriation is exercised, or determined by such other method as the Security Trustee may select (including independent valuation). The Parties agree that the methods of valuation for financial collateral set out in this Deed constitute commercially reasonable methods of valuation for the purposes of the Regulations.

7.3 The Security Trustee shall account to the Chargors for any amount by which the value of any appropriated Charged Assets exceeds the Secured Liabilities and each Chargor shall remain liable to the Security Trustee for any amount by which the value of any appropriated Charged Assets is less than the Secured Liabilities.

## **8. RECEIVERS AND ADMINISTRATORS**

8.1 At any time after the Security created by this Deed becomes enforceable the Security Trustee may without prior notice to any Chargor from time to time by deed or otherwise in writing signed by any officer or manager of the Security Trustee or any person authorised for this purpose by the Security Trustee appoint:

- (a) any one or more persons (whether or not an employee of the Security Trustee) to be an administrative receiver, receiver or receiver and manager of any Charged Asset (and none of the restrictions imposed by the Act in relation to the appointment of such persons or to the giving of notice or otherwise shall apply); or
  - (b) when permitted by law, any one or more persons to be an Administrator of any Chargor.
- 8.2 An appointment over part only of the Charged Assets shall not preclude the Security Trustee from making any subsequent appointment of a Receiver over any other Charged Asset.
- 8.3 If at any time and by virtue of any appointment under this Clause 8 (Receivers and Administrators) any two or more persons shall hold office as a Receiver, each such person shall (unless otherwise provided in any relevant deed or other instrument of appointment) be jointly and severally entitled to exercise all the powers and discretions conferred by this Deed on a Receiver.
- 8.4 The Security Trustee may (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in its place.
- 8.5 The Security Trustee may either at the time of appointment of any Receiver or at any time thereafter and from time to time fix the remuneration of such Receiver. The maximum rate specified in Section 109(6) of the Act will not apply.
- 8.6 Any Receiver appointed under this Deed shall so far as the law permits be the agent of the relevant Chargor for all purposes. The Chargors shall be solely responsible for any Receiver's acts, omissions, defaults, losses, liabilities, remuneration, costs, charges and expenses and liable on any contracts or engagements made or entered into by any Receiver, failing which he shall act as principal and shall not be or become agent for the Security Trustee.
- 8.7 To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver in relation to any Charged Asset may (after the Security created by this Deed becomes enforceable) be exercised by the Security Trustee without appointing a Receiver and notwithstanding the appointment of a Receiver and irrespective of whether the Security Trustee has taken possession of any Charged Asset.

## 9. **POWERS OF RECEIVER**

Any Receiver appointed under this Deed shall have power in relation to any Chargor in respect of which he is appointed, in addition to any powers conferred upon it by law and in each case as he may think fit to:

- (a) enter upon, take possession of, appropriate, collect and get in all or any part of the property in respect of which he is appointed and for that purpose to take any proceedings in the name of that Chargor or otherwise;
- (b) manage, carry on or concur in carrying on to develop, reconstruct, amalgamate or diversify the business of that Chargor (or any part of it) and to raise or borrow money from the Security Beneficiaries or others on the security of any Charged Asset;
- (c) in the name of and on behalf of that Chargor, purchase or acquire any land and purchase, acquire and grant any interest in or right over land;
- (d) terminate or accept surrenders of leases or tenancies of any of the property charged by this Deed and to carry any such transactions into effect;
- (e) sell, assign, let or otherwise dispose of or concur in selling, assigning, letting or otherwise disposing of all or any of the debts and any other Charged Asset in respect of which he is appointed;
- (f) make any arrangement or compromise between that Chargor and any other person which he may think expedient;
- (g) insure, repair, improve, develop, exploit and replace any Charged Asset in respect of which he is appointed;
- (h) construct and complete any building on any Mortgaged Land of that Chargor;

- (i) call up any uncalled capital of that Chargor conditionally or unconditionally with all the powers conferred by the articles of association of that Chargor in relation to calls;
- (j) employ, engage and appoint managers and other employees and professional advisers including, without limitation, those to guard and protect any freehold or leasehold property charged by this Deed;
- (k) to do all such other acts and things as he may consider:
  - (i) necessary or desirable for the realisation of any Charged Asset belonging to that Chargor; or
  - (ii) incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law;
- (l) generally to exercise all or any of the powers set out in the Insolvency Act 1986 over the Charged Assets over which he shall have been appointed (whether or not he is an administrative receiver);
- (m) generally to use the name of that Chargor in the exercise of any of the powers conferred by this Clause 9 (Powers of Receiver); and/or
- (n) generally to exercise all the powers and rights of an absolute beneficial owner of the Charged Assets belonging to that Chargor and do or omit to do anything which that Chargor could do or omit to do,

provided that any Receiver shall in the exercise of his powers, authority and discretions conform to any directions from time to time given by the Security Trustee and shall not be responsible to any Chargor or any other person nor shall the Security Trustee be responsible for any loss thereby occasioned.

