



**Registration of a Charge**

Company name: **NORTH RIVER RESOURCES PLC**

Company number: **05875525**



X99ENQPE

Received for Electronic Filing: **16/07/2020**

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**Details of Charge**

Date of creation: **16/07/2020**

Charge code: **0587 5525 0006**

Persons entitled: **CL VENTURES LUX S.A.R.L.**

Brief description:

**Contains fixed charge(s).**

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**MORRISON & FOERSTER (UK) LLP**



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

Company number: 5875525

Charge code: 0587 5525 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 16th July 2020 and created by NORTH RIVER RESOURCES PLC was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th July 2020 .

Given at Companies House, Cardiff on 17th July 2020

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**DATED 16 JULY 2020**

**NORTH RIVER RESOURCES PLC  
(IN ADMINISTRATION)  
as Chargor**

**and**

**CL VENTURES LUX S.A.R.L.  
as Lender**

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**DEBENTURE**

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I certify that, save for material  
redacted pursuant to s.859G of  
the Companies Act 2006, this  
copy instrument is a correct  
copy of the original instrument

*MORRISON FOERSTER (UK) LLP*

Dated:

*C. D. [Signature] 16/7/2020*  
*CAROLINE JURY*  
*PARTNER*

**MORRISON | FOERSTER**

A LIMITED LIABILITY PARTNERSHIP

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THIS DEED is made on 16 July 2020

BETWEEN:

- (1) **NORTH RIVER RESOURCES PLC (IN ADMINISTRATION)** a company registered under the laws of England and Wales with registered number 05875525 and registered office at 55 Baker Street, London, W1U 7EU (the “**Chargor**”) represented by Mark Shaw and Shane Crooks acting without personal liability as joint administrators of the Chargor (the “**Administrators**”); and
- (2) **CL VENTURES LUX S.A.R.L.**, a company incorporated in Luxembourg with registration number B221056 whose registered office is at 534, rue de Neudorf L2220 Luxembourg (the “**Lender**”).

IT IS HEREBY AGREED AS FOLLOWS:

1. **DEFINITIONS & INTERPRETATION**

- 1.1 Unless otherwise defined or the context otherwise requires, words or expressions defined in the Administration Funding Agreement shall have the same meaning when used in this Deed.

- 1.2 In addition, in this Deed:

“**Account**” means each of the accounts opened or maintained from time to time by the Chargor with any bank, building society, financial institution or other person.

“**Administration Funding Agreement**” means the single currency term facility agreement dated on or about the date of this Deed entered into between the Chargor as borrower and the Lender.

“**Charged Investments**” means all:

- (a) stocks, shares, debentures, securities and certificates of deposit and other instruments creating or acknowledging indebtedness, including alternative finance investment bonds (but not including the Shares);
- (b) interests in collective investment schemes, in whatever form or jurisdiction any such scheme is established, including partnership interests;
- (c) warrants and other instruments entitling the holder to subscribe for or acquire any investments described in paragraphs (a) or (b) above;
- (d) certificates and other instruments conferring contractual or property rights (other than options) in respect of the investments in paragraphs (a), (b), and (c) above; and
- (e) options to acquire any investments described in paragraphs (a), (b), (c) and (d) above,

in each case, present and future, held directly or indirectly by (or to the order of or on behalf of) the Chargor from time to time.

“**Collateral Rights**” means all rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law.

“**Delegate**” means any delegate, agent, attorney or co-trustee appointed by the Lender or by a Receiver.

“**Event of Default**” means the occurrence of a breach of any term of the Administration Funding Agreement by the Borrower.

“**Fixed Security**” means any mortgage, fixed charge or assignment expressed to be created by or pursuant to Clause 4 (*Fixed Charge*) of this Deed.

“**Insurance Policies**” means all contracts, policies of insurance and cover notes of any kind taken out by or on behalf of the Chargor or (to the extent of its interest) in which it has an interest from time to time, including each contract or policy of insurance (if any) specified in Schedule 4 (*Insurance Policies*).

“**Intellectual Property**” means any patents, trademarks, service marks, designs, business and trade names, copyrights, database rights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered, and the benefit of all applications and rights to use such assets in which the Chargor may from time to time have an interest, including the intellectual property (if any) specified in Schedule 3 (*Intellectual Property*).

“**Liquidation Account**” means an account held by any subsequently appointed liquidator of the Borrower.

“**Monetary Claims**” means any book and other debts and monetary claims from time to time owing to the Chargor and any proceeds of such debts and claims (including any claims or sums of money deriving from or in relation to any Intellectual Property, any court order or judgment, any contract or agreement to which the Chargor is a party and any other assets, property, rights or undertaking of the Chargor).

“**Mortgaged Property**” means the Real Property and any other land in which the Chargor has any rights from time to time including the property (if any) specified in Schedule 1 (*Mortgaged Property*).

“**Notice of Assignment**” means a notice of assignment in substantially the form set out in Schedule 5 (*Form of Notice of Assignment of Relevant Contract*) and Schedule 6 (*Form of Notice of Assignment of Insurance Policy*).

“**Notice of Charge**” means a notice of charge in substantially the form set out in Schedule 12 (*Charged Investments: Broker’s Notice of Charge and Undertaking*).

“**Party**” means a party to this Deed.

“**Real Property**” means (including as provided in Clause 1.6 (*Real Property*)), the Mortgaged Property and any present or future freehold or leasehold or immovable property and any other interest in land or buildings and any fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of such real or immovable property and any rights relating thereto in which the Chargor has an interest.

“**Receiver**” means a receiver, receiver and manager, administrative receiver or liquidator appointed under the terms of this Deed or under the powers conferred on the Lender by applicable law, and includes all Delegates, attorneys or agents of such Receiver.

“**Related Rights**” means, in respect of any Secured Asset, all rights of the Chargor in and to:

- (a) the proceeds of sale or rental of any part of that Secured Asset;
- (b) all shares, investments or other assets derived from that Secured Asset;

- (c) all rights under any licence, agreement for sale or agreement for lease in respect of that Secured Asset;
- (d) all rights, powers, benefits, claims, causes of action, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of or derived from that Secured Asset; and
- (e) all monies and proceeds paid or payable in respect of that Secured Asset.

“**Relevant Contract**” means each of:

- (a) any intra-group indebtedness;
- (b) the documents (if any) described in Schedule 2 (*Relevant Contracts*); and
- (c) any document rights under which are from time to time assigned under this Deed and designated as a Relevant Contract by the Chargor and the Lender in writing.

“**Secured Assets**” means all of the assets and undertaking of the Chargor which from time to time are the subject of the Security created (or expressed to be created) by or under this Deed in favour of the Lender.

“**Secured Liabilities**” means, excluding the Outstanding Unsecured Claims and the Required Sum, all present and future obligations and liabilities of the Chargor (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by the Chargor or by some other person) to the Lender under or pursuant to each of the Finance Documents including any liability in respect of any further advances made under the Finance Documents, except for any obligation or liability which, if it were included, would cause that obligation or liability or any of the Security in respect thereof, to be unlawful, prohibited or invalid by or under any applicable law.

“**Security Period**” means the period beginning on the date of this Deed and ending on the date on which the Lender is satisfied that the Secured Liabilities have been unconditionally and irrevocably paid or discharged in full and the Lender is under no further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor or any other person under any of the Finance Documents.

“**Shares**” means all shares in the capital of any subsidiary of the Chargor, present and future, held directly or indirectly by (or to the order of or on behalf of) the Chargor from time to time.

“**Tangible Moveable Property**” means any plant, machinery, office equipment, computers, vehicles, furniture, fittings and other chattels (excluding any for the time being forming part of the Chargor’s stock in trade or work in progress).

### 1.3 Interpretation

In this Deed:

- (a) Unless a contrary indication appears, a reference to:
  - (i) the rules of interpretation contained in clauses 1.2 (*Construction*) and 1.3 (*Currency Symbols and definitions*) of the Administration Funding Agreement shall apply to the construction of this Deed, or in any notice given under or in connection with this Deed;

- (ii) the provisions of clauses 16 (*Application of Proceeds*), 23 (*Calculations and certificates*) and 27 (*Amendments and waivers*) of the Administration Funding Agreement shall apply to the provisions of this Deed as if set out herein in full, mutatis mutandis;
  - (iii) the “Lender”, the “Chargor” or any other person shall be construed so as to include its successors in title, permitted assigns and/or permitted transferees;
  - (iv) assets includes present and future properties, revenues and rights of every description (including any right to receive such revenues); and
  - (v) this Deed or any other agreement or instrument is a reference to this Deed or that other agreement or instrument as amended, novated, supplemented or restated from time to time (however fundamentally).
- (b) Any word importing the singular shall include the plural and vice versa.
  - (c) An Event of Default is “continuing” if it has not been waived.
  - (d) A reference to a Clause or Schedule is a reference to a clause or schedule to this Deed.

