



**Registration of a Charge**

Company name: **Superwinch Limited**

Company number: **02708737**

Received for Electronic Filing: **17/08/2016**



X5DJZE83

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**Details of Charge**

Date of creation: **10/08/2016**

Charge code: **0270 8737 0009**

Persons entitled: **TCF NATIONAL BANK**

Brief description:

**Contains fixed charge(s).**

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**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:

**ADDLESHAW GODDARD LLP**



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

Company number: 2708737

Charge code: 0270 8737 0009

The Registrar of Companies for England and Wales hereby certifies that a charge dated 10th August 2016 and created by Superwinch Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th August 2016 .

Given at Companies House, Cardiff on 18th August 2016

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 10 August 2016

SUPERWINCH LIMITED

TCF NATIONAL BANK

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DEBENTURE

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WE HEREBY CERTIFY THAT THIS IS  
A TRUE COPY OF THE ORIGINAL

*Addleshaw Goddard LLP*

DATE 16/09/16

ADDLESHAW GODDARD LLP

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This Debenture is made on

10 August

2016

Between

- (1) **Superwinch Limited** (registered in England with number 02708737) (**Chargor**); and
- (2) **TCF National Bank** at 71 S Wacker Drive, Suite 2110, Chicago, IL60606, USA (**Lender**).

It is agreed

## 1 Definitions and interpretation

### 1.1 Definitions

In this Deed:

**Account** has the meaning given to it in clause 3.4(h) (First fixed charges)

**Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration, or any other similar permission

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

**CA2006** means the Companies Act 2006

**Chattels** has the meaning given to it in clause 3.4(d) (First fixed charges)

**Credit Agreement** means the credit agreement between Superwinch Group, Inc, Superwinch Holding LLC, Superwinch Merger Sub, LLC, Superwinch LLC and the Lender dated 24 March 2015, as amended pursuant to amendment no.1 dated 15 April 2016 and amendment no. 2 dated on or around the date of this Deed and as amended, supplemented or otherwise modified from time to time

**Debts** has the meaning given to it in clause 3.4(g) (First fixed charges)

**Event of Default** has the meaning given to such term in the Credit Agreement

**Excluded Leasehold Property** means Unit E1, Pitts Cleave Industrial Estate, Tavistock, Devon, PL19 0NS, which the Chargor rents pursuant to a lease agreement dated 27 October 2010 and entered into between Roger Keith Pridham, Paul Johan Pridham and Linda Mary Pridham as the landlord and the Chargor as the tenant (as amended, varied, supplemented, restated, renewed or replaced from time to time)

**Financing Agreement** has the meaning given to such term in the Credit Agreement

**Fixtures** means in respect of any Real Property, all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery now or at any time after the date of this Deed on that Secured Property

**Floating Charge Assets** means all the assets and undertaking from time to time subject to the floating charge created under clause 3.5 (Floating charge)

**Intellectual Property** means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, topography rights, domain names, moral rights, inventions, confidential information, knowhow and any other associated or similar intellectual property rights and interests anywhere in the world (which may now or in the future subsist), and in each case whether registered or unregistered and
- (b) the benefit of all applications, rights to apply for and rights to use such assets (including, without limitation, any licences and sub-licences of the same granted by it or to it) of the Chargor (which may now or in the future subsist)

**Investments** means any shares, stocks, debenture security, securities, bonds and investments of any type (other than the Subsidiary Shares) whatever, including but not limited to, negotiable instruments, certificates of deposit, eligible debt securities, interests in collective investment schemes, or other investments referred to in section 22 of, and as defined in Part II of schedule 2 to, the Financial Services and Markets Act 2000 and Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, whether certificated or uncertificated, physical or dematerialised, registered or unregistered, held by the Chargor or by a trustee or clearance system or nominee

**Obligors** has the meaning given to such term in the Credit Agreement and shall include the Chargor

**Party** means a party to this Deed

**Premises** means any building on a Secured Property

**Real Property** means any freehold, leasehold or commonhold property now or subsequently acquired by the Chargor and situated in England and Wales (but excluding (i) any freehold or commonhold property with a value not in excess of \$325,000 (or the equivalent amount in GBP calculated at the Lender's spot rate of exchange for the purchase of USD with GBP at the time the relevant freehold or commonhold property was acquired); and (ii) any leasehold property that has 25 years or less on the lease or has a rack-rent payable in respect thereof) and, in each case, any buildings fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery now or at any time after the date of this Deed on each such property

**Receiver** means any receiver, manager or administrative receiver appointed by the Lender in respect of the Chargor or any of the Secured Assets

**Related Rights** means, in respect of any Investment or Subsidiary Share:

- (a) all monies paid or payable in respect of that Investment or Subsidiary Share (whether as income, capital or otherwise)
- (b) all shares, investments or other assets derived from that Investment or Subsidiary Share and
- (c) all rights derived from or incidental to that Investment or Subsidiary Share

**Relevant Agreement** means each agreement designated as a Relevant Agreement by the Lender and the Chargor in writing

**Relevant Policies** means all policies of insurance and all proceeds of them present and future in which the Chargor has an interest but excluding any third party liability or public liability insurance, any directors and officers insurance and any travel insurance covering the travel of individuals on business

**Required Lender Consent** means the consent of the Lender under the applicable Financing Agreement pursuant to which such matter, action or step is prohibited or not permitted as the context requires

**Secured Assets** means all of the assets and undertaking of the Chargor the subject of any Security created by, under or supplemental to, this Deed in favour of the Lender

**Secured Obligations** means all Liabilities (as defined in the Credit Agreement) and all monies and liabilities now or after the date of this Deed due, owing or incurred by any one or more of the Obligors and the Chargor to the Lender whatsoever, in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, together with all interest accruing on such monies and liabilities and all costs, charges and expenses incurred by the Lender, except for any obligation which, if it were included here, would constitute unlawful financial assistance, or its equivalent in any other jurisdiction

**Secured Property** means any Real Property which is subject to any Security created by, under or supplemental to, this Deed

**Security** has the meaning given to the term Lien in the Credit Agreement

**Security Period** means the period beginning on the date of this Deed and ending on the date on which the Lender is satisfied that the Secured Obligations have been irrevocably and unconditionally satisfied in full and all facilities made available by the Lender to any one or more of the Chargor and the Obligors have been cancelled

**Subsidiary** means a subsidiary undertaking within the meaning of section 1162 of the CA2006 and any company which would be a subsidiary undertaking within the meaning of section 1162 of the CA2006 but for any Security subsisting over the shares in that company from time to time

