



**Registration of a Charge**

Company name: **CUSTODES ACQCO LIMITED**

Company number: **08818212**



X86K6SYW

Received for Electronic Filing: **30/05/2019**

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**Details of Charge**

Date of creation: **24/05/2019**

Charge code: **0881 8212 0003**

Persons entitled: **SHAWBROOK BANK LIMITED**

Brief description: **N/A**

**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:

**TROWERS & HAMLINS LLP**



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

Company number: 8818212

Charge code: 0881 8212 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th May 2019 and created by CUSTODES ACQCO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th May 2019 .

Given at Companies House, Cardiff on 31st May 2019

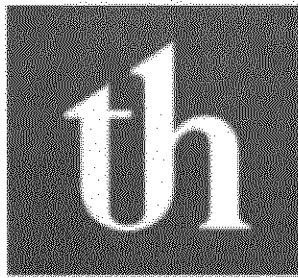
The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



dated *24<sup>th</sup> May* 2019

**U.K. Healthcare Enterprise 1 Ltd and others**

(as Chargors)

and

**Shawbrook Bank Limited**

(as Lender)

## **Composite Debenture**

(To: The Chief Land Registrar. Note: This Composite Debenture contains (in clause 5.1) the consent of the Chargor to the lodgement at the Land Registry of an application by or on behalf of the Lender to enter a restriction in the Proprietorship Register and (in clause 5.3.2) the consent of the Chargor to the lodgement at the Land Registry of an application by or on behalf of the Lender to enter a notice on the Charges Register).

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## Deed

dated 24<sup>th</sup> May 2019

## Parties

- (1) **U.K. Healthcare Enterprise 1 Ltd. and others** as listed in Schedule 1 to this Deed (each a **Chargor** and together the **Chargors**); and
- (2) **Shawbrook Bank Limited** a company incorporated in England and Wales with registration number 00388466 and whose registered office is at Lutea House The Drive, Warley Hill Business Park, Great Warley, Brentwood, Essex CM13 3BE (the **Lender**).

## Introduction

- (A) The Lender has agreed to make a loan facility available to the Borrower in accordance with the terms of the Facility Agreement (as defined below).
- (B) It is a condition precedent to the granting of the loan facility under the Facility Agreement that the Chargors enter into this Deed to provide security to the Lender for the purposes and on the terms as described below.
- (C) It is intended by the parties to this document that it will take effect as a deed.

## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Deed, unless the context otherwise requires:

**Accounts** means the accounts listed in Schedule 5 or such other account or accounts held by a Chargor as the Lender and the Chargors may from time to time agree in writing;

**Administrator** has the meaning given to it by paragraph 1 of Schedule B1 to the Insolvency Act 1986 (incorporated by Schedule 16 to the Enterprise Act 2002);

**Assigned Contracts** means the agreements and deeds listed in Schedule 4;

**Borrower** means U.K. Healthcare Enterprise 1 Ltd a company incorporated in England and Wales with registration number 11534162;

**Collateral Rights** means all rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law;

**CREST** means the electronic settlement system for UK and Irish securities operated by Euroclear UK & Ireland Limited or any successor system for the time being;

**Debts** means all book and other debts of a Chargor, all other monies due and owing to a Chargor and the benefit of all rights, securities or guarantees in respect of such book and other debts;

**Default** has the meaning given to that term in the Facility Agreement;

**Default Rate** means the rate of interest calculated in accordance with clause 8.3 of the Facility Agreement;

**Facility Agreement** means the facility agreement dated on or about the date of this Deed between the Borrower (1) the Chargors (other than the Borrower) (2) and the Lender (3) pursuant to which the Lender has agreed to make available a loan facility of up to £12,500,000 to the Borrower;

**Finance Document** has the meaning given to that term in the Facility Agreement;

**Financial Collateral** shall have the meaning given to that expression in the Financial Collateral Regulations;

**Financial Collateral Regulations** means the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226);

**Fixtures** includes all buildings, erections and structures at any time on or in the course of construction on the Mortgaged Property and includes all fixtures, fittings, plant, materials, machinery, equipment, installations and apparatus now and from time to time in or on the Mortgaged Property;

**Floating Charge Assets** means the assets charged pursuant to clause 3.3;

**Insurances** means all contracts and policies of insurance of whatever nature which are from time to time taken out by or with the authority or on behalf of a Chargor in relation to the Security Assets or any part of them;

**Insured Risks** means such risks as any Chargor is obliged to insure against under the terms of the Facility Agreement

**Intellectual Property** has the meaning given to that term in the Facility Agreement

**Mortgaged Property** means all the leasehold property specified in Schedule 2 and any other freehold or leasehold property which is the subject of a Security Interest under this Deed;

**Occupational Lease** means any tenancy or licence to occupy or any agreement for any of the same from time to time granted or entered into by a Chargor in respect of any part of the Mortgaged Property and any licence, consent or approval given thereunder;

**Planning Acts** means the **consolidating Acts** as defined in the Planning (Consequential Provisions) Act 1990 together with the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008 and the Localism Act 2011 and all applicable laws, orders, regulations, instruments, by laws, instructions and standards, whether national, regional or local, including any subordinate legislation relating to town and country planning and to the use and/or occupation of a Mortgaged Property;

**Receiver** means any receiver appointed under this Deed or pursuant to any applicable law, whether alone or jointly, and includes a receiver and/or manager;

**Related Rights** means, in relation to any asset which comprises the Security Assets:



- (a) the proceeds of sale of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, covenants, easements, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and
- (d) any monies and proceeds paid or payable in respect of that asset;

**Rent** means all amounts payable to or for the benefit of a Chargor by way of rent, dilapidations and rent charge in respect of any part of the Mortgaged Property under an Occupational Lease;

**Secured Liabilities** means all present and future monies, obligations and liabilities now or hereafter due owing or incurred to the Lender by a Chargor under the terms of the Facility Agreement (including, without limitation, under any amendments, supplements or restatements of any of the Facility Agreement or in relation to any new or increased advances or utilisations);

**Securities** means all shares, stock, warrants, debentures, and other securities present and future (certificated or uncertificated) or units in an account of balance (whether held in the name of a Chargor or by a nominee) owned by a Chargor (including any specified opposite its name in Schedule 3) and all income and rights deriving from or attaching to the same;

**Security** means the security constituted by or pursuant to this Deed;

**Security Assets** means all the assets, rights, property and undertaking of a Chargor from time to time mortgaged, charged, assigned or agreed to be assigned to, the Lender by a Chargor under this Deed including, without limitation, the Mortgaged Property;

**Security Financial Collateral Arrangement** shall have the meaning given to that expression in the Financial Collateral Regulations;

**Security Interest** means any mortgage, pledge, lien, charge, security assignment, right of set off, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security (including, for the avoidance of doubt, a floating charge) or any other type of preferential arrangement (including, without limitation, title transfer or retention of title) having a similar effect;

**Security Period** means the period beginning on the date hereof and ending on the date upon which the Lender is satisfied that all the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full and no further Secured Liabilities are capable of being outstanding;

**Sterling** means the lawful currency of the United Kingdom;

**Tax** has the meaning given to that term in the Facility Agreement; and

**Valuation** has the meaning given to that term in the Facility Agreement.

## 1.2 Interpretation

In this Deed, unless the context otherwise requires, a reference to:

**assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;

an **authorisation** includes an authorisation, consent, approval, resolution, licence, exemption, filing or registration;

the **Chargor** or the **Chargors** (as the case may be) or the **Lender** includes a reference to its respective successors, permitted assigns and permitted transferees;

a **person** includes a permitted body corporate, unincorporated association and partnership, in each case, whether or not having a separate legal personality;

a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

one gender shall include a reference to other genders; an individual will be treated as including corporations and vice versa; words importing the singular will be treated as including the plural and vice versa and words importing the whole will be treated as including a reference to any part, in each case except where the context specifically requires otherwise;

this Deed or to any provision of this Deed or any other document (including, without limitation, any of the Finance Documents) is a reference to it as amended, restated, supplemented, varied or novated from time to time;

the words **include** or **including** (or any similar term) are not to be construed as implying any limitation and general words introduced by the word **other** (or any similar term) will not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things;

a statute, a statutory provision, enactment or an EC Directive or subordinate legislation is a reference to any amendment, modification, extension, consolidation, replacement or re-enactment of any such statute, statutory provision, enactment or EC Directive, whether before or after the date of this Deed;

the making of an administration order shall be treated as including a reference to the appointment of an Administrator under paragraph 14 (by the holder of a qualifying floating charge in respect of a Chargor's property) or paragraph 22 (by a Chargor or the directors of a Chargor) of Schedule B1 to the Insolvency Act 1986; and

the making of an application for an administration order by petition shall be treated as including a reference to making an administration application to the court under Schedule B1 to the Insolvency Act 1986, appointing an Administrator under paragraphs 14 or 22 of that Schedule, or giving notice under paragraphs 15 or 26 of that Schedule of intention to appoint an Administrator.

