



**Registration of a Charge**

Company Name: **INDIGO SWAN LIMITED**

Company Number: **07085891**



XBJ96RZE

Received for filing in Electronic Format on the: **20/12/2022**

**Details of Charge**

Date of creation: **08/12/2022**

Charge code: **0708 5891 0002**

Persons entitled: **EMILY VICTORIA GROVES  
DAVID GROVES**

Brief description: **FIXED CHARGE OVER ANY FREEHOLD OR LEASEHOLD PROPERTY  
LISTED IN CLAUSE 3.2 OF THE INSTRUMENT, SUBJECT TO THE  
PROVISIONS IN CLAUSE 3.5.**

**Contains fixed charge(s).**

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

**Contains negative pledge.**

**Authentication of Form**

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

**Authentication of Instrument**

Certification statement: **I CERTIFY THAT 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:

**ABIGAIL MILLIKEN**



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

Company number: 7085891

Charge code: 0708 5891 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 8th December 2022 and created by INDIGO SWAN LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th December 2022 .

Given at Companies House, Cardiff on 22nd December 2022

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:** 08 December .....**2022**

**INDIGO SWAN LIMITED (1)**

**And**

**EMILY VICTORIA GROVES AND DAVID GROVES (2)**

**DEBENTURE**

**SPIRE**  
SOLICITORS<sup>LLP</sup>

Holland Court  
The Close  
Norwich  
Norfolk  
NR1 4DY

**01603 677077**

**Ref: MRD/AZM/G17678-0002**

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THIS DEED is dated 08 December .....2022

## Parties

- (1) **INDIGO SWAN LIMITED** incorporated and registered in England and Wales with company number 07085891 whose registered office is at 7 The Close, Norwich, Norfolk, NR1 4DJ (**Indigo Swan**);
- (2) **EMILY VICTORIA GROVES** of [REDACTED] and **DAVID GROVES** of [REDACTED] (**Sellers**).

## Background

- (A) The Sellers have agreed, pursuant to the Share Purchase Agreement, to accept some of the share sale consideration due to the Sellers under the Share Purchase Agreement on a deferred basis by the issue of the Loan Notes.
- (B) The Sellers have agreed to the repayment terms of the Loan Notes provided that The Happiness First Group Limited's obligation to pay the amounts due to the Sellers under the Loan Notes is guaranteed by Indigo Swan on the terms set out in the Guarantee and secured by Indigo Swan on the terms of this deed.
- (C) The Sellers have agreed for the security created in this deed in their favour to rank behind any security being granted by Indigo Swan in favour of the Lender which is providing finance to The Happiness First Group Limited to support it purchasing the Sellers shares in Indigo Swan in accordance with the terms of the Share Purchase Agreement and the Loan Notes.
- (D) Under this deed, Indigo Swan provides security to the Sellers for the Secured Liabilities.

## Agreed Terms

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

Terms defined in the Share Purchase Agreement shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed:

**Administrator:** an administrator appointed to manage the affairs, business and property of Indigo Swan pursuant to clause 11.6.

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

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

**Charged Property:** any freehold, leasehold or commonhold property the subject of the security constituted by this deed and references to "Charged Property" shall include references to the whole or any part of it.

**Delegate:** any person appointed by the Sellers or any Receiver pursuant to clause 16 and any person appointed as attorney of the Sellers or any Receiver or Delegate.

**Environment:** 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 Secured Assets.

**Equipment:** all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property owned by Indigo Swan or in which it has an interest, including any part of it and all spare parts, replacements, modifications and additions.

**Event of Default:** means any of the following events unless agreed otherwise in writing with the Sellers or a revised payment plan in respect of the Secured Liabilities is agreed in writing between Indigo Swan and the Sellers prior to such event occurring provided no such event then occurs as a result of a default under such revised payment plan:

- (a) Indigo Swan fails to pay any of the Secured Liabilities within 20 Business Days of a written demand for payment from the Sellers after the due date for payment (provided the Sellers have given Indigo Swan a reasonable opportunity within the 20 Business Days to negotiate and agree a restructuring of any payments that are due);
- (b) Indigo Swan fails to comply with any material provision of this deed and (if, the default is capable of remedy) such default is not remedied within 21 days of the Sellers notifying in writing Indigo Swan of the default and the remedy required;
- (c) Indigo Swan suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business due to financial difficulties;
- (d) Indigo Swan is unable to, or admits its inability to, pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the

words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

- (e) Indigo Swan commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its lenders (excluding the Sellers) with a view to rescheduling any of its indebtedness (because of actual financial difficulties);
- (f) a moratorium is declared in respect of any indebtedness of Indigo Swan;
- (g) any action, proceedings, procedure or step is taken in relation to the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation of Indigo Swan; (other than for the sole purpose of a scheme for a solvent amalgamation of Indigo Swan with one or more other companies or the solvent reconstruction of Indigo Swan);
- (h) any action, proceedings, procedure or step is taken in relation to a composition, compromise, assignment or arrangement with any lender to Indigo Swan other than for the sole purpose of a scheme for a solvent amalgamation of Indigo Swan with one or more other companies or the solvent reconstruction of Indigo Swan;
- (i) 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 Indigo Swan or any of its assets other than for the sole purpose of a scheme for a solvent amalgamation of Indigo Swan with one or more other companies or the solvent reconstruction of Indigo Swan, and
- (j) control of Indigo Swan's goods is taken or a distress, attachment, execution, expropriation, sequestration or other analogous legal process in any jurisdiction;

**Excluded Property:** each leasehold property held by Indigo Swan under a lease that either precludes absolutely, or requires consent of a third party to, the creation of Security over Indigo Swan's leasehold interest in that property.

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

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

**Guarantee:** means a deed of guarantee and indemnity of even date made between Indigo Swan (1) and the Sellers (2) under which (inter alia) Indigo Swan guaranteed to the Sellers the obligations of The Happiness First Group Limited under the Loan Notes.

**Insurance Policy:** each contract and policy of insurance effected or maintained by Indigo Swan from time to time in respect of its assets or business (including, without



limitation, any contract or policy of insurance relating to the Charged Properties or the Equipment).

**Intellectual Property:** Indigo Swan's present and future patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Investments:** all certificated shares, stock, debentures, bonds or other securities or investments (whether or not marketable) from time to time legally or beneficially owned by or on behalf of Indigo Swan.

**Loan Notes:** the loan notes as defined and issued to the Sellers in accordance with the terms of the Share Purchase Agreement.

**Lender:** Time Invoice Finance Limited t/a Time Finance.

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

**Permitted Security:** means a debenture of even date in respect of the assets of Indigo Swan in favour of the Lender and which shall rank in priority to this deed.

**Receiver:** a receiver, receiver and manager or administrative receiver appointed by the Sellers under clause 14.

**Secured Assets:** all the assets, property and undertaking of Indigo Swan which are, or are expressed to be, subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them).

**Secured Liabilities:** all present and future obligations and liabilities of Indigo Swan to the Sellers, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Guarantee, the Loan Notes or this deed (including, without limitation, those arising under clause 28), together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities.

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

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

**Security Period:** the period starting on the date of this deed and ending on the date on which the Sellers 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.

**Share Purchase Agreement:** the share purchase agreement of even date between The Happiness First Group Limited (1), the Sellers (2) and James William Groves (3).

**The Happiness First Group Limited:** The Happiness First Group Limited incorporated and registered in England and Wales with company number 14278556.

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

## 1.2 Interpretation

In this deed:

- (a) clause and paragraph headings shall not affect the interpretation of this deed;
- (b) a **person** includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees 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;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes neither fax or email;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;

- (j) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) 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;
- (l) a reference to an **amendment** includes a novation, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- (m) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (n) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution;
- (o) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (p) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (q) 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.

### **1.3 Clawback**

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

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

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

- (a) 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 Charged Property at any time;

- (b) the proceeds of the sale of any part of that Charged Property and any other monies paid or payable in respect of or in connection with that Charged Property;
- (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of Indigo Swan in respect of that Charged Property, and any monies paid or payable in respect of those covenants; and
- (d) all rights under any licence, agreement for sale or agreement for lease in respect of that Charged Property.