#### 1.4 Third Party Rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no rights or benefits expressly or impliedly conferred by this Deed shall be enforceable under that Act against the Parties by any other person.

#### 1.5 Present and future assets

- (a) A reference in this Deed to any Mortgaged Property, Secured Asset or other asset includes, unless the contrary intention appears, present and future Mortgaged Property, Secured Assets and other assets.
- (b) The absence of or incomplete details of any Secured Assets in any Schedule to this Deed shall not affect the legal validity or enforceability of any Security under this Deed.

#### 1.6 Real Property

A reference in this Deed to a mortgage, assignment or charge of any freehold, leasehold or commonhold property includes all buildings, plant, machinery, fixtures and fittings from time to time on or forming part of that property and all Related Rights.

#### 1.7 Disposition of land

The terms of the Administration Funding Agreement and any related documents are incorporated into this Deed to the extent necessary for any purported disposition of land contained in the Finance Documents to be valid in accordance with section 2(1) Law of Property (Miscellaneous Provisions) Act 1989.

#### 1.8 Separate Security

Clauses 4.1 (*Mortgage of Real Property*) to 4.11 (*Assignment of the proceeds of Insurance Policies*) shall be construed as creating a separate and distinct mortgage, fixed charge or assignment over each relevant asset within any particular class of assets defined in this Deed and the failure to create an effective mortgage, fixed charge or assignment (whether arising out of this Deed or any act or omission by any party) over any one asset shall not affect the nature

or validity of the mortgage, charge or assignment imposed on any other asset whether within that same class of assets or not.

**1.9 Lender assumes no obligation**

The Lender shall not be under any obligation in relation to the Secured Assets as a consequence of this Deed and the Chargor shall at all times remain liable to perform all obligations in respect of the Secured Assets.

**1.10 Consent for Fixed Security**

To the extent that any right, title or interest or benefit in or in respect of, any asset described in Clause 4 (*Fixed Charge*) cannot be, or is not effectively, secured pursuant to that Clause, in each case, for whatever reason, the Chargor shall:

- (a) promptly notify the Lender of the same and the reasons thereof;
- (b) hold the benefit of the same on trust for the Lender as security for the payment and discharge of the Secured Liabilities; and
- (c) use its reasonable endeavours to remove any impediment to an assignment, a mortgage or a charge (as the case may be).

**1.11 Administrators**

- (a) To the maximum extent permissible in law, all conditions, representations and warranties which are to be implied by statute or otherwise by general law into this Deed are hereby excluded. The terms and conditions of this Deed and in particular this clause, are fair and reasonable in the context of borrowing by a company in administration.
- (b) No personal liability shall fall on the Administrators or their firm or any member of their firm or on the Administrators' solicitors (Fieldfisher LLP) or any agents or advisers of the Administrators under or in connection with this Deed.
- (c) The Administrators enter into this Deed as agents of the Borrower and without personal liability and execute this Deed in their personal capacities solely for the purpose of receiving the benefit of the exclusions of liability and acknowledgements in their favour contained in this Deed.
- (d) The Lender is satisfied that it and its advisers have had full opportunity for investigation, inspection and analysis of the Borrower and its assets, is aware of the need to rely upon that inspection by reason of the absence of warranties in this Deed. The Lender acknowledges that it places and has placed no reliance whatsoever on any representations, agreements, statements or undertakings (oral or in writing) made or alleged to have been made by the Administrators) or any member of the Administrators' firm or the Administrators' solicitors (Fieldfisher LLP) or any agents or advisers of the Administrators.
- (e) The exclusions of liability, acknowledgements and waivers in this clause 1.11 shall have effect, and shall continue to have effect when the Administrators' capacity as agents of the Borrower has been terminated. Such exclusions, acknowledgements and waivers shall continue notwithstanding termination of this Deed and shall be in addition to, and not qualified by or in substitution for, any right of indemnity, recovery or relief otherwise available to the Administrators and shall apply to claims formed in contract, tort or otherwise howsoever.

- (f) No sums due from the Borrower or the Administrators under or in connection with this Deed shall be charged or payable as an expense or remuneration of the Administrators or otherwise as mentioned in paragraphs 99(3) and 99(4) schedule B1 or section 176ZA of the Insolvency Act 1986.
- (g) Nothing in this Deed or any associated agreements, arrangements or negotiations will restrict the right of the Administrators to cease acting as Administrators of the Borrower.

## **2. COVENANT TO PAY**

### **2.1 Covenant to pay**

- (a) Subject to clause 2 (*Limited Recourse*) of the Administration Funding Agreement, the Chargor covenants with the Lender that it shall, on demand of the Lender, pay and discharge the Secured Liabilities when they become due for payment and discharge in accordance with the terms of the Finance Documents pursuant to which such Secured Liabilities arise.
- (b) The covenants contained in this Clause 2.1 and the Security created by this Deed shall not extend to or include any liability or sum which would otherwise cause any such covenant or Security to be unlawful or prohibited by any applicable law.

## **3. CHARGING PROVISIONS**

All Security created by the Chargor in favour of the Lender under Clause 4 (*Fixed Charge*) and Clause 5 (*Floating Charge*) is:

- (a) continuing Security for the payment and discharge of the Secured Liabilities; and
- (b) granted in respect of all the rights, title and interest (if any), present and future, of the Chargor in and to the relevant Secured Asset.

## **4. FIXED CHARGE**

### **4.1 Mortgage of Real Property**

The Chargor charges, by way of first legal mortgage in favour of the Lender, the Mortgaged Property.

### **4.2 Fixed charge over Real Property**

The Chargor charges (to the extent not validly and effectively charged by way of first legal mortgage pursuant to Clause 4.1 (*Mortgage of Real Property*), by way of first fixed charge in favour of the Lender, all of its rights, title and interest from time to time in and to all of the Real Property and all Related Rights.

### **4.3 Fixed charge over Tangible Moveable Property**

The Chargor charges, by way of first fixed charge in favour of the Lender, all of its rights, title and interest from time to time in and to the Tangible Moveable Property and all Related Rights.

### **4.4 Fixed charge over contracts**

The Chargor charges, by way of first fixed charge in favour of the Lender, all of its rights, title and interest from time to time in and to any contract or agreement to which the Chargor is a

party (except for the Relevant Contracts), each of its interest or currency rate swap, cap, floor, collar or option transactions) and all Related Rights.

#### **4.5 Fixed charge over Monetary Claims**

The Chargor charges, by way of first fixed charge in favour of the Lender, all of its rights, title and interest from time to time in and to the Monetary Claims and all Related Rights (other than any claims which are otherwise subject to a fixed charge or assignment (at law or in equity) pursuant to this Deed) and all Related Rights (to the extent not already charged under this Clause 4.5).

#### **4.6 Fixed charge over Charged Investments**

The Chargor charges, by way of first fixed charge in favour of the Lender, all of its rights, title and interest from time to time in and to the Charged Investments and all dividends, interest and other monies payable in respect of those Charged Investments (including the Shares) and all Related Rights.

#### **4.7 Fixed charge over Shares**

The Chargor charges, by way of first fixed charge in favour of the Lender, all of its rights, title and interest from time to time in and to the Shares and all dividends, interest and other monies payable in respect of those Shares and all Related Rights (whether derived by way of redemption, bonus, preference, options, substitution, conversion, compensation or otherwise).

#### **4.8 Fixed charge over goodwill**

The Chargor charges, by way of first fixed charge in favour of the Lender, all of its rights, title and interest from time to time in and to any goodwill, rights and claims in relation to the uncalled capital of the Chargor.

#### **4.9 Fixed charge over Intellectual Property**

The Chargor charges, by way of first fixed charge in favour of the Lender, all of its rights, title and interest from time to time in and to any Intellectual Property and Related Rights of the Chargor.

