



**Registration of a Charge**

Company name: **BRITISH ENGINEERING SERVICES HOLDCO LIMITED**

Company number: **09522873**



X92HEOVS

Received for Electronic Filing: **07/04/2020**

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**Details of Charge**

Date of creation: **27/03/2020**

Charge code: **0952 2873 0006**

Persons entitled: **HSBC BANK PLC**

Brief description: **NO SPECIFIC LAND, SHIP, AIRCRAFT OR INTELLECTUAL PROPERTY HAS BEEN CHARGED. FOR FULL DETAILS OF THE CHARGES, PLEASE REFER TO THE CHARGING DOCUMENT DIRECTLY.**

**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:

**CHARLES WEEMS**



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

Company number: 9522873

Charge code: 0952 2873 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 27th March 2020 and created by BRITISH ENGINEERING SERVICES HOLDCO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 7th April 2020 .

Given at Companies House, Cardiff on 8th April 2020

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 27 March 2020

(1) BRITISH ENGINEERING SERVICES HOLDCO LIMITED

- and -

(2) HSBC BANK PLC

## SUPPLEMENTAL CHARGE OVER SHARES

*This Supplemental Charge Over Shares is subject to and has the benefit of an Intercreditor Agreement dated 20 October 2016 and made between, among others, (1) the Company, (2) the Security Agent and (3) the Secured Parties (as each such term is defined in this Deed).*

I CERTIFY THAT, SAVE FOR MATERIAL  
REDACTED PURSUANT TO SECTION 859C OF  
THE COMPANIES ACT 2006, THIS IS A  
TRUE, COMPLETE AND CORRECT COPY  
OF THE ORIGINAL INSTRUMENT

DLA Piper Ireland  
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18-21 St Stephen's Green  
Dublin 2  
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DATE: 6<sup>th</sup> April 2020

Signed:



DLA Piper UK LLP

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THIS SUPPLEMENTAL CHARGE OVER SHARES is made on

27 March 2020

**BETWEEN:**

- (1) **BRITISH ENGINEERING SERVICES HOLDCO LIMITED**, a company incorporated in England and Wales with limited liability with registration number 9522873 ("**Chargor**"); and
- (2) **HSBC BANK PLC**, as security trustee for the Secured Parties (as defined in the Facilities Agreement) (in such capacity, the "**Security Agent**").

**BACKGROUND:**

- A The Company is or may hereafter become indebted to the Security Agent in respect of the Secured Obligations.
- B The Chargor is the legal and beneficial owner of the Secured Assets, including the Shares.
- C The Chargor has agreed (as acknowledged by its execution of this deed) with the Security Agent that the Secured Obligations shall be secured by the security created by or pursuant to this deed and by the covenants, agreements, warranties and acknowledgements of and by the Chargor in this deed.

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this deed (including the Background), capitalised terms used but not otherwise defined in this deed shall have the meanings given to such terms in the Facilities Agreement. In addition, in this deed (including the Background) the following terms shall, unless the context otherwise requires, have the following meanings:

**"Amendment and Restatement Deed"** means the amendment and restatement deed dated the same date as this Deed and made between (1) British Engineering Services Topco Ltd as Parent, (2) the entities listed in part 1 of schedule 1 to it as Borrowers, (3) the entities listed in part 2 of schedule 1 to it as Guarantors and (4) HSBC Bank plc as Arranger, Original Lender, Original Hedge Counterparty, Agent and Security Agent;

**"Ancillary Rights"** means:

- (a) all dividends, interest or other income, declared, made, paid or payable, and deriving from or incidental to, the ownership of the Shares; and
- (b) all allotments, accretions, offers and rights deriving from or incidental to any of the Shares, including all stocks, shares and other securities, rights, monies and other property whether of a capital or income nature accruing, offered, issued or deriving at any time by way of bonus, redemption, exchange, purchase, substitution, conversion, preference, option or otherwise attributable to or in respect to any of the Shares;
- (c) all rights relating to any Shares which are deposited with, or registered in the name of, any depositary, custodian, nominee, clearing house or system, investment manager,

chargee or other similar person or their nominee, in each case whether or not on a fungible basis (including rights against any such person); and

- (d) all other rights attaching or relating to any Shares and all cash or other securities or investments in the future deriving from the Shares or such rights;

**"Company"** means Vertigo Inspection (ROI) Limited being a company registered in Ireland with company number 566073 and having its registered office at First Floor, Riverside Two, 43-49 Sir John Rogerson's Quay, Dublin 2;

