

# MR01

## Particulars of a charge

232558 / 13



**A fee is payable with this form**  
Please see 'How to pay' on the  
last page

**You can use the WebFiling service to file this form online.**  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

☒ **What this form is NOT for**  
You may not use this form to  
register a charge where the  
instrument Use form MR0

For further information, please  
refer to our guidance at

This form **must be delivered to the Registrar for registration within  
21 days** beginning with the day after the date of creation of the charge.  
If delivered outside of the 21 days it will be rejected unless it is accompanied by a  
court order extending the time for delivery



You **must** enclose a certified copy of the instrument with this form. This will be  
scanned and placed on the public record



A30 \*A2LI03F4\* 19/11/2013 #11  
COMPANIES HOUSE

### 1 Company details

Company number 0 7 8 9 0 5 9 9  
Company name in full BIWATER (BVI) HOLDINGS LIMITED

For official use  
→ **Filing in this form**  
Please complete in typescript or in  
bold black capitals  
All fields are mandatory unless  
specified or indicated by \*

### 2 Charge creation date

Charge creation date d1 d5 m1 m1 y2 y0 y1 y3

### 3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name BARCLAYS BANK PLC as Security Trustee  
for and on behalf of the Finance Parties

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge

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Description

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security

Continuation page

Please use a continuation page if you need to enter more details

Description

N/A

5

Fixed charge or fixed security

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☒ Yes

☐ No

6

Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☐ Yes Continue

☒ No Go to Section 7

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7

Negative Pledge

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ Yes

☐ No

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**Trustee statement ①**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

**Signature**

Please sign the form here

Signature

Signature

*Allen + Overly LLP*

X on behalf of the Chargee

X

This form must be signed by a person with an interest in the charge

# MR01

## Particulars of a charge



### Presenter information

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name JENNIFER ETHERINGTON

Company name ALLEN & OVERY LLP

Address ONE BISHOPS SQUARE

Post town LONDON

County/Region LONDON

Postcode E 1 6 A D

Country UNITED KINGDOM

DX

Telephone +44 (0) 20 3088 0000



### Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



### Checklist

**We may return forms completed incorrectly or with information missing**

**Please make sure you have remembered the following:**

- ☒ The company name and number match the information held on the public Register
- ☒ You have included a certified copy of the instrument with this form
- ☒ You have entered the date on which the charge was created
- ☒ You have shown the names of persons entitled to the charge
- ☒ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☒ You have given a description in Section 4, if appropriate
- ☒ You have signed the form
- ☒ You have enclosed the correct fee
- ☒ Please do not send the original instrument, it must be a certified copy



### Important information

Please note that all information on this form will appear on the public record.



### How to pay

A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House'



### Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:

**For companies registered in England and Wales:**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland:**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

**For companies registered in Northern Ireland:**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1



### Further information

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)



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

Company number: 7890599

Charge code: 0789 0599 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 15th November 2013 and created by BIWATER (BVI) HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th November 2013.

*[Handwritten signature]*

Given at Companies House, Cardiff on 25th November 2013



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED 15 November 2013

**BIWATER (BVI) HOLDINGS LTD**

as chargor

and

**BIWATER (BVI) LTD.**  
as company

and

**BARCLAYS BANK PLC**  
as security trustee

Except for material redacted  
pursuant to S859G of the  
Companies Act 2006 I certify  
that this is a correct copy  
of the original document.

J. Etherington 15/11/13

JENNIFER ETHERINGTON  
SOLICITOR

ALLEN + OVERY LLP  
ONE BISHOPS SQUARE  
LONDON E1 6AD

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**EQUITABLE MORTGAGE**

over registered shares in a BVI Business Company

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**HARNEYS**

Harney Westwood & Riegels  
Cragmulr Chambers  
P O Box 71  
Road Town, Tortola  
British Virgin Islands  
Tel +1 (284) 494 2233  
Fax +1 (284) 494 3547  
www.harneys.com

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THIS MORTGAGE is dated the 15<sup>th</sup> day of November 2013 and is made

**BETWEEN:**

- (1) **BIWATER (BVI) HOLDINGS LTD**, a private company limited by shares organised and existing under the laws of England with registration number 07890599,

the "Chargor"), and

- (2) **BIWATER (BVI) LTD.**, a company organised and existing under the laws of the British Virgin Islands with registration number 1505595 (the "Company"), and

- (3) **BARCLAYS BANK PLC**, a public limited liability company registered in England and Wales under company registration number 1026167 (the "Security Trustee")

**BACKGROUND:**

- (A) The Chargor and the Company enter into this Mortgage in connection with the Credit Agreement (as defined below)
- (B) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand

**IT IS AGREED** as follows

**1. INTERPRETATION**

**1.1 Definitions**

In this Mortgage

"Act" means the Conveyancing and Law of Property Act 1961 (Chapter 220 of Revised Laws of the Virgin Islands, 1991) of the laws of the British Virgin Islands.

"Companies Act" means the BVI Business Companies Act (No 16 of 2004) of the laws of the British Virgin Islands, as amended

"Credit Agreement" means the US\$43,000,000 credit facility agreement dated on or about the date of this Mortgage between (among others) the Company and the Security Trustee.