**Subsidiary Shares** means all shares present and future held by the Chargor in its wholly-owned Subsidiaries (including those listed in schedule 1 (Subsidiary Shares)) (if any)

**Treasury Transaction** means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price

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

## 1.2 Interpretation



- (a) Unless otherwise defined in this Deed, a term defined in the Credit Agreement has the same meaning when used in this Deed or any notices, acknowledgements or other documents issued under or in connection with this Deed.
- (b) In this Deed the term **dispose** includes any sale, lease, licence, transfer or loan.
- (c) Section 1.4 (Other Definitional or Interpretive Provisions) of the Credit Agreement is incorporated in this Deed as if set out here in full but so that each reference in that clause to **this Agreement** shall be read as a reference to this Deed.
- (d) In this Deed the term "**continuing**" means, in the context of any Event of Default, that such Event of Default has not been remedied or waived.
- (e) "\$" denotes the lawful currency of the United States of America.
- (f) "GBP" denotes the lawful currency of the United Kingdom.

### 1.3 Third party rights

- (a) Unless expressly provided to the contrary in any Financing Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other Financing Agreement issued or entered into under or in connection with it.
- (b) Unless expressly provided to the contrary in any Financing Agreement the consent of any person who is not a Party is not required to rescind or vary this Deed or any other Financing Agreement entered into under or in connection with it.

### 1.4 Administration

- (a) Any reference in this Deed, or any other Financing Agreement entered into under or in connection with it, to the making of an administration order shall be treated as including a reference to the appointment of an administrator under paragraph 14 (by the holder of a qualifying floating charge in respect of the Chargor's assets) or 22 (by the Chargor or the directors of the Chargor) of Schedule B1 to the Insolvency Act 1986 or any steps taken toward such order or appointment.
- (b) Any reference in this Deed or any other Financing Agreement entered into under or in connection with it, to making an application for an administration order by petition shall be treated as including a reference to making an administration application to the court under Schedule B1 to the Insolvency Act 1986, appointing an administrator under paragraph 14 or 22 of that Schedule, or giving notice under paragraph 15 or 26 of that Schedule of intention to appoint an administrator or any steps taken towards such application or notice.

### 1.5 Incorporated terms

The terms of the Financing Agreements and of any side letters relating to the Financing Agreements and the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of any Secured Assets contained in this Deed to be a

valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

**1.6 No conflict**

Notwithstanding anything to the contrary in this Deed, the terms of this Deed shall not operate or be construed so as to prohibit or restrict any transaction, matter or other step not prohibited by the Financing Agreements or where Required Lender Consent has been obtained.

**2 Covenant to pay**

The Chargor covenants with the Lender to pay and discharge the Secured Obligations when they become due for payment and discharge in accordance with the terms of the relevant Financing Agreement.

**3 Charging provisions**

**3.1 General**

All Security created by the Chargor under clauses 3.2 to 3.5 inclusive is:

- (a) a continuing security for the payment and discharge of the Secured Obligations;
- (b) subject to, any Security or arrangement which is permitted by the Lender in writing or is expressly permitted under the terms of the Credit Agreement, granted with full title guarantee;
- (c) granted in respect of all the right, title and interest (if any), present and future, of the Chargor in and to the relevant Secured Asset; and
- (d) granted in favour of the Lender.

**3.2 First legal mortgages**

Subject to clause 3.10 (Excluded assets), the Chargor charges by way of first legal mortgage all of its freehold Real Property.

**3.3 Assignments**

- (a) Subject to clause 3.10 (Excluded assets), the Chargor assigns to the Lender its rights in respect of:
  - (i) the Relevant Agreements to which it is a party; and
  - (ii) the Relevant Policies to which it is a party

provided that on payment and discharge in full of the Secured Obligations (in the sole opinion of the Lender) the Lender will re-assign the Relevant Agreements and Relevant Policies to the Chargor (or as it shall direct) as soon as reasonably practicable.

- (b) The Chargor shall remain liable to perform all its obligations under the Relevant Agreements and the Relevant Policies.
- (c) Notwithstanding the other terms of this clause 3.3, prior to the occurrence of an Event of Default which is continuing, the Chargor may, subject to the other terms of the Financing Agreements, continue to exercise all and any of its rights under and in connection with the Relevant Agreements and the Relevant Policies.

### 3.4 First fixed charges

Subject to clause 3.10 (Excluded assets), the Chargor charges by way of first fixed charge:

- (a) all interests and estates in any Real Property (other than any Real Property effectively charged by way of legal mortgage under clause 3.2 (First legal mortgages));
- (b) the proceeds of sale of its Secured Property and all licences to enter on or use any Secured Property;
- (c) its rights under all other agreements and instruments relating to its Secured Property;
- (d) all plant, machinery, goods, vehicles, computers, office and other equipment (whether already acquired or to be acquired, including all engines, appliances, parts, spare parts, instruments, appurtenances, accessories and other equipment of any kind installed on, or in, such goods or chattels), all furniture, furnishings, equipment and tools and any and all substitutions, alterations, removals, replacements, renewals and additions made for or, in or to the same or any part of the same after the date of this Deed and, where the context so permits, any part or parts of them, (excluding any for the time being forming part of the Chargor's stock in trade or work in progress) (together **Chattels**) present and future and the benefit of all contracts, licences, warranties, maintenance contracts relating to them and any renewals and replacements of them;
- (e) the Subsidiary Shares together with all Related Rights;
- (f) the Investments together with all Related Rights;
- (g) all book and other debts due to the Chargor and their proceeds (both collected and uncollected) (together **Debts**) and all rights, guarantees, security or other collateral in respect of the Debts (or any of them) and the benefit of any judgment or order to pay a sum of money and all rights to enforce the Debts (or any of them) other than any claims which are otherwise subject to an assignment in favour of the Lender (at law or in equity) pursuant to this Deed;
- (h) all monies from time to time standing to the credit of each account held by the Chargor with any bank, building society, financial institution or other person (each an **Account**);
- (i) all its Intellectual Property;
- (j) all its goodwill and uncalled capital;

- (k) the benefit of all Authorisations held or utilised by it in connection with its business or the use of any of its assets and the right to recover and receive compensation payable in respect of any of them;
- (l) its rights under any hedging agreement or any other Treasury Transaction other than any rights which are otherwise subject to an assignment in favour of the Lender (at law or in equity) pursuant to this Deed;
- (m) all of its rights in each Relevant Policy and all proceeds thereof, to the extent not effectively assigned pursuant to clause 3.3; and
- (n) all of its rights in each Relevant Agreement, to the extent not effectively assigned pursuant to clause 3.3.

