



**Registration of a Charge**

Company name: **GRIDSERVE EMEA DEPC LTD**

Company number: **07471644**



X8058LAA

Received for Electronic Filing: **26/02/2019**

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**Details of Charge**

Date of creation: **22/02/2019**

Charge code: **0747 1644 0001**

Persons entitled: **INVESTEC BANK PLC AS SECURITY TRUSTEE**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **WATSON FARLEY & WILLIAMS LLP**



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

Company number: 7471644

Charge code: 0747 1644 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 22nd February 2019 and created by GRIDSERVE EMEA DEPC LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th February 2019 .

Given at Companies House, Cardiff on 27th February 2019

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 .....22 February..... 2019

**GRIDSERVE EMEA DEPC LTD**  
as Chargor

and

**INVESTEC BANK PLC**  
as Security Trustee

**EPC CONTRACTOR SECURITY ASSIGNMENT**

relating to  
a 364 day construction term, VAT and letter of credit facilities agreement

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**THIS AGREEMENT** is made by way of deed on .....22.February.... 2019

## **PARTIES**

- (1) **GRIDSERVE EMEA DEPC LTD**, a company incorporated in England and Wales with registered number 07471644 whose registered office is at Thorney Weir House, Thorney Mill Road, Iver, Buckinghamshire, SL0 9AQ as chargor (the "**Chargor**")
- (2) **INVESTEC BANK PLC**, whose registered office is at 30 Gresham Street, London, EC2V 7QP, as trustee for each of the Secured Parties (as defined below) on the terms and conditions set out in the Intercreditor Deed (as defined below) (the "**Security Trustee**")

## **OPERATIVE PROVISIONS**

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Deed:

**"Administration Event"** means:

- (a) the presentation of an application to the court for the making of an administration order in relation to the Chargor or the Borrower;
- (b) the giving of written notice by any person of its intention to appoint an administrator of the Chargor or the Borrower or the filing of such a notice with the court; or
- (c) an administrator of the Chargor or the Borrower is appointed.

**"Borrower"** means GRIDSERVE WBC Ltd, a company incorporated in England and Wales with registered number 11664424 whose registered office is at Thorney Weir House, Thorney Mill Road, Iver, Buckinghamshire, SL0 9AQ.

**"Charge"** means the Security expressed to be constituted in favour of the Security Trustee by or pursuant to this Deed.

**"Charged Property"** means all of the assets and undertaking of the Chargor which from time to time are the subject of the Security expressed to be constituted in favour of the Security Trustee by or pursuant to this Deed.

**"Collateral Rights"** means all rights, powers and remedies of the Security Trustee provided by or pursuant to this Deed or by law.

**"Delegate"** means a delegate or sub-delegate appointed pursuant to Clause 33.2 (*Delegation*).

**"Event of Default"** means any event or circumstance specified as such in the Facilities Agreement.

**"Facilities Agreement"** means the Facilities Agreement dated on or about the date of this Deed between, amongst others, Borrower and Investec Bank plc as arranger, as agent, as security trustee, as hedge counterparty and as account bank.

**"Intercreditor Deed"** means the intercreditor deed dated on or about the date of this Deed between, amongst others, the Parent, the Borrower, York ProjectCo, the Mezzanine Lender and Investec Bank PLC as Facilities Agent, Security Trustee and Hedge Counterparty.

**"Obligors"** means the Borrower and:

- (a) York ProjectCo, until such time as the York ProjectCo resigns from the Facilities Agreement; and
- (b) Hull ProjectCo, on and from the date on which Hull ProjectCo accedes to the Facilities Agreement.

**"Receiver"** means a receiver, receiver and manager or, where permitted by law, an administrative receiver, and that term will include any appointee under a joint or several appointment.

**"Secured Obligations"** means all present and future obligations and liabilities of each Obligor (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by the Chargor, the Borrower, an Obligor or by some other person) to the Security Trustee (whether for its own account or as trustee for the Secured Parties) or any of the other Secured Parties under or pursuant to the Finance Documents including any liability in respect of any further advances made under the Finance Documents.

**"Secured Parties"** means each Senior Finance Party from time to time party to the Intercreditor Deed, any Receiver or Delegate, and the Mezzanine Lender.

**"Security Period"** means the period beginning on the date of this Deed and ending on the Final Discharge Date.

**"Specific Contract"** means:

- (a) each York ProjectCo EPC Subcontract together with any agreement or instrument supplementing, amending or replacing such agreement or contract, until the York ProjectCo resigns from the Facilities Agreement; and
- (b) on and from the date on which the Hull ProjectCo accedes to the Facilities Agreement, each Hull ProjectCo EPC Subcontract together with any agreement or instrument supplementing, amending or replacing such agreement or contract; and
- (c) each Warranty Document in connection with the York ProjectCo PV Plant together with any agreement or instrument or instrument supplementing, amending or replacing such agreement or contract, until the York ProjectCo resigns from the Facilities Agreement; and
- (d) on and from the date on which the Hull ProjectCo accedes to the Facilities Agreement, each Warranty Document in connection with the Hull ProjectCo PV Plant together with any agreement or instrument supplementing, amending or replacing such agreement or contract.

## 1.2 Terms defined in other Finance Documents

Unless defined in this Deed, or the context otherwise requires, a term defined in the Facilities Agreement or in any other Finance Document has the same meaning in this Deed, or any notice given under or in connection with this Deed.

## 1.3 Construction

In this Deed:

- (a) any reference to a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that Finance Document or other agreement or instrument;
- (b) the rules of interpretation contained in clauses 1.2 (*Construction*) and 1.3 (*Currency symbols and definitions*) of the Facilities Agreement shall apply to the construction of this Deed, or in any notice given under or in connection with this Deed, and, for the purposes of this paragraph (b), references to the Facilities Agreement shall be construed as references to this Deed;
- (c) any reference to the "**Security Trustee**", the "**Secured Parties**", the "**Finance Parties**", the "**Borrower**" or the "**Chargor**" shall be construed so as to include its or their (and any subsequent) successors in title, permitted assigns and permitted transferees in accordance with their respective interests and, in the case of the Security Trustee, any person for the time being appointed as Security Trustee in accordance with the Facilities Agreement; and
- (d) references to any Clause or Schedule shall be to a Clause or Schedule contained in this Deed.