"Insolvency Act" means the Insolvency Act (No 5 of 2003) of the laws of the British Virgin Islands, as amended

"Mortgage Obligors" means the Chargor and the Company

"Receiver" means an administrative receiver, receiver and manager or a receiver, in each case, appointed under this Mortgage

"Registered Agent" means the registered agent of the Company under section 91 of the Companies Act

"Related Rights" means the rights attached to the Shares described in Clause 2 2(b)



**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to any Finance Party under each Finance Document

**"Security Assets"** means all assets of the Chargor that are subject to any security created by this Mortgage

**"Security Period"** means the period beginning on the date of this Mortgage and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full

**"Shares"** means all of the shares issued by the Company owned by the Chargor or held by any nominee on its behalf

## **1.2 Construction**

- (a) Capitalised terms defined in the Credit Agreement have, unless expressly defined in this Mortgage, the same meaning in this Mortgage
- (b) The provisions of clause 1.3 (Construction) of the Credit Agreement apply to this Mortgage, as though they were set out in full in this Mortgage except that references to the Credit Agreement are to be construed as references to this Mortgage
- (c) In this Mortgage
  - (i) any reference to a Finance Document includes all amendments and supplements including supplements providing for further advances,
  - (ii) the term **"this Security"** means any security created by this Mortgage, and
  - (iii) a reference to any asset, unless the context otherwise requires, includes any present and future asset
- (d) Any covenant of the Mortgage Obligors under this Mortgage (other than a payment obligation) remains in force during the Security Period
- (e) If the Security Trustee considers that an amount paid to a Finance Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Mortgage
- (f) Unless the context otherwise requires, a reference to a Security Asset includes the proceeds of sale of that Security Asset

## **1.3 General**

- (a) The Act shall not apply to this Mortgage to the extent that it is inconsistent with the provisions of this Mortgage
- (b) The obligations of the Mortgage Obligors under this Mortgage are joint and several

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## **2. CREATION OF SECURITY**

### **2.1 General**

- (a) All the security created under this Mortgage
  - (i) is created in favour of the Security Trustee,
  - (ii) is created over present and future Shares and Related Rights,
  - (iii) is security for the payment and satisfaction of all the Secured Liabilities, and
  - (iv) is made by the Chargor as beneficial owner in accordance with Section 27 of the Act
- (b) The Security Trustee holds the benefit of this Mortgage on trust for the Finance Parties

### **2.2 Securities**

- (a) The Chargor charges by way of first equitable mortgage all of its interest in all the Shares
- (b) The Chargor charges by way of first fixed charge all of its interest in
  - (i) any dividend or interest paid or payable in relation to the Shares, and
  - (ii) any right, money or property accruing or offered at any time in relation to the Shares by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise

## **3. REPRESENTATIONS**

### **3.1 Representations**

The representations set out in this Clause 3 are made by the Chargor to each Finance Party

### **3.2 Status**

- (a) Biwater (BVI) Holdings Ltd, a private company limited by shares, is duly incorporated and validly existing in good standing under the laws of its jurisdiction of original incorporation
- (b) It has the power to own its assets and carry on its business as it is being conducted

### **3.3 Powers and authority**

It has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, this Mortgage and the transactions contemplated by this Mortgage

### **3.4 Legal Validity**

- (a) Subject to any general principles of law limiting its obligations and referred to in any legal opinion required under this Mortgage, this Mortgage comprises its legally binding, valid and enforceable obligations, and
- (b) this Mortgage is in the proper form for enforcement in the jurisdiction of its incorporation

**3.5 Non-conflict**

The entry into and performance by it of, and the transactions contemplated by, this Mortgage do not conflict with

- (a) any law or regulation applicable to it,
- (b) its constitutional documents, or
- (c) any document which is binding upon it or any of its assets

**3.6 Authorisations**

- (a) All authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by this Mortgage have been obtained or effected (as appropriate) and are in full force and effect,
- (b) It is not aware of
  - (i) any reason why any authorisation required by it will not be obtained or effected by the time it is required,
  - (ii) any steps to revoke or cancel any authorisation required by it, or
  - (iii) any reason why any authorisation required by it will not be renewed when it expires without the imposition of any new restriction or condition

**3.7 Immunity**

- (a) The entry into this Mortgage by it constitutes, and the exercise by it of its rights and performance of its obligations under this Mortgage will constitute, private and commercial acts performed for private and commercial purposes, and
- (b) It will not be entitled to, nor shall it, claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Mortgage

**3.8 No Adverse Consequences**

- (a) It is not necessary under the laws of its jurisdiction of incorporation
  - (i) in order to enable any Finance Party to enforce its rights under this Mortgage,
  - (ii) by reason of the entry into of any Finance Document or the performance by it of its obligations under any Finance Document,

that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in its jurisdiction of incorporation, and

- (b) no Finance Party is or will be deemed to be resident, domiciled or carrying on business in its jurisdiction of incorporation by reason only of the entry into, performance and/or enforcement of this Mortgage

### **3.9 Jurisdiction/Governing Law**

- (a) Its
  - (i) irrevocable submission under this Mortgage to the jurisdiction of the courts of the British Virgin Islands,
  - (ii) agreement that
    - (1) this Mortgage and any non-contractual obligations arising out of or in connection with it are governed by British Virgin Islands law, and
    - (2) the other Finance Documents are governed by the laws of England (as specified in the relevant Finance Document),
  - (iii) agreement not to claim any immunity to which it or its assets may be entitled,are legal, valid and binding under the laws of its jurisdiction of incorporation
- (b) Any judgment obtained in the British Virgin Islands, will be recognised and be enforceable by the courts of its jurisdiction of incorporation

