



Registration of a Charge

Company name: **RESOLVING LIMITED**

Company number: **08021550**



X8114NLN

Received for Electronic Filing: **11/11/2019**

Details of Charge

Date of creation: **04/11/2019**

Charge code: **0802 1550 0003**

Persons entitled: **DRAPER ESPIRIT PLC**

Brief description:

Contains fixed charge(s).

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

Contains negative pledge.

Chargor acting as a bare trustee for the property.

Authentication of Form

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

Authentication of Instrument

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

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

Certified by:

DMH STALLARD LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8021550

Charge code: 0802 1550 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 4th November 2019 and created by RESOLVING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th November 2019 .

Given at Companies House, Cardiff on 12th November 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: **4 November**

2019

RESOLVING LIMITED

and

DRAPER ESPRIT PLC
(as Security Agent)

DEBENTURE

It is hereby certified that this is a true
redacted copy of the original document.

DMH Stallard LLP

DMH Stallard LLP
Griffin House
135 High Street
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RH10 1DQ



DMH Stallard

www.dmhstallard.com

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THIS DEED is made the 4th day of November 2019

BETWEEN

- (1) **RESOLVING LIMITED** a company incorporated in England with company number 008021550 whose registered office is at Treviot House, 186-192 High Road, Ilford, Essex, IG1 1LR (the Chargor).
- (2)
- (3) **DRAPER ESPRIT PLC** a company incorporated in England with company number 09799594 whose office is at 20 Garrick Street, WC2E 9BT8HN (the Security Agent) as security agent for the Loan Noteholders.

BACKGROUND

- (A) Under this deed, the Chargor provides security to the Security Agent for the benefit of the Loan Noteholders under the terms of the Instrument.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this deed:

Administrator: an administrator appointed to manage the affairs, business and property of the Chargor pursuant to clause 13.8.

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

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

Delegate: any person appointed by the Security Agent or any Receiver pursuant to clause 18 and any person appointed as attorney of the Security Agent, Receiver or Delegate.

Designated Account: any account of the Chargor nominated by the Security Agent as a designated account for the purposes of this deed.

Environment: the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

Environmental Law: all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

Equipment: all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property

for the time being owned by the Chargor, including any part of it and all spare parts, replacements, modifications and additions.

Event of Default: has the meaning given to that expression in the Instrument.

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

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

Insurance Policy: each contract and policy of insurance effected or maintained by the Chargor from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the Properties or the Equipment).

Instrument: the £3,000,000 secured convertible loan notes 2019 Instrument dated [DATE] for the provision of the loan facilities secured by this deed.

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

Investments: all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by the Chargor, including any:

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

Loan Notes: means the loan notes issued pursuant to the Instrument and outstanding from time to time.

Loan Noteholders: means the person owning of record, from time to time, the Loan Notes.

LPA 1925: the Law of Property Act 1925.

Properties: all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned

by the Chargor, or in which the Chargor holds an interest (including, but not limited to, the properties specified in Schedule 1, if any), and **Property** means any of them.

Receiver: a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Security Agent under clause 16.

Relevant Agreement: each agreement to which the Chargor is a party and which is, by its nature or terms, material to the net asset level, profits or operations of the Chargor and its subsidiaries on an on-going basis.

Secured Assets: all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them).

Secured Liabilities: all present and future monies, obligations and liabilities of the Chargor pursuant to the Instrument, including the Loan Notes, or this deed (including, without limitation, those arising under clause 30.3.2), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

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

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

Security Period: the period starting on the date of this deed and ending on the date on which the Security Agent is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

1.2 Interpretation

In this deed:

1.2.1 clause and Schedule headings shall not affect the interpretation of this deed;

1.2.2 a reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);

1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the Loan Noteholders and the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;

- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to writing or written includes fax but not email;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to this deed (or any provision of it) or to the Instrument or any other agreement or document referred to in this deed is a reference to this deed or the Instrument, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.12 any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.14 a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.16 a reference to continuing in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.17 a reference to determines or determined means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.18 a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- 1.3 **Clawback**
If the Security Agent considers that an amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.
- 1.4 **Nature of security over real property**
A reference in this deed to a charge or mortgage of or over any Property includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time;
- 1.4.2 the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Chargor in respect of that Property, and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of that Property.
- 1.5 **Law of Property (Miscellaneous Provisions) Act 1989**
For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Instrument and of any side letters between any parties in relation to the Instrument are incorporated into this deed.
- 1.6 **Perpetuity period**
If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).
- 1.7 **Schedules**
The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.
- 1.8 **Trust**

The Security Agent holds the benefit of this deed for itself and on trust for the Loan Noteholders.
- 2. **COVENANT TO PAY**
The Chargor shall, on demand, pay and discharge the Secured Liabilities when they become due.
- 3. **GRANT OF SECURITY**- 3.1 **Legal mortgage**
As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Security Agent, by way of first legal mortgage, each Property specified in Schedule 1.
- 3.2 **Fixed charges**
As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Security Agent by way of first fixed charge;