#### **4.10 Assignment of Relevant Contracts**

The Chargor assigns and agrees to assign absolutely to the Lender, all of its rights, claims, title and interest (whether legal or beneficial) from time to time in and to each Relevant Contract and any other agreement to which it is party (together with all Related Rights) to the extent that it is not subject to a mortgage or a fixed charge under this Clause.

#### **4.11 Assignment of the proceeds of Insurance Policies**

The Chargor assigns and agrees to assign as security to the Lender, all of its rights, claims, title and interest (whether legal or beneficial) from time to time in and to the proceeds of each Insurance Policy (together with all Related Rights) to the extent that it is not subject to a mortgage or a fixed charge under this Clause.

## **5. FLOATING CHARGE**

### **5.1 Floating charge**

- (a) The Chargor charges by way of first floating charge in favour of the Lender all present and future assets and undertaking of the Chargor.
- (b) The floating charge created pursuant to paragraph (a) of Clause 5.1 above shall be deferred in point of priority to all Fixed Security validly and effectively created by the Chargor under the Finance Documents in favour of the Lender as security for the payment and discharge of the Secured Liabilities.
- (c) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by or pursuant to this Deed (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act 1986).

### **5.2 Conversion by notice**

The Lender may at any time, by written notice to the Chargor, convert the floating charge created pursuant to this Deed with immediate effect into a fixed charge as regards all or any of the assets of the Chargor specified in the notice if:

- (a) an Event of Default has occurred and is continuing; or
- (b) the Chargor requests the Lender to exercise any of its powers under this Deed.

### **5.3 Automatic conversion**

Notwithstanding Clause 5.2 (*Conversion by notice*) and without prejudice to any law which may have a similar effect, the floating charge created under this Deed shall (in addition to the circumstances in which the same will occur under general law) automatically convert (without notice) with immediate effect into a fixed charge as regards all assets subject to it if:

- (a) except as permitted by the Finance Documents the Chargor creates or attempts to create any Security over any of the Secured Assets or attempts to sell, lease, transfer or otherwise dispose of any Secured Assets;
- (b) other than with respect to the Administration, any person levies or attempts to levy any distress, execution or other process against any of the Secured Assets;
- (c) other than with respect to the Administration, any person presents an application to the court for the making of an administration order in relation to the Chargor or gives notice of its intention to appoint an administrator of the Chargor or the filing of such notice with the court;
- (d) a Receiver is appointed over all or any of the Secured Assets;
- (e) a meeting is convened to consider the passing of a resolution for the voluntary winding-up of the Chargor;
- (f) a petition is presented for the compulsory winding-up of the Chargor;
- (g) a provisional liquidator is appointed to the Chargor; or
- (h) a resolution is passed or an order is made for the dissolution or reorganisation of the Chargor,

or any analogous procedure or step is taken in any jurisdiction.

## **6. GENERAL SECURITY PROVISIONS**

### **6.1 Continuing security**

The Security constituted by this Deed shall be continuing security and shall remain in full force and effect regardless of any intermediate payment or discharge by any person of the whole or any part of the Secured Liabilities.

### **6.2 Additional security**

The Security created, or purported to be created, by this Deed is in addition to and is not in any way prejudiced by any other guarantee or Security now or subsequently held by the Lender whether in relation to the Secured Liabilities or otherwise.

### **6.3 Settlements conditional**

- (a) If the Lender believes that any amount paid by any person (including, for the avoidance of doubt, the Chargor) in respect of the Secured Liabilities is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid.
- (b) Any settlement, discharge or release between the Chargor and the Lender shall be conditional upon no Security or payment to or for the Lender by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency, liquidation or otherwise.

### **6.4 Waiver of defences**

The liability of the Chargor under this Deed will not be affected by any act, omission, matter or thing which, but for this Clause 6.4, would reduce, release or prejudice any of its liability under this Deed (without limitation and whether or not known to it or the Lender) including:

- (a) any time, waiver or consent granted to, or composition with, the Borrower or any other person;
- (b) the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of the Borrower or such other person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, the Borrower or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
- (e) any amendment (however fundamental) or replacement of any Finance Document, any other document or any Security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any document or Security; or
- (g) any insolvency or similar proceedings.

## **6.5 Immediate recourse**

The Chargor waives any right it may have of first requiring the Lender (or any trustee, Receiver or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before enforcing its rights under and in accordance with Clause 15 (*Enforcement of Security*) of this Deed. This waiver applies irrespective of any law or any provision of any Finance Document or any other document to the contrary.

## **7. PERFECTION OF SECURITY**

### **7.1 Real Estate - Deposit of title deeds**

The Chargor shall:

- (a) on the date of this Deed (and promptly upon the acquisition by it of any interest in any Real Property at any time) deposit with the Lender (or procure the deposit of) all deeds, certificates and other documents constituting or evidencing title to such Real Property; and
- (b) at any time thereafter deposit with the Lender (or procure the deposit of) any further such deeds, certificates and other documents, promptly upon coming into possession of any of those items.

### **7.2 Real Estate - Application to the Land Registry**

The Chargor consents to an application being made to the Land Registry to enter the following restriction on the Register of Title relating to any Mortgaged Property registered at H.M. Land Registry:

“No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the security agreement dated [●] in favour of [●] referred to in the charges register or their conveyancer. (Standard Form P)”

### **7.3 Real Estate - Acquisitions of Real Property**

- (a) The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to include the obligations set out in paragraph (b)(ii) of this Clause 7.3.
- (b) If the Chargor acquires any Real Property after the date of which it becomes a Party, it must:
  - (i) notify the Lender promptly;
  - (ii) promptly on request by the Lender and at the cost of the Chargor, enter into, execute and complete a mortgage over any Real Property in England and Wales not already the subject of a registrable legal charge and do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notarisations, registrations, notices and instructions) as the Lender may specify (and in such form as the Lender may require) in favour of the Lender or its nominee(s);
  - (iii) create, perfect, maintain and/or protect the Security created or intended to be created in respect of the Secured Assets (which may include the execution by

the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Secured Assets) or for the exercise of the Collateral Rights;

- (iv) confer on the Lender Security over any asset or undertaking of the Chargor located in any jurisdiction outside England and Wales equivalent or similar to the Security intended to be conferred by or pursuant to this Deed; and/or
- (v) to facilitate the realisation of the Secured Assets.

#### **7.4 Real Estate - Notices**

The Chargor must, within 14 days after the receipt by the Chargor of any material application, requirement, order or notice served or given by any public or local or other authority with respect to the Mortgaged Property (or any part of it):

- (a) deliver a copy to the Lender; and
- (b) inform the Lender of the steps taken or proposed to be taken to comply with the relevant requirement.

#### **7.5 Relevant Contracts – Notice of Assignment**

- (a) The Chargor shall, on the date of this Deed (or, if later, the date of entry into a Relevant Contract), serve a notice of assignment on each Debtor in respect of Relevant Contracts in existence on the date of this Deed in substantially the form set out in Schedule 5 (*Form of Notice of Assignment of Relevant Contract*).
- (b) The Chargor shall use its reasonable endeavours to procure that each recipient of a notice of assignment served pursuant to paragraph (a) above duly executes and returns to the Lender an acknowledgement of such notice of assignment in substantially the form set out in Schedule 5 (*Form of Notice of Assignment of Relevant Contract*) within 20 Business Days of service of such notice, provided that the Chargor's obligation under this paragraph (b) shall cease upon the expiration of such period.

#### **7.6 Shares – Deposit of documents**

- (a) The Chargor shall, upon its coming into possession thereof at any time, deposit with the Lender (or procure the deposit of) all certificates and other documents of title to the Shares of any Subsidiary, and stock transfer forms (executed in blank by or on behalf of the Chargor) in respect of the Shares of any Subsidiary.
- (b) The Chargor shall, promptly upon (and in any event within 5 days of) the accrual, offer or issue of any stocks, shares, warrants or other securities in respect of or derived from the Shares and the Related Rights (or upon acquiring any interest therein) notify the Lender of that occurrence and deposit with the Lender (or procure the deposit of): (i) all certificates and other documents of title representing such assets and (ii) such stock transfer forms or other instruments of transfer (executed in blank by or on behalf of the Chargor) in respect thereof as the Lender may require.

