



Registration of a Charge

Company name: **C & D HOLDINGS LIMITED**

Company number: **04023769**

Received for Electronic Filing: **29/08/2017**



X6DTAGTK

Details of Charge

Date of creation: **22/08/2017**

Charge code: **0402 3769 0005**

Persons entitled: **PNC BANK, NATIONAL ASSOCIATION**

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: **SQUIRE PATTON BOGGS (UK) LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 4023769

Charge code: 0402 3769 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 22nd August 2017 and created by C & D HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 29th August 2017 .

Given at Companies House, Cardiff on 31st August 2017

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 August 2017

C & D HOLDINGS LIMITED
and
C&D TECHNOLOGIES (U.K.) LIMITED
as Obligors

and

PNC BANK, NATIONAL ASSOCIATION
as Collateral Agent

DEBENTURE

Subject to the terms of the
ABL Intercreditor Agreement (defined herein)

Slaughter and May
One Bunhill Row
London EC1Y 8YY
XWY/CLXP

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THIS DEBENTURE is made on 22 August 2017

PARTIES:

- (1) **C & D HOLDINGS LIMITED**, incorporated in England and Wales with company number 04023769 whose registered office is at Unit 25 Romsey Industrial Estate, Greatbridge Road, Romsey, Hampshire, SO51 0HR ("**Holdings**");
- (2) **C&D TECHNOLOGIES (U.K.) LIMITED**, incorporated in England and Wales with company number 02765371 whose registered office is at Unit 25 Romsey Industrial Estate, Greatbridge Road, Romsey, Hampshire, SO51 0HR ("**Technologies**", and together with Holdings, the "**Obligors**" and each an "**Obligor**"); and
- (3) **PNC Bank, National Association** as collateral agent for the Secured Parties (as defined below) (the "**Collateral Agent**").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms defined in the ABL Credit Agreement shall, unless otherwise defined in this Deed, have the same meaning when used in this Deed and in addition:

"**ABL Intercreditor Agreement**" has the meaning given to it in the ABL Credit Agreement.

"**ABL Credit Agreement**" means the asset-based revolving credit agreement entered into on or around the date of this Deed between the Obligors as UK Borrowers, the other Loan Parties thereto, the Lenders party thereto and PNC Bank, National Association as Administrative Agent and Lead Arranger.

"**Accession Deed**" means a deed substantially in the form set out in Schedule 2 (*Form of Accession Deed*), with such amendments as the Collateral Agent may approve or reasonably require.

"**Costs and Expenses**" means costs, charges, losses, liabilities, expenses and other sums (including legal, accountants' and other professional fees) and any Taxes thereon.

"**Delegate**" means a delegate or sub-delegate appointed pursuant to Clause 19.2 (*Delegation*).

"**Dissolution**" means an event or circumstance as described in Section 7.01(h) or Section 7.01(i) (*Events of Default*) of the ABL Credit Agreement.

"**Enforcement Event**" means any Event of Default that is continuing.

"**Event of Default**" means any event or circumstance specified as such in the ABL Credit Agreement.

"Insurance Policy" means any policy of insurance, insurance or indemnity but excluding any third party liability policy) in which an Obligor may from time to time have an interest (to the extent of its interest) together with all Related Rights.

"Insurance Rights" means all amounts payable to an Obligor under or in connection with an Insurance Policy and all rights of an Obligor in connection with those amounts.

"Intellectual Property Rights" means all rights in know-how, patents, designs, copyrights, trade marks, any database rights, and any other associated or similar (in nature or effect) rights anywhere in the world, whether registered or not, and including all applications for registration of any of them and rights to apply for them in any part of the world and all rights.

"Investments" means:

- (a) any equity securities including shares and stock;
- (b) any debt securities and other forms of instrument giving rise to or acknowledging indebtedness including bonds, notes, certificates of deposit, depositary receipts, loan stock and debenture stock;
- (c) all interests in collective investment schemes; and
- (d) all warrants, options and other rights to subscribe, purchase, call for delivery or otherwise acquire any investments of a type described in the foregoing paragraphs,

and includes each Obligor's rights in or in respect of and claims relating to Investments of a type specified in (a) to (d) above (and whether or not on a fungible basis), including any rights or claims against any trustee, nominee, depositary, intermediary, fiduciary, custodian or clearance or settlement system and all Related Rights.

"Loan Documents" shall have the meaning given to it in the ABL Credit Agreement.

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Act 1980 and Foreign Limitation Periods Act 1984, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of England and Wales; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the legal opinion issued by Slaughter and May on or around the date of this Deed in respect of (amongst others) this Deed.

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

"Obligors" means each of the Obligors and each company which grants Security over its assets in favour of the Collateral Agent by executing an Accession Deed.

"Permitted Lien" has the meaning given to it in the ABL Credit Agreement.

"Receivables" means any debts and monetary claims owing to an Obligor, including any such claims relating to or derived from any Intellectual Property, any Investments, any Relevant Contracts or any Insurance Policy, in each case together with any proceeds of such debts and monetary claims and all Related Rights.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

"Related Rights" means, in relation to any asset:

- (a) the proceeds of sale or other disposal of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all other assets and rights at any time receivable or distributable in respect of, or in exchange for, that asset;
- (d) the benefit of all rights in respect of or appurtenant to that asset (including, the benefit of all claims, distributions, covenants for title, warranties, guarantees, indemnities and security interests); and
- (e) any moneys and proceeds paid or payable in respect of that asset,

and (to the extent not included in paragraphs (a) to (e) above), in relation to Investments, includes all cash dividends, interest and other sums paid or payable in respect of any Investments.

"Relevant Contracts" means any contract or agreement to which an Obligor is a party from time to time or in which an Obligor otherwise has an interest, together with all Related Rights.

"Secured Obligations" has the meaning given to the term "Obligations" in the ABL Credit Agreement.

"Secured Parties" has the meaning given to it in the ABL Credit Agreement.

"Security" means the security interests constituted or expressed to be constituted in favour of the Collateral Agent by or pursuant to this Deed and any Accession Deed.

"Security Assets" means all the assets which from time to time are the subject of the Security.

"Security Rights" means all rights of the Collateral Agent or any Receiver or Delegate provided by or pursuant to this Deed or by law in respect of the subject matter of this Deed and any Accession Deed.

"Tangible Moveable Property" means any plant, machinery, office equipment, computers, vehicles and other chattels (excluding any for the time being forming part of any Obligor's stock in trade) in which any Obligor may have an interest from time to time, together with all Related Rights.

