



Registration of a Charge

Company name: **BFINANCE INTERNATIONAL LIMITED**

Company number: **03759626**



X3YXQ8QP

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

Details of Charge

Date of creation: **22/12/2014**

Charge code: **0375 9626 0003**

Persons entitled: **BMS FINANCE S.A.R.L.**

Brief description:

Contains fixed charge(s).

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **ROSENBLATT**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3759626

Charge code: 0375 9626 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 22nd December 2014 and created by BFINANCE INTERNATIONAL LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th January 2015 .

Given at Companies House, Cardiff on 13th January 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

DATED 22 December 2014

**BFINANCE ACQUISITION LIMITED
BFINANCE INTERNATIONAL LIMITED
BFINANCE UK LIMITED**

as Companies

BMS FINANCE S.A.R.L.
as Lender

DEBENTURE

ROSENBLATTSOLICITORS

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London EC4A 3AF
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DATED _____ 2014

PARTIES

- (1) **THE PARTIES LISTED IN THE SCHEDULE HERETO** (together the "**Companies**" and individually each of these a "**Company**"); and
- (2) **BMS FINANCE S.A.R.L.**, a private limited liability company (société à responsabilité limitée), having its registered office at 55, Avenue Pasteur, L-2311 Luxembourg, Grand Duchy of Luxembourg as lender (the "**Lender**").

BACKGROUND

- (A) By a loan agreement dated on or about the date of this Debenture (the "**Loan Agreement**") and made between the Lender, as lender and Bfinance Acquisition Limited, as borrower (the "**Borrower**"), it was agreed that the Lender would make available to the Borrower a loan facility of £5,000,000 (the "**Loan**").
- (B) It is one of the conditions precedent to the Loan being advanced to the Borrower that each of the Companies grants a guarantee in favour of the Lender under which each Company guarantees the performance of the obligations of the Borrower and the other Companies under the Finance Documents and the Companies have also agreed to enter into this Debenture for the purpose of providing security to the Lender for the Secured Liabilities.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Debenture:

"**Accounts**" means, in the case of each Company, the latest annual (if consolidated, then consolidated) audited profit and loss account and audited balance sheet of each Company and its Subsidiaries (if any) available from time to time.

"**Asset Insurance**" means the insurances referred to in Clause 17.7(a) in respect of assets other than the Property.

"**Authorities**" means all national and local governments, government departments, supranational bodies, local or public authorities, statutory undertakings, states or agencies and "**Authority**" shall be construed accordingly.

"**Bank Account**" means each separate and denominated account or accounts of the Companies (in whatever currency) as may be opened or maintained by the Company at any bank or financial institution, including all accounts used for the purpose of receiving payments and the collection of Book Debts.

"**Book Debts**" means in respect of each Company:

- (a) all book and other debts in existence from time to time (including, without limitation, any sums whatsoever owed by banks or similar institutions), both present and future, due, owing to or which may become due, owing to or purchased or otherwise acquired by each Company; and

- (b) the benefit of all rights whatsoever relating to the debts referred to above including, without limitation, any related agreements, documents, rights and remedies (including, without limitation, negotiable or non-negotiable instruments, guarantees, indemnities, legal and equitable charges, reservation of proprietary rights, rights of tracing, unpaid vendor's liens and all similar connected or related rights and assets).

"Business Day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom.

"Business Operator" means a person carrying out any business, process or other undertaking (whether currently operated by or under the control or with the consent of any Company, or otherwise) whether at the Property or elsewhere.

"Charged Property" means in respect of each Company the whole or any part of the property, assets, income and undertaking of that Company from time to time mortgaged, charged or assigned to the Lender pursuant to this Debenture.

"Contracts" means in respect of each Company all of the Company's rights, title, interest and benefit in and to any contract in respect of the whole or any part of the Charged Property to which the Company is a party.

"Costs" means all costs, charges or expenses of whatsoever nature (including, without limitation, legal fees) including, without limitation, disbursements and any Value Added Tax to be charged on such costs, charges, expenses and disbursements.

"Default Rate" means the rate specified in clause 8.4 of the Loan Agreement.

"Derivative Assets" means all stocks, shares, warrants or other securities, rights, dividends, interest or other property (whether of a capital or income nature) accruing, offered, issued or deriving at any time by way of dividend, bonus, redemption, exchange, purchase, substitution, conversion, consolidation, subdivision, preference, option or otherwise attributable to any of the Shares or any Derivative Assets previously described.

"Event of Default" has the meaning given to it in the Loan Agreement.

"Exchange Rate" means the prevailing Spot Rate of Exchange (as defined in the Loan Agreement) on the date on which any conversion of currency is to be effected pursuant to this Debenture.

"Finance Documents" has the meaning given to it in the Loan Agreement.

"Fixtures" means in respect of each Company all assets of whatsoever nature, apart from land and buildings, forming part of any freehold or leasehold property owned by that Company and deemed by law to be immovable property.

"Group" means each Company, its Holding Companies and its Subsidiaries (if any) from time to time and **"members of the Group"** shall be construed accordingly.

"Holding Company" has the meaning given to it in Section 1159 Companies Act 2006 and **"Holding Company"** shall be construed accordingly.

"Insolvency Act" means the Insolvency Act 1986.

"Intellectual Property" means all subsisting patents and subsisting rights of a similar nature held in any part of the world, applications for patents and such rights, divisions and continuations of such applications for patents, registered and unregistered trade marks, registered and unregistered service marks, registered designs, utility models (in each case for their full period and all extensions and renewals of them), applications for any of them and the right to apply for any of them in any part of the world, inventions, confidential information, Know-how, business names, trade names, brand names, copyright and rights in the nature of copyright, design rights and get-up and any similar rights existing in any country; and the benefit (subject to the burden) of any and all agreements, arrangements and licences in connection with any of the foregoing.

"Issuer" means any person of whose share capital the Shares form all or any part.

"Know-how" means in respect of each Company all the body of knowledge, technical experience, expertise and skills, technical processes, secret processes, formulae and technical information held by that Company and relating to its business, which is not in the public domain.

"LPA" means the Law of Property Act 1925.

"Material Adverse Effect" has the meaning given to it in the Loan Agreement.

"Nominees" means the Lender, its agents, nominees and any other person holding the Shares and the Derivative Assets on behalf of the Lender from time to time.

"Occupational Leases" means in respect of each Company all leasehold interests and other occupational rights whatsoever (including, without limitation, all licences and agreements for leases) in existence from time to time relating to the whole or any part of the Property, the immediate reversion to which is vested in that Company.

"Permitted Security Interest" means:

- (a) the security constituted by the rental deposit deed dated 23 March 2012 between Stargas Nominees Limited and Beegas Nominees Limited (1) and bfinance UK Limited (2);
- (b) the security constituted by this Debenture; and
- (c) any Security permitted under the terms of the Loan Agreement.

"Plant and Machinery" means in respect of each Company all plant and machinery, equipment, fittings, installations and apparatus, tools, motor vehicles and all other such assets (other than Fixtures) whatsoever, wherever situate, which are now, or at any time after the date of this Debenture become, the property of that Company.

"Property" means in respect of each Company all estates and other interests in any freehold, leasehold or other immovable property (including, without limitation, all Fixtures on such property) which are now, or at any time after the date of this Debenture become, the property of that Company, all proceeds of sale derived from such property and the benefit of all covenants to which that Company is entitled in respect of such property.

"Property Insurance" means the insurance referred to in Clause 17.7(a) in respect of the Property.

"Receiver" means any receiver appointed pursuant to this Debenture.