#### **7.7 Charged Investments – Deposit of documents**

After the occurrence of an Event of Default which is continuing and to the extent not delivered under Clause 7.6 above, the Chargor shall promptly on the request of the Lender, deposit with the Lender (or procure the deposit of) all of the Charged Investments and any certificates and

other documents of title representing the Charged Investments to which the Chargor (or its nominee(s)) is or becomes entitled, together with any other document which the Lender may reasonably request (in such form and executed in such manner as the Lender may reasonably require (including stock transfer forms or other instruments of transfer executed in blank by it or on its behalf), with a view to perfecting or improving its security over the Charged Investments or to registering any Charged Investment in its name or the name of any nominee(s).

#### **7.8 Registration of Intellectual Property**

The Chargor shall, if requested by the Lender, execute all such documents and do all such acts as the Lender may reasonably require to record the interest of the Lender in any registers relating to any registered Intellectual Property.

#### **7.9 Proceeds of Insurance Policies**

The Chargor shall, on the date of this Deed or, if later, when requested by the Lender, deliver to the Lender (or procure the delivery of) a Notice of Assignment duly executed by, or on behalf of, the Chargor in respect of each Insurance Policy and the Chargor shall use reasonable endeavours to procure from:

- (a) each insurer that has written an Insurance Policy an acknowledgement in substantially the form set out in such Notice of Assignment; and
- (b) each broker in respect of an Insurance Policy a broker's undertaking in substantially the form set out in Schedule 7 (*Form of Insurance Broker's Letter of Undertaking*).

#### **7.10 Notice of Security: other Secured Assets**

- (a) The Chargor shall, on the date of this Deed or, if later, when requested by the Lender from time to time, promptly deliver to the Lender (or procure the delivery of) a Notice of Assignment or a Notice of Charge (as appropriate) duly executed by, or on behalf of, the Chargor in relation to any asset which is the subject of the Fixed Security and any floating charge which is converted into a fixed charge pursuant to Clauses 5.2 (*Conversion by notice*) and 5.3 (*Automatic conversion*).
- (b) The Chargor shall procure from each recipient of such a Notice of Assignment or a Notice of Charge (as appropriate) an acknowledgement in the form set out therein within 20 Business Days of service of such notice, provided that the Chargor's obligation under this paragraph (b) shall cease upon the expiration of such period.

#### **7.11 Deposit of documents and notices**

The Chargor shall promptly on request by the Lender, deposit all deeds and documents of title relating to the Secured Assets with the Lender and/or affix to any plant, machinery, fixtures, fittings, computers, vehicles, office equipment, or other equipment and other assets for the time being owned by it (in a prominent position) a durable notice of this Deed (in any form required by the Lender (acting reasonably)).

#### **7.12 Further advances**

- (a) Subject to the terms of the Administration Funding Agreement, the Lender is under an obligation to make further advances to the Chargor and that obligation will be deemed to be incorporated in this Deed as if set out in this Deed.

- (b) The Chargor consents to an application being made to the Land Registry to enter the obligation to make further advances on the Charges Register of any registered land forming part of the Secured Assets.

#### **7.13 Custodians**

The Lender may appoint and pay any person to act as a custodian or nominee on any terms in relation to all or any part of the Secured Assets as the Lender may determine and the Lender shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any such person or be bound to supervise the proceedings or acts of any such person.

#### **8. NEGATIVE PLEDGE**

The Chargor shall not at any time during the Security Period create or permit to subsist any Security over all or any part of the Secured Assets except as otherwise permitted by the Administration Funding Agreement.

#### **9. FURTHER ASSURANCE**

- (a) The Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions and making all filings and registrations) as the Lender may reasonably specify (and in such form as the Lender may require) in favour of the Lender or its nominee(s):
  - (i) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law; and/or
  - (ii) to, when and for so long as the Security constituted by this Deed is enforceable in accordance with Clause 15 (*Enforcement of Security*) facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by or under this Deed.
- (b) Any document required to be executed by the Chargor under this Clause 9 will be prepared at the cost of the Lender.

#### **10. SHARES AND CHARGED INVESTMENTS**

##### **10.1 Voting rights and dividends prior to an Event of Default**

Prior to the occurrence of an Event of Default, the Chargor shall:

- (a) ensure that all dividends, interest and other monies or distributions of an income nature arising from the Shares are paid into an Administration Account or, if the Administration no longer has effect, a Liquidation Account or an Account nominated by the Lender; and
- (b) be entitled to exercise all voting rights in relation to the Shares.

## 10.2 Voting rights and dividends after an Event of Default

Upon the occurrence of an Event of Default which is continuing, the Lender may, at its discretion, in the name of the Chargor or otherwise and without any further consent or authority from the Chargor:

- (a) exercise (or refrain from exercising) any voting rights in respect of the Shares;
- (b) apply all dividends, interest and other monies arising from the Shares as though they were the proceeds of sale in accordance with clause 16 (*Application of Proceeds*) of the Administration Funding Agreement;
- (c) transfer the Shares into the name of the Lender or such nominee(s) of the Lender as it shall require; and
- (d) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Shares including the right, in relation to any company whose shares or other securities are included in the Shares, to concur or participate in:
  - (i) the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof);
  - (ii) the release, modification or variation of any rights or liabilities attaching to such shares or securities; and
  - (iii) the exercise, renunciation or assignment of any right to subscribe for any shares or securities,

in each case in the manner and on the terms the Lender thinks fit, and the proceeds of any such action shall form part of the Shares.

## 10.3 Charged Investments: Exercise of rights

The Chargor shall not exercise any of its rights and powers in relation to any of the Charged Investments in any manner which would prejudice the value of, or the ability of the Lender to realise, the Security created pursuant to this Deed.

## 11. MONETARY CLAIMS

### 11.1 Release of Monetary Claims: Before Event of Default

Prior to the occurrence of an Event of Default which is continuing, the proceeds of the realisation of the Monetary Claims shall be credited to an Administration Account or, if the Administration no longer has effect, a Liquidation Account or an Account specified by the Lender (a “Secured Account”) and (subject to any restriction on the application of such proceeds contained in this Deed or in the Finance Documents), the Chargor shall be entitled to withdraw such proceeds from an Administration Account or Secured Account (as applicable) provided that such proceeds shall continue to be subject to the floating charge created pursuant to Clause 5 (*Floating Charge*) and the terms of this Deed.

## **11.2 Release of Monetary Claims: After Event of Default**

After the occurrence of an Event of Default which is continuing, the Chargor shall not, except with the prior written consent of the Lender, be entitled to withdraw or otherwise transfer the proceeds of the realisation of any Monetary Claims standing to the credit of any Administration Account or Secured Account (as applicable) (save for payments made by the Administrators in compliance with clause 16 (*Application of Proceeds*) of the Administration Funding Agreement).

## **12. INSURANCES**

### **12.1 Application of Insurance proceeds**

All monies received under any Insurance Policies relating to the Secured Assets shall (subject to the rights and claims of any person having prior rights to such monies):

- (a) prior to the occurrence of an Event of Default which is continuing, be applied in repairing, replacing, restoring or rebuilding the property or assets damaged or destroyed; and
- (b) after the occurrence of an Event of Default which is continuing, be held upon trust for the Lender pending payment to the Lender for application in accordance with clause 16 (*Application of Proceeds*) of the Administration Funding Agreement and the Chargor waives any right it may have to require that any such monies are applied in reinstatement of any part of the Secured Assets.

## **13. RETENTION OF DOCUMENTS**

The Lender may retain any document constituting part of the Secured Assets delivered to it pursuant to this Deed or otherwise until the Security created by this Deed is released and if for any reason it ceases to hold any such document before such time, it may by notice to the Chargor require that the relevant document, to the extent in the Chargor's possession, be redelivered to it and the Chargor shall promptly comply (or procure compliance) with such notice, to the extent reasonably possible.

## **14. SECURITY POWER OF ATTORNEY**

### **14.1 Appointment and powers**

The Chargor, by way of security for the performance of its obligations under this Deed, irrevocably appoints the Lender and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to, when and for so long as the Security constituted by this Deed is enforceable in accordance with Clause 15 (*Enforcement of Security*) and provided that the Administration is no longer in effect, execute, deliver and perfect all documents and do all things which the attorney may (acting in its sole discretion) consider to be required or desirable for:

- (a) carrying out any obligation imposed on the Chargor by this Deed (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Secured Assets); or
- (b) enabling the Lender to exercise, or delegate the exercise of, all or any of the rights, powers and remedies of the Lender provided by this Deed or by law.