### **1.5 Nature of security over Investments**

A reference in this deed to any share, stock, debenture or other security or investment includes:

- (a) any dividend, interest or other distribution paid or payable in respect of that share, stock, debenture or other security or investment;
- (b) any right, money, shares or property accruing, offered or issued at any time in relation to that share, stock, debenture or other security or investment by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise.

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

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Guarantee and the Loan Notes and of any side letters between any parties in relation to the guarantee and the Loan Notes are incorporated into this deed.

## **2. COVENANT TO PAY**

Indigo Swan shall, on demand, pay to the Sellers and discharge the Secured Liabilities when they become due.

## **3. GRANT OF SECURITY**

### **3.1 Legal mortgage**

As a continuing security for the payment and discharge of the Secured Liabilities, Indigo Swan with full title guarantee charges to the Sellers, by way of a second legal mortgage, all estates or interests in any freehold, leasehold or commonhold property now owned by it.

### **3.2 Fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, Indigo Swan with full title guarantee charges to the Sellers by way of a second fixed charge:

- (a) all present and future estates or interests of Indigo Swan in, or over, any freehold, leasehold or commonhold property (other than any such property effectively mortgaged under clause 3.1);
- (b) the benefit of all other contracts, guarantees, appointments and warranties relating to each Charged Property and other documents to which Indigo Swan 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 any Charged Property or otherwise relating to any Charged Property (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);
- (c) all licences, consents and authorisations (statutory or otherwise) held or required in connection with its business or the use of any Secured Asset, and all rights in connection with them;
- (d) all its present and future goodwill;
- (e) all its uncalled capital;
- (f) all the Equipment;
- (g) all the Intellectual Property;
- (h) all the Investments; and
- (i) all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, to the extent not effectively assigned under clause 3.3.

### **3.3 Assignment**

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

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

- (b) the benefit of each Relevant Agreement and the benefit of all other agreements, instruments and rights relating to the Secured Assets.

### **3.4 Floating charge**

As a continuing security for the payment and discharge of the Secured Liabilities, Indigo Swan with full title guarantee charges to the Sellers, by way of first floating charge, all its undertaking, property, assets and rights not otherwise effectively mortgaged, charged or assigned under clause 3.1 to clause 3.3 inclusive.

### **3.5 Leasehold security restrictions**

The security created by clause 3.1 to clause 3.2 shall not apply to an Excluded Property until Indigo Swan obtains any relevant consent, or waiver of any prohibition, to the creation of security over that Excluded Property.

### **3.6 Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.4.

### **3.7 Automatic crystallisation of floating charge**

The floating charge created by clause 3.4 shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:

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

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

Except as provided in clause 3.9, the Sellers may, in their sole discretion, by written notice to Indigo Swan, convert the floating charge created under this deed into a fixed

charge as regards any part of the Secured Assets specified by the Sellers in that notice if:

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

### **3.9 Part A1 moratorium**

- (a) Subject to paragraph (b) below, the floating charge created by clause 3.4 may not be converted into a fixed charge solely by reason of obtaining a moratorium (or anything done with a view to obtaining a moratorium) under Part A1 of the Insolvency Act 1986.
- (b) Paragraph (a) above does not apply to any floating charge referred to in section A52(4) of Part A1 of the Insolvency Act 1986.

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

Any asset acquired by Indigo Swan after any crystallisation of the floating charge created under this deed that, but for that crystallisation, would be subject to a floating charge under this deed, shall (unless the Sellers confirms otherwise to Indigo Swan in writing) be charged to the Sellers by way of second fixed charge.

## **4. LIABILITY OF INDIGO SWAN**

### **4.1 Liability not discharged**

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

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Sellers that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) the Sellers 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
- (c) any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of Indigo Swan.

## **4.2 Immediate recourse**

Indigo Swan waives any right it may have to require the Sellers to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against Indigo Swan.

## **5. REPRESENTATIONS AND WARRANTIES**

### **5.1 Times for making representations and warranties**

Indigo Swan makes the representations and warranties set out in this clause 5 to the Sellers on the date of this deed and the representations and warranties contained in clause 5 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.

### **5.2 Ownership of Secured Assets**

Indigo Swan is the sole legal and beneficial owner of, and has good, valid and marketable title to, the Secured Assets.

### **5.3 No Security**

The Secured Assets are free from any Security other than Permitted Security and the Security created by this deed.