## 1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document, 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 any Finance Document, 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.
- (c) Any Secured Party, Receiver or Delegate may enforce and enjoy the benefit of any Clause which expressly confers rights on it, subject to paragraph (b) above and the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 1.5 Incorporation of provisions from Facilities Agreement

Clauses 16 (*Tax gross up and indemnities*), 18 (*Other indemnities*), 42.1 (*Accounts*) and 42.2 (*Certificates and determinations*) of the Facilities Agreement are deemed to form part of this Deed as if expressly incorporated into it and as if all references in those clauses to the Facilities Agreement were references to this Deed.

## 1.6 Present and future assets

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

## 1.7 Separate Security

Clause 5 (*Security*) shall be construed as creating a separate and distinct fixed charge over each relevant asset within any particular class of assets defined in this Deed and the failure to create an effective fixed charge (whether arising out of this Deed or any act or omission by any party) over any one asset shall not affect the nature or validity of the charge imposed on any other asset whether within that same class of assets or not.

## 1.8 Security Trustee assumes no obligation

The Security Trustee shall not be under any obligation in relation to the Charged Property as a consequence of this Deed and the Chargor shall at all times remain liable to perform all obligations expressed to be assumed by it in respect of the Charged Property.

## 2 COVENANT TO PAY

The Chargor shall pay and discharge the Secured Obligations at the time or times when, in the manner in which, and in the currencies in which, they are expressed to be due and payable in accordance with and as provided for in the Finance Documents, provided that the liability of the Chargor shall be limited to the amount of the proceeds of enforcement of the Charged Property from time to time.

## 3 DEFAULT INTEREST

If the Chargor fails to pay any amount payable by it under this Deed on its due date, interest shall accrue on the overdue amount (both before and after judgment) on a daily basis at the rate specified in, determined in accordance with, and on the terms set out in, clause 12.3 (*Default interest*) of the Facilities Agreement.

## 4 COMMON PROVISIONS

### 4.1 All the Security created by or pursuant to this Deed is:

- (a) created with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994;
- (b) created in favour of the Security Trustee as trustee for the Secured Parties;
- (c) continuing security for the payment and discharge of all the Secured Obligations; and
- (d) (unless otherwise stated) created over present and future assets of the Chargor.

### 4.2 Third party consents

- (a) If the rights of the Chargor under any Specific Contract cannot be secured without the consent of a party to that document:



- (i) the Chargor must promptly notify the Security Trustee;
  - (ii) the Security under this Deed will secure all amounts which the Chargor may receive, or has received, under that document but will exclude the Chargor's other rights under that document; and
  - (iii) the Chargor must use all reasonable endeavours to obtain that consent or satisfy the relevant condition promptly.
- (b) If the Chargor obtains the required consent or satisfies the relevant condition:
- (i) the Chargor must immediately notify the Security Trustee;
  - (ii) all of the Chargor's rights under that document will immediately be secured in accordance with Clause 5; and
  - (iii) Clause 6 will apply to that document.

## **5 SECURITY**

The Chargor assigns and agrees to assign absolutely, subject to a proviso for re-assignment on redemption, all of its rights, claims, title and interest from time to time in and to each Specific Contract and all Related Rights.

## **6 PROVISIONS AS TO SECURITY AND PERFECTION**

The Chargor shall:

- (a) immediately:
  - (i) in the case of present Specific Contracts, on the date of this Deed; and
  - (ii) in the case of future Specific Contracts, following execution thereof or, as the case may be, the accession of Hull ProjectCo to the Facilities Agreement,

deliver to the Security Trustee (or procure delivery of) Notices of Assignment duly executed by, or on behalf of, the Chargor in respect of the relevant Specific Contract and the Chargor shall use all reasonable endeavours to procure from the counterparty to the relevant Specific Contract an acknowledgement in the form set out in such Notice of Assignment as soon as possible; and
- (b) promptly deliver to the Security Trustee executed originals or certified copies of all Specific Contracts and such other documents relating to the Specific Contracts as the Security Trustee requests.

## **7 REPRESENTATIONS**

### **7.1 General**

The Chargor makes the representations and warranties set out in this Clause 7 (*Representations*) to the Security Trustee on the date of this Deed.

## 7.2 Status

- (a) It is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

## 7.3 Binding obligations

Subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to clause 4 (*Conditions of Utilisation*) of the Facilities Agreement:

- (a) the obligations expressed to be assumed by it under this Deed are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), this Deed creates the Security which it purports to create, the Charge is valid and effective and is not subject to avoidance in the event of any winding-up, dissolution or administration involving an Obligor or the Chargor (or any other company whose shares are subject to the Charge from time to time).

## 7.4 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the Charge does not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

## 7.5 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.
- (b) No limit on its powers will be exceeded as a result of the grant of the Charge or the giving of the indemnities contemplated by this Deed.

## 7.6 Validity and admissibility in evidence

All Authorisations required or desirable to:

- (a) enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed;
- (b) permit the creation of the Charge and ensure that this Deed creates the Security it purports to create and that the Charge is valid and effective and ranks in priority to the interests of any liquidator, administrator or creditor of the Chargor; and
- (c) make this Deed admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

## **7.7 Governing law and enforcement**

- (a) The choice of governing law of this Deed will be recognised and enforced in its jurisdiction of incorporation.
- (b) Any judgment obtained in relation to this Deed in England and Wales will be recognised and enforced in its jurisdiction of incorporation.

