



**Registration of a Charge**

Company name: **15 FM LIMITED**

Company number: **08282747**



X6AWT948

Received for Electronic Filing: **18/07/2017**

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**Details of Charge**

Date of creation: **30/06/2017**

Charge code: **0828 2747 0002**

Persons entitled: **SANCUS (IOM) LIMITED (AS SECURITY AGENT)**

Brief description: **(1) ALL PROPERTIES (AS DEFINED IN THE DEBENTURE) ACQUIRED BY THE COMPANY IN THE FUTURE; (2) ALL PRESENT AND FUTURE INTERESTS OF THE COMPANY IN ANY OTHER FREEHOLD OR LEASEHOLD PROPERTY; (3) ALL PRESENT AND FUTURE RIGHTS RELATING TO EACH PROPERTY; AND (4) ALL THE INTELLECTUAL PROPERTY (AS DEFINED IN THE DEBENTURE) EACH AS MORE PARTICULARLY DESCRIBED IN THE DEBENTURE.**

**Contains fixed charge(s).**

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

**Contains negative pledge.**

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**Authentication of Form**

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

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## Authentication of Instrument

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

Certified by: **GRAEME MCKEE, SOLICITOR**



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

Company number: 8282747

Charge code: 0828 2747 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th June 2017 and created by 15 FM LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18th July 2017 .

Given at Companies House, Cardiff on 19th July 2017

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

30 JUNE

2017

**15 FM LIMITED**

(as Borrower)

and

**SANCUS (IOM) LIMITED**

(as Security Agent for the Finance Parties)

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## DEBENTURE

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**CMCC/13504/1**

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THIS DEED is made on the 30 day of June 2017

## PARTIES

- (1) **15 FM LIMITED** a company incorporated in England and Wales with Company Number 08282747 and having its registered office at Flat 30 Block B, Eagle Wharf 138 Grosvenor Road, London, SW1V 3JS (the "**Borrower**"); and
- (2) **SANCUS (IOM) LIMITED**, a company incorporated in the Isle of Man with registered number 012528V and having its registered office at 2<sup>nd</sup> Floor, Exchange House, Athol Street, Douglas, Isle of Man IM1 1JD as security agent and trustee for and on behalf of itself and the Finance Parties (as defined below) (the "**Security Agent**").

## BACKGROUND

Under this Deed, the Borrower provides security to the Security Agent for the loan facilities made available under the Facility Agreement.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 DEFINITIONS

The following definitions apply in this Deed:

"Administrator"	means an administrator appointed to manage the affairs, business and property of the Borrower pursuant to clause 14.8.
"Book Debts"	means all present and future book and other debts, and monetary claims due or owing to the Borrower, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Borrower in relation to any of them.
"Business Day"	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Delegate"	means any person appointed by the Security Agent or any Receiver pursuant to clause 19 and any person appointed as attorney of the Security Agent, Receiver or Delegate.
"Designated Account"	means any account of the Borrower nominated by the Security Agent as a designated account for the purposes of this Deed.
"Environment"	means 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.

<b>"Environmental Law"</b>	means 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.
<b>"Equipment"</b>	means 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 Borrower, including any part of it and all spare parts, replacements, modifications and additions.
<b>"Event of Default"</b>	has the meaning given to that expression in the Facility Agreement.
<b>"Facility Agreement"</b>	means the facility agreement dated <u>29 JUNE 2017</u> — between the Borrower, the Facility Agent, the Security Agent, the Funder and Norman Menary as Guarantor for the provision of the loan facilities secured by this Deed.
<b>"Facility Agent"</b>	means the parties listed at Part 1 of Schedule 6 of this Deed;
<b>"Finance Parties"</b>	means each Funder, the Facility Agent and the Security Agent;
<b>"Financial Collateral"</b>	has the meaning given to that expression in the Financial Collateral Regulations.
<b>"Financial Collateral Regulations"</b>	means the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226).
<b>"Funder"</b>	means the parties listed at Part 2 of Schedule 6 of this Deed;
<b>"Insurance Policy"</b>	means each contract and policy of insurance effected or maintained by the Borrower 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).
<b>"Intellectual Property"</b>	means the Borrower's present and future patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in

any part of the world.

**"Investments"**

means 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 Borrower, 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.

**"LPA 1925"**

means the Law of Property Act 1925.

**"Properties"**

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

**"Receiver"**

means a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Security Agent under clause 17.

**"Relevant Agreement"**

means each agreement specified in Schedule 2.

**"Secured Assets"**

means 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"**

means all present and future monies, obligations and liabilities of the Borrower to the Security Agent, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this Deed (including, without limitation, those arising under clause 31.3.2), 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"**

means 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"** means 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, Schedule and paragraph 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 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 any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time;
- 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,
- 1.2.15 revenues, rights and benefits of every description;
- 1.2.16 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.17 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.18 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
- 1.2.19 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 Borrower in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower 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 Borrower 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 Facility Agreement and of any side letters between any parties in relation to the Facility Agreement 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.

## **2. TRUST**

- 2.1** All Secured Liabilities and dispositions made or created, and all obligations and undertakings contained in this Deed in favour of or for the benefit of the Security Agent are made, created and entered into in favour of the Security Agent as trustee for the Finance Parties from time to time on the terms set out in Schedule 7 and otherwise in the remainder of this Deed.

## **3. COVENANT TO PAY**

The Borrower shall, on demand, pay to the Security Agent and discharge the Secured Liabilities when they become due.

## **4. GRANT OF SECURITY**

### **4.1 LEGAL MORTGAGE**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Security Agent, by way of first legal mortgage, each Property specified in Schedule 1.

### **4.2 FIXED CHARGES**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Security Agent by way of first fixed charge:

- 4.2.1 all Properties acquired by the Borrower in the future;
- 4.2.2 all present and future interests of the Borrower not effectively mortgaged or charged under the preceding provisions of this clause 4 in, or over, freehold or leasehold property;
- 4.2.3 all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;
- 4.2.4 all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Borrower's business or the use of any Secured Asset, and all rights in connection with them;
- 4.2.5 all its present and future goodwill;
- 4.2.6 all its uncalled capital;
- 4.2.7 all the Equipment;

- 4.2.8 all the Intellectual Property;
- 4.2.9 all the Book Debts;
- 4.2.10 all the Investments;
- 4.2.11 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);
- 4.2.12 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 4.3; and
- 4.2.13 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 4.3.

#### **4.3 ASSIGNMENT**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower 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:

- 4.3.1 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
- 4.3.2 the benefit of each Relevant Agreement and the benefit of all other agreements, instruments and rights relating to the Secured Assets.

#### **4.4 FLOATING CHARGE**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Security Agent, by way of first floating charge, all the undertaking, property, assets and rights of the Borrower at any time not effectively mortgaged, charged or assigned pursuant to clause 4.1 to clause 4.3 inclusive.

#### **4.5 QUALIFYING FLOATING CHARGE**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 4.4.

#### **4.6 AUTOMATIC CRYSTALLISATION OF FLOATING CHARGE**

The floating charge created by clause 4.4 shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:

- 4.6.1 the Borrower:

- (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 Facility Agreement); 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);

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

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

#### **4.7 CRYSTALLISATION OF FLOATING CHARGE BY NOTICE**

The Security Agent may, in its sole discretion, at any time and by written notice to the Borrower, 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.