### **5.4 No adverse claims**

Indigo Swan has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

## **6. GENERAL COVENANTS**

### **6.1 Negative pledge and disposal restrictions**

Indigo Swan shall not at any time, except with the prior written consent of the Sellers:

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



## **6.2 Preservation of Secured Assets**

Indigo Swan 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 Sellers, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this deed.

## **6.3 Compliance with laws and regulations**

- (a) Indigo Swan shall not, without the Sellers's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.
- (b) Indigo Swan shall use reasonable endeavours to:
  - (i) comply with the requirements in all material respects of any law or regulation relating to or affecting the Secured Assets or the use of it or any part of them;
  - (ii) obtain, and promptly renew from time to time, and comply with the terms in all material respects of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
  - (iii) effect any maintenance, modifications, alterations or repairs that are required by any law or regulation in all material respects to be effected on or in connection with the Secured Assets.

## **6.4 Enforcement of rights**

Indigo Swan shall use reasonable endeavours to procure the observance and performance by each counterparty in all material respects to any agreement or arrangement with Indigo Swan forming part of the Secured Assets (including each insurer in respect of an Insurance Policy) of the covenants and other obligations imposed on that counterparty:

## **6.5 Insurance**

- (a) Indigo Swan shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Secured Assets against:
  - (i) loss or damage by fire or terrorist acts, including any third party liability arising from such acts; and
  - (ii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as Indigo Swan.

- (b) Any such insurance must:
  - (i) include property owners' public liability and third party liability insurance;
  - (ii) be for not less than the replacement value of the relevant Secured Assets (meaning in the case of any premises on any Charged Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation).
- (c) Indigo Swan shall, if requested by the Sellers, produce to the Sellers each policy, certificate or cover note relating to any insurance as is required by clause 6.5(a).

#### **6.6 Insurance premiums**

Indigo Swan shall:

- (a) promptly pay all premiums in respect of each insurance policy as is required by clause 6.5(a) and do all other things necessary to keep that policy in full force and effect; and
- (b) (if the Sellers so require) give to the Sellers copies of the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy as is required by clause 6.5(a) (or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as Indigo Swan is entitled to obtain from the landlord under the terms of the relevant lease).

#### **6.7 No invalidation of insurance**

Indigo Swan shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy as is required by clause 6.5(a).

#### **6.8 Proceeds from insurance policies**

All monies payable under any insurance policy maintained by Indigo Swan in accordance with clause 6.5(a) on this deed becoming enforceable and subordinated always to the Lender's first ranking rights under the Permitted Security shall (unless agreed otherwise with the Sellers in writing) be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received.

## **6.9 Payment of outgoings**

Indigo Swan shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Sellers.

## **7. PROPERTY COVENANTS**

### **7.1 Repair and maintenance**

Indigo Swan shall keep all premises and fixtures and fittings on each Charged Property in such repair and condition as to enable each Charged Property to be let in accordance with all applicable laws and regulations in all material respects.

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

Indigo Swan shall use reasonable endeavours to:

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

### **7.3 Payment of rent and outgoings**

Indigo Swan shall:

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

### **7.4 Environment**

Indigo Swan shall in respect of each Charged Property use reasonable endeavours to:

- (a) comply in all material respects with all the requirements of Environmental Law; and
- (b) obtain and comply in all material respects with all Environmental Licences.

## **7.5 Proprietary rights**

Indigo Swan shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of any Charged Property without the prior written consent of the Sellers.

## **7.6 Inspection**

Indigo Swan shall permit any Receiver and any person appointed by either of them to enter on and inspect any Charged Property on reasonable prior notice.

## **7.7 Property information**

Indigo Swan shall inform the Sellers of any acquisition by Indigo Swan of, or contract made by Indigo Swan to acquire, any freehold, leasehold or other interest in any property.

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

Indigo Swan consents to an application being made by the Sellers to the Land Registrar for the following restriction in Form P to be registered against its title to each Charged Property over which the Sellers has a legal mortgage:

"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 [DATE] in favour of [NAME OF PARTY] referred to in the charges register [or [their conveyancer or specify appropriate details]]."