#### **10. SET-OFF AND CONSOLIDATION**

In addition to any right of set-off or similar right to which the Security Trustee may become entitled from time to time, the Security Trustee may at any time and without notice to any Chargor combine or consolidate all or any of the Chargors' then existing accounts with and liabilities to the Security Beneficiaries and/or set-off or transfer any sum or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of the liabilities of the Chargors to the Security Beneficiaries on any other account or in any other respects.

#### **11. APPLICATION OF PROCEEDS**

- 11.1 All moneys received by the Security Trustee or any Receiver after the Security created by this Deed becomes enforceable shall be applied (subject to any liabilities having priority to the Secured Liabilities) in accordance with the terms of the Security Trust Deed; and
- 11.2 This Clause 11 (Application of proceeds) does not prejudice the right of the Security Trustee (or any Receiver) to recover any shortfall from the Chargors.

#### **12. PROTECTION OF THIRD PARTIES**

- 12.1 In favour of any purchaser (as defined in section 205 of the Act) or person dealing in good faith, the Secured Liabilities shall be deemed to become due and all rights of enforcement conferred upon the Security Trustee by the Act, as varied and extended by this Deed, shall be deemed to arise, immediately after the execution of this Deed.
- 12.2 No purchaser, mortgagor, mortgagee or other person dealing with the Security Trustee or a Receiver shall be bound or concerned to enquire whether any power exercised or purported to be exercised under this Deed has arisen, become exercisable or is being properly exercised or whether any money is due on the Security created by this Deed or as to the propriety or regularity of any sale by or other dealing with the Security Trustee or any Receiver or be concerned with notice to the contrary. Any such sale or dealing shall be deemed to be within the powers conferred by this Deed and to be valid and effective.

#### **13. FURTHER ASSURANCE**

Each Chargor shall, at its own expense, at any time on written demand by the Security Trustee or any Receiver:

- (a) take whatever action the Security Trustee or any Receiver may require to create, perfect, protect or maintain any Security created or intended to be created under this Deed;
- (b) affix to or endorse on any Charged Assets such labels, signs, memoranda or other recognisable identification markings as the Security Trustee or such Receiver shall require referring or drawing attention to the Security created under this Deed; and/or
- (c) take whatever action the Security Trustee or any Receiver may require to facilitate:
  - (i) the realisation of any Charged Asset;
  - (ii) the exercise of any right, power or discretion exercisable by the Security Trustee or any Receiver in respect of any Charged Asset or otherwise under this Deed; and/or
  - (iii) the enforcement of the Security created under this Deed,

including, without limitation, the execution of any legal mortgage, charge, transfer, conveyance or assignment of any property or asset to the Security Trustee or its nominee and the giving of any notice, order or direction and the making of any filing or registration, in each case which the Security Trustee or any Receiver considers expedient.

#### **14. REGISTERED LAND**

- 14.1 Each Chargor consents to a restriction in the following terms being entered on the register of title of any Mortgaged Land that is now or in the future registered at the Land Registry:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time being of the debenture dated [•] in favour of Gordons Partnership LLP referred to in the charges register or their conveyancer."

- 14.2 To the extent that any Security Beneficiary is under an obligation to make further advances to the Chargors such obligation is deemed incorporated into this Deed as if set out in this Deed in full and each Chargor consents to an application being made to the Land Registry for a note of such obligation to be entered on the registers referred to in Clause 14.1.
- 14.3 Each Chargor hereby certifies that the Security created by this Deed does not contravene any of the provisions of its memorandum or articles of association.

#### **15. POWER OF ATTORNEY AND DELEGATION**

- 15.1 Each Chargor irrevocably and by way of security for the Secured Liabilities appoints the Security Trustee and any Receiver and any delegate acting jointly and severally as its attorney with full power of substitution in its name, on its behalf and as its act and deed to execute, seal and deliver and otherwise perfect and do any deed, assurance, agreement, instrument, act or thing which that Chargor is obliged to execute or do under this Deed. Each Chargor hereby ratifies and confirms and shall ratify and confirm whatever any attorney appointed under this Clause 15.1(Power of attorney) does or purports to do under this Clause 15.1 (Power of attorney).
- 15.2 The Security Trustee or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed upon any terms (including power to sub-delegate) which the Security Trustee or any Receiver may think fit. Neither the Security Trustee nor any Receiver will be in any way liable or responsible to any Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate.