#### **4.8 ASSETS ACQUIRED AFTER ANY FLOATING CHARGE HAS CRYSTALLISED**

Any asset acquired by the Borrower 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 Borrower in writing) be charged to the Security Agent by way of first fixed charge.

### **5. LIABILITY OF THE BORROWER**

#### **5.1 LIABILITY NOT DISCHARGED**

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

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Security Agent that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 5.1.2 the Security Agent renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 5.1.3 any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

#### **5.2 IMMEDIATE RECOURSE**

The Borrower waives any right it may have to require the Security Agent 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 Borrower.

**6. REPRESENTATIONS AND WARRANTIES**

**6.1 REPRESENTATIONS AND WARRANTIES**

The Borrower makes the representations and warranties set out in this clause 6 to the Security Agent.

**6.2 OWNERSHIP OF SECURED ASSETS**

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

**6.3 NO SECURITY**

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

**6.4 NO ADVERSE CLAIMS**

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

**6.5 NO ADVERSE COVENANTS**

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

**6.6 NO BREACH OF LAWS**

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

**6.7 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.

**6.8 NO OVERRIDING INTERESTS**

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.

**6.9 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 Borrower or otherwise.

**6.10 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 Borrower does not, and will not, constitute a breach of any Insurance Policy, Relevant Agreement or any other agreement or instrument binding on the Borrower or its assets.

## **6.11 ENVIRONMENTAL COMPLIANCE**

The Borrower has, at all times, complied in all material respects with all applicable Environmental Law.

## **6.12 ENFORCEABLE SECURITY**

This Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Borrower, and is, and will continue to be, effective security over all and every part of the Secured Assets in accordance with its terms.

## **6.13 INVESTMENTS**

- 6.13.1 The Investments are fully paid and are not subject to any option to purchase or similar rights.
- 6.13.2 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.
- 6.13.3 The Borrower 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.
- 6.13.4 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.

## **6.14 TIMES FOR MAKING REPRESENTATIONS AND WARRANTIES**

The representations and warranties set out in clause 6.2 to clause 6.13 are made by the Borrower on the date of this Deed and 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.

## **7. GENERAL COVENANTS**

### **7.1 NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

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

- 7.1.1 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;
- 7.1.2 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

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

## **7.2 PRESERVATION OF SECURED ASSETS**

The Borrower 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.

## **7.3 COMPLIANCE WITH LAWS AND REGULATIONS**

- 7.3.1 The Borrower 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.

- 7.3.2 The Borrower 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.

## **7.4 ENFORCEMENT OF RIGHTS**

The Borrower shall use its best endeavours to:

- 7.4.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Borrower's counterparties (including each counterparty in respect of a Relevant Agreement and each insurer in respect of an Insurance Policy); and
- 7.4.2 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.

## **7.5 NOTICE OF MISREPRESENTATION AND BREACHES**

The Borrower shall, promptly on becoming aware of any of the same, notify the Security Agent in writing of:

- 7.5.1 any representation or warranty set out in clause 6 which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 7.5.2 any breach of any covenant set out in this Deed.

## **7.6 TITLE DOCUMENTS**

The Borrower shall, on the execution of this Deed, deposit with the Security Agent and the Security Agent shall, for the duration of this Deed be entitled to hold:

- 7.6.1 all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Borrower (and if these are not within the possession or control of the Borrower, the Borrower undertakes to obtain possession of all these deeds and documents of title);
- 7.6.2 all Insurance Policies and any other insurance policies relating to any of the Secured Assets that the Borrower is entitled to possess;
- 7.6.3 all deeds and documents of title (if any) relating to the Book Debts as the Security Agent may specify from time to time; and
- 7.6.4 copies of all the Relevant Agreements, certified to be true copies by either a director of the Borrower or by the Borrower's solicitors.

## **7.7 INSURANCE**

- 7.7.1 The Borrower 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 Borrower; and
  - (c) any other risk, perils and contingencies as the Security Agent may reasonably require.
- 7.7.2 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
- 7.7.3 The Borrower 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 7.7.1 (or where, in the case of any leasehold property, that insurance is effected by the landlord, such evidence of insurance as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).



7.7.4 The Borrower 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 7.7.1 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.

7.7.5 The Borrower shall ensure that each Insurance Policy contains:

- (a) a loss payee clause under which the Security Agent is named as first loss payee (other than in respect of any claim under any public liability and third party liability insurances);
- (b) terms ensuring that it cannot be avoided or vitiated as against the Security Agent by reason of the act or default of any other insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any other insured party;
- (c) a waiver of each insurer's rights of subrogation against the Borrower, the Security Agent and the tenants of any Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of any Property or any Insurance Policy; and
- (d) terms ensuring that no insurer can repudiate, rescind or cancel it, treat it as avoided in whole or in part nor treat it as expired due to non-payment of premium without giving at least 30 days' prior written notice to the Security Agent.

## **7.8 INSURANCE PREMIUMS**

The Borrower shall:

7.8.1 promptly pay all premiums in respect of each insurance policy maintained by it in accordance with clause 7.7.1 and do all other things necessary to keep that policy in full force and effect; and

7.8.2 (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 7.7.1 (or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).

## **7.9 NO INVALIDATION OF INSURANCE**

The Borrower 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 7.7.1.

## **7.10 PROCEEDS OF INSURANCE POLICIES**

All monies payable under any insurance policy maintained by it in accordance with clause 7.7.1 at any time (whether or not the security constituted by this Deed has become enforceable) shall:

- 7.10.1 immediately be paid to the Security Agent ;
- 7.10.2 if they are not paid directly to the Security Agent by the insurers be held, pending such payment, by the Borrower as trustee of the same for the benefit of the Security Agent; and
- 7.10.3 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.

## **7.11 NOTICES TO BE GIVEN BY THE BORROWER**

The Borrower shall:

- 7.11.1 on the execution of this Deed and as so requested by the Security Agent from time to time:
  - (a) give notice to each counterparty to a Relevant Agreement in the form set out in Part 1 of Schedule 3; and
  - (b) procure that each counterparty provides to the Security Agent promptly an acknowledgement of the notice in the form set out in Part 2 of Schedule 3;
- 7.11.2 on the execution of this Deed and as so requested by the Security Agent from time to time:
  - (a) give notice to each insurer under an Insurance Policy in the form set out in Part 1 of Schedule 4; and
  - (b) procure that each insurer provides to the Security Agent promptly an acknowledgement of the notice in the form set out in Part 2 of Schedule 4; and
- 7.11.3 on the execution of this Deed and as so requested by the Security Agent from time to time:
  - (a) give notice to each bank, financial institution or other person (other than the Security Agent) with whom the Borrower holds an account (including each Designated Account) in the form set out in Part 1 of Schedule 5; and
  - (b) procure that each such bank, financial institution or other person provides to the Security Agent promptly an acknowledgement of the notice in the form of Part 2 of Schedule 5.

## **7.12 INFORMATION**

The Borrower shall:

- 7.12.1 give the Security Agent such information concerning the location, condition, use and operation of the Secured Assets as the Security Agent may require;
- 7.12.2 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
- 7.12.3 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 Borrower'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.