"Related Rights" means in relation to any Charged Property:

- (a) the proceeds of sale of any part of that Charged Property;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that Charged Property;
- (c) all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that Charged Property; and
- (d) any moneys and proceeds paid or payable in respect of that Charged Property.

"Rights" means in respect of each Company all of that Company's rights, title and interest from time to time in any lease, licence or occupational right whatsoever together with the entire benefit of all of that Company's rights, title and interest from time to time in any renewal of, replacement of or variation to any such lease, licence or occupational right (including, without limitation, all its rights, title and interest in any Occupational Lease, agreement for any Occupational Lease and any associated agreements which may be granted by that Company or any person deriving title from that Company from time to time over or in respect of the whole or any part of the Property and any other properties (freehold or leasehold) in which that Company has an interest).

"Secured Liabilities" means all monies, debts and liabilities from time to time due, owing or incurred by each member of the Group to the Lender under the Finance Documents in any manner whatsoever, in each case:

- (a) whether present or future;
- (b) whether alone or jointly with any other person;
- (c) whether actual or contingent;
- (d) whether as principal or as surety;
- (e) in whatsoever name, firm or style;
- (f) in whatsoever currency denominated; or
- (g) otherwise.

"Security Interest" means any mortgage, charge, assignment, pledge, lien, right of set-off, hypothecation, encumbrance, priority or other security interest (whether fixed or floating) including, without limitation, any "hold-back" or "flawed asset" arrangement together with any preferential right, retention of title, deferred purchase, leasing, sale or purchase, sale and leaseback arrangement, trust agreement, declaration of trust, trust arising by operation of law, any option or agreement for any of the same or any arrangement which has substantially the same commercial or substantive effect as the creation of security.

"Security Period" means the period commencing on the date of this Deed and ending on the date on which the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full to the Lender.

"Shares" means in respect of each Company all stocks, shares and other securities for which the stock or share certificates or other documents of title have from time to time been deposited by that Company with the Lender or its Nominees or which are held to the order of the Lender whether held in England and Wales or elsewhere and irrespective of whether in any such case the deposit was made or the certificates or other documents were received by the Lender or its Nominees for the purposes of creating security, safe custody, collection or otherwise.

"Subsidiary" means, in respect of a company incorporated in the United Kingdom, a subsidiary within the meaning of section 1159 of the Companies Act 2006 and/or a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006, and, in respect of any company, any other person directly or indirectly Controlled by such person or any entity treated as a subsidiary in the financial statements of such person from time to time.

"Taxes" means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereto, wherever imposed, levied, collected or withheld pursuant to any regulation having the force of law and **"Taxation"** shall be construed accordingly.

1.2 Interpretation

1.2.1 In this Debenture:

- (a) the Contents page and Clause headings are included for convenience only and do not affect the construction of this Debenture;
- (b) words denoting the singular include the plural and vice versa; and
- (c) words denoting one gender include each gender and all genders.

1.2.2 In this Debenture, unless the context otherwise requires, references to:

- (a) persons include references to natural persons, firms, partnerships, companies, corporations, associations, organisations and trusts (in each case whether or not having a separate legal personality);
- (b) documents, instruments and agreements (including, without limitation, this Debenture and any document referred to in this Debenture) are references to such documents, instruments and agreements as modified, amended, varied, supplemented or novated from time to time;
- (c) receivers are references to receivers of whatsoever nature including, without limitation, receivers and managers and administrative receivers;
- (d) the terms the **"Lender"** and the **"Receiver"** include, where the context so admits, references to any delegate of any such person;
- (e) a party to this Debenture include references to its successors, transferees and assigns;

- (f) Recitals, Clauses and Schedules are references to recitals to this Debenture, Clauses of this Debenture and Schedules to this Debenture; and references to this Debenture include its Schedules;
- (g) paragraphs are references to paragraphs of the Schedule in which the references appear;
- (h) statutory provisions (where the context so admits and unless otherwise expressly provided) are construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time, and to any orders regulations instruments or other subordinate legislation made under the relevant statute; and
- (i) a time of day is a reference to London time.

2 **GUARANTEE**

2.1 **Guarantee and indemnity**

Each Company unconditionally and irrevocably:

- (a) guarantees the due payment of all amounts payable by each member of the Group under or in connection with the Loan and the Finance Documents;
- (b) guarantees to the Lender the punctual performance of each member of the Group's obligations under the Finance Documents;
- (c) undertakes to pay to the Lender, within 2 Business Days of the Lender's demand, any such amount which is not paid by any member of the Group when payable; and
- (d) fully indemnifies the Lender within 2 Business Days of its demand in respect of all claims, Costs, liabilities and losses which are made or brought against, or incurred by, the Lender as a result of, or in connection with, any obligation or liability guaranteed by the Companies being or becoming unenforceable, invalid, void or illegal; and the amount recoverable under this indemnity shall be equal to the amount which the Lender would otherwise have been entitled to recover.

2.2 **No limit on number of demands**

The Lender may serve more than one demand under Clause 2.1 (*Guarantee and indemnity*).

2.3 **Continuing Guarantee**

The guarantee in Clause 2.1 (*Guarantee and indemnity*) is a continuing guarantee and will extend to the ultimate balance of the sums stated to be payable by each member of the Group under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

3 LIABILITY AS PRINCIPAL AND INDEPENDENT DEBTOR

3.1 Principal and independent debtor

Each Company shall be liable under this Debenture as a principal and independent debtor and accordingly no Company shall have, as regards this Debenture, any of the rights or defences of a surety.

3.2 Waiver of rights and defences

Without limiting the generality of Clause 3.1 (*Principal and independent debtor*), no Company shall neither be discharged by, nor have any claim against the Lender in respect of:

- (a) any time, waiver or consent granted to or in composition with the Borrower or any other person;
- (b) any amendment or supplement being made to this Debenture;
- (c) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
- (d) any arrangement or concession (including a rescheduling or acceptance of partial payments) relating to, or affecting, this Debenture;
- (e) any amendment (however fundamental) or replacement of any Finance Document or security;
- (f) any release or loss (even though negligent) of any right or Security Interest created by any Finance Document;
- (g) any failure (even though negligent) promptly or properly to exercise or enforce any such right or Security Interest, including a failure to realise for its full market value an asset covered by such a Security Interest;
- (h) this Debenture or Security Interest or any Finance Document now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it;
- (i) any assignment, transfer or warranty by the Lender of its rights or obligations under the Finance Documents; or
- (j) any insolvency or other proceedings.

4 JOINT AND SEVERAL LIABILITY

4.1 The Companies are jointly and severally liable for the obligations set out in this Debenture.

4.2 The Lender may wholly or partly release or compromise, or grant time or other indulgence in respect of, any Company's liability, without affecting its rights against the other Companies, or any other person.

5 PRESERVATION OF RIGHTS

5.1 No requirement to commence proceedings against the Borrower

The Lender will not need to commence any proceedings under the Loan Agreement before claiming or commencing proceedings under this Debenture.

5.2 Conclusive evidence of certain matters

However, as against any Company:

- (a) any judgement or order of a court in England and Wales or in connection with the Loan Agreement; and
- (b) any statement or admission of the Borrower in connection with the Loan Agreement,

shall be binding and conclusive as to all matters of fact and law to which it relates.

6 COVENANT TO PAY

Each Company shall on demand pay to the Lender or discharge, as the case may be, all the Secured Liabilities when the Secured Liabilities become due.