# **8. INVESTMENTS COVENANTS**

## **8.1 Dividends and voting rights before enforcement**

- (a) Before the security constituted by this deed becomes enforceable, Indigo Swan may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Sellers or any of its nominees, the Sellers will hold all those dividends, interest and other monies received by it for Indigo Swan and will pay them to Indigo Swan promptly on request.
- (b) Before the security constituted by this deed becomes enforceable, Indigo Swan may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Sellers or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:
  - (i) it shall not do so in any way that would breach any provision of this deed or for any purpose inconsistent this deed; and

- (ii) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Sellers's opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Sellers's security under this deed.

## **8.2 Dividends and voting rights after enforcement**

After the security constituted by this deed has become enforceable and subject always to the prior ranking rights of the Lender under the Permitted security:

- (a) all dividends and other distributions paid in respect of the Investments and received by Indigo Swan shall be held by Indigo Swan on trust for the Sellers or, if received by the Sellers, may be applied by the Sellers in accordance with clause 17.1; and
- (b) all voting and other rights and powers attaching to the Investments may be exercised by, or at the direction of, the Sellers and Indigo Swan shall, and shall procure that its nominees shall, comply with any directions the Sellers may give, in its absolute discretion, concerning the exercise of those rights and powers.

## **8.3 Calls on Investments**

Notwithstanding the security created by this deed, Indigo Swan shall pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. Indigo Swan acknowledges that the Sellers shall not be under any liability in respect of any such calls, instalments or other payments.

## **8.4 Compliance with requests for information**

Indigo Swan shall send a copy to the Sellers of, and comply with, all reasonable requests for information which is within its knowledge and which are made under any law or regulation or any similar provision in any articles of association or other constitutional document, or by any listing or other authority, relating to any of the Investments.

## **9. EQUIPMENT COVENANTS**

### **9.1 Maintenance of Equipment**

Indigo Swan shall use reasonable endeavours to maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance in all material respects with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules.

### **9.2 Payment of Equipment taxes**

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

## **10. INTELLECTUAL PROPERTY COVENANTS**

### **10.1 Preservation of rights**

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

## **11. POWERS OF THE SELLERS**

### **11.1 Power to remedy**

- (a) The Sellers shall be entitled (but shall not be obliged) to remedy, at any time, a breach by Indigo Swan of any of its obligations contained in this deed if Indigo Swan have not remedied such breach within 30 Business Days of writing notice by the Sellers to do so.
- (b) Indigo Swan shall reimburse the Sellers, on a full indemnity basis, for any monies the Sellers reasonably and properly expends in remedying a breach by Indigo Swan of its obligations contained in this deed, and such monies shall carry interest in accordance with clause 18.1.

### **11.2 Exercise of rights**

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

### **11.3 Power to dispose of chattels**

- (a) At any time after the security constituted by this deed has become enforceable, any Receiver may, as agent for Indigo Swan, dispose of any chattels or produce found on any Charged Property.
- (b) Without prejudice to any obligation to account for the proceeds of any disposal made under clause 11.3(a), Indigo Swan shall indemnify any Receiver against any liability arising from any disposal made under clause 11.3(a).

### **11.4 Sellers have 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 Sellers in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

## **11.5 Indulgence**

The Sellers 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 Indigo Swan) 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 Indigo Swan for the Secured Liabilities.

## **11.6 Appointment of an Administrator**

- (a) The Sellers may, without notice to Indigo Swan, appoint any one or more persons to be an Administrator of Indigo Swan pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.
- (b) Any appointment under this clause 11.6 shall:
  - (i) be in writing signed by a duly authorised signatory of the Sellers; and
  - (ii) take effect in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- (c) The Sellers may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 11.6 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

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

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

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 Sellers 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 Secured Assets.

## **13. ENFORCEMENT OF SECURITY**

### **13.1 General**

- (a) 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.

- (b) 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 12.1.
- (c) 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 Sellers 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 Indigo Swan, to:

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

whether or not at a premium and containing such covenants on the part of Indigo Swan, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Sellers 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 Access on enforcement**

- (a) At any time after the Sellers has demanded payment of the Secured Liabilities or if Indigo Swan defaults in the performance of its obligations under this deed or the Guarantee, Indigo Swan will allow the Sellers or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Sellers or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to Indigo Swan for, or by any reason of, that entry.
- (b) At all times, Indigo Swan must use reasonable endeavours to allow the Sellers or its Receiver access to any premises for the purpose of clause 13.3(a) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.



