



**Registration of a Charge**

Company Name: **DIRECT MARKET SOLUTIONS LIMITED**

Company Number: **05829714**



Received for filing in Electronic Format on the: **30/06/2023**

XC6R0MO3

**Details of Charge**

Date of creation: **29/06/2023**

Charge code: **0582 9714 0001**

Persons entitled: **ALLICA BANK LIMITED**

Brief description: **FIRST CHARGE OVER SUITE 1, COMMERCIAL OFFICE 2, BRUNEL WAY, BRITON FERRY, NEATH SA11 2FP AS DETAILED IN THE SECURITY DOCUMENT.**

**Contains fixed charge(s).**

**Contains negative pledge.**

**Authentication of Form**

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

**Authentication of Instrument**

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

Certified by: **LAWRENCE STEPHENS LTD**



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

Company number: 5829714

Charge code: 0582 9714 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th June 2023 and created by DIRECT MARKET SOLUTIONS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th June 2023 .

Given at Companies House, Cardiff on 3rd July 2023

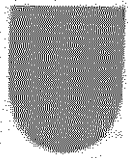
The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**



# Allica Bank

Legal Mortgage – Limited Company or Limited Liability Partnership

**THIS DOCUMENT CONTAINS IMPORTANT LEGAL OBLIGATIONS. YOU SHOULD TAKE INDEPENDENT LEGAL ADVICE FROM A SOLICITOR TO ENSURE THAT YOU FULLY UNDERSTAND THE NATURE AND EFFECT OF THE OBLIGATIONS CONTAINED IN IT. IF YOU DEFAULT IN YOUR OBLIGATIONS TO THE BANK, THE BANK MAY ENFORCE AGAINST ANY SECURITY PROVIDED FOR UNDER THIS DOCUMENT IN ADDITION TO ANY OTHER REMEDY AVAILABLE TO IT.**

This deed is made on 29 June 2023

**BETWEEN:**

- (1) **Mortgagor** : DIRECT MARKET SOLUTIONS LIMITED incorporated and registered in England and Wales with registered number 05829714 whose registered office is at Market Chambers, The Parade, Neath, Wales, SA11 1PU
- (2) **Bank** : ALLICA BANK LIMITED incorporated and registered in England and Wales with company number 07706156 whose registered office is at Eldon House, First Floor, 2-3 Eldon Street, London EC2M 7LS

**BACKGROUND**

- 1. Under this deed, the Mortgagor provides security to the Bank for all its present and future obligations and liabilities to the Bank.
- 2. The Mortgagor owns the Property.

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions and Interpretation**

The definitions and rules of interpretation under Schedule 1 hereto apply in this deed.

**2. COVENANT TO PAY**

**2.1 Covenant to pay**

The Mortgagor shall, on demand, pay to the Bank and discharge the Secured Liabilities.

**2.2 Interest**

The Mortgagor covenants with the Bank to pay interest on any amounts due under clause 2.1 from day to day until full discharge (whether before or after judgment, liquidation, winding-up or administration of the Mortgagor) at the Default Rate, provided that, in the case of any cost or expense, such interest shall accrue and be payable as from the date on which the relevant cost or expense arose without the necessity for any demand being made for payment.

### **3. GRANT OF SECURITY**

#### **3.1 Legal mortgage and fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Mortgagor with full title guarantee charges to the Bank:

3.1.1 by way of a first legal mortgage, the Property; and

3.1.2 by way of a first fixed charge:

- a. all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, the Rental Income and the benefit of any guarantee or security in respect of the Rental Income to the extent not effectively assigned under clause 3.2;
- b. the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Assets and other documents to which the Mortgagor is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Assets or otherwise relating to the Charged Assets (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them); and
- c. all licences, consents and authorisations (statutory or otherwise) held or required in connection with its business carried on at the Property or the use of any Charged Asset, and all rights in connection with them.

#### **3.2 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Mortgagor with full title guarantee assigns to the Bank absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

3.2.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and

3.2.2 the Rental Income and the benefit of any guarantee or security in respect of the Rental Income,

provided that nothing in this clause 3.2 shall constitute the Bank as mortgagee in possession.

### **4. PERFECTION OF SECURITY**

#### **4.1 Registration of legal mortgage at the Land Registry**

The Mortgagor shall apply to the Land Registrar for the following restriction in Form P to be registered against its title to the 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 2023 in favour of Allica Bank Limited referred to in the charges register."

#### **4.2 Further advances**

This deed secures further advances and re-advances but the Bank is not obliged to make further advances.

#### **4.3 First registration**

If the title to the Property is not registered at the Land Registry, the Mortgagor shall ensure that no person (other than itself) shall be registered under the Land Registration Act 2002 as the proprietor of all or any part of the Property, without the prior written consent of the Bank.

#### **4.4 Cautions against first registration and notices**

Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Mortgagor's title to the Property, the Mortgagor shall immediately provide the Bank with full particulars of the circumstances relating to such caution or notice. If such caution or notice was registered to protect a purported interest the creation of which is not permitted under this deed, the Mortgagor shall immediately, and at its own expense, take such steps as the Bank may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

### **5. LIABILITY OF THE MORTGAGOR**

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

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

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Bank that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 5.1.2 the Bank 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; or
- 5.1.3 any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Mortgagor.

#### **5.2 Immediate recourse**

The Mortgagor waives any right it may have to require the Bank 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 Mortgagor.

### **6. REPRESENTATIONS AND WARRANTIES**

**6.1 Times for making representations and warranties**

The Mortgagor makes the representations and warranties set out in this clause 6 to the Bank on the date of this deed and the representations and warranties contained in this clause 6 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.

**6.2 Ownership of Charged Assets**

The Mortgagor is the sole legal and beneficial owner of the Charged Assets and has good, valid and marketable title to the Property.

**6.3 No Security**

The Charged Assets are free from any Security other than Permitted Security.

**6.4 No adverse claims**

The Mortgagor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Assets or any interest in them.