## **7.8 No insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in clause 28.6 (*Insolvency proceedings*) of the Facilities Agreement; or
- (b) creditors' process described in clause 28.7 (*Creditors' process*) of the Facilities Agreement,

has been taken or, to its knowledge, threatened in relation to it and none of the circumstances described in clause 28.5 (*Insolvency*) of the Facilities Agreement applies to it.

## **7.9 No filing or stamp taxes**

Under the laws of its jurisdiction, it is not necessary that this Deed be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to this Deed or the Charge except registration of particulars of this Deed at Companies House in England and Wales under section 859A of the Companies Act 2006 and payment of associated fees, which registration and fees shall be made and paid promptly after the date of this Deed.

## **7.10 Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under this Deed.

## **7.11 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency has (to the best of its knowledge and belief having made due and careful enquiry) been started or threatened against it (or against its directors) which, if adversely determined, would have a Material Adverse Effect.

## **7.12 No breach of laws**

It has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

## **7.13 Pari passu ranking**

Its payment obligations under this Deed rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**7.14 Centre of main interests and establishments**

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in England and Wales and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

**7.15 Ranking of Security**

The Charge will have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security.

**7.16 Charged Property**

- (a) It is the sole legal and beneficial owner of the Charged Property.
- (b) No Security (other than the Permitted Security) exists on, over or with respect to any of the Charged Property.
- (c) No third party is entitled to exercise any right in relation to the Charged Property, whether pursuant to sections 145 and 146 of the Companies Act 2006 or otherwise.

**7.17 Repetition**

The representations set out in this Clause 7 (*Representations*) are deemed to be made by the Chargor on each date on which the representations and warranties in the Facilities Agreement are repeated by reference to the facts or circumstances existing on the date of deemed repetition.

**8 UNDERTAKINGS WITH RESPECT TO CHARGED PROPERTY****8.1 Charged Property: Payment of calls**

The Chargor shall pay when due all calls or other payments which may be or become due in respect of any of the Charged Property, and in any case of default by it in such payment, the Security Trustee may, if it thinks fit, make such payment on its behalf and any such monies shall be reimbursed by the Chargor on demand with interest from the date of payment by the Security Trustee until the date the Security Trustee is reimbursed at the rate specified in and calculated in accordance with Clause 3 (*Default interest*).

**8.2 Other obligations in respect of Charged Property**

- (a) The Chargor shall promptly send a copy to the Security Trustee of, and comply with all requests for, information which is within its knowledge and which are made under any law or regulation or by any competent authority or any similar provision contained in any articles of association or other constitutional document, or by any listing or other authority, relating to any of its Charged Property. If it fails to do so, the Security Trustee may elect to provide such information as it may have on behalf of the Chargor but shall not be liable for any failure or delay in providing such information.
- (b) The Chargor shall comply with all other conditions and obligations assumed by it in respect of any Charged Property.

- (c) The Chargor shall notify any subsequent chargee or person acquiring any interest whatsoever in the Charged Property of the existence of the Charge.
- (d) The Chargor shall forward copies of all notices, documents and other communications received by it or its nominee in connection with the Charged Property to the Security Trustee promptly upon receipt.
- (e) The Security Trustee is not obliged to:
  - (i) perform any obligation of the Chargor;
  - (ii) make any payment;
  - (iii) make any enquiry as to the nature of any payment received by it or the Chargor; or
  - (iv) present or file any claim or take any other action to collect or enforce the payment of any amount to which it may be entitled under this Deed,
 in respect of any of the Charged Property.

## **9 FURTHER ASSURANCE**

### **9.1 Further assurance**

The Chargor shall, at its own cost, promptly do all such acts and execute all such documents (including assignments, transfers, deeds, mortgages, conveyances, charges, powers of attorney, notices, orders, instructions, proxies, corporate approvals and the making of registrations and filings) as the Security Trustee or any Receiver or Delegate may specify (and in such form and at such times as the Security Trustee or any Receiver or Delegate may require):

- (a) to effect the transfer and registration of all or any part of the Charged Property in the name of the Security Trustee or such nominee(s) or other person(s) as the Security Trustee or any Receiver or Delegate may require;
- (b) to create, perfect, protect and maintain the Charge and its priority (which may include the execution by the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Property in favour of the Security Trustee or its nominee(s)) or for the exercise of the Collateral Rights;
- (c) to ensure that the Charge is and remains valid, legally binding and enforceable;
- (d) to confer on the Security Trustee security over any asset or undertaking of the Chargor located in any jurisdiction outside England and Wales equivalent or similar to the Charge intended to be conferred by or pursuant to this Deed; and/or
- (e) to facilitate the realisation of the Charged Property or the exercise of any right, power, remedy or discretion exercisable by the Security Trustee or any Receiver, Delegate or any of their respective nominees or sub-delegates in respect of any Charged Property.

## 9.2 Implied covenants for title

- (a) The covenants set out in sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clause 5 (*Security*).
- (b) The obligations of the Chargor under this Deed shall be in addition to the covenants of title deemed to be included in this Deed by virtue of Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 (other than those which have been excluded pursuant to paragraph (a) of Clause 9.2 (*Implied covenants for title*) above).
- (c) It shall be implied in respect of Clause 5 (*Security*) that the Chargor is disposing of the Charged Property free from all charges and incumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

## 10 NEGATIVE UNDERTAKINGS

### 10.1 Negative pledge

Other than the Permitted Security the Chargor shall not at any time during the Security Period create or permit to subsist any Security over all or any part of the Charged Property.

### 10.2 Restriction on disposals

Other than the Permitted Security the Chargor shall not (and shall not agree to) enter into a single transaction or series of transactions (whether related or not) and whether voluntary or involuntary to sell, transfer, assign, lease, licence or otherwise dispose of any of the Charged Property.

### 10.3 Preservation of Charged Property

The Chargor will not take or permit any action which is likely to:

- (a) adversely affect the value of or otherwise depreciate, impair or prejudice any Charged Property or the Collateral Rights or result in any of the Security created or expressed to be created by or pursuant to this Deed becoming enforceable; or
- (b) result in a Default.