### 1.3 **Facility Agreement**

1.3.1 Words and expressions defined in the Facility Agreement will have the same meanings when used in this Deed, unless the context otherwise requires. In the case of inconsistency, definitions set out in the Facility Agreement will prevail.

1.3.2 In the event of any inconsistency, ambiguity or discrepancy between the provisions of the Facility Agreement and the provisions of this Deed, then the provisions of the Facility Agreement shall prevail.

### 1.4 **Headings**

The clause, paragraph and Schedule headings and the table of contents are inserted for ease of reference only and will not affect construction.

### 1.5 **Nature of security over Mortgaged Property**

A reference in this Deed to a **charge or mortgage of or over the Mortgaged Property** includes:

1.5.1 all buildings and Fixtures and fittings (including trade and tenant's Fixtures and fittings) and fixed plant and machinery which are situated on or form part of the Mortgaged Property at any time; and

1.5.2 all Related Rights.

### 1.6 **Third party rights**

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy, any term of this Deed.

### 1.7 **Qualifying floating charge**

This Deed contains a qualifying floating charge which gives the Lender the power to appoint an Administrator of a Chargor and paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.3 of this Deed.

### 1.8 **Avoidance of payments**

If the Lender considers an amount paid by a Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the insolvency, liquidation or administration of a Chargor or otherwise set aside, that amount shall not have been irrevocably and unconditionally paid for the purposes of this Deed.

## 2 **Payment of Secured Liabilities**

### 2.1 **Covenant to pay**

Each Chargor covenants with the Lender that it will, on demand, pay and discharge the Secured Liabilities.

## **2.2 Interest on demand**

If a Chargor fails to pay any sum on the due date for payment of that sum the Chargors will pay interest on such sum (before and after any judgment) in accordance with the terms of the Facility Agreement.

## **3 Security**

### **3.1 Fixed charges**

Each Chargor hereby charges in favour of the Lender with full title guarantee as continuing security for the payment and discharge of the Secured Liabilities:

#### **3.1.1**

- (a) by way of a first fixed legal mortgage the Mortgaged Property belonging to that Chargor (as set against the name of the relative Chargor is Schedule 2);
- (b) by way of a first fixed legal mortgage all estates or interests in any freehold or leasehold property (except any assets specified in clause 3.1.1(a)) now or in the future belonging to it;

#### **3.1.2 by way of first fixed charge:**

- (a) the benefit of all present and future consents and authorisations (statutory or otherwise) held or utilised by a Chargor in connection with the Security Assets belonging to that Chargor or the use of any of the Security Assets belonging to that Chargor and all rights in connection with them;
- (b) the benefit of all other contracts, guarantees, appointments, covenants and warranties relating to the Mortgaged Property belonging to that Chargor and other documents to which that Chargor is a party or which are in its favour or of which it has the benefit relating to letting, development, sale or purchase of the Mortgaged Property belonging to that Chargor or any part of it;
- (c) all Fixtures;
- (d) all monies from time to time standing to the credit of the Account(s);
- (e) the Securities;
- (f) all choses in action (other than Debts) and the Intellectual Property;
- (g) all present and future goodwill, uncalled and called but unpaid capital of that Chargor;
- (h) all a Chargor's rights and interests in and claims under any Insurances issued in relation to the Security Assets (but subject always to the terms of the Facility Agreement and the rights of all other persons interested in such Insurances);

- (i) the benefit of any interest rate swap, currency swap, cap or collar arrangement, future, option, forward rate agreement or other derivative instrument (howsoever described) or any other agreement with the Lender or any third party for protecting or hedging any of the Secured Liabilities at any time; and
- (j) insofar as the legal mortgages referred to in clause 3.1.1 or any of the assignments referred to in clause 3.2 shall for any reason be ineffective as a legal mortgage or an assignment, the assets referred to in those clauses.

## 3.2 Assignments

Each Chargor hereby assigns and agrees to assign by way of security to the Lender with full title guarantee for the payment and discharge of the Secured Liabilities all that Chargor's right, title and interest in, to and under each of the following present and future assets:

- 3.2.1 the benefit of each of the Assigned Contracts and the benefit of any guarantee or security for the performance of each Assigned Contract;
- 3.2.2 all its rights and interests in any Rent and the benefit of any guarantee or security in respect of the Rent;
- 3.2.3 all its rights and interests in and claims under the Insurances;
- 3.2.4 all contracts, deeds, undertakings, agreements, rights and claims in relation to any Mortgaged Property belonging to that Chargor including, without limitation, all rights and claims against any lessees, tenants, sub-lessees or sub-tenants of the Mortgaged Property belonging to that Chargor from time to time and all guarantors and sureties for the obligations of such persons under the Occupational Lease.
- 3.2.5 the benefit of all rights, warranties, securities, covenants, guarantees, bonds and indemnities (other than employment or supply and maintenance agreements) of any nature now or at any time enjoyed or held by that Chargor and relating to the Mortgaged Property belonging to that Chargor and all compensation paid in relation to the Mortgaged Property belonging to that Chargor and all VAT payable on the same;
- 3.2.6 the benefit of any development documents and all undertakings, agreements, rights, warranties, securities, covenants, guarantees, bonds and indemnities relating to such development documents of any nature now or at any time enjoyed or held by that Chargor;
- 3.2.7 the benefit of all guarantees, warranties and representations given or made by, and any rights or remedies to which that Chargor may now or in the future be entitled against, all or any professional advisors and contractors in relation to the Mortgaged Property belonging to that Chargor, and any business carried on thereat, and the manufacturer supplier and installers of all plant, machinery, Fixtures and fittings or other items now or hereafter in buildings located on the Mortgaged Property belonging to that Chargor and any other person now or

from time to time under contract or under a duty to the Chargor including without limitation the right to prosecute in the name of the Chargor proceedings against any such person and the benefit of all sums recovered in proceedings against all or any such persons; and

- 3.2.8 all claims, remedies, awards or judgments paid or payable to that Chargor (including, without limitation, all liquidated and ascertained damages payable to the Chargor under the above),

provided that, in each case, to the extent (if any) that the benefits, rights, titles, claims and interests assigned under this clause 3.2 are not assignable, such assignment will operate as an assignment of all proceeds received by a Chargor in connection with such benefits, rights, titles, claims and interests.

### **3.3 Floating charge**

Each Chargor hereby charges in favour of the Lender with full title guarantee for the payment and discharge of the Secured Liabilities by way of floating charge the whole of that Chargor's undertaking, property and assets, present and future wherever situate not from time to time subject to an effective mortgage, fixed charge or assignment under this Deed or, in relation to assets situated in Scotland, whether or not the same are effectively charged pursuant to the foregoing provisions of this Deed.

### **3.4 Exceptions to Fixed Security**

The fixed security from time to time created by this Deed does not extend to any assets situated outside England and Wales or the rights to which are governed by any law other than the laws of England and Wales to the extent that and for so long as any such fixed security would be unlawful or ineffective under the laws of the jurisdiction in which such asset is situated.

## **4 Conversion of the Floating Charge**

### **4.1 Notice of conversion**

- 4.1.1 The Lender may from time to time, by notice in writing to a Chargor following the occurrence of a Default or if the Lender considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution, diligence or other legal process or to otherwise be in jeopardy, convert the floating charge contained in clause 3.3 into a fixed charge as regards any Floating Charge Assets specified in such notice.

- 4.1.2 The floating charge contained in clause 3.3 may not be converted into a fixed charge solely by reason of the obtaining of a moratorium or anything done with a view to obtaining a moratorium under the Insolvency Act 2000.