**"Companies Act"** means the Companies Act 2014 (as amended);

**"Conveyancing Act"** means the Land and Conveyancing Law Reform Act 2009 (as amended);

**"Default Rate"** means with respect to any amount of the Secured Obligations not paid on its due date, the rate of interest for unpaid sums determined in accordance with clause 12.3 of the Facilities Agreement;

**"Existing Share Charges"** means the charge over shares dated 18 January 2017 entered into between (1) the Chargor and (2) the Security Agent and the charge over shares dated 30 August 2019 entered into between (1) the Chargor and (2) the Security Agent ;

**"Facilities Agreement"** means the term and revolving facilities agreement dated 20 October 2016 and made between (1) British Engineering Services Topco Ltd as Parent, (2) the entities listed in part 1 of schedule 1 to it as Original Borrowers, (3) the entities listed in part 1 of schedule 1 to it as Original Guarantors, (4) HSBC Bank plc as Mandated Lead Arranger, (5) the financial institutions listed in part 2 of schedule 1 to it as Original Lenders, (6) the financial institutions listed in part 2 of schedule 1 to it as Original Hedge Counterparties, (7) HSBC Bank plc as Agent and (8) HSBC Bank plc as Security Agent, as amended on 21 December 2017, as amended and restated on 30 August 2019 and as amended and restated pursuant to the Amendment and Restatement Deed;

**"Receiver"** means any one or more receivers and/or receiver and managers appointed by the Security Agent pursuant to this deed;

**"Secured Assets"** means all of the rights, property, assets and undertaking of the Chargor the subject of the security created pursuant to, or evidenced or expressed, or intended to be created, or evidenced pursuant to, this deed. Any reference to the **"Secured Assets"** includes a reference to all or any part of them;

**"Secured Obligations"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or alone or in any other capacity whatsoever) of each Obligor to the Security Agent and/or the other Secured Parties (or any of them) under or pursuant to any Finance Document (including all monies covenanted to be paid under this deed);

**"Securities"** means collectively the Shares and the Ancillary Rights and any reference to the **"Securities"** includes a reference to all or any part of them;

**"Security"** means the Security Interests created or evidenced or expressed or intended to be created or evidenced by or pursuant to this deed;

**"Security Interest"** includes any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement or other security

arrangement or agreement and any other agreement or arrangement having substantially the same economic effect;

**"Security Period"** means the period from the date of this deed until the date upon which all of the Secured Obligations shall have been unconditionally and irrevocably paid and discharged in full or upon which all of the Security has been unconditionally and irrevocably released and discharged; and

**"Shares"** means all of the Chargor's present and future shares in the Company, whether those shares are held in a certificated, un-certificated or de-materialised form and whether they are registered in the name of the Chargor, or any other agent, nominee or trustee for and on behalf of the Chargor, including (but not limited to) those shares in the Company specified in the schedule 1.

## 1.2 Interpretation

In this deed:

- (a) words such as **"hereunder"**, **"hereto"**, **"hereof"** and **"herein"** and other words commencing with **"here"** shall refer to the whole of this document and not to any particular section or clause of this document;
- (b) any reference to a person shall if the context so requires apply to a company, partnership or unincorporated association and any use of gender includes the other genders;
- (c) words importing the singular shall where the context so requires or admits include the plural and vice versa and reference to the masculine, feminine or neuter genders shall include references to the other genders;
- (d) any reference to a clause or schedule shall be reference to a clause or schedule (as the case may be) of this deed and any reference in a clause to a sub-clause, paragraph or sub-paragraph shall be reference to a sub-clause, paragraph or sub-paragraph of the clause in which the reference is contained;
- (e) the contents of the schedules form an integral part of this deed and shall have as full effect as if they were incorporated in the body of this deed and the expressions "this deed" and "the deed" as used in the schedules shall mean this deed and any reference to "this deed" shall be deemed to include the schedules;
- (f) the headings and captions to the clauses and schedules in this deed and the numbering are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this deed;
- (g) any reference to any legislation, order or regulation in this deed shall include reference to any extension, modification, replacement or re-enactment thereof from time to time in force and all regulations and orders from time to time made thereunder and any analogous provision or rule under any applicable law for the time being in force;
- (h) words and phrases the definition of which are contained in or referred to in Section 2 of the Companies Act are to be construed as having the meaning attributed to them in Section 2 of the Companies Act except where the context otherwise requires;
- (i) a reference to any document includes that document as it has or may be amended, restated, supplemented, varied, assigned, novated, or otherwise from time to time;