- 3.2.1 all Properties acquired by the Chargor in the future;
- 3.2.2 all present and future interests of the Chargor not effectively mortgaged or charged under the preceding provisions of this clause 3 in, or over, freehold or leasehold property;
- 3.2.3 all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;
- 3.2.4 all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Chargor's business or the use of any Secured Asset, and all rights in connection with them;
- 3.2.5 all its present and future goodwill;
- 3.2.6 all its uncalled capital;
- 3.2.7 all the Equipment;
- 3.2.8 all the Intellectual Property;
- 3.2.9 all the Book Debts;
- 3.2.10 all the Investments;
- 3.2.11 all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account), together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest);
- 3.2.12 all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy, to the extent not effectively assigned under clause 3.3; and
- 3.2.13 all its rights in respect of each Relevant Agreement and all other agreements, instruments and rights relating to the Secured Assets, to the extent not effectively assigned under clause 3.3.
- 3.3 **Assignment**
As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee assigns to the Security Agent absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:
 - 3.3.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy; and
 - 3.3.2 the benefit of each Relevant Agreement and the benefit of all other agreements, instruments and rights relating to the Secured Assets.
- 3.4 **Floating charge**
As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Security Agent, by way of first

floating charge, all the undertaking, property, assets and rights of the Chargor at any time not effectively mortgaged, charged or assigned pursuant to clause 3.1 to clause 3.3 inclusive.

3.5 Qualifying floating charge

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

3.6 Automatic crystallisation of floating charge

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

3.6.1 the Chargor:

- (a) creates, or attempts to create, without the prior written consent of the Security Agent, Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this deed or the Instrument); or
- (b) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);

3.6.2 any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or

3.6.3 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor.

3.7 Crystallisation of floating charge by notice

The Security Agent may, in its sole discretion, by written notice to the Chargor, convert the floating charge created under this deed into a fixed charge as regards any part of the Secured Assets specified by the Security Agent in that notice if:

3.7.1 an Event of Default occurs and is continuing; or

3.7.2 the Security Agent considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

3.8 Assets acquired after any floating charge has crystallised

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

4. LIABILITY OF THE CHARGOR

4.1 Liability not discharged

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

- 4.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Security Agent or any Loan Noteholder that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 4.1.2 the Security Agent or any Loan Noteholder renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 4.1.3 any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Chargor.

4.2 Immediate recourse

The Chargor waives any right it may have to require the Security Agent or any Loan Noteholder to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Chargor.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties

The Chargor makes the representations and warranties set out in this clause 5 to the Security Agent.

5.2 Ownership of Secured Assets

The Chargor is the sole legal and beneficial owner of the Secured Assets.

5.3 No Security

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

5.4 No adverse claims

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

5.5 No adverse covenants

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

5.6 No breach of laws

There is no breach of any law or regulation that materially and adversely affects the Secured Assets.

5.7 No interference in enjoyment

No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.

- 5.8 No overriding interests**
Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.
- 5.9 Avoidance of security**
No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.
- 5.10 No prohibitions or breaches**
There is no prohibition on assignment in any Insurance Policy or Relevant Agreement and the entry into this deed by the Chargor does not, and will not, constitute a breach of any Insurance Policy, Relevant Agreement or any other agreement or instrument binding on the Chargor or its assets.
- 5.11 Environmental compliance**
The Chargor has, at all times, complied in all material respects with all applicable Environmental Law.
- 5.12 Enforceable security**
This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Chargor, and is, and will continue to be, effective security over all and every part of the Secured Assets in accordance with its terms.
- 5.13 Investments**
- 5.13.1** The Investments are fully paid and are not subject to any option to purchase or similar rights.
- 5.13.2** No constitutional document of an issuer of an Investment, nor any other agreement:
- (a) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this deed; or
 - (b) contains any rights of pre-emption in relation to the Investments.
- 5.13.3** The Chargor has complied with all notices relating to all or any of the Investments received by it pursuant to sections 790D and 790E of the Companies Act 2006.
- 5.13.4** No warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of all or any of the Investments.
- 5.14 Times for making representations and warranties**
The representations and warranties set out in clause 5.2 to clause 5.13 are made by the Chargor on the date of this deed and the representations and warranties contained in clause 5.2 to 5.11 are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.
- 6. GENERAL COVENANTS**

6.1 Negative pledge and disposal restrictions

The Chargor shall not at any time, except with the prior written consent of the Security Agent:

6.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this deed;

6.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or

6.1.3 create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

6.2 Preservation of Secured Assets

The Chargor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Security Agent, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this deed.

6.3 Compliance with laws and regulations

6.3.1 The Chargor shall not, without the Security Agent's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.

6.3.2 The Chargor shall:

- (a) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;
- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
- (c) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

6.4 Enforcement of rights

The Chargor shall use its best endeavours to:

6.4.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Chargor's counterparties (including each counterparty in respect of a Relevant Agreement and each insurer in respect of an Insurance Policy); and

6.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Security Agent may require from time to time.

