



**Companies House**

**MR01**(ef)

**Registration of a Charge**

Company name: **NEW CALL TELECOM LIMITED**

Company number: **07298834**

Received for Electronic Filing: **01/07/2013**



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**Details of Charge**

Date of creation: **26/06/2013**

Charge code: **0729 8834 0006**

Persons entitled: **JEROME BOOTH**

Brief description: **BY WAY OF FIRST FIXED CHARGE ALL PRESENT AND FUTURE INTERESTS OF THE COMPANY IN OR OVER FREEHOLD OR LEASEHOLD PROPERTY PLEASE REFER TO THE INSTRUMENT FOR FURTHER DETAILS**

**Contains fixed charge(s).**

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

**Notification of addition to or amendment of charge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **MARIA WATMOUGH**



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

Company number: 7298834

Charge code: 0729 8834 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 26th June 2013 and created by NEW CALL TELECOM LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st July 2013 .

Given at Companies House, Cardiff on 1st July 2013



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED 26 June 2013

(1) NEW CALL TELECOM LIMITED

(2) JEROME BOOTH

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**GUARANTEE & DEBENTURE**

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Final Version  
Dated 260613



**PENNINGTONS**  
S O L I C I T O R S

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THIS GUARANTEE AND DEBENTURE dated 26 June 2013 is made between the following parties:

- (1) **NEW CALL TELECOM LIMITED** incorporated and registered in England with company number 7298834 whose registered office is c/o Collards, 2 High Street, Kingston Upon Thames, Surrey KT1 1EY (**Company**); and
- (2) **JEROME BOOTH** of Castle Hill Cottage, Pound Walk, Saffron Walden CB10 2EJ (**Chargeholder**).

**Background:**

- A. Holdings (as defined below) has issued Loan Notes (also as defined below) to the Chargeholder subject to the Company granting security to the Chargeholder for such Loan Notes.
- B. The Company enters into this guarantee and debenture to secure the repayment and satisfaction of the Secured Liabilities.

**Now it is agreed** as follows:

**1. Definitions and Interpretation**

- 1.1 The following definitions apply in this guarantee and debenture:

<b>Administrator</b>	an administrator appointed to manage the affairs, business and property of the Company pursuant to paragraph 15 of Schedule 8;
<b>Assigned Agreements</b>	the agreements short particulars of which are set out in Schedule 1, the rights under which are assigned pursuant to clause 4.1.4;
<b>Book Debts</b>	all present and future book and other debts and monetary claims due or owing to the Company and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Company in relation to any of them.
<b>Business Day</b>	a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London and deposits are dealt with on the London Interbank Market;
<b>Charged Property</b>	all the assets, property and undertaking for the time being subject to the security interests created by this debenture (and references to the Charged Property shall include references to any part of it);
<b>Costs</b>	all costs, charges, expenses and liabilities of any kind including, without limitation, costs and damages in connection with litigation, professional fees, disbursements and any value added tax

charged on Costs;

<b>Designated Account</b>	any account nominated by the Chargeholder as a designated account for the purposes of this debenture;
<b>Equipment</b>	all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations, apparatus and other tangible moveable property for the time being owned by the Company, including any part of it and all spare parts, replacements, modifications and additions.
<b>Excluded Property</b>	any leasehold property held by the Company under a lease which precludes, either absolutely or conditionally (including requiring the consent of any third party), the Company from creating any charge over its leasehold interest in that property;
<b>Financial Collateral</b>	shall have the meaning given to that expression in the Financial Collateral Regulations;
<b>Financial Collateral Regulations</b>	the Financial Collateral Arrangements (No. 2) Regulations 2003 ( <i>SI 2003/3226</i> );
<b>Group</b>	in relation to a company, that company, its subsidiaries, any company of which it is a subsidiary (its holding company) and any other subsidiaries of any such holding company; and each company in a Group is a member of the Group and " <b>Group Company</b> " shall be construed accordingly. Unless the context requires otherwise, the application of the definition of Group to a company at any time will apply to the company as it is at that time;
<b>Guarantee</b>	the guarantee given by the Company in the terms of clause 3.1 subject to and with the benefit of the provisions set forth in Schedule 2;
<b>Holdings</b>	New Call Telecom Holdings Limited (Company Number: 8584229) being the parent company of the Company and the issuer of the Loan Notes;
<b>Insurance Policies</b>	the insurance policies referred to in clause 4.1.3;
<b>Intellectual Property</b>	the Company's present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights;
<b>Investments</b>	all present and future stocks, shares, loan capital, securities, bonds and investments (whether or not

	marketable) for the time being owned (at law or in equity) by the Company, including all rights accruing or incidental to those investments from time to time;
<b>Intercreditor Arrangements</b>	means: <ul style="list-style-type: none"> <li>(i) the deed of priority made between Barclays Bank PLC, Hawk Investment Holdings Limited (<b>Hawk</b>) and the Company on 2 December 2012;</li> <li>(ii) a deed of priority made between Hawk, the Chargeholder and the Company on or around the date of this debenture; and</li> <li>(iii) a deed of priority made between Hawk, the Chargeholder and Holdings on or around the date of this debenture;</li> </ul>
<b>Loan Notes</b>	the loan notes issued to the Chargeholder pursuant to the Loan Note Instrument;
<b>Loan Note Instrument</b>	the loan note instrument issued by New Call constituting up to £12,217,261 fixed rate secured loan notes 2018;
<b>Permitted Security Interest</b>	any Security Interest that is permitted to subsist or otherwise acknowledged and provided for pursuant to the Intercreditor Arrangements;
<b>Properties</b>	all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or at any time after the date of this debenture (and from time to time) owned by the Company, or in which the Company holds an interest (including (but not limited to) the properties which are briefly described in Schedule 3) and <b>Property</b> means any of them;
<b>Receiver</b>	a receiver and/or manager of any or all of the Charged Property appointed under paragraph 6 of Schedule 7;
<b>Security Documents</b>	any guarantee and/or debenture executed by a Group Company in favour of the Chargeholder in relation to any Secured Liabilities including but not limited to the Loan Notes and the Loan Note Instrument;
<b>Security Interest</b>	any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, hypothecation, assignment as security, title retention or any other type of arrangement that has a similar effect to any of them;
<b>Security Financial Collateral Arrangement</b>	shall have the meaning given to that expression in the Financial Collateral Regulations;
<b>Secured Liabilities</b>	all present and future monies, obligations and liabilities owed by Holdings to the Chargeholder,



whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity including but not limited to under or in connection with the Loan Notes, Loan Note Instrument and the Security Documents (including, without limitation, those arising under clause 14.3) together with all interest (including, without limitation, default interest) accruing in respect of such monies or liabilities;

**Security Period**

the period starting on the date of this debenture and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**1.2 In this debenture:**

- 1.2.1 a reference to the Company or to the Chargeholder shall include its successors in title, permitted assigns and permitted transferees;
- 1.2.2 a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.3 a reference to an amendment includes a supplement, restatement, variation, novation or re-enactment (and amended shall be construed accordingly);
- 1.2.4 a reference to an authorisation includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notarisation;
- 1.2.5 a reference to this debenture (or any specified provision of it) or any other document shall be construed as a reference to this guarantee and debenture, that provision or that document as in force for the time being and as amended from time to time;
- 1.2.6 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of:
  - (a) another person (or its nominee), by way of security or in connection with the taking of security; or
  - (b) its nominee.