- (j) any reference to the "**Chargor**" or the "**Security Agent**" shall, where the context so admits, include each of their successors and permitted assigns as the case may be. In respect of the Security Agent, each such person shall be entitled to enforce and proceed upon this deed as if named in this deed;
  - (k) "**Secured Obligations**" includes obligations and liabilities which would be treated as such but for the liquidation, examinership, administration or dissolution of or similar event affecting any member of the Group;
  - (l) each undertaking of the Chargor (other than a payment obligation) contained in this deed:
    - (i) must be complied with at all times during the Security Period; and
    - (ii) is given by the Chargor for the benefit of the Security Agent and each other Secured Party; and
  - (m) Section 75 of the Conveyancing Act shall not apply to this deed.
- 1.3 If the Security Agent reasonably considers that an amount paid by or on behalf of any Obligor to a Secured Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of such Obligor, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.
- 1.4 The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand.
- 1.5 **Inconsistency between this deed and the Intercreditor Agreement**
- If there is any conflict or inconsistency between any provision of this deed and any provision of the Intercreditor Agreement, the provision of the Intercreditor Agreement shall prevail.
- 1.6 **Trust**
- All Security and dispositions made or created, and all obligations and undertakings contained, in this deed to, in favour of or for the benefit of the Security Agent are made, created and entered into in favour of the Security Agent as trustee for the Secured Parties from time to time on the terms of the Intercreditor Agreement.
- 1.7 **Existing Share Charges**
- (a) On or around the date of this deed, the Facilities Agreement will be amended and restated pursuant to the terms of the Amendment and Restatement Deed.
  - (b) It is a condition precedent of the Amendment and Restatement Deed that the Chargor enter into this deed.
  - (c) Notwithstanding any other provision of this deed, the parties acknowledge and agree that the Chargor enter into this deed in addition to, and without prejudice to, the Existing Share Charges and that any references in this deed to the Security created hereunder being first ranking are subject to any prior ranking Security created under the Existing Share Charges.

## 2. COVENANT TO PAY

- 2.1 The Chargor as principal obligor and not merely as surety covenants in favour of the Security Agent that it will pay and discharge the Secured Obligations on demand when they become due.
- 2.2 If any of the Secured Obligations become due (whether upon the making of a demand or otherwise), the Chargor shall pay interest on such sums at the Default Rate from the due date to the date of actual payment (after as well as before any demand is made or any judgment is obtained).

## 3. SECURITY

- 3.1 The Chargor as legal and beneficial owner hereby **CHARGES** by way of first fixed charge and **ASSIGNS** by way of a first security assignment in favour of the Security Agent all of its present and future right, title, benefit and interest in and to the Securities as a continuing security for the payment and performance of the Secured Obligations and the discharge of all and any obligations and liabilities hereby covenanted to be paid or otherwise hereby secured.
- 3.2 The Chargor will immediately upon the execution of this deed (save to the extent already held by the Security Agent) and thereafter immediately following its acquisition of any additional Securities deposit with the Security Agent and permit the Security Agent during the continuance of the Security Period to hold and retain:
- (a) all stock/share certificates and documents of title relating to the Securities;
  - (b) stock/share transfer forms in relation to the Securities duly executed (but undated and with the transferee details left blank);
  - (c) a duly executed (but undated) dividend payment mandate in relation the Securities in the form set out in part 1 of schedule 2;
  - (d) a duly executed (but undated) irrevocable voting proxy in relation to the Securities in the form set out in part 2 of schedule 2;
  - (e) signed letter/s of authority in relation to clause 3.2(b) to 3.2(d) (inclusive) in the form set out in part 3 of schedule 2;
  - (f) a certified copy of the share register in respect of the Company; and
  - (g) all such other documents as the Security Agent may from time to time require for perfecting its title to the Securities (duly executed by or signed on behalf of the registered holder) or for vesting or enabling it to vest the same in itself or its nominees or in any purchasers to the intent that the Security Agent may at any time without notice present same for registration.
- 3.3 Save to the extent already held by the Security Agent, in respect of any Securities held by or on behalf of any nominee of any clearance or settlement system, the Chargor shall immediately upon execution of this Deed or (if later) immediately upon acquisition of an interest in such Securities deliver to the Security Agent duly executed stock notes or other document in the name of the Security Agent (or as it may direct) issued by such nominee and representing or evidencing any benefit or entitlement to such Securities.

#### **4. PROVISIO FOR REDEMPTION**

- 4.1 If all of the Secured Obligations have been paid and discharged, the Security Agent shall at the request and cost of the Chargor execute such documents as may be necessary to release the Security.
- 4.2 Any release, discharge or settlement between the Chargor and the Security Agent shall be conditional upon no security, disposition or payment to the Security Agent by the Chargor, the Company or any other person being void, set aside or ordered to be refunded pursuant to any enactment of law relating to bankruptcy, liquidation, administration, examinership or insolvency, or for any other reason whatsoever. If such condition shall not be fulfilled, any such release, discharge or settlement shall be void and the Security Agent shall be entitled to enforce this deed subsequently to the full extent of the Secured Obligations as if such release, discharge or settlement had not occurred and any such payment had not been made.