#### **7.13 PAYMENT OF OUTGOINGS**

The Borrower 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.

#### **7.14 APPOINTMENT OF ACCOUNTANTS**

7.14.1 The Borrower 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 Borrower 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.

7.14.2 The Borrower authorises the Security Agent to make an appointment as it shall think fit at any time, without further authority from the Borrower. In every case, the Borrower shall pay, or reimburse the Security Agent for, the fees and expenses of those accountants.

### **8. PROPERTY COVENANTS**

#### **8.1 MAINTENANCE**

The Borrower shall keep all premises and fixtures and fittings on each Property in good and substantial repair and condition.

#### **8.2 PRESERVATION OF PROPERTY, FIXTURES AND EQUIPMENT**

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

- 8.2.1 pull down or remove the whole, or any part of, any building forming part of any Property or permit the same to occur;

- 8.2.2 make or permit any alterations to any Property, or sever or remove, or permit to be severed or removed, any of its fixtures; or
- 8.2.3 remove or make any alterations to any of the Equipment belonging to, or in use by, the Borrower on any Property (except to effect necessary repairs or replace them with new or improved models or substitutes).

### **8.3 CONDUCT OF BUSINESS ON PROPERTIES**

The Borrower 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.

### **8.4 PLANNING INFORMATION**

The Borrower shall:

- 8.4.1 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
- 8.4.2 at its own expense, immediately on request by the Security Agent, and at the cost of the Borrower, 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.

### **8.5 COMPLIANCE WITH COVENANTS AND PAYMENT OF RENT**

The Borrower shall:

- 8.5.1 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;
- 8.5.2 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
- 8.5.3 (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.

### **8.6 PAYMENT OF RENT AND OUTGOINGS**

The Borrower shall:

- 8.6.1 where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and

- 8.6.2 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.

## **8.7 MAINTENANCE OF INTERESTS IN PROPERTIES**

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

- 8.7.1 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
- 8.7.2 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.

## **8.8 REGISTRATION RESTRICTIONS**

If the title to any Property is not registered at the Land Registry, the Borrower 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 Borrower 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.

## **8.9 DEVELOPMENT RESTRICTIONS**

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

- 8.9.1 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
- 8.9.2 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.

## **8.10 ENVIRONMENT**

The Borrower shall:

- 8.10.1 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
- 8.10.2 obtain and comply with all authorisations, permits and other types of licences necessary under Environmental Law.

## **8.11 NO RESTRICTIVE OBLIGATIONS**

The Borrower 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.

## **8.12 PROPRIETARY RIGHTS**

The Borrower 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.

## **8.13 INSPECTION**

The Borrower 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.

## **8.14 PROPERTY INFORMATION**

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

## **8.15 VAT OPTION TO TAX**

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

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

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

## **8.16 REGISTRATION AT THE LAND REGISTRY**

The Borrower 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]]."

## **9. INVESTMENTS COVENANTS**

### **9.1 DEPOSIT OF TITLE DOCUMENTS**

9.1.1 The Borrower shall:

- (a) on the execution of this Deed, 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 Borrower 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.

9.1.2 At the same time as depositing documents with the Security Agent, or as the Security Agent may direct, in accordance with clause 9.1.1, the Borrower 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 Borrower, 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 Borrower) 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 Borrower, complete and present those stock transfer forms and other documents to the issuer of the Investments for registration.

## **9.2 NOMINATIONS**

9.2.1 The Borrower shall 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.

9.2.2 The Borrower 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.

## **9.3 PRE-EMPTION RIGHTS AND RESTRICTIONS ON TRANSFER**

The Borrower shall:

- 9.3.1 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
- 9.3.2 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.

#### **9.4 DIVIDENDS AND VOTING RIGHTS BEFORE ENFORCEMENT**

- 9.4.1 Before the security constituted by this Deed becomes enforceable, the Borrower 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 Borrower and will pay them to the Borrower promptly on request.
- 9.4.2 Before the security constituted by this Deed becomes enforceable, the Borrower 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 Facility Agreement or this Deed or for any purpose inconsistent with the Facility Agreement 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.
- 9.4.3 The Borrower 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 Borrower.
- 9.4.4 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.

#### **9.5 DIVIDENDS AND VOTING RIGHTS AFTER ENFORCEMENT**

After the security constituted by this Deed has become enforceable:

- 9.5.1 all dividends and other distributions paid in respect of the Investments and received by the Borrower shall be held by the Borrower 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
- 9.5.2 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 Borrower 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.



## **9.6 CALLS ON INVESTMENTS**

Notwithstanding the security created by this Deed, the Borrower 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 Borrower acknowledges that the Security Agent shall not be under any liability in respect of any such calls, instalments or other payments.

## **9.7 NO ALTERATION OF CONSTITUTIONAL DOCUMENTS OR RIGHTS ATTACHING TO INVESTMENTS**

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

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

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

## **9.8 PRESERVATION OF INVESTMENTS**

The Borrower 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:

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

9.8.2 issue any new shares or stock; or

9.8.3 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 Borrower in accordance with this Deed.

## **9.9 INVESTMENTS INFORMATION**

The Borrower 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.

## **9.10 COMPLIANCE WITH REQUESTS FOR INFORMATION**

The Borrower 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 Borrower.

## **10. EQUIPMENT COVENANTS**

### **10.1 MAINTENANCE OF EQUIPMENT**

The Borrower shall:

- 10.1.1 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;
- 10.1.2 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
- 10.1.3 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.

## **10.2 PAYMENT OF EQUIPMENT TAXES**

The Borrower 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.

## **10.3 NOTICE OF CHARGE**

- 10.3.1 The Borrower 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]."

- 10.3.2 The Borrower shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with clause 10.3.1.

## **11. BOOK DEBTS COVENANTS**

### **11.1 REALISING BOOK DEBTS**

- 11.1.1 The Borrower shall as an agent for the Security Agent, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Security Agent;
- 11.1.2 The Borrower shall not, without the prior written consent of the Security Agent, withdraw any amounts standing to the credit of any Designated Account.
- 11.1.3 The Borrower 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.

## **11.2 PRESERVATION OF BOOK DEBTS**

The Borrower shall not (except as provided by clause 11.1 or with the prior written consent of the Security Agent) release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

## **12. RELEVANT AGREEMENTS COVENANTS**

### **12.1 RELEVANT AGREEMENTS**

12.1.1 The Borrower 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).

12.1.2 The Borrower 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,

12.2 any Relevant Agreement or any other document, agreement or arrangement comprising the Secured Assets (other than the Insurance Policies).

## **13. INTELLECTUAL PROPERTY COVENANTS**

### **13.1 PRESERVATION OF RIGHTS**

The Borrower 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.

### **13.2 REGISTRATION OF INTELLECTUAL PROPERTY**

The Borrower 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.

### **13.3 MAINTENANCE OF INTELLECTUAL PROPERTY**

The Borrower shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.

## **14. POWERS OF THE SECURITY AGENT**

### **14.1 POWER TO REMEDY**

- 14.1.1 The Security Agent shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this Deed.
- 14.1.2 The Borrower irrevocably authorises the Security Agent and its agents to do all things that are necessary or desirable for that purpose.
- 14.1.3 Any monies expended by the Security Agent in remedying a breach by the Borrower of its obligations contained in this Deed shall be reimbursed by the Borrower to the Security Agent on a full indemnity basis and shall carry interest in accordance with clause 21.1.

