

MR01

Particulars of a charge



Companies House

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

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

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

☐ **What this form is NOT for**  
You may not use this form to  
register a charge where there is  
an instrument. Use form MR08

MONDAY



A08 \*A2D5GAJD\*

22/07/2013

#12

COMPANIES HOUSE

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



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

**1 Company details**

Company number 0 8 5 8 6 2 2 9

Company name in full Arkose Investments Ltd

For official use

**→ Filing in this form**

Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

**2 Charge creation date**

Charge creation date d 1 2 m 0 7 y 2 0 y 1 3

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

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

Name Icon Quattro II, LLC (as Chargee)

Name

Name

Name

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

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

**MRO1**

**Particulars of a charge**

**4**

**Description**

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

**Continuation page**

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

Description

**5**

**Fixed charge or fixed security**

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

☒ **Yes**

☐ **No**

**6**

**Floating charge**

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

☒ **Yes** Continue

☐ **No** Go to **Section 7**

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

☒ **Yes**

**7**

**Negative Pledge**

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

☒ **Yes**

☐ **No**

MR01

Particulars of a charge

8

**Trustee statement <sup>①</sup>**

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

☐

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

9

**Signature**

Please sign the form here

Signature

Signature

X

*Reed Smith LLP*

X

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

# MR01

## Particulars of a charge



### Presenter information

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

Contact name  
Ben Wulwik

Company name  
Reed Smith LLP

Address  
The Broadgate Tower

20 Primrose Street

Post town  
London

County/Region  
Greater London

Postcode  
E C 2 A 2 R S

Country  
United Kingdom

DX  
DX 1066/DX 18 City/London

Telephone  
020 3116 2835



### Certificate

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



### Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following.

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



### Important information

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



### How to pay

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

Make cheques or postal orders payable to 'Companies House'.



### Where to send

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

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

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

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



### Further information

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

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



DX

FILE COPY

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

Company number: 8586229

Charge code: 0858 6229 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 12th July 2013 and created by ARKOSE INVESTMENTS LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd July 2013.

Given at Companies House, Cardiff on 24th July 2013



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED 12 JULY 2013

- (1) ICON QUATTRO II, LLC  
(as Chargee)
- (2) THE COMPANIES NAMED IN THIS DEED AS  
OBLIGORS  
(as Obligors)

## COMPOSITE GUARANTEE AND DEBENTURE

EXECUTION VERSION

WE HEREBY CERTIFY THAT THIS IS A  
TRUE COPY OF THE ORIGINAL

*Reed Smith LLP*

REED SMITH LLP

DATE *15 July 2013*

**ReedSmith**

US\_ACTIVE-113528748 6

DATED 12 JULY 2013

- (1) **ICON QUATTRO II, LLC**  
(as Chargee)
- (2) **THE COMPANIES NAMED IN THIS DEED AS  
OBLIGORS**  
(as Obligors)

## **COMPOSITE GUARANTEE AND DEBENTURE**

EXECUTION VERSION

WE HEREBY CERTIFY THAT THIS IS A  
TRUE COPY OF THE ORIGINAL

Reed Smith LLP

REED SMITH LLP

DATE 15 July 2013

**ReedSmith**

US\_ACTIVE-113528748 6

## CONTENTS

### CLAUSE

1	DEFINITIONS AND INTERPRETATION . . . . .	3
2	GUARANTEE AND INDEMNITY . . . . .	7
3	COVENANT TO PAY . . . . .	8
4	GRANT OF SECURITY . . . . .	8
5	FIXED SECURITY . . . . .	9
6	FLOATING CHARGE . . . . .	10
7	CONVERSION OF FLOATING CHARGE . . . . .	11
8	CONTINUING SECURITY . . . . .	12
9	LIABILITY OF OBLIGORS RELATING TO SECURITY ASSETS . . . . .	12
10	ACCOUNTS . . . . .	12
11	REPRESENTATIONS . . . . .	12
12	UNDERTAKINGS BY OBLIGORS . . . . .	13
13	POWER TO REMEDY . . . . .	18
14	WHEN SECURITY BECOMES ENFORCEABLE . . . . .	18
15	ENFORCEMENT OF SECURITY . . . . .	19
16	RECEIVER . . . . .	20
17	POWERS OF RECEIVER . . . . .	21
18	APPLICATION OF PROCEEDS . . . . .	23
19	SET-OFF . . . . .	23
20	DELEGATION . . . . .	24
21	FURTHER ASSURANCES . . . . .	24
22	POWER OF ATTORNEY . . . . .	25
23	PAYMENTS . . . . .	25
24	STAMP DUTY . . . . .	25
25	COSTS AND EXPENSES . . . . .	26
26	CURRENCIES . . . . .	26
27	INDEMNITY . . . . .	27
28	MISCELLANEOUS . . . . .	27
29	NOTICES . . . . .	29
30	PARTIAL INVALIDITY . . . . .	30
31	RELEASE . . . . .	31
32	COUNTERPARTS . . . . .	31
33	GOVERNING LAW . . . . .	31

### SCHEDULES

SCHEDULE 1 . . . . .	32
OBLIGORS . . . . .	32
SCHEDULE 2 . . . . .	33



THE GUARANTEE	33
SCHEDULE 3	35
DETAILS OF SECURITY ASSETS	35
PART 1 - SPECIFIED REAL PROPERTY	35
PART 2 - CHARGED SECURITIES	36
PART 3 - INTELLECTUAL PROPERTY	37
PART 4 - INSURANCES	38
EXECUTION PAGES	39

**THIS DEBENTURE** dated 2 July 2013

**BETWEEN:**

- (1) **ICON QUATTRO II, LLC**, as Chargee (the **Chargee**), and
- (2) **THE COMPANIES NAMED IN THIS DEED AS OBLIGORS** listed in Part 1 of Schedule 1 (in this capacity as **Obligors**)

**BACKGROUND**

- (A) Pursuant to the Loan Agreement (as defined below) the Chargee has agreed, subject to the terms and conditions set forth in the Loan Agreement, to loan certain funds to the Borrower (as defined in the Loan Agreement)
- (B) It is a condition to such loan by the Chargee under the Loan Agreement that the Obligors shall have granted the security interests and undertaken the obligations contemplated by this Deed, subject to the terms of the Intercreditor Agreement, for so long as it is in effect

**IT IS AGREED** as follows

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed

- (a) terms defined in, or construed for the purposes of, the Loan Agreement (as defined below) have the same meanings when used in this Deed (unless the same are otherwise defined in this Deed), and

- (b) the following terms have the following meanings

**"Act"** means the Law of Property Act 1925,

**"Assigned Assets"** means the Security Assets expressed to be assigned pursuant to clause 5.2 (*Security assignments*),

**"Charged Investments"** means the Charged Securities and all present and future Securities Rights accruing to all or any of the Charged Securities,

**"Charged Securities"** means the Securities specified in part 2 of Schedule 3 (*Details of Security Assets*),

**"Guarantee"** means the guarantee and indemnity contained in clause 2 (*Guarantee and indemnity*) as extended by Schedule 2 (*The Guarantee*),

**"Insurances"** means, all policies of insurance (and all cover notes) which are at any time held by, or written in favour of, an Obligor or in which an Obligor from time to time has an interest and as specified in part 4 of Schedule 3 (*Details of Security Assets*)) and any other policies of insurance which may replace those policies of insurance,

**"Intellectual Property"** means all present and future Intellectual Property Rights,

**"Intellectual Property Rights"** means

- (a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests whether registered or unregistered, and
- (b) the benefit of all applications and rights to use such assets of each Obligor,

**"Inventory"** means raw materials, work in progress and finished goods, being the stock-in-trade of an Obligor,

**"Loan Agreement"** means the loan agreement dated on or about the date of this Deed made between (1) the Chargee, (2) the Borrower and (3) the Parent, pursuant to which the Chargee agreed to make a term loan facility available to the Borrower,

**"Other Receivables"** means all present and future book debts and other debts, rentals, royalties, fees, VAT and monetary claims and all other amounts at any time recoverable or receivable by, or due or owing to, any Obligor (whether actual or contingent and whether arising under contract or in any other manner whatsoever) together with.