- 6.5 Notice of misrepresentation and breaches**
The Chargor shall, promptly on becoming aware of any of the same, notify the Security Agent in writing of:
- 6.5.1** any representation or warranty set out in clause 5 which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 6.5.2** any breach of any covenant set out in this deed.
- 6.6 Title documents**
The Chargor shall, as so required by the Security Agent, deposit with the Security Agent and the Security Agent shall, for the duration of this deed be entitled to hold:
- 6.6.1** all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Chargor (and if these are not within the possession or control of the Chargor, the Chargor undertakes to obtain possession of all these deeds and documents of title);
- 6.6.2** all Insurance Policies and any other insurance policies relating to any of the Secured Assets that the Chargor is entitled to possess;
- 6.6.3** all deeds and documents of title (if any) relating to the Book Debts as the Security Agent may specify from time to time; and
- 6.6.4** copies of all the Relevant Agreements, certified to be true copies by either a director of the Chargor or by the Chargor's solicitors.
- 6.7 Insurance**
- 6.7.1** The Chargor shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Secured Assets against:
- (a) loss or damage by fire or terrorist acts;
- (b) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Chargor; and
- (c) any other risk, perils and contingencies as the Security Agent may reasonably require.
- 6.7.2** Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Security Agent, and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Secured Assets (meaning in the case of any premises on any Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate

allowance for inflation) and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three years, including provision for increases in rent during the period of insurance

- 6.7.3 The Chargor shall, if requested by the Security Agent, produce to the Security Agent each policy, certificate or cover note relating to the insurance required by clause 6.7.1 (or where, in the case of any leasehold property, that insurance is effected by the landlord, such evidence of insurance as the Chargor is entitled to obtain from the landlord under the terms of the relevant lease).
- 6.7.4 The Chargor shall, if requested by the Security Agent, procure that a note of the Security Agent's interest is endorsed upon each insurance policy (other than public liability and third party liability insurances) maintained by it or any person on its behalf in accordance with clause 6.7.1 but without the Security Agent having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.
- 6.8 **Insurance premiums**
The Chargor shall:
- 6.8.1 promptly pay all premiums in respect of each insurance policy maintained by it in accordance with clause 6.7.1 and do all other things necessary to keep that policy in full force and effect; and
- 6.8.2 (if the Security Agent so requires) produce to, or deposit with, the Security Agent the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy maintained by it in accordance with clause 6.7.1 (or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Chargor is entitled to obtain from the landlord under the terms of the relevant lease).
- 6.9 **No invalidation of insurance**
The Chargor shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy maintained by it in accordance with clause 6.7.1.
- 6.10 **Proceeds of insurance policies**
All monies payable under any insurance policy maintained by it in accordance with clause 6.7.1 at any time (whether or not the security constituted by this deed has become enforceable) shall:
- 6.10.1 immediately be paid to the Security Agent;
- 6.10.2 if they are not paid directly to the Security Agent by the insurers, be held, pending such payment, by the Chargor as trustee of the same for the benefit of the Security Agent; and
- 6.10.3 at the option of the Security Agent, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.

- 6.11 **Notices to be given by the Chargor**
The Chargor shall as so requested by the Security Agent from time to time give notice to each counterparty to a Relevant Agreement and procure that each counterparty provides to the Security Agent promptly an acknowledgement of the notice in a form acceptable to the Security Agent; and
- 6.11.1 on the execution of this deed and as so requested by the Security Agent from time to time give notice to each insurer under an Insurance Policy,
- 6.12 **Information**
The Chargor shall:
- 6.12.1 give the Security Agent such information concerning the location, condition, use and operation of the Secured Assets as the Security Agent may require;
- 6.12.2 permit any persons designated by the Security Agent and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- 6.12.3 promptly notify the Security Agent in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Security Agent's prior approval, implement those proposals at its own expense.
- 6.13 **Payment of outgoings**
The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Security Agent.
- 6.14 **Appointment of accountants**
- 6.14.1 The Chargor shall:
- (a) at its own cost, if at any time so required by the Security Agent, appoint an accountant or firm of accountants nominated by the Security Agent to investigate the financial affairs of the Chargor and those of its subsidiaries and report to the Security Agent; and
- (b) co-operate fully with any accountants so appointed and immediately provide those accountants with all information requested.
- 6.14.2 The Chargor authorises the Security Agent to make an appointment as it shall think fit at any time, without further authority from the Chargor. In every case, the Chargor shall pay, or reimburse the Security Agent for, the fees and expenses of those accountants.
7. **PROPERTY COVENANTS**

- 7.1 Maintenance**
The Chargor shall keep all premises and fixtures and fittings on each Property in good and substantial repair and condition.
- 7.2 Preservation of Property, fixtures and Equipment**
The Chargor shall not, without the prior written consent of the Security Agent:
- 7.2.1** pull down or remove the whole, or any part of, any building forming part of any Property or permit the same to occur;
- 7.2.2** make or permit any material alterations to any Property, or sever or remove, or permit to be severed or removed, any of its fixtures; or
- 7.2.3** remove or make any material alterations to any of the Equipment belonging to, or in use by, the Chargor on any Property (except to effect necessary repairs or replace them with new or improved models or substitutes).
- 7.3 Conduct of business on Properties**
The Chargor shall carry on its trade and business on those parts (if any) of the Properties as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in that trade or business.
- 7.4 Planning information**
The Chargor shall:
- 7.4.1** give full particulars to the Security Agent of any notice, order, direction, designation, resolution or proposal given or made by any planning authority or other public body or authority (**Planning Notice**) that specifically applies to any Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Planning Notice; and
- 7.4.2** at its own expense, immediately on request by the Security Agent, and at the cost of the Chargor, take all reasonable and necessary steps to comply with any Planning Notice, and make, or join with the Security Agent in making, any objections or representations in respect of that Planning Notice that the Security Agent may desire.
- 7.5 Compliance with covenants and payment of rent**
The Chargor shall:
- 7.5.1** observe and perform all covenants, stipulations and conditions to which each Property, or the use of it, is or may be subjected, and (if the Security Agent so requires) produce evidence sufficient to satisfy the Security Agent that those covenants, stipulations and conditions have been observed and performed;
- 7.5.2** diligently enforce all covenants, stipulations and conditions benefiting each Property and shall not (and shall not agree to) waive, release or vary any of the same; and
- 7.5.3** (without prejudice to the generality of the foregoing) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and perform and observe all the tenant's covenants and conditions.