#### 14.2 Ratification

The Chargor ratifies and confirms, and agrees to ratify and confirm, whatever any attorney does or purports to do pursuant to its appointment under this Clause 14.

### 15. ENFORCEMENT OF SECURITY

#### 15.1 When security is enforceable

Upon the occurrence of:

- (a) an Event of Default which is continuing;
- (b) other than the Administration (or a subsequent liquidation), any event or the receipt by the Lender of any information or the coming to the attention of the Lender of any other matter or thing whatsoever which causes the Lender to believe that all or any part of the Secured Assets is in danger of seizure, distress or other legal process or that all or any part of the Security created by or pursuant to this Deed is otherwise for any reason whatsoever in jeopardy;
- (c) a request from the Chargor to the Lender that it exercise any of its powers under this Deed,

the Security created by and under this Deed shall be immediately enforceable without prior notice to the Chargor, subject to obtaining the prior consent of the Administrators or an order of the Court.

#### 15.2 Effect of a moratorium

The Lender shall not be entitled to exercise its rights under Clause 15 (*Enforcement of Security*) or Clause 5.2 (*Conversion by notice*) where the right arises as a result of an Event of Default occurring solely due to any person obtaining, or taking steps to obtain, a moratorium pursuant to Schedule A1 of the Insolvency Act 1986.

#### 15.3 Rights and Powers of the Lender

- (a) The Lender may in its absolute discretion at any time when the Security hereby constituted is enforceable:
  - (i) secure and perfect its title to the Secured Assets (including transferring the same into the name of the Lender or its nominee(s));
  - (ii) enforce all or any part of the Security created by this Deed (upon such terms and generally in such manner as the Lender thinks fit) and take possession and hold or dispose of all or any part of the Secured Assets;
  - (iii) without notice to the Chargor appropriate with immediate effect any of the Secured Assets and apply them (or any proceeds generated by them) in or towards the discharge of the Secured Liabilities in such manner as the Lender may think fit in its absolute discretion, whether such Secured Assets are held by the Lender or otherwise;
  - (iv) whether or not it has appointed a Receiver, exercise all or any of the powers, authorisations and discretions conferred by the Law of Property Act 1925 (as

varied or extended by this Deed) on chargees and by this Deed on any Receiver or otherwise conferred by law on chargees or Receivers; and

- (v) transfer the Shares and Related Rights into the name of the Lender or such nominee(s) of the Lender as it shall require.
- (b) The enforcement powers of the Lender under this Deed shall be construed in the widest possible sense and all Parties intend that the Lender shall have as wide and flexible a range of enforcement powers as may be conferred (or, if not expressly conferred, as is not restricted) by any applicable law.

#### **15.4 Appointment of Receiver**

- (a) At any time when the Security created by or under this Deed is enforceable or if otherwise requested by the Chargor, the Lender may in writing appoint any person or persons to be a Receiver in respect of the Secured Assets or any part thereof and may remove any Receiver so appointed and appoint another. The Lender shall be entitled to appoint a Receiver save to the extent prohibited by section 72A of the Insolvency Act 1986.
- (b) The power of appointment of a Receiver expressly provided under this Deed shall be in addition to all statutory and other powers of appointment of the Lender under the Law of Property Act 1925 (as extended by this Deed) and such powers shall remain exercisable from time to time by the Lender in respect of all or any part of the Secured Assets.
- (c) Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between the Receiver and the Lender.

#### **15.5 Rights and Powers of Receiver**

At any time when the Security created by or under this Deed is enforceable, any Receiver appointed pursuant to Clause 15.4 (*Appointment of Receiver*) shall have the following rights and powers in relation to the Secured Assets in respect of which it is appointed:

- (a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
- (b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (c) to secure and perfect its title to the Secured Assets (including transferring the same into the name of the Lender or its nominee(s));
- (d) to take possession of and hold or sell, realise, transfer or otherwise dispose of the Secured Assets (or any of them), at any time and in any way it deems expedient, free from any restrictions and claims. The consideration for any such transaction may be for cash, debentures or other obligations, shares, stock, securities or other valuable consideration and may be payable or delivered, immediately or deferred, in one amount or by instalments over such period of time as the Lender or Receiver may think fit. Neither the Lender nor any Receiver shall be liable for any loss arising out of such sale, realisation or disposal;

- (e) without prejudice to any other provision of this Deed, to collect, recover or compromise and give a good discharge for any dividends, interests or other moneys accruing or payable on the Secured Assets (or any of them);
- (f) without prejudice to any other provision of this Deed, to exercise all voting and other rights attached to the Shares and Related Rights (or any of them) for any purpose, whether for the winding up of the Chargor's affairs or the realisation of all or any part of its assets or otherwise;
- (g) to remove the directors of the the Chargor and appoint such other persons as directors of the Chargor as the Receiver may decide;
- (h) to manage and preserve the Secured Assets (or any of them) and to do (or permit the Chargor or any of its nominees to do) all such things as the Lender or such Receiver would be capable of doing if it was the absolute beneficial owner of the relevant Secured Assets;
- (i) to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating to the Secured Assets (or any of them);
- (j) to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Chargor or the Secured Assets (or any of them);
- (k) to redeem any Security (whether or not having priority to the Security created under this Deed) over the Shares and Related Rights (or any of them), to procure the transfer of that Security to itself and/or to settle the accounts of any person with an interest in the Chargor or the Secured Assets (or any of them);
- (l) to raise or borrow money from or incur any other liability to any person either unsecured or on the security of any Secured Asset either in priority to the Security created under this Deed and generally on any terms and for whatever purpose;
- (m) to appoint and discharge managers, officers, agents, accountants, and others for the purposes of this Deed upon such terms as to remuneration or otherwise as such Receiver sees fit;
- (n) to exercise all the rights which may be exercisable by the registered holder or bearer of the Secured Assets (or any of them) and all other rights conferred on receivers and/or mortgagees by statute or common law;
- (o) to do anything else such Receiver may think fit for the realisation and enforcement of the rights under this Deed or which may be incidental to the exercise of any of the rights conferred on the Lender or such Receiver under or by virtue of any Finance Document to which the Chargor is a party, and other applicable statutory provisions and applicable laws; and
- (p) to spend such reasonable sums as is necessary in order to exercise any of the above rights and the Chargor shall pay to the Receiver all sums so spent.

## 15.6 General

- (a) For the purposes of determining whether any statutory power has arisen or become exercisable, the Secured Liabilities shall be deemed to have become due and payable on the date of this Deed.

- (b) The power of sale or other disposal conferred on the Lender and on the Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Liabilities shall be deemed due and payable for that purpose) on execution of this Deed.
- (c) The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Deed or to the exercise by the Lender of its right to consolidate all or any of the Security created by or pursuant to this Deed with any other security in existence at any time or to its power of sale.

#### 15.7 Contingencies

If the Lender enforces the Security constituted by or under this Deed at a time when no Secured Liabilities are due to it but at a time when amounts may or will become so due, the Lender may pay the proceeds of any recoveries received by it into an interest bearing suspense account.

#### 15.8 No liability as mortgagee in possession

The Lender shall not be liable to account as a mortgagee or a mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee or mortgagee in possession might otherwise be liable.

#### 15.9 Redemption of prior mortgages

At any time when the Security created by or under this Deed is enforceable, the Lender may, at its own cost:

- (a) redeem any prior form of Security over any Secured Asset;
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, the Lender or encumbrancer which, once so settled and passed, shall be conclusive and binding on the Chargor.

#### 15.10 Right of appropriation

- (a) To the extent that the Security created by this Deed constitutes a “**security financial collateral arrangement**” and the Secured Assets constitute “**financial collateral**” for the purpose of the Financial Collateral Arrangements (No. 2) Regulations 2003 (the “**Regulations**”), the Lender shall have the right on giving prior notice to the Chargor, at any time when the Security is enforceable but provided that the Administration is no longer in effect, to appropriate all or any part of those Secured Assets in or towards discharge of the Secured Liabilities.
- (b) The Parties agree that the value of the appropriated Secured Assets shall be determined by the Lender by reference to any publicly available market price or, in the absence of which, by such other means as the Lender (acting reasonably) may select including, without limitation, an independent valuation. For the purpose of Regulation 18(1) of the Regulations, the Chargor agrees that any such determination by the Lender will constitute a valuation in a “**commercially reasonable manner**”.

## **16. PROTECTION OF THIRD PARTIES**

A certificate of an officer or agent of the Lender to the effect that its power of sale has arisen and is exercisable shall be conclusive evidence of that fact in favour of a purchaser of all or any part of the Secured Property. Upon receipt of such a certificate, no person (including a purchaser) dealing with the Lender or its agents has an obligation to enquire of the Lender or others:

- (a) whether the Secured Liabilities have become payable;
- (b) whether any power purported to be exercised pursuant to the terms of this Deed or otherwise has become exercisable;
- (c) whether any Secured Liabilities or other monies remain outstanding;
- (d) how any monies paid to the Lender shall be applied; or
- (e) the status, propriety or validity of the acts of the Lender.

The receipt by the Lender shall be an absolute and conclusive discharge to a purchaser and shall relieve such purchaser of any obligation to see to the application of any monies paid to or by the direction of the Lender.

In this clause, 'purchaser' includes any person acquiring for money or money's worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Secured Assets or any of them.

## **17. SUSPENSE ACCOUNTS**

All monies received, recovered or realised by the Lender under this Debenture (including the proceeds of any conversion of currency) may in the discretion of the Lender be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Lender considers appropriate (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Lender's discretion, in or towards the discharge of any of the Secured Liabilities and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

## **18. SUBSEQUENT SECURITY**

If the Lender receives notice of any subsequent Security or other interest affecting all or any of the Secured Assets it may open a new account or accounts for the Chargor in its books. If it does not do so then, unless it gives express written notice to the contrary to the Chargor, as from the time of receipt of such notice by the Lender, all payments made by the Chargor to the Lender shall not be treated as having been applied in reduction of the Secured Liabilities.

## **19. PAYMENTS**

### **19.1 Currency of account**

US Dollar is the currency of account and payment for any sum due from the Chargor under this Deed.

## **19.2 No set-off by the Chargor**

All payments to be made by the Chargor under this Deed shall be calculated and shall be made without (and free and clear of) any deduction, set-off or counterclaim.

## **20. MISCELLANEOUS**

### **20.1 Costs and expenses**

The provisions of clause 12 (*Costs and Expenses*) of the Administration Funding Agreement shall apply as if set out herein in full, mutatis mutandis.

### **20.2 Partial invalidity**

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

### **20.3 Remedies and waivers**

- (a) No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.
- (b) The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.
- (c) A waiver given or consent granted by the Lender under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

### **20.4 No liability**

None of the Lender, its nominee(s) or any Receiver appointed pursuant to this Deed shall be liable by reason of:

- (a) taking any action permitted by this Deed; or
  - (b) any neglect or default in connection with the Secured Assets; or
  - (c) taking possession or realisation of all or any part of the Secured Assets,
- except in the case of gross negligence or wilful default upon its part.

### **20.5 Assignment and Transfer**

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Deed. The Lender may assign or otherwise transfer all or any of its rights and/or obligations under this Deed to any person in accordance with the terms of the Administration Funding Agreement.

## 20.6 Discretion

Any liberty or power which may be exercised or any determination which may be made under this Deed by the Lender or any Receiver may, subject to the terms and conditions of the Administration Funding Agreement, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

## 20.7 Implied Covenants for Title

- (a) The covenants set out in Sections 3(1), 3(2) and 6(2) of the Law of Property (*Miscellaneous Provisions*) Act 1994 will not extend to Clause 3 (*Charging Provisions*).
- (b) It shall be implied in respect of Clause 3 (*Charging Provisions*) that the Chargor is charging the Secured Assets free from all charges and encumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

## 21. NOTICES

The provisions of clause 22 (*Notices*) of the Administration Funding Agreement shall apply as if set out herein in full, mutatis mutandis.

## 22. RELEASE OF SECURITY

Upon the expiry of the Security Period, the Security created under this Deed shall terminate and the Lender shall promptly execute and deliver to the Chargor such documents and instruments reasonably requested by the Chargor as shall be necessary to evidence termination of all Security given by the Chargor to the Lender hereunder subject to Clause 6.3 (*Settlements conditional*) and without recourse to, or any representation or warranty by, the Lender or any of its nominees.

## 23. COUNTERPARTS

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

## 24. GOVERNING LAW

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

## 25. JURISDICTION

### 25.1 Jurisdiction of the English courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of Deed or the consequences of its nullity) or any non-contractual obligations arising out of or in connection with this Deed (“**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle disputes and accordingly no Party will argue to the contrary.

**IN WITNESS WHEREOF this Deed has been executed and delivered as a deed on the date given at the beginning of this Deed.**

**SCHEDULE 1  
MORTGAGED PROPERTY**

<b>Chargor</b>	<b>Property Description</b>	<b>Title Number</b>
<i>[None as at the date of this Deed]</i>		

**SCHEDULE 2**  
**RELEVANT CONTRACTS**

*[No agreements documenting intra-group indebtedness as at the date of this Deed]*

**SCHEDULE 3**  
**INTELLECTUAL PROPERTY**

*[None as at the date of this Deed]*

**SCHEDULE 4**  
**INSURANCE POLICIES**

*[None as at the date of this Deed]*

**SCHEDULE 5**  
**FORM OF NOTICE OF ASSIGNMENT OF RELEVANT CONTRACT**

To: [Insert name of party to Relevant Contract]

Date: [●]

Dear Sirs

We give you notice that, by a deed dated [ ] (the **Deed**), we have assigned to [[Enter Lender Name] (the **Lender**) all our right, title and interest in and to [details of contract] (the **Contract**) including all monies which may be payable in respect of the Contract.

With effect from your receipt of this notice:

1. all payments by you to us under or arising from the Contract (the **Payments**) shall, prior to the enforcement of the Deed, be made to the following Administration Account:

ACCOUNT NAME:

ACCOUNT NUMBER:

SORT CODE:

2. following enforcement of the Deed, all Payments shall be made to the Lender or to its order as it may specify in writing from time to time;
3. all remedies provided for in the Contract or available at law or in equity shall be exercisable by the Lender;
4. all rights to compel performance of the Contract shall be exercisable by the Lender although we shall remain solely liable to perform all the obligations assumed by us under or in connection with the Contract;
5. all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Contract shall belong to the Lender and no changes may be made to the terms of the Contract nor may the Contract be terminated without the Lender's consent; and
6. you are authorised and instructed, without requiring further approval from us, to provide the Lender with such information relating to the Contract as it may from time to time request and to send it copies of all notices issued by you under the Contract to the Lender as well as to us.

These instructions may not be revoked, nor may the terms of the Contract be amended, varied, waived or terminated without the prior written consent of the Lender.

This letter and all non-contractual obligations arising out of or in conjunction with it are governed by and will be construed in accordance with the laws of England and Wales.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning it to the Lender at [ ] marked for the attention of [ ].

Yours faithfully,

.....

for and on behalf of

*[Insert the Chargor's Name]*

**Form of Acknowledgement of  
Assignment from counterparty of Relevant Contract**

To:     [[*Insert Lender Name*] (the Lender)]

Date:

Dear Sirs

We acknowledge receipt of a notice dated [ ] in the terms set out above and confirm that we have not received notice of any previous assignments or charges of or over any of the rights, interests and benefits in and to the Contract and that we will comply with the terms of that notice.

We further confirm that:

- (a)     we have not claimed or exercised and have no outstanding right to claim or exercise any right of set-off, counterclaim or other right relating to any payments by us to the Chargor under or arising from the Contract;
- (b)     no amendment, waiver or release of any of such rights, interests and benefits shall be effective without the prior written consent of the Lender;
- (c)     no termination of such rights, interests or benefits shall be effective unless we have given the Lender [thirty] days written notice of the proposed termination, specifying the action necessary to avoid such termination; and
- (d)     no breach or default on the part of the Chargor of any of the terms of the Contract shall be deemed to have occurred unless we have given notice of such breach to the Lender specifying how to make good such breach.

This letter and all non-contractual obligations arising out of or in conjunction with it are governed by and will be construed in accordance with the laws of England and Wales.

Yours faithfully,

.....

for and on behalf of

[[*Insert party to Relevant Contract*]]

cc.     [[*Insert the Chargor's Name*]]

**SCHEDULE 6**  
**FORM OF NOTICE OF ASSIGNMENT OF INSURANCE POLICY**

To:     *[Insert name of Insurer]*

Date:

Dear Sirs

We give you notice that, by a deed dated [●] (the Deed), we have assigned to *[[Insert Lender Name]* (the Lender) all our right, title and interest in and to the proceeds of *[insert details of relevant insurance policy]* (the Policy of Insurance).

With effect from your receipt of this notice we instruct and authorise you to:

1.     make all payments and claims [in excess of £ [●]] under or arising from the Policy of Insurance to the Lender *[insert relevant account number and sort code]* or to its order as it may specify in writing from time to time;
2.     note the interest of the Lender on the Policy of Insurance; and
3.     disclose to the Lender, without further approval from us, such information regarding the Policy of Insurance as the Lender may from time to time request and to send it copies of all notices issued by you under the Policy of Insurance.

We will remain liable to perform all our obligations under the Policy of Insurance and the Lender is under no obligation of any kind whatsoever under the Policy of Insurance nor under any liability whatsoever in the event of any failure by us to perform our obligations under the Policy of Insurance.

With effect from your receipt of this notice all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Policy of Insurance (including all rights to compel performance) belong to and are exercisable by the Lender.

This letter and all non-contractual obligations arising out of or in conjunction with it are governed by and will be construed in accordance with the laws of England and Wales.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning it to the Lender at [ ] marked for the attention of [ ].

Yours faithfully,

.....

for and on behalf of  
*[Insert the specific Chargor's Name]*

**Form of Acknowledgement of  
Assignment from Insurer**

To:    [[*Insert Lender Name*] (the Lender)]

Date:

Dear Sirs

We acknowledge receipt of a notice dated [ ] in the terms set out above and confirm that we have not received notice of:

- (a)     any assignment or charge of or over any of the rights, interests and benefits specified in such notice; or
- (b)     the interest of any third party in any of the rights, interests and benefits specified in such notice,

and will make all payments in the manner and to the account specified in that notice. We confirm that we have made all necessary arrangements for all future payments payable under such Policy of Insurance, to be made into the account specified in the notice.

We further confirm that:

1.     no amendment, waiver or release or any such rights, interest and benefits will be effective without the prior written consent of the Lender;
2.     no termination of such rights, interests or benefits will be effective unless we have given the Lender [21] days' written notice of the proposed termination and specifying the action necessary to avoid such termination;
3.     the Chargor will remain liable to perform all its obligations under the Policy of Insurance and the Lender is under no obligation of any kind whatsoever under the Policy of Insurance nor under any liability whatsoever in the event of any failure by the Chargor to perform its obligations under the Policy of Insurance; and
4.     no breach or default on the part of the Chargor of any of the terms of such Policy of Insurance will be deemed to have occurred unless we have given notice of such breach to the Lender specifying how to make good such breach.

We unconditionally and irrevocably waive all rights of set-off, lien, combination of accounts and similar rights (however described) which we may have now or in the future to the extent that such rights relate to amounts owed to us by the Chargor (and the proceeds thereof) and we will send you copies of all statements, orders and notices given by us relating to such debt.

This letter and all non-contractual obligations arising out of or in connection with it are governed by and will be construed in accordance with the laws of England and Wales.

Yours faithfully,

.....

for and on behalf of  
***[Insert name of Insurer]***

cc. *[Insert the Chargor's Name]*

**SCHEDULE 7**  
**FORM OF INSURANCE BROKER'S LETTER OF UNDERTAKING**

To:    [[*Insert Lender Name*] (the **Lender**)]

Date:

Dear Sirs

We, [*insert name of Insurance Broker*] in our capacity as insurance brokers to [Insert the [*Chargor*][specific *Chargor*]'s Name] (the **Chargor**) agree to use our best endeavours as follows in respect of the following insurances [●] (including any renewal of the same) (the **Insurances**):

1.     To give notice to you in writing as soon as practicable upon our becoming aware of:
  - (a)     any underwriter or insurer cancelling or giving notice of cancellation or suspension of any of the Insurances;
  - (b)     any actual or proposed material alteration to or termination, cancellation, suspension or expiry (in the latter case, which is not immediately followed by renewal upon the same terms with the same underwriters or insurers) of any of the Insurances;
  - (c)     any default in the payment of any premium, or failure of the *Chargor* to instruct us to renew any of the Insurances not less than [thirty] days prior to the date of renewal of the Insurances;
  - (d)     any act or omission on the part of any insured party or of any event of which we have knowledge, which will invalidate or render unenforceable, in whole or in part, any of the Insurances; or
  - (e)     our ceasing to act as insurance brokers to the *Chargor*.
2.     Promptly upon written request made by you, to supply to you and/or your insurance consultants copies of all policies, cover notes, certificates, endorsements, renewal receipts and confirmation of renewal and payment of premiums in respect of the Insurances and to make available to you the original of any of these which are required by you in connection with the making of an insurance claim where these are held by us, **provided that** the *Chargor* consents to us doing this.
3.     To hold the insurance slips or contracts, the policies and any renewals or new policies or any policies substituted with your consent for those and the benefit of the insurances relating to them to your order [in accordance with the requirements of the Administration Funding Agreement] and to hold any cover notes, certificates, endorsements, renewal receipts and confirmation of renewal and payment of premiums in respect of the Insurances, to the extent held by us, to your order.
4.     To pay to you without set-off or deduction of any kind for any reason (other than in respect of employers liability, public liability and professional indemnity policies and unpaid premiums if required by underwriters or insurers) any and all proceeds from the Insurances received by us from the insurers except as might otherwise be permitted in the loss payable Clause endorsed on any of the insurances [*an account for payment of the proceeds may also be specified*].
5.     To allow you an opportunity by [thirty] days' notice in writing of paying any unpaid premium or unpaid premium instalments or amounts due to us and not operate by reason of such unpaid amount any cancellation Clause.

6. To procure the agreement of underwriters or insurers to endorse on each and every applicable policy as and when the same is issued, a Notice of Assignment [(in the form of Schedule 6 (*Form of Notice of Assignment of Insurance Policy*)) to the Deed dated [●] and entered into between the Lender)] dated and signed by the Chargor and acknowledged by the insurers in accordance with market practice.
7. Notwithstanding anything in this letter, we are and remain solely the agent of the Chargor, and with the exception of our obligations hereunder, owe duties only to the Chargor. We accept no responsibility whatsoever for any loss, damage or expense which any person (other than the Chargor) may suffer as a result of our failure, arising from the circumstances beyond our control, to comply with the undertakings in this letter save for any loss, damage or expense arising from our wilful default or negligence.

The above agreement is given subject to our continuing appointment as insurance brokers to the Chargor and shall automatically cease upon termination of our appointment and subject to the Chargor confirming its consent to the giving by us of the undertakings contained in this agreement.

This letter and all non-contractual obligations arising out of or in conjunction with it are governed by and will be construed in accordance with the laws of England and Wales.

Yours faithfully,

.....

for and on behalf of  
**[Insert name of Insurance Broker]**

cc. [Insert the Chargor's Name]

**SCHEDULE 8**  
**CHARGED INVESTMENTS: BROKER'S NOTICE OF CHARGE AND UNDERTAKING**

**PART A**  
**FORM OF BROKER'S NOTICE OF CHARGE**

To: [Broker]

Date:

Dear Sirs,

We refer to the terms of the deed (the **Deed**) dated [●] entered into by us in favour of [[Enter Lender Name] (the **Lender**) [, a copy of which is attached hereto]. Terms defined in the Deed shall have the same meanings in this notice.

Notice is hereby given by us to you that, by and pursuant to the Deed, we have charged to the Lender all of our rights and benefits in and to [Shares/Charged Investments].

This letter and all non-contractual obligations arising out of or in conjunction with it are governed by and will be construed in accordance with the laws of England and Wales.

We should be grateful if you would acknowledge receipt of this notice by returning the enclosed copy to the Lender at [●] (attention [●]) [*reference may also be made to the Broker's Undertaking if it is being delivered to the Broker with this Notice*].

Yours faithfully,

.....

For and on behalf of  
[Insert the Chargor's Name]

On copy only:

Duly received and acknowledged for and on behalf of [**Broker**]

Dated:

**PART B**  
**FORM OF BROKER'S UNDERTAKING**

To:     *[Insert the Chargor's Name]*; and  
          *[[Insert Lender Name] (the Lender)]*

Date:

Dear Sirs,

1.     We refer to the deed (the **Deed**) dated [●] entered into by *[Insert the Chargor's Name]* (the **Chargor**) in favour of the Lender under which all of the Chargor's right, title and interest in and to [the Shares/Charged Investments] (as defined in the Deed) were charged to the Lender. Terms defined in the Deed have the same meaning when used in this Undertaking.
2.     We understand that:
  - (a)     we may from time to time be asked to deliver certificates, substantially in the form attached to this Undertaking (**Broker's Certificates**), to the Lender in relation to [the Shares/Charged Investments] purchased, or to be purchased, by us on behalf of the Chargor;
  - (b)     amounts may, from time to time, be disbursed to us for the account of the Chargor by or on behalf of both or either of the Chargor and/or the Lender for application in or towards the purchase on behalf of the Chargor of any [Shares/Charged Investments] which it may have agreed to purchase; and
  - (c)     all amounts disbursed to us for the account of the Chargor by or on behalf of both or either of the Chargor and/or the Lender, and all [Shares/Charged Investments] purchased or held by us on behalf of the Chargor, are subject to Security in favour of the Lender **provided that** this does not prejudice any lien or other encumbrance that we may have over such [Shares/Charged Investments] purchased by us for which payment has not been received by us.
3.     We agree that (subject to paragraph 4), in consideration of the obligations expressed to be assumed in paragraphs 5 and 6, we shall hold all amounts disbursed to us for the account of the Chargor by or on behalf of both or either of the Chargor and/or the Lender in a separate account and we shall apply each such amount:
  - (a)     **first**, in or towards the purchase by us on behalf of the Chargor of the [Shares/Charged Investments] in relation to which such amount was so disbursed to us;
  - (b)     **secondly**, in or towards the payment by us on behalf of the Chargor of any stamp duty payable in connection with the purchase of such [Shares/Charged Investments]; and
  - (c)     **thirdly**, in or towards the payment of our commission and any relevant levy for the purchase of such [Shares/Charged Investments].
4.     No amount received by us in respect of any [Shares/Charged Investments] shall be applied in accordance with the terms set out above unless:

- (a) immediately before such application, we hold for the account of the Chargor in respect of such [Shares/Charged Investments] sufficient amounts to enable us to pay on behalf of the Chargor all amounts owing by it in respect of all such [Shares/Charged Investments], our fees, stamp duty and any Stock Exchange levy payable in respect of its purchase of such [Shares/Charged Investments]; and
- (b) to the extent that any such amount is being applied in the purchase of any such [Shares/Charged Investments] in the form of registered shares, we receive, against application of such amount:<sup>1</sup>
  - (i) a duly completed and duly executed stock transfer form transferring the title to such [Shares/Charged Investments] to the Chargor (or such other person as it may have designated with the prior approval of the Lender) and either all share certificates and other evidence of title to such [Shares/Charged Investments] or such indemnities or other evidence of the vendor's title to such [Shares/Charged Investments] as would normally be accepted by English stockbrokers; or
  - (ii) such evidence (such as stock notes) of a beneficial entitlement functionally equivalent to such [Shares/Charged Investments] and held by the Chargor (or such other person as it may have designated) in any pool of shares registered in the name of any nominee from time to time of The London Stock Exchange Limited or other evidence of such entitlement as would normally be accepted by English stockbrokers; and
- (c) to the extent any such amount is being applied in the purchase of any such Shares/Charged Investments in the form of bearer instruments, we receive, against application of such amount:
  - (i) definitive bearer certificates in respect of such [Shares/Charged Investments] (having attached thereto the interest coupons relating to them); or
  - (ii) such evidence of instructions given by the seller (or any financial institution acting as nominee for the seller) to any relevant clearance system that such [Shares/Charged Investments] are to be credited to a securities account in the name of the Lender in such clearance system as would normally be accepted by an English financial institution dealing in such [Shares/Charged Investments] (or securities similar thereto) within such clearance system; and
  - (iii) we shall promptly deliver to the Lender all documents (including the relevant contract notes) relating to the purchase of any [Shares/Charged Investments] or otherwise purchased by or on behalf of the Chargor] at any time after the date of this undertaking received or produced by us and, pending such delivery, we shall hold the same to the order of the Lender.

5. The Chargor and the Lender shall take all steps open to you to ensure that:

- (a) all amounts disbursed to us for the account of the Chargor by or on behalf of the Lender are paid into such account of ours with such bank in London as we shall from time to time have specified by prior written notice to the Chargor and the Lender; and

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<sup>1</sup> These provisions will need amending if shares or securities are held through CREST.

- (b) the Lender shall promptly notify us of all amounts disbursed by it to us for the account of the Chargor specifying, in relation to each such amount, the [Shares/Charged Investments] in respect of which such amount is so disbursed.

6. The Chargor shall:

- (a) pay all amounts disbursed to us by it or on its behalf into our account as specified above; and
- (b) promptly notify us of all amounts disbursed by it or on its behalf to us specifying, in relation to each such amount, the [Shares/Charged Investments] in respect of which such amount is so disbursed.

7. We should be grateful if you would confirm that you agree to the terms of this letter and to our utilising the amounts disbursed to us for the account of the Chargor by or on behalf of the Chargor in the manner described in this undertaking by countersigning the enclosed copy of this letter and returning it to us.

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

Yours faithfully,

.....

for and on behalf of  
[*Broker*]

[On copy:]

We hereby acknowledge receipt of the letter dated [●] attached to this acknowledgement and confirm our agreement to the terms of such letter and to your utilising the amounts disbursed to you for the account of the Chargor by or on behalf of the Chargor in the manner described in the letter.

[

for and on behalf of  
[Insert the Chargor's Name]

By: .....

for and on behalf of  
[Insert Lender Name]

By: .....

**PART C**  
**FORM OF BROKER'S CERTIFICATE**

To: [[Insert Lender Name] (the Lender)]

Attention: [●]

Date:

Dear Sirs,

We refer to the undertaking (the **Undertaking**) dated [●] and given by us in favour of [Insert the Chargor 's Name] (the **Chargor**) and the Lender.

We hereby certify that (*delete as appropriate*):

- (a) we have purchased [number] [Shares/Charged Investments] on behalf of the Chargor at an aggregate purchase price of £[●] and the Chargor has paid for such [Shares/Charged Investments];
- (b) an amount of £[●] was payable, and has been paid, by the Chargor in respect of stamp duty and our fees and any relevant levy in relation to the purchase of the [Shares/Charged Investments] referred to above;
- (c) we have purchased, or agreed to purchase, the following [Shares/Charged Investments] on behalf of the Chargor:

No. of [Shares/Charged Investments]	Purchase Price

and the purchase price of such [Shares/Charged Investments] is now due from the Chargor or will fall due from the Chargor on or before [●];

- (d) an amount of £[●] is payable by the Chargor in respect of stamp duty, our fees and any relevant levy in relation to the purchase of the [Shares/Charged Investments] referred to above;
- (e) the purchase of the [Shares/Charged Investments] referred to above were all made or agreed by or on behalf of the Chargor on or before [●];
- (f) we have issued no other certificates to you in substantially this form in relation to any of the [Shares/Charged Investments] referred to above.

This letter and all non-contractual obligations arising out of or in conjunction with it are governed by and will be construed in accordance with the laws of England and Wales.

Yours faithfully,


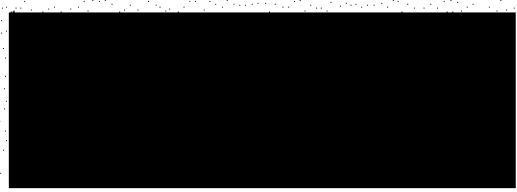
for and on behalf of  
[*Broker*]

**EXECUTION PAGES**

**THE CHARGOR**


**EXECUTED** as a DEED by  
**NORTH RIVER RESOURCES PLC (IN ADMINISTRATION)**  
acting by its joint administrator Shane Crooks without personal liability

By:   
Name: Shane Crooks  
Title: Administrator

Witnessed by:   
Name: JOANNE CROOKS  
Title: ACCOUNTANT  
Address: 

THE LENDER

CL VENTURES LUX S.A.R.L.

By:   
Name: GAUTIERA MAGNANE  
Title: MANAGER

*[NRR – Signature Page to the Debenture]*