#### **16. INDEMNITIES AND CURRENCIES**

Each Chargor shall indemnify the Security Trustee, any Receiver and any other person duly appointed by the Security Trustee under this Deed immediately on demand against:

- (a) any losses, liabilities, costs and expenses (including, without limitation, legal fees) and any VAT thereon reasonably incurred directly, by any of them in the exercise of any of the powers, authorities or discretions vested in them under this Deed or as a result of holding the Security granted under this Deed; and

- (b) all actions, proceedings, costs, losses, liabilities, claims and demands in respect of any matter or thing done or omitted in any way relating to any Charged Asset or the Security granted under this Deed,

and the Security Trustee and any Receiver may retain and pay all sums in respect of the same out of any moneys received under this Deed.

**17. NEW ACCOUNT**

If any Security Beneficiary receives or is deemed to be affected by actual or constructive notice of any subsequent mortgage, charge, assignment or other disposition affecting any Charged Asset of any Chargor, such Security Beneficiary may open a new account for that Chargor. If a Security Beneficiary does not open a new account then, unless it gives express written notice to the contrary to that Chargor, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice. As from that time all payments made by or on behalf of that Chargor to a Security Beneficiary shall be credited or be treated as having been credited to the new account and shall not operate to reduce the Secured Liabilities.

**18. REINSTATEMENT AND AVOIDANCE OF PAYMENTS**

- 18.1 Any settlement or discharge between a Security Beneficiary and any Chargor in respect of the Secured Liabilities shall be conditional upon no Security of, or payment to, the Security Beneficiaries (whether made by that Chargor or otherwise) being avoided, reduced or required to be refunded or paid away by virtue of any requirement (whether or not having the force of law) or enactment, whether relating to bankruptcy, insolvency, liquidation, administration or otherwise, at any time in force or by virtue of any obligation to give effect to any preference or priority.

- 18.2 If any settlement or discharge is so avoided, reduced, refunded or paid away the liability of each Chargor and the Security created under this Deed shall continue, and the Security Beneficiaries shall be entitled to recover the value or amount of any such payment or Security from each Chargor, in each case as if such settlement, discharge, refund or payment had not occurred.

- 18.3 Each Security Beneficiary may concede or compromise any claim that any payment, Security or other disposition is liable to avoidance or restoration.

**19. APPROPRIATIONS**

Each Security Beneficiary (or any Receiver) may at any time:

- (a) refrain from applying or enforcing any other moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Chargor shall be entitled to the benefit of the same; and
- (b) hold in an interest bearing suspense account any moneys received from any Chargor or otherwise on account of the Secured Liabilities.

**20. WAIVER OF DEFENCES**

The obligations of each Chargor and the Security created under this Deed will not be affected by any act, omission, matter or thing which, but for this Clause 20 (Waiver of defences), would reduce, release or prejudice any of its obligations or the Security created under this Deed including (and whether or not known to it, any Security Beneficiary or any other person):

- (a) any time, waiver or consent granted to, or composition with, any person;
- (b) the release of any person under the terms of any composition or arrangement with any creditor of any person;
- (c) the taking, variation, compromise, exchange, crystallisation, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over any assets of, any person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;



- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or Security (including any change in the purpose of, any extension of, or any increase in any facility or the addition of any new facility under, any Finance Document or other document or Security);
- (f) any unenforceability, illegality, invalidity or determination of any obligation of any person under any Finance Document or any other agreement, document or Security; or
- (g) any insolvency or similar proceedings.

**21. IMMEDIATE RECOURSE**

Each Chargor waives any right it may have of first requiring any Security Beneficiary (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from that Chargor under this Deed or enforcing any Security created under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

**22. NON-COMPETITION**

Unless the Security Trustee otherwise directs, no Chargor shall at any time during the Security Period exercise any rights which it may have by reason of performance by it of its obligations under this Deed or by reason of any amount being payable, or liability arising, under this Deed:

- (a) to be indemnified by any other person;
- (b) to claim any contribution from any guarantor of the Secured Liabilities or any person's obligations under any Finance Document;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Security Beneficiaries under any Finance Document or of any other guarantee or Security taken pursuant to, or in connection with, any Finance Document by any Security Beneficiary;
- (d) to bring legal or other proceedings for an order requiring any person to make any payment, or perform any obligation, in respect of which that Chargor has given a guarantee, undertaking or indemnity or granted any Security under this Deed;
- (e) to exercise any right of set-off against any other person; and/or
- (f) to claim or prove as a creditor of any person in competition with any Security Beneficiary.