- (a) the benefit of all rights, guarantees, Encumbrances and remedies relating to any of the foregoing (including, without limitation, negotiable instruments, indemnities, reservations of property rights, rights of tracing and unpaid vendor's liens and similar associated rights), and
- (b) all proceeds of any of the foregoing,

**"Parent"** means Arkose Investments Ltd, a company incorporated in England and Wales with registered number 08586229 and having its registered office at Greenway Court, Canning Road, Stratford, London E15 3ND,

**"Party"** means a party to this Deed,

**"P&M"** means all plant, machinery, other capital equipment (excluding Inventory) owned by an Obligor from time to time wherever located and all spare parts, replacements, modifications and additions for or to the same and any manuals, logbooks or registration documents relating thereto,

**"PNC Discharge Date"** means the date on which all obligations and liabilities due, owing or incurred to PNC by any member of the Group under the terms of the PNC Finance Documents have been unconditionally and irrevocably paid in full,

**"PNC Finance Documents"** means the "Finance Documents" as defined in the PNC Loan Agreement,

**"Real Property"** means all estates and interests in freehold, leasehold and other immovable property (wherever situated) now or in future belonging to an Obligor, or in which an Obligor has an interest at any time, together with

- (a) all buildings and fixtures (including trade fixtures) and fixed P&M at any time thereon,
- (b) all easements, rights and agreements in respect thereof, and
- (c) the benefit of all covenants given in respect thereof,

**"Receiver"** means any receiver or receiver and manager appointed by the Chargee under this Deed;

**"Secured Obligations"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or alone or in any other capacity whatsoever) of any member of the Group to the Chargee under or pursuant to any Finance Document (including all monies covenanted to be paid under this Deed), provided that no obligation or liability shall be included in the definition of **"Secured Obligations"** to the extent that, if it were so included, this Deed (or any part of it) would constitute unlawful financial assistance within the meaning of section 678 of the Companies Act 2006,

**"Securities"** means all stocks, shares, debentures, bonds, warrants, coupons, negotiable instruments, certificates of deposit or other securities or *"investments"* (as defined in part II of schedule II to the Financial Services and Markets Act 2000 as in force at the date of this Deed) now or in future owned (legally or beneficially) by an Obligor, held by a nominee on its behalf or in which such Obligor has an interest at any time,

**"Securities Rights"** means

- (a) all dividends, distributions and other income paid or payable on the relevant Securities or Charged Securities or on any asset referred to in paragraph (b) of this definition,
- (b) all rights, monies or property accruing or offered at any time in relation to such Securities or Charged Securities whether by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise,

**"Security"** means the Encumbrances created by or pursuant to this Deed,

**"Security Assets"** means all property and assets from time to time mortgaged, charged or assigned (or expressed to be mortgaged, charged or assigned) by or pursuant to this Deed,

**"Security Period"** means the period beginning on the date of this Deed and ending on the date on which

- (a) all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full, and
- (b) the Chargee has no further commitment, obligation or liability under or pursuant to the Finance Documents, and

**"Specified Real Property"** means the estates and interests in freehold, leasehold and other immovable property (if any) specified in part 1 of Schedule 3 (*Details of Security Assets*), together with

- (a) all buildings and fixtures (including trade fixtures) and fixed P&M at any time thereon,
- (b) all easements, rights and agreements in respect thereof, and
- (c) the benefit of all covenants given in respect thereof

## 1.2 Interpretation

- (a) Unless a contrary indication appears, any reference in this Deed to
  - (i) the "**Borrower**", an "**Obligor**" or "**the Chargee**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees,
  - (ii) "**this Deed**", the "**Loan Agreement**", any other "**Finance Document**" or any other agreement or instrument shall be construed as a reference to this Deed, the Loan Agreement, such other Finance Document or such other agreement or instrument as varied, amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the obligations of any member of the Group or provides for further advances),
  - (iii) "**assets**" includes any present and future properties, revenues and rights of every description and includes uncalled capital,
  - (iv) an Event of Default that is "**continuing**" shall be construed as meaning an Event of Default that has not been waived in writing by the Chargee, to the satisfaction of the Chargee and any waiver given by the Chargee shall only apply to the specific occurrence of the specific event referred to in such waiver,
  - (v) "**including**" or "**includes**" means including or includes without limitation,
  - (vi) "**Secured Obligations**" includes obligations and liabilities which would be treated as such but for the liquidation or dissolution of or similar event affecting any member of the Group,
  - (vii) a provision of law is a reference to that provision as amended or re-enacted, and
  - (viii) the singular includes the plural and vice versa
- (b) References to clauses, paragraphs and schedules are to be construed, unless otherwise stated, as references to clauses, paragraphs and schedules of and to this Deed and references to this Deed include its schedules
- (c) Clause and schedule headings are for convenience only and shall not affect the construction of this Deed.

- (d) Each undertaking of any Obligor contained in this Deed must be complied with at all times during the Security Period
- (e) The terms of the other Finance Documents and of any side letters between any of the parties thereto in relation to any Finance Document are incorporated in this Deed to the extent required to ensure that any disposition of the property contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989
- (f) If the Chargee reasonably considers that an amount paid by any Obligor to the Chargee under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of such Obligor, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed
- (g) The liabilities and obligations of each Obligor under this Deed shall be joint and several. Each Obligor agrees to be bound by this Deed notwithstanding that any other Obligor which was intended to sign or be bound by this Deed did not so sign or is not bound by this Deed
- (h) The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand

### **1.3 Third party rights**

A person who is not a Party shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed

## **2. GUARANTEE AND INDEMNITY**

### **2.1 Guarantee and indemnity**

Each Obligor irrevocably and unconditionally

- (a) guarantees in favour of the Chargee punctual performance by each member of the Group of all obligations of each member of the Group under the Finance Documents,
- (b) undertakes in favour of the Chargee that whenever a member of the Group does not pay any amount when due under, or in connection with, any Finance Document, such Obligor shall immediately on demand pay that amount as if it were the principal obligor, and
- (c) indemnifies the Chargee immediately on demand against any cost, loss or liability suffered by the Chargee, if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which the Chargee would otherwise have been entitled to recover

## **2.2 Extension of guarantee**

The guarantee set out in this clause 2 is given subject to and with the benefit of the provisions set out in Schedule 2 (*The Guarantee*)

## **3. COVENANT TO PAY**

### **3.1 Covenant to pay**

Each Obligor, as principal obligor and not merely as surety, covenants in favour of the Chargee that it will pay and discharge the Secured Obligations from time to time when they fall due

### **3.2 Default interest**

- (a) Any amount which is not paid under this Deed when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the rate and in the manner agreed in the Finance Document under which such amount is payable and, in the absence of such agreement, at the Default Rate from time to time
- (b) Default interest will accrue from day to day and will be compounded at such intervals as the Chargee states are appropriate

## **4. GRANT OF SECURITY**

### **4.1 Nature of security**

All Encumbrances and dispositions created or made by or pursuant to this Deed are created or made:

- (a) in favour of the Chargee,
- (b) with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994;
- (c) subject to the terms of the Intercreditor Agreement, for so long as it is in effect; and
- (d) as continuing security for payment of the Secured Obligations

### **4.2 Qualifying floating charge**

Paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to any floating charge created by or pursuant to this Deed (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act 1986).

