



**Registration of a Charge**

Company name: **RIP CURL UK LTD**

Company number: **04286576**



X910J2NK

Received for Electronic Filing: **17/03/2020**

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**Details of Charge**

Date of creation: **17/03/2020**

Charge code: **0428 6576 0001**

Persons entitled: **ANZ BANK NEW ZEALAND LIMITED (AND ITS SUCCESSORS IN TITLE AND PERMITTED TRANSFEREES)**

Brief description: **THE REAL PROPERTY SPECIFIED IN THE INSTRUMENT INCLUDING 61 BANK STREET, NEWQUAY, CORNWALL (TITLE NUMBER: CL31043). FOR MORE DETAILS PLEASE REFER TO THE INSTRUMENT.**

**Contains fixed charge(s).**

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **LINKLATERS LLP**



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

Company number: 4286576

Charge code: 0428 6576 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th March 2020 and created by RIP CURL UK LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th March 2020 .

Given at Companies House, Cardiff on 18th March 2020

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

SECURITY AGREEMENT

dated 17 March 2020

created by

*RIP CURL UK LTD*  
as the Original Chargor

in favour of

*ANZ BANK NEW ZEALAND LIMITED*  
acting as Security Trustee

**Linklaters**

Ref: L-291891

Linklaters LLP

*Certified that save for material  
redacted pursuant to section  
859G of the Companies Act  
2006 this copy instrument  
is a correct copy of the  
original instrument.  
Linklaters LLP*

A41226479

*Dated: 17 March 2020*

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THIS DEED is dated 17 March 2020 and made between:

- (1) RIP CURL UK LTD, registration number 04286576, as chargor (the "**Original Chargor**"); and
- (2) ANZ BANK NEW ZEALAND LIMITED as Security Trustee for the Secured Parties (the "**Security Trustee**").

#### Background

- (A) The board of directors of each Chargor (as defined below) is satisfied that entering into this Deed would be most likely to promote the success of that Chargor for the benefit of its members as a whole and to the further benefit and advantage of that Chargor.
- (B) The Security Trustee and each Chargor intend this document to take effect as a deed (even though the Security Trustee only executes it under hand).
- (C) The Security Trustee holds the benefit of this Deed for the Secured Parties on the terms of the Finance Documents.

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Deed:

**"Administrator"** means an administrator appointed under Schedule B1 to the Insolvency Act.

**"Assigned Agreements"** means, in relation to the Chargor, all its right, title and interest from time to time in and to the agreements (if any) described in Schedule 6 (*Assigned Agreements*) and all Related Rights.

**"Additional Chargor"** means a company which grants Security over its assets in favour of the Security Trustee by executing a Security Accession Deed.

**"Bank Accounts"** means, in relation to a Chargor, all its right, title and interest from time to time in and to all current, deposit or other accounts with any bank or financial institution, all balances from time to time standing to the credit of or accrued or accruing on those accounts and all Related Rights.

**"Chargor"** means the Original Chargor or an Additional Chargor.

**"CREST"** means the relevant system (within the meaning of the Uncertificated Securities Regulations) operated by Euroclear UK and Ireland Limited.

**"CREST Rights"** means, in relation to a Chargor, all its right, title and interest from time to time in, against and to:

- (a) any system participant or sponsoring system participant in respect of CREST;
- (b) any account forming part of CREST; and
- (c) any payment obligation of any settlement bank in respect of CREST,

in each case arising in connection with any Investment which is recorded in the relevant operator register of members (within the meaning of the Uncertificated Securities Regulations) as being held in uncertificated form and is transferable through CREST, and all Related Rights, and

provided that the terms system participant, sponsoring system participant and settlement bank shall each have the meaning given to them in the Uncertificated Securities Regulations.

**"Delegate"** means a delegate or sub-delegate appointed by the Security Trustee or a Receiver in accordance with this Deed.

**"Facility Agreement"** means the multi-option syndicated facility agreement dated 25 October 2019 between, among others, Kathmandu Holdings Limited as the Parent, the Facility Agent and the Security Trustee.

**"Fixtures"** means fixtures, fittings and fixed plant, machinery and apparatus.

**"Head Lease"** means any lease pursuant to which title to any Real Property is vested in a Chargor.

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

**"Insurances"** means, in relation to a Chargor, all its right, title and interest from time to time in and to all contracts and policies of insurance of any kind taken out by or on behalf of it and all Related Rights.

**"Intellectual Property"** means, in relation to a Chargor, all its right, title and interest from time to time in and to:

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

and all Related Rights (in each case including any related licences and sub-licences of the same granted by it or to it).

**"Investments"** means, in relation to a Chargor, all its right, title and interest from time to time in and to:

- (a) shares, stocks, debentures, units, bonds, notes, commercial paper, certificates of deposit, depository interests, securities and other investments;
- (b) warrants, options and other rights to subscribe for, purchase or otherwise acquire securities and investments; and
- (c) any other securities or investments deriving from Investments or any rights attaching or relating to securities or investments,

in each case excluding Shares and including whether in certificated or uncertificated form, held through CREST or any other electronic share clearing, transfer or settlement system, and any rights against any custodian, nominee, clearing system or other similar person holding any such right, title or interest on its behalf, and all dividends and other Related Rights.

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

**"Occupational Lease"** means any lease or contractual licence or other right of occupation of all or any part of any Real Property.

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

**"Permitted Disposal"** means a disposal permitted by paragraph (b) of clause 22.4 (*General undertakings*) of the Facility Agreement.

**"Plant and Machinery"** means, in relation to a Chargor, all its right, title and interest from time to time in and to all plant and machinery and all Related Rights.

**"Quasi-Security"** means a transaction under which any member of the Group will:

- (a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any other member of the Group;
- (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

**"Real Property"** means, in relation to a Chargor, all its right, title and interest from time to time in and to any freehold or leasehold property in England and Wales and other real property anywhere in the world, all Fixtures from time to time on that property, and all Related Rights.

**"Receivables"** means, in relation to a Chargor, all its right, title and interest from time to time in and to all book and other debts of any nature, all other rights to receive money (excluding Bank Accounts), and all Related Rights.

**"Receiver"** means a receiver and manager or other receiver appointed in respect of all or any part of the Security Assets and shall, if allowed by law, include an administrative receiver.

**"Related Rights"** means, in relation to a Security Asset:

- (a) any proceeds of sale, transfer or other disposal, lease, licence, sub-licence, or agreement for sale, transfer or other disposal, lease, licence or sub-licence, of that Security Asset;
- (b) any moneys or proceeds paid or payable deriving from that Security Asset;
- (c) any rights, claims, guarantees, indemnities, security or covenants for title in relation to that Security Asset;
- (d) any awards or judgments in favour of a Chargor in relation to that Security Asset; and
- (e) any other assets deriving from, or relating to, that Security Asset.

**"Relevant Lease"** means any lease to which a Chargor is a party as lessee or tenant at the date of this Deed and under the terms of which:

- (a) the grant of a security interest under this deed over a Chargor's rights and interest in that lease is not permitted; or



- (b) the consent of the lessor (howsoever described) is required in order to grant a security interest.

**"Secured Liabilities"** means all indebtedness of that Chargor to the Security Trustee or any other Secured Party under or in connection with any Finance Document (and includes future advances).

**"Secured Party"** has the meaning given to the term "Beneficiary" by the Security Trust Deed.

**"Secured Party Representative"** has the meaning given to the term "Beneficiary Party Representative" by the Security Trust Deed.

**"Security Accession Deed"** means a document substantially in the form set out in Schedule 9 (*Form of Security Accession Deed*).

**"Security Assets"** means all of a Chargor's assets which are subject to security under any Security Document.

**"Security Interests"** means all or any of the security created or expressed to be created in favour of the Security Trustee by or pursuant to this Deed or any Security Accession Deed.

**"Security Trust Deed"** means the security trust deed dated 25 October 2019 between, among others, Kathmandu Holdings Limited as the Parent and ANZ Bank New Zealand Limited as the Security Trustee.

**"Shares"** means, in relation to a Chargor, all its right, title and interest from time to time in and to:

- (a) the shares described in Schedule 4 (*Shares*) and any other shares issued in the future by any person identified in Schedule 4 (*Shares*) as issuer of any such shares;
- (b) the shares described in Schedule 3 (*Shares*) of any Security Accession Deed to which it is a party and any other shares issued in the future by any person identified in Schedule 3 (*Shares*) of that Security Accession Deed as issuer of any such shares;
- (c) warrants, options and other rights to subscribe for, purchase or otherwise acquire any such shares; and
- (d) any other securities or investments deriving from any such shares or any rights attaching or relating to any such shares,

in each case including any rights against any custodian, nominee, clearing system or other similar person holding any such right, title or interest on its behalf, and all dividends and other Related Rights.

**"Uncertificated Securities Regulations"** means the Uncertificated Securities Regulations 2001.

**"VAT"** means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above or imposed elsewhere.

## 1.2 Incorporation of defined terms

Unless a contrary indication appears, terms defined in the Facility Agreement and Security Trust Deed have the same meaning in this Deed.