### **4.2 Automatic conversion**

Notwithstanding anything contained in this Deed, if (without the prior written consent of the Lender):

- 4.2.1 a Chargor creates any Security Interest over or otherwise encumbers any of the

Security Assets created by this Deed or attempts to do so other than as permitted under the Facility Agreement;

- 4.2.2 any person levies or attempts to levy any distress, execution, diligence, sequestration or other process against the Security Assets;
- 4.2.3 a resolution is passed or a petition is presented for the winding up, dissolution, administration or re-organisation of a Chargor;
- 4.2.4 a Receiver or an administrative receiver is appointed over the Security Assets or, if any person entitled to do so, gives notice of intention to appoint a Receiver or an administrative receiver over the Security Assets or files such a notice with the court; or
- 4.2.5 an Administrator is appointed in respect of a Chargor or the Lender receives notice of an intention to appoint an Administrator pursuant to paragraphs 15 or 26 of Schedule B1 of the Insolvency Act 1986 in respect of the Chargor,

the floating charge created by this Deed over the Floating Charge Assets shall (other than in respect of any Security Assets situated in Scotland if and to the extent that a Receiver would not be capable of exercising his powers in Scotland in relation thereto under Section 72 of the Insolvency Act 1986 by reason of automatic conversion) with immediate effect and without notice automatically convert into a fixed charge.

## **5 The Land Registry and further advances**

### **5.1 Land registration**

Each Chargor hereby consents to an application being made to the Chief Land Registrar by or on behalf of the Lender to enter the following restriction (in form P of Schedule 4 to the Land Registration Rules 2003) in the Proprietorship Register of any property which is, or is required to be, registered forming part of the Mortgaged Property belonging to that Chargor:

"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 [the date of this Deed] in favour of Shawbrook Bank Limited (as Lender) referred to in the Charges Register or their conveyancer or an individual identified as an authorised signatory of the Lender".

### **5.2 Implied covenants**

For the purposes of Rule 68(1) of the Land Registration Rules 2003, the covenants set out in Sections 2 to 5 (inclusive) of the Law of Property (Miscellaneous Provisions) Act 1994 will be extended by the provisions of this Deed.

### **5.3 Further advances**

- 5.3.1 For the purposes of section 94(1)(c) of the Law of Property Act 1925, section 49(3) of the Land Registration Act 2002 and Rule 108 of the Land Registration Rules 2003, any obligation on the Lender to make further advances will be

deemed to be incorporated in this Deed as if the same were set out in this Deed.

- 5.3.2 For the purposes of the Land Registration Rules 2003 and section 49(3) of the Land Registration Act 2002, each Chargor hereby consents to an application being made to the Chief Land Registrar by or on behalf of the Lender for the entry of a note of any obligation to make further advances on the Charges Register of any registered land forming part of the Mortgaged Property belonging to it.

## **6 Further assurance**

### **6.1 Further assurance: general**

Each Chargor shall, at its own expense, promptly do all such acts or execute all such documents (including, without limitation, assignments, transfers, mortgages, charges, notices and instructions) as the Lender or any Receiver may reasonably specify (and in such form as the Lender or any Receiver may reasonably require) in favour of the Lender or its nominees:

- 6.1.1 to perfect or protect the security created or intended to be created in respect of the Security Assets (which may include the execution by a Chargor of a mortgage, fixed charge or assignment over all or any of the assets constituting, or intended to constitute, Security Assets) or for the exercise of the Collateral Rights; and/or
- 6.1.2 to facilitate the realisation of the Security Assets; and/or
- 6.1.3 to obtain all necessary consents to procure the registration of this Deed with the registrar of companies (if applicable) and, in respect of the Mortgaged Property belonging to it, at the Land Registry or on the Land Charges Register, as appropriate.

### **6.2 Consents**

Each Chargor will use all reasonable endeavours to obtain (in form and content satisfactory to the Lender) as soon as possible any consents necessary to enable the relevant Security Assets purported to be so charged or assigned to be the subject of an effective fixed charge or assignment pursuant to clauses 3.1 and 3.2 and, immediately upon obtaining any such consent, the relevant Security Asset shall become subject to such Security and that Chargor shall promptly deliver a copy of each such consent to the Lender.

### **6.3 Notice of assignment of Assigned Contracts**

Each Chargor will promptly give notice of assignment in the form set out in part I of Schedule 6 to each counterparty to an Assigned Contract and shall use all reasonable endeavours to procure that each relevant party acknowledges that notice substantially in the form set out in part II of Schedule 6.



#### **6.4 Notice of charge of Account**

Each Chargor will promptly give notice to the bank(s) at which the Accounts are held (save where such Accounts are held with the Lender) in the form set out in part I of Schedule 7 and shall use all reasonable endeavours to procure the acknowledgement of that notice in the form set out in Part II of Schedule 7.

#### **6.5 Notice to tenants under Occupational Leases**

At any time after a Default has occurred and is continuing each Chargor, promptly upon receiving request from the lender to do so, shall issue a notice in the form of part I of Schedule 8 to all other parties to any Occupational Lease to which that Chargor is a party to pay rents and all other sums (including, without limitation, each guarantee or security in respect of the rents) due under that Occupational Lease to the Lender or into such Account as the Lender may require and to use all reasonable endeavours to procure that such parties acknowledge such notice in the form of part II of Schedule 8.

#### **6.6 Notices of assignment of Insurances**

Each Chargor will promptly give notice of assignment to all insurers in respect of the Insurances in the form set out in part I of Schedule 9 and shall procure that such insurers acknowledge the notice in the form set out in part II of Schedule 9.

#### **6.7 Preservation of rights**

Neither the obligations of the Chargors contained in this Deed nor the rights, powers and remedies conferred in respect of the Chargors upon the Lender by the Finance Documents or by law shall be discharged, prejudiced or otherwise affected by:

- 6.7.1 the winding-up, dissolution, administration or reorganisation of any Chargor or any other person or any change in its status, function, control or ownership;
- 6.7.2 any of the obligations of a Chargor or any other person under the Finance Documents or under any other security relating to the Finance Documents being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- 6.7.3 any time or other indulgence being granted or agreed to be granted to a Chargor or any other person in respect of its obligations under the Finance Documents;
- 6.7.4 any amendment to, or any variation, waiver or release of any obligation of a Chargor or any other person under the Finance Documents;
- 6.7.5 any failure to take, or fully to take, any security contemplated by the Facility Agreement or otherwise agreed to be taken in respect of a Chargor's or any other person's obligations under the Finance Documents;
- 6.7.6 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any security taken or agreed to be taken in respect of a Chargor's or any other person's obligations under the Finance Documents;  
or
- 6.7.7 any other act, event or omission which, but for this clause 6.6, might operate to

discharge, impair or otherwise affect any of the obligations of a Chargor or any other person or any of the rights, powers or remedies conferred upon the Lender by the Finance Documents or by law.

## **7 Negative pledge and disposal restrictions**

### **7.1 Negative pledge**

Save as permitted by the Facility Agreement, no Chargor shall, without the prior written consent of the Lender, create, purport to create, or permit to subsist (in favour of any person other than the Lender) any Security Interest over any of the Security Assets now or in the future, or agree or attempt to do so, or increase or extend any liability of any Chargor secured on any of the Security Assets.

### **7.2 Disposal of fixed charge assets**

Save as permitted by the Facility Agreement, no Chargor shall, without the prior written consent of the Lender (whether by a single transaction or number of related or unrelated transactions, and whether at the same time or over a period of time) sell, transfer, lease out, lend or otherwise dispose of any of the Security Assets charged or assigned by clauses 3.1 and 3.2 or following the crystallisation of the floating charge created by clause 3.3 the Floating Charge Assets charged by clause 3.3 or any interests therein or the right to receive or to be paid the proceeds arising from their disposal or agree or attempt to do so.

### **7.3 Disposal of Floating Charge Assets**

No Chargor shall dispose of any of the Floating Charge Assets charged by clause 3.3 other than in the ordinary course of and for the purposes of, carrying on its trading business whilst the floating charge remains uncrystallised.

## **8 Representations and warranties**

### **8.1 Duration and to whom made**

Each Chargor represents and warrants to the Lender at the same times and on the same basis as set out in the Facility Agreement.

### **8.2 Matters represented**

Each Chargor represents and warrants to the Lender in the same terms and on the same basis as set out under clause 18 in the Facility Agreement.

### **8.3 Security created**

Subject to registration with the registrar of companies and at the Land Registry in England and Wales, this Deed creates those Security Interests it purports to create ranking as set out above and is not liable to be avoided or otherwise set aside on the liquidation or administration of a Chargor or otherwise.

## **9 General undertakings**

Each Chargor undertakes to the Lender at the same times and on the same basis as the

set out under clauses 19, 21 and 22 in the Facility Agreement.

## **10 Insurance**

Except where insured by the lessor of any Mortgaged Property, the Chargors will insure all of the Security Assets (which are of an insurable nature) in accordance with the terms of the Facility Agreement.