### **3.5 Floating charge**

Subject to clause 3.10 (Excluded assets), the Chargor charges by way of first floating charge all its assets and undertaking wherever located both present and future other than any assets effectively charged by way of legal mortgage or fixed charge or assigned under clauses 3.2, 3.3 or 3.4.

### **3.6 Qualifying floating charge**

This Deed contains a qualifying floating charge and paragraph 14 of Schedule B1 of the Insolvency Act 1986 applies to the floating charge created by or under this Deed.

### **3.7 Conversion of floating charge to a fixed charge**

The Lender may at any time by notice in writing to the Chargor convert the floating charge created under clause 3.5 into a fixed charge as regards any Floating Charge Asset as it shall specify in the notice if:

- (a) an Event of Default is continuing; or
- (b) in the opinion of the Lender acting reasonably that Floating Charge Asset is in danger of being seized or any legal process or execution is being enforced against that Floating Charge Asset.

### **3.8 Automatic conversion of floating charge to a fixed charge**

If (unless permitted in writing by the Lender or expressly permitted under the terms of any Financing Agreement):

- (a) the Chargor creates or attempts to create any Security over any of its Floating Charge Assets;
- (b) any person levies or attempts to levy any distress, attachment, execution or other legal process against any Floating Charge Asset; or
- (c) any corporate action, legal proceedings or other procedures or steps are taken for the winding up, dissolution, administration or reorganisation of the Chargor,

the floating charge created by this Deed will automatically and immediately without notice be converted into a fixed charge over the relevant assets or, in the circumstances described in clause 3.8(c), over all of the Floating Charge Assets.

### 3.9 Small company moratorium

Where the Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986, then the obtaining of a moratorium, including any preliminary decision, or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986 shall not cause the floating charge created by this Deed to crystallise into a fixed charge, nor cause restrictions which would not otherwise apply to be imposed on the disposal of its property and assets by the Chargor.

### 3.10 Excluded assets

- (a) There shall be excluded from the Security created by this clause 3 (Charging provisions), from the other provisions of this Deed and from the operation of any further assurance provisions contained in the Financing Agreements, all of the Chargor's interests, rights and title in and to the Excluded Leasehold Property.
- (b) There shall be excluded from (1) the Security created by clauses 3.2 (First legal mortgages), 3.3 (Assignments) and 3.4 (First fixed charges) and (2) the requirements of clause 9 (Future property):
  - (i) any asset or undertaking which the Chargor is at any time prohibited (whether conditionally or unconditionally) from creating Security on or over by reason of any contract, licence, lease, instrument or other arrangement with a third party (including any asset or undertaking which the Chargor is precluded from creating Security on or over without the prior consent of a third party);
  - (ii) any asset or undertaking which, if subject to any such Security or the provisions of this Deed, would give a third party the right to terminate or otherwise amend any rights, benefits and/or obligations of any Obligor or Subsidiary in respect of that asset or undertaking or require any Obligor or Subsidiary to take any action materially adverse to the interests of any such Obligor or Subsidiary;
  - (iii) any asset or undertaking situated outside England and Wales;
  - (iv) any unregistered Real Property which, if subject to any such Security, would be required to be registered under the Land Registration Act 2002 (provided that such Real Property shall only be excluded for so long as it remains unregistered);
  - (v) any Investment in a joint venture (or other minority interest investment), which is not permitted to be charged under the joint venture agreement; and
  - (vi) any asset or undertaking subject to Permitted Lien in favour of a third party or any cash constituting customer cash.

## 4 Continuing security

- 4.1 The Security constituted by this Deed shall be continuing security and shall remain in full force and effect regardless of any intermediate payment or discharge by the Chargor or any other person of the whole or any part of the Secured Obligations.

**4.2 Recourse**

The Security constituted by this Deed:

- (a) is in addition to any other Security which the Lender may hold at any time for the Secured Obligations (or any of them); and
- (b) may be enforced without first having recourse to any other rights of the Lender.

**5 Negative pledge**

- 5.1 Subject to clause 5.2, the Chargor shall not create or permit to subsist any Security over any of its assets.
- 5.2 Clause 5.1 does not apply to any Security or arrangement which is permitted by the Lender in writing or expressly permitted under the terms of the Credit Agreement.

**6 Restrictions on disposals**

- 6.1 Subject to clause 6.2, the Chargor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any Secured Assets.
- 6.2 Clause 6.1 does not apply to any disposal of assets expressly permitted under or in accordance with the Credit Agreement or where the Required Lender Consent has been obtained.

**7 Further assurance**

- 7.1 The Chargor shall promptly do all such acts and 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) in favour of the Lender or its nominee(s):
- (a) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law; and/or
  - (b) (if an Event of Default is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by or under this Deed.
- 7.2 The Chargor 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 Deed.
- 7.3 Any document required to be executed by the Chargor under this clause 7 will be prepared at the cost of the Chargor.

## **8 Land Registry**

### **8.1 Application for restriction**

- (a) In relation to any Secured Property situated in England and Wales title to which is registered at the Land Registry and which is subject to Security created by clause 3.2 (First legal mortgages), the Chargor consents to an application being made to the Land Registry using the prescribed Land Registry form for a restriction in the following or substantially similar terms to be entered on the Proprietorship Register of such Secured Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [•] in favour of [•] as Lender referred to in the charges register."

### **8.2 Tacking and further advances**

The Lender is, subject to the terms of the Financing Agreements, under an obligation to make further advances to one or more of the Obligors and this security has been made for securing, among other things, such further advances. The Lender and the Chargor by this Deed consent to an application being made to the Land Registry to enter a note of such obligation on the register of title to all present and future registered property of the Chargor (and any unregistered properties subject to compulsory first registration at the date of this Deed).

## **9 Future property**

- 9.1 Subject to clause 3.10(b), if the Chargor acquires any freehold Real Property after the date of this Deed (After-acquired Property) it must:

- (a) promptly notify the Lender of such acquisition;
- (b) promptly on request by the Lender and at the cost of the Chargor, execute and deliver to the Lender, a supplemental legal mortgage in favour of the Lender over such property in such form as the Lender may require;
- (c) if the title to such After-acquired Property is registered at the Land Registry and a supplemental legal mortgage in favour of the Lender is entered into in respect of that After-acquired Property pursuant to paragraph (a) above, promptly after entering into that supplemental legal mortgage make an application to the Land Registry using the prescribed Land Registry form for the restriction set out in clause 8.1 (Application for restriction) to be entered on the Proprietorship Register of such After-acquired Property; and
- (d) if applicable, ensure that the Security is correctly noted in the register of title against that title at the Land Registry.

## **10 Notices of assignments and charges**

### **10.1 Relevant Agreements**

- (a) The Chargor shall give notice in the form specified in part 1 (Form of notice of assignment) of schedule 2 to the other parties to each Relevant Agreement that the Chargor has assigned to the Lender all its right, title and interest in that Relevant Agreement.
- (b) The Chargor shall give the notices referred to in clause 10.1(a):
  - (i) in the of case of each Relevant Agreement in existence as at the date of this Deed, as soon as reasonably practicable and in any event within ten (10) Business Days after the date of this Deed; and
  - (ii) in the case of each Relevant Agreement being designated as such after the date of this Deed, as soon as reasonably practicable and in any event within ten (10) Business Days of such designation.
- (c) The Chargor shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that notice in substantially the form specified in part 2 (Form of acknowledgement) of schedule 2 within 10 Business Days of that notice being given, provided that if the relevant Chargor has not been able to obtain acknowledgement any obligation to comply with this clause 10.1(c) shall cease 10 Business Days following the date of service of the relevant notice.
- (d) The Lender shall not be entitled to give any notice specifying an Event of Default is continuing to any addressee of a notice referred to in clause 10.1(a), unless and until an Event of Default is continuing.

## **10.2 Insurance Policies**

- (a) The Chargor shall give notice in the form specified in part 1 (Form of notice of assignment) of schedule 3 to each insurer under each Relevant Policy that the Chargor has assigned to the Lender all its right, title and interest in that Relevant Policy.
- (b) The Chargor shall give the notices referred to in clause 10.2(a):
  - (i) in the case of each Relevant Policy subsisting at the date of this Deed, as soon as reasonably practicable and in any event within ten (10) Business Days after the date of this Deed; and
  - (ii) in the case of each Relevant Policy coming into existence after the date of this Deed, as soon as reasonably practicable and in any event within ten (10) Business Days of such Relevant Policy coming into existence.
- (c) The Chargor shall use reasonable endeavours to procure that the recipient of each such notice given pursuant to clause 10.2(a) acknowledges that notice in substantially the form specified in part 2 (Form of acknowledgement) of schedule 3 within 10 Business Days of that notice being given, provided that if the Chargor has not been able to obtain acknowledgement any obligation to comply with this clause 10.2(b) shall cease 10 Business Days following the date of service of the relevant notice.



- (d) The Lender shall not be entitled to give any notice specifying an Event of Default is continuing to any addressee of a notice referred to in clause 10.2(a), unless and until an Event of Default is continuing.

### **10.3 Charge over accounts**

- (a) The Chargor shall give notice in the form specified in part 1 (Form of notice of charge) of schedule 4 to the financial institution at which each Account is held (if such financial institution is not the Lender) that the Chargor has created a fixed charge over the balance standing to the credit of that Account.
- (b) The Chargor will give the notices referred to in clause 10.3(a):
  - (i) in the case of an Account held by the Chargor at the date of this Deed, as soon as reasonably practicable and in any event within ten (10) Business Days after the date of this Deed; and
  - (ii) in the case of an Account opened after the date of this Deed, as soon as reasonably practicable and in any event within ten (10) Business Days after the date of this Deed on that Account being opened.
- (c) The Chargor shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that notice substantially in the form specified in part 2 (Form of acknowledgement) of schedule 4 within 10 Business Days of that notice being given.
- (d) The Lender shall not be entitled to give any notice or written instructions to an addressee of a notice referred to in clause 10.3(a), unless and until an Event of Default is continuing.

### **10.4 Accounts**

The Chargor shall, prior to the occurrence of an Event of Default which is continuing, be entitled to receive, withdraw or otherwise deal with or transfer any credit balance from time to time on an Account and shall be entitled to deal with such Account in any manner in accordance with the terms of the Credit Agreement and any other Financing Agreement.

### **10.5 Register of Trade Marks**

The Chargor as registered proprietor hereby appoints the Lender as its agent to apply for the particulars of this Deed and the Lender's interest in the Chargor's Intellectual Property (if any) and any other or future trade marks or trade mark applications registered or to be registered in the United Kingdom in the name of the Chargor, to be entered on the Register of Trade Marks under section 25(1) of the Trade Marks Act 1994. The Chargor hereby agrees to execute all documents and forms required to enable such particulars to be entered on the Register of Trade Marks.

## **11 Undertakings**

The Chargor undertakes to the Lender in accordance with this clause 11. The undertakings in this clause 11 shall remain in force during the Security Period.

### **11.1 Real property - Deposit of title deeds**

The Chargor shall as soon as reasonably practicable after the request of the Lender, deposit with the Lender (or procure the deposit of) all deeds and documents constituting or evidencing title relating to its Real Property, which is subject to any Security created by clause 3.2 (First legal mortgages).

### **11.2 Chattels**

The Chargor shall keep all Chattels now or subsequently acquired by the Chargor permanently in its sole and exclusive possession at the Excluded Leasehold Property (except for Chattels in transit, Chattels out for temporary repairs, Chattels used by employees in the ordinary course of business, Chattels transferred to the United States and located at the locations permitted by (and subject to the exceptions set forth in) the Credit Agreement and other Chattels with an aggregate value of not more than \$130,000 or its equivalent in sterling) and shall not in any event take any of the Chattels out of England and Wales, unless permitted pursuant to this clause 11.2 or under the terms of the Credit Agreement.

### **11.3 Subsidiary Shares and Investments**

(a) The Chargor shall:

- (i) in respect of Subsidiary Shares, Investments and Related Rights held by the Chargor on the date of this Deed, on the date of this Deed; or
- (ii) in respect of Subsidiary Shares, Investments and Related Rights acquired by the Chargor after the date of this deed, as soon as practicable after such acquisition (or such longer period as is reasonably required to allow HM Revenue and Customs to stamp any transfer form effecting such acquisition and for legal title to transfer to the Chargor),

deliver to the Lender all share certificates in respect of those Subsidiary Shares together with a signed and undated blank stock transfer form in respect of those Subsidiary Shares and any other documents of title or evidence of ownership in respect of those Subsidiary Shares, Investments and Related Rights provided that the Lender shall, at any time prior to an Event of Default which is continuing, promptly return such share certificates on request of the Chargor if required to effect a transaction, matter or other step not prohibited by the Financing Agreements or in respect of which Required Lender Consent has been obtained.

- (b) Following the occurrence of an Event of Default which is continuing, the Chargor shall promptly on prior written request by the Lender (and in any event within 10 Business Days of such request), deliver (or procure delivery) to the Lender, and the Lender shall be entitled to retain, all of the Investments and any certificates and other documents of title representing the Investments (if any) to which the Chargor (or its nominee(s)) is or becomes entitled together with any other document which the Lender may reasonably request (in such form and executed as the Lender may reasonably require) with a view to perfecting or improving its security over the Investments or to registering any Investment in its name or the name of any nominee(s).

- (c) Until any steps are taken to enforce the Security created by or under this Deed, the Chargor shall be entitled to receive and retain all dividends, distributions and other monies receivable in respect of its Subsidiary Shares, Investments and Related Rights.
- (d) The Chargor shall not exercise its voting and other rights in respect of its Subsidiary Shares, Investments and Related Rights in a manner which is likely to be prejudicial to the interests of the Lender.
- (e) The Chargor shall make all payments which may become due and payable in respect of any of its Subsidiary Shares, Investments and Related Rights. If it fails to make any such payments, the Lender may but shall not be obliged to make such payment on behalf of the Chargor. Any sums so paid by the Lender shall be repayable by the Chargor to the Lender on demand and pending such repayment shall constitute part of the Secured Obligations.
- (f) The Chargor shall remain liable to observe and perform all of the conditions and obligations assumed by it in respect of the Subsidiary Shares, Investments and Related Rights and the Lender shall not be required to perform or fulfil any obligation of the Chargor in respect of any Subsidiary Shares, Investments or Related Rights, provided the Subsidiary Shares, Investments and Related Rights are at all times legally owned by the Chargor.
- (g) The Chargor shall ensure that none of its Subsidiary Shares are converted into uncertificated form without the prior written consent of the Lender.
- (h) Promptly following the conversion of any of its Subsidiary Shares, Investment or Related Rights from a certificated to an uncertificated form, and on the acquisition by it of any Subsidiary Shares, Investments or Related Rights in an uncertificated form, it shall give such instructions or directions and take such other steps and enter into such documentation as the Lender may require in order to protect or preserve the Security intended to be created by this Deed.

#### **11.4 Insurance**

- (a) The Chargor shall effect and maintain insurance in accordance with the terms of the Credit Agreement.
- (b) The Chargor shall use reasonable endeavours to ensure that the Lender's interest be noted on each of the Relevant Policies until such time as the Lender notifies the insurer(s) to the contrary;

#### **11.5 Book and other debts**

- (a) It shall collect and realise the Debts in the ordinary course of trading as agent for the Lender and pay their proceeds into an Account promptly on receipt. It shall hold all such proceeds on trust for the Lender pending payment of them into an Account.
- (b) Save as permitted by the Financing Agreements, the Chargor shall not set off, postpone or release any of the Debts or do or omit to do anything which may delay or prejudice the full recovery of all Debts without the prior written consent of the Lender.

## **12 Power to remedy**

- 12.1 If the Chargor fails to comply with any of the undertakings set out in clause 11 (Undertakings), it shall allow and irrevocably authorises the Lender and/or such persons as it shall nominate to take such action on its behalf as shall be necessary to ensure that it complies with those undertakings.
- 12.2 If the Chargor fails to perform any obligation or other covenant affecting the Secured Property or other Secured Asset, the Chargor shall permit the Lender or its agents and contractors:
- (a) to enter on the Secured Property;
  - (b) to comply with or object to any notice served on the Chargor relating to the Secured Property or other Secured Asset; and
  - (c) to take any action the Lender may reasonably consider expedient to prevent or remedy any breach of any such term or to comply with or object to any such notice.

## **13 Security power of attorney**

The Chargor, by way of security for the performance of its obligations under this Deed hereby, irrevocably and severally appoints the Lender, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take but has not taken under this Deed within 3 Business Days of request by the Lender. The Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause 13.

## **14 Enforcement of security**

### **14.1 When security is enforceable**

On the occurrence of any Event of Default which is continuing, the Security created by and under this Deed is immediately enforceable.

### **14.2 Acts of enforcement**

The Lender may, at its absolute discretion, at any time after the Security created by or under this Deed is enforceable:

- (a) enforce all or any part of the Security created by or under this Deed in any manner it sees fit;
- (b) exercise its rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not it has taken possession or appointed a Receiver to any of the Secured Assets;
- (c) appoint a Receiver to all or any part of the Secured Assets;
- (d) when permitted by law, appoint an administrator in respect of the Chargor and take any steps to do so;

- (e) exercise its power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed); or
- (f) if permitted by law, appoint an administrative receiver in respect of the Chargor.

#### **14.3 Right of appropriation**

To the extent that the Security created by this Deed constitutes a "security financial collateral arrangement" and the Secured Assets constitute "financial collateral" for the purpose of the Financial Collateral Arrangements (No 2) Regulations 2003 (**Regulations**), the Lender shall have the right on giving prior notice to the Chargor, at any time after the Security becomes enforceable, to appropriate all or any part of those Secured Assets in or towards discharge of the Secured Obligations. The Parties agree that the value of the appropriated Secured Assets shall be, in the case of cash, the amount of cash appropriated and, in the case of Subsidiary Shares and Investments, determined by the Lender by reference to any publicly available market price and, in the absence of which, by such other means as the Lender (acting reasonably) may select including, without limitation, an independent valuation. For the purpose of Regulation 18(1) of the Regulations, the Chargor agrees that any such determination by the Lender will constitute a valuation "in a commercially reasonable manner".

#### **14.4 Statutory powers - general**

- (a) For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the Law of Property Act 1925 and section 93 of the Law of Property Act 1925 do not apply to the Security constituted by or under this Deed.
- (c) The statutory powers of leasing conferred on the Lender are extended so that, without the need to comply with any provision of section 99 or section 100 of the Law of Property Act 1925, the Lender is empowered to lease and make agreements for lease at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as it may think fit.
- (d) Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and Receivers.

#### **14.5 Contingencies**

If the Lender enforces the Security constituted by or under this Deed at a time when no amounts are due to the Lender but at a time when amounts may or will become so due, the Lender (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.

#### **14.6 Mortgagee in possession - no liability**

Neither the Lender nor any Receiver will be liable, by reason of entering into possession of a Secured Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

#### **14.7 Redemption of prior mortgages**

At any time after the Security created by or under this Deed has become enforceable, the Lender may, at the sole cost of the Chargor (payable to the Lender on demand):

- (a) redeem any prior form of Security over any Secured Asset; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargor.

#### **14.8 Subsidiary Shares and Investments – following an Event of Default**

- (a) If an Event of Default is continuing, the Chargor shall on request by the Lender deliver, unless such items have already been delivered pursuant to clause 11.3 (Subsidiary Shares and Investments) to the Lender such stock transfer forms or other transfer documents as the Lender may require to enable the Lender or its nominee or nominees to be registered as the owner of, and to obtain legal and beneficial title to, the Subsidiary Shares, the Investments and/or Related Rights referred to in such request.
- (b) At any time while an Event of Default is continuing, the Lender may complete any transfer documents held by it in respect of the Subsidiary Shares, the Investments and/or the Related Rights in favour of itself or such other person or nominee as it shall select.
- (c) At any time after the Security created by or under this Deed has become enforceable, the Lender and its nominee or nominees may sell all or any of the Subsidiary Shares, Investments or Related Rights of the Chargor in any manner permitted by law and on such terms as the Lender shall in its absolute discretion determine (but always subject to clause 14.3 (Right of appropriation)).
- (d) If the Chargor receives any dividends, distributions or other monies in respect of its Subsidiary Shares, Investments and Related Rights at a time when the Lender has made a request under clause 14.8(a) or taken any steps to enforce the Security created by or under this Deed under clause 14.2, the Chargor shall immediately pay such sums received directly to the Lender for application in accordance with clause 17 (Application of monies) and shall hold all such sums on trust for the Lender pending payment of them to such account as the Lender shall direct.

### **15 Receiver**

#### **15.1 Appointment of Receiver**

- (a)

- (i) At any time after any Security created by or under this Deed is enforceable, the Lender may appoint a Receiver to all or any part of the Secured Assets in accordance with clause 14.2(c) (Acts of enforcement).
  - (ii) At any time, if so requested in writing by the Chargor, without further notice, the Lender may appoint a Receiver to all or any part of the Secured Assets as if the Lender had become entitled under the Law of Property Act 1925 to exercise the power of sale conferred under the Law of Property Act 1925.
- (b) Any Receiver appointed under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall the Lender be in any way responsible for any misconduct, negligence or default of the Receiver.
- (c) Where the Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986:
  - (i) obtaining a moratorium; or
  - (ii) anything done with a view to obtaining a moratorium including any preliminary decision or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986,

shall not be grounds for appointment of a Receiver.

## **15.2 Removal**

The Lender may by written 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 receiver) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

## **15.3 Powers of Receiver**

### **(a) General**

- (i) In addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 15.3.
- (ii) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.
- (iii) A Receiver of the Chargor has all the rights, powers and discretions of an administrative receiver under the Insolvency Act 1986.
- (iv) A Receiver may, in the name of the Chargor:

- (A) do all other acts and things which he may consider expedient for realising any Secured Asset; and
- (B) exercise in relation to any Secured Asset all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.

**(b) Borrow money**

A Receiver may raise and borrow money (either unsecured or on the security of any Secured Asset, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

**(c) Carry on business**

A Receiver may carry on the business of the Chargor as he thinks fit and, for the avoidance of doubt, a Receiver may apply for such Authorisations as he considers in his absolute discretion appropriate.

**(d) Compromise**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Secured Asset.

**(e) Delegation**

A Receiver may delegate his powers in accordance with clause 16 (Delegation).

**(f) Employees**

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of the Chargor or for itself as Receiver, may:

- (i) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and
- (ii) discharge any such persons appointed by the Chargor.

**(g) Leases**

A Receiver may let any Secured Asset for any term and at any rent (with or without a premium) which he thinks proper and may accept a surrender of any lease or tenancy of any Secured Assets on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

**(h) Legal actions**



A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the Chargor in relation to any Secured Asset as he considers expedient.

(i) **Possession**

A Receiver may take immediate possession of, get in and collect any Secured Asset and for that purpose enter upon any premises of the Chargor and sever, dismantle and remove the Chattels, without being liable for any loss or damage thereby occasioned (other than through negligence).

(j) **Protection of assets**

A Receiver may, in each case as he may think fit:

- (i) make and effect all repairs and insurances and do all other acts which the Chargor might do in the ordinary conduct of its business be they for the protection or for the improvement of the Secured Assets;
- (ii) commence and/or complete any building operations on the Secured Property or other Secured Asset; and
- (iii) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence.

(k) **Receipts**

A Receiver may give valid receipts for all monies and execute all assurances and things which may be expedient for realising any Secured Asset.

(l) **Sale of assets**

A Receiver may sell, exchange, convert into monies and realise any Secured Asset by public auction or private contract in any manner and on any terms which he thinks proper. The consideration for any such transaction may consist of cash, debenture or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit. Fixtures and any plant and machinery annexed to any part of the Secured Property may be severed and sold separately from the property containing them without the consent of the Chargor.

(m) **Subsidiaries**

A Receiver may form a Subsidiary of the Chargor and transfer to that Subsidiary any Secured Asset.

(n) **Deal with Secured Assets**

A Receiver may, without restriction sell, let or lease, or concur in selling, letting or leasing, or vary the terms of, determine, surrender or accept surrenders of, leases or tenancies of, or grant options and licences over or otherwise dispose of or deal with, all or any part of the Secured Assets without being responsible for loss or damage,

and so that any such sale, lease or disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration. The Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase, lease, licence or otherwise acquire interests in all or any of the Secured Assets or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire all or any of the Secured Assets on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit.

(o) **Voting rights**

A Receiver may exercise all voting and other rights attaching to the Investments, Subsidiary Shares, Related Rights, and stocks, shares and other securities owned by the Chargor and comprised in the Secured Assets in such manner as he may think fit.

(p) **Security**

A Receiver may redeem any prior Security and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver.

(q) **Acquire land**

The Receiver may purchase or acquire any land and purchase, acquire or grant any interest in or right over land.

(r) **Development**

A Receiver may implement or continue the development of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on, any Secured Property (unless such Secured Property is leasehold property and such actions would be prohibited by the terms of the relevant lease) and do all acts and things incidental to the Secured Property.

(s) **Landlord's obligations**

A Receiver may on behalf of the Chargor and without consent of or notice to the Chargor exercise all the powers conferred on a landlord or a tenant by the Landlord and Tenants Acts, the Rents Acts and Housing Acts or any other legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Secured Property.

(t) **Uncalled capital**

A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital.

(u) **Incidental matters**

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Secured Assets and to use the name of the Chargor for all the purposes set out in this clause 15.

#### **15.4 Remuneration**

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

#### **16 Delegation**

16.1 The Lender and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Lender and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Lender and Receiver (as appropriate) may think fit.

16.2 The Lender and any Receiver will not be liable or responsible to the Chargor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate.

#### **17 Application of monies**

17.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed.

17.2 All monies received by the Lender or any Receiver under this Deed and applied in discharge of the Secured Obligations shall be applied to the Secured Obligations in accordance with the terms of the Credit Agreement.

17.3 The Lender and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

#### **18 Remedies and waivers**

18.1 No failure to exercise, nor any delay in exercising, on the part of the Lender or any Receiver, 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 or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

18.2 A waiver given or consent granted by the Lender under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

#### **19 Protection of third parties**

19.1 No person (including a purchaser) dealing with the Lender or a Receiver or its or his agents has an obligation to enquire of the Lender, Receiver or others:

- (a) whether the Secured Obligations have become payable;
- (b) whether any power purported to be exercised has become exercisable;
- (c) whether any Secured Obligations or other monies remain outstanding;
- (d) how any monies paid to the Lender or to the Receiver shall be applied; or
- (e) the status, propriety or validity of the acts of the Receiver or Lender.

19.2 The receipt by the Lender or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Lender or any Receiver.

19.3 In clauses 19.1 and 19.2, **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Secured Assets or any of them.

## **20 Additional security**

The Security created by or under this Deed is in addition to and is not in any way prejudiced by any guarantee or security now or subsequently held by the Lender.

## **21 Settlements conditional**

21.1 If the Lender (acting reasonably) believes that any amount paid by the Chargor or any other person in respect of the Secured Obligations is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid.

21.2 Any settlement, discharge or release between the Chargor and the Lender shall be conditional upon no Security or payment to or for the Lender by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

## **22 Subsequent Security**

If the Lender receives notice of any other subsequent Security or other interest affecting all or any of the Secured Assets it may open a new account or accounts for the Chargor in its books. If it does not do so then, unless it gives express written notice to the contrary to the Chargor, as from the time of receipt of such notice by the Lender, all payments made by the Chargor to the Lender shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations.

## **23 Set-off**

The Lender may, set off any matured obligation due from the Chargor (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**24 Notices**

Any communication under this Deed or any other Security or Financing Agreements created by or under this Deed, shall be made and given in accordance with the terms of clause 9.17 (Notices) of the Credit Agreement.

**25 Invalidity**

Section 9.12 (Severability) of the Credit Agreement shall apply to this Deed as if set out here in full but so that references to the Financing Agreements shall be construed as references to this Deed and any Security created by or under it.

**26 Assignment**

The Lender may assign or otherwise transfer all or any part of its rights under this Deed or any Security created by or under it in accordance with the terms of the Financing Agreements.

**27 Releases**

Upon the expiry of the Security Period, the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to release and reassign to each relevant Chargor:

- (a) its rights arising under this Deed;
  - (b) the Secured Assets from the Security created by and under this Deed,
- and return all documents or deeds of title delivered to it under this Deed.

**28 Currency clauses**

If a payment is made to the Lender under this Deed in a currency (Payment Currency) other than the currency in which it is expressed to be payable (Contractual Currency), the Lender may convert that payment into the Contractual Currency at the rate at which it (acting reasonably and in good faith) is able to purchase the Contractual Currency with the Payment Currency on or around the date of receipt of the payment and to the extent that the converted amount of the payment falls short of the amount due and payable the Chargor will remain liable for such shortfall.

**29 Counterparts**

This Deed or any Financing Agreement entered into under or in connection with this Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed or any such Financing Agreement entered into under or in connection with this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

**30 Governing law**

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

## **31 Enforcement**

### **31.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (**Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 31 is for the benefit of the Lender. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

### **31.2 Service of process**

- (a) The Civil Procedure Rules regarding service and deemed service will not apply to any letter or other communication notifying a claim or serving legal proceedings under or in connection with this Deed, which shall instead be served in accordance with this clause 31.2.
- (b) Any letter or other communication notifying a claim or serving legal proceedings under or in connection with this Deed may not be made by way of fax and must be made pursuant to clause 24 (Notices).

**This Deed** has been entered into as a deed on the date given at the beginning of this Deed.

**Schedule 1****Subsidiary Shares**

<b>Chargor</b>	<b>Name and registered number of Subsidiary</b>	<b>Number and class of shares</b>
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None		
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## Schedule 2

### Relevant Agreements

#### Part 1 - Form of notice of assignment

To: [♦]

Dated: [♦]

Dear Sirs

#### The agreement described in the attached schedule (Agreement)

We hereby notify you that we have assigned to TCF National Bank (**Lender**) all our right, title and interest in and to the Agreement (subject to a proviso for re-assignment on redemption) pursuant to a debenture entered into with the Lender on [●] (the **Debenture**).

We hereby further notify you that:

- 1 prior to receipt by you of notice in writing from the Lender specifying that an Event of Default (as defined in the Debenture) is continuing, we will continue to have the sole right to deal with you in relation to the Agreement (including any amendment, waiver or termination thereof); and
- 2 following receipt by you of notice in writing from the Lender specifying that an Event of Default is continuing (but not at any other time), we irrevocably and unconditionally authorise you to pay all sums payable by you under the Agreement directly to the Lender at such account as the Lender may specify from time to time.

Please sign and return the acknowledgement attached to one enclosed copy of this notice to the Lender and the other copy to us.

The provisions of this notice (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

Yours faithfully

.....  
for and on behalf of  
**Superwinch Limited**



**Schedule**

<b>Date</b>	<b>Parties</b>	<b>Description</b>
[♦]	[♦]	[♦]

*[Attach form of acknowledgment]*

## Part 2 - Form of acknowledgement

To: TCF National Bank  
71 S Wacker Drive  
Suite 2110  
Chicago  
IL60606  
USA

To: Superwinch Limited (**Chargor**)  
Superwinch Union Mine Road  
Pitts Cleave Industrial Estate  
Tavistock  
Devon  
PL19 0NS

Dated: [♦]

We acknowledge receipt of the notice of assignment (**Notice**) of which the above is a duplicate. Terms defined in the Notice shall have the same meaning when used in this acknowledgement. We confirm that:

- (a) there has been no amendment, waiver or release of any rights or interests in the Agreement since the date of the Agreement;
- (b) we shall act in accordance with the Notice;
- (c) as at the date of this acknowledgement we have not received any notice of assignment or charge of the Chargor's interest in the Agreement in favour of any other person;
- (d) as at the date of this acknowledgement, we are not aware of any breach by the Chargor of the terms of the Agreement; and
- (e) we do not have and have not claimed or exercised any right or claim against the Chargor or exercised or attempted to exercise any right of set-off, counterclaim or other right relating to the Agreement.

The provisions of this acknowledgement (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

For and on behalf of

[♦]

### Schedule 3

#### Relevant Policies

##### Part 1 - Form of notice of assignment

To: [insurer]

Dated: [♦]

Dear Sirs

##### **The insurance policies described in the attached schedule (Relevant Policies)**

We hereby notify you that we have assigned to TCF National Bank (Lender) all our right, title and interest in and to the Relevant Policies (subject to a proviso for re-assignment on redemption) pursuant to a debenture entered into with the Lender on [●] (the **Debenture**).

We hereby further notify you that:

1. prior to receipt by you of notice in writing from the Lender specifying that an Event of Default (as defined in the Debenture) is continuing, we will continue to have the sole right to deal with you in relation to the Relevant Policies (including any amendment, waiver or termination thereof); and
2. following receipt by you of notice in writing from the Lender specifying that an Event of Default is continuing (but not at any other time), we irrevocably and unconditionally authorise you to pay all sums payable by you under the Relevant Policies directly to the Lender at such account as the Lender may specify from time to time.

Please sign and return the acknowledgement attached to one enclosed copy of this notice to the Lender and the other copy to us.

The provisions of this notice (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

Yours faithfully

.....  
for and on behalf of  
**Superwinch Limited**

**Schedule**

Date of policy	Insured	Policy type	Policy number
[♦]	[♦]	[♦]	[♦]

[Attach form of acknowledgment]

**Part 2 - Form of acknowledgement**

To: TCF National Bank  
71 S Wacker Drive  
Suite 2110  
Chicago  
IL60606  
USA

To: Superwinch Limited (**Chargor**)  
Superwinch Union Mine Road  
Pitts Cleave Industrial Estate  
Tavistock  
Devon  
PL19 0NS

Dated: [♦]

We acknowledge receipt of the notice of assignment (**Notice**) of which the above is a duplicate. Terms defined in the Notice shall have the same meaning when used in this acknowledgement. We confirm that:

- (a) there has been no amendment, waiver or release of any rights or interests in any Relevant Policy since the date of such policy;
- (b) we have noted the Lender's interest on each Relevant Policy;
- (c) we shall act in accordance with the Notice;
- (d) as at the date of this acknowledgement we have not received any notice of assignment or charge of the Chargor's interest in any Relevant Policy or the proceeds of any Relevant Policy in favour of any other person; and
- (e) we do not have and have not claimed or exercised any right or claim against the Chargor or exercised or attempted to exercise any right of set-off, counterclaim or other right relating to any Relevant Policy.

The provisions of this acknowledgement (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

For and on behalf of  
[insurance company]

**Schedule 4**

**Accounts**

**Part 1 - Form of notice of charge**

To: *[insert name and address of account holding institution]*

Account number: [♦] (Account)  
Sort code: [♦]  
Account holder: [♦] Limited

We hereby notify you that we have charged by way of first fixed charge to TCF National Bank (Lender) all our right, title and interest in and to the monies from time to time standing to the credit of the Account.

We hereby irrevocably and unconditionally authorise and instruct you:

- 1 to hold all monies from time to time standing to the credit of the Account to the order of the Lender and accordingly to pay all or any part of those monies to the Lender (or as it may direct) promptly following receipt of written instructions from the Lender to that effect; and
- 2 to disclose to the Lender such information relating to us and the Account as the Lender may from time to time request you to provide.

By countersigning this notice, the Lender authorises you to permit us to withdraw and otherwise deal with funds standing to the credit of the Account until:

- (a) you receive a notice in writing to the contrary from the Lender;
- (b) a petition is presented for a winding up order in respect of us or an application is made for an administration order in respect of us,

(whichever occurs first).

Please sign and return the acknowledgement attached to one enclosed copy of this notice to the Lender and the other copy to us.

The provisions of this notice (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

Yours faithfully

.....  
for and on behalf of **Superwinch Limited**

Countersigned for and on behalf of  
the Lender: .....

*[Attach form of acknowledgment]*

**Part 2 - Form of acknowledgement**

To: TCF National Bank  
71 S Wacker Drive  
Suite 2110  
Chicago  
IL60606  
USA

To: Superwinch Limited (**Chargor**)  
Superwinch Union Mine Road  
Pitts Cleave Industrial Estate  
Tavistock  
Devon  
PL19 0NS

Dated: [♦]

We acknowledge receipt of the notice of charge (**Notice**) of which the above is a duplicate. Terms defined in the Notice shall have the same meaning when used in this acknowledgement.

We confirm that:

- (a) we shall act in accordance with the Notice;
- (b) as at the date of this acknowledgement we have not received any notice of assignment or charge or other security over the Chargor's interest in the Account in favour of any other person; and
- (c) we will not exercise any right of combination of accounts, set-off or lien over any monies standing to the credit of the Account.

The provisions of this acknowledgement (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

For and on behalf of  
*[account holding institution]*

**SIGNATURES TO THE DEBENTURE**

**Chargor**

Executed as a deed by )

**Superwinch Limited** )

acting by a director in the presence of )

Director

Signature of witness

Name MARK JURMAN

Address .....

.....

**Lender**

Executed and delivered as a deed )

by \_\_\_\_\_ )

as duly authorised attorney )

for and on behalf of **TCF National Bank** )

in the presence of )

.....  
Signature of witness

Name .....

Address .....

.....



**SIGNATURES TO THE DEBENTURE**

**Chargor**

Executed as a deed by )  
**Superwinch Limited** ) .....  
acting by a director in the presence of ) Director

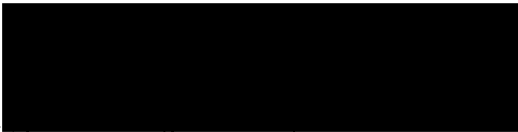
.....  
Signature of witness

Name .....

Address .....

.....

**Lender**

Executed and delivered as a deed )  
by Thomas G. Karle )  
as duly authorised attorney )  
for and on behalf of **TCF National Bank** )  
in the presence of ) ..... 



.....  
Signature of witness

Name ..... Nick O'Brien .....

Address ... 