## 1.3 Construction

- (a) Any reference in this Deed to a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that Finance Document or other agreement or instrument.
- (b) The provisions in clause 1.2 (*Construction*) of the Facility Agreement apply to this Deed, except that references to the Facility Agreement shall be construed as references to this Deed.
- (c) In this Deed any reference to this "Deed" includes, in respect of any Additional Chargor, any Security Accession Deed to which it is a party.

## 1.4 Third Party Rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.

## 1.5 Disposition

The terms of the other Finance Documents and of any other agreement or instrument between the Parties are incorporated into each Finance Document to the extent required for any disposition or purported disposition of all or any part of any Real Property or any other relevant Security Asset contained in any Finance Document to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

# 2. SECURITY INTERESTS

## 2.1 Creation of Security Interests

- (a) Each Chargor, with full title guarantee and as security for the payment of all Secured Liabilities, charges in favour of the Security Trustee:
  - (i) by way of first legal mortgage, all Real Property in England and Wales (including, in respect of the Original Chargor, that described in Schedule 2 (*Real Property*), and in respect of an Additional Chargor, that described in Schedule 1 (*Real Property*) of any Security Accession Deed to which it is a party) owned by it on the date of this Deed or the date of any Security Accession Deed;
  - (ii) by way of first fixed equitable charge, all other Real Property owned by it on the date of this Deed, or (in the case of an Additional Chargor) the date of its Security Accession Deed, all Real Property acquired by it after the date of this Deed or (in the case of an Additional Chargor) the date of its Security Accession Deed and, to the extent not validly and effectively mortgaged under sub-paragraph (i) above, all Real Property in England

and Wales owned by it on the date of this Deed or the date of any Security Accession Deed;

- (iii) by way of first fixed charge, all its Bank Accounts (including, in respect of the Original Chargor, those described in Schedule 3 (*Bank Accounts*) and in respect of an Additional Chargor, those described in Schedule 2 (*Bank Accounts*) of any Security Accession Deed to which it is a party);
  - (iv) by way of first fixed charge, all its Receivables;
  - (v) by way of first fixed charge, all its Assigned Agreements, to the extent not validly and effectively assigned under paragraph (c) below;
  - (vi) by way of first mortgage, all its Shares;
  - (vii) by way of first fixed charge, all its Investments and CREST Rights;
  - (viii) by way of first fixed charge, all its right, title and interest from time to time in and to its uncalled capital and goodwill;
  - (ix) by way of first fixed charge, all its Intellectual Property (including, in respect of the Original Chargor, that described (if any) in Schedule 5 (*Intellectual Property*) and in respect of an Additional Chargor, that described (if any) in Schedule 4 (*Intellectual Property*) of any Security Accession Deed to which it is a party);
  - (x) by way of first fixed charge, all its right, title and interest from time to time in and to its beneficial interest, claim or entitlement in any pension fund;
  - (xi) by way of first fixed charge, all its Plant and Machinery (except that validly and effectively mortgaged or charged under sub-paragraph (i) or sub-paragraph (ii) above);
  - (xii) by way of first fixed charge, all its Insurances, to the extent not validly and effectively assigned under paragraph (b) below; and
  - (xiii) by way of first floating charge, all its undertaking and all its assets, both present and future (including assets expressed to be mortgaged, charged or assigned under this Clause 2.1).
- (b) Each Chargor, with full title guarantee and as security for the payment of all Secured Liabilities, assigns to the Security Trustee by way of security all its Insurances.
- (c) Each Chargor, with full title guarantee and as security for the payment of all Secured Liabilities, assigns to the Security Trustee by way of security all its Assigned Agreements.

## 2.2 Ranking

The floating charge created by each Chargor under Clause 2.1 (*Creation of Security Interests*) ranks:

- (a) behind all the mortgages, fixed charges and assignments created by that Chargor; but
- (b) in priority to any other security over the Security Assets of that Chargor except for security ranking in priority in accordance with paragraph (j) of Schedule 1 (*Rights of Receivers*).

### 2.3 Conversion by notice

The Security Trustee may convert the floating charge over all or any of the Security Assets into a fixed charge by notice to the relevant Chargor specifying the relevant Security Assets:

- (a) if it reasonably considers it desirable to do so in order to protect or preserve the Security Interests over those Security Assets and/or the priority of those Security Interests; and/or
- (b) while an Event of Default is continuing.

### 2.4 Automatic conversion

If:

- (a) any Chargor takes any step to create any security or Quasi-Security in breach of Clause 3.1 (*Negative pledge*) or clause 3.2 (*Negative pledge*) of any Security Accession Deed over any Security Asset subject to a floating charge; or
- (b) any person takes any step to effect any expropriation, attachment, sequestration, distress or execution against any such Security Asset,

the floating charge over the relevant Security Assets shall automatically and immediately be converted into a fixed charge.

### 2.5 Company voluntary arrangement moratorium

Obtaining a moratorium or doing anything with a view to obtaining a moratorium pursuant to Schedule A1 of the Insolvency Act (including any preliminary decision or investigation) shall not cause the floating charge over all or any of the Security Assets to crystallise until the date upon which it is permitted to crystallise in accordance with paragraph 13 of Schedule A1 of the Insolvency Act.

### 2.6 Consents

If the consent of any third party lessor is required to create any security over, or an assignment of, the rights of a Chargor under a Relevant Lease:

- (a) that Chargor shall promptly notify the Security Trustee;
- (b) until the consent of the relevant lessor has been obtained, this Deed shall secure all amounts which that Chargor may receive, or has received, under that Relevant Lease but exclude fixed security over, or any assignment of, those rights;
- (c) if it is proposed by that Chargor or relevant lessor that the Relevant Lease be renewed or amended after the date of this Deed then unless the Security Trustee agrees otherwise, that Chargor shall use reasonable endeavours to agree with the relevant lessor to:
  - (i) amend the terms of that Relevant Lease to ensure that the grant of a security interest under this Deed over that Chargor's rights and interest in that Relevant Lease is permitted; or, as the context requires;
  - (ii) obtain the consent of that lessor (or other person if required under that Relevant Lease) in connection with the grant of security over that Chargor's rights and interest in that Relevant Lease,

and that Chargor will advise the Security Trustee of each lease for which an amendment is made or consent obtained; and

- (d) in any event, each Relevant Lease will be fully and effectively subject to a fixed security or assignment of rights under this Deed on the Security Trustee giving notice to that effect to that Chargor at any time following (and in relation to any one or more Relevant Lease) the earliest of the occurrence of:
  - (i) the declaration of any Event of Default (by either the Facility Agent or Security Trustee);
  - (ii) the occurrence of any Event of Insolvency; or
  - (iii) any Obligor failing to make a payment of principal or interest within three banking days of it falling due under the Facility Agreement.

### **3. RESTRICTIONS ON DEALING WITH SECURITY ASSETS**

#### **3.1 Negative pledge**

No Chargor shall create or permit to subsist any security or Quasi-Security over any Security Asset, other than a Permitted Encumbrance or otherwise as permitted by the Facility Agreement.

#### **3.2 Disposals**

No Chargor shall enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of any Security Asset, other than a Permitted Disposal or otherwise except as permitted by the Facility Agreement.

### **4. FURTHER ASSURANCE**

- (a) Each Chargor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s)):
  - (i) to perfect the security created or intended to be created under or evidenced by this Deed (which may include the execution of a mortgage, charge, assignment or other security over all or any of the assets which are, or are intended to be, the subject of the Security Interests) or for the exercise of any rights, powers and remedies of the Security Trustee or the Secured Parties provided by or pursuant to the Finance Documents or by law;
  - (ii) to confer on the Security Trustee or any other Secured Party security over any property and assets of that Chargor located in any jurisdiction equivalent or similar to the security intended to be conferred by or pursuant to this Deed; and/or
  - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security Interests.
- (b) Each Chargor shall take all such action as is available to it (including making and assisting with all filings, applications and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Security Trustee (for itself and on behalf of each other Secured Party) by or pursuant to this Deed.

## **5. REAL PROPERTY**

### **5.1 Notification**

Each Chargor shall promptly notify the Security Trustee of its acquisition of, or agreement to acquire, any Real Property.

### **5.2 Documents**

Each Chargor shall promptly deposit with the Security Trustee, and the Security Trustee shall be entitled to hold, all title deeds and documents relating to that Chargor's present and future Real Property.

### **5.3 Real Property**

If the Security Trustee gives notice to a Chargor that the Security Trustee will apply to the Land Registry for first registration of any Real Property or the registration of the security created by paragraph (a)(i) and paragraph (a)(ii) of Clause 2.1 (*Creation of Security Interests*) in respect of any Real Property in England and Wales owned by that Chargor and that it intends to submit the relevant forms to the Land Registry, that Chargor shall promptly provide the Security Trustee with all duly completed forms reasonably requested by the Security Trustee and all applicable registration fees.

### **5.4 Unregistered Real Property**

In the case of a Chargor's Real Property in England and Wales, both present and future, which is not registered at the Land Registry and is not required by law or this Deed to be so registered, if the title deeds and documents are not deposited with the Security Trustee, that Chargor shall promptly apply to the Land Charges Registry to register:

- (a) in respect of all such Real Property owned by it on the date of this Deed, this Deed and the security created by paragraph (a)(i) and paragraph (a)(ii) of Clause 2.1 (*Creation of Security Interests*); and
- (b) in respect of all such Real Property acquired by it after the date of this Deed, this Deed, the security created by paragraph (a)(ii) of Clause 2.1 (*Creation of Security Interests*) and any legal mortgage created pursuant to the terms of this Deed.

