



**Registration of a Charge**

Company name: **AUDYUS LIMITED**

Company number: **05158526**

Received for Electronic Filing: **08/06/2018**



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**Details of Charge**

Date of creation: **21/05/2018**

Charge code: **0515 8526 0004**

Persons entitled: **ARCHOVER LIMITED**

Brief description: **ALL INTELLECTUAL PROPERTY**

**Contains fixed charge(s).**

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

**Contains negative pledge.**

**Chargor acting as a bare trustee for the property.**

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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 THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

**GEORGE JACKSON**



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

Company number: 5158526

Charge code: 0515 8526 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st May 2018 and created by AUDYUS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th June 2018 .

Given at Companies House, Cardiff on 12th June 2018

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

**THIS Deed of Charge over Secured Assets is dated**

**21 May 2018**

**PARTIES**

- 1) **AUDYUS LIMITED** Incorporated and registered in England and Wales with Company Number 05158526, whose registered office is at Unit C4, 5C Spitfire Close, Ermine Business Park, Huntington, PE29 6XY (**Borrower**); and
- 2) **EACH LENDER** represented by the Representative, **ARCHOVER LIMITED** Incorporated and registered in England and Wales with Company Number 07235487 whose registered office is at 5<sup>th</sup> Floor, 40 Gracechurch Street, London, EC3V 0BT; and
- 3) **ARCHOVER LIMITED**, Incorporated and registered in England and Wales with Company Number 07235487, whose registered office is at 5<sup>th</sup> Floor, 40 Gracechurch Street, London, EC3V 0BT ("Trustee").

**DEED OF CHARGE OVER SECURED ASSETS**

**Standard Terms and Conditions Schedule**

This Deed is executed and delivered by the Trustee in its capacity as Trustee and by the Trustee on behalf of each Lender and the Borrower each identified in the Commercial Terms and each party agrees to be bound by the terms and conditions of this Deed, which takes effect on the date set out in the Commercial Terms.

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The following definitions apply in this deed.

**Account Bank:** the bank where the Deposit is held, as specified in the Commercial Terms.

**Accounts Receivable:** all present and future book and other debts, and monetary claims due or owing to the Borrower, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Borrower in relation to any of them.

**Administrator:** an administrator appointed to manage the affairs, business and property of the Borrower pursuant to clause 13.9.

**Borrower:** the party named as Borrower in the Commercial Terms and above.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commercial Terms:** the Main Commercial Terms and signature section of this Deed.

**Controlled Account:** where specified in the Commercial Terms, the bank account set up and operated by the Trustee on behalf of the Borrower and into which all customer receipts in respect of Accounts Receivable are to be paid.

**Deed:** this deed of charge over the Secured Assets comprising the terms and conditions set out in this Standard Terms and Conditions Schedule and the Signature Section incorporating the Commercial Terms.

**Delegate:** any person appointed by the Trustee or any Receiver pursuant to clause 18 and any person appointed as attorney of the Trustee, Receiver or Delegate.

**Deposit:** all monies from time to time standing to the credit of the Security Account together with all other rights and benefits accruing to or arising in connection with the Security Account (including without limitation entitlements to interest).

**Designated Account:** any account of the Borrower nominated by the Trustee as a designated account for the purposes of this Deed.

**Equipment:** all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Borrower, including any part of it and all spare parts, replacements, modifications and additions.

**Event of Default:** has the meaning given to that expression in the Facility Agreement.

**Facility Agreement:** the facility agreement(s) for the provision of the loan facilities between the Borrower, each Lender and Trustee representing one or more bilateral agreements between a Lender and the Borrower.

**Financial Collateral:** has the meaning given to that expression in the Financial Collateral Regulations.

**Financial Collateral Regulations:** the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226).

**Insurance Policy:** each contract and policy of insurance effected or maintained by the Borrower from time to time in respect of its assets of business (including without limitation any contract or policy of insurance relating to the Properties or the Equipment).

**Intellectual Property:** the Borrower's present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know how and any interest in any of these rights, whether registered or not, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights.

**Investments:** all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by the Borrower, including any:

(a) dividend, interest or other distribution paid or payable in relation to any of the Investments; and

(b) right, money, shares or property accruing, offered or issued at any time in relation to any of the Investments by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise.

**Lender Majority:** has the definition provided in the Facility Agreement.

**Lender:** a party lending the money to the Borrower via the Representative's platform.

**Loan to Value:** means at any interest payment date (a) the aggregate of the Borrower's Accounts Receivable accepted by the Representative under the Facility Agreement divided by (b) the Loans outstanding at such date.

**LPA 1925:** Law of Property Act 1925.

**Properties:** all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Borrower, or in which the Borrower holds an interest (including but not limited to, the properties specified in the Term Sheet), and **Property** means any of them.

**Receiver:** a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Trustee under clause 16.

**Representative Default:** has the definition provided in the Facility Agreement.

**Secured Assets:** the Deposit, Security Account, Controlled Account, Accounts Receivable, stock-in-trade, Properties, [Intellectual Property, Insurance Policy], Properties, agreements and all other assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this Deed.

**Secured Liabilities:** all present and future monies, obligations and liabilities owed by the Borrowers to the Lender and the Trustee, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the/each Facility Agreement, the Terms of Service, this Deed or otherwise via the Trustee's platform (including, without limitation, those arising under clause 30.3(b)), together with all interest (including, without limitation, default interest) accruing in respect of those monies or liabilities.

**Security:** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**Security Account:** the account in the name of the Borrower with the Account Bank, as specified in the Commercial Terms, as that account may be renumbered or redesignated from time to time and all rights of the Borrower in relation to such account.

**Security Financial Collateral Arrangement:** has the meaning given to that expression in the Financial Collateral Regulations.

**Security Period:** the period starting on the date of this Deed and ending on the date on which the Trustee is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**Terms of Service:** the terms and conditions for the provision of services through the ArchOver Limited platform at [www.archover.com](http://www.archover.com), signed by the Borrower and the Lender.

**Trust Property:** all rights vested in the Trustee by virtue of or pursuant to this Deed, the Facility Agreement, the Terms of Service and the Security created in respect of the Secured Assets, including all rights to make demands, bring proceedings or take any other action in respect of the same, together with the aggregate of all receipts or recoveries by the Trustee pursuant to or upon enforcement of its rights under this Deed after deducting all sums which the Trustee is required by the terms of this Deed, the Terms of Service and the Facility Agreement or by applicable law to pay to any other person before distributing any such receipts or recoveries to each Lender.

## 1.2 Interpretation

In this deed:

- (a) clause headings shall not affect the interpretation of this Deed;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes e-mail;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to **this Deed** (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause is to a clause of this Deed;
- (l) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit

the sense of the words, description, definition, phrase or term preceding those terms;

- (m) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- (n) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisational, registration and resolution;
- (p) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (q) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- (r) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
- (s) references to "Lender(s)" or Trustee shall be construed so as to include its and any subsequent successors, transferees and permitted assigns.

### 1.3 **Clawback**

If the Trustee considers that an amount paid by the Borrower in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

### 1.4 **Nature of security over real property**

A reference in this Deed to a charge or mortgage of or over any Property includes:

- a) All buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time;
- b) The proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property;
- c) The benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of that Property, and any monies paid or payable in respect of those covenants; and
- d) All rights under any licence, agreement for sale or agreement for lease in respect of that Property.



## 1.5 **Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions Act) 1989, the terms of the Facility Agreement and of any side letters between any parties in relation to the Facility Agreement are incorporated into this Deed.