7 SECURITY

By way of continuing security in favour of the Lender for the payment and discharge of the Secured Liabilities, each Company with full title guarantee hereby charges to the Lender or assigns to the Lender (as the case may be) the property set out below in the manner set out below (the assignment set out below is an absolute assignment for the purposes of Section 136 of the LPA (Legal assignments of things in action) and is not made by way of charge only).

7.1 Property

By way of first fixed charge the Property and all Rights relating to such Property.

7.2 Contracts

By way of absolute legal assignment, the Contracts.

7.3 Book Debts and Bank Accounts

By way of first fixed charge, the Book Debts and each Bank Account possessed or controlled by it.

7.4 Insurance

By way of first fixed charge, the Property Insurance and the Asset Insurance.

7.5 Intellectual Property

By way of first fixed charge, all the Intellectual Property owned, possessed or controlled by it.

7.6 Plant and Machinery

By way of first fixed charge, the Plant and Machinery.

7.7 Shares and Derivative Assets

By way of first fixed charge, the Shares and Derivative Assets.

7.8 Goodwill

By way of first fixed charge, all the goodwill and uncalled capital for the time being of it.

7.9 Related Rights

By way of first fixed charge, the Related Rights under or in connection with the Shares and Derivative Assets, each Bank Account, the Property Insurance and the Asset Insurance, the Contracts, the Book Debts and the Fixed Plant and Machinery.

7.10 Floating charge

By way of first floating charge, all the undertaking and assets of it whatsoever, wherever situate, whether movable, immovable, present or future (including, without limitation, its uncalled capital for the time being and all the undertaking and assets of it referred to above which are, for any reason, not validly charged or assigned pursuant to Clause 7.1 (*Property*) to Clause 7.9 (*Related Rights*) (inclusive) of this Debenture). Such floating charge being a qualifying floating charge for the purposes of paragraph 14 of schedule B1 of the Insolvency Act, the provisions of such paragraph applying to such floating charge.

8 CONVERSION OF FLOATING CHARGE

8.1 Conversion by notice

The Lender may by notice to each Company convert the floating charge contained in this Debenture into a fixed charge as regards such Charged Property as the Lender may specify (whether generally or specifically) in that notice:

- (a) if it considers that it would be desirable to do so in order to protect, preserve or supplement the charges over the Charged Property or the priority of those charges; or
- (b) on, or at any time following, the occurrence of an Event of Default which is continuing; or

or any of them.

8.2 Automatic conversion

If, without the prior written consent of the Lender, any Company creates any Security Interest other than a Permitted Security Interest over any of the Charged Property not expressed to be subject to a fixed charge under this Debenture, or attempts to do so, or if any person levies or attempts to levy any distress, attachment, execution or other legal process against any of such Charged Property, the floating charge created by this Debenture over the Charged Property the subject of such Security Interest or process will automatically, without notice, be converted into a fixed charge as soon as such event occurs.

FURTHER ASSURANCE

Each Company shall:

- (a) forthwith, at any time if so required by the Lender, at its own expense execute and deliver to the Lender such further legal or other mortgages, charges, assignments, securities, authorities and documents as the Lender may in its discretion require of the whole or such part of the Charged Property as the Lender may specify, in such form as the Lender may in its discretion require, to secure the payment or discharge of the Secured Liabilities, including, without limitation, in order to vest the whole or such part of the Charged Property in the Lender, the nominee of the Lender or in any purchaser from the Lender or the Receiver;
- (b) pending the execution and delivery of any such assignments, hold such Charged Property upon trust for the Lender subject to the provisions of this Debenture; and
- (c) pending the execution and delivery of any such mortgages, charges, or other security, hold such Charged Property subject to the provisions of this Debenture.

10 PERFECTION OF SECURITY

10.1 Each Company shall, promptly upon the request of the Lender from time to time, give or join the Lender in giving:

- 10.1.1 a notice in the form set out in Part 1 of SCHEDULE 2 (Form of Notice of Charge – Bank Accounts not with the Lender) to each bank or financial institution in respect of each Bank Account of a Company opened or maintained with it; and
- 10.1.2 each such notice shall be duly signed by or on behalf of the relevant Company and each Company shall use all reasonable endeavours to procure that each of the persons on whom any such notice is served promptly provides to the Lender a duly signed acknowledgement of that notice in the form set out in Part 2 of SCHEDULE 2 or in such other form in any case as the Lender may reasonably require.

11 BANK ACCOUNTS

11.1 Each Company, during the subsistence of this Debenture:

- 11.1.1 shall promptly deliver to the Lender on the date of this Debenture (and, if any change occurs after the date of this Debenture, on that date), details of each Bank Account maintained by it with any bank or financial institution; and
- 11.1.2 shall not, without the Lender's prior written consent or as otherwise permitted under the Finance Documents, permit or agree to any variation of the rights attaching to any Bank Account (save for any changes to the terms and conditions of such Bank Accounts that are unilaterally imposed by the relevant financial institution and which are notified to the Lender by the relevant Company) or open or close any Bank Account unless such Bank Account closure is notified in advance to the Lender.

11.2 Bank Accounts: Operation before the occurrence of an Event of Default

- 11.2.1 Subject to the provisions of the Loan Agreement, each Company shall, prior to the occurrence of an Event of Default which is continuing, be entitled to receive,

withdraw or otherwise transfer any credit balance from time to time on any Bank Account, in each case, in the ordinary course of its business.

11.3 Bank Accounts: Operation after the occurrence of an Event of Default

11.3.1 After the occurrence of an Event of Default which is continuing, no Company shall be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Bank Account except with the prior written consent of the Lender or as otherwise permitted under the Finance Documents.

11.4 Bank Accounts: Application of Moneys

11.4.1 The Lender shall, upon the occurrence of an Event of Default which is continuing, be entitled without notice to apply, transfer or set-off any or all of the credit balances from time to time on any Bank Account in or towards the payment or other satisfaction of all or part of the Secured Liabilities in accordance with Clause 21.7 (Application of Proceeds).

12 BOOK DEBTS

12.1 No dealing with Book Debts

12.1.1 No Company shall at any time during the subsistence of this Debenture, without the prior written consent of the Lender or as otherwise permitted by the Loan Agreement, sell, factor, discount, transfer, assign, lend or otherwise dispose of any of the Book Debts or enter into any agreement to do any of the foregoing.

12.2 Proceeds of Book Debts

12.2.1 Each Company shall get in and realise the Book Debts in the ordinary course of business and pay the proceeds of those Book Debts into a Bank Account.

13 DEPOSIT OF DOCUMENTS AND TITLE DEEDS

13.1 Each Company shall deposit with the Lender (and the Lender during the continuance of this security may hold and retain):

- (a) all deeds and documents of title relating to the Property including, without limitation, all Occupational Leases;
- (b) all stock or share certificates or other documents of title to or representing the Shares together with such duly executed transfers or assignments with the name of the transferee, date and consideration left blank as the Lender may require;
- (c) all such deeds and documents of title (if any) relating to the Book Debts as the Lender may from time to time specify;
- (d) copies of all the Contracts certified to be true copies by one director of, or solicitor acting for, it; and
- (e) copies of all policies of insurance held by, or written in favour of, it certified to be true copies by one director of, or solicitor acting for, it.

13.2 Each Company shall:

- (a) after an occurrence of an Event of Default which is continuing procure the registration in the books of the Issuer of the transfer of the Shares and the Derivative Assets to the Lender (or the Nominees as the Lender may require), the entry of Lender (or the Nominees as the Lender may require) in the register of members of the Issuer as the holder or holders of the Shares and the Derivative Assets, and the issue of new share certificates in respect of the Shares and the Derivative Assets to the Lender (or the Nominees as the Lender may require); and
- (b) upon the accrual, offer, issue or receipt of any Derivative Assets deliver or pay to the Lender or procure the delivery or payment to the Lender of all such Derivative Assets or the stock or share certificates or other documents of title to or representing them together with such duly executed transfers or assignments with the name of the transferee, date and consideration left blank as the Lender may require.