## **5. FIXED SECURITY**

### **5.1 Fixed charges**

Each Obligor charges and agrees to charge all of its present and future right, title and interest in and to the following assets which are at any time owned by it, or in which it from time to time has an interest

- (a) by way of legal mortgage the Specified Real Property;
- (b) by way of fixed charge
  - (i) all Real Property and all interests in Real Property not charged by clause 5 1(a)),
  - (ii) all licences to enter upon or use any land and the benefit of all other agreements relating to any land, and
  - (iii) the proceeds of sale of all Real Property other than Specified Real Property,
- (c) by way of fixed charge all P&M and the benefit of all contracts, licences and warranties relating to the same,
- (d) by way of fixed charge
  - (i) all computers, vehicles, office equipment and other equipment; and
  - (ii) the benefit of all contracts, licences and warranties relating to the same,other than any which are for the time being part of any Obligor's Inventory,
- (e) by way of fixed charge the Charged Securities;
- (f) by way of fixed charge all Securities Rights from time to time accruing to the Charged Securities,
- (g) by way of fixed charge all rights which an Obligor may have at any time against any clearance or settlement system or any custodian in respect of any Charged Securities;
- (h) by way of fixed charge all Securities (not charged by clause 5 1(e)),
- (i) by way of fixed charge (A) all Securities Rights from time to time accruing to those Securities and (B) all rights which such Obligor may have at any time against any clearance or settlement system or any custodian in respect of any Securities;
- (j) by way of fixed charge the Intellectual Property (if any) specified in part 3 of Schedule 3 (*Details of Security Assets*),



- (k) by way of fixed charge all Intellectual Property (if any) not charged by clause 5 1(j),
- (l) to the extent that any Assigned Asset is not effectively assigned under clause 5 2 (*Security assignments*), by way of fixed charge, such Assigned Asset,
- (m) by way of fixed charge (to the extent not otherwise charged or assigned in this Deed)
  - (i) the benefit of all licences, consents, agreements and authorisations held or used in connection with the business of such Obligor or the use of any of its assets, and
  - (ii) any letter of credit issued in favour of such Obligor and all bills of exchange and other negotiable instruments held by it, and
- (n) by way of fixed charge all of the goodwill and uncalled capital of such Obligor

## 5.2 Security assignments

Each Obligor assigns and agrees to assign absolutely (subject to a proviso for reassignment on redemption) all its present and future right, title and interest in and to

- (a) the proceeds of the sale of any Specified Real Property,
- (b) the proceeds of the sale of any Charged Securities,
- (c) the proceeds of the sale of any Intellectual Property specified in part 5 of schedule 3 (*Details of Security Assets*),
- (d) the Insurances, all claims under the Insurances and all proceeds of the Insurances, and
- (e) Other Receivables (not assigned under clauses 5 2(a) to 5 2(d) (inclusive) above

To the extent that any Assigned Asset described in clauses 5 2(a) to 5 2(e) inclusive is not assignable, the assignment which that clause purports to effect shall operate as an assignment of all present and future rights and claims of such Obligor to any proceeds of an Assigned Asset

## 5.3 Assigned Assets

The Chargee is not obliged to take any steps necessary to preserve any Assigned Asset, or to make any enquiries as to the nature or sufficiency of any payment received by it pursuant to this Deed

## 6. FLOATING CHARGE

Each Obligor charges and agrees to charge by way of floating charge all of its present and future

- (a) assets and undertaking (wherever located) which are not effectively charged by way of fixed mortgage or charge or assigned pursuant to clause 5.1 (*Fixed charges*), clause 5.2 (*Security assignments*) or any other provision of this Deed, and
- (b) (whether or not effectively so charged or assigned) heritable property and all other property and assets in Scotland.

## **7. CONVERSION OF FLOATING CHARGE**

### **7.1 Conversion by notice**

The Chargee may, by written notice to an Obligor, convert the floating charge created under this Deed into a fixed charge as regards all or any of the assets of such Obligor specified in the notice if

- (a) an Event of Default has occurred and is continuing, or
- (b) the Chargee (acting reasonably) considers any Security Assets (whether or not those specified in the notice) to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

### **7.2 Small companies**

The floating charge created under this Deed by any Obligor shall not convert into a fixed charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of such Obligor

### **7.3 Automatic conversion**

The floating charge created under this Deed shall (in addition to the circumstances in which the same will occur under general law) automatically convert into a fixed charge

- (a) in relation to any Security Asset which is subject to a floating charge if
  - (i) such Obligor creates (or attempts or purports to create) any Encumbrance on or over the relevant Security Asset without the prior written consent of the Chargee, or
  - (ii) any third party levies or attempts to levy any distress, execution, attachment or other legal process against any such Security Asset, and
- (b) over all Security Assets of an Obligor which are subject to a floating charge if an administrator is appointed in respect of such Obligor or the Chargee receives notice of intention to appoint such an administrator

### **7.4 Partial conversion**

The giving of a notice by the Chargee pursuant to clause 7.1 (*Conversion by notice*) in relation to any class of assets of any Obligor shall not be construed as a waiver or abandonment of the

rights of the Chargee to serve similar notices in respect of any other class of assets or of any other right of the Chargee

## **8. CONTINUING SECURITY**

### **8.1 Continuing security**

The Security is continuing and will extend to the ultimate balance of the Secured Obligations regardless of any intermediate payment or discharge in whole or in part. This Deed shall remain in full force and effect as a continuing security for the duration of the Security Period.

### **8.2 Additional and separate security**

This Deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Encumbrance which the Chargee may at any time hold for any Secured Obligation.

### **8.3 Right to enforce**

This Deed may be enforced against each or any Obligor without the Chargee first having recourse to any other right, remedy, guarantee or Encumbrance held by or available to it.

## **9. LIABILITY OF OBLIGORS RELATING TO SECURITY ASSETS**

Notwithstanding anything contained in this Deed or implied to the contrary, each Obligor remains liable to observe and perform all conditions and obligations assumed by it in relation to the Security Assets. The Chargee is under no obligation to perform or fulfil any such condition or obligation or to make any payment in respect of any such condition or obligation.

## **10. ACCOUNTS**

No monies at any time standing to the credit of any account (of any type and however designated) of any Obligor with the Chargee or in which any Obligor has an interest (and no rights and benefits relating thereto) shall be capable of being assigned to any third party.

## **11. REPRESENTATIONS**

### **11.1 General**

Each Obligor makes the representations and warranties set out in this clause 11 to the Chargee.

### **11.2 No Encumbrances**

Its Security Assets are, or when acquired will be, beneficially owned by such Obligor free from any Encumbrance other than

- (a) as created by this Deed, and
- (b) as permitted by the Loan Agreement.