- 7.6 Payment of rent and outgoings**
The Chargor shall:
- 7.6.1** where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and
- 7.6.2** pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on each Property or on its occupier.
- 7.7 Maintenance of Interests in Properties**
The Chargor shall not, without the prior written consent of the Security Agent:
- 7.7.1** grant, or agree to grant, any licence or tenancy affecting the whole or any part of any Property, or exercise, or agree to exercise, the statutory powers of leasing or of accepting surrenders under sections 99 or 100 of the Law of Property Act 1925; or
- 7.7.2** in any other way dispose of, surrender or create, or agree to dispose of surrender or create, any legal or equitable estate or interest in the whole or any part of any Property.
- 7.8 Registration restrictions**
If the title to any Property is not registered at the Land Registry, the Chargor shall procure that no person (other than itself) shall be registered under the Land Registration Acts 1925 to 2002 as proprietor of all or any part of any Property without the prior written consent of the Security Agent. The Chargor shall be liable for the costs and expenses of the Security Agent in lodging cautions against the registration of the title to the whole or any part of any Property from time to time.
- 7.9 Development restrictions**
The Chargor shall not, without the prior written consent of the Security Agent:
- 7.9.1** make or, insofar as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or
- 7.9.2** carry out, or permit, or suffer to be carried out on any Property any development as defined in the Town and Country Planning Act 1990 and the Planning Act 2008, or change or permit or suffer to be changed the use of any Property.
- 7.10 Environment**
The Chargor shall:
- 7.10.1** comply with all the requirements of Environmental Law both in the conduct of its general business and in the management, possession or occupation of each Property; and
- 7.10.2** obtain and comply with all authorisations, permits and other types of licences necessary under Environmental Law.
- 7.11 No restrictive obligations**

The Chargor shall not, without the prior written consent of the Security Agent, enter into any onerous or restrictive obligations affecting the whole or any part of any Property, or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of any Property.

7.12 Proprietary rights

The Chargor shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of any Property without the prior written consent of the Security Agent.

7.13 Inspection

The Chargor shall permit the Security Agent, any Receiver and any person appointed by either of them to enter on and inspect any Property on reasonable prior notice.

7.14 Property information

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

7.15 VAT option to tax

The Chargor shall not, without the prior written consent of the Security Agent:

7.15.1 exercise any VAT option to tax in relation to any Property; or

7.15.2 revoke any VAT option to tax exercised, and disclosed to the Security Agent, before the date of this deed.

7.16 Registration at the Land Registry

The Chargor consents to an application being made by the Security Agent to the Land Registrar for the following restriction in Form P to be registered against its title to each Property:

"No disposition of the registered estate by the proprietor of the registered estate [or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction] is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of [NAME OF PARTY] referred to in the charges register or [their conveyancer or specify appropriate details]."

8. INVESTMENTS COVENANTS

8.1 Deposit of title documents

8.1.1 The Chargor shall upon request of the Security Agent:

(a) deliver to the Security Agent, or as the Security Agent may direct, all stock or share certificates and other documents of title or evidence of ownership relating to any Investments owned by the Chargor at that time; and

(b) on the purchase or acquisition by it of Investments after the date of this deed, deposit with the Security Agent, or as the Security Agent may direct,

all stock or share certificates and other documents of title or evidence of ownership relating to those Investments.

8.1.2 At the same time as depositing documents with the Security Agent, or as the Security Agent may direct, in accordance with clause 8.1.1, the Chargor shall also deposit with the Security Agent, or as the Security Agent may direct:

- (a) all stock transfer forms relating to the relevant Investments duly completed and executed by or on behalf of the Chargor, but with the name of the transferee, the consideration and the date left blank; and
- (b) any other documents (in each case duly completed and executed by or on behalf of the Chargor) that the Security Agent may request to enable it or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain a legal title to, or to perfect its security interest in any of the relevant Investments,

so that the Security Agent may, at any time and without notice to the Chargor, complete and present those stock transfer forms and other documents to the issuer of the Investments for registration.

8.2 Nominations

8.2.1 The Chargor shall upon request of the Security Agent terminate with immediate effect all nominations it may have made (including, without limitation, any nomination made under section 145 or section 146 of the Companies Act 2006) in respect of any Investments and, pending that termination, procure that any person so nominated:

- (a) does not exercise any rights in respect of any Investments without the prior written approval of the Security Agent; and
- (b) immediately on receipt by it, forward to the Security Agent all communications or other information received by it in respect of any Investments for which it has been so nominated.

8.2.2 After a request pursuant to clause 8.2.1 the Chargor shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments.

8.3 Pre-emption rights and restrictions on transfer

The Chargor shall:

8.3.1 obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association (or otherwise) of an issuer of any Investments, for the transfer of the Investments to the Security Agent or its nominee, or to a purchaser on enforcement of the security constituted by this deed; and

8.3.2 procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) under the articles of association, other constitutional document or otherwise of each issuer of the Investments in any manner that the Security Agent may require in order to permit the transfer of the

Investments to the Security Agent or its nominee, or to a purchaser on enforcement of the security constituted by this deed.