- 1.2.7 a reference to indebtedness includes any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent;
- 1.2.8 a reference to a person shall include a reference to an individual, firm, corporation, unincorporated body of persons or any state or any agency of a person;
- 1.2.9 a reference to a statute or statutory provision includes a reference to any subordinate legislation made under that statute or statutory provision, to any modification, re-enactment or extension of that statute or statutory provision and any former statute or statutory provision which it consolidated or re-enacted before the date of this debenture;
- 1.2.10 a reference to transactions entered into in the ordinary course of business excludes:
- (a) any unprecedented or exceptional transactions;
  - (b) any transaction entered into in breach of directors' duties; and
  - (c) any transaction that may be classified as being a preference or at an undervalue;
- 1.2.11 a reference to a time of day is a reference to London time;
- 1.2.12 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.13 unless the context otherwise requires, words in the singular include the plural and in the plural include the singular;
- 1.2.14 a reference to the Company or the Chargeholder shall include its successors, permitted transferees and permitted assigns;
- 1.2.15 a reference to a clause or Schedule is to a clauses of or Schedule to this debenture and references to paragraphs are to paragraphs of the relevant Schedule unless the context requires otherwise; and
- 1.2.16 clause, schedule and paragraph headings shall not affect the interpretation of this debenture.
- 1.3 If the Chargeholder considers that an amount paid by the Company in respect of the Secured Liabilities is capable of being avoided, or otherwise set aside, on the

liquidation or administration of the Company or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this debenture.

- 1.4 A reference in this debenture to a charge or mortgage of any freehold, leasehold or commonhold property includes:
- 1.4.1 all buildings and fixtures (including trade and tenant's fixtures) which are situated on that property at any time;
  - 1.4.2 the proceeds of the sale of any part of that property; and
  - 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Company in respect of that property, and any monies paid or payable in respect of those covenants.
- 1.5 For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Loan Note Instrument and the Loan Notes issued pursuant thereto and of any side letters between any parties in relation to the Loan Note Instrument and the Loan Notes issued pursuant thereto are incorporated into this debenture.
- 1.6 A third party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this debenture.
- 1.7 If the rule against perpetuities applies to any trust created by this debenture, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).
- 1.8 Paragraph 14 of Schedule B1 of the Insolvency Act 1986 (as inserted by section 248 of, and Schedule 16 to, the Enterprise Act 2002) applies to the floating charge created by this debenture.
- 1.9 The Schedules form part of this debenture and shall have effect as if set out in full in the body of this debenture. Any reference to this debenture includes the Schedules.

## **2. Covenant to Pay**

The Company shall, on demand, pay to the Chargeholder and discharge (subject to the rights of any prior chargee pursuant to the Intercreditor Arrangements) the Secured Liabilities when they become due.

## **3. Guarantee**

- 3.1 The Company hereby guarantees to the Chargeholder that it shall on demand pay to the Chargeholder, all moneys which are now or at any time hereafter shall have

become due or owing by any Group Company to the Chargeholder including but not limited to under the terms of the Loan Note Instrument and the Loan Notes issued pursuant thereto or the Security Documents pursuant to the terms of any of any such documents.

- 3.2 The Guarantee given pursuant to clause 3.1 is given subject to, and with the benefit of the provisions set out in Schedule 2.
- 3.3 The Company hereby covenants with the Chargeholder that it shall on demand pay to the Chargeholder all costs and expenses properly incurred by the Chargeholder in relation to this guarantee and debenture and the protection or enforcement of the Chargeholder's rights hereunder.

#### **4. Grant of Security**

- 4.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Company, (subject to the rights of any prior chargee pursuant to the Intercreditor Arrangements) with full title guarantee:

- 4.1.1 charges to the Chargeholder, by way of first legal mortgage, all the Properties listed in Schedule 3;

- 4.1.2 charges to the Chargeholder, by way of first fixed charge:

- (a) all Properties acquired by the Company after the date of this debenture;
    - (b) all present and future interests of the Company not effectively mortgaged or charged under the preceding provisions of this clause 4 in, or over, freehold or leasehold property;
    - (c) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to the Properties;
    - (d) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Company's business or the use of any Charged Property, and all rights in connection with them;
    - (e) all present and future goodwill and uncalled capital for the time being of the Company;
    - (f) all the Equipment;
    - (g) all the Intellectual Property;
    - (h) all the Book Debts;

- (i) all the Investments; and
  - (j) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account).
- 4.1.3 assigns to the Chargeholder, by way of first fixed mortgage, all its rights in any policies of insurance or assurance present or future (including, without limitation, any insurances relating to the Properties or the Equipment);
- 4.1.4 assigns to the Chargeholder, by way of first fixed charge, to the extent the same are assignable, the benefit of the Assigned Agreements and the benefit of any guarantee or security for the performance of the Assigned Agreements; and
- 4.1.5 charges to the Chargeholder, by way of first floating charge, all the undertaking, property, assets and rights of the Company at any time not effectively mortgaged, charged or assigned pursuant to clause 4.1.1 to clause 4.1.4 inclusive.
- 4.2 The charges created by clause 4.1 shall not apply to Excluded Property so long as any relevant consent or waiver of prohibition has not been obtained, but:
  - 4.2.1 for each Excluded Property, the Company undertakes to:
    - (a) apply for the relevant consent or waiver of prohibition or conditions within five Business Days of the date of this debenture and to use its best endeavours to obtain that consent or waiver of prohibition as soon as possible;
    - (b) keep the Chargeholder informed of its progress in obtaining such consent or waiver; and
    - (c) immediately on receipt of such consent or waiver, provide the Chargeholder with a copy; and
  - 4.2.2 immediately on receipt of the relevant waiver or consent, the relevant formerly Excluded Property shall stand charged to the Chargeholder under clause 4.1. If required by the Chargeholder at any time following receipt of that waiver or consent, the Company shall execute a valid fixed charge in such form as the Chargeholder requires.