### 10.4 Information and access

The Chargor shall from time to time on request of the Security Trustee, furnish the Security Trustee with such information as the Security Trustee may require about the Chargor's business and affairs, the Charged Property and its compliance with the terms of this Deed and the Chargor shall permit the Security Trustee, its representatives, professional advisers and contractors free access at all reasonable times and on reasonable notice to inspect and take copies and extracts from the books, accounts and records of the Chargor.

### 10.5 Restriction on third party rights

The Chargor shall not exercise any right to nominate any third party to exercise any right in relation to the Charged Property, whether pursuant to sections 145 or 146 of the Companies Act 2006 or otherwise.

## 10.6 Specific Contracts: Amendments

The Chargor shall not, except as permitted by the Finance Documents:

- (a) amend, supplement, vary or waive any provision of any Specific Contract (or agree to do so);
- (b) exercise any right to rescind, cancel or terminate a Specific Contract;
- (c) release any counterparty from its obligations under a Specific Contract;
- (d) waive any breach by any counterparty or consent to any act or omission which would otherwise constitute a breach under any Specific Contract; or
- (e) novate, transfer or assign any of its rights under any Specific Contract (save as provided pursuant to this Deed).

## 10.7 Specific Contracts: Application of proceeds

All monies received under any Specific Contract shall, subject to Clause 10.8 (*Specific Contracts: Event of Default*), be deposited into the account specified in the Facilities Agreement and applied in accordance with the terms and conditions of the Facilities Agreement at the direction of the Security Trustee and, pending such payment, the Chargor shall hold all such monies on trust for the Security Trustee.

## 10.8 Specific Contracts: Event of Default

After the occurrence of an Event of Default:

- (a) the Security Trustee may exercise (without any further consent or authority on the part of the Chargor and irrespective of any direction given by the Chargor) any of the rights under or in connection with the Specific Contracts;
- (b) the Chargor must take such steps (at its own cost) as the Security Trustee may require to enforce those rights, including, if the Security Trustee so directs, initiating and pursuing legal or arbitration proceedings in the name of the Chargor; and
- (c) the Chargor shall hold all monies received by it under or in connection with any of the Specific Contracts on trust for the Security Trustee pending payment to the Security Trustee for application in accordance with Clause 17 (*Application of Proceeds*).

## 11 POSITIVE UNDERTAKINGS

### 11.1 Authorisations

The Chargor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Security Trustee of,

any Authorisations required under any law or regulation of any relevant jurisdiction to enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence in any relevant jurisdiction of this Deed.

## 11.2 Compliance with laws

The Chargor shall comply in all respects with all laws to which it may be subject, if failure so to comply has or is likely to have a Material Adverse Effect.

## 11.3 Pari passu ranking

The Chargor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

## 12 ENFORCEMENT OF SECURITY

On or at any time after the occurrence of:

- (a) an Event of Default (which is continuing);
- (b) an Administration Event; or
- (c) a request from the Chargor to the Security Trustee that it exercise any of its powers under this Deed,

then the Charge is immediately enforceable and the Security Trustee may (without notice to the Chargor or prior authorisation from any court):

- (i) enforce all or any part of the Charge at the times, in the manner and on the terms it thinks fit (including whether for cash consideration or otherwise) and take possession of and hold or dispose of all or any part of the Charged Property; and
- (ii) whether or not it has appointed a Receiver, exercise all or any of the rights, powers, authorities and discretions conferred by this Deed or the Law of Property Act 1925 (as varied or extended by this Deed) on mortgagees, chargees and Receivers or otherwise conferred by law on mortgagees, chargees or Receivers in the manner and on the terms it thinks fit.

## 13 EXTENSION OF POWERS AND RIGHT OF APPROPRIATION

### 13.1 Extension of powers

The power of sale or other disposal conferred on the Security Trustee and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on the date of this Deed.

### 13.2 Restrictions

The restrictions contained in sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Deed or to the exercise by the Security Trustee or any Receiver or Delegate of its right to consolidate all or any of the Security created by or pursuant to this Deed with any other Security in existence at any time or to its power of sale, which powers may be exercised by the Security Trustee without notice to the Chargor on or at any time after this Deed has become enforceable in accordance with Clause 12 (*Enforcement of Security*).



## 14 RIGHT OF APPROPRIATION

- (a) To the extent that the Charged Property constitutes "financial collateral" and this Deed and the obligations of the Chargor under this Deed constitute a "security financial collateral arrangement" (in each case, for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "**Regulations**")), the Security Trustee will have the right after the Charge has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of that Charged Property shall be:
- (i) in the case of cash, determined by any method that the Security Trustee may select; and
  - (ii) in the case of any other financial collateral (as defined in the Regulations), the market value of such financial collateral determined (after appropriation) by the Security Trustee by reference to a public index or by such other process as the Security Trustee may select, which may be independent valuation.
- (b) In the case of both (a)(i) and (ii) above, the parties agree that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

## 15 APPOINTMENT OF RECEIVER OR ADMINISTRATOR

### 15.1 Appointment and removal

After the Charge has become enforceable in accordance with Clause 12 (*Enforcement of Security*) or if requested by the Chargor, the Security Trustee may by deed or otherwise in writing (acting through an authorised officer of the Security Trustee):

- (a) without prior notice to the Chargor:
- (i) appoint one or more persons to be a Receiver of the whole or any part of the Charged Property; or
  - (ii) appoint two or more Receivers of separate parts of the Charged Property; or
  - (iii) remove (so far as it is lawfully able) any Receiver so appointed; or
  - (iv) appoint another person(s) as an additional or replacement Receiver(s); or
- (b) following notice to the Chargor, appoint one or more persons to be an administrator of the Chargor pursuant to paragraph 12 of Schedule B1 of the Insolvency Act 1986.