### **5.5 Title Information Document**

On completion of the registration of any Security Interest pursuant to this Clause 5, the relevant Chargor shall promptly supply to the Security Trustee a certified copy of the relevant Title Information Document issued by the Land Registry or, as the case may be, Certificate of Registration of Land Charge issued by the Land Charges Registry.

### **5.6 Protection of assets**

#### **(a) Each Chargor shall:**

- (i) repair and keep in good and substantial repair and condition all its Real Property which is a Security Asset; and
- (ii) keep all its Fixtures which are Security Assets in good working order and condition, to the extent that failure to do so would materially and adversely affect the value of its Real Property as a whole.

(b) Each Chargor shall not:

- (i) fix or permit the affixing of any Security Asset to any real estate which is not itself a Security Asset; or
- (ii) sever or remove any Fixture, other than for any necessary repairs or replacements or as a Permitted Disposal.

**5.7 Compliance with obligations**

Each Chargor shall comply with any covenants, stipulations, conditions, licences, consents and any other statutory, regulatory or contractual obligations relating to its Real Property or its use.

**5.8 Leases**

Each Chargor shall:

- (a) observe and perform in all material respects all covenants, stipulations and obligations binding upon it as lessee under any Head Lease and as lessor or lessee under any Occupational Lease (and in any event where it is lessee all obligations which, if it fails to so observe and perform may result in termination of its rights as lessee);
- (b) diligently enforce all covenants, stipulations and obligations benefiting it as lessor under any Head Lease or Occupational Lease;
- (c) not do or permit to be done anything under any Head Lease which may result in its forfeiture;
- (d) promptly notify the Security Trustee of anything which may result in the forfeiture or termination of any Head Lease or Occupational Lease; and
- (e) not grant any new Occupational Lease or exercise any of the powers of leasing or agreeing to lease any Real Property vested in or conferred on mortgagors by law.

**5.9 Power to remedy**

- (a) If a Chargor does not comply with any provision of this Clause 5, the Security Trustee, or any agent, contractor or other person required by the Security Trustee, may take any action reasonably required by the Security Trustee to comply with any such provision.
- (b) The cost and expense of any action referred to in paragraph (a) above shall be borne by the relevant Chargor.

**6. BANK ACCOUNTS**

**6.1 Restriction on Bank Accounts**

A Chargor shall not have any Bank Accounts other than, in respect of the Original Chargor, those listed in Schedule 3 (*Bank Accounts*) and in respect of an Additional Chargor, those listed in Schedule 2 (*Bank Accounts*) of any Security Accession Deed to which it is a party, those maintained with a Secured Party or those from time to time designated in writing by the Security Trustee.

**6.2 Operation before Event of Default**

A Chargor 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.

### **6.3 Operation after Event of Default**

While an Event of Default is continuing, a Chargor shall not be entitled to withdraw or otherwise transfer any credit balance from time to time on any Bank Account except with the prior consent of the Security Trustee.

### **6.4 Documents**

Each Chargor shall promptly deliver to the Security Trustee, and the Security Trustee shall be entitled to hold, such documents relating to that Chargor's Bank Accounts as the Security Trustee reasonably requires, including any notice to the relevant bank or financial institution of the Security Interests over them in such form as the Security Trustee requires.

## **7. ASSIGNED AGREEMENTS**

### **7.1 Documents**

Each Chargor shall promptly deliver to the Security Trustee, and the Security Trustee shall be entitled to hold, executed originals of each Assigned Agreement and shall promptly deliver such other documents relating to the Assigned Agreements as the Security Trustee requires.

### **7.2 Notice of assignment**

Each Chargor shall within three Business Days after the date of this Deed give notice of the assignment in paragraph (c) of Clause 2.1 (*Creation of Security Interests*) substantially in the form set out in Schedule 7 (*Form of notice of assignment of Assigned Agreements*) (or in such other form as is acceptable to the Security Trustee) and shall use its reasonable endeavours to ensure that each recipient of any such notice promptly signs and returns the relevant form of acknowledgement.

### **7.3 Chargor still liable**

Each Chargor shall remain liable to perform all its obligations under each Assigned Agreement. Neither the Security Trustee, any Receiver nor any Delegate shall be under any obligation or liability to that Chargor or any other person under or in respect of any Assigned Agreement.

### **7.4 No variation etc.**

#### **(a) A Chargor shall not:**

- (i) amend, supplement, vary or waive (or agree to amend, supplement, vary or waive) any provision of any Assigned Agreement;
- (ii) exercise any right to rescind, cancel or terminate any Assigned Agreement;
- (iii) release any counterparty from any obligations under any Assigned Agreement;
- (iv) waive any breach by any counterparty or consent to any act or omission which would otherwise constitute such a breach; or
- (v) except as provided in this Deed, novate, transfer or assign any of its rights under any Assigned Agreement.

#### **(b) Each Chargor shall promptly enforce all its rights under each Agreement.**

### **7.5 Breach etc.**

#### **(a) Each Chargor shall notify the Security Trustee of:**



- (i) any breach of or default under an Assigned Agreement by it or any other party;
- (ii) any right of it or any other party arising to rescind, cancel or terminate an Assigned Agreement; and
- (iii) any claim made or to be made by it or any other party under or in connection with an Assigned Agreement,

promptly upon becoming aware of the same.

- (b) Each Chargor shall provide the Security Trustee with reasonable details of any breach, default, right or claim of a type referred to in paragraph (a) above. Each Chargor shall not take any action or proceedings in relation to any such breach, default, right or claim except with the prior consent of the Security Trustee.

## **8. RECEIVABLES**

### **8.1 Collection**

Each Chargor shall promptly collect all Receivables.

### **8.2 Restrictions on dealing with Receivables**

Except as permitted by the Facility Agreement, each Chargor shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, factor, transfer, discount or otherwise dispose of all or any part of any of its Receivables.

### **8.3 Documents**

Each Chargor shall promptly deliver to the Security Trustee, and the Security Trustee shall be entitled to hold, such documents relating to that Chargor's Receivables as the Security Trustee requires.

## **9. SHARES**

### **9.1 Notification**

Each Chargor shall promptly notify the Security Trustee of:

- (a) its acquisition of, or agreement to acquire, any Share;
- (b) the declaration, payment, receipt, offer or issue of any Related Right in respect of any Share excluding any cash dividend; and
- (c) any intention of which it becomes aware for any Share to be held in uncertificated form and to be transferable through CREST.

### **9.2 Documents**

Each Chargor shall on the date of this Deed or, as the case may be, the date of its Security Accession Deed and, where Shares are acquired by it after the date of this Deed or the date of its Security Accession Deed, promptly following a request by the Security Trustee:

- (a) deliver to the Security Trustee, or as it directs, and the Security Trustee shall be entitled to hold, all certificates and other documents of title or evidence of ownership in relation to its Shares; and

- (b) deliver to the Security Trustee, or as it directs, and the Security Trustee shall be entitled to hold, transfers of the Shares, each executed in blank, and other documents relating to the Shares reasonably required by the Security Trustee.

**9.3 Voting before enforcement**

At any time prior to the occurrence of an Event of Default which is continuing each Chargor shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Share provided that:

- (a) it does so for a purpose not inconsistent with any Finance Document; and
- (b) the exercise of or, as the case may be, the failure to exercise those rights would not have an adverse effect on the value of the relevant Shares or the Security Assets or the ability of the Security Trustee to realise the Security Interests and would not otherwise prejudice the interests of any Secured Party under any Finance Document.

**9.4 Voting after enforcement**

At any time while an Event of Default is continuing and the Security Trustee has given notice to the relevant Chargor that it intends to exercise its rights under this Clause 9.4:

- (a) the Security Trustee or the Receiver shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Share; and
- (b) each Chargor shall comply or procure the compliance with any directions of the Security Trustee or the Receiver in respect of the exercise of those rights and shall promptly execute and/or deliver to the Security Trustee or the Receiver such forms of proxy as it requires with a view to enabling such person as it selects to exercise those rights.

**9.5 Cash dividends before enforcement**

At any time prior to the occurrence of an Event of Default which is continuing each Chargor shall be entitled to retain any cash dividend deriving from the Shares.

**9.6 Cash dividends after enforcement**

At any time while an Event of Default is continuing each Chargor shall hold any cash dividend deriving from the Shares received by it on trust for the Secured Parties and transfer or pay the same immediately to the Security Trustee or as it may direct.

**9.7 Shares held by nominees of Chargors**

If any Share is held in the name of a nominee of a Chargor, that Chargor shall promptly upon request by the Security Trustee deliver to it an irrevocable power of attorney, expressed to be given by way of security and executed as a deed by that nominee. That power of attorney shall appoint the Security Trustee, each Receiver and each Delegate, as the attorney of the holder and shall be in such form as the Security Trustee requires.

**9.8 Communications**

- (a) Each Chargor shall promptly upon request by the Security Trustee deliver to it a copy of each circular, notice, report, set of accounts or other document received by it or its nominee relating to any of its Shares.