## 1.6 **Perpetuity period**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

## **2. TRUST AND ACTIONS OF THE TRUSTEE**

- 2.1 The Trustee declares that it holds the Secured Assets on trust for itself, the Representative and the Lender on the terms set out in this clause or otherwise as separately agreed between them from time to time. Each Lender authorises the Trustee to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Trustee under or in connection with the Facility Agreement, this Deed and the Terms of Service, together with any other incidental rights, powers, authorities and discretions. The trust created pursuant to this clause shall take effect immediately after the granting of the Security by the Borrower pursuant to this deed. On creation of the trust pursuant to this clause, the Trustee shall hold the Trust Property on trust for itself, the Representative and each Lender on the terms and subject to the conditions set out in this Deed. The Trustee may act as sole trustee or jointly with any other trustee. The Trustee may be removed or replaced pursuant to clause 2.6.
- 2.2 Each of the parties to the Deed agrees that the Trustee shall have only those duties, obligations and responsibilities expressly specified in this Deed, the Facility Agreement or Terms of Service, and no others shall be implied and all other duties, obligations and responsibilities are hereby disclaimed.
- 2.3 No Lender shall have any independent power to enforce, or have recourse to, any of the Trust Property or to exercise any rights or powers arising under this Deed, the Facility Agreement or the Terms of Service, except through the Trustee and shall not have any independent power or authority to communicate with or contact the Borrower or to require the Trustee to act, or desist from acting, in a certain way.
- 2.4 The Trustee is hereby authorised, in granting any consent, waiver or exercising any power, trust, authority or discretion hereby (or pursuant to the Facility Agreement or Terms of Service) vested in it, to act (or desist from acting) as it, in its absolute discretion, shall think fit, and each Lender and the Borrower hereby agree and affirm that, subject to section 750 of the Companies Act 2006 (if applicable) neither the Trustee nor any of its Delegates, officers, agents or employees shall be in any way responsible for any loss, costs, damages, claims or expenses which may result from the exercise or non-exercise thereof (or for any delay in the same), or for any liability

arising from a force majeure event, or for any loss or damage (including without limitation consequential loss or damage) save, in each case, in the case of its own gross negligence, wilful misconduct or fraud.

2.5 By way of supplement to the Trustee Act 1925 and to the Trustee Act 2000, it is expressly declared as follows:

- (a) The Trustee may in relation to any of the provisions of this Deed without the consent of each Lender, obtain, pay for and act on the opinion or advice of, or any information obtained from, any lawyer, valuer, surveyor, broker, auctioneer, accountant or other expert whether obtained by the Borrower, any Lender or by the Trustee or otherwise, and shall not be responsible for any loss occasioned by so acting;
- (b) Any opinion, advice or information obtained pursuant to sub-clause 2.5(a) may be sent or obtained by letter, facsimile transmission, telephone or other means and the Trustee shall not be liable for acting on any opinion, advice or information purporting to be so conveyed or any other document purporting to be conveyed from any Lender or the Borrower or any such auctioneer, accountant, lawyer, valuer, surveyor, broker or other expert even if in any such case the same shall contain some error or shall not be authentic;
- (c) The Trustee shall not be liable for any failure, omission or defect in perfecting the Trust Property or any Security under this Deed, including (without prejudice to the generality of the foregoing):
  - (i) Failure to obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of this Deed or any Security under this Deed;
  - (ii) Failure to register, file or record or otherwise protect any of the Trust Property or Security under this Deed (or the priority of the Secured Assets or such Security) under any applicable laws in any jurisdiction or to give notice to any person of the execution of this Deed;
  - (iii) Taking or requiring the Borrower to take any steps to perfect its title to any of the Trust Property or Secured Assets or to render the Trust Property or Secured Assets (and Security over the Secured Assets) effective or to secure the creation of any ancillary security interest under the laws of any jurisdiction; or
  - (iv) Requiring any further assurances in relation to any Security or this Deed;
- (d) The Trustee may in the conduct of the trusts contained in this Deed, without the consent of each Lender, instead of acting personally, employ and pay an agent (whether a solicitor or other appropriately qualified person) to transact or concur in transacting any business and to do or concur in doing any acts required to be done by the Trustee (including the receipt and payment of money) and any agent (being a solicitor, broker or other person engaged in any profession or business) shall be entitled to be paid all usual and

professional and other charges for business transacted and acts done by him or any partner of his in connection with the trusts contained herein;

- (e) The Trustee shall have only those duties, obligations and responsibilities expressly specified in this Deed and shall not have any implied duties, obligations and responsibilities;
- (f) The Trustee shall, on the discharge of the Secured Liabilities, have the power to wind up the trusts created by this Deed;
- (g) The Trustee shall not be under any obligations to insure any of the Trust Property or any deeds or documents of title (or other evidence in respect thereof) and shall not be responsible for any loss, expense or liability which may be suffered as a result of the lack of or inadequacy of any such insurance;
- (h) No provision of this Deed, the Facility Agreement, Terms of Service or any other document relating to the subject matter of those documents or any of them shall require the Trustee to expend or risk its own funds or to otherwise incur any financial liability in the performance of any of its duties, or in the exercise of any of its rights or powers;
- (i) The Trustee shall not be responsible for the legality, validity, effectiveness, suitability, adequacy or enforceability of the Facility Agreement, the Terms of Service, this Deed or any other documents entered into in connection therewith, or any other document, or any obligations or rights created or purported to be created by or pursuant to such documents, or any Security or the priority thereof constituted or purported to be constituted thereby or pursuant thereto, neither shall it be responsible or liable to any person because of any invalidity of any provision of such documents or the unenforceability thereof, whether arising from statute, law or decision of any court;
- (j) Unless otherwise stated in any discharge of this Deed, the provisions of this clause shall continue in full force and effect notwithstanding any such discharge;
- (k) In performing or carrying out its duties, obligations and responsibilities, the Trustee shall be considered to be acting only in an administrative capacity (save as expressly provided in this Deed, the Facility Agreement and the Terms of Service) and shall not have or be deemed to have any duty, obligation or responsibility to, or relationship of trust or agency with, the Borrower or, except as expressly set out in this Deed, the Facility Agreement and Terms of Service, for each Lender;
- (l) Without prejudice to the Borrower's obligation to indemnify the Trustee under this Deed, each Lender hereby undertakes severally to indemnify and hold harmless the Trustee against all costs, charges, losses, claims, damages, liabilities, expenses and other sums (or actions in respect thereof) included value added tax thereon suffered or incurred by the Trustee or any person or Delegate appointed by the Trustee to whom any power, trust, authority or

discretion may be delegated, in connection with this Deed and all costs, charges, losses, claims, damages, liabilities, expenses and other sums suffered or incurred by the Trustee or such person or Delegate as a result of complying with the provisions of this Deed, other than as a result of the fraud, gross negligence or wilful default of the Trustee;

- (m) Section 1 of the Trustee Act 2000 shall not apply to the duties of the Trustee in relation to the trusts constituted by this Deed. Where there are any inconsistencies between the Trustee Act 1925 and/or the Trustee Act 1925 with any provision of this Deed, the Facility Agreement or Terms of Service, the provisions of this Deed shall, to the extent allowed by law, prevail and in the case of any inconsistency with the Trustee Act 2000, the provisions of this deed, the Facility Agreement or Terms of Service shall constitute a restriction or exclusion for purposes of that Act. Where there is any inconsistency between the Terms of Service and this Deed or the Facility Agreement, the provisions of this Deed and the Facility Agreement shall prevail to the extent necessary to resolve the inconsistency;
- (n) Any corporation into which the Trustee may be merged or converted or with which it may be consolidated resulting from any merger, conversion or consolidation to which the Trustee may be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this clause, without the execution or filing of any paper or any further act on the part of any of the parties to this Deed;
- (o) The Trustee may appoint any trustee to act jointly with or in place of the Trustee if it determines that such appointment is in the interests of the Lender or to conform with a legal requirement in a jurisdiction in which a particular act is to be performed to give effect to this deed, or to obtain or enforce a judgment, or enforce any provision of this deed or any Trust Property in any jurisdiction provided that it shall promptly notify the Lender and the Borrower of such appointment;
- (p) Neither the Trustee nor any officer, agent or employee of the Trustee, nor any Delegate hereby assumes any duty of skill and care (statutory or otherwise) and any such duty is hereby expressly disclaimed;
- (q) The Lender shall have no right to, and hereby undertake not to, take any action against any officer, agent, employee or Delegate of the Trustee;
- (r) The Trustee shall not be required to ascertain or enquire as to the performance or observance by the Borrower of the terms of this Deed, the Facility Agreement, Terms of Service or any other document in connection with it and shall not be under a duty to monitor the Borrower's performance. The Trustee shall not be deemed to have knowledge of the occurrence of any default unless the Trustee has received notice, marked for the attention of the individual or holder of the office, or any successor office, from a party to this

agreement describing the default and stating that the notice is a 'notice of default'.