## **11 Assigned Contracts**

### **11.1 Performance**

Each Chargor will remain liable to perform all the obligations to be performed in respect of any of the Assigned Contracts and the Lender will have no obligation of any kind whatsoever to any Chargor in relation to them or be under any liability whatsoever in the event of any failure by a Chargor to perform its obligations in respect of them. Each Chargor agrees to indemnify and hold the Lender harmless from all costs, claims, damages or liabilities whatsoever and howsoever arising out of the performance of or the failure in performance of a Chargor's obligations in respect of the Assigned Contracts save in the case of the Lender's fraud, negligence or wilful default.

### **11.2 No amendments**

Save as permitted under the Facility Agreement, no Chargor will:

11.2.1 amend, supplement, novate or waive any provision of or terminate any Assigned Contract; or

11.2.2 do anything which might jeopardise the enforceability of any Assigned Contract.

## **12 Account and Debts**

### **12.1 Restriction on dealing**

No Chargor will, without the prior written consent of the Lender, deal with its Debts otherwise than by collecting them in the ordinary course of business and will not charge, factor, discount or assign any of its Debts in favour of any third party.

### **12.2 Payment**

Each Chargor will use all reasonable endeavours promptly to collect all Debts charged to the Lender under this Deed.

### **12.3 Withdrawal**

No Chargor will withdraw all or any monies standing to the credit of the Account(s) without the Lender's prior written consent or as permitted by the Facility Agreement.

## **13 Securities**

### **13.1 Calls and other payments**

In relation to the Securities:

- 13.1.1 each Chargor will duly and promptly pay all calls or other payments due or payable in respect of any Securities belonging to it and will comply with all other conditions and obligations assumed by it in relation to any of those Securities;
- 13.1.2 the Lender will not incur any liability in relation to any calls or other payments relating to the Securities;
- 13.1.3 if a Chargor defaults in complying with its obligations under clause 13.1.1 the Lender may in its absolute discretion make such payments on behalf of that Chargor; and
- 13.1.4 each Chargor agrees to reimburse the Lender on demand all sums expended by the Lender under clause 13.1.3.

## **13.2 Notices**

Each Chargor will forward to the Lender any notices, reports, accounts, circulars and other documents relating to the Securities belonging to it material to the rights of the Lender hereunder promptly after they are received.

## **13.3 Rights prior to enforcement**

Until the Security becomes enforceable:

- 13.3.1 each Chargor may exercise or direct all voting and other rights relating to the Securities provided that such exercise does not adversely affect the Securities or the Lender or the Security; and
- 13.3.2 except as otherwise permitted by the Lender in writing or by the Facility Agreement, all interest, dividends and other distributions in relation to the Securities (other than any paid and/or payable by a Chargor to another Chargor) will be paid into the Account(s).

## **13.4 Rights after enforcement**

Upon the Security becoming enforceable:

- 13.4.1 the Lender shall be entitled to exercise in the name of the Chargor all voting or other rights in relation to the Securities and the Chargor will (and will procure that its nominees will) comply with any directions the Lender may in its absolute discretion, give concerning the exercise of those rights and powers;
- 13.4.2 the Lender shall be entitled to receive and retain all dividends, and other distributions paid in respect of the Securities;
- 13.4.3 the Lender shall be entitled to exercise or direct the exercise of all voting or other rights in relation to the Securities in such means as it considers fit; and
- 13.4.4 the Lender shall be entitled to complete all instruments of transfer referred to in clause 13.5 and otherwise have any Securities registered in its name or the name of its nominee.

### 13.5 **Deposit of certificates**

Each Chargor will on the date of this deed, or if later, on the date of acquisition of any Securities, deposit with the Lender, in addition the documents of title and other documentary evidence required by clause 12.2, such duly executed instruments of transfer (with the name of the transferee, date and consideration left blank) as the Lender may require to perfect the title of the Lender or its nominee to such Securities and/or to enable the Lender to vest such Securities in any purchaser upon exercise of the Lender's power of sale.

### 13.6 **CREST system**

13.6.1 In the case of the CREST system and if requested by the Lender, each Chargor will transfer (or procure the transfer by its nominee of) the relevant units of participating securities comprised in any Securities belonging to it from its (or its nominee's) member account to its escrow balance by sending a **Transfer to Escrow** instruction to CREST identifying the Lender or the Lender's nominee as the escrow agent in respect of such escrow balance and any subsequent transfer or other dealings with such escrow balance will only be made with the consent of the Lender or its nominee.

13.6.2 If any of the Securities held in uncertificated form in CREST is recertificated, each Chargor will procure that, immediately on receipt of the relevant investment in certificated form, it is delivered to the Lender or its nominee together with executed blank transfer forms.

### 13.7 **Liability of the Lender**

Each Chargor agrees with the Lender that neither the Lender nor the Lender's nominee will have any liability:

- 13.7.1 for failing to present any coupon or other document relating to any of the Securities belonging to it for payment or redemption;
- 13.7.2 for failing to accept any offer relating to any of the Securities belonging to it;
- 13.7.3 for failing to attend or to vote at any meetings related to the Securities belonging to it;
- 13.7.4 for failing to notify that Chargor of any matters mentioned in this clause 13 or of any communication received by the Lender in relation to the Securities belonging to it; or
- 13.7.5 for any loss arising out of or in connection with the exercise or non-exercise of any rights or powers attaching or accruing to the Securities belonging to it or which may be exercised by the Lender or any nominee for the Lender under this Deed save in the case of the Lender's fraud, negligence or wilful default.

## **14 Intellectual Property**

### **14.1 Each Chargor shall:**

- 14.1.1 if requested by the Lender at any time, register the interest of the Lender in all or any part of any Intellectual Property;
- 14.1.2 if requested by the Lender at any time, execute all such documents and do all such things as the Lender may require to record the interest of the Lender in any register relating to the Intellectual Property;
- 14.1.3 preserve, maintain and renew as and when necessary all Intellectual Property required by that Chargor for carrying on its business; and
- 14.1.4 promptly notify the Lender of any infringements of the Intellectual Property and take all steps as may be necessary to prevent such infringement and/or recover damages in respect thereof.

## **15 Deposit of title deeds**

Each Chargor will deposit all deeds and documents of title relating to the Security Assets with the Lender and such other documents relating to the Security Assets as the Lender may require from time to time, for the duration of the Security Period, except to the extent that any such Security Assets are released by the Lender pursuant to the terms of the Facility Agreement.

## **16 Power to remedy**

In the case of default by a Chargor in repairing or keeping in repair or insuring the Security Assets or any part thereof or in observing or performing any of the covenants or stipulations affecting the same, that Chargor will permit the Lender or its agents and contractors to enter on the Security Assets and to comply with or object to any notice served on the Chargor in respect of the Security Assets and to effect such repairs or insurance or generally do such things or pay all such costs, charges and expenses as the Lender may consider are necessary or desirable to prevent or remedy any breach of covenant or stipulation or to comply with or object to any notice. The Chargor will indemnify and keep the Lender indemnified against all losses, costs, charges and expenses reasonably incurred in connection with the exercise of the powers contained in this clause 1616.

## **17 Enforcement of Security**

### **17.1 When Security becomes enforceable**

The Security shall be immediately enforceable if a Default occurs. After the Security has become enforceable, the Lender may in its absolute discretion enforce all or any part of such Security at the times, in the manner, and on the terms as it shall think fit and take possession of or hold or dispose of all or any part of the Security.

### **17.2 Exercise of powers**

At any time after the Security becomes immediately enforceable, the Lender may, without notice to the Chargors or prior authorisation from any court, in its absolute discretion

whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Deed) on mortgagees and by this Deed on any Receiver or otherwise conferred by law on mortgagees or Receivers.

**17.3 Right of appropriation**

To the extent that any of the Security Assets constitutes Financial Collateral and this Deed and the obligations of the Chargors hereunder constitute a Security Financial Collateral Arrangement the Lender shall have the right, at any time after this Deed has become enforceable, to appropriate all or any part of such Financial Collateral in or towards payment and/or discharge of the Secured Liabilities in such order as the Lender in its absolute discretion may from time to time determine. For this purpose each of the Chargors and the Lender agrees that the value of such Financial Collateral so appropriated shall be (a) in the case of cash, the amount standing to the credit of each of the Account(s), together with any accrued but unposted interest, at the time the right of appropriation is exercised; and (b) in the case of Securities, the market price of such Securities at the time the right of appropriation is exercised as determined by the Lender by reference to any recognised market index or by such other process as the Lender may select, including, without limitation, independent valuation. In each case, each of the Chargors and the Lender agree that the method of valuation provided for in this clause 16 shall constitute a commercially reasonable method of valuation for the purpose of the Financial Collateral Regulations.