4.3 The floating charge created by clause 4.1.5 shall automatically and immediately (without notice) be converted into a fixed charge over the relevant Charged Property if:

4.3.1 the Company:

(a) creates, or attempts to create, a Security Interest without the prior written consent of the Chargeholder, or any trust in favour of another person, over all or any part of the Charged Property; or

(b) disposes, or attempts to dispose of, all or any part of the Charged Property (other than property that is only subject to the floating charge while it remains uncrystallised which property may be disposed of in the ordinary course of business); or

4.3.2 a receiver is appointed over all or any of the Charged Property that is subject to the floating charge; or

4.3.3 any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Charged Property; or

4.3.4 the Chargeholder receives notice of the appointment of, or a proposal or an intention to appoint, an administrator of the Company.

4.4 The Chargeholder may, in its sole discretion, at any time by written notice to the Company, convert the floating charge created under this debenture into a fixed charge as regards any part of the Charged Property specified by the Chargeholder in that notice.

4.5 Any asset acquired by the Company after any crystallisation of the floating charge created under this debenture which, but for such crystallisation, would be subject to a floating charge shall (unless the Chargeholder confirms in writing to the contrary) be charged to the Chargeholder by way of first fixed charge.

## **5. Liability of the Company**

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

5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Chargeholder being or becoming wholly or partially illegal, void or unenforceable on any ground; or

5.1.2 the Chargeholder renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying

any compromise, arrangement or settlement or omitting to claim or enforce payment from any other person; or

5.1.3 any other act or omission which but for this clause 5.1 might have discharged or otherwise prejudiced or affected the liability of the Company.

5.2 The Company waives any right it may have to require the Chargeholder to enforce any security or other right or claim any payment from or otherwise proceed against any other person before enforcing this debenture against the Company.

## **6. Representations and Warranties**

The Company represents and warrants to the Chargeholder in the terms set out in Schedule 4. The representations and warranties set out in Schedule 4 are made on the date of this debenture.

## **7. Covenants**

The Company covenants with the Chargeholder in the terms set out in Schedule 5.

## **8. Powers of the Chargeholder**

The Chargeholder shall have the powers set out in Schedule 6.

## **9. Enforcement**

9.1 The security constituted by this debenture shall be immediately enforceable (subject to the rights of any prior chargee pursuant to the Intercreditor Arrangements) in any of the circumstances set out in paragraph 1 of Schedule 7. The parties to this debenture agree that the provisions of Schedule 7 shall apply to this debenture and shall be binding between them.

9.2 A Receiver shall have, in addition to the powers conferred on receivers by statute, the further powers set out in Schedule 8.

9.3 To the extent that the Charged Property constitutes Financial Collateral and this debenture and the obligations of the Company hereunder constitute a Security Financial Collateral Arrangement, the Chargeholder shall have the right, at any time after the security constituted this debenture has become enforceable, (subject to the rights of any prior chargee pursuant to the Intercreditor Arrangements) to appropriate all or any of that Charged Property in or towards the payment and/or discharge of the Secured Liabilities in such order as the Chargeholder in its absolute discretion may from time to time determine. The value of any Charged Property appropriated in accordance with this clause shall be the price of that Charged

Property at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Chargeholder may select (including independent valuation). The Company agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

## **10. Prior Charges**

- 10.1 If there subsists any prior Security Interest against the Charged Property and either any step is taken to exercise any power or remedy conferred by such Security Interest or the Chargeholder or the Receiver exercises any power of sale pursuant to this debenture, subject to the terms of the Intercreditor Arrangements, the Chargeholder may redeem such prior Security Interest or procure the transfer of such Security Interest to itself and may settle and pass the accounts of the person entitled to such Security Interest. Any accounts so settled and passed are conclusive and binding on the Company and all the principal, interest, costs, charges and expenses of and incidental to such redemption or transfer shall be secured on the property charged by this debenture and all the powers conferred by any prior Security Interest upon the holder of any prior Security Interest or any receiver under such prior Security Interest shall be exercisable by the Chargeholder or the Receiver in like manner as if the same were expressly included in this debenture.
- 10.2 This debenture is subject to the terms of the Intercreditor Arrangements. In the case of any inconsistency between the terms of the Intercreditor Arrangements and the terms of this debenture, then the terms of the Intercreditor Arrangements shall prevail

## **11. Costs and Indemnity**

- 11.1 The Company shall pay to, or reimburse, the Chargeholder and any Receiver on demand, on a full indemnity basis, all Costs incurred by the Chargeholder and/or any Receiver in relation to:

- 11.1.1 this debenture or the Charged Property;
- 11.1.2 protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Chargeholder's or Receiver's rights under this debenture; and
- 11.1.3 suing for, or recovering, any of the Secured Liabilities,

(including, without limitation, the Costs of any proceedings in relation to this debenture or the Secured Liabilities), together with interest on any amount due under clause 11.1.2 and clause 11.1.3 at the default rate of interest specified in the Loan Note Instrument.



11.2 The Chargeholder, any Receiver and their respective employees and agents shall be indemnified on a full indemnity basis out of the Charged Property in respect of all actions, liabilities and Costs incurred or suffered in or as a result of:

11.2.1 the exercise, or purported exercise, of any of the powers, authorities or discretions vested in them under this debenture;

11.2.2 any matter or thing done, or omitted to be done, in relation to the Charged Property under those powers; or

11.2.3 any default or delay by the Company in performing any of its obligations under this debenture.

## **12. Release**

Subject to clause 14.3, on the expiry of the Security Period (but not otherwise) the Chargeholder shall, at the request and cost of the Company, take whatever action is necessary to release the Charged Property from the security constituted by this debenture.

## **13. Assignment and Transfer**

13.1 At any time, without the consent of the Company, the Chargeholder may assign or transfer the whole or any part of its rights and/or obligations under this debenture to any person.

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

## **14. Further Provisions**

14.1 This debenture shall be in addition to, and independent of, every other security or guarantee which the Chargeholder may hold for any of the Secured Liabilities at any time. No prior security held by the Chargeholder over the whole or any part of the Charged Property shall merge in the security created by this debenture.

14.2 This debenture 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 Chargeholder discharges this debenture in writing.