### 15.2 Capacity of Receivers

Each person appointed to be a Receiver pursuant to Clause 15.1 (*Appointment and removal*) shall:

- (a) be entitled to act individually or together with any other person appointed or substituted as Receiver;

- (b) for all purposes be the agent of the Chargor and the Chargor shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration. No Receiver shall at any time act as, or be deemed to be, agent for the Security Trustee; and
- (c) entitled to remuneration for his services at a rate to be fixed by the Security Trustee from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

### **15.3 Statutory powers of appointment**

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Trustee under the Law of Property Act 1925 (as extended by this Deed), the Insolvency Act 1986 or otherwise and such powers shall be exercisable without the restrictions contained in section 109(1) of the Law of Property Act 1925 and shall remain exercisable from time to time by the Security Trustee in respect of any part of the Charged Property.

## **16 POWERS OF RECEIVERS**

Every Receiver shall (subject to any restrictions in the instrument appointing him but notwithstanding any winding-up or dissolution of the Chargor) have and be entitled to exercise, in relation to the Charged Property (and any assets of the Chargor which, when got in, would be Charged Property) in respect of which he was appointed, and as varied and extended by the provisions of this Deed (in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor):

- (a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
- (b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 as in force at the date of this Deed (whether or not in force at the date of exercise) and all the powers of an administrative receiver as may be added to Schedule 1 of the Insolvency Act 1986 after the date of this Deed (in each case, whether or not the Receiver is an administrative receiver);
- (c) the right to sell or otherwise dispose of or realise all or any part of the Charged Property in any manner whatsoever and for such consideration (whether comprising cash or other valuable consideration of any kind) and on such terms as it may think fit;
- (d) all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor itself could do or omit to do;
- (e) the right to redeem or transfer to the Security Trustee or its nominee any prior Security over the Charged Property;
- (f) all the rights expressed to be conferred upon the Security Trustee in this Deed and all rights to release the Charged Property from the Security conferred upon the Security Trustee in the Finance Documents; and
- (g) the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to:
  - (i) any of the functions, powers, authorities or discretions conferred on or vested in him;

- (ii) the exercise of the Collateral Rights (including realisation of all or any part of the assets in respect of which that Receiver was appointed); or
- (iii) bringing to his hands any assets of the Chargor forming part of, or which when got in would be, Charged Property.

## **17 APPLICATION OF PROCEEDS**

**17.1** All monies received or recovered and any non-cash recoveries made or received by the Security Trustee or any Receiver pursuant to this Deed or the powers conferred by it shall (by way of variation of the provisions of the Law of Property Act 1925) be applied first in the payment of the costs, charges and expenses incurred and payments made by the Receiver (or Delegate of any Receiver), the payment of their remuneration and the discharge of any liabilities incurred by the Receiver (or Delegate of the Receiver) in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Security Trustee (notwithstanding any purported appropriation by the Chargor) in accordance with the terms of the Finance Documents.

**17.2** Clause 17.1 above:

- (a) is subject to the payment of any claims having priority over this Charge; and
- (b) does not prejudice the right of any Secured Party to recover any shortfall from the Chargor.

## **18 PROTECTION OF PURCHASERS**

### **18.1 Consideration**

The receipt of the Security Trustee or any Receiver or Delegate shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Property or making any acquisition, the Security Trustee or any Receiver or Delegate may do so for such consideration, in such manner and on such terms as it thinks fit.

### **18.2 Protection of purchasers**

- (a) No purchaser or other person dealing with the Security Trustee or any Receiver or Delegate shall be bound to inquire whether any right conferred by or pursuant to this Deed has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Security Trustee or such Receiver or Delegate in such dealings.
- (b) All the protections for purchasers contained in sections 104 and 107 of the Law of Property Act 1925, section 42(3) of the Insolvency Act 1986 or in any other applicable law or regulation shall apply to any person purchasing from or dealing with the Security Trustee or any Receiver or Delegate.

## **19 POWER OF ATTORNEY**

### **19.1 Appointment and powers**

The Chargor by way of security irrevocably and severally appoints the Security Trustee and any Receiver to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

- (a) carrying out any obligation imposed on the Chargor by this Deed or any other agreement binding on the Chargor to which the Security Trustee is party (including the execution and delivery of any deeds, mortgages, charges, assignments or other security and any transfers of the Charged Property and perfecting and/or releasing the Charge);
- (b) to take any action required or desirable to enable the Security Trustee to exercise all or any of the Collateral Rights; and
- (c) enabling the Security Trustee and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Deed or by law (including, after the occurrence of an Event of Default which is continuing, the exercise of any right of a legal or beneficial owner of the Charged Property).

## **19.2 Ratification**

The Chargor ratifies and confirms and agrees to ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## **20 EFFECTIVENESS OF SECURITY**

### **20.1 Continuing security**

- (a) The Charge shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Security Trustee in writing.
- (b) No part of the Charge from time to time intended to be constituted by this Deed will be considered satisfied or discharged by an intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

### **20.2 Cumulative rights**

The Charge and the Collateral Rights shall be cumulative, in addition to and independent of every other Security which the Security Trustee or any Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent security notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security. No prior Security held by the Security Trustee (whether in its capacity as trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Charged Property shall merge into the Charge.

### **20.3 No prejudice**

The Charge and the Collateral Rights shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person, or the Security Trustee (whether in its capacity as trustee or otherwise) or any of the other Secured Parties or by any variation of the terms of the trust upon which the Security Trustee holds the Charge or by any other thing which might otherwise prejudice the Charge or any Collateral Right.

## 20.4 Trusts

If any trust intended to arise pursuant to any provision of this Deed fails or for any reason (including the laws of any jurisdiction in which any assets, moneys, payments or distributions may be situated) cannot be given effect to, the Chargor will pay to the Security Trustee for application in accordance with Clause 17 (*Application of Proceeds*) an amount equal to the amount (or the value of the relevant assets) intended to be so held on trust for the Security Trustee.