### **3.10 Registration requirements**

- (a) Except for registration of this Mortgage duly by Biwater (BVI) Holdings Ltd in England, it is not necessary to file, register or record this Mortgage in any public place or elsewhere, and
- (b) except for stamp duties payable to the Grantor, no stamp, registration or similar tax or charge is payable in respect of this Mortgage

### **3.11 Litigation**

No litigation, arbitration or administrative proceedings are current or, to its knowledge, pending or threatened

### **3.12 Nature of security**

This Mortgage creates those Security Interests it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Mortgage Obligors or otherwise

### **3.13 Shares**

- (a) The Shares and, to the extent applicable, the other Security Assets are fully paid and non-assessable
- (b) The Chargor
  - (i) is the sole legal and beneficial owner of the Shares registered in its ownership, and

- (ii) has good and marketable title to such Shares
- (c) The Shares represent 100% of the shares issued by the Company
- (d) The Company has not granted any warrants, options or other analogous rights to any person relating to shares issued by the Company
- (e) The Shares are freely transferable on the books of the Company and no consents or approvals are required in order to register a transfer of the Shares
- (f) The Security Assets are free from any Security Interest, except those created by this Mortgage
- (g) It has not received any notice of any adverse claim by any person in respect of the ownership of any Security Asset or any interest in it, nor has any acknowledgement been given to any person in respect of any Security Asset
- (h) Nothing has arisen or has been created or is outstanding which would be an overriding interest, or an unregistered interest which overrides first registration or registered dispositions, over the Security Assets

#### **3.14 Times for making representations**

- (a) The representations set out in this Mortgage (including in this Clause) are made on the date of this Mortgage
- (b) Unless a representation is expressed to be given at a specific date, each representation under this Mortgage is deemed to be repeated by the Chargor on each date during the Security Period
- (c) When a representation is repeated, it is applied to the circumstances existing at the time of repetition

#### **3.15 Estoppel**

The Chargor acknowledges and agrees that the representations in this Mortgage are made by way of deed, and that it shall be estopped from subsequently arguing that any representation was untrue when made or repeated

### **4. RESTRICTIONS ON DEALINGS**

#### **4.1 Security**

Except as expressly allowed in the Credit Agreement, the Chargor must not create or permit to subsist any Security Interest on any Security Asset (except for this Security)

#### **4.2 Disposals**

Except as expressly allowed in the Credit Agreement, the Chargor must not sell, transfer, licence, lease or otherwise dispose of any Security Asset

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**5. SHARES****5.1 Deposit**

The Chargor must

- (a) immediately deposit with the Security Trustee, or as the Security Trustee may direct, all certificates and other documents of title or evidence of ownership in relation to any Shares, and
- (b) promptly execute and deliver to the Security Trustee a share transfer instrument in the form set out in Schedule 2 and other documents which may be requested by the Security Trustee in order to enable the Security Trustee or its nominees to be registered as the owner or otherwise obtain legal title to the Shares

**5.2 Title to Shares**

At any time after this Security has become enforceable, or if the Security Trustee (acting reasonably) believes that either an Event of Default may occur or that the Security Assets may be in jeopardy, the Security Trustee may complete and date the share transfer instruments delivered under this Mortgage and register the Shares in its own name or the name of its nominee, subject to any equity of redemption under this Mortgage in favour of the Chargor

**5.3 Removal of directors**

The Mortgage Obligors shall procure that

- (a) signed but undated letters of resignation from each director of the Company in the form set out in Schedule 1, Part I, and
- (b) signed and dated letters of authorisation from each director of the Company in the form set out in Schedule 1, Part II,

are delivered to the Security Trustee contemporaneously with the execution of this Mortgage, and where any person is appointed as a director of the Company after the execution of this Mortgage the Mortgage Obligors shall procure that they deliver such letters to the Security Trustee immediately after their appointment as a director

**5.4 Registered Agent**

The Mortgage Obligors shall execute and deliver to the Registered Agent an irrevocable letter of instruction in the form set out in Schedule 3

**5.5 Changes to rights**

The Mortgage Obligors must not take or allow the taking of any action on their behalf which may result in the rights attaching to any of the Shares being altered or further shares in the Company being issued

**5.6 Payments on shares**

- (a) The Chargor must pay all payments due and payable in respect of any Shares in its ownership

- (b) If the Chargor fails to do so, the Security Trustee may pay the calls or other payments in respect of any such Shares on behalf of the Chargor. The Chargor must immediately on request reimburse the Security Trustee for any payment made by the Security Trustee under this Subclause.