8.4 Dividends and voting rights before enforcement

8.4.1 Before the security constituted by this deed becomes enforceable, the Chargor may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Security Agent or any of its nominees, the Security Agent will hold all those dividends, interest and other monies received by it for the Chargor and will pay them to the Chargor promptly on request.

8.4.2 Before the security constituted by this deed becomes enforceable, the Chargor may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Security Agent or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:

- (a) it shall not do so in any way that would breach any provision of the Instrument or this deed or for any purpose inconsistent with the Instrument or this deed; and
- (b) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Security Agent's opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Security Agent's security under this deed.

8.4.3 The Chargor shall indemnify the Security Agent against any loss or liability incurred by the Security Agent (or its nominee) as a consequence of the Security Agent (or its nominee) acting in respect of the Investments at the direction of the Chargor.

8.4.4 The Security Agent shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Investments that the Security Agent considers prejudicial to, or impairing the value of, the security created by this deed.

8.5 Dividends and voting rights after enforcement
After the security constituted by this deed has become enforceable:

8.5.1 all dividends and other distributions paid in respect of the Investments and received by the Chargor shall be held by the Chargor on trust for the Security Agent and immediately paid into a Designated Account or, if received by the Security Agent, shall be retained by the Security Agent; and

8.5.2 all voting and other rights and powers attaching to the Investments shall be exercised by, or at the direction of, the Security Agent and the Chargor shall, and shall procure that its nominees shall, comply with any directions the Security Agent may give, in its absolute discretion, concerning the exercise of those rights and powers.

8.6 Calls on Investments

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

8.7 No alteration of constitutional documents or rights attaching to Investments

The Chargor shall not, without the prior written consent of the Security Agent, amend, or agree to the amendment of:

8.7.1 the memorandum or articles of association, or any other constitutional documents, of any issuer of the Investments that is not a public company; or

8.7.2 the rights or liabilities attaching to, or conferred by, all or any of the Investments.

8.8 Preservation of Investments

The Chargor shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer of the Investments that is not a public company shall not:

8.8.1 consolidate or subdivide any of the Investments, or re-organise, exchange, repay or reduce its share capital in any way;

8.8.2 issue any new shares or stock; or

8.8.3 refuse to register any transfer of any of the Investments that may be lodged with it for registration by, or on behalf of, the Security Agent or the Chargor in accordance with this deed.

8.9 Investments information

The Chargor shall, promptly following receipt, send to the Security Agent copies of any notice, circular, report, accounts and any other document received by it that relates to the Investments.

8.10 Compliance with requests for information

The Chargor shall promptly copy to the Security Agent and comply with all requests for information which are made under the Companies Act 2006 (including, without limitation, under sections 790D, 790E and 793 of the Companies Act 2006) relating to all or any part of the Secured Assets. If it fails to do so, the Security Agent may elect to provide such information as it may have on behalf of the Chargor.

9. EQUIPMENT COVENANTS

9.1 Maintenance of Equipment

The Chargor shall:

9.1.1 maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules;

9.1.2 at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value; and

9.1.3 not permit any Equipment to be:

- (a) used or handled other than by properly qualified and trained persons; or
- (b) overloaded or used for any purpose for which it is not designed or reasonably suitable.

9.2 Payment of Equipment taxes

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

9.3 Notice of charge

9.3.1 The Chargor shall, if so requested by the Security Agent, affix to and maintain on each item of Equipment in a conspicuous place, a clearly legible identification plate containing the following wording:

"NOTICE OF CHARGE

This [DESCRIBE ITEM] and all additions to it [and ancillary equipment] are subject to a fixed charge dated [DATE] in favour of [SECURITY AGENT]."

9.3.2 The Chargor shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with clause 9.3.1.

10. BOOK DEBTS COVENANTS

10.1 Book Debts

The Chargor shall, if called on to do so by the Security Agent, execute a legal assignment of the Book Debts to the Security Agent on such terms as the Security Agent may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

11. RELEVANT AGREEMENTS COVENANTS

11.1 Relevant Agreements

11.1.1 The Chargor shall, unless the Security Agent agrees otherwise in writing, comply with the terms of any Relevant Agreement and any other document, agreement or arrangement comprising the Secured Assets (other than the Insurance Policies).

11.1.2 The Chargor shall not, unless the Security Agent agrees otherwise in writing:

- (a) amend or vary or agree to any change in, or waive any requirement of;
- (b) settle, compromise, terminate, rescind or discharge (except by performance); or

- (c) abandon, waive, dismiss, release or discharge any action, claim or proceedings against any counterparty to a Relevant Agreement or other person in connection with,
- 11.2 any Relevant Agreement or any other document, agreement or arrangement comprising the Secured Assets (other than the Insurance Policies).
- 12. **INTELLECTUAL PROPERTY COVENANTS**
- 12.1 **Preservation of rights**

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

The Chargor shall use all reasonable efforts to register applications for the registration of any Intellectual Property, and shall keep the Security Agent informed of all matters relating to each such registration.
- 12.3 **Maintenance of Intellectual Property**