#### **5. VOTING AND DIVIDENDS**

- 5.1 Prior to a Declared Default, the Chargor shall (unless otherwise stipulated in writing by the Security Agent):

- (a) be entitled to continue to exercise all voting and other rights and powers pertaining to the Securities; and
- (b) be entitled to receive and retain all dividends, interest or other income, declared, made, paid or payable, and deriving from or incidental to, the ownership of the Securities,

provided that:

- (c) the Chargor shall not exercise any such voting rights or powers in a manner which, in the opinion of the Security Agent might impair the value of, or prejudice the ability of the Security Agent to realise, the Securities, or cause a Declared Default, or that would otherwise be inconsistent with the terms of this deed;
- (d) the Chargor shall, following a Declared Default, pay to the Security Agent all cash dividends accruing on or in respect of the Securities and (for the avoidance of doubt) all other distributions, interest or other monies and assets receivable in respect of and forming part of the Secured Assets (whether in the nature of capital or income).

- 5.2 The Security Agent and its nominees may at their absolute discretion, at any time following a Declared Default (and without any consent or authority on the part of the Chargor), in the name of the Chargor or otherwise:

- (a) exercise or cause to be exercised in respect of all or any part of the Securities all voting and other rights and powers pertaining to the Securities and all other powers and rights conferred or exercisable by the bearer or holder of the Securities;
- (b) apply all cash dividends accruing on or in respect of the Securities and (for the avoidance of doubt) all other distributions, interest or other monies and assets receivable in respect of and forming part of the Secured Assets (whether in the nature of capital or income) in repayment of the Secured Obligations as though they were proceeds of sale; and
- (c) sign, seal, execute, deliver, acknowledge, file, date and register all documents, instruments, agreements, certificates and any other document (including (but not

limited to) any of the documents deposited with the Security Agent pursuant to clause 3.2) and do any and all such other acts or things as the Security Agent may in its absolute discretion deem necessary or desirable to remove any or all of the directors from the office of director of the Company or to perfect or enforce the Security.

- 5.3 At any time when any Securities are registered in the name of the Security Agent or its nominee, the Security Agent shall be under no duty to:
- (a) ensure that any dividends, distributions or other monies payable in respect of such Securities are duly and promptly paid or received by it or its nominee;
  - (b) verify that the correct amounts are paid or received; or
  - (c) take any action in connection with the taking up of any (or any offer of any) Ancillary Rights in respect of or in substitution for, any such Securities.

## **6. NEGATIVE PLEDGE**

The Chargor hereby covenants with the Security Agent that during the Security Period, the Chargor shall:

### **6.1 Other Security**

Not create or permit to subsist any Security Interest or other security interest over all or any part of the Secured Assets, other than in favour of the Security Agent.

### **6.2 No Disposals**

Not, without the prior written consent of the Security Agent, sell, transfer, assign, licence, part with possession of or otherwise dispose of in any manner all or any part of the Secured Assets.

### **6.3 No Third Party Interests**

Not create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

## **7. FURTHER ASSURANCES**

Subject to the Agreed Security Principles, the Chargor shall at any time at its own cost promptly and duly execute and do all such assurances, acts and things as the Security Agent may require for perfecting or protecting the Security over the Secured Assets or for facilitating the realisation of the same and the exercise of all powers, authorities and discretions vested in the Security Agent or in any Receiver of the Secured Assets or in any delegate (or sub-delegate) including, without prejudice to the generality of the foregoing, to execute and sign in favour of the Security Agent or its nominees and to deliver to the Security Agent all such transfers and assignments and make all such payments, as the Security Agent may specify in such notice for the purpose of vesting the same in the Security Agent or its nominees or any purchaser absolutely, and shall, in particular, execute all mortgages, charges, transfers, conveyances, assignments and assurances of the Secured Assets whether to the Security Agent or to its nominee(s) and give all notices, orders and directions which the Security Agent may think expedient.

## **8. COVENANTS**

The Chargor hereby covenants with the Security Agent that during the Security Period, the Chargor shall:

### **8.1 Ownership**

- (a) Remain the legal and beneficial owner of the Secured Assets and not permit any other person other than the Security Agent, or such person as the Security Agent may nominate in writing (after the Security has become enforceable), to be registered as holder of the Secured Assets.
- (b) Duly register or procure that the directors of the Company will duly register all transfers of the Securities from time to time lodged with them by or on behalf of the Security Agent and issue and deliver a new certificate or certificates for the Securities in the name of the Security Agent or its nominee as soon as possible following receipt of such transfers.
- (c) Ensure that all of the Secured Assets are, and at all times remain, free from any restriction which is likely to affect the exercise by the Security Agent of its rights and entitlements under this deed.

### **8.2 Calls / Payments**

Duly and promptly pay all calls, instalments or other payments, which from time to time become due in respect of the Secured Assets. In any case of default by the Chargor in this respect the Security Agent may, if it thinks fit, make any such payments on behalf of the Chargor in which event any sums so paid shall be reimbursed on demand by the Security Agent and shall until reimbursed bear interest accruing from the date of demand on the monies so demanded and on the amount of other liabilities at the Default Rate (the rate to apply after as well as before any judgment).

### **8.3 Information**

- (a) Notify the Security Agent promptly upon receipt of any notice issued under section 768(1) of the Companies Act (or any equivalent provision pursuant to the laws of any other relevant jurisdiction), in respect of the Securities or upon becoming aware that any such notice has been issued or that steps have been taken or are about to be taken to obtain an order for the sale of all or any of the Securities under section 772 of the Companies Act (or any equivalent provision pursuant to the laws of any other relevant jurisdiction).
- (b) Give to the Security Agent (or such person or persons as the Security Agent may for that purpose appoint), any notice or agenda of any shareholders' meeting of the Company (and will not, without the Security Agent's prior written consent, waive any notice period in respect of any such meeting).
- (c) Notify the Security Agent immediately upon the appointment of any additional or replacement director or secretary of the Company.
- (d) Give to the Security Agent (or such person or persons as the Security Agent may for that purpose appoint), such information as the Security Agent (or such other person or persons aforesaid) shall reasonably require in relation to the Chargor's business or otherwise relating to the Chargor's affairs.

- (e) At the request of the Security Agent, promptly send to the Security Agent a copy of every material report or other notice, statement or circular sent or delivered to the Chargor by the Company.

#### **8.4 Section 1001 / 1002**

Promptly inform the Security Agent of any event as soon as it becomes aware of same, or of the receipt of any notice (including without limitation, any notice issued under Section 1001 or 1002 of the Taxes Consolidation Act, 1997) or any analogous legislation in any other jurisdiction which may or is likely to effect the fulfilment by the Chargor of any of its covenants or obligations hereunder or under the Security, or which is likely to effect the Chargor's ability to carry on its business.

#### **8.5 Reorganisation**

Take such action that the Security Agent requests in the event that it becomes possible (whether under the terms of issue of the Securities, a reorganisation or otherwise) to convert or exchange the Securities or have them repaid or in the event that any offer to purchase is made in respect of the Securities or any proposal is made for varying or abrogating any rights attaching to them.

#### **8.6 Restrictions**

- (a) Not do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the Security.
- (b) Not suffer or permit the Company to cancel, increase, create or issue or agree to issue or put under option, or agree to put under option, any share or loan capital or obligation now or hereafter convertible into share or loan capital of or in the Company of any class or call any uncalled capital.
- (c) Not exercise any voting rights associated with the Securities in favour of (i) an amendment to any provision of the Constitution of the Company in any manner adverse to the Security Agent, (ii) a proposal for the liquidation, merger or split-up of the Company, (iii) a proposal which would result in any other dilution of the rights attaching to the Securities or (iv) any breach by the Chargor of its obligations under this deed.
- (d) Not suffer or permit the Company to permit any person other than the Chargor to be registered as holders of the Securities.
- (e) Not redeem the Securities or apply for redemption of the Securities.
- (f) Not convert any of the Securities from certificated to uncertificated form pursuant to the Companies Act, 1990 (Uncertificated Securities) Regulations, 1996 and shall not at any time renounce or de-materialise any stocks, shares or other property distributed or offered by way of redemption, bonus, rights, preference or otherwise on, or in respect of, the Shares or Ancillary Rights.
- (g) Not claim any set-off or counterclaim against the Company or claim or prove in competition with the Security Agent in the bankruptcy or liquidation of the Company or any other person liable, or have the benefit of, or share in, any payment from or composition with, the Company for any indebtedness of the Company but so that, if so directed by the Security Agent, the Chargor will prove for the whole or any part of its claim in the liquidation or bankruptcy of the Company, on terms that the benefit of such

proof and of all money received by the Chargor in respect thereof shall be held on trust for the Security Agent and applied in or towards discharge of the Secured Obligations and the liabilities and obligations of the Chargor to the Security Agent under this deed or otherwise secured by this deed.

- (h) Not exercise any rights of subrogation, reimbursement or indemnity against the Company.
- (i) Not take or receive any Security Interest from the Company in respect of the liability of the Chargor under this deed.

## **9. REPRESENTATIONS AND WARRANTIES**

9.1 The Chargor represents and warrants to the Security Agent that the statements in the succeeding paragraphs of this clause 9 are true and correct in all respects.

9.2 The Chargor hereby acknowledges that they have made the representations and warranties contained in this clause 9 to the Security Agent with the intention of inducing the Security Agent to enter into this deed.

9.3 The Chargor hereby represents and warrants that:

(a) General

- (i) It is a limited liability company, duly incorporated and validly existing under the law of its jurisdiction of incorporation and has, and will at all times have, full power to own the Secured Assets and to enter into and perform its obligations under this deed.
- (ii) All necessary corporate approvals and other action necessary to enable it to execute and deliver this deed and to perform its obligations under this deed have been taken.
- (iii) Subject to the Legal Reservations and Perfection Requirements, this deed constitutes the Chargor's legal, valid and binding obligations.
- (iv) All authorisations, consents, registrations, notarisations, legalisations and notifications required in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this deed have been obtained or effected (as appropriate) and are in full force.
- (v) The entry into and performance by the Chargor of, and the transactions contemplated by, this deed does not and will not:
  - (A) conflict with its memorandum and articles of association (or equivalent constitutional documents);
  - (B) conflict with any laws binding on it; or
  - (C) conflict with or result in default under any document agreement or instrument which is binding upon it or any of its assets.
- (vi) The Chargor is not in breach of or in default under any agreement to which the Chargor is a party or which is binding on the Chargor or any of its assets or

under any statutory obligation whatsoever (including the payment of any due taxes) where such breach or default could adversely affect the Chargor's ability to perform its obligations under this deed.

- (vii) No litigation, arbitration, action or administrative proceeding of or before any court or agency which might restrain the Chargor's entry into and the exercise of the Chargor's rights under and/or performance or enforcement of or compliance with the Chargor's rights hereunder, has been started or threatened.
- (viii) Under the laws of Ireland in force at the date of this deed, the claims of the Security Agent against the Chargor under this deed will rank at least *pari passu* with the claims of all its other creditors save those whose claims are preferred solely by any bankruptcy, insolvency, liquidation or other similar laws of general application.
- (ix) It has not taken any corporate action nor have any other steps been taken or legal proceedings been started or threatened against it for its winding-up, dissolution or reorganisation or for the appointment of a receiver, an examiner, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues.

(b) Secured Assets

- (i) Prior to the date of this deed, the Chargor has made full disclosure to the Security Agent of all facts in relation to the Company and the Secured Assets which are material and ought properly to be made known to the Security Agent to enable the Security Agent to obtain a true and accurate view of such Secured Assets.
- (ii) The Securities shall at all times represent not less than 100% of the issued share capital of the Company and represent all of the securities of the Company which are legally and beneficially owned by the Chargor. All of the Securities in the Company held by the Chargor or on the Chargor's behalf at the date of this deed are set out in schedule 1 and all of the details set out in the schedule 1 are true, complete, accurate and up to date.
- (iii) The Chargor is and will at all times during the Security Period be solely and absolutely entitled to all of the Secured Assets free from all Security Interests, rights of set-off or any other claims whatsoever, other than in favour of the Security Agent pursuant to this deed or other than as permitted by the Facilities Agreement.
- (iv) The Chargor has not sold, transferred, assigned, licenced, parted with possession of or otherwise disposed of in any manner any of the Secured Assets and it will not at any time during the Security Period sell, transfer, assign, licence, part with possession of or otherwise dispose of the benefit of any of Chargor's rights, title and interests in and to the Secured Assets other than a Permitted Disposal.
- (v) The Securities are fully paid up and are not subject to any claim, lien or option, or pre-emption or other rights and there is no restriction in any of the constitutional documents of the Company or in any shareholders agreement or other agreement to which the Chargor is a party which would affect the ability of the Security Agent to enforce the security created by this deed.

- (vi) No provisions exist under any shareholder, subscription, investment, joint venture or other agreement or arrangement, whatsoever or howsoever described, which could affect or impede the entry into or performance by the Chargor of its obligations under this deed.
- (vii) They have not received a notice under section 768 of the Companies Act in respect of all or any of the Shares and, so far as the Chargor is aware, no such notice has been issued and, so far as the Chargor is aware, no steps have been taken or are about to be taken to obtain an order for the sale of all or any of the Shares under section 772 of the Companies Act.

#### 9.4

- (a) The Chargor makes the representations and warranties set out in this clause 9 on the date of this deed.
- (b) The representations and warranties in this clause 9 shall continue and are deemed to be made by the Chargor on each day until this deed is released by the Security Agent.
- (c) Each representation and warranty deemed to be made after the date of this deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation and warranty is deemed to be made.
- (d) Reliance
  - (i) The Chargor acknowledges that it has not entered in to this document or any other Finance Document in reliance on any representation, warranty, promise or statement made by or on behalf of the Chargee.
  - (ii) The Chargor acknowledges that the Chargee has entered into each Finance Document to which the Chargor is a party in reliance on the representations and warranties given by the Chargor under this document.

### 10. SET-OFF

- 10.1 The Security Agent and each other Secured Party may (but shall not be obliged to) set off any obligation which is due and payable by the Chargor and unpaid against any obligation (whether or not matured) owed by the Security Agent or such other Secured Party to the Chargor, regardless of the place of payment, booking branch or currency of either obligation.
- 10.2 At any time after the Security has become enforceable (and in addition to its rights under clause 10.1), the Security Agent and each other Secured Party may (but shall not be obliged to) set-off any contingent liability owed by the Chargor under any Finance Document against any obligation (whether or not matured) owed by the Security Agent or such other Secured Party to the Chargor, regardless of the place of payment, booking branch or currency of either obligation.
- 10.3 If the obligations are in different currencies, the Security Agent or such other Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- 10.4 If either obligation is unliquidated or unascertained, the Security Agent or such other Secured Party may set off in an amount estimated by it in good faith to be the amount of that obligation.

## **11. ENFORCEMENT**

- 11.1 The Secured Obligations shall immediately become due and all powers conferred on the Security Agent under this deed and pursuant to the common law and any legislation, order or regulation (including (but not limited to) the right and powers of a mortgagee under the Conveyancing Act, as varied or extended by this deed) shall become exercisable by the Security Agent and all rights of the Chargor to deal for any purpose whatsoever with the Secured Assets shall cease immediately on or at any time after the occurrence of an of a Declared Default, whatever the reason for such Declared Default, and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment decree or governmental body.
- 11.2 Any right, power or liberty which may be exercised, or any determination which may be made, by the Security Agent under this deed may be exercised or made in the Security Agent's absolute and unfettered discretion and it shall not be under any obligation to give reasons for same.
- 11.3 Without prejudice to the generality of clause 11.2, the exercise by the Security Agent of the powers and rights conferred on it by virtue of the provisions of Chapter 3 of Part 10 of the Conveyancing Act shall be exercisable by the Security Agent without the restrictions on its exercise imposed by Section 96(1)(c) of the Conveyancing Act.

## **12. SECURITY AGENT'S POWER OF SALE AND RIGHT OF POSSESSION**

- 12.1 At any time after the Security has become enforceable, the Security Agent may, without further notice or demand:
- (a) enter into possession of the Secured Assets and the restrictions on taking possession contained in Section 97 or Section 98 of the Conveyancing Act shall not apply to this deed. The rights of the Security Agent under this clause 12.1 are without prejudice to and in addition to any right of possession (express or implied) to which it is at any time otherwise entitled (whether by virtue of this deed, operation of law, contract or otherwise); and
  - (b) exercise the power of sale contained in Section 100(1) of the Conveyancing Act and the restrictions contained in Section 99(1) and Section 100 of the Conveyancing Act (or otherwise in the Conveyancing Act) shall not apply to this deed.
- 12.2 The Security Agent reserves the right to consolidate mortgages without restriction. The restrictions on the right of consolidating mortgages contained in Section 92 of the Conveyancing Act shall not apply to this deed.
- 12.3 The Chargor shall not take any action under section 94 of the Conveyancing Act in respect of the Secured Assets, this deed or any the Secured Obligations covenanted to be paid or discharged under this deed.
- 12.4 The restrictions on taking possession of mortgaged property contained in Section 97 of the Conveyancing Act shall not apply to this deed.
- 12.5 The restrictions contained in Section 101 and 105(2) of the Conveyancing Act shall not apply to this deed.
- 12.6 The notification requirement contained in section 103(2) of the Conveyancing Act shall not apply to this deed.

- 12.7 The Security Agent shall not be liable to account as mortgagee in possession in respect of the Secured Assets nor shall it be liable for any loss upon realisation or for any neglect or default to present any interest coupon or any bond or stock drawn for repayment or for any failure to pay any call or instalment or to accept any offer or to notify the Chargor of any such matter or for any loss of any nature whatsoever in connection with the Secured Assets.