14.3 Any release, discharge or settlement between the Company and the Chargeholder shall be deemed conditional on no payment or security received by the Chargeholder

in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- 14.3.1 the Chargeholder or its nominee may retain this debenture and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Charged Property, for such period as the Chargeholder deems necessary to provide the Chargeholder with security against any such avoidance, reduction or order for refund; and
- 14.3.2 the Chargeholder may recover the value or amount of such security or payment from the Company subsequently as if such release, discharge or settlement had not occurred.
- 14.4 A certificate or determination by the Chargeholder as to any amount for the time being due to it from the Company shall (in the absence of any manifest error) be conclusive evidence of the amount due.
- 14.5 The rights and powers of the Chargeholder conferred by this debenture are cumulative, may be exercised as often as the Chargeholder considers appropriate, and are in addition to its rights and powers under the general law.
- 14.6 Any waiver or variation of any right or remedy (whether arising under this debenture or under the general law), or any consent given under this debenture, is only be effective if it is in writing and signed by the waiving, varying or consenting party, and applies only in the circumstances for which it was given, and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 14.7 No act or course of conduct or negotiation by or on behalf of the Chargeholder shall, in any way, preclude the Chargeholder from exercising any right or remedy under this debenture or constitute a suspension or variation of any such right or remedy.
- 14.8 No delay or failure to exercise any right or remedy under this debenture shall operate as a waiver of such right or remedy or constitute an election to affirm this debenture. No election to affirm this debenture on the part of the Chargeholder shall be effective unless it is in writing.
- 14.9 No single or partial exercise of any right or remedy under this debenture shall prevent any further or other exercise of that right or remedy, or the exercise of any other right or remedy under this debenture.

- 14.10 The restriction on the right of consolidation contained in section 93 of the Law of Property Act 1925 shall not apply to this debenture.
- 14.11 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this debenture under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modification necessary to give effect to the commercial intention of the parties.
- 14.12 This debenture may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

## **15. Notices**

- 15.1 Each notice or other communication required to be given under, or in connection with, this debenture shall be:

15.1.1 in writing, delivered personally or sent by pre-paid first-class letter or fax; and

15.1.2 sent to the address or fax number, and for the attention, of the relevant party as set out beneath the signatures of each of the parties hereto

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

- 15.2 Any notice or other communication that the Chargeholder gives shall be deemed to have been received:

15.2.1 if sent by fax, when received in legible form;

15.2.2 if given by hand, at the time of actual delivery; and

15.2.3 if posted, on the second Business Day after the day it was sent by pre-paid first-class post.

A notice or other communication given as described in clause 15.2.1 or clause 15.2.2 on a day which 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.

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

## **16. Governing Law and Jurisdiction**

- 16.1 This debenture and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.
- 16.2 The parties to this debenture irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this debenture or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Chargeholder to take proceedings against the Company 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.
- 16.3 The Company irrevocably consents to any process in any proceedings being served on it in accordance with the provisions of this debenture relating to service of notices. Nothing contained in this debenture shall affect the right to serve process in any other manner permitted by law.

This guarantee and debenture has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Schedule 1**

**Assigned Agreements**

NONE

## **Schedule 2**

### **Guarantee Provisions Subject to Clause 3**

1. This Guarantee is a continuing security and shall remain in full force and effect until all moneys, obligations and liabilities referred to in Clause 2 of this debenture have been paid, discharged or satisfied in full notwithstanding the liquidation or other incapacity or any change in the constitution of the Company or any Group Company or in the name and style of any of them or any settlement of account or other matter whatsoever.
2. This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect or be prejudiced by any other right, remedy, guarantee, indemnity or security and may be enforced without first having recourse to the same or any other bill, note, mortgage, charge, pledge or lien now or hereafter held by or available to the Chargeholder.
3. If any purported obligation or liability of any Group Company to the Chargeholder which if valid would have been the subject of this Guarantee is not or ceases to be valid or enforceable against that Group Company on any ground whatsoever whether or not known to the Chargeholder including but not limited to any defect in or want of powers of that Group Company or irregular exercise thereof or lack of authority by any person purporting to act on behalf of that Group Company or any legal or other limitation (whether under any statute of limitations or otherwise), disability, incapacity or any change in the constitution of or any amalgamation, reconstruction or liquidation of any Group Company, the Company shall nevertheless be liable to the Chargeholder in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Company was the principal debtor in respect thereof. The Company hereby agrees to keep the Chargeholder fully indemnified against all damages, loss, costs and expenses arising from any failure of any Group Company to carry out any such purported obligation or liability.
4. The liability of the Company shall not be affected nor shall this Guarantee and debenture be discharged or diminished by reason of:
  - 4.1.1 any present or future bill, note, guarantee, indemnity, mortgage, charge, pledge, lien or other security or right or remedy held by or available to the Chargeholder becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Chargeholder from time to time dealing with, exchanging, varying, realising, releasing or failing to perfect or enforce any of the same; or
  - 4.1.2 the Chargeholder compounding with, discharging, releasing or varying the liability of or granting any time, indulgence or concession to any Group Company or any other person or renewing, determining, varying or increasing any bill, promissory note or other negotiable instrument, accommodation, facility or transaction in any manner whatsoever or concurring in, accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from any of any Group Company and the Company or any other person; or
  - 4.1.3 any act or omission which would have discharged or affected the liability of the Company had it been principal debtor instead of guarantor or by anything done or omitted which but for this provision might operate to exonerate the Company.
5. The Company warrants to the Chargeholder that it has not taken or received and undertakes that it will not take or receive the benefit of any security from any Group Company in connection with this Guarantee and debenture. If any such security is taken, the Company hereby declares that such security and all moneys at any time

received in respect thereof shall be held on trust for the Chargeholder and as security for the liabilities of the Company under this Guarantee.

6. The Company hereby agrees to pay interest to the Chargeholder for the account of the Chargeholder on all sums demanded under this Guarantee and debenture from the date of demand until actual payment (as well after as before any judgment) at the rate specified in Condition 4.4 of the Loan Note Instrument calculated on a day to day basis. Such interest shall be compounded monthly in accordance with the usual practice of the Chargeholder but without prejudice to the right of the Chargeholder to require payment of such interest.
7. Until the Secured Obligations have been paid, discharged or satisfied in full, the Company hereby waives all rights of subrogation and indemnity against all Group Companies and agrees not to share in any security held or moneys received by the Chargeholder on account of the Secured Obligations or to claim or prove in competition with the Chargeholder in the liquidation of any Group Company in respect of any moneys paid by the Company to the Chargeholder under this Guarantee and debenture. If the Company receives any payment or other benefit or exercises any set-off or counter-claim or otherwise acts in breach of this Clause anything so received and any benefit derived directly or indirectly by the Company therefrom shall be held in trust for the Chargeholder and as security for the liabilities of the Company under this Guarantee and debenture.
8. Any money received in connection with this Guarantee and debenture may be placed to the credit of a suspense account with a view to preserving the right of the Chargeholder to prove for the whole of its claim against a Group Company or any other person liable or may be applied by the Chargeholder in or towards satisfaction of such of the moneys, obligations or liabilities of the Company under this Guarantee and debenture as the Chargeholder may from time to time conclusively determine.
9. Any release, discharge or settlement between the Company and the Chargeholder shall be conditional upon no security, disposition or payment to the Chargeholder by any Group Company or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy, liquidation or insolvency or for any reason whatever and, if such condition shall not be fulfilled, the Chargeholder shall be entitled to enforce this Guarantee and debenture subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made.
10. Unless and until the Chargeholder is satisfied in its absolute discretion as to the solvency of any Group Company and the Company, the Chargeholder shall be entitled to retain any security constituted by or pursuant to this Guarantee and debenture for a period of up to six months after the payment, discharge or satisfaction of all moneys, obligations and liabilities that are or may become due, owing or incurred to or in favour of the Chargeholder from any Group Company or the Company and notwithstanding any such payment, discharge or satisfaction, in the event of an act of bankruptcy by or the commencement of winding-up of the person making such payment or effecting such discharge or satisfaction at any time within the said period of six months, the Chargeholder shall be entitled to retain any such security for such further period as the Chargeholder may determine.
11. If this Guarantee is determined or called in by demand made by the Chargeholder, then the Chargeholder may open a new account or accounts with any Group Company; if the Chargeholder does not open a new account it shall nevertheless be treated as if it had done so at the time of determination or calling in and as from that time all payments made to the Chargeholder shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount for which this Guarantee is available as security at that time.
12. The Chargeholder shall not be obliged before it takes steps to enforce this Guarantee:

- 12.1.1 to take action or obtain judgment in any court against any Group Company or any other person; or
  - 12.1.2 to make or file any claim in a bankruptcy or liquidation of any Group Company or any other person; or
  - 12.1.3 to make, enforce or seek to enforce any claim against any Group Company or any other person under any security or other document, agreement or arrangement.
- 13.** All sums due and payable by the Company under this Guarantee and debenture shall be made in full without set-off or counter-claim and free and clear of and (subject as provided in the next sentence) without deduction for or on account of any future or present taxes. If:
- 13.1.1 the Company is required by any law to make any deduction or withholding from any sum payable by the Company to the Chargeholder hereunder; or
  - 13.1.2 the Chargeholder is required by law to make any payment, on account of tax (other than tax on its overall net income) or otherwise, on or in relation to any amount received or receivable by the Chargeholder hereunder;
  - 13.1.3 then the sum payable by the Company in respect of which such deduction, withholding or payment is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction, withholding or payment, (and after taking account of any deduction, withholding or payment which is required to be made as a result of the increase) the Chargeholder receives and retains a net sum equal to the sum which it would have received and so retained had no such deduction, withholding or payment been made.
- 14.** This Guarantee and debenture is and will remain the property of the Chargeholder.



**Schedule 3**

**Properties Currently Owned**

**Part 1**

**Registered Land**

NONE

**Part 2**

**Unregistered Land**

NONE

## **Schedule 4**

### **Representations and Warranties**

**1. Ownership of Charged Property**

The Company is the legal and beneficial owner of the Charged Property.

**2. No Security Interest**

The Charged Property is free from any Security Interest other than Permitted Security Interests and the Security Interests created by this debenture.

**3. Adverse Claims**

The Company has not received or acknowledged notice of any adverse claim by any person in respect of the Charged Property or any interest in it.

**4. Adverse Covenants**

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

**5. No Breach of Laws**

There is no breach of any law or regulation which materially adversely affects the Charged Property.

**6. Avoidance of Security**

No Security Interest expressed to be created under this debenture is liable to be avoided or otherwise set aside on the liquidation or administration of the Company or otherwise.

## **Schedule 5**

### **Covenants**

#### **Part 1**

#### **General Covenants**

##### **1. Negative Pledge and Disposal Restrictions**

1.1 The Company shall not, at any time, except with the prior written consent of the Chargeholder:

1.1.1 create, purport to create or permit to subsist any Security Interest, other than Permitted Security Interests, in relation to the Charged Property other than this debenture; or

1.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property except disposals in the ordinary course of business of assets which are only subject to the floating charge under clause 4.1.5 at a time when the floating charge has not crystallised; or

1.1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

##### **2. Preservation of Charged Property**

The Company shall not do, or permit to be done, any act or thing which would or might depreciate, jeopardise or otherwise prejudice the security held by the Chargeholder or materially diminish the value of any of the Charged Property or the effectiveness of the security created by this debenture.

##### **3. Enforcement of Rights**

3.1 The Company shall use its reasonable endeavours to:

3.1.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Company's counterparties; and

3.1.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property which the Chargeholder may require from time to time.

#### **4. Notice of Breaches**

4.1 The Company shall promptly on becoming aware of any of the same give the Chargeholder notice in writing of any breach of:

4.1.1 any representation or warranty set out in Schedule 4; and

4.1.2 any covenant set out in this Schedule 5.

#### **5. Title Documents**

5.1 If requested in writing by the Chargeholder the Company shall, on the execution of this debenture (or, if later, the date of acquisition of the relevant Charged Property), deposit with the Chargeholder and the Chargeholder shall, for the duration of this debenture, be entitled to hold:

5.1.1 all deeds and documents of title relating to the Charged Property which are in the possession or control of the Company (if these are not within the possession and/or control of the Company, the Company undertakes to obtain possession of all such deeds and documents of title);

5.1.2 all Insurance Policies;

5.1.3 copies of all the Assigned Agreements, certified to be true copies by either a director of the Company or by the Company's solicitors;

5.1.4 all certificates relating to the Investments and such instruments of transfer in blank and other documents as the Chargeholder may, from time to time, require for perfecting its title to the Investments or for vesting, or enabling it to vest, the Investments in itself or its nominee or in any purchaser; and

5.1.5 declarations of trust in favour of the Company executed by all persons (other than the Company) in whose name the Investments are registered.

#### **6. Notices to be Given By the Company**

The Company shall if requested by the Chargeholder in writing give notice to the relevant third parties identified by the Chargeholder as requiring written notice of the execution of this debenture in such form as the Chargeholder may reasonably require.

## **7. Further Assurance**

The Company, at its own cost, shall prepare and execute such further legal or other mortgages, charges or transfers (containing a power of sale and such other provisions as the Chargeholder may reasonably require) in favour of the Chargeholder as the Chargeholder, in its absolute discretion, requires from time to time over all or any part of the Charged Property and give all notices, orders and directions which the Chargeholder may require in its absolute discretion for perfecting, protecting or facilitating the realisation of its security over the Charged Property.

## **8. Company's Waiver of Set-off**

The Company waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Company under this debenture).

## **9. Disclosure**

9.1 The Company consents to the disclosure by the Chargeholder of any information about the Company, this debenture, the Charged Property and the Secured Liabilities to:

9.1.1 any person to whom the Chargeholder has assigned or transferred, or proposes or may propose to assign or transfer, all or any of its rights and benefits under this debenture or the Secured Liabilities; or

9.1.2 any person with whom the Chargeholder has entered into, or proposes or may propose to enter into, any contractual arrangements in connection with this debenture or the Secured Liabilities; or

9.1.3 any subsidiary or agent of the Chargeholder; or

9.1.4 any other person if required or permitted by law to do so.