14 NEGATIVE PLEDGE

No Company shall save as permitted under the Loan Agreement:

- (a) create, purport to create or allow to subsist, any Security Interest over the whole or any part of the Charged Property except for any Permitted Security Interest;
- (b) convey, assign, transfer, or agree to convey, assign or transfer the whole or any part of the Charged Property;
- (c) permit or agree to any variation of the rights attaching to the whole or any part of the Charged Property;
- (d) do, cause or permit to be done anything which may in the opinion of the Lender, in any way depreciate, jeopardise or otherwise prejudice the value to the Lender (whether monetary or otherwise) of the whole or any part of the Charged Property; or
- (e) release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts save as expressly provided in this Debenture.

15 DIVIDENDS, VOTING RIGHTS AND NOMINEES

15.1 Dividends and voting rights

For so long as no Event of Default has occurred and is continuing, each Company may:

- (a) receive and retain all dividends, interest and other income deriving from and received by it in respect of the Shares and the Derivative Assets; and
- (b) exercise all voting and other rights and powers attached to the Shares and the Derivative Assets, provided that such exercise does not adversely affect the Shares and the Derivative Assets and is not otherwise inconsistent with the Debenture and provided further that none of the Companies shall exercise any right or power if such action would adversely affect the value of the Shares and the Derivative Assets or if such action would be inconsistent with this Debenture.

15.2 **Trustee powers**

The Lender may at its discretion (in the name of the relevant Company or otherwise, subject to Clause 15.1 (*Dividends and voting rights*)), after an Event of Default which is continuing has occurred and without any consent or authority on the part of any Company) exercise all the powers given to trustees by Sections 3 to 7 (inclusive) of the Trustee Act 2000 in respect of those Shares and the Derivative Assets subject to a trust.

15.3 **Lender's powers of enforcement over Shares and the Derivative Assets**

15.3.1 Following the occurrence of an Event of Default which is continuing, all dividends, interest and other income forming part of the Shares and the Derivative Assets shall, unless otherwise agreed between the Lender and the Companies, be paid without any set-off or deduction whatsoever to an interest bearing suspense account in the name of the Lender and shall be retained by the Lender until applied as hereinafter provided as part of the Shares and the Derivative Assets and any such monies which may be received by any Company shall, pending such payment, be held in trust for the Lender.

15.3.2 The Lender shall not have any duty as to any Shares and Derivative Assets and shall incur no liability for:

- (a) ascertaining or taking action in respect of any calls instalments, conversions, exchanges, maturities, tenders or other matters in relation to any Shares and Derivative Assets or the nature or sufficiency of any payment whether or not the Lender has or is deemed to have knowledge of such matters; or
- (b) taking any necessary steps to preserve rights against prior parties or any other rights pertaining to any Shares and Derivative Assets; or
- (c) for any failure to present any interest, coupon or any bond or stock drawn for repayment or for any failure to pay any call or instalment or to accept any offer or to notify any Company of any such matter or for any failure to ensure that the correct amounts (if any) are paid or received in respect of the Shares and the Derivative Assets.

15.4 **Custody**

The Lender shall be entitled to provide for the safe custody by third parties of all stock and share certificates and documents of title deposited with the Lender or Nominees at the expense of any Company and shall not be responsible for any loss of or damage to any such certificates or documents.

16 **REPRESENTATIONS AND WARRANTIES**

16.1 **General**

Each Company makes the representations and warranties set out in this Clause to the Lender.

16.2 **Status**

It is duly incorporated and validly existing under the laws of England and Wales and is fully qualified and empowered to own its assets and carry out its business.

16.3 **Powers**

It has power to enter into this Debenture, to exercise its rights and perform its obligations hereunder, and has taken all necessary corporate and other action to authorise the execution, delivery and performance and any other documents referred to herein.

16.4 **Authorisations**

All acts, conditions, authorisations and other things required to be done, fulfilled and performed by it in order:

- (a) to enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it in this Debenture;
- (b) to ensure that the obligations expressed to be assumed by it in this Debenture are legal, valid and binding; and
- (c) to make this Debenture admissible in evidence in England and Wales,

have been done, fulfilled and performed and are in full force and effect.

16.5 **No filing**

Under the laws of England and Wales in force at the date hereof, it is not necessary that this Debenture be filed, recorded or enrolled with any court or other authority in England and Wales or that any stamp, registration or similar tax be paid on or in relation to this Debenture (or where it is so required, this Debenture has been so filed, recorded or enrolled or such stamp, registration or other tax has been paid) other than registration of this Debenture pursuant to the Companies Act 2006.

16.6 **Legal validity**

The obligations expressed to be assumed by it in this Debenture are legal and valid obligations binding on it in accordance with the terms of this Debenture.

16.7 **Insolvency**

It has not taken any corporate action nor have any other steps been taken or legal proceedings been started or threatened against it for its winding-up, dissolution or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any of its revenues or assets.

16.8 **No default**

No event of default is outstanding or might result from the execution and performance of this Debenture, nor is any other event outstanding which constitutes (or, with the giving of notice, lapse of time, determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing, might constitute) a default under any document which is binding on it, or on any of its revenues or assets, to an extent or in a manner which might have a Material Adverse Effect in relation to it.

16.9 Non-conflict

It does not require the consent, approval or authority of any other person to enter into or perform its obligations under this Debenture and its entry into and performance of, and the transactions contemplated by, this Debenture will not:

- (a) constitute any breach of, or default under, any contractual, governmental or public obligation binding upon it;
- (b) conflict with its constitutional documents; nor
- (c) result in the creation or imposition of (or enforceability of) any Security Interest over the whole or any part of its undertaking or assets of the Company pursuant to the provisions of any agreement or document other than this Debenture.

16.10 No deduction

It will not be required to make any deduction or withholding from any payment it may make under this Debenture.

16.11 Litigation

No action, arbitration or administrative proceeding of or before any court, tribunal or agency is current, pending or threatened which might, if adversely determined have a Material Adverse Effect in relation to it or any other member of the Group.

16.12 No undisclosed Security Interest

Save as disclosed to the Lender in writing before the date of this Debenture, no Security Interest exists over all or any of its present or future revenues or assets.

16.13 Future Security Interest

Except as contemplated by this Debenture, the execution of this Debenture by it and its exercise of the rights and performance of its obligations hereunder will not result in the existence of or oblige it to create any Security Interest over all or any of its present or future revenues or assets.

16.14 Other circumstances

It is not aware of any facts or circumstances that have not been disclosed to the Lender which might have a Material Adverse Effect in relation to it.

16.15 Ownership of the Charged Property

It is absolutely, solely and beneficially entitled to all the Charged Property as from the date it or any part of it falls to be charged under this Debenture and the rights of it in respect of the Charged Property are free from any Security Interest of any kind other than a Permitted Security Interest.

16.16 No disposal

It has not sold or agreed to sell or otherwise disposed of, or agreed to dispose of, the benefit of all or any of its right, title and interest in and to the Charged Property.

16.17 Times when representations made

The representations and warranties set forth in this Clause are given and made on and as of the date of this Debenture, shall survive the execution of this Debenture and are continuing representations and warranties which are deemed to be repeated during the continuance of the security constituted by this Debenture.

17 UNDERTAKINGS

Each Company gives each of the undertakings contained in this Clause to the Lender.