**17.4 Possession**

If the Lender, any Receiver or any delegate of any such person takes possession of the Security Assets, it or he may at any time relinquish such possession.

**17.5 No liability as mortgagee in possession**

The Lender will not be liable to account as a mortgagee in possession in respect of all or any part of the Security Assets or be liable for any loss upon realisation or for any neglect, default or omission in connection with the Security Assets to which a mortgagee in possession might otherwise be liable.

**17.6 Power of sale**

The power of sale under this Deed may be exercised notwithstanding that the Lender or the Receiver may have previously waived or refrained from exercising that power; and no demand or notice of sale made or given under this Deed will be waived by the acceptance of any payment on account of the Secured Liabilities, or by any negotiations between the Lender and a Chargor or any other party who is acting as agent for or on behalf of a Chargor.

**17.7 Receiver's liability**

All the provisions of clause 17.5 will apply, mutatis mutandis, in respect of the liability of any Receiver and delegate of the Receiver or the Lender or any officer, employee or agent of the Lender, any Receiver or any delegate.

**18 Extension and variation of the Law of Property Act 1925**

**18.1 Extension of powers**

The power of sale or other disposal conferred on the Lender and on any Receiver by this Deed will operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power will arise (and the Secured Liabilities will be deemed due and payable for that purpose) on the execution of this Deed.

**18.2 Restrictions**

The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 will not apply to this Deed or to the exercise by the Lender of its right to consolidate all or any of the Security with any other security in existence at any time or to its power of sale, which powers may be exercised by the Lender without notice to any Chargor.

**18.3 Power of leasing**

The statutory powers of leasing may be exercised by the Lender at any time after a Default has occurred subject to which the Lender and any Receiver may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it will think fit, without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925.

**18.4 Application**

Section 109(8) of the Law of Property Act 1925 will not apply, and all monies received by the Lender or any Receiver in the exercise of any powers conferred by this Deed will be applied in the following order:

**18.4.1 in the payment of:**

- (a) all costs, charges, liabilities and expenses incurred by the Lender or any Receiver in the exercise of those powers or incidental to any Receiver's appointment, together with interest at the applicable rate set out in clause 2.2 (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full; and
- (b) any Receiver's remuneration;

**18.4.2 in or towards discharge of all liabilities having priority to the Secured Liabilities;**

**18.4.3 in or towards the satisfaction of the Secured Liabilities in such order as the Lender determines; and**

**18.4.4 in the payment of any surplus to any Chargor or other person entitled to it.**

**18.5 Application of sums received**

No Chargor will have any rights in respect of the application by the Lender of any sums received, recovered or realised by the Lender under this Deed until such time as the Secured Obligations have been discharged in full.



**19 Appointment of Receiver**

**19.1 Appointment and removal**

At any time after the Security becomes enforceable, or if requested to do so by any Chargor, the Lender may by deed or otherwise (acting through an authorised officer of the Lender), without prior notice to any Chargor:

- 19.1.1 appoint one or more persons to be a Receiver of the whole or any part of the Security Assets or an Administrator of any Chargor;
- 19.1.2 remove (so far as it is lawfully able) any Receiver or an Administrator so appointed; and
- 19.1.3 appoint another person(s) as an additional or replacement Receiver(s) or Administrator(s).

**19.2 Capacity of Receivers**

Each person appointed to be a Receiver under this Deed will be:

- 19.2.1 entitled to act individually or together with any other person appointed or substituted as Receiver;
- 19.2.2 for all purposes will be deemed to be the agent of any Chargor which will be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver will at any time act as agent for the Lender; and
- 19.2.3 entitled to remuneration for his services at a rate to be fixed by the Lender from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

**19.3 Statutory powers of appointment**

The powers of a Receiver will be in addition to all statutory and other powers of the Lender under the Law of Property Act 1925 (as extended by this Deed), an administrative receiver under the Insolvency Act 1986 or otherwise and such powers will remain exercisable from time to time by the Lender in respect of any part of the Security Assets.

**20 Powers of Receiver**

**20.1 Powers**

Every Receiver appointed by the Lender will (in addition to all powers conferred on him by law) have the following powers exercisable in respect of the Security Assets upon such terms and conditions as he thinks fit:

- 20.1.1 to take possession of and generally to manage the Security Assets and any business of any Chargor;
- 20.1.2 to enter into, carry into effect, complete, deliver, perform, repudiate, rescind or vary any deed, contract, transaction or arrangement to which any Chargor is or is to be a party;

- 20.1.3 to carry out on any Mortgaged Property (or on any other property which it may in his opinion be necessary or desirable to work upon) any development or new works or complete any unfinished works of building, reconstruction, maintenance, furnishing or equipment and to apply for and obtain all planning permissions, consents or licences as may be necessary or desirable for such purposes;
- 20.1.4 to purchase or acquire any land and purchase, acquire, grant or release any interest in or right over land and enter into, take or release the benefit of covenants (positive or restrictive) binding on or benefiting the Mortgaged Property;
- 20.1.5 to sell, lease, licence, surrender or accept surrender of leases or licences of, charge or otherwise deal with and dispose of the Security Assets without restriction including (without limitation) power to dispose of any Fixtures separately from the land;
- 20.1.6 to carry into effect and complete any transaction by executing deeds or documents in the name of or on behalf of any Chargor;
- 20.1.7 to insure the Security Assets and any works and effect indemnity insurance or other similar insurance and obtain bonds or give commitments, guarantees indemnities and security;
- 20.1.8 to engage, rely on the advice of and discharge advisers, consultants, officers, managers, agents, workmen and others;
- 20.1.9 to purchase materials, tools, equipment, goods or supplies;
- 20.1.10 to bring, continue or defend any claim, dispute, action or legal proceedings and enter into any arrangement or compromise in relation to the Security Assets or any part of them;
- 20.1.11 to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purposes of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- 20.1.12 to make any elections or options for value added tax purposes; and
- 20.1.13 to do any other acts or things as:
  - (a) he may consider to be necessary or desirable for the realisation of the Security Assets or any part thereof;
  - (b) as he 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.

## **21 Protection of purchasers**

### **21.1 Consideration**

The receipt of the Lender or any Receiver will be conclusive discharge to a purchaser and,

in making any sale or disposal of any of the Security Assets or making any acquisition, the Lender or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

## **21.2 Protection of purchaser**

No purchaser or other person dealing with the Lender or any Receiver will be bound to inquire whether the right of the Lender or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Lender or such Receiver in such dealings.

## **22 Power of attorney**

### **22.1 Appointment and powers**

Each Chargor by way of security irrevocably appoints the Lender and every Receiver or Administrator and any delegate or sub-delegate severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which:

22.1.1 that Chargor ought to have done by this Deed (including the execution and delivery of any deeds, charges, legal mortgages, assignments or other security and any transfers of the Security Assets); and/or

22.1.2 enable the Lender and any Receiver or Administrator or any delegate or sub-delegate to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Deed or by law (including the exercise of any right of a legal or beneficial owner of the Security Assets)

provided always that the Lender shall not exercise its power under this clause unless (a) a Default has occurred or (b) the relevant Chargor is otherwise in breach of its obligations under this Agreement.

### **22.2 Ratification**

Each Chargor will ratify and confirm all things lawfully done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## **23 Effectiveness of Security**

### **23.1 Continuing Security**

The Security will remain in full force and effect as a continuing security for the Secured Liabilities during the Security Period.

### **23.2 Cumulative rights**

The Security and the Collateral Rights will be cumulative, in addition to and independent of every other security which the Lender may at any time hold for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior security held by the Lender over the whole or any part of the Security Assets will merge into the Security.

**23.3 No prejudice**

Neither the Security nor the Collateral Rights will be prejudiced by any time or indulgence granted to the Chargors or any other person or by any other thing which might otherwise prejudice the Security or any Collateral Right.

**23.4 Remedies and waivers**

No failure on the part of the Lender to exercise, or any delay on its part in exercising, any Collateral Right will operate as a waiver thereof, nor will any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.

**23.5 No liability**

None of the Lender, any Receiver or any delegate or sub-delegate will be liable by reason of:

23.5.1 taking any action permitted by this Deed; or

23.5.2 any neglect or default in connection with the Security Assets; or

23.5.3 taking possession of or realising all or any part of the Security Assets

except in the case of negligence or wilful default or fraud upon its part.