### **14.2 EXERCISE OF RIGHTS**

- 14.2.1 The rights of the Security Agent under clause 14.1 are without prejudice to any other rights of the Security Agent under this Deed.
- 14.2.2 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.

### **14.3 POWER TO DISPOSE OF CHATTELS**

- 14.3.1 At any time after the security constituted by this Deed has become enforceable, the Security Agent or any Receiver may, as agent for the Borrower, dispose of any chattels or produce found on any Property.
- 14.3.2 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 14.3.1, the Borrower shall indemnify the Security Agent and any Receiver against any liability arising from any disposal made under clause 14.3.1.

### **14.4 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.

### **14.5 CONVERSION OF CURRENCY**

- 14.5.1 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 14.5) from their existing currencies of denomination into any other currencies of denomination that the Security Agent may think fit.
- 14.5.2 Any such conversion shall be effected at Lloyds Bank plc's then prevailing spot selling rate of exchange for such other currency against the existing currency.

- 14.5.3 Each reference in this clause 14.5 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.

#### **14.6 NEW ACCOUNTS**

- 14.6.1 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 Borrower 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 Borrower in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- 14.6.2 If the Security Agent does not open a new account immediately on receipt of the notice, or deemed notice, under clause 14.6.1, then, unless the Security Agent gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Security Agent shall be treated as having been credited to a new account of the Borrower 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.

#### **14.7 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 Borrower) 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 Borrower for the Secured Liabilities.

#### **14.8 APPOINTMENT OF AN ADMINISTRATOR**

- 14.8.1 The Security Agent may, without notice to the Borrower, appoint any one or more persons to be an Administrator of the Borrower pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Deed becomes enforceable.
- 14.8.2 Any appointment under this clause 14.8 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.
- 14.8.3 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 14.8 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

#### **14.9 FURTHER ADVANCES**

The Security Agent covenants with the Borrower that it shall perform its obligations to make advances under the Facility Agreement (including any obligation to make available further advances).

#### **15. WHEN SECURITY BECOMES ENFORCEABLE**

##### **15.1 SECURITY BECOMES ENFORCEABLE ON EVENT OF DEFAULT**

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

##### **15.2 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.

#### **16. ENFORCEMENT OF SECURITY**

##### **16.1 ENFORCEMENT POWERS**

16.1.1 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.

16.1.2 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 15.1.

16.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.

##### **16.2 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 Borrower, to:

16.2.1 grant a lease or agreement to lease;

16.2.2 accept surrenders of leases; or

16.2.3 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 Borrower, 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.

### **16.3 ACCESS ON ENFORCEMENT**

- 16.3.1 At any time after the Security Agent has demanded payment of the Secured Liabilities or if the Borrower defaults in the performance of its obligations under this Deed or the Facility Agreement, the Borrower 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 Borrower for, or by any reason of, that entry.
- 16.3.2 At all times, the Borrower must use its best endeavours to allow the Security Agent or its Receiver access to any premises for the purpose of clause 16.3.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

### **16.4 PRIOR SECURITY**

- 16.4.1 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.
- 16.4.2 The settlement and passing of any such account passed shall, in the absence of any manifest error, be conclusive and binding on the Borrower. 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 Borrower to the Security Agent on current account and shall bear interest at the default rate of interest specified in the Facility Agreement and be secured as part of the Secured Liabilities.

### **16.5 PROTECTION OF THIRD PARTIES**

No purchaser, mortgagee or other person dealing with the Security Agent, any Receiver or Delegate shall be concerned to enquire:

- 16.5.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 16.5.2 whether any power the Security Agent, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- 16.5.3 how any money paid to the Security Agent, any Receiver or any Delegate is to be applied.

## **16.6 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.

## **16.7 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.

## **16.8 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.

## **16.9 RIGHT OF APPROPRIATION**

16.9.1 To the extent that:

- (a) the Secured Assets constitute Financial Collateral; and
- (b) this Deed and the obligations of the Borrower 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.

16.9.2 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 Borrower'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).

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



## **17. RECEIVER**

### **17.1 APPOINTMENT**

At any time after the security constituted by this Deed has become enforceable, or at the request of the Borrower, 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.

### **17.2 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.

### **17.3 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.

### **17.4 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.

### **17.5 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.

### **17.6 AGENT OF THE BORROWER**

Any Receiver appointed by the Security Agent under this Deed shall be the agent of the Borrower and the Borrower 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 Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Security Agent.

## **18. POWERS OF RECEIVER**

### **18.1 GENERAL**

18.1.1 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 18.2 to clause 18.23.

18.1.2 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.

18.1.3 Any exercise by a Receiver of any of the powers given by clause 18 may be on behalf of the Borrower, the directors of the Borrower (in the case of the power contained in clause 18.16) or itself.

## **18.2 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.

## **18.3 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.

## **18.4 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 Borrower.

## **18.5 MAKE VAT ELECTIONS**

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

## **18.6 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.

## **18.7 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.

## **18.8 MANAGE OR RECONSTRUCT THE BORROWER'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 Borrower.

**18.9 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.

**18.10 SEVER FIXTURES AND FITTINGS**

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

**18.11 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.

**18.12 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.

**18.13 MAKE SETTLEMENTS**

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

**18.14 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.

**18.15 IMPROVE THE EQUIPMENT**

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

**18.16 MAKE CALLS ON BORROWER MEMBERS**

A Receiver may make calls conditionally or unconditionally on the members of the Borrower 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 Borrower on its directors in respect of calls authorised to be made by them.

**18.17 INSURE**

A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 21, 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 Borrower under this Deed.

**18.18 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.

**18.19 BORROW**

A Receiver may, for any of the purposes authorised by this clause 18, 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).

**18.20 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 Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

**18.21 DELEGATION**

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

**18.22 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.

**18.23 INCIDENTAL POWERS**

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

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

18.23.2 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

18.23.3 lawfully may or can do as agent for the Borrower.

**19. DELEGATION**

**19.1 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 23.1).

## **19.2 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.

## **19.3 LIABILITY**

Neither the Security Agent nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

## **20. APPLICATION OF PROCEEDS**

### **20.1 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:

20.1.1 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;

20.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Security Agent determines; and

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

### **20.2 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.

### **20.3 SUSPENSE ACCOUNT**

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

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

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

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

## **21. COSTS AND INDEMNITY**

### **21.1 COSTS**

The Borrower 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:

21.1.1 this Deed or the Secured Assets;

21.1.2 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

21.1.3 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 Borrower) at the rate and in the manner specified in the Facility Agreement.

### **21.2 INDEMNITY**

The Borrower 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:

21.2.1 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;

21.2.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Deed; or

21.2.3 any default or delay by the Borrower in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this clause 21.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **22. FURTHER ASSURANCE**

### **22.1 FURTHER ASSURANCE**

22.2 The Borrower shall, at its own expense, take whatever action the Security Agent or any Receiver may reasonably require for:

- 22.2.1 creating, perfecting or protecting the security intended to be created by this Deed;
- 22.2.2 facilitating the realisation of any Secured Asset; or
- 22.2.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Security Agent or any Receiver in respect of any Secured Asset,
- 22.3 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.