If any Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Security Beneficiaries by it under or in connection with this Deed to be repaid in full on trust for the Security Beneficiaries and shall promptly pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application in accordance with Clause 11 (Application of proceeds).

**23. NOTICES**

Any demand, notice or other communication under or in connection with this Deed shall be made or given in accordance with the provisions of the Security Trust Deed.

**24. COSTS AND EXPENSES**

All costs, charges and expenses (including, without limitation, legal fees) and any VAT thereon incurred by the Security Trustee, any Receiver, attorney, manager, agent or other person appointed by the Security Trustee or any Receiver under this Deed:

- (a) in the creation or discharge of or otherwise in connection with this Deed (including, without limitation, the remuneration of any Receiver) or in respect of any Charged Asset; and

- (b) in connection with the holding, preservation or enforcement (or attempted preservation or enforcement) of the Security or other rights created under this Deed or obtaining or attempting to obtain payment of any Secured Liabilities,

shall be recoverable on a full indemnity basis as a debt due from the Chargors and shall form part of the Secured Liabilities.

**25. GENERAL**

- 25.1 A certificate, determination, notification or opinion of the Security Trustee as to the amount of any of the Secured Liabilities or any other matter connected with this Deed (or the Security created by this Deed) shall, in the absence of manifest error, be conclusive evidence of the matters to which it relates.
- 25.2 The Security constituted by this Deed shall be a continuing security for the payment and discharge of the Secured Liabilities and will extend to the ultimate balance of the Secured Liabilities regardless of any intermediate payment or satisfaction of the whole or any part of the Secured Liabilities.
- 25.3 The Security created by this Deed is in addition to and is not in any way excluded or prejudiced by any other Security or any right of set-off, combination, guarantee or indemnity now or in the future held by the Security Beneficiaries for any of the Secured Liabilities.
- 25.4 If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 25.5 No failure to exercise, nor any delay in exercising, on the part of the Security Trustee, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise of that right or remedy or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative, and are in addition to and not exclusive of any rights or remedies provided by law.
- 25.6 This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed. Each counterpart is an original but all counterparts shall together constitute one and the same instrument.
- 25.7 Unless expressly provided to the contrary in this Deed (and subject always to the terms of the Security Trust Deed), a person who is not a party to this Deed (other than the Security Beneficiaries and their permitted successors and assignees and any Receiver) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.
- 25.8 It is intended that this Deed takes effect as a deed notwithstanding the fact that a party to it may only execute it under hand.
- 25.9 The Security Trustee may at any time assign all of its rights or transfer all of its rights and obligations under this Deed to a replacement security trustee appointed in accordance with the terms of the Security Trust Deed. No Chargor shall assign any of its rights or novate or otherwise transfer any of its rights and obligations under or interests in this Deed.

**26. GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

**IN WITNESS** whereof this Deed has been duly executed as a deed by each Chargor and signed by the Security Trustee and is intended to be and is delivered on the date first above written.

**SCHEDULE 1**  
**(Mortgaged Land)**

None at the date of this Deed

**SCHEDULE 2**  
**(Specified Intellectual Property)**

THE SECURITY TRUSTEE

**SIGNED AS A DEED**

by **ANTONIA D'MARCO** (as security trustee)

in the presence of:

.....  
**ANTONIA D'MARCO**

Witness:

Signature .....

Name

..... CARIS TOPHER BENJAMIN .....

Address

..... No 1 CALMORE SQUARE .....

.....

.....

Occupation

..... TRAINEE SOLICITOR .....

THE CHARGORS

**SIGNED AS A DEED**

By **BRIGHTSTAR CAPITAL (PROPORTION) LIMITED**

acting by:

Signature of Director

.....

Print name of Director

..... TOM BILLINGS

in the presence of:

Witness:

Signature

.....

Name

..... AS ABOVE

Address

.....

.....

.....

Occupation

.....

**SIGNED AS A DEED**

By **PROPORTION LONDON LIMITED**

acting by:

Signature of Director

.....

Print name of Director

..... TOM BILLING

in the presence of:

Witness:

Signature

.....

Name

..... AS ABOVE

Address

.....

.....

.....

Occupation

.....