1.2 Construction of Particular Terms

Unless a contrary intention appears, in this Deed the provisions of Section 1.02 (*Terms Generally*) of the ABL Credit Agreement shall apply as if set out in full in this Deed, save that references to the ABL Credit Agreement shall be construed as references to this Deed and:

- (a) **"assets"** includes properties, revenues and rights of every kind, present, future and contingent and whether tangible or intangible;
- (b) **"authorisation"** or **"consent"** shall be construed as including any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;
- (c) a **"company"** includes any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) **"this Deed"** or any other agreement or instrument is a reference to this Deed or other agreement or instrument as it may have been amended, supplemented, replaced or novated from time to time and includes a reference to any document which amends, supplements, replaces, novates or is entered into, made or given pursuant to or in accordance with any of the terms of this Deed or, as the case may be, the relevant deed, agreement or instrument;
- (e) **"law"** includes any present or future common or customary law, principles of equity and any constitution, decree, judgment, decision, legislation, statute, order, ordinance, regulation, bye-law or other legislative measure in any jurisdiction or any present or future official directive, regulation, guideline, request, rule, code of practice, treaty or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of a person to whom the directive, regulation, guideline, request, rule, code of practice, treaty or requirement is intended to apply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (f) **"qualified person"** means a person who, under the Insolvency Act 1986, is qualified to act as a receiver of the property of any company with respect to which he is appointed or an administrative receiver of any such company;
- (g) **"rights"** includes all rights, title, benefits, powers, privileges, interests, claims, authorities, discretions, remedies, liberties, easements, quasi easements and appurtenances (in each case, of every kind, present, future and contingent); and
- (h) **"security"** includes any mortgage, charge, pledge, lien, security assignment, hypothecation or trust arrangement for the purpose of providing security and any other encumbrance or security interest of any kind having the effect of securing any obligation of any person (including the deposit of moneys or property with a person with the

intention of affording such person a right of lien, set-off, combination or counter-claim) and any other agreement or any other type of arrangement having a similar effect (including any "flawed-asset" or "hold back" arrangement) and "**security interest**" shall be construed accordingly.

1.3 Interpretation of this Deed

- (a) Unless a contrary indication appears, a reference to a time of day shall be construed as referring to London time.
- (b) The terms "include", "includes" and "including" shall be construed without limitation.
- (c) References in this Deed to any Clause or Schedule shall be to a clause or schedule contained in this Deed.
- (d) Clause and Schedule headings are for ease of reference only and shall be ignored in construing this Deed.
- (e) Unless a contrary indication appears, references to any provision of any law are to be construed as referring to that provision as it may have been, or may from time to time be, amended or re enacted, and as referring to all bye laws, instruments, orders, decrees, ordinances and regulations for the time being made under or deriving validity from that provision.
- (f) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Enforcement Event is "**continuing**" if it has not been remedied or waived.
- (g) This Deed is a Loan Document.
- (h) This Deed is subject to the ABL Intercreditor Agreement and in the event of any inconsistency between this Deed and the ABL Intercreditor Agreement, the ABL Intercreditor Agreement shall prevail. In the event of any inconsistency between the provisions of the ABL Intercreditor Agreement and ABL Credit Agreement referenced in this Deed, the former shall prevail.

1.4 Third Party Rights

- (a) Save as otherwise provided in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of this Deed, the consent of any person who is not a party is not required to rescind or vary this Deed at any time.
- (c) Any Receiver or Delegate may, subject to this Clause 1.4 and the Contracts (Rights of Third Parties) Act 1999, rely on any Clause of this Deed which expressly confers rights on it.

2. PAYMENT OF SECURED OBLIGATIONS

2.1 Covenant to Pay

Each Obligor shall, as principal obligor and not merely as surety, pay and discharge the Secured Obligations in accordance with the Loan Documents.

2.2 Interest on Demands

If any Obligor fails to pay any sum payable by it pursuant to this Deed on its due date, interest shall accrue on the overdue amount from the due date until the date of actual payment (both before and after judgment) calculated on a daily basis at the rate determined in accordance with Section 2.13(c) of the ABL Credit Agreement.

3. FIXED CHARGES, ASSIGNMENTS AND FLOATING CHARGE

3.1 Fixed Charges

As continuing security for the full and punctual payment, performance and discharge of the Secured Obligations, with full title guarantee and free of any security interest (save for any Permitted Liens), each Obligor charges all its right, title and interest from time to time in and to each of the following assets in favour of the Collateral Agent as trustee for the Secured Parties, in each case subject to and in accordance with the provisions of the ABL Intercreditor Agreement:

- (a) the Tangible Moveable Property by way of fixed charge;
- (b) the Investments by way of fixed charge;
- (c) the Insurance Rights by way of fixed charge;
- (d) the Relevant Contracts by way of fixed charge;
- (e) the Receivables (other than any claims which are otherwise subject to a fixed charge or assignment (at law or in equity) pursuant to this Deed) by way of fixed charge;
- (f) the Intellectual Property Rights by way of fixed charge;
- (g) all goodwill and rights in relation to the uncalled capital of each Obligor by way of fixed charge; and

, provided that to the extent any necessary third party consent to such fixed charge is required, the relevant asset shall be excluded from the Security above until such third party consent has been obtained in accordance with Clause 12.2 (*Consents*).

3.2 Floating Charge

- (a) As continuing security for the full and punctual payment, performance and discharge of the Secured Obligations, with full title guarantee and free of any security interest (save for any Permitted Liens), each Obligor charges by way of floating charge all its present

and future assets, property, business, undertaking and uncalled capital together with all Related Rights, which are not at any time effectively charged by virtue of Clause 3.1 (*Fixed Charges*), in favour of the Collateral Agent as trustee for the Secured Parties and in accordance with the provisions of the ABL Intercreditor Agreement.

- (b) This floating charge shall be without prejudice to and shall rank behind all fixed Security but shall rank in priority to any other security interest created by an Obligor after the date of this Deed, subject to the provisions of the ABL Intercreditor Agreement.
- (c) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by this Deed.
- (d) If any third party consent is necessary to enable an asset of an Obligor to be the subject of an effective floating charge, in relation to that asset, paragraph (a) is subject to any such consent being obtained.

3.3 Security Assignments

- (a) Each Obligor assigns and agrees to assign absolutely (subject to a proviso for reassignment on redemption) all its present and future right, title and interest in and to:
 - (i) the proceeds of the Receivables;
 - (ii) the proceeds of sale of any Security Assets;
 - (iii) the proceeds of the sale of any Intellectual Property; and
 - (iv) the Insurance Rights.
- (b) To the extent that any asset described in Clauses 3.3(a)(i) to (a)(iv) inclusive is not assignable, the assignment which that clause purports to effect shall operate as an assignment of all present and future rights and claims of a Obligor to any proceeds of the same.
- (c) The Collateral Agent is not obliged to take any steps necessary to preserve any asset assigned in accordance with this Clause 3.3, or to make any enquiries as to the nature or sufficiency of any payment received by it pursuant to this Deed.

4. CRYSTALLISATION OF FLOATING CHARGE

4.1 Crystallisation by Notice

The Collateral Agent may at any time by notice in writing to the relevant Obligor convert the floating charge created by Clause 3.2 (*Floating Charge*) with immediate effect into a fixed charge as regards any property or assets specified in the notice if:

- (a) an Enforcement Event has occurred and is continuing; or

- (b) the Collateral Agent reasonably considers that any of the Security Assets may be in danger of being seized or sold pursuant to any form of legal process or otherwise in jeopardy; or
- (c) the Collateral Agent reasonably considers that it is desirable in order to protect the priority of the Security,

provided that any exercise by the Collateral Agent of this right is subject to the ABL Intercreditor Agreement.

4.2 Automatic Crystallisation

Notwithstanding Clause 4.1 (*Crystallisation by Notice*) and without prejudice to any law which may have a similar effect, the floating charge will automatically and immediately be converted into a fixed charge as regards all the Security Assets subject to the floating charge if:

- (a) any Obligor creates or attempts to create or permits to subsist any security interest (other than any Permitted Liens) affecting any of the Security Assets; or
- (b) any person levies or attempts to levy any distress, attachment, execution or other process against any of the Security Assets; or
- (c) an administrator is appointed in respect of an Obligor.

5. REPRESENTATIONS AND WARRANTIES

Each Obligor makes the representations and warranties set out in this Clause 5 to each Secured Party on the date of this Deed.