## **23. POWER OF ATTORNEY**

### **23.1 APPOINTMENT OF ATTORNEYS**

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

- 23.1.1 the Borrower is required to execute and do under this Deed; or
- 23.1.2 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.

### **23.2 RATIFICATION OF ACTS OF ATTORNEYS**

The Borrower 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 23.1.

## **24. RELEASE**

- 24.1 Subject to clause 31.3, on the expiry of the Security Period (but not otherwise), the Security Agent shall, at the request and cost of the Borrower, take whatever action is necessary to:

- 24.1.1 release the Secured Assets from the security constituted by this Deed; and
- 24.1.2 reassign the Secured Assets to the Borrower.

## **25. ASSIGNMENT AND TRANSFER**

### **25.1 ASSIGNMENT BY SECURITY AGENT**

- 25.1.1 At any time, without the consent of the Borrower, the Security Agent may assign or transfer any or all of its rights and obligations under this Deed.
- 25.1.2 The Security Agent may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower,

the Secured Assets and this Deed that the Security Agent considers appropriate.

**25.2 ASSIGNMENT BY BORROWER**

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

**26. SET-OFF**

**26.1 SECURITY AGENT'S RIGHT OF SET-OFF**

The Security Agent may at any time set off any liability of the Borrower to the Security Agent against any liability of the Security Agent to the Borrower, 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 26 shall not limit or affect any other rights or remedies available to it under this Deed or otherwise.

**26.2 NO OBLIGATION TO SET OFF**

The Security Agent is not obliged to exercise its rights under clause 26.1. If, however, it does exercise those rights it must promptly notify the Borrower of the set-off that has been made.

**26.3 EXCLUSION OF BORROWER'S RIGHT OF SET-OFF**

All payments made by the Borrower 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).

**27. AMENDMENTS, WAIVERS AND CONSENTS**

**27.1 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).

**27.2 WAIVERS AND CONSENTS**

27.2.1 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.

27.2.2 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.

### **27.3 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.

### **28. SEVERANCE**

#### **28.1 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.

### **29. COUNTERPARTS**

#### **29.1 COUNTERPARTS**

29.1.1 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.

29.1.2 Transmission of an executed counterpart of this Deed (but for the avoidance of doubt not just a signature page) by fax or email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

29.1.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

### **30. THIRD PARTY RIGHTS**

#### **30.1 THIRD PARTY RIGHTS**

30.1.1 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.

30.1.2 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.

## **31. FURTHER PROVISIONS**

### **31.1 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.

### **31.2 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.

### **31.3 DISCHARGE CONDITIONAL**

Any release, discharge or settlement between the Borrower 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:

31.3.1 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

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

### **31.4 CERTIFICATES**

A certificate or determination by the Security Agent as to any amount for the time being due to it from the Borrower under this Deed and the Facility Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

### **31.5 CONSOLIDATION**

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

### **31.6 SMALL COMPANY MORATORIUM**

Notwithstanding anything to the contrary in this Deed, neither the obtaining of a moratorium by the Borrower under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Borrower with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:

- 31.6.1 an event under this Deed which causes any floating charge created by this Deed to crystallise;
- 31.6.2 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 Borrower; or
- 31.6.3 a ground under this Deed for the appointment of a Receiver.

## **32. NOTICES**

### **32.1 DELIVERY**

Each notice or other communication required to be given to a party under or in connection with this Deed shall be:

- 32.1.1 in writing;
- 32.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- 32.1.3 sent to:

- (a) the Borrower at:

Flat 30 Block B, Eagle Wharf 138 Grosvenor Road, London, SW1V 3JS

Fax: \_\_\_\_\_

Attention: NORMAN MENARY

- (b) the Security Agent at:

2nd Floor, Exchange House, Athol Street, Douglas, Isle of Man IM1 1JD

Attention: Michael Hennessy or to any other address or fax number as is notified in writing by one party to the other from time to time.

### **32.2 RECEIPT BY BORROWER**

Any notice or other communication that the Security Agent gives to the Borrower shall be deemed to have been received:

- 32.2.1 if delivered by hand, at the time it is left at the relevant address;
- 32.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- 32.2.3 if sent by fax, when received in legible form.

A notice or other communication given as described in clause 32.2.1 or clause 32.2.3 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.

### **32.3 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.

### **32.4 SERVICE OF PROCEEDINGS**

This clause 32 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.

### **32.5 NO NOTICE BY EMAIL**

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

## **33. GOVERNING LAW AND JURISDICTION**

### **33.1 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.

### **33.2 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 Borrower 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.

### **33.3 OTHER SERVICE**

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 33.2 being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in this Deed shall affect the right to serve process in any other manner permitted by law.

**THIS AGREEMENT** has been entered into as a deed on the date stated at the beginning of it.

**SCHEDULE 1**  
**PROPERTY**  
**PART 1**  
**REGISTERED PROPERTY**

## **PART 2**

### **UNREGISTERED PROPERTY**

**SCHEDULE 2**

**RELEVANT AGREEMENTS**

### SCHEDULE 3

#### NOTICE AND ACKNOWLEDGEMENT - RELEVANT AGREEMENT

##### PART 1

##### FORM OF NOTICE

*[On the letterhead of the Borrower]*

[NAME OF COUNTERPARTY]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [BORROWER] and [SECURITY AGENT]**

We refer to the [DESCRIBE RELEVANT AGREEMENT] (Contract).

This letter constitutes notice to you that under the Debenture [(a copy of which is attached)] we have [charged **OR** assigned, by way of security,] to [SECURITY AGENT] (Security Agent) all our rights in respect of the Contract.

We confirm that:

- We will remain liable under the Contract to perform all the obligations assumed by us under the Contract.
- None of the Security Agent, any delegate appointed by the Security Agent or any receiver will at any time be under any obligation or liability to you under or in respect of the Contract.

Neither the Debenture nor this notice releases, discharges or otherwise affects your liability and obligations in respect of the Contract.

Subject to the above, we will remain entitled to exercise all our rights, powers and discretions under the Contract and you may continue to deal with us in relation to the Contract and give notices under the Contract to us unless and until you receive written notice to the contrary from the Security Agent. Thereafter, all such rights, powers and discretions shall be exercisable by, and notices shall be given to, the Security Agent or as it directs and we will cease to have any right to deal with you in relation to the Contract and you must deal only with the Security Agent.

Please note that we have agreed that we will not amend or waive any provision of or terminate the Contract without the prior written consent of the Security Agent.



The instructions in this notice may only be revoked or amended with the prior written consent of the Security Agent.

Please confirm that you agree to the terms of this notice, and to act in accordance with its provisions, by sending the attached acknowledgement to the Security Agent at [ADDRESS OF SECURITY AGENT], with a copy to us.

This notice, 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.

Yours faithfully,

.....  
[NAME OF BORROWER]

## PART 2

### FORM OF ACKNOWLEDGEMENT

*[On the letterhead of the counterparty]*

[NAME OF SECURITY AGENT]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [BORROWER] and [SECURITY AGENT]**

We confirm receipt from [BORROWER] (Borrower) of a notice (Notice) dated [DATE] of [a charge **OR** an assignment, by way of security,] of all the Borrower's rights under [DESCRIBE RELEVANT AGREEMENT] (Contract).