## 20.5 Remedies and waivers

No failure on the part of the Security Trustee to exercise, nor any delay on its part in exercising, any Collateral Right, shall operate as a waiver of that Collateral Right or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Security Trustee shall be effective unless it is in writing. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

## 20.6 No liability

- (a) None of the Security Trustee, its nominees(s) or any Receiver or Delegate nor any officer, agent or employee of any of them shall be liable:
  - (i) to account as a mortgagee or mortgagee in possession or for any loss on realisation; or
  - (ii) for any default or omission for which a mortgagee in possession might be liable.
- (b) None of the Security Trustee, its nominees(s) or any Receiver or Delegate nor any officer, agent or employee of any of them shall be liable for any loss arising by reason of taking any action permitted by this Deed or any neglect, default or omission in connection with the Charged Property or taking possession of or realising all or any part of the Charged Property, except to the extent directly caused by fraud, wilful default or gross negligence upon its part.

## 20.7 Partial invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the Charge intended to be created by or pursuant to this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Charge or any other security.

## 20.8 Waiver of defences

The obligations assumed, and the Charge created, by the Chargor under this Deed, and the Collateral Rights, will not be affected by any act, omission, matter or thing which, but for this Clause 20.8 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Deed or the Charge (without limitation and whether or not known to the Chargor or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or any other person;

- (b) the release of any Obligor or any other person under the terms of any composition or arrangement with any creditor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any Obligor any other person;
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (f) any amendment, novation, supplement, extension, restatement (in each case, however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security or of the Secured Obligations including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (g) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security or of the Secured Obligations; and
- (h) any insolvency or similar proceedings.

## **20.9 Chargor intent**

Without prejudice to the generality of Clause 20.8 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Charge, and the Collateral Rights, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature, increasing working capital, enabling investor distributions to be made, carrying out restructurings, refinancing existing facilities, refinancing any other indebtedness, making facilities available to new borrowers, any other variation or extension of the purposes for which any such facility or amount might be made available from time to time, and any fees, costs and/or expenses associated with any of the foregoing.

## **20.10 Immediate recourse**

The Chargor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any other person before claiming from the Chargor. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

## **20.11 Deferral of rights**

The Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Deed:

- (a) to be indemnified by any Obligor;

- (b) to claim any contribution from any guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Party under the Finance Documents or of any other guarantee or Security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Obligor has given a guarantee, undertaking or indemnity under any Finance Document;
- (e) to exercise any right of set-off against any Obligor; or
- (f) to claim, rank, vote or prove as a creditor of any Obligor in competition with any Secured Party.

#### **20.12 Turnover trust**

- (a) The Chargor shall not accept or permit to subsist any security or collateral from any person in respect of any rights the Chargor may have arising out of this Deed. If, despite this provision, any such security or collateral shall be accepted or subsisting, the Chargor acknowledges that the Chargor's rights under such collateral shall be held on trust for the Security Trustee and the Secured Parties, to the extent necessary to enable the Secured Obligations to be repaid in full, and the Chargor shall, if requested, promptly transfer the same to the Security Trustee (or as the Security Trustee may direct) for application in accordance with Clause 17 (*Application of proceeds*).
- (b) If the Chargor receives any benefit, payment or distribution relating to the rights described in Clause 20.11 (*Deferral of rights*) above, it shall hold that benefit, payment or distribution to the extent necessary to enable the Secured Obligations to be repaid in full on trust for the Security Trustee and the Secured Parties and shall promptly pay or transfer the same to the Security Trustee (or as the Security Trustee may direct) for application in accordance with Clause 17 (*Application of proceeds*).
- (c) If the Chargor exercises any right of set-off described in paragraph (e) of Clause 20.11 (*Deferral of rights*) above, it will immediately pay or transfer to the Security Trustee an amount equal to the amount set-off.

#### **21 PRIOR SECURITY INTERESTS**

- (a) In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security against any of the Charged Property or in case of exercise by the Security Trustee or any Receiver or Delegate of any power of sale under this Deed, the Security Trustee may redeem such prior Security or procure the transfer thereof to itself.
- (b) The Security Trustee may settle and agree the accounts of the prior Security and any accounts so settled and agreed will be conclusive and binding on the Chargor.
- (c) All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Chargor to the Security Trustee on demand together with accrued interest thereon calculated in accordance with Clause 3 (*Default interest*).

## **22 SUBSEQUENT SECURITY INTERESTS AND FURTHER ADVANCES**

### **22.1 Subsequent security interests**

If the Security Trustee (acting in its capacity as trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security, assignment or transfer affecting all or any part of the Charged Property which is prohibited by the terms of any Finance Document, all payments thereafter by or on behalf of the Chargor to the Security Trustee (whether in its capacity as trustee or otherwise) or any of the other Secured Parties will be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations.

### **22.2 Further advances**

The Charge is intended to secure further advances. The Security Trustee confirms on behalf of each Lender that, subject to the terms of the Facilities Agreement, each Lender is under an obligation to make further advances to the Chargor and that obligation shall be deemed to be incorporated in this Deed as if set out in this Deed.

## **23 SUSPENSE ACCOUNTS**

The Security Trustee may place and retain on a suspense account, for as long as it considers fit, any monies received, recovered or realised under or in connection with this Deed to the extent of the Secured Obligations, without any obligation on the part of the Security Trustee to apply such moneys in or towards the discharge of such Secured Obligations.

## **24 RELEASE OF SECURITY**

### **24.1 Release of Security**

Upon the expiry of the Security Period, the Security Trustee shall, at the request and cost of the Chargor, release the Charge, subject to Clause 24.2 (*Reinstatement*) and without recourse to, or any representation or warranty by, the Security Trustee or any of its nominees.