- (b) Each Chargor shall promptly deliver to the Security Trustee a copy of, and comply with, each request for information which is made under section 793 of the Companies Act 2006 or any similar provision contained in any articles of association or other constitutional document relating to any of its Shares.
- (c) If a Chargor does not comply with paragraph (b) above, the Security Trustee may provide any information it has on behalf of that Chargor.

#### **9.9 Payment of calls**

- (a) Each Chargor shall promptly pay all calls or other payments in respect of any of its Shares.
- (b) If a Chargor does not comply with paragraph (a) above, the Security Trustee may pay that call or other payment on behalf of that Chargor.
- (c) The relevant Chargor shall immediately on request by the Security Trustee reimburse the Security Trustee for any payment made by the Security Trustee under this Clause 9.9.

### **10. INVESTMENTS**

#### **10.1 Notification**

Each Chargor shall promptly notify the Security Trustee of:

- (a) its acquisition of, or agreement to acquire, any Investment; and
- (b) the declaration, payment, receipt, offer or issue of any Related Right in respect of any Investment excluding any cash dividend.

#### **10.2 Documents**

Each Chargor shall:

- (a) promptly deliver to the Security Trustee, or as it directs, and the Security Trustee shall be entitled to hold, all certificates and other documents of title or evidence of ownership in relation to its Investments; and
- (b) promptly deliver to the Security Trustee, or as it directs, and the Security Trustee shall be entitled to hold, transfers of the Investments, each executed in blank, and other documents relating to the Investments reasonably required by the Security Trustee.

#### **10.3 Voting before enforcement**

At any time prior to the occurrence of an Event of Default which is continuing each Chargor shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Investment provided that:

- (a) it does so for a purpose not inconsistent with any Finance Document; and
- (b) the exercise of or, as the case may be, the failure to exercise those rights would not have an adverse effect on the value of the relevant Investment or the Security Assets or the ability of the Security Trustee to realise the Security Interests and would not otherwise prejudice the interests of any Secured Party under any Finance Document.

#### **10.4 Voting after enforcement**

At any time while an Event of Default is continuing:

- (a) the Security Trustee or the Receiver shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Investment; and
- (b) each Chargor shall comply or procure the compliance with any directions of the Security Trustee or the Receiver in respect of the exercise of those rights and shall promptly execute and/or deliver to the Security Trustee or the Receiver such forms of proxy as it requires with a view to enabling such person as it selects to exercise those rights.

**10.5 Cash dividends before enforcement**

At any time prior to the occurrence of an Event of Default which is continuing each Chargor shall be entitled to retain any cash dividend deriving from the Investments.

**10.6 Cash dividends after enforcement**

At any time while an Event of Default is continuing each Chargor shall hold any cash dividend deriving from the Investments received by it on trust for the Secured Parties and transfer or pay the same immediately to the Security Trustee or as it may direct.

**10.7 Investments held by nominees of Chargors**

If any Investment is held in the name of a nominee of a Chargor, that Chargor shall promptly upon request by the Security Trustee deliver to it an irrevocable power of attorney, expressed to be given by way of security and executed as a deed by that nominee. That power of attorney shall appoint the Security Trustee, each Receiver and each Delegate, as the attorney of the holder and shall be in such form as the Security Trustee requires.

**10.8 Communications**

- (a) Each Chargor shall promptly upon request by the Security Trustee deliver to it a copy of each circular, notice, report, set of accounts or other document received by it or its nominee relating to any of its Investments.
- (b) Each Chargor shall promptly deliver to the Security Trustee a copy of, and comply with, each request for information which is made under section 793 of the Companies Act 2006 or any similar provision contained in any articles of association or other constitutional document relating to any of its Investments.
- (c) If a Chargor does not comply with paragraph (b) above, the Security Trustee may provide any information it has on behalf of that Chargor.

**10.9 Payment of calls**

- (a) Each Chargor shall promptly pay all calls or other payments in respect of any of its Investments.
- (b) If a Chargor does not comply with paragraph (a) above, the Security Trustee may pay that call or other payment on behalf of that Chargor.
- (c) The relevant Chargor shall immediately on request by the Security Trustee reimburse the Security Trustee for any payment made by the Security Trustee under this Clause 10.9.

## **11. INTELLECTUAL PROPERTY**

### **11.1 Notification**

Each Chargor shall promptly notify the Security Trustee of its acquisition of, or agreement to acquire, (by licence or otherwise) any Intellectual Property, and any application by it or on its behalf to register any Intellectual Property.

### **11.2 Documents**

Each Chargor shall promptly deliver to the Security Trustee, and the Security Trustee shall be entitled to hold, such documents relating to that Chargor's Intellectual Property as the Security Trustee requires.

### **11.3 Maintenance**

Each Chargor shall:

- (a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for its business from time to time;
- (b) use reasonable endeavours to prevent any infringement in any material respect of its Intellectual Property including, where appropriate, commencing and diligently undertaking the prosecution of infringement actions or oppositions;
- (c) make registrations where registration is necessary or desirable and pay all registration fees, renewal fees and taxes necessary to maintain its Intellectual Property in full force and effect and record its interest in that Intellectual Property;
- (d) not use or permit its Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of its Intellectual Property or imperil the right of any member of the Group to use such property;
- (e) not discontinue the use of its Intellectual Property;
- (f) take all steps to record this Deed and restrictions on disposal under this Deed on such registers, in such jurisdictions and within such time limits as the Security Trustee requires in order to perfect the Security Interests over its Intellectual Property; and
- (g) perform and comply with all laws and obligations to which it is subject as registered proprietor, beneficial owner, user, licensor or licensee of any Intellectual Property held by it.

### **11.4 Grant**

No Chargor shall grant any exclusive registered user agreement or exclusive licence in relation to any of its present or future Intellectual Property.

## **12. INSURANCES**

### **12.1 Documents**

Each Chargor shall promptly upon request by the Security Trustee deliver to it, and the Security Trustee shall be entitled to hold, copies of such contracts and policies of insurance taken out by

or on behalf of it and the related premium receipts, and such other documents relating to that Chargor's Insurances, as the Security Trustee reasonably requires.

#### **12.2 Enforceability**

No Chargor shall do or omit to do or permit to be done or omitted anything which might render any of its Insurances void, voidable or unenforceable.

### **13. GENERAL UNDERTAKINGS**

#### **13.1 Information**

Each Chargor shall supply to the Security Trustee promptly such information regarding its financial condition, business and operations, its Security Assets and its compliance with this Deed as the Security Trustee may reasonably request.

#### **13.2 Access**

Each Chargor shall permit the Security Trustee and/or any of its representatives (including workmen, surveyors, valuers and other persons) at all reasonable times to view the condition of, and repair, any of its Security Assets.

#### **13.3 No other prejudicial conduct**

No Chargor shall do, or permit to be done, anything which could prejudice the Security Interests.

#### **13.4 People with significant control regime**

Each Chargor shall (and shall ensure that each of its Subsidiaries shall):

- (a) within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from any company incorporated in the United Kingdom whose shares are the subject to security for the benefit of the Secured Parties; and
- (b) promptly provide the Security Trustee with a copy of that notice.

### **14. REPRESENTATIONS AND WARRANTIES**

The Original Chargor:

- (a) represents and warrants to the Security Trustee that the assets (if any) listed in Schedule 2, Schedule 3, Schedule 4 and Schedule 5 are all of the relevant class of assets in which it has an interest; and
- (b) represents and warrants to the Security Trustee that the agreements (if any) listed in Schedule 6 (*Assigned Agreements*) are correctly described and have not been amended, supplemented, varied, waived, rescinded, cancelled or terminated.

### **15. ENFORCEMENT OF SECURITY INTERESTS**

#### **15.1 When enforceable**

The Security Interests shall be immediately enforceable on and at any time after the occurrence of an Event of Default.

#### **15.2 Enforcement action**

At any time after the Security Interests have become enforceable, the Security Trustee may in its absolute discretion enforce all or any part of the Security Interests in any manner it sees fit.

### **15.3 Law of Property Act powers**

At any time after the Security Interests have become enforceable, the powers, authorities and discretions conferred by the Law of Property Act on mortgagees, including the power of sale and other powers conferred by section 101 (*Powers incident to estate or interest of mortgagee*) of the Law of Property Act, as varied and extended by this Deed, shall be immediately exercisable.

## **16. LAW OF PROPERTY ACT**

### **16.1 Section 101**

The power of sale and other powers conferred by section 101 (*Powers incident to estate or interest of mortgagee*) of the Law of Property Act on mortgagees, as varied and extended by this Deed, shall arise (and the Secured Liabilities shall be deemed due and payable for that purpose) in respect of the Original Chargor, on the date of this Deed and in respect of any Additional Chargor, on the date of the relevant Security Accession Deed to which it is a party and shall be exercisable in accordance with Clause 15.3 (*Law of Property Act powers*).

### **16.2 Section 103**

Section 103 (*Regulation of exercise of power of sale*) of the Law of Property Act shall not apply to this Deed.

### **16.3 Section 93**

Section 93 (*Restriction on consolidation of mortgages*) of the Law of Property Act shall not apply to this Deed.

### **16.4 Sections 99 and 100**

At any time after the Security Interests have become enforceable, the Security Trustee may make any lease or agreement for lease, accept any surrender of lease and grant any option as it sees fit and without the need to comply with any provision of section 99 (*Leasing powers of mortgagor and mortgagee in possession*) or section 100 (*Powers of mortgagor and mortgagee in possession to accept surrenders of leases*) of the Law of Property Act.

