



**Registration of a Charge**

Company name: **CURLEW LETTING GP2 LIMITED**

Company number: **09012635**



X58LZ9MQ

Received for Electronic Filing: **07/06/2016**

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**Details of Charge**

Date of creation: **26/05/2016**

Charge code: **0901 2635 0005**

Persons entitled: **THE ROYAL BANK OF SCOTLAND INTERNATIONAL LIMITED (AS SECURITY AGENT)**

Brief description:

**Contains fixed charge(s).**

**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:

**PINSENT MASONS LLP**



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

Company number: 9012635

Charge code: 0901 2635 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 26th May 2016 and created by CURLEW LETTING GP2 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 7th June 2016 .

Given at Companies House, Cardiff on 8th June 2016

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** 26 May **2016**

**SECURITY INTEREST AGREEMENT**

**(relating to accounts with  
THE ROYAL BANK OF SCOTLAND INTERNATIONAL  
LIMITED)**

**BETWEEN**

**THE ROYAL BANK OF SCOTLAND INTERNATIONAL  
LIMITED  
(the Security Agent)**

**AND**

**CURLEW LETTING GP1 LIMITED and CURLEW LETTING  
GP2 LIMITED as general partners of CURLEW LETTING L.P.  
(the Chargor)**

**Bedell Cristin**  
P.O. Box 75, 26 New Street,  
St. Helier, Jersey,  
Channel Islands, JE4 8PP

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**THIS SECURITY INTEREST AGREEMENT** is made on 26 May 2016

**BETWEEN:**

- (1) **THE ROYAL BANK OF SCOTLAND INTERNATIONAL LIMITED** as agent and trustee for itself and each of the Secured Parties (the "Security Agent" which expression shall include the Security Agent's successors and assigns); and
- (2) **CURLEW LETTING GP1 Limited**, a company limited by shares registered in England and Wales with registered number 09012642 whose registered office is at Brockbourne House, 77 Mount Ephraim, Tunbridge Wells, Kent, TN4 8BS and **CURLEW LETTING GP2 Limited**, a company limited by shares registered in England and Wales with registered number 09012635 whose registered office is at Brockbourne House, 77 Mount Ephraim, Tunbridge Wells, Kent, TN4 8BS in their respective capacities as general partners of **CURLEW LETTING L.P.** a limited partnership registered in Guernsey (with registered number LP016076) whose registered office is at Brockbourne House, 77 Mount Ephraim, Tunbridge Wells, Kent, TN4 8BS (the "Chargor", which expression shall include the Chargor's successors and permitted assigns).

**WHEREAS:**

- (A) The Lenders agreed to make available to, amongst others, Curlew Property GP1 Limited and Curlew Property GP2 Limited as general partners of Curlew Property L.P. (as borrower) sterling term loan facility on the terms and conditions set out in the Facility Agreement.
- (B) The Chargor is the sole owner of the Accounts.
- (C) It is a condition under the Facility Agreement that the Chargor is required to enter into this Agreement to grant security interests in or over the Accounts in favour of the Security Agent as security for its obligations under this Agreement and any Finance Documents to which it is a party.
- (D) This Agreement includes the terms of and constitutes a security agreement in accordance with the provisions of the Security Interests (Jersey) Law 2012 (the "Security Law").

**NOW BY THIS AGREEMENT:**

**1. INTERPRETATION**

**(1) Definitions**

In this Agreement:

- (a) the "Account Bank" means The Royal Bank of Scotland International Limited of P.O. Box 64, Royal Bank House, 71 Bath Street, St Helier, Jersey, JE4 8PJ;
- (b) the "Accounts" means:
  - (i) the rent account with account number \_\_\_\_\_ sort code \_\_\_\_\_ held by the Chargor with the Account Bank, maintained by the Chargor in accordance with clause 17 of the Facility Agreement;

- (ii) any other accounts which may from time to time be opened and held by the Chargor with the Account Bank and be agreed by the Chargor and Security Agent to be an Account,

and includes any of such accounts as renumbered or redesignated from time to time, each replacement account or sub-account relating to any such accounts, all monies from time to time standing to the credit of those accounts and all interest accruing in relation thereto;

- (c) this "Agreement" means and extends to every separate and independent stipulation contained herein including, without limitation, the parties clause and the recitals;
- (d) "bankruptcy" has the meaning attributed to such terms by Article 8 of the Interpretation Law and also includes any proceedings of a similar nature in any place outside Jersey and "bankrupt" shall be construed accordingly;
- (e) "Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London and Guernsey and Jersey;
- (f) "collateral" shall have the meaning given to it in Article 1 of the Security Law;
- (g) "control" shall have the meaning given to it in Article 3(3)(d) of the Security Law;
- (h) "Default Rate" means the rate specified in Clause 2(10);
- (i) "Event of Default" has the meaning given to that term in the Facility Agreement;
- (j) the "Facility Agreement" means the £100,000,000 single currency term facility agreement originally dated 19 December 2013 as amended and restated on each of 7 April 2014 and 26 March 2015 between (1) Curlew Property GP1 Limited and Curlew Property GP2 Limited as general partners of Curlew Property L.P. (as Borrower); (2) The Royal Bank of Scotland International Limited (as Arranger); (3) the financial institutions listed in part 2 of schedule 1 thereto (as Original Lenders); (4) The Royal Bank of Scotland plc (as Original Hedge Counterparty); (5) The Royal Bank of Scotland plc (as Agent); and (6) the Security Agent;
- (k) "Finance Document" has the meaning given to that term in the Facility Agreement;
- (l) "financing change statement" shall have the meaning given to it in Article 1 of the Security Law;
- (m) "financing statement" shall have the meaning given to it in Article 1 of the Security Law;
- (n) "further advance" shall have the meaning given to it in Article 33(4) of the Security Law;

- (o) **"intangible movable property"** shall have the meaning given to it in Article 1 of the Security Law;
- (p) the **"Interpretation Law"** means the Interpretation (Jersey) Law 1954;
- (q) **"Jersey"** means the Island of Jersey, Channel Islands;
- (r) **"Party"** means a party to this Agreement;
- (s) the **"Powers of Attorney Law"** means the Powers of Attorney (Jersey) Law 1995;
- (t) **"Proceeds"** means identifiable or traceable property, being intangible movable property in which the Chargor acquires an interest at any time on or after the date of this Agreement and that is derived directly or indirectly from a dealing with the Accounts (such identifiable or traceable property being hereinafter referred to as the **"Primary Proceeds"**) or from a dealing with the Primary Proceeds but does not include interest or other income derived from the Accounts or the Primary Proceeds;
- (u) **"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under each Finance Document;
- (v) **"security interest"** shall have the meaning given to it in Article 1A of the Security Law;
- (w) **"Security Period"** means the date commencing on the date of this Agreement and ending on the date that the Security Agent (acting reasonably) is satisfied that the Secured Liabilities have been irrevocably and unconditionally paid, performed and discharged in full; and
- (x) **"verification statement"** shall have the meaning given to it in Article 1 of the Security Law.

(2) **Incorporation of terms**

Unless the context otherwise requires or unless defined in this Agreement, all words and expressions defined or whose interpretation is provided for in the Facility Agreement, shall have the same meanings in this Agreement.

(3) **Interpretation**

The principles of interpretation set out in Clause 1.2 (*Construction*) and Clause 1.3 (*Currency symbols and definitions*) of the Facility Agreement shall apply to this Agreement insofar as they are relevant to it and in this Agreement, unless the context otherwise requires, a reference to a "Transaction Document" or any other agreement or instrument is a reference to that Transaction Document or other agreement or instrument as amended, novated, supplemented, restated or replaced (however fundamentally) and includes any increase in, extension of, or change to, any facility made available under that Transaction Document or other agreement or instrument and includes any increase in, extension of or change to any facility made available under that Transaction Document or other agreement or instrument.



**(4) Acknowledgement**

The Chargor acknowledges that the Security Agent enters into this Agreement for itself and as trustee for the Secured Parties who shall be entitled to the full benefit of this Agreement.

**2. SECURITY INTEREST**

- (1) The Chargor covenants that it will on demand by the Security Agent pay and discharge any or all of the Secured Liabilities when due in accordance with the provisions of the Finance Documents.
- (2) In order to provide continuing security for the payment, performance and discharge of the Secured Liabilities, the Chargor hereby creates a security interest under the Security Law in or over all of its present and future rights, title and interest in and to the Accounts in favour of the Security Agent,
- (3) It is acknowledged and agreed by the Parties that the Parties have not entered into (i) any agreement referred to in Article 18(1) of the Security Law which defers or delays any attachment of the security interest constituted by or pursuant to this Agreement or (ii) any agreement to the contrary referred to in Article 19(2) of the Security Law.
- (4) The security interest constituted by or pursuant to this Agreement will attach, in the case of:

  - (a) any present rights, title and interest of the Chargor in and to the Accounts, on the date of this Agreement; and
  - (b) any future rights, title and interest of the Chargor in and to the Accounts, on the acquisition of such rights, title and interest by the Chargor and without the need for any specific appropriation by the Chargor.
- (5) The Chargor acknowledges and agrees that the security interest created by Clause 2(2) will extend to any Proceeds in accordance with Article 24 of the Security Law to the extent that such Proceeds are capable, according to Part 2 of the Security Law, of being the subject of a security interest to which the Security Law applies.
- (6) The Chargor acknowledges and agrees that value (as defined in the Security Law) has been given in respect of this Agreement and that the Chargor has rights in the Accounts or the power to grant rights in the Accounts to the Security Agent.
- (7) To the extent that the Accounts do not fall within the intangible moveable property referred to in Article 4 of the Security Law, the Parties agree for the purposes of Article 5 of the Security Law that this Agreement shall apply to such Accounts.
- (8) The Chargor shall promptly pay all payments that are now due in respect of the Accounts and shall pay all payments that become due in respect of the Accounts on or before their due date for payment. If the Chargor does not make any such payment, the Security Agent may do so and the Chargor shall reimburse the Security Agent for any such payment on demand. The Chargor acknowledges and agrees that the Security Agent shall have no liabilities in relation to the Accounts and shall have no obligation to preserve or enhance the Accounts or its value.

- (9) Where more than one account is included within the meaning of "the Accounts" a separate security interest shall be deemed to be created in the monies held in each such account. No defect in relation to one such security interest shall prejudice any other.
- (10) The Chargor covenants to pay interest to the Security Agent upon any sum demanded in accordance with Clause 2(1) until payment (both before and after any judgment) at two per cent above the rate applicable to that sum immediately before demand (or, if there was no such applicable rate, at two per cent. above the Security Agent's base rate).

### **3. FURTHER ASSURANCE AND POWER OF ATTORNEY**

- (1) The Chargor shall promptly do any and all such acts and things and execute and deliver any and all such documents as the Security Agent reasonably requires for creating, perfecting, maintaining or enforcing its security interest or interests in the Accounts, for vesting the Accounts in the Security Agent (or its nominee) or, for disposing of the Accounts and vesting the same in any purchaser or in any respect whatsoever for obtaining the full benefit of this Agreement and of the rights, powers and discretions herein granted including any enforcement remedies under the Security Law.
- (2) In accordance with Article 5(2)(a) of the Powers of Attorney Law, for the purpose of facilitating the exercise of the powers of the Security Agent under the Security and of the powers given pursuant to this Agreement, the Chargor hereby irrevocably appoints the Security Agent and any delegate or sub delegate of, or other person nominated in writing by, an officer of the Security Agent severally as the Chargor's attorney with effect from the occurrence of an Event of Default which is continuing (with full power of substitution in accordance with Article 8 of the Powers of Attorney Law) for the Chargor and in the name and on behalf of the Chargor to execute and complete any transfers or other documents whatsoever which the Security Agent reasonably considers necessary or desirable for perfecting maintaining or enforcing its security interest or interests in the Accounts or for vesting the Accounts in the Security Agent (or its nominee) or, for disposing of the Accounts and vesting the same in any purchaser and to make any substitution, addition or other alteration to the property comprising the Accounts or to this Agreement and generally to execute and deliver or otherwise perfect any such transfers or other documents whatsoever which the Security Agent and to do any such acts and things as the Security Agent reasonably considers necessary or desirable in order to obtain the full benefit of this Agreement and of the rights, powers and discretions herein granted including any enforcement remedies under the Security Law. The Chargor hereby covenants with the Security Agent and the persons deriving rights under the Security Agent to ratify and confirm any exercise of the power of attorney granted in this sub-clause (2).

### **4. REPRESENTATIONS AND WARRANTIES**

The Chargor represents and warrants to the Security Agent and persons deriving title under the Security Agent to the intent that the same shall be representations and warranties made by reference to the facts and circumstances then existing on the date of each Utilisation Request, on each Utilisation Date and the first day of each Interest Period:

- (1) subject only to any security interest or interests created pursuant to this Agreement,

the Chargor is the sole legal and beneficial owner of the Accounts;

- (2) other than as provided in this Agreement, there are no security interests, charges, liens, rights of set off or other encumbrances affecting the Accounts;
- (3) subject to the Legal Reservations, this Agreement shall for as long as the Security Agent (or its nominee) has control pursuant to this Agreement to the Accounts, constitute a valid first priority security interest in respect of the Chargor's present and future rights, title and interest in the Accounts under the Security Law;
- (4) save in respect of the registration of the security interest hereunder on the Security Interest Register maintained by the Jersey Financial Services Commission, under the law of Jersey it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in Jersey; and
- (5) the Chargor is acting in all matters relating to this Agreement as principal for its own account and not as agent or trustee or in any other capacity whatsoever on behalf of any third party.

## 5. COVENANTS

The Chargor agrees and covenants throughout the continuance of this Agreement:

- (1) not create or permit to subsist any Security over the Accounts or any Proceeds except as expressly permitted under the terms of Clause 22.3 (*Negative Pledge*) of the Facility Agreement;
- (2) it will procure the discharge of any financing statement that is registered against it by any person (other than the Security Agent) in relation to the whole or any part of the Accounts or any Proceeds including, without limitation, any such registration made at any time on or before the date of this Agreement;
- (3) advise the Security Agent immediately of any redesignation or change in account details affecting all or any of the Accounts;
- (4) promptly upon request by the Security Agent, supply the Security Agent with copies of all mandate letters, bank statements and other agreements relating to all or any of the Accounts;
- (5) not, without the Security Agent's prior written consent, permit or agree to any variation of the terms and conditions or mandates relating to all or any of the Accounts or close all or any of the Accounts;
- (6) not permit all or any of the Accounts to become overdrawn;
- (7) notwithstanding any term to the contrary relating to all or any of the Accounts, the Chargor shall not make any withdrawal or transfer from all or any of the Accounts, or otherwise deal with any of the Accounts, other than as permitted pursuant to this Agreement and the Facility Agreement; and
- (8) to exercise its rights under Article 85 of the Security Law in respect of any security



interest granted in favour of any person (other than the Security Agent) over the Accounts in such manner as the Security Agent may request from time to time and to promptly deliver to the Security Agent a copy of any documents given to the Chargor pursuant to Article 85 of the Security Law.

## **6. OPERATION OF THE ACCOUNTS**

Without prejudice to the control by the Security Agent of the Accounts and the security interest or interests of the Security Agent therein, the Accounts shall only be operated in accordance with the terms of the Facility Agreement.

## **7. ENFORCEMENT**

- (1) The power of enforcement in respect of the security interest constituted by or pursuant to this Agreement shall become exercisable when an Event of Default has occurred and the Security Agent has served on the Chargor written notice specifying such Event of Default.
- (2) The Security Agent may exercise the power of enforcement in respect of the security interest constituted by or pursuant to this Agreement by doing any of the matters set out in Article 43(2) of the Security Law.
- (3) Without prejudice to Clause 7(1), the Security Agent agrees that it shall only exercise the power of enforcement in respect of the security interest constituted by or pursuant to this Agreement if an Event of Default occurs which is continuing.
- (4) The Security Agent shall not appropriate the Accounts or any Proceeds unless the Security Agent has given notice in accordance with Article 44(1) of the Security Law to the persons entitled to receive such notice under Article 44(1) of the Security Law. Without prejudice to Clause 7(1), the Chargor unconditionally and irrevocably waives any right to receive any such notice. Accordingly, the Chargor acknowledges and agrees that it does not have any right to receive any notice pursuant to Article 44(1) of the Security Law.
- (5) The Security Agent shall not sell the Accounts or any Proceeds unless the Security Agent has given notice in accordance with Article 44(2) of the Security Law to the persons entitled to receive such notice under Article 44(2) of the Security Law. Without prejudice to Clause 7(1), the Chargor unconditionally and irrevocably waives any right to receive any such notice. Accordingly, the Chargor acknowledges and agrees that it does not have any right to receive any notice pursuant to Article 44(2) of the Security Law. It is further acknowledged and agreed that the Security Agent does not have to give any notice under Article 44(2) of the Security Law to any person in circumstances where Article 44(3) of the Security Law applies.
- (6) The power of enforcement in respect of the security interest constituted by or pursuant to this Agreement shall be exercisable by the Security Agent in such manner, at such time, at such intervals and for such cash or other consideration (whether payable immediately, by instalments or otherwise deferred) as the Security Agent may in its absolute discretion deem appropriate and with all the powers of a beneficial owner. Without prejudice to the generality of the foregoing, the Security Agent may sell the whole or any part of the Accounts or any Proceeds without giving any representation or warranty of any nature whatsoever in favour of the purchaser thereof and the Security Agent may sell the whole or any part of the Accounts or any Proceeds to any subsidiary of the Security Agent or any subsidiary of any holding

body of the Security Agent.

- (7) The power of enforcement in respect of the security interest constituted by or pursuant to this Agreement may be exercised in respect of the whole or any part of the Accounts and any Proceeds and may be exercised any number of times.
- (8) Subject to the payment of any claim having priority over the security interest constituted by or pursuant to this Agreement, any amount or value received or recovered by the Security Agent as a result of exercising the power of enforcement in respect of the security interest constituted by or pursuant to this Agreement shall be applied by the Security Agent in or towards payment or discharge of the Secured Liabilities in such order as the Security Agent may in its absolute discretion deem appropriate. If any surplus arises as described in Article 51 of the Security Law, then the Security Agent shall either apply such surplus in accordance with Article 49 of the Security Law or pay such surplus into court pursuant to Article 50 of the Security Law. If the Security Agent elects to apply any surplus in accordance with Article 49 of the Security Law, the Security Agent shall not be liable for any failure to apply the surplus in accordance with Article 49 of the Security Law provided that the Security Agent sought to comply with Article 49 of the Security Law in good faith and after having made reasonable enquiries.
- (9) No purchaser or other person shall be bound or concerned to see or enquire whether the Security Agent may exercise the power of enforcement in respect of the security interest constituted by or pursuant to this Agreement or with the propriety of the exercise or purported exercise of such power of enforcement.
- (10) Any amount received or recovered by the Security Agent as a result of exercising the power of enforcement in respect of the security interest constituted by or pursuant to this Agreement may be placed in a suspense account for so long as the Security Agent thinks fit. When the Security Agent withdraws any moneys from any such suspense account, such moneys shall be applied in accordance with Clause 7(8).
- (11) If any balance remains after the discharge of the Secured Liabilities following an exercise by the Security Agent of the power of sale such balance shall be promptly returned to the Chargor.
- (12) The Chargor shall have no right or claim against the Security Agent in respect of loss arising out of a sale of or recourse against the Accounts pursuant hereto howsoever such loss may have been caused and in the case of a sale of the Accounts whether or not a better price might have been obtained.
- (13) The Chargor shall have no right or claim against the Security Agent in respect of any loss arising out of the exercise of, or a failure to exercise, the power of enforcement in respect of the security interest constituted by or pursuant to this Agreement howsoever such loss may have been caused and in the case of the appropriation or sale of the Accounts or any Proceeds whether or not a better value or price might have been obtained and whether or not the Chargor or any other person may have benefited from a delay or advancement of the exercise of the power of enforcement.
- (14) The Security Agent shall not be liable for any loss of interest on or any penalty or charge assessed against any sums in, payable on, or credited to the Accounts as a result of the Security Agent exercising any of its rights or remedies under this Agreement or the Security Law.

- (15) The Security Agent shall be under no liability or obligation to the Chargor arising out of any failure to preserve, maintain or enhance the value of the Accounts or any rights relating to the Accounts.
- (16) The Chargor irrevocably and unconditionally waives any right which it may have under Article 54 of the Security Law to reinstate this Agreement. Accordingly, the Chargor does not have (and shall not seek to exercise) any right of reinstatement under the Security Law.
- (17) The Security Agent will only be accountable, and the Chargor will only be entitled to be credited, for the actual moneys or value received by the Security Agent arising from the sale, appropriation or other realisation of the Accounts and any Proceeds.
- (18) If the value of the Accounts and any Proceeds appropriated or the proceeds of sale or other realisation of the Accounts and any Proceeds is insufficient to pay or discharge the Secured Liabilities in full, the Chargor shall remain liable for any such deficiency or shortfall.
- (19) Without prejudice to any other right or power which the Security Agent may have under the Security Law or this Agreement, the Security Agent may redeem any prior security interest in the Accounts or any Proceeds. If the Chargor is not subrogated to the rights of any secured party whose security interest is so redeemed, then the Chargor shall indemnify (and keep indemnified) the Security Agent on demand against all amounts paid or payable by the Security Agent in connection with any such redemption. Any such redemption by the Security Agent may be effected at any time including, without limitation, before the power of enforcement becomes exercisable in accordance with Clause 7(3).
- (20) The rights of the Security Agent contained in Clause 6 may be exercise at any time both before and after the power of enforcement becomes exercisable in accordance with Clause 7(3) and if any such rights are exercised after the power of enforcement may be exercised, then the exercise of such rights shall constitute actions or remedies for the purposes of Article 43(2)(c) or Article 43(2)(d) of the Security Law.

#### **8. NEW ACCOUNTS**

If the Security Agent or any other Finance Party receives notice (whether actual or otherwise) of any subsequent Security over or affecting the Accounts or if a petition is presented or a resolution passed in relation to the winding up of the Chargor, the Security Agent and the relevant Finance Party or Finance Parties may close the current account or accounts and/or open a new account or accounts for the Chargor. If the Security Agent or any other Security Agent does not open a new account or accounts immediately it shall nevertheless be treated as if it had done so at the time when the relevant event occurred, and as from that time all payments made by the Chargor to the Security Agent or that Security Agent shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the Secured Liabilities.

#### **9. CONDITIONAL DISCHARGE AND RETENTION OF COLLATERAL**

If the Security Agent reasonably considers that any amount paid or credited to any Security Agent under any Finance Document (whether in respect of the obligations of any Obligor or any Security for those obligations or otherwise) is capable of being avoided, reduced or otherwise set aside:-

- (1) that amount shall not be considered to have been paid for the purposes of determining whether the Secured Liabilities have been irrevocably and unconditionally paid and discharged; and
- (2) the liability of the Chargor and the Security created by this Agreement shall continue as if that amount had not been paid or credited.

**10. CONTINUING SECURITY AND PRESERVATION OF SECURITY**

- (1) For the purposes of Article 33 of the Security Law, the Parties acknowledge and agree that this Agreement secures further advances.
- (2) The security interest or interests hereunder shall:
  - (a) continue in existence and shall not terminate until the expiry of the Security Period and the security interest over the Accounts released;
  - (b) constitute a continuing security notwithstanding any intermediate payment or settlement of account or any other matter whatsoever and shall be in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, set off, combination, security interest, mortgage, charge or other security or other right now or hereafter held by or available to the Security Agent and shall not be prejudiced or affected thereby or by the invalidity thereof or by the Security Agent now or hereafter dealing with, exchanging, releasing, varying or abstaining from perfecting or enforcing any of the same or any rights which the Security Agent may now or hereafter have or giving time for payment or indulgence or compounding with any other person liable in respect of the Secured Liabilities;
  - (c) not be discharged by the bankruptcy, insolvency or incapacity of the Chargor or any other person or by any change in the constitution of the Chargor or any other person or by the Chargor or any other person becoming involved in any amalgamation, reorganisation, reconstruction or merger; and
  - (d) not be affected by any variation of the terms of the Secured Liabilities or of any Finance Document.

**11. RELEASE OF SECURITY INTEREST**

- (1) Upon the expiry of the Security Period the Security Agent shall, subject to the rights of any persons for the time being entitled thereto in priority to the Chargor, at the request and cost of the Chargor promptly return to the Chargor control of so much (if any) of the Accounts as shall not have been applied by the Security Agent in or towards satisfaction of the Secured Liabilities.
- (2) The Security Agent may, on the written request of the Chargor and at the cost of the Chargor, execute a partial release of the security interest constituted by or pursuant to this Agreement on such terms as the Security Agent may determine (acting reasonably).
- (3) The Security Agent (or any representative of the Security Agent) may at the cost of the Chargor file a financing change statement to reflect any release or partial release of the security interest constituted by or pursuant to this Agreement.



## **12. SET OFF AND COMBINATION OF ACCOUNTS**

- (1) In addition to any general lien, right to combine accounts, right of set-off or other right which it may at any time have, the Security Agent and each Finance Party may at any time after an Event of Default has occurred and is continuing, without notice to the Chargor, combine or consolidate all or any accounts which it then has in relation to the Chargor (in whatever name) and any Secured Liabilities owed by the Chargor to the Security Agent or that Finance Party, and/or set-off or transfer any amounts standing to the credit of one or more accounts of the Chargor in or towards satisfaction of the Secured Liabilities owed it on any other account or otherwise.
- (2) The Security Agent's and each Finance Party's rights under Clause 12(1) apply:-
  - (a) whether or not any demand has been made under this Agreement, or any liability concerned has fallen due for payment;
  - (b) whether or not any credit balance is immediately available or subject to any restriction;
  - (c) irrespective of the currencies in which any balance or liability is denominated, and the Security Agent and the relevant Finance Party may for the purpose of exercising its right elect to convert any sum or liability in one currency into any other at its spot rate applying at or about 11.00am on the date of conversion; and
  - (d) in respect of any Secured Liabilities owed by the Chargor, whether owed solely or jointly, certainly or contingently, presently or in the future, as principal or surety, and howsoever arising.

## **13. INDEMNITY**

- (1) The Chargor shall indemnify and keep indemnified the Security Agent, each other Finance Party and their respective officers, employees and delegates, against all claims, costs, expenses and liabilities reasonably and properly incurred by them in respect of all or any of the following:-
  - (a) any act or omission by any of them in relation to all or any of the Accounts;
  - (b) any payment relating to or in respect of all or any of the Accounts which is made at any time by any of them;
  - (c) any stamp, registration or similar Tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Agreement;
  - (d) exercising or purporting to exercise or failing to exercise any of the rights, powers and discretions conferred on them or permitted under this Agreement; and
  - (e) any breach by the Chargor of any of its covenants or other obligations to the Security Agent or any other Finance Party,

except in the case of fraud, gross negligence or wilful misconduct on the part of that person.

- (2) The Chargor shall pay interest at the Default Rate on the sums payable under this Clause 13 from the date on which the liability was incurred to the date of actual payment (both before and after judgment).
- (3) The Security Agent, the other Finance Parties and their respective officers, employees and delegates shall be entitled to be indemnified out of the Accounts in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 13(1).
- (4) The provisions of this Clause 13 shall continue in full force and effect notwithstanding any release or discharge of this Agreement.

**14. NOTICES**

Each communication to be made under or in connection with this Agreement shall be in accordance with the Facility Agreement.

**15. REGISTRATION AND CHANGE DEMANDS**

- (1) The Chargor hereby consents to the Security Agent (or any representative of the Security Agent) registering such financing statements and financing change statements as the Security Agent may consider appropriate to perfect the security interest constituted by or pursuant to this Agreement continuously during the Security Period.
- (2) If the Chargor makes or lodges any demand pursuant to Article 75 of the Security Law, the Chargor shall in addition send a notice in writing to the Security Agent in accordance with Clause 14 (other than by email) notifying the Security Agent that such a demand has been made and giving full details as to the nature of the demand.

**16. MISCELLANEOUS**

- (1) If any provision of this Agreement is illegal, invalid or unenforceable in any jurisdiction, that shall not affect:-
  - (a) the validity or enforceability of any other provision, in any jurisdiction; or
  - (b) the validity or enforceability of that particular provision, in any other jurisdiction.
- (2) The Security Agent may from time to time seek from any other person having dealings with the Chargor such information about the Chargor and their affairs as the Security Agent may think fit and the Chargor authorises and requests any such person to provide any such information to the Security Agent and agrees to provide such further authority in this regard as the Security Agent may from time to time reasonably require.
- (3) No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this Agreement 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 in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

- (4) This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
- (5) The rights of the Security Agent shall not be affected or prejudiced in any way by any change in its constitution or by its reconstruction or reorganisation or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person.
- (6) The rights, powers and discretions given to the Security Agent in this Agreement:
- (a) may be exercised as often as, and in such manner as, the Security Agent thinks fit;
  - (b) are cumulative, and are not exclusive of any of its rights under the general law; and
  - (c) may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.
- (7) A certificate by an officer of the Security Agent:-
- (a) as to any amount for the time being due to the Finance Parties or any of them; or
  - (b) as to any sums payable to the Security Agent under this Agreement,
- shall (save in the case of manifest error) be conclusive and binding upon the Chargor for all purposes.
- (8) In accordance with the provisions of the Finance Documents, the Security Agent may assign this Agreement to any successor in title to the Secured Liabilities or to a replacement Security Agent appointed, and each Security Agent may assign its interest in this Agreement in whole or in part to any successor in title to the Secured Liabilities, and the Security Agent and any Security Agent may disclose any information in its possession relating to the Chargor, its affairs or the Secured Liabilities to any actual or prospective assignee.
- (9) The Chargor may not, without the prior written consent of the Security Agent, assign transfer, novate or dispose of any of, or any interest in, its rights and obligations under this Agreement.
- (10) The Security Agent holds this Agreement and the proceeds of this Agreement on trust for the Secured Parties on the terms contained in the Facility Agreement.
- (11) The Security Agent and the Chargor designate this Agreement as a Finance Document (and a Security Document) for the purposes of the Facility Agreement.
- (12) Notwithstanding clause 46.2 of the Facility Agreement, without prejudice to any other mode of service allowed under any relevant law, the Chargor:
- (a) irrevocably appoints Helm Trust Company Limited of 1st Floor, 17 Bond Street, St Helier Jersey, Channel Islands JE2 (marked for the attention of Lewis Buckley) as its agent for service of process in relation to any

proceedings before the courts of the Island of Jersey in connection with this Agreement; and

- (b) agrees that failure by a process agent to notify the Chargor of the process will not invalidate the proceedings concerned.
- (13) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Chargor must immediately (and in any event within 2 days of such event taking place) appoint another agent on terms acceptable to the Security Agent. Failing this, the Security Agent may appoint another agent for this purpose.
- (14) This Agreement shall be governed by and construed in accordance with Jersey law and the Chargor hereby submits for the exclusive benefit of the Security Agent to the nonexclusive jurisdiction of the courts of the Island of Jersey in connection herewith. Nothing in this Clause 16(14) limits the right of the Security Agent to bring proceedings against the Chargor in any other court of competent jurisdiction nor shall the bringing or continuing of proceedings in one or more jurisdictions preclude the bringing or continuing of proceedings in any other jurisdiction, whether concurrently or otherwise. The Chargor irrevocably waives (and irrevocably agrees not to raise) any objection which it may have now or hereafter to the venue of any proceedings in any such court as is referred to in this Clause 16(14) and any claim that any such proceedings have been instituted in an inconvenient forum and further irrevocably agrees that a judgment in any proceedings brought in any such court as is referred to in this Clause 16(14) shall be conclusive and binding upon the Chargor and may be enforced in the court of any other jurisdiction.

**IN WITNESS WHEREOF** the parties hereto have entered into this Agreement on the date first above written.

**the Security Agent:**

**SIGNED** for and on behalf of  
**ROYAL BANK OF SCOTLAND**  
**INTERNATIONAL LIMITED**

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Therese G. Slater  
Head of Bank of Scotland  
Offshore

Name:  
Job Title:

**the Chargor:**

**SIGNED** for and on behalf of  
**CURLEW LETTING GP1**  
**LIMITED** as general partner of **CURLEW**  
**LETTING L.P.**

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**SIGNED** for and on behalf of  
**CURLEW LETTING GP2**  
**LIMITED** as general partner of **CURLEW**  
**LETTING L.P.**

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**the Security Agent:**

**SIGNED** for and on behalf of  
**ROYAL BANK OF SCOTLAND**  
**INTERNATIONAL LIMITED**


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**the Chargor:**

**SIGNED** for and on behalf of  
**CURLEW LETTING GP1**  
**LIMITED** as general partner of **CURLEW**  
**LETTING L.P.**

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**SIGNED** for and on behalf of  
**CURLEW LETTING GP2**  
**LIMITED** as general partner of **CURLEW**  
**LETTING L.P.**

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