### **24.2 Reinstatement**

If the Security Trustee considers that any amount paid or credited to, or any security or guarantee provided to, it or any other Secured Party under a Finance Document is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Chargor under this Deed and the Charge shall continue as if such amounts had not been paid or as if any such security or guarantee had not been provided.

## **25 SET-OFF**

The Chargor authorises the Security Trustee (but the Security Trustee shall not be obliged to exercise such right), after the occurrence of an Event of Default which is continuing, to set-off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Security Trustee to the Chargor and apply any credit balance to which the Chargor is entitled on any account with the Security Trustee in accordance with Clause 17 (*Application of Proceeds*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).



## **26 ASSIGNMENT**

### **26.1 No assignments or transfers by Chargor**

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

### **26.2 Assignments and transfers by the Security Trustee**

The Security Trustee may, at any time, without the consent of the Chargor, assign or transfer all or any of its rights and obligations under this Deed to any person to whom its rights and obligations under the Facilities Agreement may be assigned or transferred. The Security Trustee shall be entitled to disclose such information concerning the Chargor and this Deed as the Security Trustee considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

## **27 NOTICES**

Clause 41 (*Notices*) of the Facilities Agreement shall be incorporated mutatis mutandis into this Deed and the address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party to this Deed for any communication or document to be made or delivered under or in connection with this Deed is:

- (a) in the case of the Parent:

Address:

Fax number:

Attention:

- (b) in the case of the Security Trustee, the details provided in the Facilities Agreement,

or any substitute address or fax number or department or officer as the party may notify to the Facilities Agent (or the Facilities Agent may notify to the other parties to this Deed, if a change is made by the Facilities Agent) by not less than five (5) Business Days' notice.

## **28 EXPENSES, STAMP TAXES AND INDEMNITY**

### **28.1 Expenses**

The Chargor shall, on demand of the Security Trustee, reimburse the Security Trustee for all the costs and expenses (including legal fees) on a full indemnity basis together with any VAT thereon incurred by it or any Receiver in relation to:

- (a) the negotiation, preparation and execution of this Deed and the completion of the transactions and perfection of the Charge contemplated in this Deed;
- (b) any waiver, consent or authorisation sought by the Chargor in relation to this Deed and/or any other document referred to in this Deed;
- (c) any variation, amendment, extension or modification of, or supplement to, this Deed and/or any other document referred to in this Deed;

- (d) the exercise, preservation and/or enforcement of any of the Collateral Rights or the Charge or any proceedings instituted by or against the Security Trustee as a consequence of taking or holding the Charge or of enforcing the Collateral Rights,

and such amounts shall carry interest from the date of such demand until so reimbursed in accordance with Clause 3 (*Default interest*).

## 28.2 Stamp Taxes

The Chargor shall pay all stamp, registration, notarial and other taxes and fees to which this Deed, the Charge or any judgment given in connection with either of them is or at any time may be subject and shall, from time to time, indemnify the Security Trustee on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

## 28.3 Indemnity

The Chargor shall, notwithstanding any release or discharge of all or any part of the Charge, upon demand indemnify each of the Secured Parties, the Security Trustee, its agents, attorneys and any Receiver and Delegate against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by the Chargor of the provisions of this Deed, the exercise or purported exercise of any of the rights and powers conferred on them by this Deed or otherwise relating to the Charged Property.

## 29 CURRENCY INDEMNITY

- 29.1 If any payment under or in connection with this Deed (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (a) making or filing a claim or proof against the Chargor; or
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Chargor shall as an independent obligation, promptly and in any event within 3 Business Days of demand, indemnify each Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- 29.2 The Chargor waives any right it may have in any jurisdiction to pay any amount under or in connection with this Deed in a currency or currency unit other than that in which it is expressed to be payable.

## 30 CURRENCY CONVERSION

- 30.1 For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Trustee may convert any moneys received or recovered by the Security Trustee from one currency to another, as the Security Trustee thinks fit and any such conversion shall be effected

at the Security Trustee's spot rate of exchange for the time being for obtaining such other currency with the first currency.

- 30.2** The Secured Obligations shall only be satisfied to the extent of the amount of the due currency purchased after deducting any commission, premium and other costs of exchange and Taxes payable in connection with such conversion.

## **31 PAYMENTS**

- 31.1** All payments to be made by the Chargor under this Deed shall be made without set-off or counterclaim and in the currency in which the relevant indebtedness is denominated or, if different, is payable and to such account, with such financial institution and in such other manner as the Security Trustee may direct.

- 31.2** All payments to be made by the Chargor under this Deed shall be made free and clear of and without deduction for or on account of Tax unless the Chargor is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Chargor shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the person on account of whose liability to Tax such deduction or withholding has been made, receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

## **32 ACCOUNTS, CERTIFICATES AND DETERMINATIONS**

- 32.1** In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.
- 32.2** A determination by the Security Trustee or a copy of a certificate signed by an officer of the Security Trustee shall, in the absence of manifest error, be conclusive evidence of the matters to which it relates.

## **33 DISCRETION AND DELEGATION**

### **33.1 Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Deed by the Security Trustee or any Receiver may, subject to the terms and conditions of the Finance Documents, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons or reference to the Chargor.

### **33.2 Delegation**

Each of the Security Trustee and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and rights conferred on it by this Deed (including the power of attorney) on such terms and conditions as it shall see fit (including the power to sub-delegate) which delegation shall not preclude the subsequent exercise, any subsequent delegation or any revocation of such power, authority or right by the Security Trustee or the Receiver itself.

### 33.3 Liability

Neither the Security Trustee nor any Receiver shall be bound to supervise, or be in any way responsible or liable for any damages, costs or losses incurred by reason of any misconduct, omission on or default on the part of, any such Delegate or sub-Delegate.

## 34 AMENDMENTS

Any term of this Deed may be amended or waived only:

- (a) in writing; and
- (b) in accordance with clause 45 (*Amendments and waivers*) of the Facilities Agreement; and
- (c) with the agreement of all of the parties to this Deed.