## **Part 2**

### **Book Debts, Insurance and Assigned Agreements Covenants**

## **1. Preservation of Book Debts**

1.1 The Company shall not (except as provided by paragraph 2 of Part 2 of Schedule 5 or with the prior written consent of the Chargeholder) release, exchange, compound,

set-off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

## **2. Realising Book Debts**

2.1 The Company shall:

- 2.1.1 as an agent for the Chargeholder, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Chargeholder;
- 2.1.2 not, without the prior written consent of the Chargeholder, withdraw any amounts standing to the credit of any Designated Account; and
- 2.1.3 if called on so to do by the Chargeholder, execute a legal assignment of the Book Debts to the Chargeholder in such terms as the Chargeholder may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

## **3. Insurance Covenant**

3.1 The Company:

- 3.1.1 shall (if the Chargeholder so requires) produce to, or deposit with, the Chargeholder all Insurance Policies and the receipts for all premiums and other payments necessary for effecting and keeping up such policies; and
- 3.1.2 has not done or omitted to do, and shall not do or omit to do, any act or thing that may invalidate or otherwise prejudice the Insurance Policies.

## **4. Insurance Policies' Proceeds**

4.1 All sums payable under any of the Insurance Policies at any time (whether or not the security constituted by this debenture has become enforceable) shall:

- 4.1.1 immediately be paid into a Designated Account;
- 4.1.2 if they are not paid directly to the Chargeholder by the insurers, be held by the Company as trustee of the same for the benefit of the Chargeholder (and the Company shall account for them to the Chargeholder); and
- 4.1.3 at the option of the Chargeholder, be applied in making good or recouping expenditure in respect of the loss or damage for which such monies are

received or in or towards discharge or reduction of the Secured Liabilities (but subject to paragraph 10 of Schedule 7).

**5. Assigned Agreements**

5.1 The Company shall not, without the prior written consent of the Chargeholder:

5.1.1 waive any of its rights under any Assigned Agreement; or

5.1.2 supplement, amend, novate, terminate or permit termination of any Assigned Agreement.

**Part 3**

**Property Covenants**

**1. Maintenance and Insurance**

1.1 The Company shall:

1.1.1 keep all buildings and all fixtures belonging to the Company on each Property in good and substantial repair and condition;

1.1.2 insure, and keep insured, those buildings and fixtures with such insurer and against such risks and in such amounts and otherwise on such terms as the Chargeholder may require (and, failing such requirement, in accordance with the practice in respect of items of the same type current amongst prudent businessmen from time to time); and

1.1.3 procure (if so requested in writing by the Chargeholder) that the interest of the Chargeholder is noted on all those insurance policies or, at the option of the Chargeholder, that those insurance policies are issued in the joint names of the Chargeholder and the Company.

**2. Preservation of Property, Fixtures and Equipment**

2.1 The Company shall not, without the prior written consent of the Chargeholder:

2.1.1 pull down or remove the whole or any part of any building forming part of any Property; or

2.1.2 make any material alterations to any Property or sever or remove any of its fixtures; or

2.1.3 remove or make any material alterations to any of the Equipment belonging to, or in use by, the Company on any Property (except to effect necessary repairs, or replace it with new or improved models or substitutes); or

2.1.4 whenever any Equipment is destroyed, damaged or deteriorates, as soon as reasonably practicable repair, replace and make good the same.

**3. Property Information**

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

**4. HM Land Registry Disposal Restriction**

If the Chargeholder so requires, in respect of any Property, or part of or interest in any Property title, which is registered at HM Land Registry, the Company applies to HM Chief Registrar to enter the following restriction on the Proprietorship Register of the title to such Property:

"Except under an order of the Registrar, no disposition or dealing is to be registered without the consent of the proprietor for the time being of the deed dated [DATE] in favour of [FULL NAME OF CHARGEHOLDER]".

**Part 4**

**Investment Covenants**

**1. Registration of Investments**

The Company shall not during the Security Period exercise any rights under sections 145 and 146 of the Companies Act 2006 to nominate any person in respect of any of the Investments.

**2. Additional Registration Obligations**

2.1 The Company shall:

2.1.1 procure all consents, waivers, approvals and permissions which are necessary, under the articles of association of any issuer that is not a public company or otherwise, for the transfer of the Investments to the Chargeholder or its nominee, or to a purchaser, on enforcement of this debenture; and



- 2.1.2 procure the amendment of the share transfer provisions of the articles of association of each issuer that is not a public company in such manner as the Chargeholder may require in order to permit such a transfer.

### **3. Dividends and Voting Rights Post Enforcement**

- 3.1 After the security constituted by this debenture has become enforceable:

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

### **4. Preservation of Investments**

- 4.1 The Company shall ensure (insofar as it is able, by the exercise of all voting rights, powers of control and other means available to it to do so) that no issuer, that is not a public company shall:
- 4.1.1 consolidate or subdivide any of its Investments, or reduce or re-organise its share capital in any way; or
- 4.1.2 issue any new shares or stock; or
- 4.1.3 refuse to register any transfer of any of its Investments which may be lodged for registration by, or on behalf of, the Chargeholder or the Company in accordance with this debenture.

### **5. Investments Information**

The Company shall send to the Chargeholder copies of all notices, circulars, reports, accounts and other documents which are sent to holders of any Investments, promptly following receipt.

## **Part 5**

### **Equipment Covenants**

**1. Maintenance of Equipment**

The Company shall maintain the Equipment in good and serviceable condition (except for expected fair wear and tear)

**2. Equipment Insurance**

2.1 The Company shall:

2.1.1 at its own expense, procure that the Equipment is covered, and kept covered, by insurance for full comprehensive insurance cover, which shall include (but not be limited to) fire, theft and accident;

2.1.2 if the Chargeholder so requires, procure that the interest of the Chargeholder is noted on all such insurance policies or, at the option of the Chargeholder, that such insurance policies are issued in the joint names of the Chargeholder and the Company; and

2.1.3 maintain insurance for third party liabilities in such amount, and on such terms, as is usual for users of equipment of the same type as the Equipment.

**3. Notice of Charge**

3.1 The Company shall, if so requested by the Chargeholder, place and maintain on each item of Equipment, in a conspicuous place, a clearly legible identification plate containing the following wording:

"NOTICE OF CHARGE

This [DESCRIPTION OF ITEM] and ancillary equipment is subject to a fixed charge dated [DATE] in favour of [CHARGEHOLDER]".

**Part 6**

**Intellectual Property Covenants**

**1. Preservation of Rights**

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

## **2. Registration of Intellectual Property**

The Company shall use all reasonable efforts to effect registration of applications for registration of any Intellectual Property and keep the Chargeholder informed of all matters relating to such registration.