17.1 Duration

The undertakings in this Clause shall remain in force during the continuance of the security constituted by this Debenture.

17.2 To comply with statutes

It shall comply with all requirements of any Authority, all obligations under any statute and all bylaws and regulations relating to the whole or any part of the Charged Property.

17.3 Business

It shall comply with all laws and regulations material to the carrying on of its business if failure to comply would result in a Material Adverse Effect.

17.4 Books of account

It shall keep proper books of account relating to its business of it and permit the Lender to inspect its assets, books and records at reasonable times upon reasonable notice.

17.5 To provide information

It shall furnish to the Lender forthwith on demand by the Lender such information and supply such documents or papers relating to the Charged Property from time to time as the Lender may in its discretion require.

17.6 Access and information

It shall:

- (a) upon prior written notice, permit the Lender, its representatives and agents free access at all reasonable times to examine and take copies and extracts from the records, books of account and statutory books of it;
- (b) furnish the Lender with all additional information which the Lender may in its discretion require in connection with such examination; and
- (c) co-operate and comply with all reasonable requests relating to such examination.

17.7 Property and Asset Insurance

It shall:

- (a) insure and keep insured all its property and assets of an insurable nature which are, customarily insured by persons carrying on a similar business to it against loss or damage by fire and other risks normally insured against by such persons in a sum equal to the replacement value of the same with reputable independent insurance companies or underwriters;
- (b) effect the Property Insurance and the Asset Insurance and it shall procure at the request of the Lender that the interest of the Lender is noted on all policies of Property Insurance and Asset Insurance in such manner as the Lender may in its absolute discretion require;
- (c) duly and punctually pay all premiums and any other monies necessary for maintaining the Property Insurance and the Asset Insurance in full force and effect;
- (d) produce to the Lender on request copies of all policies with respect to the Property Insurance and the Asset Insurance; and
- (e) immediately give notice to the Lender of any occurrence which gives rise, or might give rise, to a claim under any policy of insurance relating to the Property Insurance, the Asset Insurance or both and, except with the prior written consent of the Lender, it shall not agree to settlement of any such claim.

If any Company at any time fails to perform any of its obligations contained in this Clause, the Lender may effect or renew such insurance as the Lender thinks fit and each Company shall reimburse the Lender for the Costs thereby incurred on demand. Such Costs will bear interest at the Default Rate from the date of payment by the Lender until the date of reimbursement.

17.8 Insurance monies

17.8.1 Any monies received by virtue of any insurance relating to the whole or any part of the Charged Property (whether effected pursuant to this Debenture or otherwise) will be deemed to be part of the Charged Property. Each Company shall apply all such monies in making good, or in recouping expenditure incurred in making good, any loss or damage or, if the Lender in its discretion so requires, towards discharge of the Secured Liabilities.

17.8.2 Each Company shall ensure that all such monies as are referred to in Clause 17.8.1 which are not paid directly by the insurers to the Lender shall be held by the recipient upon trust for the Lender and be applied by it in accordance with Clause 17.8.1.

17.8.3 This Clause applies whether or not this Debenture has become enforceable.

17.9 To repair

Each Company shall:

- (a) at all times keep in good and substantial repair and condition all the Charged Property including, without limitation, all buildings, erections and structures on and in the Property;
- (b) keep all Plant and Machinery in good repair, working order and condition and fit for its purpose; and

- (c) where it is uneconomic to repair any part of the Charged Property, replace such part by another similar asset of equal or greater quality and value.

18 COMPANY'S PERFORMANCE OF COVENANTS

If any Company fails to perform any of the undertakings contained in Clause 17.9 (*To repair*), the Lender may perform any such covenant at such Company's expense and such Company shall reimburse the Lender for the Costs of such performance on demand. Nothing in this Debenture shall oblige the Lender to perform any covenant of any Company.

19 DEFAULT

19.1 Enforcement

This Debenture will become enforceable upon the occurrence of an Event of Default which is continuing or if any Company requests the Lender to appoint a receiver and/or an administrator or any analogous officer or person having similar right and duties in any jurisdiction relevant to any Company over the whole or any part of its undertaking or assets or any analogous proceeding occurs in any jurisdiction relevant to any Company.

19.2 Consequences of default

At any time after the occurrence of any Event of Default which is continuing, the Lender in its absolute discretion may by written notice to any Company:

- (a) declare the Secured Liabilities to be immediately due and payable, together with all accrued interest thereon and any other sums then owed by any Company under this Debenture and, upon that declaration, such sums shall become immediately due and payable without demand or notice of any kind, all of which are hereby expressly waived by each Company; or
- (b) declare the Secured Liabilities to be due and payable on demand of the Lender; and/or
- (c) declare the security constituted by this Debenture to be enforceable.

20 STATUTORY POWER OF SALE

20.1 For the purposes of all powers implied by statute, and in particular the power of sale under Section 101 of the LPA (Powers incident to estate or interest in a mortgage), the Secured Liabilities will be deemed to have become due when the security created by this Debenture becomes enforceable and Section 103 of the LPA (Regulation of exercise of power of sale) and Section 93 of the LPA (Restriction on consolidation of mortgages) will not apply.

20.2 The statutory powers of leasing conferred on the Lender are extended so as to authorise the Lender to lease, make arrangements for leases, accept surrender of leases and grant options on such terms and conditions as the Lender may in its discretion think fit. The Lender is not obliged to comply with any of the provisions of Section 99 (Leasing powers of mortgagor and mortgagee in possession) and Section 100 (Powers of mortgagor and mortgagee in possession to accept surrenders of leases) of the LPA.

20.3 Each of the Lender and the Receiver may exercise such person's statutory power of sale in respect of the whole or any part of the Property.

21 RECEIVER

21.1 Appointment of Receiver

21.1.1 At any time after the security constituted by this Debenture has become enforceable, whether or not the Lender has entered into or taken possession of the whole or any part of the Charged Property pursuant to this Debenture:

- (a) the Lender may, by writing under the hand of any authorised officer of the Lender, appoint any person to be a receiver and/or an administrator of the Charged Property and such person shall, with effect from the date of such appointment, be a "**Receiver**";
- (b) subject to the Insolvency Act the Lender may, from time to time, in similar manner, remove the Receiver and appoint another in his place;
- (c) the Lender may, either at the time of appointment or at any time thereafter, fix the remuneration of the Receiver;
- (d) the Lender and any Nominee wheresoever situate may, without further notice and without the restrictions contained in Section 103 of the Law of Property Act 1925 (Regulation of exercise of power of sale), exercise in respect of all or any part of the Shares and the Derivative Assets all the powers and rights exercisable by the registered holder of the Shares and the Derivative Assets and all other powers conferred on mortgagees by the Law of Property Act 1925 as varied or extended by this Debenture; and
- (e) the Lender and any Nominee wheresoever situate may apply any dividends, interest or other payments received or receivable by the Lender or by such Nominee in respect of the Shares and the Derivative Assets as if they were proceeds of sale.

None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.

21.1.2 The Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Debenture or otherwise, upon such terms and for such periods of time as he may in his discretion think fit and may from time to time terminate any such delegation. The Lender shall not be liable to any Company for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever.