**23.6 Partial invalidity**

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

**23.7 Other security**

The Lender will not be obliged to resort to any guarantees, indemnities, Security Interests or other means of payment now or hereafter held by or available to it before enforcing this Deed and no action taken or omitted by the Lender in connection with any such guarantee, indemnity, Security Interests or other means of payment will discharge, reduce, prejudice or affect the liability of any Chargor or the Secured Liabilities nor will the Lender be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such guarantees, indemnities, Security Interests or other means of payment.

**23.8 Variation**

No variation of the terms of this Deed will be valid unless it is in writing and executed as a deed by each Chargor and confirmed in writing by the Lender.

**24 Release of Security**

Upon the expiry of the Security Period and the Lender not being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor, the Lender will, at the request and cost of the Chargors, release and cancel the Security and procure the reassignment to the Chargors of the property and assets assigned to the Lender pursuant to this Deed and without recourse to, or any representation or warranty by, the Lender or any of its nominees.

**25 Subsequent Security Interests**

If the Lender at any time receives or is deemed to have received notice of any subsequent Security Interest affecting all or any part of the Security Assets or any assignment or transfer of the Security Assets which is prohibited by the terms of this Deed, all payments thereafter by or on behalf of the Chargors to the Lender will be treated as having been credited to a new account of the relevant Chargor and not as having been applied in reduction of the Secured Liabilities as at the time when the Lender received such notice.

**26 Assignment**

**26.1 Right of Lender to assign**

The Lender may at any time assign or otherwise transfer all or any part of its rights under this Deed.

**26.2 Restriction on Chargor**

No Chargor may assign or transfer any of its rights or obligations under this Deed.

**26.3 Confidentiality**

The Lender may give such information relating to the Chargors and the Secured Liabilities as it thinks fit to any person proposing to take an assignment and/or transfer from the Lender and/or to enter into contractual relations with the Lender with respect to this Deed.

**27 Expenses, stamp taxes and indemnity**

**27.1 Expenses**

Each Chargor will, from time to time on demand of the Lender, reimburse the Lender on a full indemnity basis for all the costs and expenses (including legal fees) together with any VAT thereon properly incurred by it or by any Receiver in connection with:

27.1.1 the negotiation, preparation and execution of this Deed and the completion of the transactions and perfection of the security contemplated in this Deed; or

27.1.2 the exercise, preservation and/or enforcement of any of the Collateral Rights or the security contemplated by this Deed or any proceedings instituted by or against the Lender or any Receiver as a consequence of taking or holding the security or of enforcing the Collateral Rights,

and such expenses will carry interest until so reimbursed at the rate referred to in clause 2.2.

## **27.2 Indemnity**

Each Chargor will, notwithstanding any release or discharge of all or any part of the Security, indemnify the Lender, its agents, attorneys and any Receiver against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by a Chargor of the provisions of this Deed, the exercise or purported exercise of any of the rights and powers conferred on them by this Deed or otherwise relating to the Security Assets.

## **28 Payments free of deduction**

All payments to be made under this Deed will be made free and clear of and without deduction or withholding whatsoever for or on account of any Tax except to the extent that a Chargor is required by law to make such payment subject to the deduction or withholding of any Tax. If any Tax or amount in respect of Tax is required to be deducted from any amounts payable or paid by a Chargor, that Chargor will pay such additional amounts as may be necessary to ensure that after the making of the deduction or withholding which is required the relevant recipient receives and retains (free from any liability in respect of any such deduction or withholding) a net amount equal to the full amount which it would have received and retained had no such deduction or withholding been made.

## **29 Discretion and delegation**

### **29.1 Discretion**

Any power or discretion which may be exercised or any determination which may be made hereunder by the Lender or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

### **29.2 Delegation**

Each of the Lender and any Receiver will have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Deed (including the power of attorney) on such terms and conditions as it sees fit, which delegation may include power to sub-delegate and will not preclude either the subsequent exercise of such power, authority or discretion by the Lender or the Receiver itself or any subsequent delegation or revocation thereof.

## **30 Perpetuity period**

The perpetuity period under the rule against perpetuities, if applicable to this Deed, will be the period of 125 years from the date of this Deed (as specified in section 5(1) of the Perpetuities and Accumulations Act 2009).

## **31 Counterparts**

### **31.1 Number of counterparts**

This Deed may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party.

**31.2 Effectiveness of counterparts**

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

**32 Certification**

Each Chargor hereby certifies that its creation of this Deed in favour of the Lender does not contravene any of the provisions of the Companies Act 2006 or its memorandum and articles of association.

**33 Reorganisation**

This Deed will remain binding on each Chargor notwithstanding any change in the constitution of the Lender or its absorption by, or amalgamation with, or the acquisition of all or part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind. The Security will remain valid and effective in all respects in favour of the Lender and for any assignee, transferee or other successor in title of the Lender.

**34 Set off**

The Lender may set off any matured obligation due from a Chargor under this Deed against any matured obligation owed by the Lender to that Chargor (whether actual or contingent, present or future), regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**35 Payment of monies**

**35.1 Date for payment**

Where neither the Facility Agreement nor this Deed specified the due date for payment of any monies owed by a Chargor to the Lender such monies will be due and payable to the Lender by that Chargor on demand.

**35.2 Currency**

Each Chargor's liability under this Deed is to discharge the Secured Liabilities in Sterling. If at any time the Lender receives a payment (including by set-off) referable to any of the Secured Liabilities from any source in a currency other than Sterling, then such payment will take effect as a payment to the Lender of the amount in Sterling which the Lender is able to purchase (after deduction of any relevant costs) with the amount of the payment so received in accordance with its usual practice.

**35.3 Currency indemnity**

If a payment is made under a court order or in satisfaction of a claim or proof and is treated by clause 35.2 as a payment of an amount which falls short of the relevant liability of a Chargor expressed in Sterling, that Chargor as a separate and independent obligation will on demand from time to time indemnify the Lender against such shortfall and pay interest on such shortfall from the date of such payment to the date on which the shortfall is paid.

#### 35.4 **Certificates**

A certificate signed by an official of the Lender as to the amount due or owing from any Chargor will be conclusive evidence against any Chargor, except in the case of manifest error.

#### 36 **Notices**

##### 36.1 **Service**

Any notice or communication to be given in connection with this Deed will be in writing and delivered by hand or sent by first class prepaid post or fax and:

36.1.1 sent to the Chargors at:

c/o Roxburgh Milkins Limited  
Merchants House North,  
Wapping Road  
Bristol, BS1 4RW

Attention: Alex Pope

36.1.2 sent to the Lender at:

Shawbrook Bank Limited  
Lutea House The Drive  
Warley Hill Business Park  
Great Warley  
Brentwood  
Essex CM13 3BE

Attention: Christos Christodoulou

unless either party has communicated another address or fax number to the other in which case it must be sent to the last address or fax number so communicated.

##### 36.2 **Receipt by Chargors**

A notice or communication sent by the Lender to a Chargor under clause 36 will be deemed to have been received:

36.2.1 if delivered by hand, at the time of delivery;

36.2.2 if sent by first class pre-paid post, on the next business day after posting; or

36.2.3 if sent by fax, when received in legible form.

##### 36.3 **Receipt by Lender**

Any notice or communication given to the Lender by a Chargor shall be deemed to have been received only on actual receipt.



#### **36.4 Confirmation in writing**

No Chargor may rely on any oral notice, waiver, consent, approval, representation, advice, statement or other communication by the Lender or any of its employees, agents or representatives except where such communications are confirmed in writing and signed for the Lender pursuant to clause 36.

#### **36.5 Electronic communication**

36.5.1 Any communication to be made between a Chargor and the Lender under or in connection with this Deed may be made by electronic mail or other electronic means to the extent that they agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if they:

- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (b) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

36.5.2 Any electronic communication made between a Chargor and the Lender will be effective only when actually received in readable form and in the case of any electronic communication made by the Chargor to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.

36.5.3 Any electronic communication which becomes effective, in accordance with clause 36.5.2 above, after 5.00 pm in the place of receipt shall be deemed only to become effective on the following Business Day.

#### **37 Governing law and jurisdiction**

##### **37.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by, and be construed in accordance with, the laws of England.

##### **37.2 Exclusive jurisdiction**

The courts of England have exclusive jurisdiction to settle any dispute arising in connection with this Deed (a **Dispute**). The parties agree that these courts are the most appropriate and convenient courts to settle any Dispute that arises under or in connection with this Deed and accordingly neither party will argue to the contrary.