[Terms defined in the Notice shall have the same meaning when used in this acknowledgement.]

We confirm that:

- We accept the confirmations and instructions contained in the Notice and agree to comply with the Notice.
- There has been no amendment, waiver or release of any rights or interests in the Contract since the date of the Contract.
- We will not cancel, avoid, release or otherwise allow the Contract to lapse without giving the Security Agent at least 30 days' prior written notice.
- We have not, as at the date of this acknowledgement, received notice that the Borrower has assigned its rights under the Contract to a third party, or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party.
- The Security Agent will not in any circumstances have any liability in relation to the Contract.
- The Contract shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Security Agent.

This letter, 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.

Yours faithfully,

[COUNTERPARTY]

## SCHEDULE 4

### NOTICE AND ACKNOWLEDGEMENT - INSURANCE POLICY

#### PART 1

#### FORM OF NOTICE

*[On the letterhead of the Borrower]*

[NAME OF INSURANCE COMPANY]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [BORROWER] and [SECURITY AGENT]**

We refer to the [DESCRIBE INSURANCE POLICY AND SPECIFY ITS POLICY NUMBER] (Policy).

This letter constitutes notice to you that under the Debenture [(a copy of which is attached)] we have [charged OR assigned, by way of security,] to [SECURITY AGENT] (Security Agent) all our rights in respect of the Policy (including all claims and all returns of premium in connection with the Policy).

We irrevocably instruct and authorise you to:

- [Note the Security Agent's interest on the Policy as [DESCRIBE NOTATION REQUIRED BY SECURITY AGENT TO BE ENDORSED ON POLICY, FOR EXAMPLE, "FIRST MORTGAGEE"] and first loss payee OR Name the Security Agent on the Policy as co-insured].
- Comply with the terms of any written instructions received by you from the Security Agent relating to the Policy, without notice or reference to, or further authority from, us and without enquiring as to the justification or the validity of those instructions.
- Hold all sums from time to time due and payable by you to us under the Policy to the order of the Security Agent.
- Pay, or release, all monies to which we are entitled under the Policy to the Security Agent, or to such persons as the Security Agent may direct.
- Disclose information in relation to the Policy to the Security Agent on request by the Security Agent.

Neither the Debenture nor this notice releases, discharges or otherwise affects your liability and obligations in respect of the Policy.

Subject to the foregoing, you may continue to deal with us in relation to the Policy until you receive written notice to the contrary from the Security Agent. Thereafter, we will cease to have any right to deal with you in relation to the Policy and you must deal only with the Security Agent.

The instructions in this notice may only be revoked or amended with the prior written consent of the Security Agent.

Please confirm that you agree to the terms of this notice and to act in accordance with its provisions by sending the attached acknowledgement to the Security Agent at [ADDRESS OF SECURITY AGENT], with a copy to us.

This notice, 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.

Yours faithfully,

.....  
[NAME OF BORROWER]

## PART 2

### FORM OF ACKNOWLEDGEMENT

[On the letterhead of the insurance company]

[NAME OF SECURITY AGENT]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [BORROWER] and [SECURITY AGENT]**

We confirm receipt from [BORROWER] (Borrower) of a notice (Notice) dated [DATE] of [a charge **OR** an assignment, by way of security.] of all the Borrower's rights under [DESCRIBE INSURANCE POLICY AND ITS NUMBER] (Policy).

[Terms defined in the Notice shall have the same meaning when used in this acknowledgement.]

We confirm that:

- We accept the instructions and authorisations contained in the Notice and agree to comply with the Notice.
- We have noted the Security Agent's interest on the Policy as [DESCRIBE NOTATION REQUIRED BY SECURITY AGENT TO BE ENDORSED ON POLICY, FOR EXAMPLE, "FIRST MORTGAGEE AND FIRST LOSS PAYEE" OR AS "CO-INSURED"].
- There has been no amendment, waiver or release of any rights or interests in the Policy since the date the Policy was issued.
- We will not cancel, avoid, release or otherwise allow the Policy to lapse without giving the Security Agent at least 30 days' prior written notice.
- We have not, as at the date of this acknowledgement, received notice that the Borrower has assigned its rights under the Policy to a third party, or created any other interest (whether by way of security or otherwise) in the Policy in favour of a third party.
- The Security Agent will not in any circumstances be liable for the premiums in relation to the Policy.

- The Policy shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Security Agent.

This letter, 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.

Yours faithfully,

.....  
[INSURER]

## **SCHEDULE 5**

### **NOTICE AND ACKNOWLEDGEMENT - BANK ACCOUNT**

#### **PART 1**

#### **FORM OF NOTICE**

*[On the letterhead of the Borrower]*

[BANK, FINANCIAL INSTITUTION OR OTHER PERSON]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [BORROWER] and [SECURITY AGENT]**

This letter constitutes notice to you that under the Debenture [(a copy of which is attached)] we have charged, by way of first fixed charge, in favour of [SECURITY AGENT] (the Security Agent) all monies from time to time standing to the credit of the account held with you and detailed below (the Account), together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest):

**Name of Account: [NAME OF ACCOUNT]**

**Sort code: [SORT CODE]**

**Account number: [ACCOUNT NUMBER]**

We irrevocably instruct and authorise you to:

Disclose to the Security Agent any information relating to the Account requested from you by the Security Agent.

[Comply with the terms of any written notice or instructions relating to the Account received by you from the Security Agent.]

[Hold all sums from time to time standing to the credit of the Account to the order of the Security Agent.]

[Pay or release all or any part of the monies standing to the credit of the Account in accordance with the written instructions of the Security Agent.]

[We acknowledge that you may comply with the instructions in this notice without any further permission from us.]

[We are not permitted to withdraw any amount from the Account without the prior written consent of the Security Agent.]



[The instructions in this notice may only be revoked or amended with the prior written consent of the Security Agent.]

This notice, 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.

Please [acknowledge receipt of this notice **OR** confirm that you agree to the terms of this notice and to act in accordance with its provisions] by sending the attached acknowledgement to the Security Agent at [ADDRESS OF SECURITY AGENT], with a copy to us.

Yours faithfully,

Signed.....

[NAME OF BORROWER]

## PART 2

### FORM OF ACKNOWLEDGEMENT

*[On the letterhead of the bank, financial institution or other person]*

[SECURITY AGENT]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear Sirs,

**Debenture (Debenture) dated [DATE] between [BORROWER] and [SECURITY AGENT]**

We confirm receipt from [BORROWER] (the Borrower) of a notice (the Notice) dated [DATE] of a charge (on the terms of the Debenture) over all monies from time to time standing to the credit of the account detailed below (the Account), together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest).

We confirm that we:

Accept the instructions contained in the Notice and agree to comply with the Notice.

[Will not permit any amount to be withdrawn from the Account without your prior written consent.]

Have not received notice of the interest of any third party in the Account.

Have neither claimed nor exercised, nor will claim or exercise any security interest, set-off, counter-claim or other right in respect of the Account.

The Account is:

**Name of Account: [NAME OF ACCOUNT]**

**Sort code: [SORT CODE]**

**Account number: [ACCOUNT NUMBER]**

This letter, 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.

Yours faithfully,

Signed.....