#### **13.4 Redemption of prior Security**

- (a) 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 Sellers may:
  - (i) redeem any prior Security over any Secured Asset;
  - (ii) procure the transfer of that Security to itself; and
  - (iii) 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 Indigo Swan).
- (b) Indigo Swan shall pay to the Sellers 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.

#### **13.5 Privileges**

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

#### **13.6 Exclusion of liability**

Neither the Sellers, nor any Receiver or Delegate, shall be liable to Indigo Swan or any other person:

- (a) (by reason of entering into possession of a Secured Asset, or for any other reason) to account as mortgagee in possession in respect of all or any of the Secured Assets; or
- (b) for any loss on realisation, or for any act, default or omission for which a mortgagee in possession might be liable.

#### **13.7 Conclusive discharge to purchasers**

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

#### **13.8 Right of appropriation**

- (a) To the extent that:
  - (i) the Secured Assets constitute Financial Collateral; and

- (ii) this deed and the obligations of Indigo Swan under it constitute a Security Financial Collateral Arrangement,

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

- (b) The value of any Secured Assets appropriated in accordance with this clause shall be:
  - (i) in the case of cash, the amount standing to the credit of each of Indigo Swan's accounts with any bank, financial institution or other person, together with any accrued but unpaid interest, at the time the right of appropriation is exercised; and
  - (ii) in the case of Investments, the market price of those Investments at the time the right of appropriation is exercised determined by the Sellers by reference to a recognised market index or by any other method that the Sellers may select (including independent valuation).
- (c) Indigo Swan agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

## **14. RECEIVER**

### **14.1 Appointment**

- (a) At any time after the security constituted by this deed has become enforceable, or at the request of Indigo Swan, the Sellers may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.
- (b) The Sellers may not appoint a Receiver solely as a result of the obtaining of a moratorium (or as a result of anything done with a view to obtaining a moratorium) under Part A1 of the Insolvency Act 1986 other than in respect of a floating charge referred to in section A52(4) of Part A1 of the Insolvency Act 1986.

### **14.2 Removal**

The Sellers may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), 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 Sellers 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 Sellers 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 Sellers despite any prior appointment in respect of all or any part of the Secured Assets.

**14.6 Agent of Indigo Swan**

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

**15. POWERS OF RECEIVER****15.1 General**

- (a) Any Receiver appointed by the Sellers under this deed shall, in addition to the powers conferred on it by statute, have the rights, powers and discretions set out in clause 15.2 to clause 15.23.
- (b) 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 it is an administrative receiver or not.
- (c) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- (d) Any exercise by a Receiver of any of the powers given by clause 15 may be on behalf of Indigo Swan, the directors of Indigo Swan (in the case of the power contained in clause 15.16) or itself.

## **15.2 Repair and develop Charged Properties**

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

## **15.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting any Secured Asset on any terms, and subject to any conditions, that it thinks fit.

## **15.4 Employ personnel and advisers**

(a) 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 it thinks fit.

(b) A Receiver may discharge any such person or any such person appointed by Indigo Swan.

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

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

## **15.6 Remuneration**

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

## **15.7 Possession**

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

## **15.8 Manage or reconstruct Indigo Swan'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 Indigo Swan.

## **15.9 Dispose of Secured Assets**

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and

a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

**15.10 Sever fixtures and fittings**

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

**15.11 Sell Book Debts**

A Receiver may sell and assign all or any of the Book Debts in respect of which it is appointed in any manner, and generally on any terms and conditions, that it thinks fit.

**15.12 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 Secured Assets.

**15.13 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 Indigo Swan or relating in any way to any Secured Asset.

**15.14 Legal action**

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

**15.15 Improve the Equipment**

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

**15.16 Make calls on Borrower members**

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

**15.17 Insure**

A Receiver may, if it 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 Indigo Swan under this deed.

#### **15.18 Subsidiaries**

A Receiver may form a subsidiary of Indigo Swan and transfer to that subsidiary any Secured Asset.

#### **15.19 Borrow**

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

#### **15.20 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 Indigo Swan, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

#### **15.21 Delegation**

A Receiver may delegate its powers in accordance with this deed.

#### **15.22 Absolute beneficial owner**

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights it 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 the Secured Assets or any part of the Secured Assets.

#### **15.23 Incidental powers**

A Receiver may do any other acts and things that it:

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

### **16. DELEGATION**

#### **16.1 Delegation**

The Sellers or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 20.1).

## **16.2 Terms**

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

## **16.3 Liability**

Neither the Sellers nor any Receiver shall be in any way liable or responsible to Indigo Swan for any loss or liability of any nature 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 Sellers, 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 Sellers's right to recover any shortfall from Indigo Swan):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Sellers (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;
- (b) in or towards payment of the Secured Liabilities on a pro-rata basis in respect of all amounts owed to each of the Sellers under the Loan Notes; and
- (c) in payment of the surplus (if any) to Indigo Swan or other person entitled to it.

### **17.2 Appropriation**

Neither the Sellers, 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 Sellers, 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):

- (a) may, at the discretion of the Sellers, Receiver or Delegate, be credited to a suspense account;

- (b) shall bear interest, if any, at the rate agreed in writing between the Sellers and Indigo Swan; and
- (c) may be held in that account for so long as the Sellers, Receiver or Delegate thinks fit.

## **18. COSTS AND INDEMNITY**

### **18.1 Costs**

Indigo Swan shall, within ten Business Days of demand, pay to, or reimburse, the Sellers and any Receiver, on a full indemnity basis, all reasonable and properly incurred costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Sellers, any Receiver or any Delegate in connection with:

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

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

### **18.2 Indemnity**

- (a) Indigo Swan shall, within ten Business Days of demand, indemnify the Sellers, each Receiver and each Delegate, and their respective employees and agents against all reasonable and properly incurred 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:
  - (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets;
  - (ii) taking, holding, protecting, perfecting, preserving, releasing or enforcing (or attempting to do so) the security constituted by this deed; or



- (iii) any default or delay by Indigo Swan in performing any of its obligations under this deed.
- (b) Any past or present employee or agent 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**

Indigo Swan shall, at its own expense, take whatever action the Sellers or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security created or intended to be created by this deed;
- (b) facilitating the realisation of any Secured Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Sellers or any Receiver in respect of any Secured 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 Secured Assets (whether to the Sellers 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 Sellers may consider necessary or desirable.

## **20. POWER OF ATTORNEY**

### **20.1 Appointment of attorneys**

By way of security, Indigo Swan irrevocably appoints the Sellers, every Receiver and every Delegate separately to be the attorney of Indigo Swan, if an Event of Default occurs and is continuing, and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

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

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

Indigo Swan 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.

## **21. RELEASE**

21.1 Subject to clause 28.3, at the end of the Security Period, the Sellers shall at their own cost, at the request of Indigo Swan, take whatever action is necessary to:

- (a) release the Secured Assets from the security constituted by this deed; and
- (b) reassign the Secured Assets to Indigo Swan.

## **22. ASSIGNMENT AND TRANSFER**

No party shall assign, transfer, mortgage, charge, declare a trust of, or deal in any other manner with any or all of their rights and obligations under this agreement without the prior written consent of the other party.

## **23. SET-OFF**

### **23.1 Sellers' right of set-off**

The Sellers may at any time set off any liability of Indigo Swan to the Sellers against any liability of the Sellers to Indigo Swan, 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 Sellers may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Sellers 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 Exclusion of Indigo Swan's right of set-off**

All payments made by Indigo Swan to the Sellers 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 (or its authorised representative).

### **24.2 Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent 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.

- (b) A failure by the Sellers 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 Sellers 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. PARTIAL INVALIDITY**

### **25.1 Partial invalidity**

If, at any time, any provision of this deed is or becomes invalid, illegal 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.

## **26. COUNTERPARTS**

### **26.1 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.

## **27. THIRD PARTY RIGHTS**

### **27.1 Third party rights**

- (a) Except as expressly provided elsewhere in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed.
- (b) Notwithstanding any term of this deed, the consent of any person who is not a party to this deed is not required to rescind or vary this deed at any time.