5.1 No avoidance

Subject to the provisions of the ABL Intercreditor Agreement, the Legal Reservations and any perfection requirements (including by way of registration with UK Companies House), this Deed creates the security interests which it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of an Obligor or otherwise.

5.2 Ownership of Security Assets

Subject to any enforcement action taken under the ABL Intercreditor Agreement, each Obligor is the sole legal and beneficial owner of all the Security Assets it charges under this Deed.

6. GENERAL UNDERTAKINGS

6.1 Negative Pledge

No Obligor shall create or permit to subsist any security interest over all or any part of the Security Assets other than Permitted Liens and any other security interest contemplated by and in accordance with the ABL Intercreditor Agreement.

6.2 No Disposal

No Obligor shall enter into a single transaction or series of transactions (whether related or not) and whether voluntary or involuntary to sell, transfer, assign, lease, licence or otherwise dispose of any interest in a Security Asset other than as permitted under the ABL Credit Agreement.

6.3 Preservation of Security Assets

- (a) No Obligor shall take or permit any action which is reasonably likely to adversely affect the value or otherwise depreciate, impair or prejudice any Security Asset or the Security Rights or result in an Event of Default.
- (b) Each Obligor shall keep or cause to be kept all of the Security Assets in good and substantial repair and condition.
- (c) Each Obligor shall punctually pay, as they become due, all debts and liabilities which by law would have priority over all or any part of the Secured Obligations.
- (d) Each Obligor shall not fix or permit the affixing of any of the Security Assets to any real property which is not itself a Security Asset.

7. INVESTMENTS

7.1 Perfection of Investments

Each Obligor shall, in relation to the Investments and in each case, subject to the terms of the ABL Intercreditor Agreement:

- (a) deliver to the Collateral Agent or to such agent or custodian as it may specify, all certificates, documents of title and other documentary evidence of ownership and transfers duly executed by the relevant Obligor or its nominee with the name of the transferee left blank; and
- (b) deliver to the Collateral Agent all other documents the Collateral Agent may require to enable the Collateral Agent (or its nominee) to be registered as the owner of, or otherwise to obtain legal title to such Investments.

7.2 Future Investments

In relation to Investments acquired after the date of this Deed, the relevant Obligor shall promptly notify the Collateral Agent and comply with each of the obligations set out in Clause 7.1 (*Perfection of Investments*) within ten Business Days of the date of acquisition of such Investments or otherwise as required by the Collateral Agent (as notified in writing to the relevant Obligor), subject to the terms of the ABL Intercreditor Agreement.

7.3 Undertakings: Investments

- (a) Prior to the occurrence of an Enforcement Event, each Obligor shall:

- (i) exercise all voting rights in relation to the Investments, provided that the exercise of such rights:
 - (A) is not inconsistent with the terms of any Loan Document and this Deed;
 - (B) does not adversely affect the validity or enforceability of any Loan Document or this Deed.
- (b) Each Obligor shall:
 - (i) promptly pay any amounts which may be due or become due in respect of the Investments;
 - (ii) forward copies of all notices, documents and other communications received by it or its nominee in connection with the Investments to the Collateral Agent promptly upon receipt; and
 - (iii) notify any subsequent chargee or person acquiring any interest whatsoever in the Investments of the existence of the Security.

7.4 Role of Collateral Agent or nominee

Each Obligor shall at all times remain liable to observe and perform all of the other conditions and obligations relating to the Investments. The Collateral Agent shall not be required to perform or fulfil any such conditions or obligations.

8. INSURANCE POLICIES

8.1 Perfection: Insurance Policies

- (a) Each Obligor shall if required by the Collateral Agent (acting reasonably) and provided it is in accordance with the terms of the ABL Intercreditor Agreement, deliver to the Collateral Agent (or procure the delivery of) notice, duly executed and substantially in the form set out in Schedule 1 (*Notices*) or otherwise as required by the Collateral Agent, to each relevant counterparty in respect of each Insurance Policy.
- (b) Each Obligor shall use reasonable endeavours to procure as soon as possible that each notice referred to in paragraph (b) above is acknowledged by the recipient substantially in the form set out in Schedule 1 (*Notices*) or otherwise in a form satisfactory to the Collateral Agent.

8.2 Undertakings: Insurance Policies

Each Obligor shall:

- (a) keep the Security Assets insured in accordance with the terms of the ABL Credit Agreement;
- (b) if required by the Collateral Agent, cause each Insurance Policy to contain (in form and substance reasonably satisfactory to the Collateral Agent) an endorsement naming the

Collateral Agent as an additional insured (in respect of liability policies) or a tender loss payee (in respect of property and casualty policies), subject to the terms of the ABL Intercreditor Agreement;

- (c) promptly pay all premiums and other moneys payable under all its Insurance Policies and promptly upon request, produce to the Collateral Agent a copy of each policy and evidence (reasonably acceptable to the Collateral Agent) of the payment of such sums;
- (d) subject to Clause 16.4 (*Security enforceable - Insurance Policies and Contractual Rights*), diligently pursue its rights under each of the Insurance Policies, provided that the exercise of such rights is not inconsistent with the terms of the Loan Documents this Deed; and
- (e) ensure that it does not do, omit to do or permit or suffer to be done or omitted to be done, anything which might render any of its Insurance Policies void, voidable or unenforceable.

9. INTELLECTUAL PROPERTY

- (a) Each Obligor shall, if requested by the Collateral Agent and subject to the provisions of the ABL Intercreditor Agreement, execute all such documents and do all acts as the Collateral Agent may reasonably require to record the interest of the Collateral Agent at the UK Intellectual Property Office in relation to any UK registered Intellectual Property Rights.
- (b) Without prejudice to Clause 11 (*Receivables*) and subject to the terms of the ABL Intercreditor Agreement, if after the date of this Deed, any Obligor (i) proposes to register any existing Intellectual Property right in any register in England and Wales in which it is not already identified as being registered in or (ii) proposes to apply to register any Intellectual Property right in England and Wales not existing on the date of this Deed, such Obligor shall notify the Collateral Agent and, if the Collateral Agent so requires and promptly notifies the Obligor, such Obligor shall ensure that application is made for the security created by this Deed to be recorded, and that any such security is recorded, at the same time (or as soon as reasonably practicable thereafter) as the application or registration (as the case may be) of such Intellectual Property.
- (c) Each Obligor will take such steps as are reasonably necessary (including the institution of legal proceedings) to police its Intellectual Property (where such Intellectual Property is necessary to the conduct of its business) in any territories which are material to its business to ensure proper use of them and to prevent third parties infringing them and take such other steps as are reasonably practicable to maintain and preserve its interests in its Intellectual Property including applying to register any interests therein in any relevant register, in each case where the failure to do so would reasonably be expected to have a Material Adverse Effect.

10. TANGIBLE MOVEABLE PROPERTY

10.1 Perfection: Tangible Moveable Property

Following the occurrence of an Enforcement Event which is continuing, each Obligor shall, promptly on request by the Collateral Agent and subject to the ABL Intercreditor Agreement, affix to any individual item of Tangible Moveable Property in a prominent position a durable notice of this Deed (in any form reasonably required by the Collateral Agent).

10.2 Undertakings: Tangible Moveable Property

Each Obligor shall:

- (a) maintain the Tangible Moveable Property in good and serviceable condition (except for expected fair wear and tear) and use the Tangible Moveable Property in accordance with good industry practice;
- (b) at its own expense, renew and replace any parts of the Tangible Moveable Property when they become obsolete, worn out or damaged to the extent necessary for the conduct of its business and in accordance with good industry practice; and
- (c) where industry standards are in place to which employees are required to be trained before operating Tangible Moveable Property, ensure that such Tangible Moveable Property is not used or handled other than by properly qualified and trained persons.