## 35 COUNTERPARTS AND EXECUTION AS A DEED

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

**35.2** The parties intend this Deed to be a deed and confirm that it is executed and delivered as a deed, notwithstanding the fact that any one or more of the parties may only execute it under hand.

## 36 GOVERNING LAW

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

## 37 JURISDICTION

### 37.1 English Courts

The courts of England have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of, or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Deed).

### 37.2 Convenient Forum

The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

### 37.3 Exclusive Jurisdiction

This Clause 37 (*Jurisdiction*) is for the benefit of the Security Trustee only. To the extent allowed by law, the Security Trustee may take:

- (a) proceedings in any other court with jurisdiction;
- (b) concurrent proceedings in any number of jurisdictions.

**This Deed has been executed and delivered as a deed on the date stated at the beginning of this Deed.**

## SCHEDULE 1

## FORM OF NOTICE OF ASSIGNMENT OF SPECIFIC CONTRACT

From: [•]

To: [•]

Date: [•]

Dear Sirs,

- 1 We hereby give you notice that we have assigned absolutely by way of security to [•] as trustee for the secured parties (the "**Security Trustee**") pursuant to a security agreement dated [•] (the "**Deed**") entered into by us in favour of the Security Trustee all our rights, claims, title and interest from time to time in and to [*details of Specific Contract*] (the "**Contract**"), including all monies which may be payable in respect of, and all rights or claims in relation to, the Contract.
- 2 Until you receive written instructions from the Security Trustee to the contrary, all monies payable by you to us in respect of the Contract must be paid to [*insert details of the relevant account*] and, following receipt of written instructions from the Security Trustee, all such monies must be paid in accordance with those instructions.
- 3 We confirm that:
  - 3.1.1 we will remain liable under the Contract to perform all the obligations assumed by us under the Contract; and
  - 3.1.2 none of the Security Trustee, its agents, any receiver, delegate or any other person will at any time be under any obligation or liability to you under or in respect of the Contract.
- 4 Subject to paragraphs 2 and 6 of this notice of assignment, we may continue to deal with you under the Contract until such time as you receive a notice from the Security Trustee to the contrary, whereupon:
  - 4.1.1 we will no longer be authorised to deal with you;
  - 4.1.2 all communications made by you under or in connection with the Contract must be sent to the Security Trustee;
  - 4.1.3 all sums due must be paid to the Security Trustee or as it directs; and
  - 4.1.4 all the rights, powers and discretions under or in connection with the Contract shall be exercisable by the Security Trustee or as it directs.
- 5 We have agreed that we will not, without the prior consent of the Security Trustee:
  - 5.1.1 amend, supplement, vary or waive any provision of the Contract (or agree to do so);

- 5.1.2 exercise any right to rescind, cancel or terminate the Contract;
- 5.1.3 release any counterparty from its obligations under the Contract;
- 5.1.4 waive any breach by any counterparty or consent to any act or omission which would otherwise constitute a breach under the Contract; or
- 5.1.5 novate, transfer or assign any of our rights under the Contract (save as provided pursuant to the Deed),

other than as permitted under the Finance Documents.

- 6 You are authorised and instructed, without requiring further approval from us, to provide the Security Trustee with such information relating to the Contract as it may from time to time request and to send to the Security Trustee and us copies of all notices issued by you under the Contract.
- 7 The authority and instruction in this notice of assignment may only be revoked or amended with the prior written consent of the Security Trustee.
- 8 This notice of assignment and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 9 Please acknowledge receipt of this notice of assignment by signing the acknowledgement on the enclosed copy letter and returning it to the Security Trustee at [•] marked for the attention of [•].

Yours faithfully,

.....

for and on behalf of

[•] [Chargor]

On copy only: [•] [Security Trustee]

[On duplicate]

From: *[Name of contract counterparty]*

To: *[Name of Security Trustee]* in its capacity as Security Trustee

We acknowledge receipt of the notice of assignment of which this is a copy and confirm each of the matters set out below:

- 9.1.1 we will pay all monies in respect of the Contract as directed by paragraphs 2 and 4 of the notice of assignment;
- 9.1.2 we will give notices under the Contract as directed by paragraphs 4 and 6 of the notice of assignment;
- 9.1.3 we accept the instructions contained in, and will comply with the other terms of, the notice of assignment;

- 9.1.4 we have not received notice of any other assignment, charge or other third party interest in, of or over any of the rights, claim, title, interest and benefit in and to the Contract;
- 9.1.5 we have not and will not claim or exercise any security interest, set-off, counterclaim or other right in respect of the Contract unless such rights arise out of the Contract itself and are Permitted by the Finance Documents; and
- 9.1.6 we acknowledge your notification that you may not amend, waive or release any rights, interests or benefits under or in respect of the Contract, nor terminate the Contract, without the prior consent of the Security Trustee other than as permitted under the Finance Documents.

For and on behalf of [relevant contract counterparty]

By:

Dated:



EXECUTION PAGE TO PARENT SECURITY AGREEMENT

THE CHARGOR

EXECUTED as a DEED by  
GRIDSERVE EMEA DEPC LTD  
acting by a director  
in the presence of:

)  
)  
)  
)

Signature of witness: .....

Name (in BLOCK CAPITALS): ..... Amarjit Syan  
Trainee Solicitor  
Address: ..... Watson Farley & Williams LLP  
15 Appold Street  
London EC2A 2HB

THE SECURITY TRUSTEE

EXECUTED as a DEED by  
.....  
as duly authorised attorney for  
INVESTEC BANK PLC  
in the presence of:

)  
)  
)  
)  
)

Andrew Nosworthy  
Au.....

Oliver Fritot  
Authorised Signatory

Signature of witness: .....

Name (in BLOCK CAPITALS): ..... Amarjit Syan  
Trainee Solicitor  
Address: ..... Watson Farley & Williams LLP  
15 Appold Street  
London EC2A 2HB