##### **37.3 Benefit of the Lender**

This clause 37 is for the benefit of the Lender only. As a result the Lender will not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

**This Deed** has been executed as a deed by the parties and is delivered and takes effect on the date

at the beginning of this Deed.

## Schedule 1

### Chargors

Chargor	Registration Number
UK Healthcare Enterprise 1 Ltd	11534162
Custodes Acqco Limited	08818212
Aaron House Limited	10370276
New Century Care (Caterham) Limited	05295038
New Century Care (Finchley) Limited	4074697
New Century Care (Borough Green) Limited	2161669
New Century Care (Colchester) Limited	3001554
New Century Care (Southampton) Limited	4986946

## Schedule 2

### Mortgaged Property

Property	Land Registry Title Number (freehold)	Chargor
53 Buxton Lane, Caterham CR3 5HL	SY438868	New Century Care (Caterham) Limited
30-32 Alexandra Grove, London N12 8HG	NGL629113 and MX378480	New Century Care (Finchley) Limited
The Oaks 15-25 Oaks Drive, Colchester CO3 3PR	EX588103	New Century Care (Colchester) Limited
69-73 Portsmouth Road, Southampton SO19 9BE	HP115042, HP441789 and HP115773	New Century Care (Southampton) Limited
West Bank, 64 Sevenoaks Road, Borough Green, Sevenoaks, TN15 8AP	K666420	New Century Care (Borough Green) Limited

in each case as contained and more particularly described in a lease made on or around the date of this Deed between CBRE UK Long Income Fund (1) and the Chargor whose name is set against such Property above.

### Schedule 3

#### Shares

Chargor	Shares
UK Healthcare Enterprise 1 Limited	The entire issued share capital of Custodes Acqco Limited, being ordinary shares
Custodes Acqco Limited	The entire issued share capital of Aaron House Limited, being ordinary shares
Custodes Acqco Limited	The entire issued share capital of New Century Care (Caterham) Limited, being ordinary shares
Custodes Acqco Limited	The entire issued share capital of New Century Care (Finchley) Limited, being ordinary shares
Custodes Acqco Limited	The entire issued share capital of New Century Care (Borough Green) Limited, being ordinary shares
Custodes Acqco Limited	The entire issued share capital of New Century Care (Colchester) Limited, being ordinary shares
Custodes Acqco Limited	The entire issued share capital of New Century Care (Southampton) Limited, being ordinary shares

#### **Schedule 4**

##### **Assigned Contracts**

- 1 Acquisition Documents
- 2 Hedging Agreement
- 3 Key Man Policy

**Schedule 5**

**Accounts**

<b>Chargor</b>	<b>Bank</b>	<b>Sort Code</b>	<b>Account Name</b>	<b>Account Number</b>
Borrower	Lender	16-58-73	Retention Account	25974886
Borrower	Lender	16-58-73	Deposit Account	25974886

## Schedule 6

### Part I

#### Form of notice of assignment of an Assigned Contract

To: [ ]

Date: [ ]

#### Notice of Assignment

We hereby give notice that by a debenture dated [ • ] made between [ ] (the **Chargor**) (1) and [ ] (the **Lender**) (2) (the **Composite Debenture**), the Chargor assigned to the Lender all its rights, title and interest present and future in [the [ • ] between you and [ • ] dated [•]] [together with all ancillary or other agreements and documents entered into pursuant to or in connection therewith] (each an **Agreement** and together the **Agreements**) as security for the obligations more particularly referred to in the Debenture.

By signing and returning to the Lender the additional copy of this letter, please acknowledge notice of this Composite Debenture and confirm and agree that:

- (a) you have not received notice of any previous assignment, charge, lien or other security interest of or affecting the Agreement(s);
- (b) all monies due or to become due from you to the Chargor under the Agreement(s) will be paid as directed by the Lender in writing and without set-off or counterclaim save as provided in the Agreement(s); and
- (c) you will not without prior written consent of the Lender determine, agree to amend or accept a waiver of your obligations under the Agreement(s).

Until the Lender serves written notice to the contrary, the Chargor will be entitled, subject to the provisions of this notice, to exercise its rights under the Agreement(s).

This letter and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.

Please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it by sending a letter, addressed to us and the Lender in the form attached hereto.

Yours faithfully

.....  
Authorised signatory  
for and on behalf of  
[Chargor]



## Part II

### Form of acknowledgement of notice of assignment of an Assigned Contract

To: (as Lender)

Copy: [Chargor]

Dated:

Dear Sirs

#### **Acknowledgement of notice**

We hereby acknowledge receipt of a letter (a copy of which is attached hereto) dated [•] and addressed to us by [Chargor] (the **Notice**) and hereby acknowledge the Composite Debenture (as defined the Notice) and accept the instructions and authorisations contained in the Notice.

We also confirm that we will pay all sums due under the Agreement(s) (as defined in the Notice) as directed in the Notice.

Yours faithfully

for and on behalf of

[ ]

## Schedule 7

### Part I

#### Form of notice of fixed charge

To: [Bank]  
[Address]

Date:

Dear Sirs

#### Notice of fixed charge over Account

We hereby give notice that by a debenture dated [ • ] made between [ ] (the **Chargor**) (1) and [ ] (the **Lender**) (2) (the **Composite Debenture**), the Chargor charged to the Lender all its rights, title and interest present and future over the following account opened by it with you:

**Account:**                      **Account number:** [     ]      **Account sort code:** [     ]

(the **Account**) as security for the obligations more particularly referred to in the Debenture.

The Chargor hereby gives you notice that pursuant to the Debenture, it has, with full title guarantee, charged to the Lender all its rights, title and interest in and to all sums which may at any time be standing to the credit of the Account (the **Account Funds**).

In connection therewith and by way of security for its obligations to the Lender, the Chargor hereby irrevocably and unconditionally instructs and authorises you (notwithstanding any previous instructions whatsoever which it may have given you to the contrary):

- 1            to disclose to the Lender without any reference to or further authority from the Chargor and without any enquiry by you as to the justification for such disclosure, such information relating to the Account Funds and the debt represented thereby as the Lender may, at any time and from time to time, request you to disclose to it;
- 2            to comply with the terms of any written notice, statement or instructions in any way relating or purporting to relate to the Account Funds or the debt represented thereby which you receive at any time and from time to time from the Lender or without any reference to or further authority from the Chargor and without any enquiry by you as to the jurisdiction for such notice, statement or instructions or the validity thereof; and
- 3            to accept all instructions from the Lender in connection with any payments from or withdrawals from the Account, at any time and from time to time, and to comply with all such instructions save that until you receive notice to the contrary from the Lender, all instructions relating to payments from or withdrawals from the Account may be validly given by us together with the Lender in accordance with the Account mandate. Upon receipt of such notice to the contrary from the Lender, you hereby agree to accept and comply with all such instructions from the Lender in connection with any payments from or withdrawals from the Account.

The instructions and authorisations which are contained in this letter will remain in full force and effect until the Lender gives you notice in writing revoking them.

This letter and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.

Please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it by sending a letter addressed to us and to the Lender in the form attached hereto.

Yours faithfully

.....  
Authorised Signatory  
for and on behalf of .....  
[Chargor]

## Part II

### Acknowledgement of notice of fixed charge

To: [ ] (the **Lender**)

Copy: [Chargor]

Dated:

Dear Sirs

#### Acknowledgement of notice

Account number: [ ] (the **Account**)

We hereby acknowledge receipt of a letter (a copy of which is attached hereto) dated [ • ] (the **Notice**) and addressed to us by [ • ] (the **Chargor**) and we accept the instructions and authorisations contained in the Notice and undertake to act in accordance and comply with the terms thereof.

We hereby acknowledge and confirm to each of the Chargor and the Lender that we have not, as at the date hereof, received any notice that any third party has or will have any right or interest whatsoever in or has made or will be making any claim or demand or taking any action whatsoever against the Account Funds or the debt represented thereby or any part thereof.

We hereby acknowledge and confirm to each of the Chargor and the Lender that we will not make any claim or demand or exercise any rights of counterclaim, rights of set-off or any other equities whatsoever against the Chargor in respect of the Account Funds or the debt represented thereby or any part thereof.

We agree that in the event of us receiving notice at any time that any person or entity other than the Chargor or the Lender claims to have or claims it will acquire any right or interest whatsoever in the Account Funds or any part thereof we will as soon as is reasonably practicable give written notice of the terms thereof to the Lender.

The expressions defined and used in the Notice will have the same meaning when used in this Notice.

This letter and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.