[NAME OF BANK, FINANCIAL INSTITUTION OR OTHER PERSON]

## **SCHEDULE 6 - PARTIES**

### **PART 1 – THE FACILITY AGENT**

<b>Name:</b>	<b>Company Registration Number:</b>
<b>Sancus (IOM) Limited</b>	<b>012528V</b>

### **PART 2 - THE FUNDERS**

<b>Name:</b>	<b>Company Registration Number:</b>
<b>Sancus (IOM) Limited</b>	<b>012528V</b>
<b>Sancus Loan Notes 2 Limited</b>	<b>63252</b>

## **SCHEDULE 7 – ADDITIONAL TERMS OF SECURITY TRUST**

### **1. SECURITY AGENT'S REMUNERATION**

- 1.1. The Borrower shall pay the Security Agent remuneration for its services as Security Agent as from the date of this Deed, such remuneration to be at such rate as may be from time to time agreed between the Borrower and the Security Agent. Such remuneration shall be payable upon the execution of this Deed.
- 1.2. In the event of the occurrence of an Event of Default, the Borrower hereby agrees that the Security Agent shall be entitled to be paid additional remuneration calculated at its normal hourly rates in force from time to time. In any other case if the Security Agent considers it expedient or necessary or is requested by the Finance Parties to undertake duties which the Security Agent deems to be of an exceptional nature or otherwise outside the scope of the normal duties of the Security Agent hereunder the Borrower shall pay to the Security Agent such additional remuneration (together with any applicable VAT) which shall be calculated by reference to the Security Agent's normal hourly rates in force from time to time.
- 1.3. The Borrower shall in addition pay to the Security Agent an amount equal to the amount of any VAT or similar tax chargeable in respect of its remuneration hereunder.
- 1.4. All amounts payable to the Security Agent pursuant to paragraph 1.2 or any other general indemnity shall be payable by the Borrower on the date specified in a demand by the Security Agent; the rate of interest applicable to such payments shall be the rate specified by the Security Agent as being its cost of funding and interest shall accrue: (a) in the case of payments made by the Security Agent prior to the date of the demand, from the date on which the payment was made or such later date as specified in such demand; and (b) in the case of payments made by the Security Agent on or after the date of the demand, from the date specified in such demand, which date shall not be a date earlier than the date such payments are made. All remuneration payable to the Security Agent shall carry interest at such rate from the due date therefore.
- 1.5. Unless otherwise specifically stated in any discharge of this Deed the provisions of this paragraph 1 shall continue in full force and effect notwithstanding such discharge.

### **2. SECURITY AGENT'S POWERS AND OTHER PROVISIONS**

#### **2.1. Security Agent's powers**

The Security Agent shall have all the powers conferred on trustees by the Trustee Act 1925 and:

- 2.1.1. the Security Agent may in relation to this Deed act on the opinion or advice of or information obtained from any lawyer, valuer, surveyor, banker, broker, auctioneer, accountant or other expert whether obtained by the Borrower or by the Security Agent or otherwise and shall not be responsible for any loss occasioned by so acting;
- 2.1.2. save as otherwise expressly provided in this Deed, the Security Agent shall, as regards all trusts, powers, authorities and discretions vested in it by this

Deed, have absolute and uncontrolled discretion as to their exercise and, provided it shall not have acted fraudulently, dishonestly or recklessly it shall not be responsible for any loss, costs, damages or expenses that may result from the exercise or non-exercise thereof. In particular, it shall not be bound to act (whether at the request or direction of the Finance Parties or otherwise) under any of the provisions of this Deed unless the Security Agent shall first be indemnified and/or secured and/or prefunded to its satisfaction against all proceedings, claims and demands to which the Security Agent may so become liable and all costs, charges and expenses which may be so incurred by the Security Agent;

- 2.1.3. without prejudice to the right of indemnity by law given to trustees, the Security Agent and every attorney, manager, agent, delegate or other person appointed by it under this Deed may indemnify itself out of the charged property and shall otherwise be indemnified by the Borrower against all liabilities and expenses properly incurred by it or him in the execution of the powers and trusts of this Deed or of any powers, authorities or discretion vested in it or him pursuant to this Deed. This indemnity shall extend to all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in relation to this Deed. The Security Agent may in priority to any payment to the Finance Parties retain and pay out of any monies in its hands on the trusts of this Deed the amount of any such liabilities and expenses and also the remuneration of the Security Agent as provided in this Deed;
- 2.1.4. as between itself and the Finance Parties, the Security Agent shall have full power to determine all questions and doubts arising in relation to any of the provisions of this Deed. Every such determination made in good faith (whether or not the same shall relate in whole or in part to the acts or proceedings of the Security Agent under this Deed) shall be conclusive and binding on the Security Agent and the Finance Parties;
- 2.1.5. any consent granted by the Security Agent pursuant to this Deed may be granted on such terms and subject to such conditions (if any) as the Security Agent may in its absolute discretion think fit and may be given retrospectively;
- 2.1.6. at any time and without the consent of the Finance Parties, the Security Agent may concur with the Borrower in making any modification to this Deed which, in the opinion of the Security Agent, will not be materially prejudicial to the interests of the Finance Parties or which is to correct a manifest error, in which case the Borrower shall promptly take all such reasonable steps as the Security Agent may require; and
- 2.1.7. the Security Agent may on such terms and subject to such conditions as to it shall seem fit:
  - 2.1.7.1. authorise or waive any proposed breach or any breach by the Borrower or any of the terms of this Deed without prejudice to the rights of the Security Agent in respect of any subsequent breach of any such terms; and
  - 2.1.7.2. determine that any event which constitutes (or which, with the giving of notice and/or lapse of time or any other matter would constitute) an event on the happening of which the Secured Liabilities shall have or may become immediately due and repayable shall not be

treated as such for the purposes of this Deed, without prejudice to the rights of the Security Agent in respect of any subsequent such event.

**2.2. Expenditure of funds**

Nothing contained in this Deed shall require the Security Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or exercise of its rights and powers, authority or discretion unless and until it shall have received in form and substance satisfactory to it such indemnification and/or security (whether by way of payment in advance or otherwise) for all Costs (including legal fees and disbursements) which it will or may pay, expend or will or may reasonably be expected to incur or be exposed to in complying with the instructions or directions of the Finance Parties or in taking any such other action (and, for the avoidance of doubt, nothing contained in this Deed shall require the Security Agent to expend or risk its own funds or otherwise incur any financial liability and the Security Agent shall not be obliged to do or omit to do anything, including entering into any transaction or incurring any liability (including, without limitation, giving its own indemnity to any Administrator or Receiver or becoming a mortgagee in possession) unless the Security Agent's liability is limited in a manner satisfactory to it).

**2.3. Failure to show degree of care and diligence**

If the Security Agent has failed to show the degree of care and diligence reasonably required of it under this Deed, nothing in this paragraph 2 shall exempt the Security Agent from or indemnify it against any liability for breach of trust or any liability which by virtue of any rule of law would otherwise attach to it in respect of any fraud, dishonesty or recklessness of which it is proven to be guilty in relation to its duties under this Deed.