The Chargor shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.
- 13. **POWERS OF THE SECURITY AGENT**
- 13.1 **Power to remedy**
- 13.1.1 The Security Agent shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this deed.
- 13.1.2 The Chargor irrevocably authorises the Security Agent and its agents to do all things that are necessary or desirable for that purpose.
- 13.1.3 Any monies expended by the Security Agent in remedying a breach by the Chargor of its obligations contained in this deed shall be reimbursed by the Chargor to the Security Agent on a full indemnity basis and shall carry interest in accordance with clause 20.1.
- 13.2 **Exercise of rights**
- 13.2.1 The rights of the Security Agent under clause 13.1 are without prejudice to any other rights of the Security Agent under this deed.
- 13.2.2 The exercise of any rights of the Security Agent under this deed shall not make the Security Agent liable to account as a mortgagee in possession.
- 13.3 **Power to dispose of chattels**

- 13.3.1 At any time after the security constituted by this deed has become enforceable, the Security Agent or any Receiver may, as agent for the Chargor, dispose of any chattels or produce found on any Property.
- 13.3.2 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 13.3.1, the Chargor shall indemnify the Security Agent and any Receiver against any liability arising from any disposal made under clause 13.3.1.
- 13.4 **Security Agent has Receiver's powers**
To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Security Agent in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.
- 13.5 **Conversion of currency**
- 13.5.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Security Agent may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 13.5) from their existing currencies of denomination into any other currencies of denomination that the Security Agent may think fit.
- 13.5.2 Any such conversion shall be effected at the HSBC Bank then prevailing spot selling rate of exchange for such other currency against the existing currency.
- 13.5.3 Each reference in this clause 13.5 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.
- 13.6 **New accounts**
- 13.6.1 If the Security Agent receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Security Agent may open a new account for the Chargor in the Security Agent's books. Without prejudice to the Security Agent's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- 13.6.2 If the Security Agent does not open a new account immediately on receipt of the notice, or deemed notice, under clause 13.6.1, then, unless the Security Agent gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Security Agent shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Security Agent.
- 13.7 **Indulgence**
The Security Agent may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Chargor) in respect of

any of the Secured Liabilities, or of any other security for them without prejudice either to this deed or to the liability of the Chargor for the Secured Liabilities.

13.8 Appointment of an Administrator

13.8.1 The Security Agent may, without notice to the Chargor, appoint any one or more persons to be an Administrator of the Chargor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.

13.8.2 Any appointment under this clause 13.8 shall:

- (a) be in writing signed by a duly authorised signatory of the Security Agent; and
- (b) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

13.8.3 The Security Agent may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 13.8 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

14. WHEN SECURITY BECOMES ENFORCEABLE

14.1 Security becomes enforceable on Event of Default

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

14.2 Discretion

After the security constituted by this deed has become enforceable, the Security Agent may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

15. ENFORCEMENT OF SECURITY

15.1 Enforcement powers

15.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.

15.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 14.1.

15.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

15.2 Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Security Agent and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Chargor, to:

15.2.1 grant a lease or agreement to lease;

15.2.2 accept surrenders of leases; or

15.2.3 grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it, whether or not at a premium and containing such covenants on the part of the Chargor, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Security Agent or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

15.3 Access on enforcement

15.3.1 At any time after the Security Agent has demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this deed or the Instrument, the Chargor will allow the Security Agent or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Security Agent or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Chargor for, or by any reason of, that entry.

15.3.2 At all times, the Chargor must use its best endeavours to allow the Security Agent or its Receiver access to any premises for the purpose of clause 15.3.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

15.4 Prior Security

15.4.1 At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Security Agent may:

- (a) redeem that or any other prior Security;
- (b) procure the transfer of that Security to it; and
- (c) settle and pass any account of the holder of any prior Security.

15.4.2 The settlement and passing of any such account passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor. All monies paid by the Security Agent to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Security Agent, be due from the Chargor to the Security Agent on current account and shall bear interest at the default rate of interest specified in the Instrument and be secured as part of the Secured Liabilities.

- 15.5 Protection of third parties**
No purchaser, mortgagee or other person dealing with the Security Agent, any Receiver or Delegate shall be concerned to enquire:
- 15.5.1** whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 15.5.2** whether any power the Security Agent, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- 15.5.3** how any money paid to the Security Agent, any Receiver or any Delegate is to be applied.
- 15.6 Privileges**
Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.
- 15.7 No liability as mortgagee in possession**
Neither the Security Agent, any Receiver, any Delegate nor any Administrator shall be liable, by reason of entering into possession of a Security Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.
- 15.8 Conclusive discharge to purchasers**
The receipt of the Security Agent, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Security Agent, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.
- 15.9 Right of appropriation**
- 15.9.1** To the extent that:
- (a) the Secured Assets constitute Financial Collateral; and
- (b) this deed and the obligations of the Chargor under it constitute a Security Financial Collateral Arrangement,
- the Security Agent shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Security Agent may, in its absolute discretion, determine.
- 15.9.2** The value of any Secured Assets appropriated in accordance with this clause shall be:
- (a) in the case of cash, the amount standing to the credit of each of the Chargor's accounts with any bank, financial institution or other person,

together with all interest accrued but unposted, at the time the right of appropriation is exercised; and

- (b) in the case of Investments, the price of those Investments at the time the right of appropriation is exercised as listed on any recognised market index or determined by any other method that the Security Agent may select (including independent valuation).