#### **5.7 Other obligations in respect of Shares**

- (a) The Chargor must promptly copy to the Security Trustee and comply with all requests for information which is within its knowledge and which are made under any relevant statute or provision contained in any articles of association or other constitutional document relating to any Shares. If it fails to do so, the Security Trustee may elect to provide such information as it may have on behalf of the Chargor.
- (b) The Chargor must comply with all other conditions and obligations assumed by it in respect of any Shares.
- (c) 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 or sufficiency 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 Mortgage,

in respect of any Shares

#### **5.8 Voting rights**

- (a) Before this Security becomes enforceable
  - (i) the voting rights, powers and other rights in respect of the Shares shall be exercised by the Chargor, or, if the Shares are registered in the name of the Security Trustee or its nominee, as the Chargor may direct in writing, and
  - (ii) all dividends or other income paid or payable in relation to any Shares shall be paid to the Chargor.
- (b) The Chargor must indemnify the Security Trustee against any loss or liability incurred by the Security Trustee as a consequence of the Security Trustee acting in respect of the Security Assets as permitted by this Mortgage on the direction of the Chargor.
- (c) After this Security has become enforceable
  - (i) the Security Trustee may exercise (in the name of the Chargor and without any further consent or authority on the part of the Chargor) any voting rights and any powers or rights which may be exercised by the legal or beneficial owner of any Security Asset, any person who is the holder of any Security Asset or otherwise,
  - (ii) the Chargor may not exercise any voting rights, powers and other rights in respect of the Shares, and

- (iii) all dividends or other income paid or payable in relation to any Shares shall be paid to the Security Trustee and applied to the Secured Liabilities

## **5.9 Company obligations**

### **The Company**

- (a) irrevocably waives
  - (i) any first and paramount lien, and
  - (ii) any rights of forfeiture,which it may have, now or in the future, under its constitutional documents, in relation to the Security Assets,
- (b) irrevocably consents to the transfer of the Shares pursuant to the enforcement by the Security Trustee of any of its rights under this Mortgage,
- (c) shall not
  - (i) register the transfer of any Share to any other person,
  - (ii) amend its memorandum of association or articles of association, or
  - (iii) change its Registered Agent,without the prior written consent of the Security Trustee

## **5.10 Share register**

- (a) The Company shall maintain a single original share register at its registered office in the British Virgin Islands during the Security Period
- (b) The Company shall
  - (i) make a notation of this Security in its share register under section 66(8) of the Companies Act,
  - (ii) promptly register any transfer of title to the Shares pursuant to any enforcement by the Security Trustee of its rights under this Mortgage
- (c) The Company shall not be required to file a copy of its share register with the Registry of Corporate Affairs during the Security Period

## **6. WHEN SECURITY BECOMES ENFORCEABLE**

### **6.1 Event of Default**

This Security will become immediately enforceable if an Event of Default occurs and is outstanding

### **6.2 Discretion**

After this Security has become enforceable, the Security Trustee may in its absolute discretion enforce all or any part of this Security in any manner it sees fit



### **6.3 Statutory powers**

The power of sale and other powers conferred by Section 38 of the Act, as amended by this Mortgage, will be immediately exercisable at any time after this Security has become enforceable

## **7. ENFORCEMENT OF SECURITY**

### **7.1 General**

- (a) For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Mortgage
- (b) Section 40 of the Act (restricting the power of sale) and section 35 of the Act (restricting the right of consolidation) do not apply to this Security

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

Neither the Security Trustee nor any Receiver will be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable

### **7.3 Privileges**

Each Receiver and the Security Trustee is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers duly appointed under the Act, except that section 40 of the Act does not apply

### **7.4 Protection of third parties**

No person (including a purchaser) dealing with the Security Trustee or a Receiver or its or his agents will be concerned to enquire

- (a) whether the Secured Liabilities have become payable,
- (b) whether any power which the Security Trustee or a Receiver is purporting to exercise has become exercisable or is being properly exercised,
- (c) whether any money remains due under the Finance Documents, or
- (d) how any money paid to the Security Trustee or to that Receiver is to be applied

### **7.5 Redemption of prior mortgages**

- (a) At any time after this Security has become enforceable, the Security Trustee may
  - (i) redeem any prior Security Interest against any Security Asset, and/or
  - (ii) procure the transfer of that Security Interest to itself, and/or
  - (iii) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer, any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargor

- (b) The Chargor must pay to the Security Trustee, immediately on demand, the costs and expenses incurred by the Security Trustee in connection with any such redemption and/or transfer, including the payment of any principal or interest

#### **7.6 Contingencies**

If this Security is enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the Security Trustee (or the Receiver) may pay the proceeds of any recoveries effected by it into a suspense account or other account selected by it.

### **8. RECEIVER**

#### **8.1 General**

In this Clause, "**Qualified Person**" means a person eligible to be appointed as a receiver in respect of the Chargor under the Insolvency Act

#### **8.2 Appointment of Receiver**

- (a) Except as provided below, the Security Trustee may appoint any one or more Qualified Persons to be a Receiver of all or any part of the Security Assets if
  - (i) this Security has become enforceable, or
  - (ii) the Chargor so requests the Security Trustee in writing at any time
- (b) Any appointment under paragraph (a) above may be by deed, under seal or in writing under its hand
- (c) Except as provided below, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 46 of the Act) does not apply to this Mortgage

#### **8.3 Removal**

The Security Trustee may by writing under its hand (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated

#### **8.4 Remuneration**

The Security Trustee may fix the remuneration of any Receiver appointed by it and the maximum rate specified in section 46 of the Act will not apply

#### **8.5 Agent of the Chargor**

- (a) A Receiver will be deemed to be the agent of the Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor alone is responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for liabilities incurred by a Receiver
- (b) No Finance Party will incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason

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**9. POWERS OF RECEIVER****9.1 General**

- (a) A Receiver has all of the rights, powers and discretions set out below in this Clause in addition to those conferred on it by any law, including
  - (i) in the case of an administrative receiver, all the rights, powers and discretions conferred on an administrative receiver under the Insolvency Act, and
  - (ii) otherwise, all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the Act and the Insolvency Act
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Mortgage individually and to the exclusion of any other Receiver

**9.2 Possession**

A Receiver may take immediate possession of, get in and collect any Security Asset

**9.3 Employees**

- (a) A Receiver may appoint and discharge managers, officers, agents, accountants, servants, workmen and others for the purposes of this Mortgage upon such terms as to remuneration or otherwise as he thinks fit
- (b) A Receiver may discharge any person appointed by the Chargor

**9.4 Borrow money**

A Receiver may raise and borrow money either unsecured or on the security of any Security Asset either in priority to this Security or otherwise and generally on any terms and for whatever purpose which he thinks fit

**9.5 Sale of assets**

- (a) A Receiver may sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms which he thinks fit
- (b) The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit

**9.6 Compromise**

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

**9.7 Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he thinks fit

**9.8 Receipts**

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset

**9.9 Subsidiaries**

A Receiver may form a subsidiary of the Chargor and transfer to that subsidiary any Security Asset

**9.10 Delegation**

A Receiver may delegate his powers in accordance with this Mortgage

**9.11 Lending**

A Receiver may lend money or advance credit to any customer of the Chargor

**9.12 Other powers**

A Receiver may

- (a) do all other acts and things which he may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Mortgage or law,
- (b) exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset, and
- (c) use the name of the Chargor for any of the above purposes

**10. APPLICATION OF PROCEEDS**

Any moneys received by the Security Trustee or any Receiver after this Security has become enforceable must be applied in the following order of priority

- (a) in or towards payment of or provision for all costs and expenses incurred by the Security Trustee or any Receiver under or in connection with this Mortgage and of all remuneration due to any Receiver under or in connection with this Mortgage,
- (b) in or towards payment of or provision for the Secured Liabilities, and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled to it

This Clause is subject to the payment of any claims having priority over this Security. This Clause does not prejudice the right of any Finance Party to recover any shortfall from the Chargor

**11 EXPENSES AND INDEMNITY**

The Chargor must

- (a) immediately on demand pay all costs and expenses (including legal fees) incurred in connection with this Mortgage by any Finance Party, Receiver, attorney, manager, agent or other person appointed by the Security Trustee under this Mortgage including any arising from any actual or alleged breach by any person of any law or regulation, whether relating to the environment or otherwise, and
- (b) keep each of them indemnified against any failure or delay in paying those costs or expenses,

in connection with which the Chargor's obligations shall be joint and several

## **12. DELEGATION**

### **12.1 Power of Attorney**

The Security Trustee or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Mortgage

### **12.2 Terms**

Any such delegation may be made upon any terms (including power to sub-delegate) which the Security Trustee or any Receiver may think fit

### **12.3 Liability**

Neither the Security Trustee nor any Receiver will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate

## **13. FURTHER ASSURANCES**

The Mortgage Obligors must, at their own expense, take whatever action the Security Trustee or a Receiver may require for

- (a) creating, perfecting or protecting any security intended to be created by this Mortgage, or
- (b) facilitating the realisation of any Security Asset, or the exercise of any right, power or discretion exercisable, by the Security Trustee or any Receiver or any of its delegates or sub-delegates in respect of any Security Asset

This includes

- (i) the execution of any transfer, conveyance, assignment or assurance of any property, whether to the Security Trustee or to its nominee, or
- (ii) the giving of any notice, order or direction and the making of any registration (including promptly complying with the Mortgage Obligors' obligations under Clause 5 9(c),

which, in any such case, the Security Trustee may think expedient

## **14. POWER OF ATTORNEY**

The Chargor, by way of security, irrevocably and severally appoints the Security Trustee, each Receiver and any of its delegates or sub-delegates to be its attorney to take any action which the

Chargor is obliged to take under this Mortgage and which the Chargor has failed to take. The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause.

## **15 MISCELLANEOUS**

### **15.1 Covenant to pay**

The Mortgage Obligors must pay or discharge the Secured Liabilities in the manner provided for in the Finance Documents.

### **15.2 Continuing security**

- (a) This Security is continuing and will extend to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.
- (b) This Security is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Security Trustee for any of the Secured Liabilities.

### **15.3 Tacking**

- (a) This Mortgage is made to secure any further advances or other facilities made available by the Finance Parties under the Finance Documents.
- (b) Each Finance Party must perform its obligations under the Credit Agreement (including any obligation to make available further advances).

### **15.4 New Accounts**

- (a) If any subsequent charge or other interest affects any Security Asset, the Security Trustee may open a new account for the Chargor.
- (b) If the Security Trustee does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other account.
- (c) As from that time all payments made to the Security Trustee will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Liability.

### **15.5 Waivers and remedies cumulative**

- (a) The rights of the Security Trustee under this Mortgage
  - (i) may be exercised as often as necessary,
  - (ii) are cumulative and not exclusive of its rights under general law, and
  - (iii) may be waived only in writing and specifically.
- (b) Delay in exercising or non-exercise of any such right is not a waiver of that right.

**15.6 Transfers**

- (a) The Mortgage Obligors may not assign or otherwise transfer any of their rights and/or obligations under this Mortgage
- (b) The Security Trustee may assign, transfer, novate or dispose of all or any part of its rights and/or obligations under this Mortgage

**15.7 Severability**

If a provision of this Mortgage is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect

- (a) the validity or enforceability in that jurisdiction of any other provision of this Mortgage, or
- (b) the validity or enforceability in any other jurisdiction of that or any other provision of this Mortgage

**15.8 Taxes**

The Chargor will be liable for the payment or procuring the payment when due of all present and future registration fees, stamp duties and other similar tax which is or becomes payable in relation to this Mortgage and keeping the Security Trustee indemnified against any failure or delay in paying them

**15.9 Reinstatement**

- (a) If any discharge (whether in respect of the obligations of any Mortgage Obligor or any security for those obligations or otherwise) or arrangement is made in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of the Chargor's under this Mortgage will continue as if the discharge or arrangement had not occurred
- (b) Each Finance Party may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration

**15.10 Waiver of defences**

The obligations of the Mortgage Obligors under this Mortgage will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of their obligations under this Mortgage and this Security and whether or not known to the Mortgage Obligor or any Finance Party including

- (a) any time, waiver or consent granted to, or composition with, an Obligor or other person,
- (b) the release of an Obligor or any other person under the terms of any composition or arrangement with any creditor or an Obligor,
- (c) the taking, variation, compromise, exchange, renewal or release of, refusal or neglect to perfect, take up or enforce, any rights against, or Security Interest or other rights over or relating to assets of, an Obligor or other person or any non-presentment or non-

observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any Security Interest,

- (d) any incapacity or lack of powers, authority or legal personality of or dissolution or change in the members or status of, an Obligor or other person,
- (e) any amendment (however fundamental) or replacement of any Finance Document or other document,
- (f) any unenforceability, illegality or invalidity or any obligation of any person under any Finance Document or other document, and
- (g) any insolvency or similar proceedings

#### **15.11 Immediate recourse**

The Chargor waives any right they may have of first requiring a Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security Interest or claim payment from any other person before claiming from the Chargor under this Mortgage

#### **15.12 Appropriations**

Each Finance Party (or any trustee or agent on its behalf) may at any time during the Security Period without affecting the liability of the Chargor under this Mortgage

- (a)
  - (i) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or
  - (ii) apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise), and
- (b) hold in an interest bearing suspense account any moneys received from the Chargor or on account of the liability of the Chargor under this Mortgage

#### **15.13 Non-competition**

Until the end of the Security Period, the Mortgage Obligors will not exercise any rights which they may have by reason of performance of their obligations under this Mortgage

- (a) to be indemnified by an Obligor,
- (b) to claim any contribution from any guarantor of an Obligor's obligations, and/or
- (c) to take the benefit of (in whole or in part and whether by subrogation or otherwise) of any right of the Finance Parties under this Mortgage or of any other guarantee or Security Interest taken pursuant to, or in connection with, the Finance Documents by any Finance Party

Each Mortgage Obligor must hold in trust for and immediately pay or transfer to the Security Trustee for the Finance Parties any payment or distribution or benefit of security received by it



contrary to this Clause or in accordance with any directions given by the Security Trustee under this Clause

#### **15.14 Counterparts**

This Mortgage 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 Mortgage

#### **15.15 No redomiciling**

None of the Mortgage Obligors shall continue its existence in a jurisdiction outside of or otherwise change or attempt or resolve to change its jurisdiction of incorporation and registration

#### **16. NOTICES**

- (a) The provisions of clause 36 (Notices) of the Credit Agreement shall apply to this Mortgage, with any necessary changes
- (b) Service of notices on the Mortgage Obligors or either of them may alternatively be effected as follows

Biwater (BVI) Ltd  
c/o MMG Trust (BVI) Corp  
Pasea Estate  
P O Box 958  
Road Town, Tortola VG1110  
British Virgin Islands

Attention Ryan Murphy

with a copy by facsimile to +44 (01306) 885233

Attention Ryan Murphy

#### **17. RELEASE**

At the end of the Security Period, the Finance Parties must, at the request and cost of the Chargor, take whatever action is necessary to release the Security Assets from this Security

#### **18. LANGUAGE**

All documents and notices provided or given in connection with this Mortgage shall be

- (a) in English, or
- (b) if not in English, accompanied by a certified English translation and, in this case, the English translation shall prevail unless the document is a statutory or other official document

#### **19. JURISDICTION**

##### **19.1 Submission**

- (a) For the benefit of the Finance Parties, the Mortgage Obligors agree that the courts of the British Virgin Islands have jurisdiction to hear and determine any action, suit or proceeding,

and settle any disputes, in connection with this Mortgage or the Secured Liabilities and accordingly submit to the jurisdiction of the British Virgin Islands courts

- (b) Without prejudice to paragraph (a), the Mortgage Obligors further agree that that any suit, action or proceeding in connection with the Mortgage or the Secured Liabilities may be brought in the courts of England and of the Republic of Panama and submit to the non-exclusive jurisdiction of such courts

## **19.2 Service of process**

- (a) Without prejudice to any other mode of service, each Chargor
  - (i) irrevocably appoints the Company as its agent for service of process in relation to any proceedings before the British Virgin Islands courts in connection with this Mortgage,
  - (ii) agrees to maintain such an agent for service of process in the British Virgin Islands during the Security Period, and
  - (iii) consents to the service of process relating to any such proceedings by prepaid posting of a copy of the process to its address for the time being applying under Clause 16 (Notices)
- (b) The Company irrevocably agrees to act as the Chargor's agent for service of process in the British Virgin Islands for the duration of the Security Period

## **19.3 Forum convenience and enforcement abroad**

The Mortgage Obligors

- (a) waive any objection which they may have to such courts referred to in Clauses 19.1(a) and (b) on the grounds of inconvenient forum or otherwise as regards proceedings in connection with this Mortgage or the Secured Liabilities, and agree not to argue before any court or tribunal that such courts are an inappropriate or inconvenient forum, and
- (b) agree that a judgment or order of such courts referred to in Clauses 19.1(a) and (b) in connection with this Mortgage or the Secured Liabilities is conclusive and binding on each of them and may be enforced in the courts of any other jurisdiction

## **19.4 Non-exclusivity**

Nothing in this Clause 19 limits the right of the Security Trustee to bring proceedings against the Mortgage Obligors in connection with this Mortgage or the Secured Liabilities

- (a) in any other court of competent jurisdiction, or
- (b) concurrently in more than one jurisdiction, to the extent permitted by law

## **19.5 Security for costs**

To the extent that a Mortgage Obligor may, in any suit, action or proceeding brought in a court in any jurisdiction arising out of or in connection with this Mortgage or the Secured Liabilities be entitled to the benefit of any provision of law requiring any Finance Party in such suit, action or proceeding to post security for the costs of the Mortgage Obligors, or to post a bond or take similar

action, the Mortgage Obligors hereby irrevocably waive any such benefit, in each case to the fullest extent now or hereafter permitted under the laws of such jurisdiction

**20 GOVERNING LAW**

This Mortgage is governed by British Virgin Islands law

This Mortgage has been entered into on the date stated at the head of this document

**SCHEDULE 1 - Part I**

**Form of Directors' Letter of Resignation**

Date \_\_\_\_\_, 20\_\_\_\_

The Board of Directors  
Biwater (BVI) Ltd  
Road Town, Tortola  
British Virgin Islands

Dear Sirs

**Resignation as a director of Biwater (BVI) Ltd. (the "Company")**

We hereby resign with effect from the date of this letter as a director of the Company

We confirm that we have no claims against the Company for compensation in relation to our loss of office or otherwise, but to the extent that we may have any such claim, we hereby irrevocably waive the same

Yours faithfully

**BIWATER (BVI) HOLDINGS LTD**

**SCHEDULE 1 - Part II**

**Form of Directors' Letter of Authority**

[ *date* ]

Barclay Bank PLC  
Level 25,  
1 Church Hill Place  
London E14 5HP  
United Kingdom

Dear Sirs

**Resignation letter - directorship of Biwater (BVI) Ltd. (the "Company")**

Please find enclosed a signed but undated letter from us resigning our position as a director of the Company

We hereby irrevocably authorise you to date the letter and send it to the Company's registered office thereby terminating our directorship of the Company without compensation for loss of office. We acknowledge and agree that your discretion to act in this regard is to be exercised solely in the interests of the Finance Parties relating to the mortgage executed over shares in the Company in your favour on or about the date of this letter.

We confirm that you may delegate the authority conferred by this letter to any of your successors and assigns as Security Trustee in relation to the mortgage granted or to be granted over shares in the Company.

Yours faithfully

[ *name of director* ]

**SCHEDULE 2**

**Form of Share Transfer**

**BIWATER (BVI) LTD.**

**(Company No 1505595)**

**a BVI Business Company**

**(the "Company")**

**SHARE TRANSFER**

We, **BIWATER (BVI) HOLDINGS LTD** a company incorporated under the laws of England with registration number 07890599 (the "*Transferor*") **DO HEREBY TRANSFER TO** \_\_\_\_\_ of \_\_\_\_\_ (the "*Transferee*") all of the \_\_\_\_\_ shares of no par value standing in our name in the share register of the Company

This Share Transfer is governed by British Virgin Islands law

As witness the hand of a duly authorised director of Biwater (BVI) Holdings Ltd the Transferor this  
day of \_\_\_\_\_, 20\_\_\_\_

**BIWATER (BVI) HOLDINGS LTD**

(Transferor)

**SCHEDULE 3**

**Form of letter of instruction to registered agent**

[ *date* ]

MMG Trust (BVI) Corp

Pasea Estate

P O Box 958

Road Town, Tortola

British Virgin Islands

Dear Sirs

**Irrevocable letter of instruction - mortgage over all of the shares issued by Biwater (BVI) Ltd. (the "Company")**

- 1 You are the Registered Agent of the Company
- 2 Please find enclosed a copy of a mortgage dated , 20 (the "**Mortgage**") executed by Biwater (BVI) Holdings Ltd (the "**Chargor**") in favour of Barclays Bank PLC (the "**Security Trustee**") over all of the shares issued by the Company Capitalised terms defined in the Mortgage have the same meaning in this letter
- 3 Pursuant to the terms of the Mortgage, the Company is prohibited from
  - (a) amending its memorandum and articles of association,
  - (b) changing its Registered Agent, or
  - (c) registering any transfer of Shares,without the prior written consent of the Security Trustee
- 4 Pursuant to the Mortgage, the Company is required to maintain its original share register at its registered office in the British Virgin Islands at all times
- 5 We hereby irrevocably authorise and direct you that, so long as the Mortgage remains in force
  - (a) the share register of the Company shall remain at the registered office under your control,
  - (b) you may not accept instructions to amend the share register of the Company except with the prior written consent of the Security Trustee,

- (c) you shall, if instructed to do so by the Security Trustee, register the transfer of Shares either to the Security Trustee (or its nominee), or to any third party pursuant to the power of sale conferred upon the Security Trustee under the Mortgage
- 6 We authorise you to accept any payment of fees from the Bank in relation to any steps required to be taken by you in relation to enforcement of the Mortgage
- 7 This letter of instruction shall remain in force until the Security Trustee notifies you in writing that the Mortgage has been released
- 8 This letter is governed by British Virgin Islands law

Yours faithfully

[ *name of director* ]

for and on behalf of

*Biwater (BVI) Holdings Ltd*

*Director of Biwater(BVI) Ltd*

[ *name of director* ]

for and on behalf of

*Biwater (BVI) Holdings Ltd*

cc [The Agent]



## EXECUTION PAGE

## Chargor

EXECUTED and DELIVERED )  
as a DEED by )  
BIWATER (BVI) HOLDINGS LTD )  
acting by its duly authorised attorney )



## Company

EXECUTED and DELIVERED )  
as a DEED by )  
BIWATER (BVI) LTD. )  
acting by its duly authorised attorney )



## Security Trustee

BARCLAYS BANK PLC

By ELISABETH CLARK



IN THE PRESENCE OF:



JENNIFER ETHERINGTON  
ONE BISHOPS SQUARE  
LONDON E1 6AD  
SOLICITOR



# SAVILLE & CO

— SCRIVENER NOTARIES —

One Carey Lane  
London EC2V 8AE  
Tel +44 (0)20 7920 0000  
Fax +44 (0)20 7920 0088  
www.savillenotaries.com  
mail@savillenotaries.com

Richard Saville  
Sophie Milburn  
Nicholas Thompson  
Robert Kerss  
Andrew MacNab  
Christopher Higgins  
(General Notary)

Eleonora Ceolin  
(General Notary)

TO ALL TO WHOM THESE PRESENTS SHALL COME, I ROBERT SCOTT KERSS of the City of London NOTARY PUBLIC by royal authority duly admitted and sworn DO HEREBY CERTIFY that I was present and did see JONATHAN STUART LAMB as and for the act and deed of the company styled **BIWATER (BVI) HOLDINGS LIMITED** of Surrey, England (hereinafter the "Chargor"), in due form of law sign and deliver the **equitable mortgage** hereunto annexed and that the signature thereto subscribed is of the own, true and proper handwriting of the said Jonathan Stuart Lamb, whose personal identity I attest and whose authority to sign the said equitable mortgage as the duly authorised attorney-in-fact of the Chargor, under and by virtue of a power of attorney dated 18<sup>th</sup> June 2013, I the notary certify, AND THAT the above mentioned individual acknowledged his signature to the document and that he has freely and voluntarily executed this instrument in his above mentioned capacity and understood its contents,

AND I DO FURTHER CERTIFY that I was present and did also see the said Jonathan Stuart Lamb as and for the act and deed of the company styled **BIWATER (BVI) LTD.** of the British Virgin Islands (hereinafter the "Company"), in due form of law sign and deliver the said equitable mortgage and that the signature thereto subscribed is of the own, true and proper handwriting of the said Jonathan Stuart Lamb, whose personal identity I attest and whose authority to sign the said equitable mortgage as the duly authorised attorney-in-fact of the Company, under and by virtue of a power of attorney dated 18<sup>th</sup> June 2013, I the notary certify, AND THAT the above mentioned individual acknowledged his signature to the document and that he has freely and voluntarily executed this instrument in his above mentioned capacity and understood its contents,

AND I DO ALSO CERTIFY that I was present and did see ELISABETH MARY GLADYS CLARK for and on behalf of the company styled **BARCLAYS BANK PLC** of London, England (hereinafter the "Security Trustee"), in due form of law sign and deliver the said annexed equitable mortgage and that the signature thereto subscribed is of the own, true and proper handwriting of the said Elisabeth Mary Gladys Clark, whose personal identity I attest and whose authority to sign the said equitable mortgage as the duly authorised attorney-in-fact of the Security Trustee, under and by virtue of a power of attorney dated 3<sup>rd</sup> April 2013, I the notary certify, AND THAT the above mentioned individual acknowledged her signature to the document and that she has freely and voluntarily executed this instrument in her above mentioned capacity and understood its contents

IN FAITH AND TESTIMONY WHEREOF I the said notary have subscribed my name and set and affixed my seal of office at London aforesaid this ~~fourteenth~~ <sup>fifteenth</sup> day of November two thousand and thirteen.



ated by the Faculty Office of the Archbishop of Canterbury

*\*delete the inapplicable*