**6.5 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affect the Charged Assets.

**6.6 No breach of laws**

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

**6.7 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Charged 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 the Property.

**6.9 No prohibitions or breaches**

There is no prohibition on the Mortgagor assigning its rights in any of the Charged Assets referred to in clause 3.2 and the entry into of this deed by the Mortgagor does not, and will not, constitute a breach of any policy, agreement, document, instrument or obligation binding on the Mortgagor or its assets.

**6.10 Environmental compliance**

The Mortgagor has, at all times, complied in all material respects with all applicable Environmental Law and Environmental Licences.

**6.11 Information for Valuations and Certificates of Title**

- 6.11.1 All written information supplied by the Mortgagor or on its behalf for the purpose of each Valuation and Certificate of Title was true and accurate in all material respects at its date or at the date (if any) on which it was stated to be given.
- 6.11.2 The information referred to in clause 6.11.1 was, at its date or at the date (if any) on which it was stated to be given, complete and the Mortgagor did not omit to supply any information that, if disclosed, would adversely affect the Valuation or Certificate of Title.
- 6.11.3 In the case of the first Valuation and Certificate of Title only, nothing has occurred since the date the information referred to in clause 6.11.1 was supplied and the date of this deed that would adversely affect such Valuation or Certificate of Title.

#### **6.12 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 Mortgagor or otherwise.

#### **6.13 Enforceable security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Mortgagor and is, and will continue to be, effective security over all and every part of the Charged Assets in accordance with its terms.

### **7. GENERAL COVENANTS**

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

The Mortgagor shall not at any time, except with the prior written consent of the Bank:

- 7.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Charged Asset other than any Security created by this deed or any Permitted Security;
- 7.1.2 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 Charged Assets; or
- 7.1.3 create or grant (or purport to create or grant) any interest in the Charged Assets in favour of a third party.

#### **7.2 Preservation of Charged Assets**

The Mortgagor 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 Bank or materially diminish the value of any of the Charged Assets or the effectiveness of the security created by this deed.

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

- 7.3.1 The Mortgagor shall not, without the Bank's prior written consent, use or permit the Charged Assets to be used in any way contrary to law.
- 7.3.2 The Mortgagor shall:

- a. comply with the requirements of any law or regulation relating to or affecting the Charged Assets or the use of them or any part of them;
- b. obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Assets or their use or that are necessary to preserve, maintain or renew any Charged Asset; and
- c. 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 Charged Assets.

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

The Mortgagor shall use its best endeavours to:

- 7.4.1 procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Mortgagor and forming part of the Charged Assets of the covenants and other obligations imposed on such counterparty; and
- 7.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Assets that the Bank may require from time to time.

#### **7.5 Notice of misrepresentation and breach**

The Mortgagor shall, promptly on becoming aware of any of the same, notify the Bank in writing of:

- 7.5.1 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
- 7.5.2 any breach of any covenant set out in this deed.

#### **7.6 Title documents**

The Mortgagor shall, on the execution of this deed, deposit with the Bank and the Bank shall, for the duration of this deed, be entitled to hold:

- 7.6.1 all deeds and documents of title relating to the Charged Assets that are in the possession or control of the Mortgagor (and if these are not within the possession or control of the Mortgagor, the Mortgagor undertakes to obtain possession of all these deeds and documents of title); and
- 7.6.2 each Insurance Policy.

#### **7.7 Notices to be given by the Mortgagor**

- 7.7.1 The Mortgagor shall as requested by the Bank from time to time give notice to the relevant insurers under the Insurance Policies of the assignment of the Mortgagor's rights and interest in and under each Insurance Policy (including the proceeds of any claims under that Insurance Policy) under clause 3.2.1 and procure that each addressee of such notice promptly provides an acknowledgement of that notice to the Bank.



- 7.7.2 The Mortgagor shall obtain the Bank's prior written approval of the form of any notice or acknowledgement to be used under this clause 7.7.

## **8. PROPERTY COVENANTS**

### **8.1 Repair and maintenance**

- 8.1.1 The Mortgagor shall keep all premises, and fixtures and fittings on the Property, in:
- a. good and substantial repair and condition and shall keep all premises adequately and properly painted and decorated and replace any fixtures and fittings that have become worn out or otherwise unfit for use with others of a like nature and equal value; and
  - b. such repair and condition as to enable the Property to be let in accordance with all applicable laws and regulations.

### **8.2 No alterations**

- 8.2.1 The Mortgagor shall not, without the prior written consent of the Bank:
- a. pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or
  - b. make or permit to be made any material alterations to the Property or sever or remove, or permit to be severed or removed, any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with clause 8.1).
- 8.2.2 The Mortgagor shall promptly give notice to the Bank if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

### **8.3 Development restrictions**

The Mortgagor shall not, without the prior written consent of the Bank:

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

### **8.4 Insurance**

- 8.4.1 The Mortgagor shall, unless it has a prior written waiver from the Bank, effect and maintain sufficient and appropriate policies of insurance of its business and assets as would be maintained by reasonably prudent persons carrying on the same class of business as the Mortgagor and shall supply copies of them to the Bank on written demand by the Bank and in any event within 30 days of the end of each calendar year. In the event that the Mortgagor fails to provide copies of its Insurance Policies to the Bank within 30 days of the end of each calendar year then the Bank may put in place such insurance policies as it sees fit in respect of the Charged Assets. The Mortgagor must immediately on demand

by the Bank pay the costs and expenses of the Bank or its agents incurred in connection with any action taken by the Bank under this clause 8.4.1.