## **17. APPOINTMENT OF RECEIVERS AND ADMINISTRATORS**

### **17.1 Appointment of Receivers**

If:

- (a) requested by any Chargor; or
- (b) the Security Interests have become enforceable,

without any notice or further notice, the Security Trustee may, by deed or otherwise in writing signed by the Security Trustee or any person authorised for this purpose by the Security Trustee, appoint one or more persons to be a Receiver of all or any part of the Security Assets. The Security Trustee may similarly remove any Receiver and appoint any person instead of any Receiver. If the Security Trustee appoints more than one person as Receiver, the Security Trustee may give those persons power to act either jointly or severally.

### **17.2 Appointment of Administrators**

Paragraph 14 of Schedule B1 to the Insolvency Act applies to this Deed and the Security Trustee may appoint an Administrator of any Chargor pursuant to that paragraph.

### 17.3 Agent of Chargor

Any Receiver shall be the agent of the relevant Chargor for all purposes. That Chargor alone shall be responsible for the Receiver's contracts, engagements, acts, omissions and defaults.

### 17.4 Remuneration of Receivers

The Security Trustee may determine the remuneration of any Receiver and the maximum rate specified in section 109(6) (*Appointment, powers, remuneration and duties of receiver*) of the Law of Property Act shall not apply. The Security Trustee may direct payment of that remuneration out of moneys it receives as Receiver. The relevant Chargor alone shall be liable for the remuneration and all other costs, losses, liabilities and expenses of the Receiver.

## 18. RIGHTS AND LIABILITIES OF SECURITY TRUSTEE AND RECEIVERS

### 18.1 Rights of Receivers

Any Receiver appointed pursuant to Clause 17 (*Appointment of Receivers and Administrators*) shall have:

- (a) the rights set out in Schedule 1 (*Rights of Receivers*); and
- (b) the rights, powers, privileges and immunities conferred by law, including:
  - (i) in the case of an administrative receiver, the rights, powers, privileges and immunities conferred by the Insolvency Act on administrative receivers duly appointed under the Insolvency Act; and
  - (ii) in all other cases, the rights, powers, privileges and immunities conferred by the Law of Property Act and the Insolvency Act on receivers or receivers and managers.

### 18.2 Rights of Security Trustee

At any time after the Security Interests have become enforceable, to the fullest extent permitted by law, any rights conferred by any Finance Document or by law upon a Receiver may be exercised by the Security Trustee, whether or not the Security Trustee shall have appointed a Receiver of all or any part of the Security Assets.

### 18.3 Delegation

The Security Trustee may delegate in any manner to any person any rights exercisable by the Security Trustee under any Finance Document. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Security Trustee thinks fit and the Security Trustee may pass confidential information to any such delegate.

### 18.4 Financial collateral arrangement

- (a) To the extent that this Deed constitutes a "financial collateral arrangement" (as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "**Financial Collateral Regulations**")) the Security Trustee shall have the right at any time after the Security Interests have become enforceable, to appropriate any Security Asset which constitutes "financial collateral" (as defined in the Financial Collateral Regulations ("**Financial Collateral**")) in such manner as it sees fit in or towards satisfaction of the Secured Liabilities in accordance with the Financial Collateral Regulations.



- (b) If the Security Trustee is required to value any Financial Collateral for the purpose of paragraph (a) above, the value shall be:
- (i) in the case of cash, its face value at the time of appropriation; and
  - (ii) in the case of financial instruments or other Financial Collateral, their market value at the time of appropriation as determined (after appropriation) by the Security Trustee by reference to a public index or other applicable generally recognised source or such other process as the Security Trustee may reasonably select, including a valuation carried out by an independent investment bank, firm of accountants or other valuers appointed by the Security Trustee,

as converted, where necessary, into the currency in which the Secured Liabilities are denominated at a market rate of exchange prevailing at the time of appropriation selected by the Security Trustee. The Parties agree that the methods of valuation set out in this paragraph (b) are commercially reasonable for the purpose of the Financial Collateral Regulations.

#### **18.5 Possession**

If the Security Trustee, any Receiver or any Delegate takes possession of the Security Assets, it may at any time relinquish possession. Neither the Security Trustee, any Receiver nor any Delegate shall be liable, by reason of viewing or repairing any of the present or future assets of any Chargor, as a mortgagee in possession.

#### **18.6 Security Trustee's liability**

Neither the Security Trustee, any Receiver nor any Delegate shall, either by reason of taking possession of the Security Assets or for any other reason and whether as mortgagee in possession or otherwise, be liable for:

- (a) any costs, losses, liabilities or expenses relating to the realisation of any Security Assets; or
- (b) any act or omission of the Security Trustee, any Receiver, any Delegate or their respective officers, employees or agents in relation to the Security Assets or in connection with the Finance Documents, unless directly caused by its gross negligence or wilful misconduct.

#### **19. ORDER OF APPLICATION**

All amounts from time to time received or recovered by the Security Trustee or any Receiver pursuant to the terms of this Deed or in connection with the realisation or enforcement of all or any part of the Security Interests will be applied in accordance with the Security Trust Deed to the extent permitted by applicable law.

#### **20. POWER OF ATTORNEY**

##### **20.1 Appointment**

Each Chargor by way of security irrevocably appoints the Security Trustee, each Receiver and each Delegate severally to be its attorney (with full power of substitution), on its behalf and in its name or otherwise, while an Event of Default is continuing and in such manner as the attorney thinks fit:

- (a) to do anything which that Chargor is obliged to do under any Finance Document to which it is party but has failed to do (including to do all such acts or execute all such documents, assignments, transfers, mortgages, charges, notices, instructions, filings and registrations as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s))); and
- (b) to exercise any of the rights conferred on the Security Trustee, any Receiver or any Delegate in relation to the Security Assets or under any Finance Document or under any law.

## 20.2 Ratification

Each Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 20.1 (*Appointment*).

## 21. PROTECTION OF THIRD PARTIES

No purchaser or other person dealing with the Security Trustee, any Receiver or its agents shall be concerned to enquire:

- (a) whether the powers conferred on the Security Trustee, any Receiver or its agents have arisen;
- (b) whether the powers conferred on the Security Trustee, any Receiver or its agents have become exercisable;
- (c) whether any consents, regulations, restrictions or directions relating to such powers have been obtained or complied with;
- (d) whether the Security Trustee, any Receiver or its agents is acting within such powers;
- (e) whether any money remains due under the Finance Documents and the receipt in writing of the Security Trustee, any Receiver or its agents shall be sufficient discharge to that purchaser or other person;
- (f) as to the propriety or validity of acts purporting or intended to be in exercise of any such powers; or
- (g) as to the application of any money paid to the Security Trustee, any Receiver or its agents.

## 22. SAVING PROVISIONS

### 22.1 Continuing Security

Subject to Clause 23 (*Discharge of Security*), the Security Interests are continuing security and will extend to the ultimate balance of the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

### 22.2 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Chargor or any Obligor or any security for those obligations or otherwise) is made by a Secured Party in whole

or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation or otherwise, without limitation, then the liability of each Chargor and each Obligor and the Security Interests will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### **22.3 Waiver of defences**

Neither the obligations of each Chargor under this Deed nor the Security Interests will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under any Finance Document or any of the Security Interests (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Chargor, Obligor or other person;
- (b) the release of any other Chargor, Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Chargor, Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Chargor, Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

#### **22.4 Chargor intent**

Without prejudice to the generality of Clause 22.3 (*Waiver of defences*), each Chargor expressly confirms that it intends that the Security Interests shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **22.5 Immediate recourse**

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

#### **22.6 Appropriations**

Until all amounts which may be or become payable by the Obligors or the Chargors under or in connection with the Finance Documents have been irrevocably paid in full and all facilities which might give rise to Secured Liabilities have terminated, each Secured Party (or any trustee or agent on its behalf) may:

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

#### **22.7 Deferral of Chargors' rights**

Until all amounts which may be or become payable by the Obligors or the Chargors under or in connection with the Finance Documents have been irrevocably paid in full and all facilities which might give rise to Secured Liabilities have terminated and unless the Security Trustee otherwise directs, no Chargor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under the Finance Documents:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other provider of security for or guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which the Obligor had given a guarantee, undertaking or indemnity;
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Secured Party.

If a Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Obligors or the Chargors under or in connection

with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application in accordance with Clause 19 (*Order of application*).

**22.8 Additional security**

The Security Interests are in addition to and are not in any way prejudiced by any other guarantee or security now or subsequently held by any Secured Party.

**22.9 Tacking**

Each Secured Party shall comply with its obligations under the Finance Documents (including any obligation to make further advances).

**23. DISCHARGE OF SECURITY**

**23.1 Final redemption**

Subject to Clause 23.2 (*Retention of security*), if the Security Trustee is satisfied that all amounts which may be or become payable by the Obligors or the Chargors under or in connection with the Finance Documents have been irrevocably paid in full and that all facilities which might give rise to Secured Liabilities have terminated, the Security Trustee shall at the request and cost of the Chargors release, reassign or discharge (as appropriate) the Security Assets from the Security Interests, without recourse to, or any representation or warranty by, the Security Trustee or any of its nominees.