### **11.3 No avoidance**

This Deed creates the Encumbrances which it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of any Obligor or otherwise

### **11.4 Ownership of Security Assets**

Each Obligor is the sole legal and beneficial owner of all the Security Assets identified against its name in Schedule 3 (*Details of Security Assets*) except in respect of those Charged Securities (if any) which are held by a nominee for an Obligor, in which case such Obligor is the beneficial owner only of such Charged Securities

### **11.5 No proceedings pending or threatened**

Each Obligor hereby gives the representation set out at paragraph 10.9 (*Litigation*) of the Loan Agreement as if the same were set out in this Deed, save that the reference to the Obligor is a reference to the relevant Obligor

### **11.6 Charged Securities**

- (a) All Securities (including any Charged Securities) are fully paid
- (b) If any Charged Securities are listed in part 4 of schedule 3 (*Details of Security Assets*) those Charged Securities constitute the entire share capital owned by each Obligor in the relevant company

### **11.7 Time when representations made**

- (a) All the representations and warranties in this clause 11 are made by each Obligor on the date of this Deed and are also deemed to be made by each Obligor on the date of each Notification
- (b) Each representation or warranty deemed to be made after the date of this Deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made

## **12. UNDERTAKINGS BY OBLIGORS**

### **12.1 Loan Agreement**

On the Commencement Date, and until the end of the Security Period, each Obligor hereby

- (a) gives the warranties and representations set out at paragraphs 10.1 (*Status*) to 10.8 (*Information*) inclusive, 10.10 (*Good title to assets*), 10.11 (*No default*) and 10.14 (*Tax*) of the Loan Agreement,
- (b) gives the covenants set out at clause 11 (*General Covenants*) of the Loan Agreement, and

- (c) gives the undertakings set out at paragraphs 13.1 (*Authorisations*) to 13.3 (*Continuing disclosure*) inclusive, 13.6 (*Restriction on dealings*), 13.7 (*Insolvency Regulation*) and 13.11 (*Conduct of business*) of the Loan Agreement,

as if the same were set out in this Deed mutatis mutandis and references in those paragraphs to the "Obligor" are deemed to be references to the relevant Obligor and references to "this Agreement" are deemed to be references to this Deed

## 12.2 Restrictions on dealing

No Obligor shall do or agree to do any of the following without the prior written consent of the Chargee

- (a) create, purport to create or permit to subsist any Encumbrance on, or in relation to, any Security Assets except an Encumbrance which is permitted pursuant to the Loan Agreement, any funding arrangements with PNC executed on the date hereof or any security granted or to be granted in favour of PNC and/or the Chargee pursuant to such funding arrangements,
- (b) sell, transfer, lease, lend or otherwise dispose of (whether by a single transaction or a number of transactions and whether related or not) the whole or any part of its interest in any Security Asset except for the sale at full market value of stock in trade in the usual course of trading as conducted by such Obligor at the Commencement Date

## 12.3 Security Assets generally

Each Obligor shall.

- (a) permit the Chargee (or its designated representatives), on reasonable written notice:
  - (i) access during normal office hours to any documents and records relating to the Security Assets, and
  - (ii) to inspect, take extracts from, and make photocopies of, the same,and to provide (at the expense of the Obligor), such clerical and other assistance which the Chargee may reasonably require to do this,
- (b) notify the Chargee of every notice, order, application, requirement or proposal given or made by any competent authority:
  - (i) in relation to any Security Asset specified in schedule 3 (*Details of Security Assets*), immediately upon receipt, and
  - (ii) within 14 days of receipt of every notice, order, application, requirement or proposal given or made in relation to any Security Assets other than Security Asset specified in schedule 3 (*Details of Security Assets*)

and (if required by the Chargee) immediately provide it with a copy of the same and either (A) comply with such notice, order, application, requirement or proposal or (B) make such objections to the same as the Chargee may require or approve **PROVIDED ALWAYS** that notices in respect of limb (a) of the definition of Securities Rights shall be dealt with in accordance with clause 12.3(b)(i) above following the exercise by the Chargee of its rights in accordance with clause 12.7(b) (*Rights in respect of Securities, Charged Securities and Securities Rights*),

- (c) duly and punctually pay all rates, rents, Taxes, and other outgoings owed by it in respect of the Security Assets, and
- (d) in addition to any provisions of the Loan Agreement or this Deed relating to specific Security Assets
  - (i) comply in all material respects with all obligations in relation to the Security Assets under any present or future law, regulation, order or instrument or under any bye-laws, regulations or requirements of any competent authority or other approvals, licences or consents,
  - (ii) comply with all material covenants and obligations affecting the Security Assets (or their manner of use),
  - (iii) not, except with the prior written consent of the Chargee, enter into any onerous or restrictive obligation affecting any Security Asset,
  - (iv) provide the Chargee with all information which it may reasonably request in relation to the Security Assets, and
  - (v) not do, cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any Security Asset (or make any omission which has such an effect)

#### **12.4 Specified Real Property**

Each Obligor undertakes that it is the owner, with full title guarantee, of the Specified Real Property listed by its name in schedule 3 (*Details of Security Assets*)

#### **12.5 Charged Securities**

- (a) To the extent not required to be delivered to or deposited with PNC or its agent under the Intercreditor Agreement, the PNC Loan Agreement or the PNC Debentures (for so long as they are in effect), in relation to any Charged Securities, each Obligor shall, immediately upon execution of this Deed or (if later), as soon as is practicable after its acquisition of any such Charged Securities in certificated form, by way of security for the Secured Obligations.
  - (i) deposit with the Chargee or, as the Chargee may direct, all certificates and other documents of title or evidence of ownership to such Charged Securities and their Securities Rights, and

- (ii) execute and deliver to the Chargee pre-stamped instruments of transfer in respect of such Charged Securities (executed in blank and left undated) and/or such other documents as the Chargee shall require to enable it (or its nominees) to be registered as the owner of or otherwise to acquire a legal title to such Charged Securities and their Securities Rights (or to pass legal title to any purchaser)
- (b) In relation to any Charged Securities, each Obligor shall (following the PNC Discharge Date)
  - (i) promptly give notice to any custodian of any agreement with such Obligor in respect of any such Charged Securities and all present and future Securities Rights accruing to all or any of such Charged Securities, in a form the Chargee may require, and
  - (ii) use its reasonable endeavours to ensure that the custodian acknowledges that notice in a form the Chargee may require
- (c) Without prejudice to the rest of this clause 12.5, the Chargee may, following the PNC Discharge Date and at the expense of the relevant Obligor, take whatever action is required for the dematerialisation or rematerialisation of any Charged Securities and all present and future Securities Rights accruing to all or any of such Charged Securities
- (d) Each Obligor shall promptly pay all calls or other payments which may become due in respect of Charged Securities and all present and future Securities Rights accruing to all or any of such Charged Securities
- (e) Following the PNC Discharge Date, each Obligor shall immediately upon a request from the Chargee comply with the provisions of this clause 12.5 in relation to any Securities other than the Charged Securities and their Securities Rights

## **12.6 Rights in respect of Securities, Charged Securities and Securities Rights**

- (a) Until an Event of Default occurs, each Obligor shall be entitled to
  - (i) receive and retain all dividends, distributions and other monies paid on or derived from its Securities and its Charged Securities, and
  - (ii) exercise all voting and other rights and powers attaching to its Securities and its Charged Securities, provided that it must not do so in a manner which (A) has the effect of changing the terms of the Securities or the Charged Securities (or any class of them) or of any Securities Rights or (B) which is prejudicial to the interests of the Chargee
- (b) After the PNC Discharge Date, at any time following the occurrence of an Event of Default which is continuing, the Chargee may, for so long as it is in effect, complete the instrument(s) of transfer for all or any Securities or Charged Securities on behalf of any Obligor in favour of itself or such other person as it may select