## **Schedule 6**

### **Powers of the Chargeholder**

#### **1. Power to Remedy**

The Chargeholder shall be entitled (but shall not be bound) to remedy a breach at any time by the Company of any of its obligations contained in this debenture and the Company irrevocably authorises the Chargeholder and its agents to do all such things as are necessary or desirable for that purpose.

#### **2. Exercise of Rights**

The rights of the Chargeholder under paragraph 1 of this Schedule 6 are without prejudice to any other rights of the Chargeholder under this debenture. The exercise of those rights shall not make the Chargeholder liable to account as a mortgagee in possession.

#### **3. Power to Dispose of Chattels**

3.1 At any time after the security constituted by this debenture has become enforceable, the Chargeholder or any Receiver:

3.1.1 may dispose of any chattels or produce found on any Property as agent for the Company; and

3.1.2 without prejudice to any obligation to account for the proceeds of any sale of such chattels or produce, shall be indemnified by the Company against any liability arising from such disposal.

#### **4. Prior Security Interests**

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

4.1.1 redeem such or any other prior Security Interest or procure its transfer to itself; and

4.1.2 settle any account of the holder of any prior Security Interest.

Any accounts shall be, in the absence of any manifest error, conclusive and binding on the Company. All monies paid by the Chargeholder to an encumbrancer in settlement of such an account shall, as from its payment by the Chargeholder, be

due from the Company to the Chargeholder on current account and shall bear interest at the default rate of interest specified in the Loan Note Instrument and be secured as part of the Secured Liabilities.

**5. Conversion of Currency**

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

**6. Indulgence**

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

**7. Investments: Dividends and Voting Rights Prior to Enforcement**

Until the security constituted by this debenture becomes enforceable the Chargeholder shall, in exercising all voting and other rights and powers of the Chargeholder or its nominee attaching to the Investments, act in accordance with the directions of the Company from time to time, if acting in accordance with those directions would not, in the Chargeholder's opinion, prejudice the Chargeholder's security under this debenture or the value of the Investments or contravene any agreement between the Chargeholder and the Company.

## **Schedule 7**

### **Enforcement**

#### **1. Enforcement Events**

1.1 This debenture shall be enforceable if:

- 1.1.1 any of the Secured Liabilities are not paid or discharged when the same ought to be paid or discharged by the Company (whether on demand, at scheduled maturity, or by acceleration or otherwise, as the case may be);  
or
- 1.1.2 the Company is in breach of any of its obligations under this debenture or under any other agreement between the Company and the Chargeholder, and that breach (if capable of remedy) has not been remedied to the satisfaction of the Chargeholder within 14 days of notice by the Chargeholder to the Company to remedy the breach; or
- 1.1.3 the Company:
  - (a) becomes unable to pay its debts as they fall due (and/or the value of the Company's assets is less than the amount of its liabilities, taking into account the Company's contingent and prospective liabilities); or
  - (b) commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness;  
or
  - (c) makes a general assignment for the benefit of or a composition with its creditors; or
- 1.1.4 the Company passes any resolution or takes any corporate action, or a petition is presented or proceedings are commenced, or any action is taken by any person for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrative receiver, administrator, trustee or similar officer of it or of any or all of its revenues or assets; or
- 1.1.5 a distress, execution, attachment or other legal process is levied or enforced on, or sued out against, all or any part of the assets of the Company and remains undischarged for seven days; or

- 1.1.6 any event occurs in relation to the Company that is analogous to those set out in paragraph 1(c), paragraph 1(d) or paragraph 1(e) of this Schedule 7; or
- 1.1.7 any representation, warranty or statement made or deemed to be made by the Company under this debenture is or proves to have been incorrect or misleading in any material respect when made or deemed to be made; or
- 1.1.8 an Event of Default (as defined in the Loan Note Instrument) occurs,

and in any such event (whether or not the event is continuing), without prejudice to any other rights of the Chargeholder, the powers of sale under the Law of Property Act 1925 shall immediately be exercisable and the Chargeholder may, in its absolute discretion, enforce all or any part of the security created by this debenture as it sees fit.

## **2. Statutory Power of Sale**

The statutory powers of sale conferred by the Law of Property Act 1925 shall, as between the Chargeholder and a purchaser from the Chargeholder, arise on and be exercisable at any time after, the execution of this debenture but the Chargeholder shall not exercise such power of sale until the security constituted by this debenture has become enforceable under paragraph 1 of this Schedule 7.

## **3. Extension of Statutory Powers**

The statutory powers of sale, leasing and accepting surrenders conferred on mortgagees under the Law of Property Act 1925 and/or by any other statute shall be exercisable by the Chargeholder under this debenture and are extended so as to authorise the Chargeholder, whether in its own name or in that of the Company, to grant a lease or agreement to lease, accept surrenders of lease or grant any option of the whole or any part of the freehold and leasehold property of the Company with whatever rights relating to other parts of it, containing whatever covenants on the part of the Company, generally on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) and whether or not at a premium, as the Chargeholder thinks fit.

## **4. Protection of Third Parties**

- 4.1 No purchaser, mortgagee or other person dealing with the Chargeholder or any Receiver shall be concerned:

4.1.1 to enquire whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged, or whether the power the Chargeholder or a Receiver is purporting to exercise has become exercisable; or

4.1.2 to see to the application of any money paid to the Chargeholder or any Receiver.

## **5. No Liability as Mortgagee in Possession**

Neither the Chargeholder, nor any Receiver nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Charged Property for which a mortgagee in possession might be liable as such.

## **6. Appointment of Receiver**

6.1 At any time after the security constituted by this debenture has become enforceable, or at the request of the Company, the Chargeholder may, without further notice:

6.1.1 appoint by way of deed, or otherwise in writing, any one or more person or persons to be a receiver or a receiver and manager, of all or any part of the Charged Property; and

6.1.2 (subject to section 45 of the Insolvency Act 1986) from time to time, by way of deed, or otherwise in writing, remove any person appointed to be Receiver and may, in a similar manner, appoint another in his place.

6.2 Where more than one person is appointed Receiver, they shall have power to act separately (unless the appointment by the Chargeholder specifies to the contrary).

6.3 The Chargeholder may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the Law of Property Act 1925 and the remuneration of the Receiver shall be a debt secured by this debenture which shall be due and payable immediately upon its being paid by the Chargeholder.

## **7. Power of Sale Additional**

7.1 The powers of sale and appointing a Receiver conferred by this debenture shall be in addition to all statutory and other powers of the Chargeholder under the Insolvency Act 1986, the Law of Property Act 1925 or otherwise, and shall be exercisable



without the restrictions contained in Sections 103 and 109 of the Law of Property Act 1925 or otherwise.

- 7.2 The power to appoint a Receiver (whether conferred by this debenture or by statute) shall be, and remain, exercisable by the Chargeholder despite any prior appointment in respect of all or any part of the Charged Property.

**8. Agent of the Company**

Any Receiver appointed by the Chargeholder under this debenture shall be the agent of the Company and the Company shall be solely responsible for his acts and remuneration, as well as for any defaults committed by him.

**9. Powers of Receiver**

Any Receiver appointed by the Chargeholder under this debenture shall, in addition to the powers conferred on him by the Law of Property Act 1925 and the Insolvency Act 1986, have the power to do all such acts and things as an absolute owner could do in the management of such of the Charged Property over which the Receiver is appointed and, in particular, the powers set out in Schedule 8.

**10. Order of Application of Proceeds**

- 10.1 All monies received by the Chargeholder or a Receiver in the exercise of any enforcement power conferred by this debenture shall be applied:

10.1.1 first, in paying all unpaid fees, costs and other liability incurred by or on behalf of the Chargeholder (and any Receiver, attorney or agent appointed by it);

10.1.2 second, in paying the remuneration of any Receiver (as agreed between the Receiver and the Chargeholder);

10.1.3 third, in or towards discharge of the Secured Liabilities in such order and manner as the Chargeholder determines; and

10.1.4 finally, in paying any surplus to the Company or any other person entitled to it.

**11. Appropriation**

Neither the Chargeholder nor any Receiver shall be bound (whether by virtue of section 109(8) of the Law of Property Act 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.

**12. Suspense Account**

All monies received by the Chargeholder or a Receiver under this debenture may, at the discretion of the Chargeholder or Receiver, be credited to any suspense or securities realised account and shall bear interest at such rate, if any, as may be agreed in writing between the Chargeholder and the Company, and may be held in such account for so long as the Chargeholder or Receiver thinks fit.

**13. Power of Attorney**

- 13.1 By way of security, the Company irrevocably appoints the Chargeholder and every Receiver separately, to be the attorney of the Company and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things which:

13.1.1 the Company is required to execute and do under this debenture, including execute any document required by the Chargeholder under paragraph 5 of Part 1 of Schedule 5; and

13.1.2 any attorney may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this debenture or by law on the Chargeholder or any Receiver.

**14. Ratification of Acts of Attorney**

The Company ratifies and confirms, and agrees to ratify and confirm, anything which any of its attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in paragraph 13 of this Schedule 7.

**15. Appointment of An Administrator**

- 15.1 The Chargeholder may, without notice to the Company, appoint any one or more persons to be an administrator of the Company pursuant to Paragraph 14 Schedule B1 of the Insolvency Act 1986 if this debenture becomes enforceable.

- 15.2 Any appointment under this paragraph 15 of Schedule 7 shall:

- 15.2.1 be in writing signed by a duly authorised signatory of the Chargeholder;  
and
  - 15.2.2 take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986, when the requirements of paragraph 18 of that Schedule B1 are satisfied.
- 15.3 The Chargeholder may (subject to any necessary approval from the court) end the appointment of an Administrator by notice in writing in accordance with this paragraph 15 of Schedule 7 and appoint a replacement for any Administrator whose appointment ends for any reason under that paragraph.

## **Schedule 8**

### **Further Powers of a Receiver**

**1. Power to Repair and Develop Properties**

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

**2. Power to Surrender Leases**

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting the Properties on such terms and subject to such conditions as he thinks fit.

**3. Power to Employ Personnel and Advisors**

A Receiver may provide services and employ or engage such managers, contractors, and other personnel and professional advisors on such terms as he deems expedient.

**4. Power to Make VAT Elections**

A Receiver may make such elections for value added tax purposes as he thinks fit.

**5. Power to Charge for Remuneration**

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

**6. Power to Realise Charged Property**

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

**7. Power to Manage or Reconstruct the Company's Business**

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

**8. Power to Dispose of Charged Property**

A Receiver may grant options and licences over all or any part of the Charged Property, sell or concur in selling, assign or concur in assigning, lease or concur in leasing and accept or concur in accepting surrenders of leases of all or any of the property of the Company in respect of which he is appointed in such manner, and generally on such terms and conditions, as he thinks fit (fixtures and plant and machinery may be severed and sold separately from the premises in which they are contained without the consent of the Company), and to carry any such sale, assignment, leasing or surrender into effect. Any such sale may be for such consideration as the Receiver thinks fit and he may promote, or concur in promoting, a company to purchase the property to be sold.

**9. Power to Sell Book Debts**

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

**10. Power to Make Settlements**

A Receiver may make any arrangement, settlement or compromise between the Company and any other person which he may think expedient.

**11. Power to Improve the Equipment**

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

**12. Power to Make Calls on Company Members**

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

**13. Power to Appoint**

A Receiver may appoint managers, officers, servants, workmen and agents for the purposes of this Schedule 8 at such salaries, for such periods and on such terms as he may determine.

**14. Power to Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 11.2, effect with any insurer any policy of insurance, either in lieu or satisfaction of, or in addition to, such insurance.

**15. Powers Under Law of Property Act 1925**

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

**16. Power to Borrow**

A Receiver may, for any of the purposes authorised by this Schedule 8, raise money by borrowing from the Chargeholder (or from any other person) on the security of all or any of the Charged Property in respect of which he is appointed on such terms as he shall think fit (including, if the Chargeholder consents, terms under which such security ranks in priority to this debenture).

**17. Power to Redeem Prior Security Interests**

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

**18. Incidental Powers**

A Receiver may do all such other acts and things as he may consider incidental or conducive to any of the matters or powers in this Schedule 8 or which he lawfully may or can do as agent for the Company.

**19. Scope of Powers**

Any exercise of any of the powers given by this Schedule 8 may be on behalf of the Company, the directors of the Company (in the case of the power contained in paragraph 12 of this Schedule 8) or himself.

**The Company**

Signed and delivered as a Deed on behalf  
of **NEW CALL TELECOM LIMITED**

by **NIGEL EASTWOOD**

in the presence of:

Signature of witness: .....

Name of witness: .....

Address of witness: .....

Occupation of witness: .....

a director

) **Nigel Eastwood**  
)  
)  
)  
) **Tom Jameson**  
) **Apartment 49, Venice Corte**  
) **2 Elmira Street**  
) **Lewisham SE13 7FW**  
) **Solicitor**

Notices:

Name: New Call Telecom Limited

Address: its Registered Office (from time to time)

Fax: 0208 247 4481

F.A.O: Nigel Eastwood/Richard Jennings

**The Chargeholder**

Signed and delivered as a Deed by

**JEROME BOOTH** in the

presence of:

)  
)  
)

Signature of witness: .....

Name of witness: .....

Address of witness: .....

Occupation of witness: .....

Notices:

Name: Jerome Booth

Address: Castle Hill Cottage, Pound Walk, Saffron Walden CB10 2EJ

Fax: Such number as is advised from time to time