8.4.2 In addition to the obligation on the Mortgagor to maintain insurance generally in relation to its business and assets under clause 8.4.1 above, the Mortgagor shall, at all times, ensure that, in relation to any Property of which it is the owner, it maintains in full force and effect, insurance which:

- a. insures its interest in any such Property and the plant and machinery thereon (including fixtures and improvements) for their full replacement value (being the total cost of entirely rebuilding, reinstating or replacing the relevant asset if it is completely destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement) as stated in the most recent valuation for the relevant Property addressed to and satisfactory to the Bank plus VAT (where applicable);
- b. provides cover on (i) an index linked basis, in line with the then current insurance industry practice and (ii) such other terms acceptable to the Bank, acting reasonably;
- c. provides cover against loss or damage by fire, storm, tempest, flood, earthquake, landslip, heave, subsidence, lightning, explosion, impact, aircraft and other aerial devices and articles dropped from them, riot, civil commotion, terrorist acts and malicious damage, bursting or overflowing of water tanks, apparatus or pipes and all other normally insurable risks of loss or damage, including any third party liability arising from such acts;
- d. includes property owners' public liability and third party liability insurance
- e. is with an insurer of good repute in the insurance market;
- f. includes cover for loss of rent and for all rents payable in respect of any Property for a period of two years; and
- g. contains a note of the Bank's interest duly noted by the insurer against the policy (but, for the avoidance of doubt, without the Bank having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy).

8.4.3 The Mortgagor shall ensure that, at all times, it:

- a. complies with the terms of the Insurance Policies;
- b. does not do or permit anything to be done which may make void or voidable or otherwise prejudice any of the Insurance Policies;
- c. pays each premium for the Insurance Policies promptly and in any event prior to the commencement of the period of insurance for which that premium is payable and, if the Bank so requires, provide evidence of the same to the Bank; and
- d. does all other things necessary as to keep each of the Insurance Policies in force.

**8.4.4 The Mortgagor shall promptly notify the Bank of:**

- a. any termination, avoidance or cancellation of any of the Insurance Policies made or, to its knowledge, threatened or pending;
- b. any claim, and any actual or threatened refusal of any claim, under any of the Insurance Policies; and
- c. any event or circumstance which has led or may lead to a breach by the Mortgagor of any provision of this clause 8 of this deed.

**8.4.5 All monies payable under any Insurance Policies shall:**

- a. be paid into a Designated Account;
- b. if they are not paid into a Designated Account, be held, pending such payment, by the Mortgagor as trustee of the same for the benefit of the Bank; and
- c. at the option of the Bank, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.

**8.5 Leases and licences affecting the Property**

The Mortgagor shall not, without the prior written consent of the Bank:

- 8.5.1 grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);
- 8.5.2 in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);
- 8.5.3 let any person into occupation, or share occupation, of the whole or any part of the Property; or
- 8.5.4 grant any consent or licence under any lease or licence affecting the Property.

**8.6 No restrictive obligations**

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

**8.7 Proprietary rights**

The Mortgagor 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 the Property, without the prior written consent of the Bank.

## **8.8 Compliance with and enforcement of covenants**

The Mortgagor shall:

- 8.8.1 observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Bank so requires) produce to the Bank evidence sufficient to satisfy the Bank that those covenants, stipulations and conditions have been observed and performed; and
- 8.8.2 diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

## **8.9 Notices or claims relating to the Property**

8.9.1 The Mortgagor shall:

- a. give full particulars to the Bank of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a **Notice**) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
- b. (if the Bank so requires) immediately, and at the cost of the Mortgagor, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Bank in making, any objections or representations in respect of that Notice that the Bank thinks fit.

8.9.2 The Mortgagor shall give full particulars to the Bank of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

## **8.10 Payment of rent and outgoings**

The Mortgagor shall:

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

## **8.11 Rent reviews**

- 8.11.1 The Mortgagor shall, if the Property is subject to occupational leases or licences, implement any upwards rent review provisions and shall not, without the prior written consent of the Bank, agree to any change in rent to less than the open market rental value of the relevant part of the Property.
- 8.11.2 The Mortgagor shall not, without the prior written consent of the Bank, if the Property is leasehold, agree to any change in the rent payable under the lease in excess of the open market rental value and shall only agree to any upwards rent review in accordance with the terms of the lease.

## **8.12 Environment**

The Mortgagor shall in respect of the Property:

8.12.1 comply with all the requirements of Environmental Law; and

8.12.2 obtain and comply with all Environmental Licences.

## **8.13 Conduct of business on Property**

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

## **8.14 Inspection**

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

## **8.15 VAT option to tax**

The Mortgagor shall not, without the prior written consent of the Bank:

8.15.1 exercise any VAT option to tax in relation to the Property; or

8.15.2 revoke any VAT option to tax exercised, and disclosed to the Bank in writing, before the date of this deed.

## **9. RENTAL INCOME COVENANTS**

The Mortgagor shall, as requested by the Bank from time to time, give notice to the relevant tenant, guarantor or surety of the assignment under clause 3.2.2 of the Mortgagor's rights and interest to the Rental Income and each guarantee or security in respect of the Rental Income and procure that each addressee of such notice promptly provides an acknowledgement of that notice to the Bank.

## **10. VALUATION**

10.1 The Bank may, acting reasonably, at any time require any Charged Asset to be professionally valued at the Mortgagor's expense including but not limited to an up to date Valuation of the Property.

10.2 The Mortgagor shall promptly on demand pay to the Bank the costs of any valuation obtained pursuant to clause 10.1.

10.3 The parties agree that there shall not be any limit under this deed on the number of Valuations that can be procured, obtained or requested by the Bank.

## **11. POWERS OF THE BANK**

### **11.1 Power to remedy**

11.1.1 The Bank shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Mortgagor of any of its obligations contained in this deed.

- 11.1.2 The Mortgagor irrevocably authorises the Bank and its agents to do all things that are necessary or desirable for that purpose.
- 11.1.3 Any monies expended by the Bank in remedying a breach by the Mortgagor of its obligations contained in this deed shall be reimbursed by the Mortgagor to the Bank on a full indemnity basis and shall carry interest in accordance with clause 18.1.
- 11.1.4 In remedying any breach in accordance with this clause 11.1, the Bank, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Bank may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

## **11.2 Exercise of rights**

The rights of the Bank under clause 11.1 are without prejudice to any other rights of the Bank under this deed. The exercise of any rights of the Bank under this deed shall not make the Bank liable to account as a mortgagee in possession.

## **11.3 Bank has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this deed (either expressly or impliedly) or by law on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Bank in relation to any of the Charged Assets whether or not it has taken possession of any Charged Asset and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

## **11.4 Conversion of currency**

- 11.4.1 For the purpose of, or pending, the discharge of any of the Secured Liabilities, the Bank may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 11.4) from their existing currencies of denomination into any other currencies of denomination that the Bank may think fit.
- 11.4.2 Any such conversion shall be effected at the Bank's then prevailing spot selling rate of exchange for such other currency against the existing currency.
- 11.4.3 Each reference in this clause 11.4 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.

## **11.5 New accounts**

- 11.5.1 If the Bank receives, or is deemed to have received, notice of any subsequent Security or other interest, affecting all or part of the Charged Assets, the Bank may open a new account for the Mortgagor in the Bank's books. Without prejudice to the Bank's right to combine accounts, no money paid to the credit of the Mortgagor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- 11.5.2 If the Bank does not open a new account immediately on receipt of the notice, or deemed notice, referred to in clause 11.5.1, then, unless the Bank gives express written notice to the contrary to the Mortgagor, all payments made by the Mortgagor to the Bank shall be treated as having been credited to a new

account of the Mortgagor 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 Bank.

#### **11.6 Indulgence**

The Bank 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 Mortgagor) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this deed or to the liability of the Mortgagor for the Secured Liabilities.

### **12. WHEN SECURITY BECOMES ENFORCEABLE**

#### **12.1 Enforcement**

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

#### **12.2 Discretion**

After the security constituted by this deed has become enforceable, the Bank may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Assets.

### **13. ENFORCEMENT OF SECURITY**

#### **13.1 Enforcement powers**

13.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.

13.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 12.

13.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

#### **13.2 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 Bank 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 Mortgagor, to:

13.2.1 grant a lease or agreement for lease;

13.2.2 accept surrenders of leases; or

13.2.3 grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

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

### **13.3 Redemption of prior Security**

13.3.1 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 Bank may:

- a. redeem any prior Security over any Charged Asset;
- b. procure the transfer of that Security to itself; and
- c. settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Mortgagor).

13.3.2 The Mortgagor shall pay to the Bank immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

### **13.4 Protection of third parties**

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

- 13.4.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 13.4.2 whether any power the Bank, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- 13.4.3 how any money paid to the Bank, any Receiver or any Delegate is to be applied.

### **13.5 Privileges**

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

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

Neither the Bank, nor any Receiver or Delegate shall be liable to the Mortgagor or any other person:

- 13.6.1 (by reason of entering into possession of a Charged Asset or for any other reason) to account as mortgagee in possession in respect of all or any of the Charged Assets;
- 13.6.2 for any loss on realisation, or for any act, default or omission for which a mortgagee in possession might be liable; or
- 13.6.3 for any expense, loss or liability relating to the enforcement of, or any failure to enforce or delay in enforcing, any security constituted by or pursuant to this



deed, or relating to an exercise of rights, or by any failure to exercise or delay in exercising, rights under this deed, or arising in any other way in connection with this deed.

### **13.7 Relinquishing possession**

If the Bank, any Receiver or Delegate enters into or takes possession of a Charged Asset, it or he/she may at any time relinquish possession.

### **13.8 Conclusive discharge to purchasers**

The receipt of the Bank, 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 Charged Assets or in making any acquisition in the exercise of their respective powers, the Bank, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

### **13.9 Right of appropriation**

13.9.1 To the extent that:

- a. the Charged Assets constitute Financial Collateral; and
- b. this deed and the obligations of the Mortgagor under it constitute a Security Financial Collateral Arrangement;

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

13.9.2 The value of any Charged Assets appropriated in accordance with this clause shall be, in the case of cash, the amount standing to the credit of the rent account of the Mortgagor into which Rental Income is paid, together with any accrued but unpaid interest, at the time the right of appropriation is exercised.

13.9.3 The Mortgagor agrees that the method of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

## **14. RECEIVER**

### **14.1 Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Mortgagor, the Bank 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 Charged Assets.

### **14.2 Removal**

The Bank may, without further notice, from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **14.3 Remuneration**

The Bank 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, to the extent not otherwise discharged.

### **14.4 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 Bank 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.

### **14.5 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 Bank despite any prior appointment in respect of all or any part of the Charged Assets.

### **14.6 Agent of the Mortgagor**

Any Receiver appointed by the Bank under this deed shall be the agent of the Mortgagor and the Mortgagor 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 Mortgagor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Bank.

## **15. POWERS OF RECEIVER**

### **15.1 Powers additional to statutory powers**

15.1.1 Any Receiver appointed by the Bank under this deed shall, in addition to the rights, powers and discretions conferred on him/her by statute, have the rights, powers and discretions set out in clause 15.2 to clause 15.20.

15.1.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether he/she is an administrative receiver or not.

15.1.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him/her states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

15.1.4 Any exercise by a Receiver of any of the powers given by clause 15 may be on behalf of the Mortgagor, the directors of the Mortgagor (if the Mortgagor is a limited company), the members of the Mortgagor (if the Mortgagor is a limited liability partnership) or himself/herself.

### **15.2 Repair and develop the Property**

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property 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.

**15.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms, and subject to any conditions, that he/she thinks fit.

**15.4 Employ personnel and advisers**

15.4.1 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/she thinks fit.

15.4.2 A Receiver may discharge any such person or any such person appointed by the Mortgagor.

**15.5 Make and revoke VAT options to tax**

A Receiver may make, exercise or revoke any VAT option to tax as he/she thinks fit.

**15.6 Charge for remuneration**

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

**15.7 Take possession**

A Receiver may take immediate possession of, get in and realise any Charged Asset.

**15.8 Manage or reconstruct the Mortgagor'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 Mortgagor carried out at the Property.

**15.9 Dispose of Charged Assets**

A Receiver may grant options and licences over all or any part of the Charged Assets, grant any other interest or right over, sell, exchange, assign or lease (or concur in granting options and licences over all or any part of the Charged Assets, granting any other interest or right over, selling, exchanging, assigning or leasing) all or any of the Charged Assets in respect of which he/she is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he/she thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Assets to be disposed of by him/her.

**15.10 Sever fixtures and fittings**

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

**15.11 Give valid receipts**

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

**15.12 Make settlements**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Mortgagor or relating in any way to any Charged Asset.

**15.13 Bring legal action**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Assets as he/she thinks fit.

**15.14 Insure**

A Receiver may, if he/she thinks fit, but without prejudice to the indemnity in clause 18, 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 Mortgagor under this deed.

**15.15 Form subsidiaries**

A Receiver may form a subsidiary of the Mortgagor and transfer to that subsidiary any Charged Asset.

**15.16 Borrow**

A Receiver may, for whatever purpose he/she thinks fit, raise and borrow money either unsecured or on the security of all or any of the Charged Assets in respect of which he/she is appointed on any terms that he/she thinks fit (including, if the Bank consents, terms under which that security ranks in priority to this deed).

**15.17 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 Mortgagor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

**15.18 Delegation**

A Receiver may delegate his/her powers in accordance with this deed.

**15.19 Absolute beneficial owner**

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

**15.20 Incidental powers**

A Receiver may do any other acts and things that he/she:

15.20.1 may consider desirable or necessary for realising any of the Charged Assets;

15.20.2 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

15.20.3 lawfully may or can do as agent for the Mortgagor.

## **16. DELEGATION**

### **16.1 Delegation**

The Bank 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 or him/her by this deed (including the power of attorney granted under clause 20).

### **16.2 Terms**

The Bank and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it or he/she thinks fit.

### **16.3 Liability**

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

## **17. APPLICATION OF PROCEEDS**

### **17.1 Order of application of proceeds**

All monies received or recovered by the Bank, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed (other than sums received under any Insurance Policy), 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 (but without prejudice to the Bank's right to recover any shortfall from the Mortgagor):

17.1.1 in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Bank (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;

17.1.2 in or towards payment of the Secured Liabilities in any order and manner that the Bank determines; and

17.1.3 in payment of the surplus (if any) to the Mortgagor or other person entitled to it.

### **17.2 Appropriation**

Neither the Bank, any Receiver nor any 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.

### **17.3 Suspense account**

All monies received by the Bank, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

- 17.3.1 may, at the discretion of the Bank, Receiver or Delegate, be credited to a suspense account;
- 17.3.2 shall bear interest, if any, at the rate agreed in writing between the Bank and the Mortgagor; and
- 17.3.3 may be held in that account for so long as the Bank, Receiver or Delegate thinks fit.

## **18. COSTS AND INDEMNITY**

### **18.1 Costs**

The Mortgagor shall, promptly on demand, pay to, or reimburse, the Bank 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 Bank, any Receiver or any Delegate in connection with:

- 18.1.1 the negotiation, preparation, execution and delivery of this deed;
- 18.1.2 the Charged Assets;
- 18.1.3 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Bank's, a Receiver's or a Delegate's rights under this deed;
- 18.1.4 any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this deed;
- 18.1.5 any release of any security constituted by this deed; or
- 18.1.6 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, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment) at the Default Rate.

### **18.2 Indemnity**

- 18.2.1 The Mortgagor shall indemnify the Bank, 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 Charged Assets;

- b. taking, holding, protecting, perfecting, preserving, releasing or enforcing (or attempting to do so) the security constituted by this deed; or
- c. any default or delay by the Mortgagor in performing any of its obligations under this deed.

18.2.2 Any past or present employee or agent of the Bank or any Receiver or Delegate may enforce the terms of this clause 18.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **19. FURTHER ASSURANCE**

### **19.1 Further assurance**

19.2 The Mortgagor shall promptly, at its own expense, take whatever action the Bank or any Receiver may reasonably require for:

- 19.2.1 creating, perfecting or protecting the security created or intended to be created by this deed;
- 19.2.2 facilitating the realisation of any Charged Asset; or
- 19.2.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Bank or any Receiver in respect of any Charged Asset,

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Assets (whether to the Bank or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Bank may consider necessary or desirable.

## **20. POWER OF ATTORNEY**

### **20.1 Appointment of attorneys**

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

- 20.1.1 the Mortgagor is required to execute and do under this deed; or
- 20.1.2 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 Bank, any Receiver or any Delegate.

### **20.2 Ratification of acts of attorneys**

The Mortgagor 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 20.1.2.

## **21. RELEASE**

Subject to clause 29.3, at the end of the Security Period, the Bank shall, at the request and cost of the Mortgagor, take whatever action is necessary to:

21.1.1 release the Charged Assets from the security constituted by this deed; and

21.1.2 reassign the Charged Assets to the Mortgagor.

## **22. ASSIGNMENT AND TRANSFERS**

### **22.1 Assignment by Bank**

The Bank may freely and separately assign or transfer any of its rights under this deed or otherwise grant an interest in any such rights to any person or persons. On request by the Bank the Mortgagor shall immediately execute and deliver to the Bank any form of instrument required by the Bank to confirm or facilitate any such assignment or transfer or grant of interest

### **22.2 Assignment by Mortgagor**

The Mortgagor may not assign any of its rights, or transfer any of its rights or obligations, under this deed or enter into any transaction which would result in any of those rights or obligations passing to another person.

## **23. SET-OFF**

### **23.1 Bank's right of set-off**

The Bank may at any time set off any liability of the Mortgagor to the Bank against any liability of the Bank to the Mortgagor, 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 Bank may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Bank of its rights under this clause 23 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

### **23.2 No obligation to set off**

The Bank is not obliged to exercise its rights under clause 23.1. If, however, it does exercise those rights it must promptly notify the Mortgagor of the set-off that has been made.

### **23.3 Exclusion of Mortgagor's right of set-off**

All payments made by the Mortgagor to the Bank under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

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

### **24.1 Amendments**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party to it.

### **24.2 Waivers and consents**

24.2.1 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 right or remedy. It only



applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

- 24.2.2 A failure by the Bank to exercise, or delay by it in exercising, 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 Bank shall be effective unless it is in writing.

#### **24.3 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.

#### **25. SEVERANCE**

If at any time any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable for any reason whatsoever, 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 remaining provisions of this deed.

#### **26. MISCELLANEOUS**

- 26.1 The Bank may disclose information about the Mortgagor to any affiliate, their authorised agents and credit reference agencies for credit assessment, fraud prevention, processing of transactions, debt recovery and for other purposes related to the performance of this deed or the Secured Liabilities.

- 26.2 The Bank may disclose any information relating to the Mortgagor, this deed and any other document related to the Mortgagor or the Secured Liabilities:

- 26.2.1 to any person in connection with any proposed assignment and/or transfer;
- 26.2.2 to any person with whom the Bank has entered into, or proposes to enter into, any contractual arrangements in connection with this deed;
- 26.2.3 to any company within its group of companies from time to time, or any of its or their agents, who provide services to the Bank or functions in relation to the Secured Liabilities;
- 26.2.4 to any insurer who is to or who proposes to provide insurance to the Bank in respect of the Secured Liabilities;
- 26.2.5 to any auditor of, or other advisor to, the Bank;
- 26.2.6 to anyone to whom information is required or requested to be disclosed by any court of competent jurisdiction or governmental, banking, taxation or other regulatory authority or similar body;
- 26.2.7 to anyone to whom information is required or requested to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes; and

26.2.8 to any prospective purchaser of the Bank or prospective purchaser of the whole or any part of the Bank's business and their professional advisers.

## **27. COUNTERPARTS**

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.

## **28. THIRD PARTY RIGHTS**

Except as expressly provided elsewhere 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.

## **29. FURTHER PROVISIONS**

### **29.1 Independent security**

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Bank may hold for any of the Secured Liabilities at any time. No prior security held by the Bank over the whole or any part of the Charged Assets shall merge in the security created by this deed.

### **29.2 Continuing security**

The security constituted by 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 Bank discharges this deed in writing.

### **29.3 Discharge conditional**

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

29.3.1 the Bank 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 Charged Assets, for any period that the Bank deems necessary to provide the Bank with security against any such avoidance, reduction or order for refund; and

29.3.2 the Bank may recover the value or amount of such security or payment from the Mortgagor subsequently as if the release, discharge or settlement had not occurred.

### **29.4 Certificates**

Any certification or determination by the Bank of any rate or amount under this deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **29.5 Consolidation**

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

### **30. NOTICES**

30.1 Any notice, demand or other communication to be made under or in connection with this deed shall be made in writing.

30.2 Any communication, demand or notice given by the Bank to the Mortgagor under this deed may be made:

30.2.1 by letter addressed to the Mortgagor or any officer of the Mortgagor sent by first class post to or left at the Mortgagor's address last known to the Bank or at the Mortgagor's registered office; or

30.2.2 by fax or other electronic means to the Mortgagor's fax number or electronic mail address last known to the Bank.

If sent by post, the communication, demand or notice will be deemed to have been received at 10.00 a.m. on the second Business Day following the day the letter was posted. If delivered by hand, the communication, demand or notice will be deemed to have been received at the time it is left at the relevant address. If sent by fax or other electronic means, the communication, demand or notice will be deemed to have been received at the time of transmission (provided that if the date of transmission is not a Business Day, or the time of transmission is after normal business hours, it shall be deemed to have been received at 9 a.m. on the next Business Day).

30.3 Unless otherwise advised by the Bank any notices or other communications given by the Mortgagor to the Bank under this deed shall be by letter and sent by first class post or delivered by hand to: the Company Secretary, Allica Bank Limited, Eldon House, First Floor, 2-3 Eldon Street, London EC2M 7LS.

30.4 All notices or other communications to the Bank shall be effective only on actual receipt by the Bank.

30.5 The Bank may rely upon any communication by telephone or email purporting to be on behalf of the Mortgagor by anyone notified to the Bank as being authorised to do so, without enquiry by the Bank as to authority or identity. The Mortgagor agrees to indemnify the Bank against any liability incurred or sustained by the Bank as a result.

### **31. GOVERNING LAW AND JURISDICTION**

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

31.2 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Bank to take proceedings against the Mortgagor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**31.3** The Mortgagor irrevocably consents to any process in any legal action or proceedings under clause 31.2 being served on it in accordance with the provisions of this deed relating to services of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

**In witness whereof** this document has been executed and delivered as a deed on the date first stated above.

## **SCHEDULE 1**

### **Definitions and Interpretation**

#### **1.1 Definitions**

The following definitions apply in this deed:

- |                             |  |
|-----------------------------|--|
| <b>Business Day</b>         | : means a day other than a Saturday, Sunday or public holiday on which the Bank is open for normal banking business in England   |
| <b>Certificate of Title</b> | : any report on or certificate of title relating to the Property supplied to the Bank  |
| <b>Change of Control</b>    | : a. any person, or group of connected persons not having control (as defined in sections 450 and 451 of the Corporation Tax Act 2010) of the Mortgagor on the date of this deed acquires control of the Mortgagor; or<br><br>b. any shareholder of the Mortgagor who owns more than 50% of the issued ordinary share capital of the Mortgagor on the date of this deed transfers (whether by a single transfer or a series of transfers at different times) shares constituting, in aggregate, 50% or more in nominal value of the Mortgagor's issued ordinary share capital without the Bank's prior written consent |
| <b>Charged Assets</b>       | : all the assets, property and undertaking of the Mortgagor, which are, or are intended to be, subject to the Security created by, or pursuant to, this deed (and references to the Charged Assets shall include references to any part of them)   |
| <b>Default Rate</b>         | : means:<br><br>a. the default interest rate set out in the document under which the relevant liability for the overdue amount initially arose; or<br><br>b. if no default rate is set out in such document, 2% per annum above the Bank of England's base rate from time to time  |
| <b>Delegate</b>             | : any person appointed by the Bank or any Receiver pursuant to clause 16 and any person appointed as attorney of the Bank, Receiver or Delegate  |
| <b>Designated Account</b>   | : any account of the Mortgagor nominated by the Bank as a designated account for the purposes of this deed   |
| <b>Environment</b>          | : the natural and man-made environment including all or any of the following media, namely air, water and  |

land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media

**Environmental Law** : all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment

**Environmental Licence** : any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Assets

**Event of Default** : means any of the following events:

- a. the Mortgagor fails to pay any of the Secured Liabilities when due, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within three Business Days of its due date;
- b. the Mortgagor fails (other than by failing to pay) to comply with any provision of this deed or any document under which the Mortgagor owes obligations to the Bank and (if the Bank considers that the failure to comply is capable of remedy) such failure to comply is not remedied within 10 Business Days of the earlier of (i) the Bank notifying the Mortgagor of the failure to comply and the remedy required and (ii) the Mortgagor becoming aware of the failure to comply;
- c. a party to any Intercreditor Deed (other than the Bank) fails to comply with any of its obligations under the Intercreditor Deed or any representation, warranty or statement made, repeated or deemed made by any such party in or pursuant to the Intercreditor Deed is (or proves to have been) incomplete, untrue, incorrect or misleading when made, repeated or deemed made;
- d. if the Mortgagor is a limited company, a Change of Control occurs in respect of the Mortgagor, without the Bank's prior written consent;
- e. if the Mortgagor is a limited liability partnership, there is a change to either (i) the identity of the members of the Mortgagor; or (ii) the proportion of the respective interests of the members in the Mortgagor, in each case, without the Bank's prior written consent;

- f. in the Bank's opinion there is a significant change in the day to day management of the Mortgagor, without the Bank's prior written consent;
- g. any representation, warranty or statement made, repeated or deemed made by the Mortgagor to the Bank is (or proves to have been) incomplete, untrue, incorrect or misleading when made, repeated or deemed made;
- h. any Financial Indebtedness is not paid when due or within any originally applicable grace period;
- i. any Financial Indebtedness becomes due, or capable of being declared due and payable, prior to its stated maturity by reason of an event of default (however described);
- j. any commitment for Financial Indebtedness is cancelled or suspended by a creditor of the Mortgagor by reason of an event of default (however described);
- k. any creditor of the Mortgagor becomes entitled to declare any Financial Indebtedness due and payable prior to its stated maturity by reason of an event of default (however described);
- l. the Mortgagor stops, or suspends, payment of any of its debts or is unable to, or admits its inability to, pay its debts as they fall due;
- m. the value of the Mortgagor's assets is less than its liabilities (taking into account contingent and prospective liabilities);
- n. any action, proceedings, procedure or step is taken in relation to the suspension of payments, a moratorium in respect of any indebtedness, winding-up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement, restructuring plan or otherwise) of the Mortgagor;
- o. any action, proceedings, procedure or step is taken in relation to a composition, compromise, assignment or arrangement with one or more of its creditors with a view to rescheduling any of its indebtedness (because of actual or anticipated financial difficulties);
- p. any action, proceedings, procedure or step is taken in relation to the appointment of a liquidator, receiver, administrative receiver,

administrator, compulsory manager or other similar officer in respect of the Mortgagor or any of its assets;

- q. any Security on or over the assets of the Mortgagor becomes enforceable;
- r. any event occurs in relation to the Mortgagor similar to those set out in paragraphs (n) to (q) (inclusive) under the laws of any applicable jurisdiction;
- s. control of the Mortgagor's goods is taken or a distress, attachment, execution, expropriation, sequestration or other analogous legal process in any jurisdiction is levied, enforced or sued out on, or against, the Mortgagor's assets and is not discharged or stayed within 21 days;
- t. all or any part of this deed or any document under which the Mortgagor owes obligations to the Bank is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect or it becomes unlawful for any party to this deed or any document under which the Mortgagor owes obligations to the Bank to perform any obligation under this deed or that document;
- u. any party to this deed or any document under which the Mortgagor owes obligations to the Bank (other than the Bank) repudiates or rescinds or shows an intention to repudiate or rescind this deed or that document;
- v. the Mortgagor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business; or
- w. any event occurs (or circumstances exist) which, in the opinion of the Bank, has or is likely to materially and adversely affect the Mortgagor's ability to perform all or any of its obligations under, or otherwise comply with the terms of, this deed or any document under which the Mortgagor owes obligations to the Bank

<b>Financial Collateral</b>	: has the meaning given to that expression in the Financial Collateral Regulations
<b>Financial Collateral Regulations</b>	: the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226)



**Financial Indebtedness** : any indebtedness of the Mortgagor for or in respect of:

- a. borrowing or raising money (with or without security), including any premium and any capitalised interest on that money;
- b. any bond, note, loan stock, debenture, commercial paper or similar instrument;
- c. any acceptances under any acceptance credit facility (or dematerialised equivalent), bill discounting, note purchase or documentary credit facilities;
- d. monies raised by selling, assigning or discounting receivables or other financial assets on terms that recourse may be had to the Mortgagor if those receivables or financial assets are not paid when due;
- e. any deferred payment for assets or services acquired, other than trade credit that is given in the ordinary course of trading and which does not involve any deferred payment of any amount for more than 60 days;
- f. any rental or hire charges under finance leases (whether for land, machinery, equipment or otherwise);
- g. any counter-indemnity obligation in respect of any guarantee, bond, indemnity, standby letter of credit or other instrument issued by a third party in connection with the Mortgagor's performance of contracts;
- h. any other transaction that has the commercial effect of borrowing (including any forward sale or purchase agreement and any liabilities which are not shown as borrowed money on the Mortgagor's balance sheet because they are contingent, conditional or otherwise);
- i. any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and when calculating the value of any derivative transaction, only the mark to market value shall be taken into account); and
- j. any guarantee, counter-indemnity or other assurances against financial loss that the Mortgagor has given for any of the items referred to in paragraphs (a) to (i) of this definition incurred by any person

<b>Insurance Policy</b>	: each contract and policy of insurance effected or maintained by the Mortgagor from time to time relating to the Property
<b>Intercreditor Deed</b>	: any document entered into by the Bank and another creditor of the Mortgagor that purports to regulate the ranking and priority of debt and/or security owing or granted by the Mortgagor
<b>LPA 1925</b>	: the Law of Property Act 1925
<b>Market Value</b>	: means market value as defined in the then current Valuation Standards issued by the Royal Institution of Chartered Surveyors (the "Red Book"). If market value ceases to be defined by the Red Book, market value shall be calculated on the basis from time to time determined by the Bank
<b>Permitted Security</b>	: <ul style="list-style-type: none"> <li>a. any liens arising by operation of law and in the ordinary course of the Mortgagor's business and not as a result of any default or omission by the Mortgagor;</li> <li>b. any normal title retention arrangements included in a supplier's standard conditions of supply of goods acquired by the Mortgagor in the ordinary course of trade;</li> <li>c. Security granted by the Mortgagor in favour of the Bank; and</li> <li>d. Security granted by the Mortgagor in favour of a third party in respect of which the Bank has given its prior written consent to the Mortgagor</li> </ul>
<b>Property</b>	: the freehold or leasehold property (whether registered or unregistered) owned by the Mortgagor described in Schedule 2
<b>Receiver</b>	: a receiver or receiver and manager appointed by the Bank under clause 14
<b>Rental Income</b>	: all amounts paid or payable to or for the account of the Mortgagor in connection with the letting, licence or grant of other rights of use or occupation of all or any part of the Property
<b>Secured Liabilities</b>	: all present and future obligations and liabilities of the Mortgagor to the Bank, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity and whether or not the Bank was an original party to the relevant transaction and in whatever name or style, together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities

<b>Security</b>	: 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
<b>Security Financial Collateral Arrangement</b>	: has the meaning given to that expression in the Financial Collateral Regulations
<b>Security Period</b>	: the period starting on the date of this deed and ending on the date on which the Bank 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
<b>Valuation</b>	: a valuation from a Valuer in respect of a Charged Asset addressed to and satisfactory to the Bank in substance and content (including, in the case of a Property, Market Value and/or vacant possession value of any Property) and on which the Bank is entitled to rely
<b>Valuer</b>	: means such valuer or surveyor instructed, and on terms approved, by the Bank
<b>VAT</b>	: value added tax or any equivalent tax chargeable in the UK or elsewhere

## **1.1 Interpretation**

In this deed:

- 1.1.1 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);
- 1.1.2 references to statutes, statutory provision and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant legislation from time to time;
- 1.1.3 references to any clause, paragraph or schedule shall be construed as a reference to the clauses, paragraphs or schedules in this deed unless otherwise specified;
- 1.1.4 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- 1.1.5 any term or phrase defined in the Companies Act 2006 (as amended from time to time) shall (whether or not it is capitalised) bear the same meaning in this deed;

- 1.1.6 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- 1.1.7 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;
- 1.1.8 clause, schedule and paragraph headings shall not affect the interpretation of this deed;
- 1.1.9 an Event of Default is continuing if it has not been waived;
- 1.1.10 a reference to writing or written includes fax and email in respect of communications from the Bank to the Mortgagor but not in respect of communications from the Mortgagor to the Bank unless otherwise specified;
- 1.1.11 a reference to this deed to a document, agreement or instrument is a reference to that document, agreement or instrument as amended or novated, supplemented, extended or restated (however fundamentally) from time to time;
- 1.1.12 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;
- 1.1.13 a reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;
- 1.1.14 an obligation on a party not to do something includes an obligation not to allow that thing to be done; and
- 1.1.15 a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description.

## 1.2 Clawback

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

## 1.3 Nature of security over real property

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

- 1.3.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of that Property at any time;
- 1.3.2 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;
- 1.3.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Mortgagor in respect of that Property, and any monies paid or payable in respect of those covenants; and
- 1.3.4 all rights under any licence, agreement for sale or agreement for lease in respect of that Property.

#### **1.4 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).

#### **1.5 Schedules**

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

**SCHEDULE 2**  
**Property**

1. Leasehold title known as Suite 1, Commercial Office 2, Brunel Way, Briton Ferry, Neath  
SA11 2FP Title Number CYM741214
2. Leasehold title known as Suite 1, Commercial Office 2, Brunel Way, Briton Ferry, Neath  
SA11 2FP Title Number CYM679897

**EXECUTION PAGE WHERE MORTGAGOR IS A LIMITED COMPANY**

Executed as a deed by DIRECT MARKET SOLUTIONS LIMITED, the Mortgagor acting by:

Signature

Director

.....  
Name in full (block capitals)

Signature

Director/ Secretary

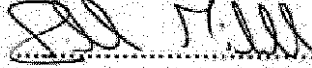
.....  
Name in full (block capitals)

OR

EXECUTED as a DEED by DIRECT MARKET SOLUTIONS LIMITED, the Mortgagor, acting by a director in the presence of

  
.....  
Director

.....  
SASCHA LOPEZ  
Name of Director (in block capitals)

  
.....  
RICHARD MINSHULL

Signature of Witness:

Name of Witness (in block capitals):

Address of Witness:

Occupation of Witness:

.....  
35 MILL RACE NEATH SAU 7FL  
.....  
CUSTOMER RELATIONS MANAGER

**EXECUTION PAGE FOR ALLICA BANK LIMITED**

EXECUTED as a DEED by

[  
as attorney for ALLICA BANK  
LIMITED, the Bank, under a power of  
attorney dated [ ]  
in the presence of:

.....  
**Attorney**

.....  
**Name of Attorney (in block capitals)**

**Signature of Witness:**

**Name of Witness (in block capitals):**

**Address of Witness:**

**Occupation of Witness:**