11. RECEIVABLES

No Obligor shall rescind or cancel any indebtedness evidenced by any Receivable or modify any term thereof or make any adjustment with respect thereto except to the extent permitted under the ABL Credit Agreement or in the ordinary course of business consistent with prudent business practice, or extend or renew any such indebtedness except in accordance with the ABL Credit Agreement or in the ordinary course of business consistent with prudent business practice or compromise or settle any dispute, claim, suit or legal proceeding relating thereto or sell any Receivable or interest therein except in accordance with the ABL Credit Agreement without the prior written consent of the Collateral Agent.

12. FURTHER ASSURANCE

12.1 General

Each Obligor shall (at its own cost), promptly take all action necessary or desirable to:

- (a) ensure that the Security is and remains valid, legally binding and enforceable;
- (b) perfect, preserve or protect the Security and its priority;
- (c) confer on the Collateral Agent security interests over any of its property and assets located in any jurisdiction outside England and Wales equivalent or similar to the Security; and/or

- (d) facilitate the exercise of any and all of the Security Rights and the realisation of the Security Assets (subject to the terms of the ABL Intercreditor Agreement),

including the execution of all such mortgages, charges, assignments and other documents, the giving of all such notices, orders, instructions and directions and the making of all such registrations and filings as the Collateral Agent or any Receiver or Delegate may reasonably consider necessary from time to time, provided that any such actions required shall be in accordance with the ABL Intercreditor Agreement.

12.2 Consents

Each Obligor shall use reasonable endeavours to obtain as soon as possible (in a form satisfactory to the Collateral Agent) any consents necessary to enable each asset of that Obligor to be the subject of the security interest expressed to be created in respect of that asset pursuant to Clause 3 (*Fixed Charges, Assignments and Floating Charge*). Immediately upon obtaining any such consent, the relevant Obligor shall promptly deliver a copy of each consent to the Collateral Agent.

12.3 Implied Covenants for Title

The obligations of each Obligor under this Deed shall be in addition to the covenants for title deemed to be included in this Deed by virtue of Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994.

13. POWER OF ATTORNEY

13.1 Appointment

Each Obligor appoints as its attorney, irrevocably (within the meaning of section 4 of the Powers of Attorney Act 1971) and by way of security for the performance of its obligations under this Deed, the Collateral Agent, each Receiver and any person nominated in writing by the Collateral Agent or Receiver, severally (with full powers of substitution and delegation), on its behalf and in its name or otherwise and as its act and deed, at such time and in such manner as the attorney may think fit:

- (a) to take any action which it is obliged to take under this Deed but has not taken; and
- (b) to take any action required to enable the Collateral Agent to exercise all or any of the Security Rights,

and the taking of action by the attorney or attorneys shall (as between the attorney and any third party) be conclusive evidence to any third party of its right to take such action.

13.2 Ratification

Each Obligor undertakes to ratify and confirm everything that any attorney does or purports to do in the exercise or purported exercise of the power of attorney in Clause 13.1 (*Appointment*).

14. EFFECTIVENESS OF SECURITY

14.1 Continuing Security

- (a) The Security shall remain in full force and effect as continuing security for the Secured Obligations unless and until discharged by the Collateral Agent in accordance with Clause 15 (*Release of Security*).
- (b) No part of the Security will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

14.2 Additional Security

The Security and the Security Rights shall be cumulative, in addition to and independent of every other security which the Collateral Agent or any Secured Party may at any time hold for the Secured Obligations or any other rights provided by law. No prior security held by the Collateral Agent (whether in its capacity as Collateral Agent or otherwise) or any of the other Secured Parties over the whole or any part of the Security Assets shall merge into the Security.

14.3 No Prejudice

Without prejudice to any other provision of this Deed, none of the Security, its priority, the Security Rights nor the liability of any Obligor or any other person for the Secured Obligations shall be prejudiced, reduced, released or otherwise adversely affected by any act, omission, fact or any other thing which but for this Clause 14.3 would or may do so, including:

- (a) any time, waiver or consent granted, or any other indulgence or concession granted to an Obligor or any other person;
- (b) the execution of any Accession Deed by a new Obligor;
- (c) the release of the Obligor or any other person under the terms of any composition or arrangement with any creditor;
- (d) the taking, holding, variation, compromise, exchange, renewal, realisation or release by any person of any rights under or in connection with any security, guarantee, indemnity or any other document including any arrangement or compromise entered into by the Collateral Agent or any other Secured Party with an Obligor or any other person;
- (e) any incapacity, lack of power, authority or legal personality of or Dissolution or change in the members or status of an Obligor or any other person;
- (f) any variation, amendment, waiver, release, novation, supplement, extension or restatement or replacement of any Loan Document, or any other security, guarantee, indemnity or other document, in each case however fundamental and of whatsoever nature; or
- (g) any unenforceability, illegality or invalidity of any obligation of any person under any Loan Document or any other security, guarantee, indemnity or other document.

14.4 Immediate recourse

Each Obligor waives any right it may have of first requiring any Secured Party (or the Collateral Agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from an Obligor under this Deed. The waiver applies irrespective of any law or any provision of this Deed to the contrary.

14.5 Deferral of Rights

- (a) Until such time as the Security has been released in accordance with Clause 15 (*Release of Security*), no Obligor will exercise any rights which it may have by reason of performance by it of its obligations under this Deed:
 - (i) to claim, rank, prove or vote as a creditor of any Loan Party under any of the Loan Documents; or
 - (ii) to receive, claim or have the benefit of any right of the Secured Parties to payment, guarantee, indemnity, contribution or security from or on account of any such party (in whole or in part or whether by way of subrogation or otherwise) under the Loan Documents; and/or
 - (iii) of set-off, combination or counter-claim or in relation to any "flawed-asset" or "hold back" arrangement as against any such party.
- (b) Each Obligor shall hold on trust for, and (subject to the ABL Intercreditor Agreement) pay or transfer to, the Collateral Agent an amount equal to any payment or benefit received by it contrary to paragraphs (a)(i) or (ii) above.
- (c) If any Obligor exercises any right of set-off, combination or counter-claim or any rights in relation to any "flawed asset" or "hold back arrangement" contrary to (a)(iii) above, it will immediately pay or transfer to the Collateral Agent an amount equal to the amount set-off, combined or counterclaimed.
- (d) The Collateral Agent shall apply all amounts received pursuant to (b) and (c) above in accordance with Clause 20 (*Application of Moneys*).

14.6 New Account

At any time after:

- (a) the Collateral Agent or any Secured Party (acting in their capacity as lender or otherwise) receives or is deemed to have received notice of any subsequent security interest affecting all or any part of the Security Assets or any assignment or transfer of the Security Assets which is prohibited by the terms of this Deed or the ABL Credit Agreement; or
- (b) the commencement of the Dissolution of any Obligor,

all payments by or on behalf of an Obligor to the Collateral Agent or any Secured Party (whether in their capacity as lender or otherwise) shall be treated as having been credited to a new

account of the relevant Obligor and not, upon the occurrence of any of the circumstances specified in paragraphs (a) or (b) above, as having been applied in reduction of the Secured Obligations.