Yours faithfully

.....  
Duly authorised signatory  
for and on behalf of  
[Account bank]

## Schedule 8

### Part I

#### Form of notice to tenants under Occupational Leases

To: [ ]

Date: [ ]

Dear Sirs

#### Notice of assignment

We refer to the lease dated [ ] and made between [ ] and [ ] (the **Lease**).

We hereby give notice that by a debenture dated [ • ] made between [ • ] (the **Chargor**) (1) and [ • ] (the **Lender**) (2) (the **Composite Debenture**), the Chargor charged to the Lender all its rights, title and interest present and future over the Lease.

All monies due or to become due from you to the Chargor under the Lease will be paid as directed by the Lender in writing and without set-off or counterclaim save as provided in the Lease.

The instructions in this letter may not be revoked or amended without the prior written consent of the Lender.

This letter and all non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.

Please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it by returning a copy of this letter addressed to us and to the Lender in the form attached hereto.

Yours faithfully

.....  
Authorised Signatory  
for and on behalf of .....  
[Chargor]

## Part II

### Form of acknowledgement from tenants under Occupational Lease Documents

To: [Chargor]

[Lender]

Date:

Dear Sirs

#### Acknowledgement of notice

We hereby acknowledge receipt of the notice (a copy of which is attached hereto) dated [ ] (the **Notice**) and addressed to us by [ ] (the **Chargor**) in relation to the Lease (as defined in the Notice) and we accept the instructions and authorisations contained in the Notice.

We confirm that:

- 1 we have not, as at the date of this acknowledgement, received any notice that any third party has or will have any right or interest in, or has made or will be making any claim or demand or taking any action in respect of, the rights of the Chargor under or in respect of the Lease (as defined in the Notice); and
- 2 we shall pay all rent and all other monies payable by us under the Lease into the Account (as defined in the Notice) and we shall continue to pay those monies into the Account until we receive your written instructions to the contrary.

This letter and all non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.

Yours faithfully

\*\*\*\*\*  
For and on behalf of

[Tenant]

## Schedule 9

### Part I

#### Form of notice of assignment of Insurances

To: [Insurer]

Date:

#### Notice of assignment

We hereby give notice that by a debenture dated [ • ] made between [ • ] (the **Chargor**) (1) and [ • ] (the **Lender**) (2) (the **Debenture**) that the Chargor has assigned in favour of the Lender all its rights, title and interest in and to the proceeds of *[insert details of insurance policy]* (the **Policy**).

We hereby instruct you with effect from the date you receive this notice to:

- 1 make all payments (other than payments in respect of third party or public liability claims or payments made in relation to claims of less than £250,000) under or in respect of the Policy to the Lender or as the Lender may specify in writing from time to time;
- 2 note the interest of the Lender as co-insured (composite) on the Policy;
- 3 disclose to the Lender without further approval from us such information regarding the Policy as the Lender may from time to time request; and
- 4 send a copy of all notices issued by you in respect of the Policy to the Lender.

All rights, interests and benefits accruing to the Chargor under the Policy belong to and are exercisable by the Lender.

The instructions in this letter may not be revoked or amended without the prior written consent of the Lender.

This letter and all non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.

Please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it by signing and returning a copy of this letter addressed to us and to the Lender in the form attached hereto.

Yours faithfully

.....

Authorised signatory  
for and on behalf of  
[Chargor]

## Part II

### Form of acknowledgement of assignment of Insurances

To: [Lender]

Date:

We acknowledge receipt of the notice dated [ • ] (the **Notice**) and addressed to us by [ • ] (the **Chargor**) in relation to the Policy (as defined in the Notice) and we accept the instructions and authorisations contained in the Notice and confirm that:

- 1 we shall comply with the terms of the Notice;
- 2 we have not received notice of any other interest relating to the Policy; and
- 3 no amendment or termination of the Policy shall be effective until the expiry of 30 days after the date we have given the Lender written notice of such amendment or termination.

We confirm that:


- 4 the Policy is in full force and effect;
- 5 as at the date of this letter, the insurance premium payable in relation to the Policy is paid up to date;
- 6 the insurances maintained under the Policy are in all [material respects] in accordance with the requirements of the [Facility Agreement / Finance Documents] and amongst other things:
  - 6.1 the interest of the Lender is noted as co-insured (composite) and first loss payee in respect of any insurance proceeds in excess of [£50,000] for any one claim (other than third party liability claims) on the relevant Policy relating to the insurances, and we hereby confirm that we will provide quarterly notification to the Lender of all claims made under the Policy;
  - 6.2 full terrorism cover applies;
  - 6.3 the Policy includes property owners public liability;
  - 6.4 the Policy provides cover for loss of rent insurance in respect of a period of not less than 3 years;
  - 6.5 the Policy contains a provision to the effect that the relevant insurance shall not be invalidated or otherwise terminated or cancelled or the cover thereunder reduced as against the Lender for non-payment of any premium due or for other cause without the insurer first giving to the Lender 30 days' prior written notice;
  - 6.6 the Policy contains a standard mortgagee protection clause whereby, among other things, the relevant insurances shall not be vitiated or avoided as against a mortgagee notwithstanding that it could otherwise be so against the Chargor;



- 6.7 the Policy will not be prejudiced, vitiated or avoidable as against a mortgagee in the event of any misrepresentation, act or neglect or failure to disclose on the part of the insured party or parties;
- 6.8 a waiver of the rights of subrogation of the insurer as against the Chargor and the Lender (save in their respective capacities as the insured) and the tenants of the property to which the Policy relates; and
- 6.9 under the terms of the Policy, the Lender shall not in any circumstances be liable for the relevant premium.

This letter, and all non-contractual obligations arising out of or in connection with it, shall be governed by, and construed in accordance with, the laws of England.

.....

For and on behalf of   
**[Insurer]**

**Signatories to the Debenture**

**Chargors**

Executed as a deed by )

UK HEALTHCARE ENTERPRISE 1 LIMITED )

acting by Alex Pope (director) ) Director  
in the presence of )

witness signature:

name: Charlotte Harding - Carroll

address: Edwin Coe LLP, 2 Stone Buildings, London WC2A 3TH

Executed as a deed by )

CUSTODES ACQCO LIMITED )

acting by Alex Pope (director) ) Director  
in the presence of )

witness signature:

name: Charlotte Harding - Carroll

address: Edwin Coe LLP, 2 Stone Buildings, London WC2A 3TH

Executed as a deed by )

AARON HOUSE LIMITED )

acting by Alex Pope (director) ) Director  
in the presence of )

witness signature:

name: Charlotte Harding - Carroll

address: Edwin Coe LLP, 2 Stone Buildings, London WC2A 3TH

Executed as a deed by )

NEW CENTURY CARE (CATERHAM) LIMITED )

acting by Alex Pope (director) ) Director  
in the presence of )

witness signature: [Signature]

name: Charlotte Harding-Carroll

address: Edwin Coe Wp, 2 Stone Buildings, London WC2A 3TH

Executed as a deed by )

NEW CENTURY CARE (FINCHLEY) LIMITED )

acting by Alex Pope (director) ) Director  
in the presence of )

witness signature: [Signature]

name: Charlotte Harding-Carroll

address: Edwin Coe Wp, 2 Stone Buildings, London, WC2A 3TH

Executed as a deed by )

NEW CENTURY CARE (BOROUGH GREEN)  
LIMITED )

acting by Alex Pope (director) ) Director  
in the presence of )

witness signature: [Signature]

name: Charlotte Harding-Carroll

address: Edwin Coe Wp, 2 Stone Buildings, London WC2A 3TH

Executed as a deed by )

NEW CENTURY CARE (COLCHESTER)  
LIMITED )

acting by *Alex Pope* (director) )  
in the presence of )



Director

witness signature:

*[Handwritten signature]*

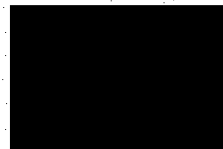
name: *Charlotte Harding - Carroll*

address: *Edwin Coe Wp, 2 Stone Buildings, London WC2A 3TH*

Executed as a deed by )

NEW CENTURY CARE (SOUTHAMPTON)  
LIMITED )

acting by *Alex Pope* (director) )  
in the presence of )



Director

witness signature:

*[Handwritten signature]*

name: *Charlotte Harding - Carroll*

address: *Edwin Coe Wp, 2 Stone Buildings, London WC2A 3TH*

**Lender**

**Executed as a deed by** )

**SHAWBROOK BANK LIMITED** )

acting by (director) ) Director

in the presence of )

witness signature:

name:

address: