Companies House

MR01(ef)

Registration of a Charge

Company name: **TRILLIUM HOLDINGS LIMITED**

Company number: **03487308**

Received for Electronic Filing: **01/12/2015**

X4LBFESQ

Details of Charge

Date of creation: **20/11/2015**

Charge code: **0348 7308 0008**

Persons entitled: **THE ROYAL BANK OF SCOTLAND PLC AS SECURITY AGENT**

Brief description: **ASSIGNMENT BY WAY OF SECURITY AND FIXED CHARGE OVER THE SUBORDINATED LOAN AGREEMENTS AND THE CONTRACT PROCEEDS AS PER CLAUSE 3 OF, AND AS DEFINED IN, THE SUBORDINATED DEBT ASSIGNMENT.**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.

Certified by: **SHEENA WELLS**

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3487308

Charge code: 0348 7308 0008

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th November 2015 and created by TRILLIUM HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st December 2015 .

Given at Companies House, Cardiff on 2nd December 2015

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

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Dated: 20 November 2015

(1) TRILLIUM HOLDINGS LIMITED as Assignor

(2) THE ROYAL BANK OF SCOTLAND PLC as Security Agent

Subordinated Debt Assignment

The rights and obligations of the parties to this agreement are subject to a Subordination Agreement (as defined in this agreement)

We certify this document as a true copy of the original, save for material redacted pursuant to section 859G Companies Act 2006

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Eversheds LLP

CONTENTS

Clause		Page
1	INTERPRETATION	1
2	COVENANT TO PAY	3
3	CHARGING CLAUSE	3
4	NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS	4
5	REPRESENTATIONS AND WARRANTIES	5
6	UNDERTAKINGS	6
7	ENFORCEABILITY	7
8	ENFORCEMENT OF SECURITY	7
9	APPLICATION OF PROCEEDS	8
10	PROTECTION OF THIRD PARTIES	9
12	POWER OF ATTORNEY	9
13	APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS	10
14	OTHER MISCELLANEOUS PROVISIONS	10
15	COMMUNICATIONS	12
16	THIS DEED	13
17	GOVERNING LAW AND JURISDICTION	13
Schedules		
1	Form of notice to Contract Parties	15
2	Receiver's specific powers	17

This Deed is made on 20 November 2015 between:

(1) **TRILLIUM HOLDINGS LIMITED** a company incorporated in England and Wales with company number 03487308 (the "**Assignor**"); and

(2) **THE ROYAL BANK OF SCOTLAND PLC** in its capacity as "**Security Agent**" on behalf of the Secured Parties.

1. INTERPRETATION

1.1 Expressly defined terms

In this Deed, the following words and phrases have the specified meanings:

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**Contract Proceeds**" means all proceeds of the Subordinated Loan Agreements from time to time in whatever form they may be, including:

(a) all monies receivable by the Assignor under, arising out of, or evidenced by, the Subordinated Loan Agreements;

(b) any other rights, titles, benefits or interests (whether present, future, proprietary contractual or otherwise) of the Assignor in, under, arising out of, or evidenced by, the Subordinated Loan Agreements;

(c) the benefit of any Authorisation, conveyance, assignment, transfer, lease or licence which may be granted to the Assignor in relation to the Subordinated Loan Agreements, whether or not arising out of an obligation contained in any Subordinated Loan Agreement;

(d) all claims competent to the Assignor to recover and receive damages or compensation arising out or relating to any breach or termination of the Subordinated Loan Agreements or any Authorisation, conveyance, assignment, transfer, lease or licence referred to in paragraph (c) above; and

(e) the full benefit of all guarantees, indemnities, bonds, debentures, mortgages, charges or other security given in relation to the Subordinated Loan Agreements or any obligation of any party to the Subordinated Loan Agreements arising under the Subordinated Loan Agreements,

in each case to the extent that they relate to the Subordinated Loan.

"**Delegate**" means any delegate, agent, attorney or trustee appointed by the Security Agent.

"**Discharge Date**" means the date with effect from which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and all relevant commitments of the Secured Parties cancelled.

"**Enforcement Party**" means any of the Security Agent, a Receiver or a Delegate.

"**Event of Default**" means the occurrence of any of the events or circumstances defined in the Facility Agreement as an Event of Default.

"**Facility Agreement**" means a £50,700,000 facility agreement made on or about the date hereof between Trillium (RMF) Limited as the Borrower and The Royal Bank of Scotland plc as the Arranger, Original Lender, Original Hedge Counterparty, the Facility Agent and the Security Agent, as the same may be varied, amended, modified, supplemented or replaced.

"**Insolvency Act**" means Insolvency Act 1986.

"**LPA**" means Law of Property Act 1925.

"**Party**" means a party to this Deed.

"**Receiver**" means any one or more receivers and managers or (if the Security Agent so specifies in the relevant appointment) receivers appointed by the Security Agent pursuant to this Deed in respect of the Assignor or in respect of the Secured Assets or any of them.

"**Secured Assets**" means the assets charged at **clause 3** (*Charging clause*) and includes any part or parts of them.

"**Secured Obligations**" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor and each grantor of Security to the Secured Parties (or any of them) under each or any of the Finance Documents together with all costs, charges and expenses incurred by any Secured Party in connection with the protection, preservation or enforcement of its respective rights under the Finance Documents or any other document evidencing or securing any such liabilities.

"**Security Period**" means the period beginning on the date of this Deed and ending on the Discharge Date.

"**Subordination Agreement**" means the subordination agreement dated on our about the same date as this Deed and made between (1) The Royal Bank of Scotland plc as Agent, (2) The Royal Bank of Scotland plc as Security Agent, (3) The Royal Bank of Scotland plc as Arranger, (4) The Royal Bank of Scotland plc as Original Lender, (5) The Royal Bank of Scotland plc as Original Hedge Counterparty, (6) the Companies listed in Schedule 2 therein as Junior Creditors and (7) Trillium (RMF) Limited as Debtor.

"**Subordinated Loan**" means each loan made by the Assignor to the Obligors under or pursuant to the terms of a Subordinated Loan Agreement.

"**Subordinated Loan Agreement**" means:

(a) the intercompany loan agreement dated 19 October 2010 between Trillium (RMF) Limited as borrower and the Assignor as lender; and

(b) any other loan made by the Assignor to an Obligor in accordance with the terms of the Finance Documents.

"**Third Parties Act**" means the Contracts (Rights of Third Parties) Act 1999.

1.2 **Definitions contained in Facility Agreement**

Except where this Deed expressly states otherwise each term used in this Deed which is defined in the Facility Agreement has the same meaning as in the Facility Agreement, construed in accordance with the Facility Agreement.

1.3 **Third Party Rights**

No person has any right under the Third Parties Act to enforce or enjoy the benefit of any term of this Deed, other than an Enforcement Party, which may do so, or any other person, to the extent that this Deed or any other of the Finance Documents expressly provides for it to do so. No consent of any person who is not a Party is required to rescind or vary this Deed at any time. This Clause 1.3 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

1.4 **Incorporation of other terms**

1.4.1 The terms of the other Finance Documents under which the Secured Obligations arise and of any side letters between the Assignor and the Secured Parties or any of them relating to the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of the 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.

1.4.2 Without prejudice to the operation of any applicable term of the Facility Agreement or any other Finance Document the provisions of clauses 1.2 (*Construction*), 8.4 (*Default Interest*), 12.2 (*Tax gross-up*), 30.8 (*Currency of Account*), 30.9 (*Change of currency*), 32.1 (*Communications in writing*), 32.3 (*Delivery*), 32.5 (*Electronic communication*), 32.6 (*English language*), 36 (*Amendments and Waivers*) and 39 (*Counterparts*) of the Facility Agreement shall apply (*mutatis mutandis*) to this Deed as if set out in this Deed in full and as if any reference in any such clause to "this Agreement" were a reference to "this Deed".

2. COVENANT TO PAY

2.1 Subject to Clause 2.2 below, the Assignor hereby, as primary obligor and not merely as surety, covenants with the Security Agent that it will pay, discharge and perform the Secured Obligations on demand when the Secured Obligations become due (subject to the expiry of any applicable grace period) in accordance with the terms of the Finance Documents.

2.2 The Security Agent agrees that its rights of enforcement in respect of the Secured Obligations against the Assignor shall be limited to the rights of enforcement or recovery against the Secured Assets.

3. CHARGING CLAUSE

As a continuing security for the payment, discharge and performance of the Secured Obligations:

3.1 Assignment by way of security

the Assignor assigns absolutely to the Security Agent all its rights, title and interest in the following assets:

3.1.1 the Subordinated Loan Agreements; and

3.1.2 the Contract Proceeds;

3.2 First fixed charge

the Assignor charges in favour of the Security Agent, by way of first fixed charge the following assets:

3.2.1 the Subordinated Loan Agreements; and

3.2.2 the Contract Proceeds,

in each case excluding the Subordinated Loan Agreements or Contract Proceeds which have been validly and effectively assigned to the Security Agent pursuant to Clause 3.1 (*Assignment by way of security*); and

3.2.3 any monies (including any deposit, advance or instalment payment) payable to the Assignor for or in connection with the disposal (by whatever means and whether or not permitted by this Deed) of the Subordinated Loan Agreements or any interest in the Subordinated Loan Agreements;

3.3 Notice of assignment or charge

3.3.1 the Assignor shall on the date of this Deed give notice of each such assignment of its right, title and interest (if any) in and to the Subordinated Loan Agreement by providing the confirmation referred to at clause 9.9 of the Subordination Agreement;

3.3.2 the Assignor will immediately upon the entering into of any Subordinated Loan Agreement after the date of this Deed give notice of each such assignment of its right, title and interest in and to the Subordinated Loan Agreements and the Contract Proceeds by sending a notice in the form set out in Schedule 1 (*Form of notice to Contract Parties*) (with such amendments as the Security Agent may agree) duly completed to each Obligor and the Assignor shall procure that each Obligor delivers an acknowledgement to the Security Agent in the form of the acknowledgement of notice contained in the notice set out in Schedule 1 (*Form of notice to Contract Parties*) in each case with such amendments as the Security Agent may agree;

3.4 **Exercise of rights and obligations under Subordinated Loan Agreements**

3.4.1 whilst no Event of Default exists and is continuing the Security Agent shall permit the Assignor to exercise its rights under the Subordinated Loan Agreements provided that the exercise of those rights in the manner proposed would not result in an Event of Default;

3.4.2 where an Event of Default exists and is continuing the Assignor shall immediately upon notification by the Security Agent, exercise its rights to recover sums from the Borrower under the Subordinated Loan Agreements in accordance with the instructions of the Security Agent;

3.4.3 the Assignor shall at all times remain liable to perform all the obligations assumed by it under the Subordinated Loan Agreements and the Security Agent shall assume no obligation of any kind whatsoever under the Subordinated Loan Agreements, nor be under any liability whatsoever in the event of any failure by the Assignor to perform its obligations under the Subordinated Loan Agreements and the Assignor will at all times indemnify the Security Agent from and against any demands, claims, damages, costs or expenses arising from or in relation to the Subordinated Loan Agreements or any such failure by the Assignor;

3.5 **Full title guarantee and implied covenants**

all the security created or given under this Deed is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

4. **NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

4.1 **Negative pledge**

The Assignor is not to create, extend or permit to subsist any security over any of the Secured Assets.

4.2 **Restrictions on disposals**

The Assignor is not to sell, transfer or otherwise dispose of its interest (whether legal or beneficial) in the Secured Assets.

4.3 **Exceptions**

Clauses 4.1 (*Negative pledge*) and Clause **4.2** (*Restrictions on disposals*) do not apply:

4.3.1 to the security created or required to be created by this Deed;

4.3.2 to any security or transaction to which the Security Agent has given its written consent; or

4.3.3 to any other security or transaction which is permitted pursuant to the terms of the Facility Agreement.

5. REPRESENTATIONS AND WARRANTIES

The Assignor represents and warrants to the Security Agent on the date of this Deed and on each subsequent date upon which the representations and warranties set out in the Facility Agreement are repeated and upon which there are Secured Obligations outstanding as follows:

5.1 Status

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

5.2 Power and enforceability

the Assignor has the power to enter into this deed and to perform its obligations and exercise its rights under it and the obligations expressed to be assumed by it under this deed are (and at all relevant times have been) legal, valid, binding and enforceable obligations (subject to the principle that equitable remedies are discretionary and to any applicable insolvency laws);

5.3 No Event of Default

5.3.1 no Event of Default has occurred or is continuing or might reasonably be expected to result from the execution of this deed or from effect being given to its provisions;

5.3.2 no other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or a termination event (however described) under any other agreement or instrument which is binding on the Assignor or to which any of the Assignors' assets are subject which has or is reasonably likely to have a Material Adverse Effect;

5.4 Non-conflict with other obligations

neither the execution of this deed by the Assignor, nor the Assignor's compliance with its terms will:

5.4.1 subject to the Legal Reservations, conflict with or result in any breach of any law or regulation applicable to it;

5.4.2 cause any limitation on any of its powers or on the right or ability of its directors to exercise those powers to be exceeded; nor

5.4.3 constitute a default, acceleration of payment or termination event (however described) under any agreement or instrument binding upon it;

5.5 Authorisations

subject to the Legal Reservations, all Authorisations required for the execution, delivery, issue, validity or enforceability of this deed or of the performance of the Assignor's obligations or the exercise of its rights under this deed have been obtained and have not been (and the Assignor is not aware of any circumstance having arisen whereby they might be) withdrawn;

5.6 **Priority of security**

subject to the Legal Reservations, the legal and equitable mortgages and fixed charges contained in clause 3 (*Charging clause*) constitute first priority security over the assets which are expressed to be secured by such mortgages and charges and those assets are not subject to any prior or pari passu security; and

5.7 **Subordinated Loan Agreements**

5.7.1 Each Subordinated Loan Agreement is in full force and effect and constitutes legal, valid, binding and enforceable obligations of the Assignor and the Borrower.

5.7.2 The Assignor:

5.7.2.1 has not rescinded or otherwise terminated or novated any Subordinated Loan Agreement and there have been no amendments to nor defaults under any Subordinated Loan Agreement other than as permitted by the Finance Documents;

5.7.2.2 has not waived, compromised, assigned nor agreed to waive, compromise or assign any of its present or future rights, title or interest in and to the Subordinated Loan Agreement or the Contract Proceeds otherwise than as provided in this Deed;

5.7.2.3 confirms that no right of action is vested in any party to the Subordinated Loan Agreements in respect of any representation, breach of condition breach of warranty or breach of any other express or implied term of any Subordinated Loan Agreement; and

5.7.2.4 confirms that other than for actions which it is permitted to take in accordance with this Deed, it is not aware of any fact or circumstance which would or might prejudice or affect the ability of the Security Agent to enforce the Subordinated Loan Agreements or any term or condition of a Subordinated Loan Agreement nor to recover and retain the Contract Proceeds.

6. **UNDERTAKINGS**

The Assignor undertakes to the Security Agent in the terms of the following provisions of this clause 6, all such undertakings to commence on the date of this Deed and to continue throughout the Security Period:

6.1 **Deposit**

the Assignor must:

6.1.1 promptly deposit with the Security Agent, or as the Security Agent may direct, all certificates and other documents of title or evidence of ownership (if any) in relation to any Security Asset; and

6.1.2 following an Event of Default which is continuing promptly execute and deliver to the Security Agent all transfer and other documents which may be requested by the Security Agent in order to enable the Security Agent or its nominees to be registered as the owner or otherwise obtain a legal title to any Security Asset;

6.2 **Subordinated Loan Agreements**

the Assignor will:

6.2.1 perform all its obligations under each Subordinated Loan Agreement in a diligent and timely manner;

6.2.2 not rescind, terminate, novate or permit rescission, termination or novation of any Subordinated Loan Agreement nor make or agree to make any amendments or modifications to a Subordinated Loan Agreement or waive or compromise any of its rights under any Subordinated Loan Agreement nor release an Obligor from its obligations under that Subordinated Loan Agreement except in any case in accordance with the terms of the Subordination Agreement; and

6.2.3 promptly inform the Security Agent of any material disputes relating to a Subordinated Loan Agreement;

6.3 **Not to jeopardise security**

It will not do anything or allow anything to be done which may in any way depreciate, jeopardise or otherwise prejudice the Security constituted by this Deed or the priority of its ranking as expressed in this Deed;

6.4 **Further assurance**

It will at all times (and forthwith upon the Security Agent's written request) but at the Assignor's own expense take all steps (including the making of all filings and registrations and the payment of all fees and taxes) and execute all documents necessary in the reasonable opinion of the Security Agent (a) to render effective and valid any security or any right or power created or intended to be created or evidenced under or by this Deed but which is or may be ineffective or invalid, (b) to perfect, protect or improve any such security or to facilitate its enforcement or realisation, (c) to protect the Security Agent's position under this Deed or any other deed or document entered into pursuant to this Deed or (d) in connection with the exercise of any of any rights or powers by any Enforcement Party under or in relation to this Deed, and so that any security document required to be executed pursuant to this clause will be in such form and will contain such provisions as the Security Agent may reasonably require; and

6.5 **Power to remedy**

If the Assignor fails to comply with any of the covenants and undertakings set out or referred to in clauses 6.2 to **6.4** inclusive it will allow (and hereby irrevocably authorises) the Security Agent and/or any other Enforcement Party to take such action (including the making of payments) on behalf of the Assignor as is necessary to ensure that such covenants are complied with.

7. **ENFORCEABILITY**

For the purposes of all powers implied by the LPA or any other applicable statute the Secured Obligations shall be deemed to have become due and payable and this deed will become immediately enforceable and the powers of the Security Agent and any Receiver will become exercisable on the date of this deed, but, as between the Security Agent and the Assignor, the power of sale and other powers conferred by this deed shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing (unless it is expressly provided to the contrary otherwise than in this clause or there has been a request from the Assignor to the Security Agent for the appointment of a Receiver, in which case they shall be exercisable when so provided or at any time following the making of such request as the case may be).

8. **ENFORCEMENT OF SECURITY**

8.1 At any time after an Event of Default which is continuing, the Security Agent may appoint one or more than one Receiver in respect of the Secured Assets and if more than one Receiver is appointed the Receiver may act jointly and severally or individually.

8.2 The Security Agent may remove the Receiver and appoint another Receiver and the Security Agent may also appoint an alternative or additional Receiver.

8.3 The Receiver will, so far as the law permits, be the agent of the Assignor and the Assignor alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver. The Security Agent will not be responsible for any misconduct, negligence or default of the Receiver.

8.4 The powers of the Receiver will continue in full force and effect following the liquidation of the Assignor.

8.5 The remuneration of the Receiver may be fixed by the Security Agent but will be payable by the Assignor. The amount of the remuneration will form part of the Secured Obligations.

8.6 The Receiver will have the power on behalf and at the cost of the Assignor:

8.6.1 to do or omit to do anything which he considers appropriate in relation to the Secured Assets; and

8.6.2 to exercise all or any of the powers conferred on the Receiver or the Security Agent under this deed or conferred upon administrative receivers by the Insolvency Act (even if he is not an administrative receiver), or upon receivers by the LPA or any other statutory provision (even if he is not appointed under the LPA or such other statutory provision).

8.7 Without prejudice to the general powers set out in clause 8.6 a Receiver will also have the powers and discretions set out in Schedule 0 (*Receiver's specific powers*).

8.8 If (notwithstanding any representation or warranty to the contrary contained in this deed) there shall be any security affecting the Secured Assets which ranks in priority to the security created by this deed and the holder of such prior security takes any steps to enforce such security, the Security Agent or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such security.

8.1 The Security Agent may, at any time after this deed has become enforceable pursuant to clause 7 (*Enforceability*), exercise, to the fullest extent permitted by law, all or any of the powers authorities and discretions conferred on a Receiver by this deed, whether as attorney of the Assignor or otherwise and whether or not a Receiver has been appointed.

8.2 The Security Agent may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on Receivers by this deed.

9. APPLICATION OF PROCEEDS

9.1 **Recoveries by Receiver** - The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations, be applied by or at the direction of the Receiver in or towards discharging or satisfying the following amounts in the following order of priority: (a) the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration; (b) any costs, charges, expenses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers including all rents, Taxes, rates and outgoings whatever affecting the Secured Assets, all premiums on Insurances properly payable under this Deed or any applicable legislation, the cost of executing necessary or proper repairs to the Secured Assets, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations; (c) the remaining Secured Obligations, in accordance with the provisions of the Finance Documents; and (d) the claims of those persons entitled to any surplus.

9.2 **Right of appropriation**

The Security Agent is entitled to appropriate money and/or assets to Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Assignor.

9.3 **Suspense Account**

The Security Agent may place (for such time as it thinks prudent) any money received by it pursuant to this Deed to the credit of a suspense account (without liability to account for interest thereon) for so long and in such manner as the Security Agent may from time to time determine without having any obligation to apply that money or any part of it in or towards discharge of the Secured Obligations provided that such amounts standing to the credit of such account shall be applied in satisfaction of the Secured Obligations once such amounts are sufficient to discharge the Secured Obligations in full.

9.4 **New account** - If the Security Agent receives notice of a subsequent mortgage or charge relating to the Secured Assets, it will be entitled to close any account and to open a new account in respect of the closed account. If the Security Agent does not open such new account, it will in any event be treated as if it had done so at the time when it received such notice.

10. **PROTECTION OF THIRD PARTIES**

10.1 **No duty to enquire**

A buyer from or other person dealing with any Enforcement Party will not be concerned to enquire whether any of the powers which such Enforcement Party has exercised or purported to exercise have arisen or become exercisable and may assume that such Enforcement Party is acting in accordance with this Deed.

10.2 **Receipt conclusive**

Receipt by the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser of the Secured Assets and shall relieve such purchaser of any obligation to see to the application of any monies paid to or by the direction of the Security Agent or any Receiver.

11. **POWER OF ATTORNEY**

11.1 The Assignor irrevocably and by way of security appoints the Security Agent and each Receiver and any person nominated for the purpose by the Security Agent or the Receiver (in writing, under hand, signed by an officer of the Security Agent or by the Receiver) severally to be the attorney of the Assignor (with full power of substitution and delegation) for the purposes set out in Clause 11.2 and Clause 11.3 below.

11.2 Prior to an Event of Default which is continuing, the power of attorney granted in Clause 11.1 allows the Security Agent or the relevant nominee, in the name of the Assignor, on its behalf, as its act and deed and at its expense to execute and deliver (using the Assignor's seal where appropriate) any document or do any act or thing which the Assignor is obliged to execute or do under this Deed but has failed to execute or do, within any applicable grace period.

11.3 Following an Event of Default which is continuing, the power of attorney granted in Clause 11.1 allows the Security Agent, the Receiver or the relevant nominee, in the name of the Assignor, on its behalf, as its act and deed and at its expense to perfect the Security created by the Assignor under this Deed and to execute and deliver (using the Assignor's seal where appropriate) any document or do any act or thing which the Assignor may, ought or has agreed to execute or do under this Deed or which the attorney may in its absolute discretion consider appropriate in connection with the exercise of any of the rights, powers, authorities or discretions of the Security Agent or the Receiver under, or otherwise for the purposes of, this Deed.

11.4 The Assignor covenants with the Security Agent to ratify and confirm all acts or things made, done or executed by any attorney exercising or purporting to exercise the powers conferred in accordance with this Clause 11.

12. APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS

12.1 Conditions applicable to power of sale etc.

12.1.1 For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of Clause 7 (*Enforceability*)), the conditions set out in that section as to when such powers arise do not apply and the Secured Obligations become due and the statutory power of sale and other powers of enforcement arise immediately following the execution of this Deed.

12.1.2 The Security Agent and any Receiver may exercise the statutory power of sale conferred by the LPA free from the restrictions imposed by section 103 of the LPA, which shall not apply to this Deed.

12.2 Extension of powers of sale, etc.

12.2.1 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Security Agent in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this Deed.

12.2.2 The Security Agent and any Receiver shall also have and enjoy all the other powers, privileges, rights and protections conferred by the LPA and the Insolvency Act on mortgagees, receivers or administrative receivers (each as amended and extended by this Deed and whether or not a receiver or administrative receiver has been appointed) but so that if there is any ambiguity or conflict between the powers contained in such statutes and those contained in this Deed, those contained in this Deed shall prevail.

12.3 Consolidation of mortgages

The restriction on the consolidation of mortgages in Section 93 of the LPA does not apply to this Deed nor to any security given to the Security Agent pursuant to this Deed.

12.4 LPA provisions relating to appointment of Receiver

Section 109(1) of the LPA shall not apply to this Deed.

12.5 Application of proceeds

Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Security Agent nor to a Receiver appointed under this Deed.

13. OTHER MISCELLANEOUS PROVISIONS

13.1 Powers, rights and remedies cumulative

The powers, rights and remedies provided in this Deed are in addition to (and not instead of), powers, rights and remedies under law.

13.2 Exercise of powers, rights and remedies

If an Enforcement Party fails to exercise any power, right or remedy under this Deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.

13.3 **Discretion**

13.3.1 The Security Agent may decide:

13.3.1.1 whether and, if so, when, how and to what extent (I) to exercise its rights under this Deed and (II) to exercise any other right it might have in respect of the Assignor (or otherwise); and

13.3.1.2 when and how to apply any payments and distributions received for its own account under this Deed,

and the Assignor has no right to control or restrict the Security Agent's exercise of this discretion.

13.3.2 No provision of this Deed will interfere with the Security Agent's right to arrange its affairs as it may decide (or oblige it to disclose any information relating to its affairs), except as expressly stated.

13.4 **Set-off and combination of accounts**

13.4.1 No right of set-off or counterclaim may be exercised by the Assignor in respect of any payment due to the Security Agent under this Deed.

13.4.2 The Security Agent may at any time after this Deed has become enforceable and without notice to the Assignor:

13.4.2.1 combine or consolidate all or any of the Assignor's then existing accounts with, and liabilities to, the Security Agent;

13.4.2.2 set off or transfer any sums standing to the credit of any one or more of such accounts; and/or

13.4.2.3 set-off any other obligation owed by the Security Agent to the Assignor (whether or not matured at such time),

in or towards satisfaction of any of the Secured Obligations. The Security Agent is to notify the Assignor in writing that such a transfer has been made.

13.4.3 If any amount is in a different currency from the amount against which it is to be set off, the Security Agent may convert either amount (or both) at any reasonable time and at any reasonable rate.

13.5 **Other security**

The Assignor authorises the holder of any prior or subsequent security to provide to the Security Agent, and the Security Agent to receive from such holder details of the state of account between such holder and the Assignor.

13.6 **No assignment by Assignor**

The Assignor must not assign, novate or otherwise deal with its rights or obligations under or interests in this Deed, except with the prior written consent of the Security Agent.

13.7 **Transfer by Security Agent**

13.7.1 Save as otherwise provided in the Facility Agreement, the Security Agent may at any time assign, novate or otherwise deal with any rights or obligations under or interests in this Deed.

13.7.2 The Security Agent may disclose any information about the Assignor, the Secured Assets and/or this Deed to any person to whom it proposes to assign

or novate or transfer (or has assigned, novated or transferred) any rights or obligations under or interests in this Deed; or with whom it proposes to enter into (or has entered into) any other dealings in relation to any such rights, obligations or interests.

13.7.3 Any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this Deed in the same way as if it had been a Party.

13.8 **Avoidance of settlements and other matters**

13.8.1 Any payment made by the Assignor, or settlement or discharge between the Assignor and the Security Agent, is conditional upon no security or payment to the Security Agent by the Assignor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force and accordingly (but without limiting the Security Agent's other rights under this Deed) the Security Agent shall be entitled to recover from the Assignor the value which the Security Agent has placed upon such security or the amount of any such payment as if such payment, settlement or discharge had not occurred.

13.8.2 If the Security Agent, acting reasonably, considers that any amount paid by the Assignor in respect of the Secured Obligations is capable of being avoided or ordered to be refunded or reduced for the reasons set out in clause 13.8.1, then for the purposes of this Deed such amount shall not be considered to have been irrevocably paid.

14. **COMMUNICATIONS**

14.1 **Communications in writing**

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

14.2 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is:

14.2.1 In the case of the Assignor, that identified with its name below;

14.2.2 In the case of the Security Agent, that identified with its name below,

or any substitute address or fax number or department or officer as the Party may notify to the Security Agent (or the Security Agent may notify to the other Party, if a change is made by the Security Agent) by not less than five Business Days' notice.

14.3 **Delivery**

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

14.3.1.1 If by way of fax, when received in legible form; or

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

and, if a particular department or officer is specified as part of its address details provided under Clause 14.2 (*Addresses*), if addressed to that department or officer.

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

14.4 Any communication or document which becomes effective, in accordance with Clauses 14.3.1 or 14.3.2 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

15. THIS DEED

15.1 This Deed is a Finance Document.

15.2 The Assignor has entered into this Deed in consideration of the Secured Parties or some of them agreeing to provide (or to continue to provide) finance facilities to the Borrower on the terms agreed in the Finance Documents.

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

15.4 If there is any conflict between the provisions of the Subordination Agreement and the provisions of this Deed, the provisions of the Subordination Agreement shall prevail.

15.5 If any Party is not bound by this Deed (or any part of it) for any reason, this does not affect the obligations of each other Party under this Deed (or under the relevant part).

15.6 This Deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other Security or guarantee which the Security Agent may now or at any time after the date of this Deed hold for or in respect of the Secured Obligations.

15.7 This Deed and every counterpart is the property of the Security Agent.

16. GOVERNING LAW AND JURISDICTION

16.1 Governing law

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

16.2 Jurisdiction

16.2.1 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) (a "**Dispute**").

16.2.2 This clause 16.2 is for the benefit of the Security Agent only. As a result the Security Agent will not be prevented from taking proceedings relating to a Dispute in the British Virgin Islands and/or Scotland. To the extent allowed by law, the Security Agent may take concurrent proceedings in the British Virgin Islands and/or Scotland.

16.2.3 Each Party agrees that the courts of England are the most appropriate and convenient courts to settle any Dispute and accordingly neither Party will argue to the contrary.

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE 0

Form of notice to Contract Parties

To: [*name and address of [Borrower]*]

Dated: [*date*]

Dear Sirs,

[*Insert description of Subordinated Loan Agreements*] (the "**Loan Agreement**") made between, amongst others, (1) [•] (the "**Assignor**") and (2) [*the Borrower*]

We [•] hereby notify you that by a Deed dated [*date*] (the "**Deed**") made by the Assignor in favour of The Royal Bank of Scotland plc (the "**Security Agent**") the Assignor has assigned and charged to the Security Agent as first priority assignee and chargee all of the Assignor's rights, title and interest in the Loan Agreement and in the proceeds of the Loan Agreement from time to time in whatever form they may be including, without limitation, all monies receivable by the Assignor under, or otherwise arising out of, or evidenced by, the Loan Agreement as security for certain obligations now or hereafter owed by the Assignor to the Security Agent.

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

1. the Assignor may not agree to amend, modify or terminate the Loan Agreement without the prior written consent of the Security Agent;

2. the Deed provides that you may not be released from your obligations under the Loan Agreement, nor may any rights of the Assignor be waived, in any case without the prior consent of the Security Agent being obtained;

3. subject to paragraph 1 above, the Deed provides that you may continue to deal with the Assigor in relation to the Loan Agreement until you receive written notice to the contrary from the Security Agent. Thereafter the Assignor will cease to have any right to deal with you in relation to the Loan Agreement and therefore from that time you should deal only with the Security Agent;

4. notwithstanding the foregoing the Assignor shall continue to be liable for the performance and discharge of all obligations under the Loan Agreement in accordance with its terms and the Deed provides that the Security Agent shall be under no obligation of any kind in respect of the Loan Agreement or such obligations;

5. you are authorised to disclose information in relation to the Loan Agreement to the Security Agent on request without any enquiry by you as to the justification for such disclosure or reference to or further authority from the Assignor;

6. you must supply copies of all notices and other information under the Loan Agreement to the Security Agent; and

7. the provisions of this notice may only be revoked with the written consent of the Security Agent.

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

A. you have not received notice that the Assignor has assigned its rights under the Loan Agreement to a third party or created any other interest (whether by way or security or otherwise) in the Loan Agreement in favour of a third party; and

B. you agree to the terms set out in this notice and to act in accordance with its provisions.

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
[•]

To: The Royal Bank of Scotland plc

Copy to: [•]

We hereby acknowledge receipt of the above notice and confirm our agreement to the matters set out in paragraphs A and B above.

Signed:.....

for and on behalf of [*the Borrower*]

Dated:

SCHEDULE 0

Receiver's specific powers

The Receiver will have full power and authority:

1. **POSSESSION**

1.1 to enter upon, take possession of and generally operate and manage the Secured Assets;

1.2 to collect and get in all the Distribution Rights;

2. **SALE AND DISPOSAL**

without restriction, to sell, charge, grant or vary the terms or accept surrenders of options or rights over, or otherwise deal with and dispose of the Secured Assets or any assets acquired in the exercise of its powers under this Deed;

3. **ACQUISITION**

to purchase or acquire any assets or rights required or convenient for the exercise of the Receiver's powers under this Deed;

4. **BORROWING**

for the purpose of exercising any of the rights, powers, authorities and discretions conferred on the Receiver by or pursuant to this Deed and/or for defraying any costs, losses or liabilities which may be incurred by him in their exercise or for any other purpose, to raise or borrow any money from the Security Agent or others or to incur any other liability on such terms, whether secured or unsecured, as he may think fit, and whether to rank in priority to this security or not;

5. **APPOINTMENTS, ETC.**

to appoint and discharge employees, officers, consultants, advisers, managers, agents, solicitors, accountants or other professionally qualified persons, workmen and others for any of the purposes of this Deed or to protect the Secured Assets upon such terms as to remuneration or otherwise as he may think fit and to discharge any such persons appointed by the Assignor prior to his appointment;

6. **LEGAL ACTIONS AND COMPROMISES**

6.1 in the name of the Assignor, to bring, prosecute, enforce, defend and discontinue all such actions, suits and proceedings, in relation to the Assignor, the Secured Assets or any business carried on from the Property, as in any case he thinks fit;

6.2 to settle, adjust, refer to arbitration or expert determination, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or body who is or claims to be a creditor of the Assignor or relating in any way to the Secured Assets;

7. **RECEIPTS**

to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising the Secured Assets;

8. **CONTRACTS**

to enter into, vary, cancel or waive any of the provisions of any contracts relating to the Secured Assets which he shall in any case think expedient in the interests of the Assignor or the Security Agent;

9. **INSURANCES AND BONDS**

to insure the Secured Assets, any assets acquired by him in the exercise of his powers, and effect indemnity insurance or other similar insurance, in every case in such amounts, against such risks and with such offices as he thinks fit, and obtain bonds and give indemnities and security to any bondsmen;

10. **FORM COMPANY**

10.1 to promote or establish any company or to acquire shares in any company (whether as a subsidiary of the Assignor or otherwise) to facilitate the exercise of his powers under this Deed;

10.2 to transfer to any such company all or any of the Secured Assets or other assets acquired by him in the exercise of his powers;

10.3 to exercise or cause to be exercised all voting and other rights attaching to, and to charge, sell or otherwise transfer any shares in any such company;

11. **VOTING RIGHTS**

to exercise all voting and other rights attaching to the stocks, shares and securities owned by the Assignor and comprised in the Secured Assets in such manner as he may think fit;

12. **TRANSACTION**

to carry into effect and complete any transaction;

13. **REDEEM SECURITY**

to redeem any prior security (or procure the transfer of such security to himself) 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 Assignor and the money so paid shall be deemed to be an expense properly incurred by the Receiver; and

14. **GENERAL**

either in the name of the Assignor or in the name of the Receiver, to execute documents and do all other acts or things which the Receiver may consider to be incidental or conducive to any of the Receiver's powers or to the realisation or use of the Secured Assets.

EXECUTION

The Assignor

Signed as a deed for
TRILLIUM HOLDINGS LIMITED, acting by

Director: [redacted]

Director:

Communications to be delivered to:

Address: Treasury Team
140 London Wall
London EC2Y 5DN

Attention: Treasury Team

The Security Agent

Executed as a deed
THE ROYAL BANK OF SCOTLAND PLC, acting by

its duly authorised attorney
in the presence of:

Witness signature:

Witness Name:

Witness Address:

Witness Occupation:

_____
as attorney for **THE ROYAL BANK OF SCOTLAND PLC**

Communications to be delivered to:

Address:

Attention:

EXECUTION

The Assignor

Signed as a deed for
TRILLIUM HOLDINGS LIMITED, acting by

Director:

Director:

Communications to be delivered to:

Address:

Attention:

The Security Agent

Executed as a deed
THE ROYAL BANK OF SCOTLAND PLC, acting by IAN ARNOLD

Its duly authorised attorney
In the presence of:

[redacted]

as attorney for **THE ROYAL BANK OF SCOTLAND PLC**

Witness signature: [redacted]

Witness Name: NATACHA KNIGHTON

Witness Address: 280 Bishopsgate
London
EC2M 4RB

Witness Occupation: [redacted]

Communications to be delivered to:

Address: 280 Bishopsgate
London
EC2M 4RB

Attention: PORTFOLIO MANAGEMENT, REF