21.2 Powers of Receiver

The Receiver has all the powers to do or abstain from doing anything which any Company could do or abstain from doing in relation to the Charged Property including, without limitation the powers conferred by Section 109 of the LPA (Appointment, powers, remuneration and duties of receivers) and, in the case of a Receiver who is an administrative receiver, the powers conferred by Section 29 of the Insolvency Act (Definitions) and Schedule 1 to the Insolvency Act (Powers of administrator or administrative receiver), and in particular the Receiver may:

- (a) carry on, manage or concur in carrying on managing the whole or any part of the business of any Company as he may in his discretion think fit;
- (b) in each case as he may in his discretion think fit:

- (i) manage, insure, repair, decorate, maintain, alter, improve, renew or add to the Charged Property or concur in so doing;
 - (ii) commence or complete any building operations on the Property; and
 - (iii) apply for and maintain any planning permissions, building regulations, approvals and any other permissions, consents or licences;
- (c) sell, exchange, convert into money and realise the Charged Property or concur in so doing by public auction or private contract and generally in such manner and on such terms as he may in his discretion think fit. Without prejudice to the generality of the foregoing, he may do any of these things for any valuable consideration, including, without limitation, cash, shares, stock, debentures or other obligations. Any such consideration may be payable in a lump sum or by instalments spread over such period as he may in his discretion think fit;
- (d) in each such case in such manner and generally on such terms as he may in his discretion think fit, with all the powers of an absolute beneficial owner:
- (i) let, hire or lease (with or without premium) and accept surrenders of leases or tenancies or concur in so doing;
 - (ii) grant rights, options or easements over and otherwise deal with or dispose of, and exercise all rights, powers and discretions incidental to, the ownership of the Charged Property; and
 - (iii) exchange or concur in exchanging the Charged Property.

The Receiver may exercise any such power by effecting such transaction in the name or on behalf of any Company or otherwise;

- (e) for the purpose of exercising any of the powers, authorities or discretions conferred on him by or pursuant to this Debenture or of defraying any Costs (including, without limitation, his remuneration) which are incurred by him in the exercise of such powers, authorities or discretions or for any other purpose, to raise and borrow money or incur any other liability either unsecured or secured on the Charged Property, either in priority to the security constituted by this Debenture or otherwise, and generally on such terms as he may in his discretion think fit. No person lending such money is to be concerned to enquire as to the propriety or purpose of the exercise of such power or as to the application of any money so raised or borrowed;
- (f) make, or require the directors of any Company to make, such calls upon the shareholders of any Company in respect of any uncalled capital of any Company as the Receiver may in his discretion require and enforce payment of any call so made by action (in the name of any Company or the Receiver as the Receiver may in his discretion think fit) or otherwise;
- (g) settle or compromise any claim by, adjust any account with, refer to arbitration any dispute with, and deal with any question or demand from, any person who is, or claims to be, a creditor of any Company, as he may in his discretion think fit;

- (h) settle or compromise any claim, adjust any account, refer to arbitration any dispute and deal with any question or demand relating in any way to the Charged Property, as he may in his discretion think fit;
- (i) bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to the Charged Property as he may in his discretion think fit;
- (j) promote the formation of any Subsidiary of any Company with a view to such Subsidiary purchasing, leasing, licensing or otherwise acquiring an interest in the Charged Property;
- (k) arrange for the purchase, lease, licence or acquisition of an interest in the Charged Property by any such Subsidiary for any valuable consideration, including, without limitation, cash, shares, debentures, loan stock, convertible loan stock or other securities, profits or a sum calculated by reference to profits, turnover, royalties, licence fees or otherwise, whether or not secured on the undertaking or assets of such Subsidiary and whether or not such consideration is payable or receivable in a lump sum or at any time or any number of times by instalments spread over such period, as the Receiver may in his discretion think fit;
- (l) arrange for such Subsidiary to trade or cease to trade as the Receiver may in his discretion think fit;
- (m) appoint and discharge any manager, officer, agent, professional adviser, employee and any other person, upon such terms as he may in his discretion think fit;
- (n) give valid receipts for all monies and execute all assurances and things which he may in his discretion think proper or desirable for realising the Charged Property;
- (o) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions, whether required under environmental legislation or by the Lender or otherwise and comply with all lawful orders and directives of all Authorities regarding environmental legislation; and
- (p) do all such other acts and things as the Receiver may in his discretion consider to be incidental or conducive to any of the matters or powers set out in this Debenture or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property.

21.3 Receiver as agent of the Company

The Receiver is at all times and for all purposes the agent of each Company. Subject to the provisions of the Insolvency Act, each Company is solely responsible for all the Receiver's acts, defaults, neglect and misconduct of any nature whatsoever and for his remuneration and Costs, to the exclusion of liability on the part of the Lender.

21.4 No obligation

The Receiver is not obliged to exercise any of the powers set out in this Clause.

21.5 Several power

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Lender specifies otherwise in the appointment of such Receiver.

21.6 Powers exercisable by the Lender

21.6.1 The Lender may exercise all powers granted to the Receiver by this Debenture, whether as attorney of the Companies or otherwise.

21.6.2 The powers of the Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Lender as provided in Clause 20 (*Statutory Power of Sale*) or otherwise and so that, inter alia, such powers are and remain exercisable by the Lender in respect of that part of the Charged Property in respect of which no appointment of a Receiver by the Lender is from time to time subsisting.

21.7 Application of proceeds

The provisions of Sections 99 to 109 inclusive of the LPA are varied and extended to the extent that all monies received by the Receiver be applied in the following order:

- (a) in full payment of his remuneration and the Costs of realisation including, without limitation, all Costs of, or incidental to, any exercise of any power referred to in this Debenture, including, without limitation, all outgoings paid by the Receiver;
- (b) providing for the matters specified in paragraphs (i) to (iii) inclusive of Section 109 (8) of the LPA (Appointment, powers, remuneration and duties of receiver);
- (c) in or towards satisfaction of any debts or other imposts which are by statute made payable in preference to the Secured Liabilities to the extent to which such debts or imposts are made so payable;
- (d) if so required by the Lender in its discretion, in or towards satisfaction of the Secured Liabilities; and
- (e) to the person entitled to any surplus.

22 PROTECTION OF THIRD PARTIES

22.1 Any person (including, without limitation, any purchaser, mortgagor or mortgagee) (in this Clause a "**purchaser**") dealing with the Lender may assume without inquiry that:

- (a) some part of the Secured Liabilities has become due;
- (b) a demand for such Secured Liabilities has been duly made; and
- (c) such Secured Liabilities have become due within the meaning of Section 101 of the LPA (Powers incident to estate or interest in a mortgage).

22.2 No purchaser dealing with the Receiver or the Lender is to be concerned to enquire whether any power exercised or purported to be exercised by the Receiver or the

Lender has become exercisable, or as to the propriety or regularity of any sale by, or other dealing with, the Receiver or the Lender. Any such sale or dealing is deemed to be within the powers conferred by this Debenture and to be valid and effective accordingly. All the protection to purchasers contained in Section 104 (Conveyance on sale) and Section 107 (Mortgagee's receipt, discharges etc) of the LPA and Section 42(3) of the Insolvency Act (Prohibition upon enquiry into administrative receiver's powers) apply to any purchaser.

23 NO LIABILITY AS MORTGAGEE IN POSSESSION

23.1 Mortgagee's liability

Neither the Lender nor the Receiver is:

- (a) liable to account as mortgagee in possession in respect of the Charged Property; nor
- (b) liable for any loss upon realisation or exercise of any power, authority or right of the Lender or the Receiver arising under this Debenture, nor for any act, default, neglect, or misconduct of any nature whatsoever.

23.2 Possession

If the Lender or the Receiver enters into possession of the Charged Property, such person may at any time go out of possession at the discretion of such person.

24 REASSIGNMENT

Subject to Clause 27.2, upon irrevocable discharge in full of the Secured Liabilities the Lender shall reassign to the relevant Company all of such Company's rights, title, interest and benefit in and to the Contracts.

25 POWER OF ATTORNEY

25.1 Each Company irrevocably appoints, by way of security the Lender, each person deriving title from the Lender and the Receiver, jointly and severally to be its attorney (with full power to appoint substitutes and to sub-delegate) for it, in its name, on its behalf and as its act and deed or otherwise to sign or execute any deed or document or do any act or thing which such Company is, or may become, obliged to sign, execute or do pursuant to this Debenture or which the Lender, the Receiver or any person deriving title from the Lender or the Receiver may in the discretion of such person think fit in connection with the exercise of any of the powers of such person or the realisation of any security constituted by this Debenture.

25.2 Without prejudice to the generality of the foregoing, each Company unconditionally undertakes to the Lender, and separately to the Receiver and to each person deriving title from the Lender or the Receiver, that it shall ratify and confirm anything done or purported to be done by any attorney appointed pursuant to this Clause.

26 CUMULATIVE AND CONTINUING SECURITY

26.1 This Debenture is a continuing security to the Lender regardless of any intermediate payment or discharge of the whole or any part of the Secured Liabilities and will not be prejudiced or affected by any act, omission or circumstance which, but for this Clause, might affect or diminish its effectiveness.

- 26.2 The security constituted by this Debenture is in addition to, is not in substitution for, is without prejudice to, and does not merge with, any rights whatsoever which the Lender may have, whether in respect of the Secured Liabilities or otherwise, including, without limitation, any rights arising under any other Security Interest, any bill, note, guarantee, contract or applicable rule of law.
- 26.3 Any receipt, release or discharge of the security constituted by, or of any liability arising under, this Debenture shall not release or discharge any Company from any liability which may exist independently of this Debenture to the Lender.
- 26.4 Where the security constituted by this Debenture initially takes effect as a collateral or further security to any other Security Interest held by the Lender then, notwithstanding any receipt, release or discharge given in respect of such other Security Interest, this Debenture shall take effect as an independent security for any monies, liabilities or other sums secured by such other Security Interest.

27 AVOIDANCE OF PAYMENTS

- 27.1 No assurance, security or payment which may be avoided under the law or subject to an order of the court made under any law relating to bankruptcy, insolvency, administration or winding-up, including, without limitation, the Insolvency Act, and no release, settlement or discharge given or made by the Lender on the faith of any such assurance, security or payment, prejudices or affects the right of the Lender:
- (a) to recover any monies from any Company (including, without limitation, any monies which it is compelled to refund under Chapter X (Malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions) of the Insolvency Act and any Costs payable by it incurred in connection with such process); or
 - (b) to enforce the security constituted by this Debenture to the full extent of the Secured Liabilities.
- 27.2 The Lender may at its discretion retain the security so created as security for the Secured Liabilities for a period of one month plus any statutory period within which any such assurance, security or payment can be avoided or invalidated notwithstanding any release, settlement, discharge or arrangement given or made by the Lender.
- 27.3 If at any time within the period referred to in Clause 27.2 any person takes any step whatsoever relating to (i) the winding-up or administration of any Company or (ii) any arrangement with the creditors of any Company, the Lender may retain the whole or any part of the security constituted by this Debenture for such further period as the Lender may in its discretion think fit. Such security will be deemed to have been held and remained held by the Lender as security for the payment to the Lender of the Secured Liabilities.
- ## **28 PRIOR CHARGES**
- 28.1 If there subsists any prior Security Interest against the Charged Property and either, any step is taken to exercise any power or remedy conferred by such Security Interest or the Lender or the Receiver exercises any power of sale pursuant to this Debenture, the Lender may redeem such prior Security Interest or procure the transfer of such Security Interest to itself and may settle and pass the accounts of the person entitled to such Security Interest. Any accounts so settled and passed are conclusive and binding on any Company.

- 28.2 The Companies shall reimburse the Lender for any Costs incurred by the Lender in exercise of its rights under this Clause.

29 PAYMENTS AND WITHHOLDING TAXES

The Companies shall pay and discharge the Secured Liabilities without any set-off, counterclaim, restriction or condition, without regard to any equities between any Company and the Lender and free and clear of, and without deduction or withholding for, or on account of, any Taxes, except to the extent that any Company is required by law to deduct or withhold any Taxes on any amounts payable under this Debenture, in which case it shall pay to the Lender such additional amount as may be necessary in order to ensure that the net amount received by the Lender after the required deduction or withholding (including, without limitation, any required deduction or withholding on such additional amount) be equal to the amount that the Lender would have received had no such deduction or withholding been made. Any additional amount paid under this Clause shall be treated as agreed compensation and not as interest.

30 CURRENCY

- 30.1 All monies received or held by the Lender or any Receiver in respect of the Secured Liabilities may, from time to time after demand has been made, be converted into such other currency as the Lender in its absolute discretion considers necessary or desirable to cover the obligations and liabilities actual or contingent of any Company in that other currency at the Exchange Rate for purchasing that other currency with the existing currency.
- 30.2 If and to the extent that any Company fails to pay the amount due on demand the Lender may in its absolute discretion without notice to any Company purchase at any time thereafter so much of any currency as the Lender considers necessary or desirable to cover the obligations and liabilities of any Company in such currency hereby secured at the Exchange Rate for purchasing such currency with sterling and any Company hereby agrees to indemnify the Lender against the full sterling cost incurred by the Lender for such purchase.
- 30.3 Neither the Lender nor any Receiver shall be liable to any Company for any loss resulting from any fluctuation in exchange rates before or after the exercise of the foregoing powers.
- 30.4 No payment to the Lender (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of any Company in respect of which it was made unless and until the Lender shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability actual or contingent expressed in that currency the Lender shall have a further separate cause of action against any Company, shall be entitled to enforce the security constituted by this Debenture to recover the amount of the shortfall and such amount will bear interest in at the Default Rate from the date of payment by the Lender until the date of reimbursement.

31 ASSIGNMENT

- 31.1 The Lender may assign, transfer, novate or dispose of any of, or any interest in, its rights and obligations under this Debenture, without regard to any equities between any Company and the Lender and without the consent of any Company.

31.2 The Lender may disclose to any person with whom it is proposing to enter into (or has entered into) any kind of assignment, transfer, novation or disposal in relation to this Debenture any information concerning each Company and its Subsidiaries (if any) as the Lender may in its discretion think fit.

31.3 No Company may assign, transfer, novate or dispose of any of, or any interest in, its rights and obligations under this Debenture.

32 **WAIVERS**

No failure or delay or other relaxation or indulgence on the part of the Lender to exercise any power, right or remedy shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

33 **SEVERABILITY**

Each of the provisions of this Debenture is distinct and severable from the others and if at any time one or more of such provisions is or becomes illegal, invalid or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

34 **NOTICES**

34.1 The addresses to which any notices under its Debenture shall be sent are:

The Lender

BMS Finance S.A.R.L
55, Avenue Pasteur, L-2311
Luxembourg, Grand Duchy of
Luxembourg with a copy to BMS
Finance AB Limited at
5th Floor, One Hammersmith
Broadway, London, W6 9DL

Fax: 020 7000 1233
email: Shane.Lanigan@bms-finance.com; Martin.Ling@bms-finance.com

Attention: Shane Lanigan/Martin
Ling

The Companies

1st Floor
Clareville House
26/27 Oxendon Street
London
SW1Y 4EL

Fax: 020 7930 1540
email: dvafai@bfinance.com
Attention: David Vafai

34.2 Each party may give any notice, demand or other communication under or in connection with this Debenture by letter, facsimile, email or comparable means of communication addressed to the other party at the address identified with its name below. Any such communication will be deemed to be given as follows:

- (a) if personally delivered, at the time of delivery;
- (b) if by letter, at noon on the Business Day following the day such letter was posted (or in the case of airmail, seven days after the envelope containing the same was delivered into the custody of the postal authorities); and

- (c) if by facsimile transmission, email or comparable means of communication during the business hours of the addressee at the time when such communication is received in readable form then on the day of transmission, otherwise on the next following Business Day.

34.3 In proving such service it shall be sufficient to prove that personal delivery was made or that such letter was properly stamped first-class, addressed and delivered to the postal authorities or in the case of facsimile transmission or other comparable means of communication, that a confirming hard copy was provided promptly after transmission.

35 **LAW AND JURISDICTION**

35.1 This Debenture shall be governed by and construed in accordance with English law.

35.2 Each Company agrees that any legal action or proceedings arising out of or in connection with this Debenture against any Company or any of its assets may be brought in the High Court of Justice in England and irrevocably and unconditionally submits to the jurisdiction of such court. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Lender to take proceedings against any Company in whatsoever jurisdictions it thinks fit, nor shall the taking of proceedings in any one or more jurisdiction preclude the taking of proceedings in any other jurisdiction, whether concurrently or not. Each Company waives objection to such court on the grounds of inconvenient forum or otherwise as regards proceedings in connection with this Debenture and agrees that the judgment or order of such court in connection with this Debenture is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

36 **COUNTERPARTS**

This Debenture may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Debenture.

37 **THIRD PARTY RIGHTS**

Unless expressly provided in this Debenture, no term of this Debenture is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

This Debenture has been executed and delivered as a deed on the date stated at the beginning of this Debenture.

Schedule 1
The Companies

Company	Details
bfinance Acquisition Limited	1 st Floor Clareville House, 26/27 Oxendon Street, London SW1Y 4EL
bfinance International Limited	1 st Floor Clareville House, 26/27 Oxendon Street, London SW1Y 4EL
bfinance UK Limited	1 st Floor Clareville House, 26/27 Oxendon Street, London SW1Y 4EL

Schedule 2
Form of Notice of Charge – Bank Accounts not with the Lenders
Part 1 – Form of Notice

To: [Name of relevant bank or financial institution]

Address: []
 [Date]

Dear Sirs

BMS FINANCE S.A.R.L (the "**Lender**") and each of bfinance Acquisition Limited, bfinance International Limited and bfinance UK Limited (each a "**Company**" and together the "**Companies**") HEREBY GIVE NOTICE that by a charge contained in a debenture dated [•] and made between the Company and the Lender (the "**Debenture**") the Company charged to the Lender by way of first fixed charge all of its present and future right, title and interest in and to all moneys from time to time deposited in or standing to the credit of any bank account with any bank or financial institution, including the following account(s) (each a "**Relevant Bank Account**") maintained with you:

[Specify accounts: account name, account number, details of branch etc].

Accordingly, each Company hereby irrevocably and unconditionally instructs and authorises you:

- (a) to disclose to the Lender, without any reference to or further authority from any Company and without any enquiry by you as to the justification for such disclosure, such information relating to any of the Relevant Bank Accounts and the moneys from time to time deposited in or standing to the credit of any of the Relevant Bank Accounts as the Lender may at any time and from time to time request you to disclose to it;
- (b) subject to the terms of this notice of charge (the "**Notice**"), to hold all moneys from time to time deposited in or standing to the credit of any of the Relevant Bank Accounts to the order of the Lender and to pay or release all or any part of such moneys in accordance with the written instructions of the Lender at any time and from time to time; and
- (c) to comply with the terms of any other written notice or instructions that you receive at any time and from time to time from the Lender in any way relating to the Debenture, any of the Relevant Bank Accounts or the moneys from time to time deposited in or standing to the credit of any of the Relevant Bank Accounts without any reference to or further authority from any Company and without any enquiry by you as to the justification for or validity of such notice or instructions.
- (d) The Lender has agreed that each Company may withdraw any moneys from any of the Relevant Bank Accounts without any reference to or further authority from the Lender except to the extent that the Lender gives you notice to the contrary. Upon and after the giving of such notice,

each Company shall cease to be entitled to make any such withdrawal to the extent specified in the notice.

Each Company confirms that:

- (i) in the event of any conflict between communications received from it and from the Lender, the communication from the Lender shall prevail;
- (ii) none of the instructions, authorisations or confirmations in this Notice can be revoked or varied in any way except with the Lender's specific written consent; and
- (iii) any written notice or instructions given to you by the Lender in accordance with this Notice shall be conclusive.

Kindly acknowledge receipt of this Notice and confirm your agreement to it by signing the enclosed form of acknowledgement and returning it to the Lender at 5th Floor, Hammersmith Broadway, London W6 9DL for the attention of Shane Lanigan/Martin Ling.

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
bfinance Acquisition Limited

.....
for and on behalf of
bfinance International Limited

.....
for and on behalf of
bfinance UK Limited

.....
for and on behalf of
bfinance UK Limited

Part 2 – Form of Acknowledgement

To: BMS FINANCE S.A.R.L

Address: 55, Avenue Pasteur, L-2311 Luxembourg, Grand Duchy of
Luxembourg with a copy to BMS Finance AB Limited at 5th Floor,
One Hammersmith Broadway, London, W6 9DL

Attention: [Date]

Dear Sirs

We acknowledge receipt of the Notice of Charge of which this is a copy. Terms and expressions defined in that Notice shall have the same meanings when used in this acknowledgment. We agree to and confirm the following:

- (a) we accept and will comply with the terms of the Notice;
- (b) we have not received notice of any other charge, assignment or other third party right or interest whatsoever in, of, over or affecting any of the Relevant Bank Accounts;
- (c) we have not claimed or exercised and will not claim or exercise (except with the Lender's prior written consent) any security interest, right of set-off, consolidation or counterclaim or any other right against or in respect of any of the Relevant Bank Accounts, except in respect of our usual administrative and transactional fees and charges in relation to the Relevant Bank Account in question; and
- (d) we shall not permit any Company to make any withdrawal from any of its Relevant Bank Accounts after receipt by us of a notice from the Lender prohibiting such withdrawals to the extent specified in that notice.

Yours faithfully

.....

for and on behalf of

[name of relevant bank or financial institution]

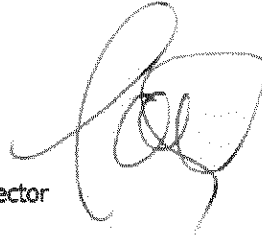
EXECUTION PAGE

EXECUTED and DELIVERED as a DEED
for and on behalf of **BMS FINANCE**
S.A.R.L.

by: *Joap Meijer*
Class A Manager

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)
)
)

Manager Director



In the presence of:

Witness:



Witness name: *ROBERTA CIGREDANI*

Address: *55, AVENUE PASTEUR, L-2311 LUXEMBOURG*

Occupation: *ADMINISTRATOR*

EXECUTED and DELIVERED as a DEED
for and on behalf of **BFINANCE UK
LIMITED**

by: D. VARENI

)
)
) 

Director

Director/Secretary

EXECUTED and DELIVERED as a DEED
for and on behalf of **BFINANCE
ACQUISITION LIMITED**

by: D. VARENI


)
)
) 

Director

Director/Secretary

EXECUTED and DELIVERED as a DEED
for and on behalf of **BFINANCE
INTERNATIONAL LIMITED**

by: D. VARENI

)
)
) 

Director

Director/Secretary