- 2.6 Where a Lender Majority votes pursuant to the Facility Agreement to remove the Trustee as Trustee, the removal shall not be effective until a new Trustee has been appointed as a successor Trustee (unless at the time of the vote pursuant to the Facility Agreement there is more than one trustee, in which case the removal shall take place immediately). For the purpose of giving effect to this clause 2.6, any reference to Trustee shall be a reference to the Lender or applicable third party where a decision has been made to replace the Trustee pursuant to this clause.
- 2.7 The removal of the Trustee as Trustee pursuant to clause 2.7 above shall not operate to remove the Trustee as security trustee under any other agreement.

### **3. COVENANT TO PAY**

#### **3.1 Covenant to pay**

The Borrower shall, on demand, pay to the Trustee and discharge the Secured Liabilities when they become due.

#### **3.2 Certain liabilities**

The Secured Liabilities shall, without limitation, include all liabilities arising under this Deed and the Facility Agreement, interest (both before and after judgment) from the date such liabilities are due, owing or incurred up to the date of payment at such rates and upon such terms as specified in the Facility Agreement and all legal, administrative and other costs, charges and expenses on a full and unqualified indemnity basis which may be properly and necessarily incurred by the Lender, Representative and Trustee in relation to any such moneys, obligations or liabilities or the release of all or any of the Secured Assets or the enforcement of the security hereby created.

#### **3.3 Interest**

The Borrower shall pay interest at the default rate specified in the Facility Agreement (whether before or after any judgment) in accordance with the Facility Agreement.

### **4. GRANT OF SECURITY**

#### **4.1 Legal mortgage**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Trustee, by way of first legal mortgage, each Property specified in the Commercial Terms.

#### 4.2 **Fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Trustee by way of first fixed charge:

- (a) all Properties acquired by the Borrower in the future;
- (b) all present and future interests of the Borrower not effectively mortgaged or charged under the preceding provisions of this clause 4 in, or over, freehold or leasehold property;
- (c) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;
- (d) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Borrower's business or the use of any Secured Asset, and all rights in connection with them;
- (e) all its present and future goodwill;
- (f) all its uncalled capital;
- (g) all the Equipment;
- (h) all the Intellectual Property;
- (i) all the Accounts Receivable;
- (j) all the Investments;
- (k) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including the Security Account and each Designated Account), all money standing to the credit of the Controlled Account, together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest);
- (l) all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy, to the extent not effectively assigned under clause 4.3; and
- (m) all its rights in respect of all agreements, instruments and rights relating to the Secured Assets, to the extent not effectively assigned under clause 4.3.

#### 4.3 **Assignment**

(i) As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Trustee absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

(a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy; and

(b) the benefit of all agreements, instruments and rights relating to the Secured Assets.

(ii) To the extent that any such right, title and interest as is referred to in paragraph (i) above is not assignable or capable of assignment, the assignment of it purported to be effected by such paragraph shall operate as an assignment of any and all compensation, damages, income, profit or rent which the Borrower may derive from it or be awarded or entitled to in respect of it, in each case as a continuing security for the payment or discharge in full of the Secured Liabilities.

#### 4.4 **Floating charge**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Trustee, by way of first floating charge, all the Secured Assets of the Borrower at any time not effectively mortgaged, charged or assigned pursuant to clause 4.1 to 4.3 inclusive.

#### 4.5 **Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 4.4.

#### 4.6 **Automatic crystallisation of floating charge**

The floating charge created by clause 4.4 shall automatically and immediately (without notice) be converted into a fixed charge over the assets subject to that floating charge if:

- (a) the Borrower:
  - (i) creates, or attempts to create, without the prior written consent of the Trustee, a Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this deed or the Facility Agreement); or
  - (ii) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);
- (b) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or
- (c) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Borrower.

#### 4.7 **Crystallisation of floating charge by notice**

The Trustee may, in its sole discretion, by written notice to the Borrower, convert the floating charge created under this Deed into a fixed charge as regards any part of the Secured Assets specified by the Trustee in that notice if:

- (a) an Event of Default occurs and is continuing; or
- (b) the Trustee considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

#### 4.8 **Assets acquired after any floating charge has crystallised**

Any Secured Asset acquired by the Borrower after any crystallisation of the floating charge created under this Deed that, but for that crystallisation, would be subject to a floating charge under this Deed, shall (unless the Trustee confirms otherwise to the Borrower in writing) be charged to each Lender, the Representative and Trustee by way of first fixed charge.

#### 4.9 **Trust**

- (a) Subject to part (b) of this clause 4.9, if or to the extent that the assignment or charging of any Secured Assets is prohibited, the Borrower shall hold it on trust for the Trustee (for the benefit of and as trustee for itself, the Representative and each Lender).
- (b) If the reason referred to in part (a) of this clause 4.9 is that:
  - (i) a consent or waiver must be obtained;
  - (ii) a condition must be satisfied

then:

- (A) subject to part (c) of clause 4.9, the Borrower shall apply for the consent or waiver; and
  - (B) the Borrower shall use all reasonable endeavours to satisfy the condition
- in each case within 10 days of the date of this Deed or, if the Secured Asset is acquired after that date of this Deed, within 10 days of the date of the acquisition.
- (c) Where the consent or waiver is not to be unreasonably withheld, the Borrower shall:
    - (A) use its reasonable endeavours to obtain it as soon as possible; and
    - (B) keep the Trustee informed of the progress of the negotiations to obtain it.
  - (d) On the waiver or consent being obtained, or the condition being satisfied, the Secured Assets shall be charged or assigned (as appropriate) under this clause 4.9 and, in



relation to such Secured Assets, the trust referred to in part (a) of this clause 4.9 shall terminate.

#### **4.10 Bank mandate**

- (a) If the Trustee at any time considers that an Event of Default is about to or is likely to occur, it shall have the right, on serving prior written notice on the Borrower with immediate effect, to sign and date the mandate regarding the Security Account and submit to the Account Bank.
- (b) If the Trustee at any time consider that an Event of Default is about to or is likely to occur, it shall have the right, on serving prior written notice on the Borrower with immediate effect to cease accounting to the Borrower for payments received into the Controlled Account for such time as any Event of Default shall remain ongoing.

### **5. LIABILITY OF THE BORROWER**

#### **5.1 Liability not discharged**

The Borrower's liability under this Deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Trustee or any Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) the Trustee renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person;
- (c) any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower; or
- (d) any termination, amendment, variation, novation or supplement of or to any of the Secured Liabilities;
- (e) any grant of time, indulgence, waiver or concession to the Borrower or any other person; or
- (f) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Borrower or any other person.

#### **5.2 Immediate recourse**

The Borrower waives any right it may have to require the Trustee or any Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Borrower.

## **6. REPRESENTATIONS AND WARRANTIES**

### **6.1 Representations and warranties**

In addition to the warranties and representations contained in the Facility Agreement, which are deemed to be repeated here as if set out below, the Borrower makes the representations and warranties set out in this clause 6 to the Trustee, as trustee for itself and for the benefit of the Representative and each Lender.

### **6.2 Ownership of Secured Assets**

The Borrower is the sole legal and beneficial owner of the Secured Assets and no other person uses the Secured Assets in any other way.

### **6.3 No Security**

The Secured Assets are free from any Security other than the Security created by this deed except as set out in the Commercial Terms.

### **6.4 No adverse claims**

Except as set out in the Commercial Terms, the Borrower has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

### **6.5 No adverse covenants**

Except as set out in the Commercial Terms, there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets or any of them.

### **6.6 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Secured Assets or any of them.

### **6.7 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.

### **6.8 No overriding interests**

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.

**6.9 Avoidance of security**

No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Borrower or otherwise.

**6.10 No prohibitions or breaches**

There is no prohibition on assignment in any Insurance Policy or customer agreement and the entry into this Deed by the Borrower does not, and will not, constitute a breach of any Insurance Policy or any agreement or instrument binding on the Borrower or its assets.

**6.11 Environmental compliance**

The Borrower has at all times complied in all material respects with all applicable environmental laws.

**6.12 Enforceable security**

This Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Borrower, and is and will continue to be effective security overall and every part of the Secured Assets in accordance with its terms.

**6.13 Investments**

(a) The Investments are fully paid and are not subject to any option to purchase or similar rights.

(b) No constitutional document of an issuer of an Investment, nor any other agreement:

(i) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this Deed; or

(ii) contains any rights of pre-emption in relation to the Investments.

**6.14 Directors and group companies**

There is no amount owed to or owing by a holding, subsidiary or sister company of the Borrower or to or by any director, officer, agent or employee of the Borrower or of such holding, subsidiary or sister company of the Borrower.

**6.15 Times for making representations and warranties**

The representations and warranties set out in clause 6.2 to clause 6.14 are made by the Borrower on the date of this Deed are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

## **7. GENERAL COVENANTS**

### **7.1 Negative pledge and disposal restrictions**

The Borrower shall not at any time, except with the prior written consent of the Trustee:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this Deed;
- (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or
- (c) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

### **7.2 Preservation of Secured Assets**

The Borrower shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Trustee (and the Lender), or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this Deed and shall, without prejudice to the generality of the foregoing, ensure that there is enough money in the Security Account to cover its liabilities under the Facility Agreement and this Deed. On crystallisation of the floating charge created by this Deed or on exercise by the Trustee of any mandate in relation to the Security Account or, in relation to the Controlled Account, the exercise of the Trustee's rights under clause 4.10(b), the Borrower shall not:

- (a) Withdraw or transfer all or any part of the Deposit until after the expiry of the Security Period;
- (b) Do or permit to be done any act or thing which would or might depreciate, jeopardise or otherwise prejudice the security held by the Trustee or materially diminish the value of the Deposit or monies standing to the credit of the Controlled Account or the effectiveness of the security created by this Deed (including, without limitation, closing the Security Account or revoking the Security Account or Controlled Account mandate or otherwise interfering with the Trustee's exercise of its right under the Security Account or Controlled Account mandate).

### **7.3 Compliance with laws and regulations**

- (a) The Borrower shall not, without the Trustee's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.

(b) The Borrower shall:

- (i) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;
- (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
- (iii) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

#### **7.4 Enforcement of rights**

The Borrower shall use its best endeavours to enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets which the Trustee may require from time to time and procure the prompt observance of the covenants and other obligations imposed on the Borrower's counterparties (including each insurer in respect of an Insurance Policy).

#### **7.5 Notice of misrepresentation and breaches**

The Borrower shall, promptly on becoming aware of any of the same, give the Trustee notice in writing of:

- (a) any representation or warranty set out in this Deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this Deed.

#### **7.6 Title documents**

The Borrower shall, as so required by the Trustee, deposit with the Trustee and the Lender shall, for the duration of this Deed be entitled to hold:

- (a) all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Borrower (and if these are not within the possession or control of the Borrower, the Borrower undertakes to obtain possession of all these deeds and documents of title);
- (b) all Insurance Policies; and
- (c) all deeds and documents of title (if any) relating to the Accounts Receivable as the Trustee may specify from time to time.

#### **7.7 Insurance**

- (a) The Borrower shall where required by the Trustee insure and keep insured all risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower.

Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Trustee, and must be for not less than the replacement (or, in the case of the Properties the reinstatement) value of the Secured Assets.

- (b) The Borrower shall, if requested by the Trustee, produce to the Trustee the policy, certificate or cover note relating to the insurance required by clause 7.7(a).
- (c) The Borrower shall agree to be jointly named as loss payee with the Trustee, or allow the Trustee to be named as sole loss payee on the insurance policy over the Secured Assets and at the Trustee's sole discretion to the extent permitted by the insurer.
- (d) On the execution of this Deed and as so requested by the Trustee from time to time Within 5 Business Days' of execution and any request, the Borrower shall give notice to the insurer under an Insurance Policy in the form agreed and procure that each insurer promptly provides to the Trustee (within 5 Business Days) an acknowledgement of the notice in the form agreed with the Trustee.

#### **7.8 Insurance premiums**

The Borrower shall:

- (a) promptly pay all premiums in respect of each insurance policy maintained by it in accordance with clause 7.7(a) and do all other things necessary to keep that policy in full force and effect; and
- (b) (if the Trustee so requires) produce to, or deposit with, the Trustee the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy maintained by it in accordance with clause 7.7(a).

#### **7.9 No invalidation of insurance**

The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy maintained by it in accordance with clause 7.7(a).

#### **7.10 Proceeds of insurance policy (which relate to the insured assets, which the deed of charge is secured over)**

All monies received or receivable by the Borrower under any insurance policy maintained by it in accordance with clause 7.7(a) (including all monies received or

receivable by it under any Insurance Policy) at any time (whether or not the security constituted by this Deed has become enforceable) shall:

- (a) immediately be paid into a Designated Account, held by the Trustee;
- (b) if they are not paid directly to the broker or Trustee by the insurers, be held by the Borrower as trustee of the same for the benefit of the Trustee and Lender (and the Borrower shall account for them to the Trustee); and
- (c) be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this Deed has become enforceable and if the Trustee so directs, in or towards discharge or reduction of the Secured Liabilities.

#### 7.11 **Information**

The Borrower shall:

- (a) give the Trustee such information concerning the Secured Assets as the Trustee may require;
- (b) permit any persons designated by the Trustee and any Receiver to enter on its premises and inspect and examine the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- (c) promptly notify the Trustee in writing of any action, claim or demand made by or against it in connection with any Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim or demand, together with, in each case, the Borrower's proposals for settling, liquidating, compounding or contesting any such action, claim or demand and shall, subject to the Trustee's prior approval, implement those proposals at its own expense.

#### 7.12 **Deposit, Security Account, Controlled Account and notice of charge**

- (a) The Borrower shall comply with the requirements of all accounts procedures notified to it by the Trustee from time to time;
- (b) With regard to any mandate that the Borrower signed in favour of the Trustee in respect of the Controlled Account and/or Security Account, the Borrower shall not revoke, change, alter, interfere or otherwise deal with it during the Security Period without the Trustee's express prior written consent;
- (c) The Borrower shall not create any new payment obligations, direct debits or standing orders or grant or permit any other rights over, from or in respect of the Security Account or Controlled Account without the Trustee's express prior written consent;
- (d) The Borrower shall not open any new bank, building society or other account;
- (e) The Borrower shall do all such acts and execute all documents as may be required by the Trustee and/or the Account Bank to give effect to the said mandate and the Trustee's exercise of it;

- (f) The Borrower shall not interfere with the Trustee's exercise of the mandate except in order to fulfil its obligations under clause 7.12(e);
- (g) On crystallisation of the floating charge over the Security Account, the Borrower shall immediately serve a notice of charge on the Account Bank substantially in the form of the Schedule and ensure that the Account Bank promptly acknowledges the notice, substantially in the form of the acknowledgement in the Schedule.

#### **7.13 Acknowledgement and covenant**

The Borrower acknowledges and accepts that the Trustee is acting on behalf of each Lender in executing and delivering this Deed, and as security trustee.

- (a) The Borrower acknowledges that this Deed is solely in electronic form and is executed and delivered electronically, with no original paper version and that any print out of the electronic document shall be a copy only.
- (b) The Borrower undertakes not to raise any claim, argument or objection to the validity of this Deed based on the validity or otherwise of the electronic nature or form of the document or method of execution or delivery.

### **8. ACCOUNTS RECEIVABLES COVENANTS**

#### **8.1 Realising Accounts Receivable**

The Borrower shall as an agent for the Trustee, collect in and realise all Accounts Receivable until crystallisation of the charge.

#### **8.2 Preservation of Accounts Receivable**

- (a) The Borrower shall not (except as provided by clause 8.1 or with the prior written consent of the Trustee on its behalf) release, exchange, compound, set-off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Accounts Receivable.
- (b) The Loan to Value shall be maintained at the percentage specified in the Facility Agreement.

### **9. PROPERTY COVENANTS**

#### **9.1 Maintenance**

The Borrower shall keep all buildings and all fixtures on each Property in good and substantial repair and condition.

#### **9.2 Preservation of Property, fixtures and Equipment**



The Borrower shall not, without the prior written consent of the Trustee:

- (a) pull down or remove the whole, or any part of, any building forming part of any Property or permit the same to occur;
- (b) make or permit any [material] alterations to any Property, or sever or remove, or permit to be severed or removed, any of its fixtures; or
- (c) remove or make any material alterations to any of the Equipment belonging to, or in use by, the Borrower on any Property (except to effect necessary repairs or replace them with new or improved models or substitutes).

### 9.3 **Conduct of business on Properties**

The Borrower shall carry on its trade and business on those parts (if any) of the Properties as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in that trade or business.

### 9.4 **Planning information**

The Borrower shall:

- (a) give full particulars to the Trustee of any notice, order, direction, designation, resolution or proposal given or made by any planning authority or other public body or authority (Planning Notice) that specifically applies to any Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Planning Notice; and
- (b) at its own expense, immediately on request by the Trustee, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Planning Notice, and make, or join with the Trustee in making, any objections or representations in respect of that Planning Notice that the Trustee may desire.

### 9.5 **Compliance with covenants and payment of rent**

The Borrower shall:

- (a) observe and perform all covenants, stipulations and conditions to which each Property, or the use of it, is or may be subjected, and (if the Trustee so requires) produce evidence sufficient to satisfy the Trustee that those covenants, stipulations and conditions have been observed and performed;
- (b) diligently enforce all covenants, stipulations and conditions benefiting each Property and shall not (and shall not agree to) waive, release or vary any of the same; and
- (c) (without prejudice to the generality of the foregoing) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and perform and observe all the tenant's covenants and conditions.

#### 9.6 **Payment of rent and outgoings**

The Borrower shall:

- (a) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and
- (b) pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on each Property or on its occupier.

#### 9.7 **Maintenance of interests in Properties**

The Borrower shall not, without the prior written consent of the Trustee:

- (a) grant, or agree to grant, any licence or tenancy affecting the whole or any part of any Property, or exercise, or agree to exercise, the statutory powers of leasing or of accepting surrenders under sections 99 or 100 of the Law of Property Act 1925; or
- (b) in any other way dispose of, surrender or create, or agree to dispose of surrender or create, any legal or equitable estate or interest in the whole or any part of any Property.

#### 9.8 **Registration restrictions**

If the title to any Property is not registered at the Land Registry, the Borrower shall procure that no person (other than itself) shall be registered under the Land Registration Acts 1925 to 2002 as proprietor of all or any part of any Property without the prior written consent of the Trustee. The Borrower shall be liable for the costs and expenses of the Trustee in lodging cautions against the registration of the title to the whole or any part of any Property from time to time.

#### 9.9 **Development restrictions**

The Borrower shall not, without the prior written consent of the Trustee:

- (a) make or, insofar as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or
- (b) carry out, or permit, or suffer to be carried out on any Property any development as defined in the Town and Country Planning Act 1990 and the Planning Act 2008, or change or permit or suffer to be changed the use of any Property.

#### 9.10 **Environment**

The Borrower shall:

- (a) comply with all the requirements of environmental law both in the conduct of its general business and in the management, possession or occupation of each Property; and
- (b) obtain and comply with all authorisations, permits and other types of licences necessary under environmental law.

**9.11 No restrictive obligations**

The Borrower shall not, without the prior written consent of the Trustee, enter into any onerous or restrictive obligations affecting the whole or any part of any Property, or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of any Property.

**9.12 Proprietary rights**

The Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of any Property without the prior written consent of the Trustee.

**9.13 Inspection**

The Borrower shall permit the Trustee, any Receiver and any person appointed by either of them to enter on and inspect any Property on reasonable prior notice.

**9.14 Property information**

The Borrower shall inform the Trustee promptly of any acquisition by the Borrower of, or contract made by the Borrower to acquire, any freehold, leasehold or other interest in any property.

**9.15 VAT option to tax**

The Borrower shall not, without the prior written consent of the Trustee:

- (a) exercise any VAT option to tax in relation to any Property; or
- (b) revoke any VAT option to tax exercised, and disclosed to the Trustee, before the date of this deed.

**9.16 Registration at the Land Registry**

The Borrower consents to an application being made by the Trustee to the Land Registrar for (i) registering the charge against each Property created by this Deed and (ii) the following restriction in Form P to be registered against its title to each Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor

for the time being of the charge dated 21<sup>st</sup> May 2018 in favour of ArchOver Limited referred to in the charges register or their conveyancer or specify appropriate details."

## **10. INVESTMENTS COVENANTS**

### **10.1 Deposit of title documents**

The Borrower shall:

- (a) on the execution of this Deed, deliver to the Trustee, or as the Trustee may direct, all stock or share certificates and other documents of title or evidence of ownership relating to any Investments owned by the Borrower at that time; and
- (b) on the purchase or acquisition by it of Investments after the date of this Deed, deposit with the Lender, or as the Lender may direct, all stock or share certificates and other documents of title or evidence of ownership relating to those Investments.

### **10.2 At the same time as depositing documents with the Trustee, or as the Trustee may direct, in accordance with clause 10.1(a), the Borrower shall also deposit with the Trustee, or as the Trustee may direct:**

- (a) all stock transfer forms relating to the relevant Investments duly completed and executed by or on behalf of the Borrower, but with the name of the transferee, the consideration and the date left blank; and
- (b) any other documents (in each case duly completed and executed by or on behalf of the Borrower) that the Trustee may request to enable it or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain a legal title to, or to perfect its security interest in any of the relevant Investments,

so that the Trustee may, at any time on an Event of Default and without notice to the Borrower, complete and present those stock transfer forms and other documents to the issuer of the Investments for registration.

### **10.3 Nominations**

The Borrower shall terminate with immediate effect all nominations it may have made (including, without limitation, any nomination made under section 145 or section 146 of the Companies Act 2006) in respect of any Investments and, pending that termination, procure that any person so nominated:

- (a) does not exercise any rights in respect of any Investments without the prior written approval of the Lender; and
- (b) immediately on receipt by it, forward to the Trustee all communications or other information received by it in respect of any Investments for which it has been so nominated.

- 10.4 The Borrower shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments.

**10.5 Pre-emption rights and restrictions on transfer**

The Borrower shall:

- (a) obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association (or otherwise) of an issuer of any Investments, for the transfer of the Investments to the Trustee or its nominee, or to a purchaser on enforcement of the security constituted by this Deed; and
- (b) procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) under the articles of association, other constitutional document or otherwise of each issuer of the Investments in any manner that the Trustee may require in order to permit the transfer of the Investments to the Trustee or its nominee, or to a purchaser on enforcement of the security constituted by this Deed.

**10.6 Dividends and voting rights before enforcement**

Before the security constituted by this Deed becomes enforceable, the Borrower may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Lender or the Trustee or any of its nominees, the Trustee will hold all those dividends, interest and other monies received by it for the Borrower and will pay them to the Borrower promptly on request.

- 10.7 Before the security constituted by this Deed becomes enforceable, the Borrower may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Trustee or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:

- (a) it shall not do so in any way that would breach any provision of the Facility Agreement or this Deed or for any purpose inconsistent with the Facility Agreement or this Deed; and
- (b) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Trustee's opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Trustee's security under this Deed.

- 10.8 The Borrower shall indemnify the Trustee against any loss or liability incurred by a Lender (or its nominee) as a consequence of the Trustee (or its nominee) acting in respect of the Investments at the direction of the Borrower.

- 10.9 The Trustee shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Investments that the Trustee considers prejudicial to, or impairing the value of, the security created by this Deed.

**10.10 Dividends and voting rights after enforcement**

After the security constituted by this Deed has become enforceable:

- (a) all dividends and other distributions paid in respect of the Investments and received by the Borrower shall be held by the Borrower on trust for the Trustee and immediately paid into a Designated Account or, if received by the Trustee, shall be retained by the Trustee; and
- (b) all voting and other rights and powers attaching to the Investments shall be exercised by, or at the direction of, the Trustee and the Borrower shall, and shall procure that its nominees shall, comply with any directions the Trustee may give, in its absolute discretion, concerning the exercise of those rights and powers.

**10.11 Calls on Investments**

Notwithstanding the security created by this Deed, the Borrower shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. The Borrower acknowledges that the Trustee shall not be under any liability in respect of any such calls, instalments or other payments.

- 10.12 No alteration of constitutional documents or rights attaching to Investments.

- 10.13 The Borrower shall not, without the prior written consent of the Trustee, amend, or agree to the amendment of:

- (a) the memorandum or articles of association, or any other constitutional documents, of any issuer of the Investments that is not a public company; or
- (b) the rights or liabilities attaching to, or conferred by, all or any of the Investments.

**10.14 Preservation of Investments**

The Borrower shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer of the Investments that is not a public company shall not:

- (a) consolidate or subdivide any of the Investments, or re-organise, exchange, repay or reduce its share capital in any way;
- (b) issue any new shares or stock; or

- (c) refuse to register any transfer of any of the Investments that may be lodged with it for registration by, or on behalf of, the Trustee or the Borrower in accordance with this Deed.

#### **10.15 Investments information**

The Borrower shall, promptly following receipt, send to the Trustee copies of any notice, circular, report, accounts and any other document received by it that relates to the Investments.

### **11. EQUIPMENT COVENANTS**

#### **11.1 Maintenance of Equipment**

The Borrower shall:

- (a) maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules;
- (b) at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value; and
- (c) not permit any Equipment to be:
  - (i) used or handled other than by properly qualified and trained persons; or
  - (ii) overloaded or used for any purpose for which it is not designed or reasonably suitable.

#### **11.2 Payment of Equipment taxes**

The Borrower shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Equipment and, on demand, produce evidence of such payment to the Trustee.

#### **11.3 Notice of charge**

The Borrower:

- (a) shall, if so requested by the Trustee, affix to and maintain on each item of Equipment in a conspicuous place, a clearly legible identification plate containing the following wording:

"NOTICE OF CHARGE

This [DESCRIBE ITEM] and all additions to it [and ancillary equipment] are subject to a fixed charge dated [DATE] in favour of ArchOver Limited."

- (b) shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with clause 11.3(a).

## **12. INTELLECTUAL PROPERTY COVENANTS**

### **12.1 Preservation of rights**

The Borrower shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including (without limitation) by observing all covenants and stipulations relating to those rights, and by paying all applicable renewal fees, licence fees and other outgoings.

### **12.2 Registration of Intellectual Property**

The Borrower shall use all reasonable efforts to register applications for the registration of any Intellectual Property, and shall keep the Trustee informed of all matters relating to each such registration.

### **12.3 Maintenance of Intellectual Property**

The Borrower shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.

## **13. POWERS OF THE TRUSTEE**

### **13.1 Power to remedy**

- (a) The Trustee shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this Deed, the Facility Agreement or Terms of Service.
- (b) The Borrower irrevocably authorises the Trustee and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Trustee in remedying a breach by the Borrower of its obligations contained in this Deed, Facility Agreement or Terms of Service shall be reimbursed by the Borrower to the Trustee on a full indemnity basis and shall carry interest in accordance with clause 20.1.

### **13.2 Exercise of rights**



The rights of the Trustee under clause 13.1 are without prejudice to any other rights of the Trustee under this Deed, the Facility Agreement and Terms of Service. The exercise of any rights of the Trustee under this Deed, the Facility Agreement or Terms of Service shall not make the Trustee liable to account as a mortgagee in possession.

### 13.3 Power to dispose of chattels

- (a) At any time after the security constituted by this Deed has become enforceable, the Trustee or any Receiver may, as agent for the Borrower, dispose of any chattels or produce found on any Property.
- (b) Without prejudice to any obligation to account for the proceeds of any disposal made under clause 13.3(a), the Borrower shall indemnify the Trustee, the Lender and any Receiver against any liability arising from any disposal made under clause 13.3(a).

### 13.4 **Trustee has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this Deed on a Receiver may, after the security constituted by this Deed has become enforceable, be exercised by the Trustee in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

### 13.5 **Conversion of currency**

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Trustee may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 13.5) from their existing currencies of denomination into any other currencies of denomination that the Trustee may think fit.
- (b) Any such conversion shall be effected at Barclays Bank Plc then prevailing spot selling rate of exchange for such other currency against the existing currency.
- (c) Each reference in this clause 13.5 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

### 13.6 **New accounts**

- (a) If the Trustee receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Trustee may open a new account for the Borrower in the Trustee's books. Without prejudice to the Trustee's right to combine accounts, no money paid to the credit of the Borrower in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

- (b) If the Trustee does not open a new account immediately on receipt of the notice, or deemed notice, under clause 13.6(a), then, unless the Trustee gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Trustee shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Trustee.

### 13.7 **Trustee's set-off rights**

If the Trustee has more than one account for the Borrower in their books, the Trustee may at any time after:

- (a) the security constituted by this Deed has become enforceable; or
- (b) the Trustee has received, or are deemed to have received, notice of any subsequent Security or other interest affecting all or any part of the Secured Assets,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account that may be in debit. After making any such transfer, the Trustee shall notify the Borrower of that transfer. The Trustee may, at any time after the security constituted by this Deed has become enforceable or the mandate for the Security Account transferred to it, apply the Deposit or any part of it towards satisfaction of all or any of the Secured Liabilities or at any time after the Trustee has given notice pursuant to clause 4.10(b) apply any sums to the credit of the Controlled Account towards satisfaction of any part of the Secured Liabilities.

### 13.8 **Indulgence**

The Trustee may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this Deed (whether or not any such person is jointly liable with the Borrower) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Deed, the Facility Agreement, Terms of Service, or to the liability of the Borrower for the Secured Liabilities.

### 13.9 **Appointment of an Administrator**

- (a) The Trustee may, without notice to the Borrower, appoint any one or more persons to be an Administrator of the Borrower pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Deed becomes enforceable.
- (b) Any appointment under this clause 13.9 shall:
  - (i) be in writing signed by a duly authorised signatory of the Trustee; and
  - (ii) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

- (c) The Trustee may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 13.9 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

#### **13.10 Advances**

The Lender covenants with the Borrower and the Trustee that they shall, through the Representative, perform their obligations to make the advance(s) under the Facility Agreement once the security has been filed at Companies House or otherwise in accordance with the terms of the Facility Agreement and the Terms of Service.

### **14. WHEN SECURITY BECOMES ENFORCEABLE**

#### **14.1 Security becomes enforceable on Event of Default**

The security constituted by this Deed shall be immediately enforceable if an Event of Default occurs.

#### **14.2 Discretion**

After the security constituted by this Deed has become enforceable, the Trustee may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms they think fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

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

#### **15.1 Enforcement powers**

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall, as between the Trustee and a purchaser from the Trustee, arise on and be exercisable at any time after the execution of this Deed, but the Trustee shall not exercise such power of sale or other powers until the security constituted by this Deed has become enforceable under clause 14.1.
- (b) Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.

#### **15.2 Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Trustee and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Borrower, to:

- (a) grant a lease or agreement to lease;

- (b) accept surrenders of leases; or
- (c) grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Borrower, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Trustee or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

### 15.3 Access on enforcement

- (a) At any time after the Trustee has demanded payment of the Secured Liabilities or if the Borrower defaults in the performance of its obligations under this Deed or the Facility Agreement or Terms of Service, the Borrower will allow the Trustee or the Trustee's Receiver, without further notice or demand, immediately to exercise all their rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where the related documentation of the Secured Asset is situated (or where the Trustee or a Receiver reasonably believe such related documentation to be situated) without incurring any liability to the Borrower for, or by any reason of, that entry.
- (b) At all times, the Borrower must use its best endeavours to allow the Trustee or its Receiver access to any premises for the purpose of clause 15.3(a) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

### 15.4 Prior Security

At any time after the security constituted by this Deed has become enforceable, or after any powers conferred by any Security having priority to this Deed shall have become exercisable, the Trustee may:

- (a) redeem that or any other prior Security;
- (b) procure the transfer of that Security to it; and
- (c) settle and pass any account of the holder of any prior Security.

Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower. All monies paid by the Trustee to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Trustee, be due from the Borrower to the Trustee and the Lender on current account and shall bear interest at the default rate of interest specified in the Facility Agreement and be secured as part of the Secured Liabilities.

### 15.5 Protection of third parties

No purchaser, mortgagee or other person dealing with the Trustee, any Receiver or other Delegate shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Trustee, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- (c) how any money paid to the Trustee, any Receiver or any Delegate is to be applied.

#### 15.6 **Privileges**

Each Receiver and each Lender and the Trustee is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

#### 15.7 **No liability as mortgagee in possession**

Neither the Lender, the Representative, the Trustee, any Receiver, any Delegate nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

#### 15.8 **Conclusive discharge to purchasers**

The receipt of the Trustee or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Trustee, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

#### 15.9 **Right of appropriation**

- (a) To the extent that:
  - (i) the Secured Assets constitute Financial Collateral; and
  - (ii) this Deed and the obligations of the Borrower under it constitute a Security Financial Collateral Arrangement,

the Trustee shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Trustee may, in its absolute discretion, determine.

- (b) The value of any Secured Assets appropriated in accordance with this clause shall be:

(i) in the case of cash, the amount standing to the credit of each of the Borrower's accounts with any bank, financial institution or other person, together with all interest accrued but unposted, at the time the right of appropriation is exercised; and

(ii) in the case of Investments, the price of those Investments at the time the right of appropriation is exercised as listed on any recognised market index or determined by any other method that the Trustee may select (including independent valuation).

(c) The Borrower agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

15.10 Where the Secured Liabilities relate to borrowings under one or more Facility Agreement, arrangement and/or other agreement or otherwise via the Trustee's platform, each Lender's rights rank pari passu in all respects with each other Lender's rights, regardless of when such Facility Agreement, arrangement, other agreement or other borrowing via the Trustee's platform was executed, arranged or entered into.

## **16. RECEIVER**

### **16.1 Appointment**

At any time after the security constituted by this Deed has become enforceable, or at the request of the Borrower, the Trustee may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

### **16.2 Removal**

The Trustee may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by them and may, whenever they think fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **16.3 Remuneration**

The Trustee may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this Deed, which shall be due and payable immediately on its being paid by the Trustee.

### **16.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Trustee under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

### **16.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Trustee despite any prior appointment in respect of the Borrower or all or any part of the Secured Assets.

#### **16.6 Agent of the Borrower**

Any Receiver appointed by the Trustee under this Deed shall be the agent of the Borrower and the Borrower shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender, the Representative or the Trustee.

### **17. POWERS OF RECEIVER**

#### **17.1 General**

- (a) Any Receiver appointed by or on behalf of the Trustee (and Lender) under this Deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 17.2 to clause 17.22.
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.
- (c) Any exercise by a Receiver of any of the powers given by clause 17 may be on behalf of the Borrower, the directors of the Borrower (in the case of the power contained in clause 17.16) or himself.
- (d) A Receiver may do anything the Trustee has power to do under this Deed.
- (e) A Receiver may do all the acts and things in Schedule 1 of the Insolvency Act 1986 as if the words "he" and "him" referred to the Receiver and "company" referred to the Borrower.

#### **17.2 Repair and develop Properties**

A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

#### **17.3 Surrender leases**

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that he thinks fit.

**17.4 Employ personnel and advisors**

A Receiver may provide services and employ, or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he thinks fit. A Receiver may discharge any such person or any such person appointed by the Borrower.

**17.5 Make VAT elections**

A Receiver may make, exercise or revoke any value added tax option to tax as he thinks fit.

**17.6 Remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Trustee may prescribe or agree with him.

**17.7 Realise Secured Assets**

A Receiver may collect and get in the Secured Assets or any part of them in respect of which he is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.

**17.8 Manage or reconstruct the Borrower's business**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower.

**17.9 Dispose of Secured Assets**

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which he is appointed in any manner and generally on any terms and conditions as he thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

**17.10 Sever fixtures and fittings**

A Receiver may sever and sell separately any fixtures or fittings from any Property without the consent of the Borrower.

**17.11 Accounts Receivable**



A Receiver may sell and assign all or any of the Accounts Receivable in respect of which he is appointed in any manner, and generally on any terms and conditions, that he thinks fit and may require the Borrower to give notice to the creditor to pay any amounts due under any of the Accounts Receivable directly to the Trustee.

**17.12 Valid receipts**

A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.

**17.13 Bring proceedings and make settlements**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as he thinks fit and may make any arrangement, settlement or compromise between the Borrower and any other person that he may think expedient.

**17.14 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 20, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this Deed.

**17.15 Improve the Equipment**

A Receiver may make substitutions of, or improvements to, the Equipment as he may think expedient.

**17.16 Make calls on Borrower members**

A Receiver may make calls conditionally or unconditionally on the members of the Borrower in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Borrower on its directors in respect of calls authorised to be made by them.

**17.17 Powers under the LPA 1925**

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

**17.18 Borrow**

A Receiver may, for any of the purposes authorised by this clause 17, raise money by borrowing from the Trustee (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which he is appointed on any

terms that he thinks fit (including, if the Trustee consents, terms under which that security ranks in priority to this Deed).

**17.19 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

**17.20 Delegation**

A Receiver may delegate his powers in accordance with this Deed.

**17.21 Absolute beneficial owner**

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.

**17.22 Incidental powers**

A Receiver may do any other acts and things:

- (a) that he may consider desirable or necessary for realising any of the Secured Assets;
- (b) that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or
- (c) that he lawfully may or can do as agent for the Borrower.

**18. DELEGATION**

**18.1 Delegation**

The Trustee or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney granted under clause 22.1).

**18.2 Terms**

The Trustee and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that they think fit.

**18.3 Liability**

Neither any Lender, nor the Trustee or Representative, nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

## **19. APPLICATION OF PROCEEDS**

### **19.1 Order of application of proceeds**

All monies received by the Trustee, a Receiver or a Delegate pursuant to this Deed, after the security constituted by this Deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

- (a) in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Trustee (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed, and of all remuneration due to any Receiver under or in connection with this Deed;
- (b) in or towards payment of or provision for the Secured Liabilities in any order and manner that the Trustee determines; and
- (c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

### **19.2 Appropriation**

Neither the Trustee, nor any Receiver nor Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

### **19.3 Suspense account**

All monies received by the Trustee, a Receiver or a Delegate under this Deed:

- (a) may, at the discretion of the Trustee, Receiver or Delegate, be credited to any suspense or securities realised account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Trustee and the Borrower; and
- (c) may be held in that account for so long as the Trustee, Receiver or Delegate think fit.

## **20. COSTS AND INDEMNITY**

### **20.1 Costs**

The Borrower shall, within five Business Days of demand, pay to, or reimburse, the Lender, Representative, Trustee and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal,

printing and out-of-pocket expenses) incurred by the Lender, Representative, Trustee, any Receiver or any Delegate in connection with:

- (a) this Deed or the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any Lender's, Representative's, the Trustee's, a Receiver's or a Delegate's rights under this Deed; or
- (c) taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Borrower) at the rate and in the manner specified in the Facility Agreement.

## 20.2 **Indemnity**

The Borrower shall indemnify each Lender, the Representative, the Trustee, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Deed; or
- (c) any default or delay by the Borrower in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this clause 16.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 21. **FURTHER ASSURANCE**

### 21.1 **Further assurance**

The Borrower shall, at its own expense, take whatever action the Trustee or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security intended to be created by this Deed;
- (b) facilitating the realisation of any Secured Asset; or

- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Trustee or any Receiver in respect of any Secured Asset,

including, without limitation (if the Trustee or Receiver think it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Trustee or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **22. POWER OF ATTORNEY**

### **22.1 Appointment of attorneys**

By way of security, effective immediately, the Borrower irrevocably appoints the Trustee, every Receiver and every Delegate separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- (a) the Borrower is required to execute and do under this Deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Trustee, any Receiver or any Delegate.

### **22.2 Ratification of acts of attorneys**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 22.1.

### **22.3 Exercise of the Power of Attorney**

The power of attorney created in clause 22.1 above (Appointment of attorneys) shall be effective immediately but the attorneys covenant that they will only exercise that power after the occurrence of an Event of Default, except that in relation to clause 21 (Further Assurance) the power of attorney created in clause 22.1 shall be exercisable at all times during the Security Period.

## **23. RELEASE**

Subject to clause 30.3, on the expiry of the Security Period (but not otherwise), the Trustee shall, at the request and cost of the Borrower, take whatever action is necessary to:

- (a) release the Secured Assets from the security constituted by this Deed; and
- (b) reassign the Secured Assets to the Borrower.

## **24. ASSIGNMENT AND TRANSFER**

### **24.1 Assignment by Trustee and Lender**

- (a) At any time, without the consent of the Borrower, both the Trustee and the Lender may assign or transfer any or all of their rights and obligations under this Deed.
- (b) The Lender or Trustee may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Secured Assets and this Deed that the Lender or Trustee consider appropriate.

### **24.2 Assignment by Borrower**

The Borrower may not assign any of its rights, or transfer any of its rights or obligations, under this Deed.

## **25. SET-OFF**

### **25.1 Trustee's right of set-off**

The Trustee may at any time set off any liability of the Borrower to a Lender and Trustee against any liability of the Trustee and a Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Deed. If the liabilities to be set off are expressed in different currencies, the Trustee may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Trustee of its rights under this clause 25 shall not limit or affect any other rights or remedies available to it or to any Lender under this Deed or otherwise.

## **26. AMENDMENTS, WAIVERS AND CONSENTS**

### **26.1 Amendments**

No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

### **26.2 Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure or delay by a party to exercise any right or remedy provided under this Deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or

remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Deed by the Trustee or any Lender shall be effective unless it is in writing.

### **26.3 Rights and remedies**

The rights and remedies provided under this Deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **27. SEVERANCE**

### **27.1 Severance**

If any provision (or part of a provision) of this Deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Deed.

## **28. COUNTERPARTS**

### **28.1 Electronic Document**

- (a) This Deed shall be in electronic form and executed electronically with no original paper version. Any print out of the electronic document shall be deemed a copy of the electronic original. This Deed shall be executed following the instructions in the Commercial Terms and delivered as described at clauses 28.1(b) and 28.2(b).
- (b) The return by the Borrower of the executed Deed in accordance with the instructions set out in the Commercial Terms constitutes delivery.

### **28.2 Counterparts**

- (a) This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- (b) Transmission of an initialled and executed counterpart of this Deed (but for the avoidance of doubt not just a signature page) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Deed. If this method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the hard copy of such counterpart as soon as reasonably possible thereafter.
- (c) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## **29. THIRD PARTY RIGHTS**

### **29.1 Third party rights**

- (a) Except as expressly provided in this Deed, a person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- (b) The rights of the parties to rescind or agree any amendment or waiver under this Deed are not subject to the consent of any other person.

## **30. FURTHER PROVISIONS**

### **30.1 Independent security**

This Deed shall be in addition to, and independent of, any other security or guarantee that the Trustee and Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Trustee and Lender or any of them (whether or not through the Trustee) over the whole or any part of the Secured Assets shall merge in the security created by this Deed.

### **30.2 Continuing security**

This deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Trustee discharges this deed in writing.

### **30.3 Discharge conditional**

Any release, discharge or settlement between the Borrower and the Trustee shall be deemed conditional on no payment or security received by the Trustee in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Trustee or its nominee may retain this Deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Trustee deems necessary to provide the Trustee and Lender with security against any such avoidance, reduction or order for refund; and
- (b) the Trustee may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

### **30.4 Certificates**



A certificate or determination by the Trustee as to any amount for the time being due to it from the Borrower under this Deed and the Facility Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

### **30.5 Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this Deed.

## **31. NOTICES**

### **31.1 Delivery**

Any notice or other communication required to be given to a party under or in connection with this Deed shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by email; and
- (c) sent to the address set out in the Commercial Terms or to any other address or email address as is notified in writing by one party to the other from time to time.

### **31.2 Receipt by Borrower**

Any notice or other communication that the Trustee gives to the Borrower shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by email, when received in legible form.

A notice or other communication given as described in clause 31.2(a) or clause 31.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

### **31.3 Receipt by Trustee and Lender**

Any notice or other communication given to the Trustee shall be deemed to have been received only on actual receipt. Any notice or other communication for the Lender shall be given to the Trustee and shall be deemed to have been received only actual receipt by the Trustee.

### **31.4 Service of proceedings**

This clause 31 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **32. GOVERNING LAW AND JURISDICTION**

### **32.1 Governing law**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

### **32.2 Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

### **32.3 Other service**

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 32.2 being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in this Deed shall affect the right to serve process in any other manner permitted by law.

## DEED OF CHARGE OVER SECURED ASSETS

### Signature Section (including main Commercial Terms)

#### INTRODUCTION

The Borrower is borrowing money from the Lender pursuant to the Facility Agreement and the Trustee and the Lender through the Trustee wish to take security over certain assets of the Borrower and the Borrower will give that security on the terms and conditions of this Deed, which comprises this signature section and the Standard Terms and Conditions Schedule

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**This Deed of Charge over Secured Assets is dated 21 May 2018 and entered into between;**

- 1) **THE LENDER** represented by **ARCHOVER LIMITED** Incorporated and registered in England and Wales with Company Number 07235487 whose registered office is at 5<sup>th</sup> Floor, 40 Gracechurch Street, London, EC3V 0BT;  
and
  - 2) **ARCHOVER LIMITED** Incorporated and registered in England and Wales with Company Number 07235487 whose registered office is at 5<sup>th</sup> Floor, 40 Gracechurch Street, London, EC3V 0BT in its capacity as Trustee ("Trustee");  
and
  - 3) **AUDYUS LIMITED** Incorporated and registered in England and Wales with Company Number 05158526 whose registered office is at Unit C4, 5C Spitfire Close, Ermine Business Park, Huntingdon, PE29 6XY (**Borrower**).
- 

#### MAIN COMMERCIAL TERMS

1) Invoices	<p>The value of the discounted security at March 2018 was £293,260</p> <p>All Asset Charge, including Negative Pledge. Deed of Priority over all assets of the business. Cyrus Audio Limited will maintain the value of its Accounts Receivable, discounted to 80%, finished goods stock, discounted to 20% and raw materials stock, discounted to 10% combined at no less than the loan value</p> <p>–The Borrower shall on a monthly basis,</p>
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	in accordance with the Standard Terms and Conditions Schedule, notify the Trustee of all accounts receivable due to it at the end of such month and each such account receivable shall fall within the Account Receivable subject to this Deed unless otherwise agreed.
2) Secured Assets	All Assets
3) Credit Insurance	Yes
4) Existing Security	NO
5) Negative Pledge over existing security	YES
6) Property	n/a
7) Controlled Account	Yes
8) Marketing and Advertising Fee plus VAT	As per facility agreements
9) Costs to be reimbursed by the Borrower	NIL

#### IMPORTANT NOTICE AND INSTRUCTIONS FOR SIGNING

This Deed shall be solely in electronic form and shall be signed electronically, with no original paper version. Any print out of the electronic document shall be deemed a copy only.

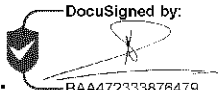
In executing this Deed please ensure that you (as authorised signatories of the Borrower and Representative on behalf of each Lender and Trustee) sign this Deed by DocuSign.

Please note that DocuSign of the Deed by you (or by an agent on your behalf) will constitute your representation, confirmation, authorisation and undertaking to the Administrative Representative that:

- (a) The person sending the initialled and executed Deed to the Administrative Representative has been authorised by you to do so;
- (b) You authorise the Administrative Representative without further notice to you to release it to the other parties to this Deed when the Administrative Representative has received the executed electronic counterparts of this Deed from each party; on doing so, this Deed will be entered into and you will be bound by its terms.

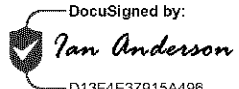
Once this Deed is executed, delivered and released, a copy of this Deed signed by each party will be circulated.

## REPRESENTATIVE

DocuSigned by:  
  
21/05/2018 17:55:08 BST  
.....BAA472333876479.....

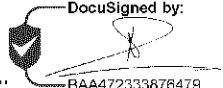
Signed as a deed by each Lender (by ArchOver Limited as representative for and on behalf of each Lender)

## REPRESENTATIVE

DocuSigned by:  
  
5/22/2018 2:05:27 AM PDT  
....D13F4E37915A496.....

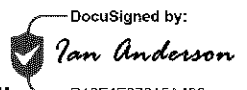
Signed as a deed by each Lender (by ArchOver Limited as representative for and on behalf of each Lender)

## TRUSTEE

DocuSigned by:  
  
21/05/2018 17:55:08 BST  
...BAA472333876479.....

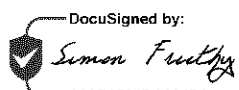
Signed as a deed by ArchOver Limited in its capacity as Trustee

## TRUSTEE

DocuSigned by:  
  
/22/2018 2:05:27 AM PDT  
...D13F4E37915A496.....

Signed as a deed by ArchOver Limited in its capacity as Trustee

## BORROWER


DocuSigned by:  
  
22/05/2018 09:37:53 PDT  
....A6AB6501DA884D2.....

Signed as a deed by AUDYUS LIMITED (as a Director authorised to do so)

in the presence of:

Witness Signature

DocuSigned by:

Mike Payne

5/22/2018 8:55:34 AM PDT

85053B86F4724DF...

Witness Name

Mike Payne

Witness Address

25 Church Street  
Great Shelford  
Cambridge  
CB22 5EL

Witness Occupation

Accountant