15.9.3 The Chargor agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

16. RECEIVER

16.1 Appointment

At any time after the security constituted by this deed has become enforceable, or at the request of the Chargor, the Security Agent may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

16.2 Removal

The Security Agent may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

16.3 Remuneration

The Security Agent may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

16.4 Power of appointment additional to statutory powers

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Security Agent under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

16.5 Power of appointment exercisable despite prior appointments

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Security Agent despite any prior appointment in respect of all or any part of the Secured Assets.

16.6 Agent of the Chargor

Any Receiver appointed by the Security Agent under this deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Security Agent.

- 17. POWERS OF RECEIVER**
- 17.1 General**
- 17.1.1** Any Receiver appointed by the Security Agent under this deed shall, in addition to the powers conferred on it by statute, have the powers set out in clause 17.2 to clause 17.23.
- 17.1.2** If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- 17.1.3** Any exercise by a Receiver of any of the powers given by clause 17 may be on behalf of the Chargor, the directors of the Chargor (in the case of the power contained in clause 17.16) or itself.
- 17.2 Repair and develop Properties**
A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.
- 17.3 Surrender leases**
A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that it thinks fit.
- 17.4 Employ personnel and advisers**
A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that it thinks fit. A Receiver may discharge any such person or any such person appointed by the Chargor.
- 17.5 Make VAT elections**
A Receiver may make, exercise or revoke any value added tax option to tax as it thinks fit.
- 17.6 Remuneration**
A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by it) that the Security Agent may prescribe or agree with it.
- 17.7 Realise Secured Assets**
A Receiver may collect and get in the Secured Assets or any part of them in respect of which it is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.
- 17.8 Manage or reconstruct the Chargor's business**

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

17.9 Dispose of Secured Assets

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

17.10 Sever fixtures and fittings

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

17.11 Sell Book Debts

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

17.12 Valid receipts

A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.

17.13 Make settlements

A Receiver may make any arrangement, settlement or compromise between the Chargor and any other person that it may think expedient.

17.14 Bring proceedings

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

17.15 Improve the Equipment

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

17.16 Make calls on Chargor members

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

17.17 Insure

A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 20, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Chargor under this deed.

17.18 Powers under the LPA 1925

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if it had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

17.19 Borrow

A Receiver may, for any of the purposes authorised by this clause 17, raise money by borrowing from the Security Agent (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Security Agent consents, terms under which that security ranks in priority to this deed).

17.20 Redeem prior Security

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

17.21 Delegation

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

17.22 Absolute beneficial owner

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights it would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.

17.23 Incidental powers

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

17.23.1 may consider desirable or necessary for realising any of the Secured Assets;

17.23.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

17.23.3 lawfully may or can do as agent for the Chargor.

18. DELEGATION

18.1 Delegation

The Security Agent or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 22.1) with the prior written consent of holders of a majority of the Loan Notes

18.2 Terms

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

18.3 Liability

Neither the Security Agent nor any Receiver shall 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.

19. APPLICATION OF PROCEEDS

19.1 Order of application of proceeds

All monies received by the Security Agent, a Receiver or a Delegate pursuant to this deed, after the security constituted by this deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

19.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Security Agent (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;

19.1.2 in or towards payment of or provision for the Secured Liabilities on a pro-rata basis to all Loan Noteholders; and

19.1.3 in payment of the surplus (if any) to the Chargor or other person entitled to it.

19.2 Appropriation

Neither the Security Agent, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

19.3 Suspense account

All monies received by the Security Agent, a Receiver or a Delegate under this deed:

19.3.1 may, at the discretion of the Security Agent, Receiver or Delegate, be credited to any suspense or securities realised account;

19.3.2 shall bear interest, if any, at the rate agreed in writing between the Security Agent and the Chargor; and

19.3.3 may be held in that account for so long as the Security Agent, Receiver or Delegate thinks fit.

20. COSTS AND INDEMNITY

20.1 Costs

The Chargor shall, promptly on demand, pay to, or reimburse, the Security Agent and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Security Agent, any Receiver or any Delegate in connection with:

20.1.1 this deed or the Secured Assets;

- 20.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Security Agent's, a Receiver's or a Delegate's rights under this deed; or
- 20.1.3 taking proceedings for, or recovering, any of the Secured Liabilities, together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Chargor) at the rate and in the manner specified in the Instrument.
- 20.2 **Indemnity**
The Chargor shall indemnify the Security Agent, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:
 - 20.2.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets;
 - 20.2.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
 - 20.2.3 any default or delay by the Chargor in performing any of its obligations under this deed.
Any past or present employee or agent may enforce the terms of this clause 20.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 21. **FURTHER ASSURANCE**
 - 21.1 **Further assurance**
 - 21.2 The Chargor shall, at its own expense, take whatever action the Security Agent or any Receiver may reasonably require for:
 - 21.2.1 creating, perfecting or protecting the security intended to be created by this deed;
 - 21.2.2 facilitating the realisation of any Secured Asset; or
 - 21.2.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Security Agent or any Receiver in respect of any Secured Asset,
 - 21.3 including, without limitation (if the Security Agent or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Security Agent or to its nominee) and the giving of any notice, order or direction and the making of any registration.

22. POWER OF ATTORNEY

22.1 Appointment of attorneys

By way of security, the Chargor irrevocably appoints the Security Agent, every Receiver and every Delegate separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

22.1.1 the Chargor is required to execute and do under this deed; or

22.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Security Agent, any Receiver or any Delegate.

22.2 Ratification of acts of attorneys

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 22.1.

23. RELEASE

23.1 Subject to clause 30.3, on the expiry of the Security Period (but not otherwise), the Security Agent shall, at the request and cost of the Chargor, take whatever action is necessary to:

23.1.1 release the Secured Assets from the security constituted by this deed; and

23.1.2 reassign the Secured Assets to the Chargor.

24. ASSIGNMENT AND TRANSFER

24.1 Assignment by Security Agent

24.1.1 At any time, without the consent of the Chargor, the Security Agent may assign or transfer any or all of its rights and obligations under this deed.

24.1.2 The Security Agent may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Secured Assets and this deed that the Security Agent considers appropriate.

24.2 Assignment by Chargor

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

25. SET-OFF

25.1 Security Agent's right of set-off

The Security Agent may at any time set off any liability of the Chargor to the Security Agent against any liability of the Security Agent to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not

either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Security Agent may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Security Agent of its rights under this clause 25 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

25.2 No obligation to set off

The Security Agent is not obliged to exercise its rights under clause 25.1. If, however, it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.

25.3 Exclusion of Chargor's right of set-off

All payments made by the Chargor to the Security Agent under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

26. AMENDMENTS, WAIVERS AND CONSENTS

26.1 Amendments

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

26.2 Waivers and consents

26.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

26.2.2 A failure to exercise, or a delay in exercising, any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Security Agent shall be effective unless it is in writing.

26.3 Rights and remedies

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

27. SEVERANCE

27.1 Severance

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

28. COUNTERPARTS

28.1 Counterparts

This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

29. THIRD PARTY RIGHTS

29.1 Third party rights

29.1.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

29.1.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

30. FURTHER PROVISIONS

30.1 Independent security

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Security Agent may hold for any of the Secured Liabilities at any time. No prior security held by the Security Agent over the whole or any part of the Secured Assets shall merge in the security created by this deed.

30.2 Continuing security

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Security Agent discharges this deed in writing.

30.3 Discharge conditional

Any release, discharge or settlement between the Chargor and the Security Agent shall be deemed conditional on no payment or security received by the Security Agent in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

30.3.1 the Security Agent or its nominee may retain this deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Security Agent deems necessary to provide the Security Agent with security against any such avoidance, reduction or order for refund; and

30.3.2 the Security Agent may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

- 30.4 **Certificates**
A certificate or determination by the Security Agent as to any amount for the time being due to it from the Chargor under this deed and the Instrument shall be, in the absence of any manifest error, conclusive evidence of the amount due.
- 30.5 **Consolidation**
The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.
- 30.6 **Small company moratorium**
Notwithstanding anything to the contrary in this deed, neither the obtaining of a moratorium by the Chargor under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Chargor with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:
- 30.6.1 an event under this deed which causes any floating charge created by this deed to crystallise;
- 30.6.2 an event under this deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Chargor; or
- 30.6.3 a ground under this deed for the appointment of a Receiver.
31. **NOTICES**
- 31.1 **Delivery**
Each notice or other communication required to be given to a party under or in connection with this deed shall be in writing and delivered by hand, by pre-paid first-class post or other next working day delivery service to the Chargor at the address first written above the Chargor and to the Security Agent at 20 Garrick Street, WC2E 9BT or to any other address as is notified in writing by one party to the other from time to time.
- 31.2 **Receipt by Chargor**
Any notice or other communication that the Security Agent gives to the Chargor shall be deemed to have been received:
- 31.2.1 if delivered by hand, at the time it is left at the relevant address;
- 31.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
A notice or other communication given on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.
- 31.3 **Receipt by Security Agent**
Any notice or other communication given to the Security Agent shall be deemed to have been received only on actual receipt.
- 31.4 **Service of proceedings**

This clause 31 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

31.5 No notice by email

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

32. GOVERNING LAW AND JURISDICTION

32.1 Governing law

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

32.2 Jurisdiction

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Security Agent to take proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

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

SCHEDULE 1

Property

Part 1

Registered Property

(DETAILS OF REGISTERED PROPERTY, INCLUDING TITLE NUMBER)

Part 2

Unregistered Property

(DETAILS OF UNREGISTERED PROPERTY)

Signed for and on behalf of **RESOLVING)**
LIMITED as a deed by **)**
)

in the presence of:

Witness' signature:

Witness' name: **Paul Hancock**

Witness' address: **5 Walton Ave, Henley RG9 1LA**

Witness' occupation: **CFO**

Signed for and on behalf of **DRAPER)**
ESPRIT PLC as a deed by **)**
)

in the presence of:

Witness' signature:

Witness' name:

Witness' address:

SCHEDULE 1

Property

Part 1

Registered Property

[DETAILS OF REGISTERED PROPERTY, INCLUDING TITLE NUMBER]

Part 2

Unregistered Property

[DETAILS OF UNREGISTERED PROPERTY]

Signed for and on behalf of **RESOLVING**)
LIMITED as a deed by)

in the presence of:

Witness' signature:

Witness' name:

Witness' address:

Witness' occupation:

Signed for and on behalf of **DRAPER**)
ESPRIT PLC as a deed by)

in the presence of:

Witness' signature:

Witness' name:

Witness' address:

PAULA DARRISON
16 CRESCENT RD
ALVERSTOKE
PO12 2DH

Witness' occupation: OFFICE MANAGER