14.7 Further Advances

The Collateral Agent confirms on behalf of each Lender that, subject to the terms of the ABL Credit Agreement, that each Lender is under an obligation to make further advances to the Borrowers and that obligation will be deemed to be incorporated into this Deed as if set out in this Deed.

14.8 Insolvency Act 2000

Notwithstanding the other provisions of this Deed, the obtaining of a moratorium, or anything done with a view to obtaining a moratorium, in relation to a voluntary arrangement under the Insolvency Act 1986 for an Obligor, will not, by itself:

- (a) cause any floating charge granted by that Obligor under this Deed to crystallise; nor
- (b) cause restrictions in this Deed or the Loan Documents which would not otherwise apply to be imposed on the disposal of property by that Obligor; nor
- (c) be a ground for the appointment of a Receiver of that Obligor.

15. RELEASE OF SECURITY

15.1 Release of Security Assets

- (a) The Collateral Agent shall, at the request and cost of the Obligors and subject to and in accordance with the provisions of the ABL Credit Agreement and the ABL Intercreditor Agreement, release and discharge the Security to the Obligor (or as it shall direct). The Collateral Agent shall not be obliged to re-assign all or any of the Security Assets, or otherwise discharge any of the Security, in any other circumstances.
- (b) In connection with any release pursuant to this Clause 15.1 (*Release of Security Assets*), the Collateral Agent shall execute and delivery to the Obligors such documents as the Chargors shall reasonably request to evidence such release.

15.2 Reinstatement

If the Collateral Agent reasonably considers, on the basis of independent legal advice, that any payment to, or security or guarantee provided to it is capable of being avoided, reduced or invalidated by virtue of applicable law the liability of the Obligors under this Deed and the Security shall continue as if such amounts had not been paid or as if any such security or guarantee had not been provided.

16. ENFORCEMENT

16.1 Timing of Enforcement

The Security shall be enforceable immediately upon and at any time after the occurrence of an Enforcement Event which is continuing.

16.2 Enforcement Rights

Subject to the provisions of the ABL Intercreditor Agreement, upon or after the Security becoming enforceable the Collateral Agent may, without notice to any Obligor save as expressly provided in Clause 16.5 (*Security enforceable – Investments*) or prior authorisation from any court enforce all or any part of that Security and exercise all or any of the powers, authorities and discretions conferred by the ABL Intercreditor Agreement and the Loan Documents including this Deed or otherwise by law on mortgagees, chargees and Receivers (whether or not it has appointed a Receiver), in each case at the times, in the manner and on the terms it thinks fit.

16.3 Redemption of prior mortgages

At any time after the Security has become enforceable, the Collateral Agent may:

- (a) redeem any prior Security against any Security Asset; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of the holder of any prior Security and any accounts so settled and passed shall be conclusive and binding on the relevant Obligor.

All principal, interest, and documented costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the relevant Obligor to the Collateral Agent on demand.

16.4 Security enforceable - Insurance Policies and Contractual Rights

Upon or after the Security becoming enforceable:

- (a) the Collateral Agent may exercise any of the relevant Obligor's rights under its Insurance Policies and Relevant Contracts; and
- (b) the Relevant Obligor shall hold all moneys received under any Insurance Policies or Relevant Contracts on trust for the Collateral Agent pending payment to the Collateral Agent for application in accordance with Clause 20 (*Application of Moneys*). In relation to the proceeds of any Insurance Policy, each Obligor waives any rights to apply such proceeds to the reinstatement, repair or replacement of the relevant asset.

16.5 Security enforceable – Investments

Upon or after the Security becoming enforceable:

- (a) the Collateral Agent may exercise (or refrain from exercising) any voting rights in respect of the Investments;
- (b) the Collateral Agent may complete the instruments of transfer for all Investments on behalf of the relevant Obligor in favour of itself or such other person as it may select, provided that at any time when any Investments are registered in the name of the Collateral Agent or its nominee, the Collateral Agent shall be under no duty to:
 - (i) ensure that any dividends, distributions or other monies payable in respect of such Investments are duly and promptly paid or received by it or its nominee; or
 - (ii) verify that the correct amounts are paid or received; or
 - (iii) take any action in connection with the taking up of any (or any offer of any) Related Rights in respect of or in substitution for any such Investments;
- (c) the Obligors shall hold all dividends, interest and other moneys arising from the Investments on trust for the Collateral Agent pending payment to the Collateral Agent for application in accordance with Clause 20 (*Application of Moneys*);
- (d) the Obligors shall transfer the Investments into the name of such nominee(s) of the Collateral Agent as it shall require; and
- (e) the Obligors shall exercise (or refrain from exercising) any other rights conferred on or exercisable by the legal or beneficial owner of the Investments in such manner and on such terms as the Collateral Agent may think fit.

16.6 Financial Collateral Regulations

- (a) To the extent that any of the Security Assets, this Deed and the rights and obligations of the parties under this Deed constitute a "security financial collateral arrangement" (as defined in and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003/3226) (the "**Regulations**")), at any time on or after the Security becoming enforceable, the Collateral Agent shall have the benefit of all of the rights of a collateral taker conferred upon it by the Regulations, including the right to appropriate all or any part of the financial collateral (as defined in the Regulations) in or towards discharge of the Secured Obligations.
- (b) The parties agree that the value of the financial collateral (as defined in the Regulations) so appropriated shall be the market value of such financial collateral determined (after appropriation) by the Collateral Agent, acting reasonably, by reference to a public index or by such other process as the Collateral Agent may select, which may be independent valuation.

The parties agree that the method of valuation set out in paragraph (b) above is commercially reasonable methods of valuation for the purposes of the Regulations

17. EXTENSION AND VARIATION OF POWERS CONFERRED BY LAW

17.1 Extension of Power

The powers conferred by section 101 of the LPA as varied and extended by this Deed shall be deemed to arise (and the Secured Obligations shall be deemed due and payable for that purpose) immediately on execution of this Deed. Section 109(1) of the LPA 1925 shall not apply to this Deed.

17.2 Restrictions

The restrictions contained in Sections 93 and 103 of the LPA 1925 shall not apply to this Deed or to the exercise by the Collateral Agent or any Receiver or Delegate of its right to consolidate all or any of the Security with any other security in existence at any time or to its power of sale.

18. APPOINTMENT OF RECEIVERS

18.1 Appointment

At any time:

- (a) on or after any of the Security becoming enforceable (whether or not the Collateral Agent shall have taken possession of the Security Assets); or
- (b) at the written request of an Obligor,

the Collateral Agent may, without notice to the relevant Obligor, appoint, one or more qualified persons to be Receiver or Receivers. If the Collateral Agent appoints more than one person as Receiver, the Collateral Agent may give the relevant persons power to exercise all or any of the powers conferred on Receivers individually as well as jointly and to the exclusion of the other or others of them.

18.2 Scope of appointment

Any Receiver may be appointed either Receiver of all the Security Assets or of such part of the Security Assets as may be specified in the appointment. In the latter case, the rights conferred by Clause 18.4 (*Powers of Receivers*) shall take effect as though every reference in that clause to "rights" were a reference to rights in respect of the specified part of the Security Assets.

18.3 Removal

The Collateral Agent may, by deed or by instrument in writing signed by any officer or other person authorised for such purpose by it (so far as it is lawfully able and subject to any requirement of the court in the case of an administrative receiver), remove any Receiver appointed by it and may, whenever it deems expedient, appoint any one or more other qualified persons in place of or to act jointly with any other Receiver.

18.4 Powers of Receivers

Any Receiver appointed under this Deed will (subject to any contrary provision specified in his appointment but notwithstanding the Dissolution of any Obligor) have:

- (a) all the rights conferred by the LPA 1925 on mortgagors and on mortgagees in possession and on any receiver appointed under the LPA 1925;
- (b) in relation to, and to the extent applicable to, the Security Assets, all the rights of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 as in force at the date of this Deed (whether or not in force at the date of exercise) and all rights of an administrative receiver as may be added to Schedule 1 of the Insolvency Act 1986 after the date of this Deed, in either case, whether or not the Receiver is an administrative receiver;
- (c) the right to take possession of, collect and get in all or any part of the Security Assets and/or income in respect of which he was appointed;
- (d) the right to manage, use and apply all or any of the Security Assets and to exercise (or permit the relevant Obligor or its nominee to exercise) all other rights of an absolute beneficial owner of the Security Assets;
- (e) the right to dispose of or otherwise realise all or any part of the Security Assets in any manner whatsoever;
- (f) the right to redeem or transfer to the Collateral Agent any prior security interest over the Security Assets;
- (g) the right to take any such proceedings (in the name of any of the Obligors or otherwise) as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed (including proceedings for monies in arrears at the date of his appointment);
- (h) the right to enter into or make any such agreement, arrangement or compromise as he shall think fit;
- (i) the right to insure, and to renew any insurances in respect of, the Security Assets as he shall think fit (or as the Collateral Agent shall direct);
- (j) the right to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ his partners and firm);
- (k) the right to:
 - (i) give valid receipts for all monies and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any Security Asset;

- (ii) exercise in relation to a Security Asset all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Security Assets; and
- (iii) use the name of an Obligor for any of the above purposes;
- (l) all the rights expressed to be conferred upon the Collateral Agent in this Deed and all the rights to release the Security Assets from the Security conferred upon the Collateral Agent in the Loan Documents; and
- (m) the right to do all lawful things which in the opinion of the Receiver seem to be incidental or conducive to any of the functions, powers, authorities or discretions conferred on or vested in him, the exercise of the Security Rights or bringing into his hands any assets forming part of, or which when got in would form part of, the Security Assets.

18.5 Agent

Any Receiver shall for all purposes be the agent of the relevant Obligor and therefore deemed to be in the same position as a Receiver duly appointed by a mortgagee under the LPA 1925. The Obligors shall be solely responsible for his contracts, engagements, acts, omissions, defaults and losses and for all liabilities incurred by him and for the payment of his remuneration. No Receiver shall at any time act as, or be deemed to be, agent of the Collateral Agent or any Secured Party.

18.6 Remuneration

Subject to section 36 of the Insolvency Act 1986, the Collateral Agent may from time to time fix the remuneration of any Receiver appointed by it (without being limited to the maximum rate specified in section 109(6) of the LPA 1925) and may direct payment of such remuneration out of moneys accruing to him as Receiver, but the Obligors alone shall be liable for the payment of such remuneration and for all other costs, charges and expenses of the Receiver.

19. DISCRETION AND DELEGATION

19.1 Discretion

Any liberty or power which may be exercised or any determination which may be made under this Deed by the Collateral Agent or any Receiver may, subject to the terms and conditions of the ABL Credit Agreement, be exercised or made from time to time in its absolute and unfettered discretion without any obligation to give reasons.

19.2 Delegation

- (a) Each of the Collateral Agent and any Receiver may at any time delegate all or any of the rights conferred on it by this Deed.
- (b) The delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions as the Collateral Agent may think fit.

- (c) Such delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Collateral Agent or the Receiver itself or any subsequent delegation or revocation.
- (d) Under no circumstances shall the Collateral Agent, nor any Secured Party, nor any Receiver nor any officer, agent or employee of any of them be liable to any Obligor or any other person as a result of or in connection with any act, default, omission or misconduct on the part of any Delegate.

20. APPLICATION OF MONEYS

All moneys arising from the exercise of the powers of enforcement under this Deed shall (except as may be otherwise required by applicable law) be held by the Collateral Agent and any Receiver and applied in the following order of priority (but without prejudice to the right of the Collateral Agent to recover any shortfall from the Obligors):

- (a) in or towards payment of all Costs and Expenses of and incidental to the appointment of any Receiver and the exercise of any of his rights including his remuneration and all outgoings paid by him;
- (b) in or towards the payment or discharge of such of the Secured Obligations in such order as is set out in the ABL Intercreditor Agreement; and
- (c) after all of the Security Assets have been released from the Security in accordance with Clause 15 (*Release of Security*), in payment of any surplus to the relevant Obligor or other person entitled to it,

and section 109(8) of the LPA 1925 shall be deemed varied and extended in such respect.

21. PROTECTION OF THIRD PARTIES

21.1 Consideration

The receipt of the Collateral Agent or any Receiver or Delegate shall be conclusive discharge to a purchaser and any sale or disposal of any of the Security Assets or any acquisition by the Collateral Agent or any Receiver or Delegate shall be for such consideration, and made in such manner and on such terms as it thinks fit.

21.2 Protection of Purchasers

- (a) No purchaser or other person dealing with the Collateral Agent, any Receiver or any Delegate shall be bound to inquire whether the right of the Collateral Agent or such Receiver or Delegate to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Collateral Agent or such Receiver or Delegate in such dealings.
- (b) All the protections given to purchasers from a mortgagee by sections 104 and 107 of the LPA 1925, and to persons dealing with a receiver in section 42(3) of the Insolvency Act 1986, shall apply equally to any person purchasing from or dealing with the Collateral Agent, any Receiver or any Delegate.

22. NO LIABILITY

Neither the Collateral Agent nor any Secured Party nor any Receiver or Delegate nor any officer, agent or employee of any of them will in any circumstances (whether by reason of taking possession of the Security Assets or for any other reason whatsoever):

- (a) be liable in respect of all or any part of the Security Assets, or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of its respective powers;
- (b) be liable to account to the Obligors or any other person for anything except the Collateral Agent's own actual receipts; or
- (c) be liable to the Obligors or any other person as a result of or in connection with:
 - (i) taking any action permitted by this Deed;
 - (ii) any neglect, default or omission in relation to the Security Assets; or
 - (iii) taking possession of or realising all or any part of the Security Assets,

except in each case, to the extent directly caused by fraud or wilful default or negligence on its part.

23. COSTS AND EXPENSES

23.1 Transaction and administration expenses

Each Obligor shall indemnify the Collateral Agent against all documented Costs and Expenses reasonably expended, paid, incurred or debited on account by the Collateral Agent in connection with:

- (a) the negotiation, preparation, execution, stamping, filing, registration and perfection of this Deed;
- (b) any waiver, consent or authorisation sought by an Obligor in relation to this Deed;
- (c) any variation, amendment, extension or modification of, or supplement to, this Deed; and
- (d) the taking, holding, administration or release of any Security or the exercise of any Security Rights.

23.2 Enforcement costs

Each Obligor shall indemnify the Collateral Agent and every Receiver, Delegate or other person appointed by the Collateral Agent under this Deed (each an "Indemnified Party") against all documented Costs and Expenses expended, paid, incurred or debited on account by any Indemnified Party in connection with:

- (a) enforcing, protecting, preserving or realising, or attempting to enforce, protect, preserve or realise, the rights vested in any Indemnified Party by this Deed or by law; and
- (b) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it under the Loan Documents and this Deed.

24. SECURED PARTIES

Each party agrees that the Collateral Agent's interests and rights under and in respect of this Deed shall be held by the Collateral Agent as agent and, to the extent permitted by law, trustee for itself and the Secured Parties for the time being and from time to time on the terms set out in the ABL Credit Agreement and ABL Intercreditor Agreement. Accordingly, unless the context requires otherwise, all references in this Deed to the Collateral Agent mean the Collateral Agent in its capacity as agent and trustee.

25. JOINT AND SEVERAL LIABILITY

The liabilities of each of the Obligors under this Deed shall be joint and several.

26. CERTIFICATES AND DETERMINATIONS

For all purposes, including any legal proceedings, a determination by the Collateral Agent or a copy of a certificate signed by an officer of the Collateral Agent, of the amount of any indebtedness comprised in the Secured Obligations for the time being or at any time shall, in the absence of manifest or proven error, be prima facie evidence against the Obligors as to such amount.

27. ASSIGNMENT

27.1 Assignment by the Collateral Agent

The Collateral Agent may at any time, assign or transfer all of its rights and obligations under this Deed to any successor or additional Collateral Agent appointed in accordance with the terms of the ABL Credit Agreement. Upon such assignment and transfer taking effect, the replacement Collateral Agent shall be and be deemed to be acting as agent and trustee for each Secured Party (as well as for itself) for the purposes of this Deed in place of the previous Collateral Agent.

27.2 Assignment by the Obligors

No Obligor shall assign or transfer, or attempt to assign or transfer, any of its rights or obligations under this Deed.

28. AMENDMENTS

This Deed may not be amended, modified or waived in any respect, otherwise than in accordance with the provisions of the ABL Credit Agreement and except as otherwise provided in the ABL Intercreditor Agreement.

29. NOTICES AND COMMUNICATIONS

Any communication to be made or notices delivered under or in connection with this Deed shall be in writing and, unless otherwise stated, may be made by fax or letter, and shall be made (and deemed effective) in accordance with Section 9.01 (*Notices; Communications*) of the ABL Credit Agreement.

30. SET-OFF

- (a) The Collateral Agent may (but shall not be obliged to) at any time after the occurrence of an Enforcement Event and for so long as the same is continuing set off any obligation of a Obligor under the Loan Documents (contingent or otherwise) against any obligation (whether or not matured) owed by the Collateral Agent to any Obligor, regardless of the place of payment, booking branch or currency of either obligation.
- (b) If the obligations are in different currencies, the Collateral Agent may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (c) If either obligation is unliquidated or unascertained, the Collateral Agent may set off in an amount estimated by it in good faith to be the amount of that obligation.

31. CALCULATIONS AND CERTIFICATES

A certificate of the Collateral Agent specifying the amount of any Secured Obligation due from the Obligors (including details of any relevant calculation thereof) shall be *prima facie* evidence of such amount against the Obligors in the absence of manifest error.

32. REMEDIES AND WAIVERS

No failure to exercise, nor any delay or omission in exercising, on the part of the Collateral Agent, any right provided by law or under this Deed shall impair, affect or operate as a waiver of that or any other right or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Collateral Agent shall be effective unless it is in writing. No single or partial exercise of any right shall prevent any further or other exercise or the exercise of any other right. The rights provided in this Deed are cumulative and not exclusive of any rights provided by law.

33. PARTIAL INVALIDITY

- (a) If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither:
 - (i) the legality, validity or enforceability of the remaining provisions under the law of that jurisdiction or any other jurisdiction; nor
 - (ii) the legality, validity or enforceability of such provision under the law of any other jurisdiction,will in any way be affected or impaired.

- (b) The parties shall enter into good faith negotiations, but without any liability whatsoever in the event of no agreement being reached, to replace any illegal, invalid or unenforceable provision with a view to obtaining the same commercial effect as this Deed would have had if such provision had been legal, valid and enforceable.

34. TRUSTS

If any trust intended to arise pursuant to any provision of this Deed fails or for any reason (including the laws of any jurisdiction in which any assets, moneys, payments or distributions may be situated) cannot be given effect to, the relevant Obligor will pay to the Collateral Agent for application in accordance with Clause 20 (*Application of Moneys*) an amount equal to the amount (or the value of the relevant assets) intended to be so held on trust for the Collateral Agent.

35. EXECUTION AS A DEED

Each of the parties intends this Deed to be a deed and confirms that it is executed and delivered as a deed, notwithstanding the fact that any one or more of the parties may only execute it under hand.

36. COUNTERPARTS

This Deed may be executed in any number of counterparts, and by the parties to this Deed on separate counterparts, but will not be effective until each such party has executed at least one counterpart. Each counterpart shall constitute an original of this Deed, but all the counterparts will together constitute one and the same instrument.

37. JURISDICTION

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) or any non-contractual obligation arising out of or in connection with this Deed (a "**Dispute**").
- (b) The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) This Clause 37 is for the benefit of only the Secured Parties. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

38. GOVERNING LAW

This Deed is governed by and is to be construed in accordance with English law, and any matter, claim or dispute arising out of or in connection with this Deed, whether contractual or non-contractual, is to be governed by and determined in accordance with English law.

IN WITNESS of which this document has been and executed as a deed by the Collateral Agent and each Obligor and is delivered on the date stated at the beginning of this Deed.

Schedule 1
Notices

[LETTERHEAD OF COMPANY]

To: [Insurer]
 [Address]

[Date]

Dear Sirs,

NOTICE OF CHARGE

Policy number [] (the "Policy")

We give you notice that we have charged in favour of **PNC Bank, National Association**, as collateral agent for itself and the Secured Parties, (the "**Collateral Agent**") all amounts payable to us under or in respect of the Policy and all our present and future rights to such amounts [as further specified below].

We hereby instruct and authorise you as follows (notwithstanding any prior instructions to the contrary):

- (a) to disclose to the Collateral Agent any information relating to the Policy required by it from time to time;
- (b) to place an endorsement on the Policy (and all renewals of the Policy) naming the Collateral Agent as [additional insured] [lender loss payee] [and first priority chargee] in respect of the proceeds of all claims; and
- (c) to endorse a copy of this notice and your acknowledgement on the Policy (and any renewals of the Policy).

The instructions in this notice shall remain in full force and effect until the Collateral Agent gives you notice in writing revoking them.

You may comply with the instructions in this notice without any further permission from us and without any enquiry by you as to the justification for or validity of any instruction. In the event of any conflict between communications received from us and from the Collateral Agent, you shall treat the communication from the Collateral Agent as prevailing over the communication from us.

Please confirm your agreement to the contents of this notice by executing and returning an original copy of the Form of Acknowledgement attached to this notice to the Collateral Agent at [address] with a copy to us.

This letter is governed by English law.

Yours faithfully,

.....
For and on behalf of
[the relevant Obligor]

c.c. Collateral Agent

Acknowledgement of Notice of Assignment/Charge of Insurance Policy*[LETTERHEAD OF UNDERWRITER/INSURANCE COMPANY]*

To: **PNC Bank National Association**
[Address]
(as collateral agent for itself and the
Secured Parties, the "**Collateral**
Agent")

[Date]

Dear Sirs,

ACKNOWLEDGEMENT OF NOTICE OF CHARGE

We acknowledge receipt of a notice dated [] (the "**Notice**") (a copy of which is attached to this letter). Words and expressions defined in the Notice shall have the same meanings in this letter.

At the request of the Collateral Agent and Obligor, we confirm that:

- (d) we accept the instructions and authorisations in the Notice and undertake to act in accordance with its terms;
- (e) we have not received notice of any previous assignment, charge, trust, claim or other third party interest or action affecting the Policy and if, we receive any such notice, we shall immediately notify the Collateral Agent;
- (f) so far as we are aware no circumstances exist which would entitle us to exercise any right of set-off or otherwise make any claim or counterclaim under or terminate the Policy, and we shall not assert or seek to exercise any such rights against the Obligor without the prior written consent of the Collateral Agent;
- (g) we will not cancel or otherwise allow the Policy to lapse without giving the Collateral Agent at least 30 days' notice.

We further acknowledge that under no circumstances shall the Collateral Agent be liable for any premiums or other payments in respect of the Policy nor shall the Policy be rendered void, voidable or unenforceable by reason of any non-disclosure by the Collateral Agent.

This letter is governed by English law.

Yours faithfully,

Signed for and on behalf of
[Name of Broker/Underwriter/Insurer]

by _____
(Print Name):

c.c. [the relevant Obligor]

**Schedule 2
Form of Accession Deed**

THIS ACCESSION DEED is made on [•]

PARTIES:

- (1) [•], (the "New Obligor"); and
- (2) **PNC Bank, National Association**, as collateral agent for itself and the other Secured Parties (the "Collateral Agent").

RECITAL:

This deed is supplemental to a debenture dated [•] between the Collateral Agent and the Obligors named therein (the "Debenture").

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

Terms defined in the Debenture shall have the same meaning when used in this deed.

1.2 Construction

Clauses 1.2 (*Construction of Particular Terms*) to 1.4 (*Third Party Rights*) of the Debenture will be deemed to be set out in full in this deed, but as if references in those clauses to the "Debenture" and other similar expressions were references to this deed.

2. ACCESSION OF NEW OBLIGOR

2.1 Accession

The New Obligor agrees to be an Obligor for the purposes of the Debenture with immediate effect and agrees to be bound by all of the terms of the Debenture as if it had originally been a party to it as a Obligor.

2.2 Covenant to pay

The New Obligor as primary obligor covenants with the Collateral Agent (for the benefit of itself and the other Secured Parties) that it will pay or discharge the Secured Obligations in the manner provided for in the Loan Documents.

2.3 Fixed Charges

The New Obligor, as continuing security for the full and punctual payment, performance and discharge of the Secured Obligations, with full title guarantee and free of any security interest

(save for any Permitted Liens) charges all its right, title and interest from time to time in and to each of the following assets in favour of the Collateral Agent as trustee for the Secured Parties:

- (a) the Tangible Moveable Property by way of first fixed charge;
- (b) the Investments by way of first fixed charge;
- (c) the Insurance Rights by way of first fixed charge;
- (d) the Relevant Contracts by way of first fixed charge;
- (e) the Receivables (other than any claims which are otherwise subject to a fixed charge or assignment (at law or in equity) pursuant to this Deed) by way of first fixed charge;
- (f) the Intellectual Property Rights by way of first fixed charge;
- (g) all goodwill and rights in relation to the uncalled capital of the New Obligor by way of first fixed charge; and

in each case subject to obtaining any necessary third party consent to such fixed charge.

2.4 Floating Charge

- (a) As further continuing security for the full and punctual payment, performance and discharge of the Secured Obligations, with full title guarantee and free of any security interest (save for any Permitted Liens), the New Obligor charges by way of first floating charge all its present and future assets, property, business, undertaking and uncalled capital together with all Related Rights, which are not at any time effectively charged by virtue of paragraph 2.3 (*Fixed Charges*), in favour of the Collateral Agent as trustee for the Secured Parties.
- (b) This floating charge shall be without prejudice to and shall rank behind all fixed Security but shall rank in priority to any other security interest created by the New Obligor after the date of this Deed.
- (c) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by this Deed.
- (d) If any third party consent is necessary to enable an asset of the New Obligor to be the subject of an effective floating charge, in relation to that asset, paragraph (a) is subject to any such consent being obtained.

2.5 Crystallisation of Floating Charge

- (a) The Collateral Agent may at any time by notice in writing to the New Obligor convert the floating charge created by paragraph 2.4 (*Floating Charge*) with immediate effect into a fixed charge as regards any property or assets specified in the notice if:
 - (i) an Enforcement Event has occurred and is continuing; or

- (ii) the Collateral Agent reasonably considers that any of the Security Assets may be in danger of being seized or sold pursuant to any form of legal process or otherwise in jeopardy; or
- (iii) the Collateral Agent reasonably considers that it is desirable in order to protect the priority of the Security.

2.6 Automatic Crystallisation

Notwithstanding paragraph 2.5 (*Crystallisation of Floating Charge*) and without prejudice to any law which may have a similar effect, the floating charge will automatically and immediately be converted into a fixed charge as regards all the Security Assets subject to the floating charge if:

- (a) the New Obligor creates or attempts to create or permits to subsist any security interest (other than any Permitted Liens) affecting any of the Security Assets; or
- (b) any person levies or attempts to levy any distress, attachment, execution or other process against any of the Security Assets; or
- (c) an administrator is appointed in respect of an Obligor.

3. NEGATIVE PLEDGE

The New Obligor shall not create or permit to subsist any security interest over all or any part of the Security Assets other than Permitted Liens

4. CONSTRUCTION OF DEBENTURE

The Debenture shall remain in full force and effect as supplemented by this deed, and the Debenture and this deed shall be read together as one instrument on the basis that references in the Debenture to "this Deed" and other similar expressions shall be deemed references to the Debenture as supplemented by this deed.

5. JURISDICTION

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute regarding the existence, validity or termination of this deed) or any non-contractual obligation arising out of or in connection with this deed (a "Dispute").
- (b) The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) This paragraph 5 is for the benefit of only the Secured Parties. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

6. GOVERNING LAW

This deed is governed by and is to be construed in accordance with English law, and any matter, claim or dispute arising out of or in connection with this deed, whether contractual or non-contractual, is to be governed by and determined in accordance with English law.

IN WITNESS of which this document has been and executed as a deed by the Collateral Agent and the New Obligor and is delivered on the date stated at the beginning of this deed.

[INSERT SIGNATURE BLOCKS OF PARTIES TO THE ACCESSION DEED]

The Obligors

EXECUTED as a DEED
by **C & D Holdings Limited** acting by
a director in the presence of a witness

 Director

 Witness

Name of Witness: **ARMANDO F. LAURON JR**

Witness' Occupation: **C.E.O., C.D.**

Witness' Address: **816 S. DELAWARE AVE.
TAMPA, FL. 33606**

EXECUTED as a DEED
by **C&D Technologies (U.K.) Limited** acting by
a director in the presence of a witness

 Director

 Witness

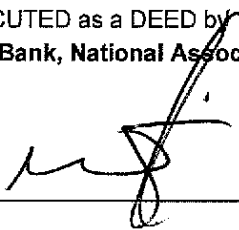
Name of Witness: **ARMANDO F. LAURON JR**

Witness' Occupation: **C.E.O., C.D.**

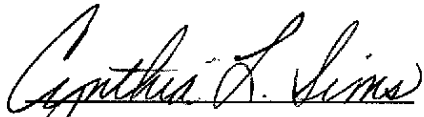
Witness' Address: **816 S. DELAWARE
TAMPA, FL. 33606**

The Collateral Agent

EXECUTED as a DEED by
PNC Bank, National Association



Authorised signatory



Witness

Witness' name: *Cynthia L. Sims*

Witness' occupation: *Administrative Assistant*

Witness' address: *200 S. Wacker Dr, Ste. 600, Chicago, IL 60606*