**23.2 Retention of security**

If the Security Trustee considers that any amount paid or credited to any Secured Party under any Finance Document is capable of being avoided or otherwise set aside, that amount shall not be considered to have been paid for the purposes of determining whether all the Secured Liabilities have been irrevocably paid.

**23.3 Release of Security Interests**

At any time, other than when an Event of Default is continuing and before the release, reassignment or discharge of the Security Assets from the Security Interests in the manner contemplated by Clause 21.1 (*Final redemption*) above, any Security Assets:

- (a) subject only to a floating charge; and
- (b) permitted to be disposed of or otherwise dealt with as a Permitted Disposal or Permitted Encumbrance,

shall, upon the creation of a Permitted Encumbrance or disposal by way of a Permitted Disposal or Permitted Encumbrance, be automatically released, reassigned or discharged (as appropriate) from the Security Interests.

**24. VAT**

Clause 14.8 (GST) of the Facility Agreement shall apply as if it were set out in full in this Deed, save that references in that clause to "Finance Party" shall be treated in this Deed as being to "Secured Party" and references in that clause to "GST" shall be treated in this Deed as being to "VAT".

## **25. PAYMENTS**

### **25.1 Undertaking to pay**

Each Chargor shall pay each of the Secured Liabilities when due in accordance with its terms.

### **25.2 Demands**

Any demand for payment made by any Secured Party shall be valid and effective even if it contains no statement of the relevant Secured Liabilities or an inaccurate or incomplete statement of them.

### **25.3 Payments**

All payments by any Chargor under this Deed shall be made to such account, with such financial institution and in such other manner as the Security Trustee may direct.

### **25.4 Continuation of accounts**

- (a) At any time after a Secured Party has received or is deemed to have received notice of any subsequent security affecting all or any part of the Security Assets of any Chargor, that Secured Party may open a new account in the name of that Chargor (whether or not it permits any existing account to continue).
- (b) If that Secured Party does not open such a new account, it shall be treated as if it had done so when the relevant notice was received or deemed to have been received and as from that time all payments made by or on behalf of that Chargor to that Secured Party shall be credited or be treated as having been credited to the relevant new account and not as having been applied in reduction of the Secured Liabilities as at the time the relevant notice was received or deemed to have been received.

### **25.5 Contingencies**

If all or any part of the Security Interests are enforced at a time when no amount is due under the Finance Documents but any such amount may or will become due, the Security Trustee or the Receiver may pay the proceeds of any recoveries effected by it into a suspense account.

## **26. REMEDIES, WAIVERS AND DETERMINATIONS**

### **26.1 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under any Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No waiver or election to affirm any of the Finance Documents on the part of any Secured Party shall be effective unless in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Finance Documents are cumulative and not exclusive of any rights or remedies provided by law, including the right to appoint an Administrator under the Insolvency Act.

### **26.2 Certificates and Determinations**

Any certification or determination by the Security Trustee or any Receiver of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**27. SEPARATE AND INDEPENDENT OBLIGATIONS**

The security created by each Chargor by or in connection with any Finance Document is separate from and independent of the security created or intended to be created by any other Obligor or other provider of security by or in connection with any Finance Document.

**28. ADDITIONAL CHARGORS**

- (a) The Parent may request that any other member of the Group become a Chargor.
- (b) A member of the Group shall become an Additional Chargor if the Parent and the proposed Additional Chargor deliver to the Security Trustee a duly completed and executed Security Accession Deed.
- (c) The Security Trustee shall notify the Parent and the Secured Parties upon being satisfied that it has received (in form and substance satisfactory to it) a duly completed and executed Security Accession Deed.
- (d) Other than to the extent the Secured Parties notify the Security Trustee in writing to the contrary before the Security Trustee gives the notification described in paragraph (c) above, the Secured Parties authorise (but do not require) the Security Trustee to give that notification. The Security Trustee shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

**29. COUNTERPARTS**

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

**30. GOVERNING LAW**

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

**31. ENFORCEMENT**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (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) Notwithstanding paragraph (a) above, the Security Trustee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions.

**This Deed has been delivered on the date stated at the beginning of this Deed.**

**SCHEDULE 1**  
**RIGHTS OF RECEIVERS**

Any Receiver appointed pursuant to Clause 17 (*Appointment of Receivers and Administrators*) shall have the right, either in its own name or in the name of the relevant Chargor or otherwise and in such manner and upon such terms and conditions as the Receiver thinks fit, and either alone or jointly with any other person:

(a) **Enter into possession**

to take possession of, get in and collect all or any part of the Security Assets, and to require payment to it or to any Secured Party of any Receivables;

(b) **Bank Accounts**

to apply, transfer or set-off any or all of the credit balances from time to time on any Bank Account in or towards payment or other satisfaction of all or part of the Secured Liabilities;

(c) **Carry on business**

to manage and carry on any business of that Chargor;

(d) **Contracts**

to enter into any contract or arrangement and to perform, repudiate, rescind or vary any contract or arrangement to which that Chargor is a party;

(e) **Deal with Security Assets**

to sell, transfer, assign, exchange, hire out, lend, licence or otherwise dispose of or realise all or any part of the Security Assets (including any Fixtures, which may be sold separately from the related Real Property) to any person either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments or deferred);

(f) **Hive down**

to form a new company and to subscribe for or acquire (for cash or otherwise) any investment in or of the new company and to sell, transfer, assign, exchange and otherwise dispose of or realise any such investments or any rights attaching thereto;

(g) **Borrow money**

to borrow or raise money either unsecured or on the security of all or any part of the Security Assets (either in priority to the Security Interests or otherwise);

(h) **Lend money**

to lend money or advance credit to any person;

(i) **Covenants and guarantees**

to enter into bonds, covenants, guarantees, indemnities and other commitments;

(j) **Dealings with tenants**



to grant leases, tenancies, licences and rights of user, grant renewals and accept surrenders of leases, tenancies, licences or rights of user, and otherwise to reach agreements and make arrangements with, and to make allowances to, any lessees, tenants or other persons;

**(k) Rights of ownership**

to manage and use all or any part of the Security Assets and to exercise and do all such rights and things as the Receiver would be capable of exercising or doing if it were the absolute beneficial owner of all or any part of the Security Assets;

**(l) Protection of Security Assets**

to insure all or any part of the Security Assets, to carry out decorations, repairs, alterations, improvements and additions to all or any part of the Security Assets (including the development or redevelopment of any Real Property), to commence and/or complete any building operation, to apply for and maintain any planning permission, building regulation approval or any other authorisation and to purchase or otherwise acquire or do anything in connection with all or any part of the Security Assets;

**(m) Legal actions**

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings relating to all or any part of the Security Assets or any business of that Chargor;

**(n) Claims**

to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or relating to all or any part of the Security Assets or any business of that Chargor;

**(o) Redemption of security**

to redeem any security (whether or not having priority to the Security Interests) over all or any part of the Security Assets and to settle the accounts of any person with an interest in all or any part of the Security Assets;

**(p) Employees**

to appoint, hire and employ officers, employees, contractors, agents, advisors and others and to discharge any such persons and any such persons appointed, hired or employed by that Chargor;

**(q) Delegation**

to delegate in any manner to any person any rights exercisable by the Receiver under any Finance Document, and any such delegation may be made upon such terms and conditions (including power to sub-delegate) as it thinks fit, and to pass confidential information to any such delegate;

**(r) Insolvency Act**

to exercise all powers set out in Schedule 1, Schedule B1 or (in the case of a Scottish Receiver) Schedule 2 to the Insolvency Act as now in force (whether or not in force at the date of exercise and whether or not the Receiver is an administrative receiver) and any powers added to Schedule 1 or Schedule 2, as the case may be, after the date of this Deed;

(s) **Receipts**

to give a valid receipt for any moneys and do anything which may be necessary or desirable for realising all or any part of Security Assets; and



(t) **Other powers**

to do anything else it may think fit for the realisation of all or any part of the Security Assets or incidental to the exercise of any of the rights conferred on the Receiver under or by virtue of any Finance Document to which the relevant Chargor is party, the Law of Property Act or the Insolvency Act.

**SCHEDULE 2**  
**REAL PROPERTY**

<b>Property</b>	<b>Freehold/Leasehold</b>	<b>Title No./Unregistered</b>
61 Bank Street, Newquay, Cornwall	Leasehold	CL31043

**SCHEDULE 3**  
**BANK ACCOUNTS**

<b>Bank</b>	<b>Sort Code</b>	<b>Account No.</b>	<b>Name of Account</b>
HSBC UK			BUSINESS A/C RIPCURLUKLTD

**SCHEDULE 4**  
**SHARES**

<b>Name of Issuer</b>	<b>No. and Type of Shares</b>	<b>Held in Certificated Form</b>
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None at the date of this Deed.

**SCHEDULE 5**  
**INTELLECTUAL PROPERTY**

**Patents**

<b>Title</b>	<b>Application No.</b>	<b>Registration No.</b>	<b>Jurisdiction</b>	<b>Status</b>
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None at the date of this Deed.

**Registered Designs**

<b>Title</b>	<b>Application No.</b>	<b>Registration No.</b>	<b>Jurisdiction</b>	<b>Status</b>
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None at the date of this Deed.

**Registered Trade Marks**

<b>Mark</b>	<b>Application No.</b>	<b>Registration No.</b>	<b>Class(es)</b>	<b>Jurisdiction</b>	<b>Status</b>
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None at the date of this Deed.

**Licences and Sub-licences of Intellectual Property**

<b>Licensor</b>	<b>Licensee</b>	<b>Date</b>	<b>Subject Matter</b>
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None at the date of this Deed.

**Other Intellectual Property**

None at the date of this Deed.

**SCHEDULE 6**  
**ASSIGNED AGREEMENTS**

None at the date of this Deed.

**SCHEDULE 7**  
**FORM OF NOTICE OF ASSIGNMENT OF ASSIGNED AGREEMENTS**

From: ANZ Bank New Zealand Limited (the "Security Trustee") and [•] (the "Chargor")

To: [Party to the Assigned Agreement]

Address:

Dated:

Dear Sirs

[•] – Security Agreement

dated [ ] (the "Security Agreement")

1. We refer to the Security Agreement.
2. We give notice that by an assignment contained in the Security Agreement the Chargor assigned to the Security Trustee by way of security all its right, title and interest from time to time in and to the Assigned Agreements, details of which are set out in the attached schedule (the "**Assigned Agreements**"), including all rights or claims in relation to the Assigned Agreements.
3. Until you receive written instructions from the Security Trustee to the contrary, all moneys payable by you to the Chargor in respect of the Assigned Agreements shall be paid to the account notified to you by the Chargor.
4. Despite the assignment referred to above or the making of any payment by you to the Security Trustee under or in connection with it:
  - (a) the Chargor shall remain liable to perform all its obligations under each Assigned Agreement; and
  - (b) the Security Trustee, and any delegate or sub-delegate appointed by it or any receiver, shall not at any time be under any obligation or liability to you under or in respect of any Assigned Agreement.
5. The Chargor shall remain entitled to exercise its rights, powers and discretions under each Assigned Agreement, except that the Chargor shall not and you agree that the Chargor shall not, without the prior written consent of the Security Trustee:
  - (a) amend, supplement, vary or waive (or agree to amend, supplement, vary or waive) any provision of any Assigned Agreement;
  - (b) exercise any right to rescind, cancel or terminate any Assigned Agreement;
  - (c) release any counterparty from any obligations under any Assigned Agreement;
  - (d) waive any breach by any counterparty or consent to any act or omission which would otherwise constitute such a breach; or



- (e) except as provided in the Security Agreement, novate, transfer or assign any of its rights under any Assigned Agreement.
6. You are authorised and instructed, without requiring further approval, to provide the Security Trustee with such information relating to the Assigned Agreements as it may from time to time request and to send to the Security Trustee and us copies of all notices issued by you.
7. This authority and instruction is irrevocable without the prior written consent of the Security Trustee.
8. This notice of assignment and any non-contractual obligations arising out of or in connection with it are governed by English law. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this notice of assignment (including a dispute relating to the existence, validity or termination of this notice of assignment or any non-contractual obligation arising out of or in connection with this notice of assignment).
9. Please acknowledge receipt of this notice of assignment and confirm that:
- (a) you will pay all moneys in respect of each Assigned Agreement as directed by or pursuant to this notice of assignment;
  - (b) you have not received any other notice of any assignment of an Assigned Agreement;
  - (c) you will not claim or exercise any set-off or counterclaim in respect of any Assigned Agreement; and
  - (d) you will comply with the other provisions of this notice of assignment,

by signing the acknowledgement on the attached copy of this notice of assignment and returning that copy to the Security Trustee at ANZ Bank New Zealand Limited, Level 25, ANZ Centre, 23-29 Albert Street, Auckland, marked for the attention of Director, Loan Syndications & Agency.

ANZ Bank New Zealand Limited

[•]

By:

By:

[On duplicate]

We acknowledge receipt of the notice of assignment of which this is a copy and confirm each of the matters referred to in paragraphs (a) - (d) of paragraph 9 of the notice of assignment.

[Party to the Assigned Agreement]

By:

Dated:

**THE SCHEDULE**  
**Assigned Agreements**  
*[insert relevant details]*

**SCHEDULE 8**  
**FORM OF NOTICE OF ASSIGNMENT OF INSURANCES**

From: ANZ Bank New Zealand Limited (the "Security Trustee") and [•] (the "Chargor")

To: [The Insurers]

Address:

Dated:

Dear Sirs

[•] – Security Agreement

dated [ ] (the "Security Agreement")

1. We refer to the Security Agreement.
2. We give notice that by an assignment contained in the Security Agreement the Chargor assigned to the Security Trustee by way of security all its right, title and interest from time to time in and to the insurances, details of which are set out in the attached schedule (the "Insurances"), including all moneys or proceeds paid or payable deriving from the Insurances and all rights or claims in relation to the Insurances.
3. All moneys payable by you to the Chargor in respect of the Insurances shall be paid to the account notified to you by the Chargor, unless and until you receive written notice from the Security Trustee to the contrary, in which event you should make all future payments as then directed by the Security Trustee.
4. We instruct you to:
  - (a) notify the Security Trustee if any renewal, premium or other sum payable by the Chargor in respect of the Insurances is not paid when due;
  - (b) notify the Security Trustee if the Chargor reduces the cover under the Insurances or if any risk insured against under the Insurances is restricted or cancelled; and
  - (c) if the Insurances are not renewed, cover under the Insurances is reduced or any risk insured against under the Insurances is restricted or cancelled, to provide insurances of the assets of the Chargor reasonably required by the Security Trustee and upon payment of an additional premium by the Security Trustee.
5. This authority and instruction is irrevocable without the prior written consent of the Security Trustee.
6. This notice of assignment and any non-contractual obligations arising out of or in connection with it are governed by English law. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this notice of assignment (including a dispute relating to the existence, validity or termination of this notice of assignment or any non-contractual obligation arising out of or in connection with this notice of assignment).

7. Please acknowledge receipt of this notice of assignment and confirm that:

- (a) you will pay all moneys in respect of the Insurances as directed by or pursuant to this notice of assignment;
- (b) you have not received any other notice of any assignment of any Insurance or of any other interest of any third party in any Insurance;
- (c) you will not claim or exercise any set-off or counterclaim in respect of any Insurance; and
- (d) you will comply with the other provisions of this notice of assignment,

by signing the acknowledgement on the attached copy of this notice of assignment and returning that copy to the Security Trustee at ANZ Bank New Zealand Limited, Level 25, ANZ Centre, 23-29 Albert Street, Auckland, marked for the attention of Director, Loan Syndications & Agency.

ANZ Bank New Zealand Limited

[•]

By:

By:

[On duplicate]

We acknowledge receipt of the notice of assignment of which this is a copy and confirm each of the matters referred to in paragraphs (a) – (d) of paragraph 7 of the notice of assignment.

[The Insurers]

By:

Dated:

**THE SCHEDULE**  
**INSURANCES ASSIGNED**  
[insert relevant details]

## FORM OF SECURITY ACCESSION DEED

**THIS SECURITY ACCESSION DEED** is dated [●] and made between:

1. Kathmandu Holdings Limited (the "**Parent**");
2. [●], a company incorporated in [●] with registered number [●] (the "**Additional Chargor**"); and
3. ANZ Bank New Zealand Limited as security trustee for the Secured Parties (the "**Security Trustee**").

### Background

- (A) This Security Accession Deed is supplemental to a security agreement dated [●] between, amongst others, the Original Chargor and the Security Trustee, as previously supplemented by earlier Security Accession Deeds (if any) and as scheduled in Schedule 5 (the "**Security Agreement**"). This Security Accession Deed shall take effect as a Security Accession Deed for the purpose of the Security Agreement.
- (B) The board of directors of the Additional Chargor are satisfied that entering into this Security Accession Deed would be most likely to promote the success of the Additional Chargor for the benefit of its members as a whole and to the further benefit and advantage of the Additional Chargor.
- (C) The Security Trustee and the Additional Chargor intend this document to take effect as a deed (even though the Security Trustee only executes it under hand).
- (D) The Security Trustee holds the benefit of this Security Accession Deed for the Secured Parties on the terms of the Finance Documents.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Terms defined in the Security Agreement have the same meaning in this Security Accession Deed unless given a different meaning in this Security Accession Deed.

### 1.2 Construction

- (a) The provisions in clauses 1.2 (*Incorporation of defined terms*) to 1.5 (*Disposition*) of the Security Agreement apply to this Security Accession Deed, except that references to the Security Agreement shall be construed as references to this Security Accession Deed.
- (b) The Security Agreement shall remain in full force and effect as supplemented by this Security Accession Deed.
- (c) The Security Agreement and this Security Accession Deed shall be read together as one instrument on the basis that references in the Security Agreement to "**this Deed**" will be deemed to be references to the Security Agreement as supplemented by this Security Accession Deed.

## **2. ACCESSION OF ADDITIONAL CHARGOR**

### **2.1 Accession**

The Additional Chargor agrees to become an Additional Chargor and to be bound by the terms of the Security Agreement as an Additional Chargor pursuant to Clause 28 (*Additional Chargors*) of the Security Agreement.

### **2.2 Creation of Security Interests**

- (a) The Additional Chargor, with full title guarantee and as security for the payment of all Secured Obligations, charges in favour of the Security Trustee:
- (i) by way of first legal mortgage, all Real Property in England and Wales (including that described in Schedule 1 (*Real Property*)) owned by it on the date of this Security Accession Deed;
  - (ii) by way of first fixed equitable charge, all other Real Property owned by it on the date of this Security Accession Deed, all Real Property acquired by it after the date of this Security Accession Deed and, to the extent not validly and effectively mortgaged under sub-paragraph (i) above, all Real Property in England and Wales owned by it on the date of this Security Accession Deed;
  - (iii) by way of first fixed charge, all its Bank Accounts (including those described in Schedule 2 (*Bank Accounts*));
  - (iv) by way of first fixed charge, all its Receivables;
  - (v) by way of first mortgage, all its Shares;
  - (vi) by way of first fixed charge, all its Investments and CREST Rights;
  - (vii) by way of first fixed charge, all its right, title and interest from time to time in and to its uncalled capital and goodwill;
  - (viii) by way of first fixed charge, all its Intellectual Property (including that described in Schedule 4 (*Intellectual Property*));
  - (ix) by way of first fixed charge, all its right, title and interest from time to time in and to its beneficial interest, claim or entitlement in any pension fund;
  - (x) by way of first fixed charge, all its Plant and Machinery (except that validly and effectively mortgaged or charged under sub-paragraph (i) or sub-paragraph (ii) above);
  - (xi) by way of first fixed charge, all its Insurances, to the extent not validly and effectively assigned under paragraph (b) below;
  - (xii) by way of first fixed charge, all its Assigned Agreements, to the extent not validly and effectively assigned under paragraph (c) below; and
  - (xiii) by way of first floating charge, all its undertaking and all its assets, both present and future (including assets expressed to be mortgaged, charged or assigned under this Clause 2.2).

- (b) The Additional Chargor, with full title guarantee and as security for the payment of all Secured Obligations, assigns to the Security Trustee by way of security all its Insurances.
- (c) The Additional Chargor, with full title guarantee and as security for the payment of all Secured Obligations, assigns to the Security Trustee by way of security all its Assigned Agreements.

### 2.3 Ranking

The floating charge created by the Additional Chargor under Clause 2.2 (*Creation of Security Interests*) ranks:

- (a) behind all the mortgages, fixed charges and assignments created by that Additional Chargor; but
- (b) in priority to any other Security over the Security Assets of that Additional Chargor except for Security ranking in priority in accordance with paragraph (g) of Schedule 1 (*Rights of Receivers*) of the Security Agreement.

### 2.4 Consents

If the consent of any third party lessor is required to create any security over, or an assignment of, the rights of the Additional Chargor under a Relevant Lease:

- (a) the Additional Chargor shall promptly notify the Security Trustee;
- (b) until the consent of the relevant lessor has been obtained, this Security Accession Deed shall secure all amounts which the Additional Chargor may receive, or has received, under that Relevant Lease but exclude fixed security over, or any assignment of, those rights;
- (c) if it is proposed by the Additional Chargor or relevant lessor that the Relevant Lease be renewed or amended after the date of this Security Accession Deed then unless the Security Trustee agrees otherwise, the Additional Chargor shall use reasonable endeavours to agree with the relevant lessor to:
  - (i) amend the terms of that Relevant Lease to ensure that the grant of a security interest under this Deed over the Additional Chargor's rights and interest in that Relevant Lease is permitted; or, as the context requires;
  - (ii) obtain the consent of that lessor (or other person if required under that Relevant Lease) in connection with the grant of security over the Additional Chargor's rights and interest in that Relevant Lease,

and the Additional Chargor will advise the Security Trustee of each lease for which an amendment is made or consent obtained; and

- (d) in any event, each Relevant Lease will be fully and effectively subject to a fixed security or assignment of rights under this Security Accession Deed on the Security Trustee giving notice to that effect to the Additional Chargor at any time following (and in relation to any one or more Relevant Lease) the earliest of the occurrence of:
  - (i) the declaration of any Event of Default (by either the Facility Agent or Security Trustee);



- (ii) the occurrence of any Event of Insolvency; or
- (iii) any Obligor failing to make a payment of principal or interest within three banking days of it falling due under the Facility Agreement.

### **3. UNDERTAKINGS**

#### **3.1 Undertaking to pay**

The Additional Chargor shall pay each of the Secured Obligations when due in accordance with its terms.

#### **3.2 Negative pledge**

The Additional Chargor shall not create or permit to subsist any security or Quasi-Security over any Security Asset, other than a Permitted Encumbrance or otherwise as permitted by the Facilities Agreement.

#### **3.3 Disposals**

The Additional Chargor shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of any Security Asset, other than a Permitted Disposal or otherwise except as permitted by the Facility Agreement.

### **4. REPRESENTATIONS**

The Additional Chargor:

- (a) makes the representations and warranties set out in clause 21 (*Representations*) of the Facilities Agreement to the Security Trustee on the date of this Security Accession Deed; and
- (b) represents and warrants to the Security Trustee that the assets listed in Schedule 2 (*Real Property*) to Schedule 6 (*Intellectual Property*) of the Security Agreement in respect of that Additional Chargor are all the relevant material assets in which it has an interest.

### **5. DESIGNATION**

In accordance with the Security Agreement, each of the Security Trustee and the Parent designate this Security Accession Deed as a Security Document and a Finance Document for the purposes of the Facility Agreement.

### **6. GOVERNING LAW**

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

**This Security Accession Deed has been delivered on the date stated at the beginning of this Security Accession Deed.**

**SCHEDULE 1**  
**Real Property**

<b>Property</b>	<b>Freehold/Leasehold</b>	<b>Title No./Unregistered</b>
[•]	[•]	[•]

**SCHEDULE 2**

**Bank Accounts**

Bank	Sort Code	Account No.	Name of Account
[•]	[•]	[•]	[•]

**SCHEDULE 3**  
**Shares**

Name of Issuer	No. and Type of Shares	Held in Certificated Form
[•]	[•]	[•]

**SCHEDULE 4**  
**Intellectual Property**

**Patents**

TITLE	APPLICATION NO.	REGISTRATION NO.	JURISDICTION	STATUS
[•]	[•]	[•]	[•]	[•]

**Registered Designs**

TITLE	APPLICATION NO.	REGISTRATION NO.	JURISDICTION	STATUS
[•]	[•]	[•]	[•]	[•]

**Registered Trade Marks**

MARK	APPLICATION NO.	REGISTRATION NO.	CLASS(ES)	JURISDICTION	STATUS
[•]	[•]	[•]	[•]	[•]	[•]

**Licences and Sub-licences of Intellectual Property**

LICENSOR	LICENSEE	DATE	SUBJECT MATTER
[•]	[•]	[•]	[•]

**Other Intellectual Property**

(i.e. copyright, unregistered trade mark and design rights)

**SCHEDULE 5**  
**Security Agreement**  
*[insert relevant details]*

**Signatories to Security Accession Deed**

**EXECUTED** as a **DEED** by [●]

acting by:

Director .....

Director/Secretary .....

**EXECUTED** as a **DEED** by **KATHMANDU**

**HOLDINGS LIMITED**

acting by:

Director .....

Director/Secretary .....

**ANZ BANK NEW ZEALAND LIMITED**

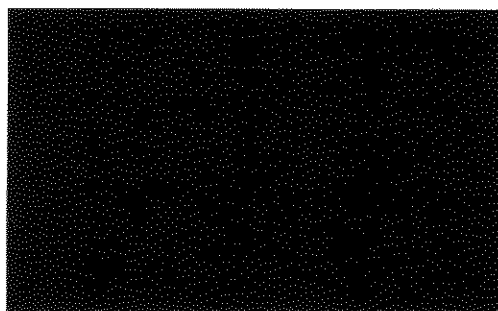
By: .....

Original Chargor

EXECUTED as a DEED by

RIP CURL UK LTD

acting by: *HARVEY ISRAEL*



Director

In the presence of: *Isabelle O'Sullivan*

Witness's signature:



Name: *Isabelle O'Sullivan*

Occupation: *Legal Advisor*

Address:





**Security Trustee**

**EXECUTED as a DEED by**

**ANZ BANK NEW ZEALAND LIMITED**

acting by Claire Bosworth Fisher

**Attorney**

In the presence of:

Witness's signature:



Name: *George Bardwell*

Occupation: *Banker*

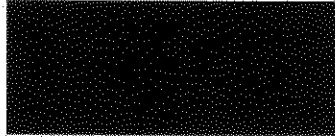
Address:



**CERTIFICATE OF NON-REVOCATION OF  
POWER OF ATTORNEY**

I, Claire Fisher of Auckland, New Zealand, currently holding the position of Director, Global Loans (Loan Syndications & Agency), Institutional NZ, ANZ Bank New Zealand Limited (**ANZ**), certify –

1. That by deed dated 1 October 2011, ANZ appointed the Director, Global Loans (Loan Syndications & Agency), Institutional NZ its attorney;
2. That the deed dated 1 October 2011 is registered with Land Information New Zealand no. PA11371474.1; and
3. That I have not received notice of any event revoking the power of attorney granted to the Director, Global Loans (Loan Syndications & Agency), Institutional NZ.



.....

Signed this      17 day of      March 2020