- (c) At any time when any Securities or Charged Securities are registered in the name of the Chargee or its nominee, the Chargee shall be under no duty to
  - (i) ensure that any dividends, distributions or other monies payable in respect of such Securities or Charged Securities are duly and promptly paid or received by it or its nominee, or
  - (ii) verify that the correct amounts are paid or received, or
  - (iii) take any action in connection with the taking up of any (or any offer of any) Securities Rights in respect of or in substitution for any such Securities or Charged Securities

## **12.7 Intellectual Property**

Unless the Chargee is of the opinion that the relevant Intellectual Property is of minor importance to the Group each Obligor shall

- (a) do all acts as are reasonably practicable to maintain, protect and safeguard (including, without limitation, registration with all relevant authorities) its Intellectual Property and not discontinue the use of any of its Intellectual Property;
- (b) take all such reasonable steps, including the commencement of legal proceedings, as may be necessary to safeguard and maintain the validity, reputation, integrity, registration or subsistence of its Intellectual Property, and
- (c) in relation to any Intellectual Property specified in part 5 of schedule 3 (*Details of Security Assets*) only, comply with any warranties, covenants and/or undertakings relating to Intellectual Property set out in the Loan Agreement

## **12.8 Proceeds of the sale of certain Charged Securities, Real Property and Intellectual Property**

Following the PNC Discharge Date, the Obligors undertake to deal with the proceeds of sale of the Security Assets referred to at clauses 5.2(a) to 5.2(c) inclusive in accordance with the terms of the Loan Agreement or otherwise, in accordance with the terms of any consent issued by the Chargee to an Obligor in relation to any such Security Asset

## **12.9 Insurance**

In relation to any Insurances, (i) no Obligor shall do or permit anything to be done in or upon or relating to any Real Property or any part thereof which may make void or voidable any Insurance in connection therewith, (ii) each Obligor shall comply with obligations as to insurance as set out in the Finance Documents and (iii) each Obligor shall comply with any insurance obligations under leases and do all things reasonable to ensure that the landlord maintains adequate insurances of any leasehold property



### **13. POWER TO REMEDY**

#### **13.1 Power to remedy**

If at any time an Obligor does not comply with any of its obligations under this Deed, the Chargee (without prejudice to any other rights arising as a consequence of such non-compliance and subject to the Intercreditor Agreement, for so long as it is in effect) shall be entitled (but not bound) to rectify that default. The relevant Obligor irrevocably authorises the Chargee and its employees and agents (subject to the Intercreditor Agreement, for so long as it is in effect) by way of security to do all things (including entering the property of such Obligor) which are necessary or desirable to rectify that default.

#### **13.2 Mortgagee in possession**

The exercise of the powers of the Chargee under this clause 13 shall not render it liable as a mortgagee in possession.

#### **13.3 Monies expended**

The relevant Obligor shall pay to the Chargee on demand any monies which are expended by the Chargee in exercising its powers under this clause 13, together with interest at the Default Rate from the date on which those monies were expended by the Chargee (both before and after judgment) and otherwise in accordance with clause 3.2 (*Default interest*).

### **14. WHEN SECURITY BECOMES ENFORCEABLE**

#### **14.1 When enforceable**

Subject to the Intercreditor Agreement, for so long as it is in effect, this Security shall become immediately enforceable upon the occurrence of an Event of Default and shall remain so for so long as such Event of Default is continuing.

#### **14.2 Statutory powers**

The power of sale and other powers conferred by section 101 of the Act (as amended or extended by this Deed) shall, subject to the Intercreditor Agreement, for so long as it is in effect, be immediately exercisable upon and at any time after the occurrence of any Event of Default and for so long as such Event of Default is continuing.

#### **14.3 Enforcement**

After this Security has become enforceable, and subject to the Intercreditor Agreement, for so long as it is in effect, the Chargee may in its absolute discretion enforce all or any part of the Security in such manner as it sees fit.

## **15. ENFORCEMENT OF SECURITY**

### **15.1 General**

For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed. Sections 93 and 103 of the Act shall not apply to the Security. The statutory powers of leasing conferred on the Chargee are extended so as to authorise the Chargee to lease, make agreements for leases, accept surrenders of leases and grant options as the Chargee may think fit and without the need to comply with section 99 or 100 of the Act.

### **15.2 Powers of the Chargee**

- (a) At any time after the Security becomes enforceable and subject to the Intercreditor Agreement, for so long as it is in effect, the Chargee may without further notice (unless required by law):
  - (i) (or if so requested by any Obligor by written notice at any time may) appoint any person or persons to be a receiver or receiver and manager of all or any part of the Security Assets and/or of the income of the Security Assets, and/or
  - (ii) appoint or apply for the appointment of any person who is appropriately qualified as administrator of an Obligor, and/or
  - (iii) exercise all or any of the powers conferred on mortgagees by the Act (as amended or extended by this Deed) and/or all or any of the powers which are conferred by this Deed on a Receiver, in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver, and/or
  - (iv) exercise (in the name of any Obligor and without any further consent or authority of such Obligor) any voting rights and any powers or rights which may be exercised by the person(s) in whose name the Charged Investments are registered, or who is the holder of any of them
- (b) The Chargee is not entitled to appoint a Receiver in respect of any Security Assets of any Obligor which are subject to a charge which (as created) was a floating charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of such Obligor.

### **15.3 Redemption of prior mortgages**

At any time after the Security has become enforceable, subject to the Intercreditor Agreement, for so long as it is in effect, the Chargee may

- (a) redeem any prior Encumbrance against any Security Asset, and/or
- (b) procure the transfer of that Encumbrance to itself, and/or

- (c) settle and pass the accounts of the holder of any prior Encumbrance and any accounts so settled and passed shall be conclusive and binding on each Obligor

All principal, interest, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the relevant Obligor to the Chargee on demand

#### **15.4 Privileges**

Each Receiver and the Chargee is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, except that section 103 of the Act does not apply

#### **15.5 No liability**

- (a) Neither the Chargee nor any Receiver shall be liable (i) in respect of all or any part of the Security Assets or (ii) for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, its or his respective powers (unless such loss or damage is caused by its or his gross negligence or wilful misconduct).
- (b) Without prejudice to the generality of clause 15.5(a), neither the Chargee nor any Receiver shall be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable

#### **15.6 Protection of third parties**

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

- (a) whether the Secured Obligations have become payable, or
- (b) whether any power which the Chargee or the Receiver is purporting to exercise has become exercisable, or
- (c) whether any money remains due under any Finance Document, or
- (d) how any money paid to the Chargee or to the Receiver is to be applied

### **16. RECEIVER**

#### **16.1 Removal and replacement**

The Chargee may from time to time and subject to the Intercreditor Agreement, for so long as it is in effect, remove any Receiver appointed by it (subject, in the case of an administrative receivership, to section 45 of the Insolvency Act 1986) and, whenever it may deem appropriate, may appoint a new Receiver in the place of any Receiver whose appointment has terminated.

## **16.2 Multiple Receivers**

If at any time there is more than one Receiver of all or any part of the Security Assets and/or the income of the Security Assets, each Receiver shall have power to act individually (unless otherwise stated in the appointment document)

## **16.3 Remuneration**

Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Chargee (or, failing such agreement, to be fixed by the Chargee)

## **16.4 Payment by Receiver**

Only monies actually paid by a Receiver to the Chargee in relation to the Secured Obligations shall be capable of being applied by the Chargee in discharge of the Secured Obligations

## **16.5 Agent of Obligors**

Any Receiver shall be the agent of the Obligor in respect of which it is appointed. Such Obligor shall (subject to the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of his remuneration. The Chargee shall incur no liability (either to such Obligor or to any other person) by reason of the appointment of a Receiver or for any other reason.

# **17. POWERS OF RECEIVER**

## **17.1 General powers**

Any Receiver shall have

- (a) all the powers which are conferred by the Act on mortgagees in possession and receivers appointed under the Act,
- (b) (whether or not he is an administrative receiver) all the powers which are listed in schedule 1 of the Insolvency Act 1986, and
- (c) all powers which are conferred by any other law conferring power on receivers

## **17.2 Additional powers**

In addition to the powers referred to in clause 17.1 (*General powers*), a Receiver shall have the following powers

- (a) to take possession of, collect and get in all or any part of the Security Assets and/or income in respect of which he was appointed,
- (b) to manage the Security Assets and the business of any Obligor as he thinks fit,

- (c) to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Secured Obligations for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise,
- (d) to sell or concur in selling, leasing or otherwise disposing of all or any part of the Security Assets in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the Act. Fixtures may be severed and sold separately from the Real Property containing them, without the consent of any Obligor. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party). Any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit,
- (e) to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which any Obligor was concerned or interested before his appointment (being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land),
- (f) to carry out any sale, lease or other disposal of all or any part of the Security Assets by conveying, transferring, assigning or leasing the same in the name of the relevant Obligor and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, such Obligor;
- (g) to take any such proceedings (in the name of any of the relevant Obligors or otherwise) as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed (including proceedings for recovery of rent or other monies in arrears at the date of his appointment),
- (h) to enter into or make any such agreement, arrangement or compromise as he shall think fit,
- (i) to insure, and to renew any insurances in respect of, the Security Assets as he shall think fit (or as the Chargee shall direct),
- (j) to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ his partners and firm),
- (k) to form one or more Subsidiaries of any Obligor, and to transfer to any such Subsidiary all or any part of the Security Assets,
- (l) to operate any rent review clause in respect of any Real Property in respect of which he was appointed (or any part thereof) and to apply for any new or extended lease; and
- (m) to

- (i) give valid receipts for all monies and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any Security Asset,
- (ii) exercise in relation to each Security Asset all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Security Assets; and
- (iii) use the name of any Obligor for any of the above purposes

## **18. APPLICATION OF PROCEEDS**

### **18.1 Application**

Subject to the Intercreditor Agreement, for so long as it is in effect, all monies received by the Chargee or any Receiver after the Security has become enforceable shall (subject to the rights and claims of any person having a security ranking in priority to the Security) be applied in the following order

- (a) *first*, in satisfaction of, or provision for, all costs, charges and expenses incurred, and payments made by the Chargee or any Receiver and of all remuneration due to the Receiver in connection with this Deed or the Security Assets,
- (b) *secondly*, in or towards satisfaction of the remaining Secured Obligations, and
- (c) *thirdly*, in payment of any surplus to any Obligor or other person entitled to it

### **18.2 Contingencies**

If the Security is enforced at a time when no amounts are due under the Finance Documents (but at a time when amounts may become so due), the Chargee or a Receiver may pay the proceeds of any recoveries effected by it into a blocked suspense account

## **19. SET-OFF**

### **19.1 Set-off**

- (a) Subject to the terms of the Intercreditor Agreement (for so long as it is in effect), the Chargee may (but shall not be obliged to) set off any obligation (contingent or otherwise under the Finance Documents or which has been assigned to the Chargee) against any obligation (whether or not matured) owed by the Chargee to the Obligor, regardless of the place of payment, booking branch or currency of either obligation
- (b) If the obligations are in different currencies, the Chargee may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off
- (c) If either obligation is unliquidated or unascertained, the Chargee may set off in an amount estimated by it in good faith to be the amount of that obligation.

## **19.2 Time deposits**

Without prejudice to clause 19 1 (*Set-off*) if any time deposit matures on any account which any Obligor has with the Chargee at a time when

- (a) this Security has become enforceable, and
- (b) no Secured Obligation is due and payable,

such time deposit shall automatically be renewed for such further maturity as the Chargee in its absolute discretion considers appropriate unless the Chargee otherwise agrees in writing

## **20. DELEGATION**

Subject to the terms of the Intercreditor Agreement (for so long as it is in effect), each of the Chargee and any Receiver may delegate, by power of attorney (or in any other manner) to any person, any right, power or discretion exercisable by it under this Deed upon any terms (including power to sub-delegate) which it may think fit. Neither the Chargee nor any Receiver shall be in any way liable or responsible to any Obligor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

## **21. FURTHER ASSURANCES**

### **21.1 Further action**

Each Obligor shall, at its own expense, promptly take whatever action the Chargee or a Receiver may require for

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

including the execution of any transfer, conveyance, assignment or assurance of any property whether to the Chargee or to its nominees, the giving of any notice, order or direction and the making of any registration which in any such case the Chargee may think expedient.

### **21.2 Specific security**

Without prejudice to the generality of clause 21 1 (*Further action*) and subject to the terms of the Intercreditor Agreement (for so long as it is in effect), each Obligor shall forthwith at the request of the Chargee execute a legal mortgage, charge, assignment, assignation or other security over any Security Asset which is subject to or intended to be subject to any fixed security created by this Deed in favour of the Chargee (including any arising or intended to arise pursuant to clause 7 (*Conversion of floating charge*)) in such form as the Chargee may require.

## **22. POWER OF ATTORNEY**

Each Obligor, subject to the Intercreditor Agreement, for so long as it is in effect, by way of security, irrevocably and severally appoints the Chargee, each Receiver and any of its or his delegates or sub-delegates to be its attorney to take any action which such Obligor is obliged to take under this Deed, including under clause 21 (*Further assurances*). Each Obligor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause.

## **23. PAYMENTS**

### **23.1 Payments**

Subject to clause 23.2 (*Gross-up*), all payments to be made by an Obligor in respect of this Deed shall be made

- (a) in immediately available funds to the credit of such account as the Chargee may designate, and
- (b) without (and free and clear of, and without any deduction for or on account of)
  - (i) any set-off or counterclaim, or
  - (ii) except to the extent compelled by law, any deduction or withholding for or on account of Tax.

### **23.2 Gross-up**

If any Obligor is compelled by law to make any deduction or withholding from any sum payable under this Deed to the Chargee, the sum so payable by such Obligor shall be increased so as to result in the receipt by the Chargee of a net amount equal to the full amount expressed to be payable under this Deed.

### **23.3 Loan Agreement**

Without prejudice to the provisions of clause 2 (*Guarantee and indemnity*) and each Obligor's obligations in accordance with this Deed, the Chargee may, subject to the terms of the Intercreditor Agreement (for so long as it is in effect), at any time discharge an Obligor's obligation to make payment of any sums due by an Obligor to the Chargee by debiting such sum to any account held by the Chargee in relation to the Obligor.

## **24. STAMP DUTY**

Each Obligor shall

- (a) pay all present and future stamp, registration and similar Taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this Deed or any judgment given in connection therewith, and



- (b) subject to the Intercreditor Agreement, indemnify the Chargee and any Receiver on demand against any and all costs, losses or liabilities (including, without limitation, penalties) with respect to, or resulting from, its delay or omission to pay any such stamp, registration and similar Taxes or charges

## **25. COSTS AND EXPENSES**

### **25.1 Transaction and amendment expenses**

Each Obligor shall promptly on demand pay to the Chargee the amount of all reasonable costs, charges and expenses (including, without limitation, reasonable legal fees, valuation, accountancy and consultancy fees (and any VAT or similar Tax thereon)) incurred by the Chargee in connection with

- (a) the negotiation, preparation, printing, execution, registration, perfection and completion of this Deed, the Security or any document referred to in this Deed, or
- (b) any actual or proposed amendment or extension of, or any waiver or consent under, this Deed

### **25.2 Enforcement and preservation costs**

Each Obligor shall, subject to the Intercreditor Agreement, promptly on demand pay to the Chargee and any Receiver the amount of all costs, charges and expenses (including (without limitation) legal fees (and any VAT or similar Tax thereon)) incurred by any of them in connection with the enforcement, exercise or preservation (or the attempted enforcement, exercise or preservation) of any of their respective rights under this Deed or any document referred to in this Deed or the Security (including all remuneration of the Receiver)

## **26. CURRENCIES**

### **26.1 Conversion**

All monies received or held by the Chargee or any Receiver under this Deed may be converted from their existing currency into such other currency as the Chargee or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the rate of exchange as determined by the Chargee. Each Obligor shall indemnify the Chargee against all costs, charges and expenses incurred in relation to such conversion. Neither the Chargee nor any Receiver shall have any liability to any Obligor in respect of any loss resulting from any fluctuation in exchange rates after any such conversion.

### **26.2 Currency indemnity**

No payment to the Chargee (whether under any judgment or court order or in the liquidation, administration or dissolution of any Obligor or otherwise) shall discharge the obligation or liability of any Obligor in respect of which it was made, unless and until the Chargee shall have received payment in full in the currency in which the obligation or liability was incurred and, to the extent that the amount of any such payment shall on actual conversion into such

currency fall short of such obligation or liability expressed in that currency, the Chargee shall have a further separate cause of action against any Obligor and shall be entitled to enforce the Security to recover the amount of the shortfall

## **27. INDEMNITY**

Each Obligor shall indemnify the Chargee, any Receiver and any attorney, agent or other person appointed by the Chargee under this Deed and the Chargee's officers and employees (each an "**Indemnified Party**") on demand against any cost, loss, liability or expense (however arising) incurred by any Indemnified Party as a result of or in connection with

- (a) anything done or omitted in the exercise or purported exercise of the powers contained in this Deed,
- (b) the Security Assets or the use or occupation of them by any person (including any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law), or
- (c) any breach by any Obligor of any of its obligations under this Deed

## **28. MISCELLANEOUS**

### **28.1 Appropriation and suspense account**

Subject to the terms of the Intercreditor Agreement

- (a) the Chargee may apply all payments received in respect of the Secured Obligations in reduction of any part of the Secured Obligations as it thinks fit. Any such appropriation shall override any appropriation by any Obligor.
- (b) all monies received, recovered or realised by the Chargee under, or in connection with, this Deed may at the discretion of the Chargee be credited to a separate interest bearing suspense account for so long as the Chargee determines (with interest accruing thereon at such rate, if any, as the Chargee may determine for the account of the relevant Obligor) without the Chargee having any obligation to apply such monies and interest or any part thereof in or towards the discharge of any of the Secured Obligations

### **28.2 New accounts**

If the Chargee receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent Encumbrance affecting any Security Asset and/or the proceeds of sale of any Security Asset or the Guarantee ceases to continue in force, it may open a new account or accounts for any Obligor. If it does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice. As from that time all payments made to the Chargee will be credited or be treated as having been credited to the new account and will not operate to reduce any amount of the Secured Obligations

### **28.3 Changes to the Parties**

- (a) No Obligor may assign any of its rights under this Deed
- (b) Subject to the Intercreditor Agreement, for so long as it is in effect, the Chargee may assign or transfer all or any part of its rights under this Deed. Each Obligor shall, immediately upon being requested to do so by the Chargee, enter into such documents as may be necessary or desirable to effect such assignment or transfer

### **28.4 Memorandum and articles**

Each Obligor certifies that the Security does not contravene any of the provisions of the memorandum or articles of association of that Obligor

### **28.5 Tacking**

If the Borrower has been provided with a loan facility relating to the financing of Real Property, the following provisions shall apply:

- (a) the Chargee shall perform its obligations under the Loan Agreement (including any obligation to make available further advances)
- (b) This Deed secures advances already made and further advances to be made

### **28.6 The Land Registry**

If the Borrower has been provided with a loan facility relating to the financing of Real Property, the following provisions shall apply:

- (a) Each Obligor shall apply to the Chief Land Registrar (and consents to such an application being made by or on behalf of the Chargee) for a restriction in the following terms to be entered on the Register of Title relating to any property registered at the Land Registry (or any unregistered land subject to first registration) and against which this Deed may be noted:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [◆] 20[◆] in favour of ICON Quattro II, LLC referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its secretary or conveyancer "

- (b) Each Obligor:
  - (i) authorises the Chargee to make any application which the Chargee deems appropriate for the designation of this Deed, the Loan Agreement or any other Finance Document as an exempt information document under rule 136 of the Land Registration Rules 2003;
  - (ii) shall use its best endeavours to assist with any such application made by or on behalf of the Chargee, and

- (iii) shall notify the Chargee in writing as soon as it receives notice of any person's application under rule 137 of the Land Registration Rules 2003 for the disclosure of this Deed, the Loan Agreement or any other Finance Document, following its designation as an exempt information document
- (c) No Obligor shall make any application under rule 138 of the Land Registration Rules 2003 for the removal of the designation of any such document as an exempt information document
- (d) Each Obligor shall promptly make all applications to and filings with the Land Registry which are necessary or desirable under the Land Registration Rules to protect the Security
- (e) No Obligor shall, without the prior written consent of the Chargee, permit any person to be or become registered under the Land Registration Act 2002 as the proprietor of a Security Asset who is not so registered under the Land Registration Act 2002 at the date of this Deed or, in the case of Real Property acquired after the date of this Deed, at the date of such acquisition

#### **28.7 Amendments and waivers**

Any provision of this Deed may be amended only if the Chargee and the Obligors so agree in writing and any breach of this Deed may be waived before or after it occurs only if the Chargee so agrees in writing. A waiver given or consent granted by the Chargee under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given

#### **28.8 Calculations and certificates**

A certificate of the Chargee specifying the amount of any Secured Obligation due from an Obligor (including details of any relevant calculation thereof) shall be prima facie evidence of such amount against each Obligor in the absence of manifest error

#### **28.9 Waiver, rights and remedies**

No failure to exercise, nor any delay in exercising, on the part of the Chargee, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law

### **29. NOTICES**

#### **29.1 Communications in writing**

- (a) The provisions of clause 20 (*Communications*) of the Loan Agreement shall apply to this Deed as if the same were set out in this Deed, provided that:

- (b) reference to "**each Party**" shall be deemed to be references to each party to this Deed, and
- (c) references to the "**Obligor**" shall be deemed to be references to each Obligor

## **29.2 Electronic communications**

No communication to be made under this Deed shall be made electronically

## **29.3 Agent for service**

- (a) Each Obligor (other than the Parent) by its execution of this Deed irrevocably appoints the Parent to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises
  - (i) the Parent on its behalf to supply all information concerning itself contemplated by this Deed to the Chargee and to give all notices and instructions to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor, and
  - (ii) the Chargee to give any notice, demand or other communication to be given to that Obligor pursuant to the Finance Documents to the Parent,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Parent or given to the Parent under any Finance Document on behalf of any Obligor or in connection with any Finance Document (whether or not known to any Obligor and whether occurring before or after such Obligor became an Obligor) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Parent and any Obligor, those of the Parent shall prevail

## **30. PARTIAL INVALIDITY**

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired

**31. RELEASE**

Upon the expiry of the Security Period (but not otherwise) the Chargee shall, at the request and cost of the Obligors, take whatever action is necessary to release or re-assign (without recourse or warranty) the Security Assets from the Security

**32. COUNTERPARTS**

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

**33. GOVERNING LAW**

This Deed (and any non-contractual obligations arising out of it) is governed by English law

**THIS DEBENTURE** has been entered into on the date stated at the beginning of this agreement

**SCHEDULE 1**

**OBLIGORS**

<b>Company name</b>	<b>Company number</b>
Quattro Plant Limited	02400439
Arkose Investments Ltd	08586229
Arkose Investments Services Ltd	8586761
Quattro Group Limited	05896557
Quattro Hire Limited	05840474
Quattro Occupational Training Academy Limited	06738883

## **SCHEDULE 2**

### **THE GUARANTEE**

**(1) Continuing guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any member of the Group under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part

**(2) Reinstatement**

If any payment by an Obligor, or any discharge given by the Chargee (whether in respect of the obligations of any member of the Group or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event

- (a) the liability of each Obligor under this Deed shall continue as if the payment, discharge, avoidance or reduction had not occurred, and
- (b) the Chargee shall be entitled to recover the value or amount of that security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred

**(3) Waiver of defences**

The obligations of each Obligor under this Deed will not be affected by an act, omission, matter or thing which, but for this Deed, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or to the Chargee) including

- (a) any time, waiver or consent granted to, or composition with, any member of the Group or other person,
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group,
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security,
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person,
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise), restatement or replacement (in each case, however fundamental and of any nature whatsoever including, without limitation, which results in any increase in any amount due or owing under any Finance Document or in the rate of interest or any other sum payable under any Finance Document) of a Finance Document or any other document or security;



(f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security, or

(g) any insolvency, administration or similar proceedings

**(4) Immediate recourse**

Each Obligor waives any right it may have of first requiring the Chargee to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Obligor under this schedule 2. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

**(5) Appropriations**

Until all amounts which may be or become payable during the Security Period by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Chargee may

(a) refrain from applying or enforcing any other monies, security or rights held or received by the Chargee in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Obligor shall be entitled to the benefit of the same, and

(b) hold in an interest-bearing suspense account any monies received from any Obligor or on account of any Obligor's liability under this schedule 2

**(6) Deferral of guarantors' rights**

Until all amounts which may be or become payable during the Security Period by the Obligors under, or in connection with, the Finance Documents have been irrevocably paid in full and unless the Chargee otherwise directs, no Obligor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents

(a) to be indemnified by an Obligor,

(b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents, and/or

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Chargee under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Chargee

**(7) Additional security**

This guarantee is in addition to, and is not in any way prejudiced by, any other guarantee or security at the date of this guarantee or subsequently held by the Chargee

**SCHEDULE 3**  
**DETAILS OF SECURITY ASSETS**

**PART 1 - SPECIFIED REAL PROPERTY**

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## PART 2 - CHARGED SECURITIES

Obligor	Name of company in which shares are held	Class of shares held	Number of shares held	Issued share capital
Arkose Investments Ltd	Arkose Investments Services Ltd	Ordinary £1 00	208,369	£208,369
Arkose Investments Services Ltd	Quattro Group Limited	Ordinary 0 10p	6,306,130	£630,613 00
Quattro Group Limited	Quattro Plant Limited	Ordinary £0 10	6,285,930	£628,593
Quattro Group Limited	Quattro Hire Limited	Ordinary £0 10	10,100	£1,010
Quattro Group Limited	Quattro Occupational Training Academy Limited	Ordinary £1 00	1	£1 00
Quattro Plant Limited	Kingsnorth Limited	Ordinary £1 00	100	£100

EXECUTION PAGES

SIGNED as a DEED  
for and on and behalf of  
ICON QUATTRO II, LLC  
acting by its duly appointed attorney pursuant to  
a power of attorney dated 11 July 2013

)  
)  
Phillip Slater  
Attorney

  
Witness Signature

BEN WULWIK  
Name

THE BROADGATE TOWER

20 PRINCE STREET, LONDON, EC2A 2RS  
Address

SOLICITOR  
Occupation

Address: 3 Park Avenue, 36 Floor, New York, New York 10016, USA

Facsimile No: 001 212 418 4739

Attention: David Verlizzo

Executed and delivered as a deed by )  
QUATTRO PLANT LIMITED acting by - )

.....  
Director

.....  
Director/Secretary

**EXECUTION PAGES**

**SIGNED as a DEED**  
for and on and behalf of  
**ICON QUATTRO II, LLC**  
acting by its duly appointed attorney pursuant to  
a power of attorney dated 11 July 2013

)  
)  
**Phillip Slater**  
Attorney

Witness Signature

Name

Address

Occupation

**Address:** 3 Park Avenue, 36 Floor, New York, New York 10016, USA

**Facsimile No:**

**Attention:** David Verlizzo

Executed and delivered as a deed by )  
**QUATTRO PLANT LIMITED** acting by - )

Director

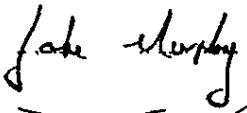

Director/Secretary

Address        Greenway Court, Canning Road, Stratford, London E15 3ND

Facsimile No   0208 519 8564

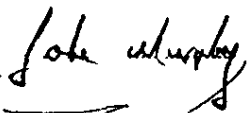

Attention       David Callé and the Directors

Executed and delivered as a deed by )  
ARKOSE INVESTMENTS LTD acting by - )

Director   
  
Director/Secretary

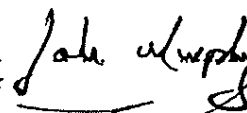

Address Greenway Court, Canning Road, Stratford, London E15 3ND  
Facsimile No 0208 519 8564  
Attention David Callé and the Directors

Executed and delivered as a deed by )  
ARKOSE INVESTMENTS )  
SERVICES LTD acting by - )

Director   
  
Director/Secretary

Address Greenway Court, Canning Road, Stratford, London E15 3ND  
Facsimile No 0208 519 8564  
Attention David Callé and the Directors

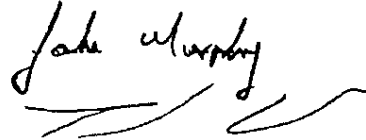
Executed and delivered as a deed by )  
QUATTRO GROUP LIMITED acting by - )

Director   
  
Director/Secretary

Address Greenway Court, Canning Road, Stratford, London E15 3ND  
Facsimile No 0208 519 8564  
Attention David Callé and the Directors

Executed and delivered as a deed by )  
QUATTRO HIRE LIMITED acting by - )

Director



Director\Secretary

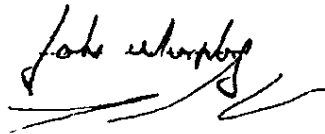
Address Greenway Court, Canning Road, Stratford, London E15 3ND

Facsimile No 0208 519 8564

Attention David Callé and the Directors

Executed and delivered as a deed by )  
QUATTRO OCCUPATIONAL TRAINING )  
ACADEMY LIMITED acting by - )

Director



Director\Secretary

Address Greenway Court, Canning Road, Stratford, London E15 3ND

Facsimile No 0208 519 8564

Attention David Callé and the Directors