## **28. FURTHER PROVISIONS**

### **28.1 Independent security**

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Sellers may hold for any of the Secured Liabilities

at any time. No prior security held by the Sellers over the whole or any part of the Secured Assets shall merge in the security created by this deed.

## **28.2 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 Sellers discharges this deed in writing.

## **28.3 Discharge conditional**

Any release, discharge or settlement between Indigo Swan and the Sellers shall be conditional on no payment or security received by the Sellers in respect of the Secured Liabilities being avoided, reduced, set aside or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or for any other reason. Despite any such release, discharge or settlement:

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

## **28.4 Certificates**

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

## **28.5 Consolidation**

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

## **29. NOTICES**

### **29.1 Delivery**

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

- (a) in writing;

(b) delivered by hand, by pre-paid first-class post or other next working day delivery service; and

(c) sent to:

(i) Indigo Swan at:

1st Floor, 2 Millennium Plain, Norwich NR2 1TF

Attention: James Groves

(ii) the Sellers at:

[REDACTED]

Attention: Emily Groves; and

[REDACTED]

Attention: David Groves

or to any other address as is notified in writing by one party to the other from time to time.

## **29.2 Receipt by Indigo Swan**

Any notice or other communication that the Sellers gives to Indigo Swan shall be deemed to have been received:

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

A notice or other communication given as described in clause 29.2(a) or clause 29.2(b) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## **29.3 Receipt by Sellers**

Any notice or other communication given to the Sellers shall be deemed to have been received only on actual receipt.

## **29.4 Service of proceedings**

This clause 29 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**29.5 No notice by email**

A notice or other communication given under or in connection with this deed is not valid if sent by email or fax.

**30. GOVERNING LAW AND JURISDICTION**

**30.1 Governing law**

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.

**30.2 Jurisdiction**

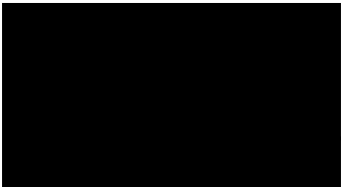
Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Sellers to take proceedings against Indigo Swan 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.

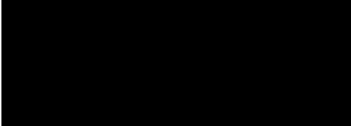
**30.3 Other service**

Indigo Swan irrevocably consents to any process in any legal action or proceedings under clause 30.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This agreement has been entered into as a deed on the date stated at the beginning of it.

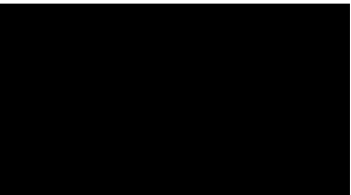
**EXECUTED as a DEED** )  
**by Indigo Swan Limited** )  
**acting by** )  
**James Groves, a director,** )  
**in the presence of:** )

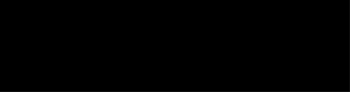


**Witness** 

**Signature:** .....

**Name:** Chris Stockley .....

**Address:** .....

**Occupation:** .....

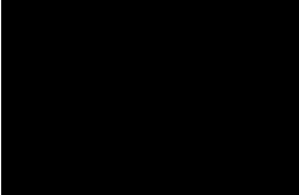
**EXECUTED as a DEED** )  
**by Emily Victoria Groves** )  
**in the presence of:** )

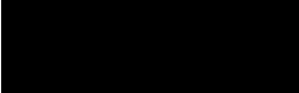


**Witness** 

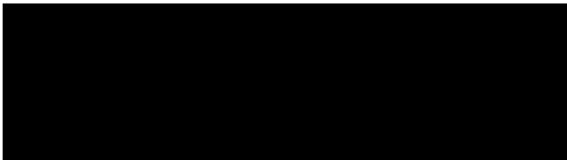
**Signature:** .....

**Name:** Tom Butler .....

**Address:** .....

**Occupation:** .....

**EXECUTED as a DEED** )  
**by David Groves** )  
**in the presence of:** )



**Witness**   
**Signature:** .....

**Name:** Desiree Greiner  
.....

**Address:**   
.....  
.....  
.....  
**Occupation:** .....