**2.4. Appointment of agent**

In the conduct of the trust business, instead of acting personally, the Security Agent may employ and pay an agent to transact or concur in transacting any business and to do or concur in doing all acts required to be done by the Security Agent, including the receipt and payment of money. Any trustee for the time being of this Deed being a person engaged in any profession or business shall be entitled to all usual professional and other charges, in addition to disbursements for business transacted and acts done by him or his firm or employer in connection with the trusts of this Deed in connection with matters arising in connection with this Deed, including matters which might or should have been attended to in person by a trustee not being engaged in any profession or business.

**2.5. Security Agent's discretions**

The Security Agent may:

- 2.5.1. assume unless it has, in its capacity as Security Agent for the Finance Parties, received actual notice in writing to the contrary, that (a) no Event of Default has occurred and (b) the Borrower is not in breach of or default under this Deed and (c) any right, power, authority or discretion vested by this Deed in any person has not been exercised;

- 2.5.2. engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts whose advice or services may at any time seem necessary, expedient or desirable and shall not be bound to supervise such persons or be responsible for any loss occasioned by so acting, provided that the Security Agent has exercised reasonable care in selecting any such persons. The Borrower shall indemnify the Security Agent in respect of any costs incurred by the Security Agent in this regard.

## **2.6. Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in this Deed, the Security Agent shall not:

- 2.6.1. be under any obligation to supervise or monitor the proceedings or acts of any persons or be in any way responsible for any liability incurred by reason of any misconduct, omission or default on the part of any other party;
- 2.6.2. be bound to account to any other party for any sum or the profit element of any sum received by it for its own account;
- 2.6.3. be bound to disclose to any other person (i) any confidential information or (ii) any other information if disclosure would or might in its reasonable opinion constitute a breach of any law or be a breach of fiduciary duty;
- 2.6.4. be under any obligations other than those which are specifically provided for in this Deed;
- 2.6.5. carry out any regulated activities for the purposes of the Financial Services and Markets Act 2000 ("FSMA"), unless it is exempt or authorised to do so under the FSMA; or
- 2.6.6. be liable for any failure, omission or defect in perfecting or protecting its rights under this Deed, or the priority of the security constituted in this Deed including, without limitation, failure:
  - 2.6.6.1. to notify any person of the execution of any document;
  - 2.6.6.2. to obtain any licence, consent or other authority for the execution, delivery, validity, legality, performance, enforceability or admissibility in evidence of the Transaction Security or any part thereof;
  - 2.6.6.3. to take any steps to perfect its title to any property or to render this Deed effective or to secure the creation of any ancillary security under the laws of any jurisdiction, register, file or record this Deed in accordance with any legal requirement in any jurisdiction and/or give notice to any person of the execution of this Deed; or
  - 2.6.6.4. to require any further assurances in relation to this Deed.

## **2.7. Exclusion of Security Agent's Liability**

Unless (and only to the extent) caused directly by its fraud, dishonesty or recklessness, the Security Agent shall not accept responsibility or be liable for:

- 2.7.1. any losses to any person or any liability arising as a result of it taking or refraining from taking any action in relation to this Deed or otherwise;
- 2.7.2. the exercise of, or the failure to exercise, any judgement, discretion or power given to it by or in connection with this Deed or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with this Deed;
- 2.7.3. any shortfall which arises on the enforcement of this Deed and in any event the Security Agent shall not be responsible for consequential losses.

## **2.8. No proceedings**

No party (other than the Security Agent) may take any proceedings against any officer, employee or agent of the Security Agent in respect of any claim it might have against the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent and any officer, employee or agent of the Security Agent may rely on this clause 2.9 subject to clause 2.13.

## **2.9. Insurance by the Security Agent**

The Security Agent shall not be under any obligation to insure any of the secured property. The Security Agent shall not be a party to any insurance policy and shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance. The Security Agent shall not be required to insure against any loss, liability, expense, demand, cost claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Deed.

## **2.10. Refrain from illegality**

Notwithstanding anything else contained in this Deed or any other documents, the Security Agent may refrain from doing anything which would or might in its opinion be contrary to any law of any jurisdiction or any directive or regulation of any agency of any state or which would or might otherwise render it liable to any person and may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

## **2.11. Disapplication of section 1 of the Trustee Act 2000**

The duty of care that applies to a trustee under Section 1 of the Trustee Act 2000 shall not apply to the Security Agent. Where there are inconsistencies between the Trustee Acts and the provision of this Deed, the provision of this Deed shall, to the extent allowed by law, prevail and, in the case of any such inconsistency with the Trustee Act 2000, the provisions of this Deed shall constitute a restriction or exclusion for the purposes of that Act.

## **3. RESIGNATION**

- 3.1. The Security Agent may resign and appoint a successor by giving notice to the Borrower and the Finance Parties.
- 3.2. The Security Agent's resignation notice shall only take effect upon (i) the appointment of a successor, (ii) the transfer of all of the transaction security to that successor and (iii) the successor confirming its agreement to be bound by the



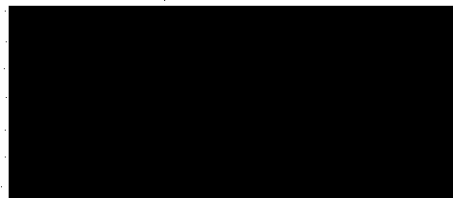
provisions of this Deed and any other related agreements to which the Security Agent is a party.

- 3.3. Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of this Deed but shall remain entitled to the benefit of paragraph 2 of this Schedule. Its successor, the Finance Parties and the Borrower shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original party.

#### **4. DELEGATION / ADDITIONAL SECURITY AGENT**

- 4.1. The Security Agent may, at any time, delegate by power of attorney or otherwise to any person for any period all or any of the rights, powers and discretions vested in it by any of this Deed.
- 4.2. The delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions as the Security Agent may think fit in the interests of the Finance Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any delegate or sub-delegate if in each case, the Security Agent shall have exercised reasonable care in the selection of the delegate.
- 4.3. Furthermore, the Security Agent may at any time appoint (and subsequently remove) any person to act as a separate Security Agent or as a co-Security Agent jointly with it (i) if it considers that appointment to be in the interests of the Finance Parties or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant or (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Agent shall give prior notice to the Borrower of any such appointment.
- 4.4. Any person so appointed (subject to the terms of this Deed) shall have the rights, powers and discretions (not exceeding those conferred on the Security Agent by this Deed) and the duties and obligations as are conferred or imposed by the instrument of appointment.
- 4.5. Any costs and expenses incurred by the Security Agent in exercising its rights under this paragraph 4 shall be borne by the Borrower.

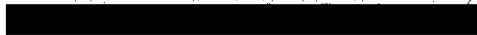
Executed as a deed by 15 FM  
LIMITED acting by NORMAN  
MENARY, a director, in the presence  
of



Director



NAME OF WITNESS:



ADDRESS OF WITNESS:



OCCUPATION OF WITNESS:



SIGNED for and on behalf of )

SANCUS (IOM) LIMITED )

acting by its duly authorised )

representative )

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Executed as a deed by **NORMAN  
MENARY**, in the presence of:

NAME OF WITNESS:

ADDRESS OF WITNESS:

OCCUPATION OF WITNESS:

SIGNED for and on behalf of )  
SANCUS (IOM) LIMITED )  
acting by its duly authorised )  
representative )