### **13. RECEIVERS**

- 13.1 At any time after the Security has become enforceable or if requested by any Chargor, the Security Agent may, without notice to the Chargor, in writing under the Security Agents common seal or under the hand of any officer or manager or any other nominated person of the Security Agent, appoint any person to be a Receiver of the Secured Assets and may, except as otherwise required by statute, remove any such Receiver and appoint another in his place or appoint another person to act jointly with any such Receiver (each such person being (a) entitled to act individually as well as jointly and (b) for all purposes deemed to be the agent of the Chargor).
- 13.2 A Receiver appointed pursuant to this deed shall have and may exercise all powers conferred by the Conveyancing Act (without the restrictions contained in the Conveyancing Act), section 437 of the Companies Act and all other legislation, orders or regulations in the same way as if the Receiver had been duly appointed thereunder and shall furthermore, but without limiting any such powers, have power to do the following things either in his own name or in the name of the Chargor:
- (a) to take immediate possession of, collect and get in the Secured Assets and for that purpose to make such demands and take any proceedings in the name of the Chargor or otherwise as may seem expedient;
  - (b) to sell, realise or otherwise dispose of the Secured Assets;
  - (c) to grant rights, options over, dispose of, convert into money and realise any Security Assets by public auction or private contract and generally in any manner and on any terms he or she thinks fit. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period he or she thinks fit;
  - (d) to require the Chargor, or the directors of the Chargor, to make calls conditionally or unconditionally upon the shareholders of the Chargor in respect of any uncalled capital of the Chargor and enforce payment of any call so made by action (in the name of the Chargor or the Receiver as he or she may think fit) or otherwise;
  - (e) to sell or assign all or any of the book debts in respect of which he or she is appointed in such manner, and generally on such terms and conditions, as he or she thinks fit;
  - (f) to exercise in respect of any Security Assets all voting or other powers or rights in such manner as he or she thinks fit;
  - (g) to carry on or manage or develop or diversify or concur in carrying on or managing or developing or diversifying the business of the Chargor;
  - (h) to settle, adjust, submit to arbitration, compromise and arrange any claims, accounts, disputes, questions, demands, with or by any person who is or claims to be a creditor

of the Chargor relating in any way to the Secured Assets which he or the Security Agent may reasonably think expedient;

- (i) to appoint, hire and employ officers, employees, contractors, agents and advisors of all kinds upon such terms as to remuneration or otherwise as he or she thinks fit and to discharge any such persons and any such persons appointed, hired or employed by the Chargor;
- (j) to form a subsidiary of the Chargor, arrange for any such subsidiary to trade or cease to trade as he or she sees fit, in his or her capacity as shareholder and transfer to that subsidiary any Security Assets and sell or otherwise dispose of any such subsidiary;
- (k) to delegate his or her powers;
- (l) to enter into, abandon, perform, repudiate, rescind, vary or cancel any contracts as he or she thinks fit;
- (m) to redeem any Security Interest (whether or not having priority to the Security) over the Secured Assets and to settle the accounts of encumbrances;
- (n) to take any indemnity from the Chargor from and against all actions, claims, expenses, demands and liabilities whether arising out of contract or out of tort or in any other way incurred by him or by any manager, agent, officer, servant or workman for whose debt, default or miscarriage he may be answerable for anything done or omitted to be done in the exercise or purported exercise of his powers under this deed or under any appointment duly made under the provisions of this clause and if he thinks fit but without prejudice to the foregoing to effect with any insurance company or office or underwriters any policy or policies of insurance either in lieu or satisfaction of or in addition to such indemnity from the Chargor;
- (o) to raise and borrow money either unsecured or on the security of the Secured Assets either in priority to the Security or otherwise and generally on any terms and for whatever purpose which he thinks fit. (No person lending that money is concerned to enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed);
- (p) to bring, prosecute, enforce, defend, and abandon all actions, suits and proceedings in relation to the Secured Asset which may seem to him to be expedient;
- (q) to give valid receipts for all monies and execute all assurances and things which may be proper or desirable for realising the Secured Assets;
- (r) to make any payment which is necessary or incidental to the performance of his or her functions;
- (s) to use the name of the Chargor for all or any of the purposes aforesaid and in any legal proceedings with full power to convey any property sold in the name of the Chargor for all of which purposes the Chargor hereby irrevocably and by way of security appoints every such Receiver to be its attorney;
- (t) to the extent permitted by law, and without prejudice to any other right or power conferred on him by this Deed, exercise all or any of the rights and powers conferred on statutory receivers under Schedule 1 of the National Asset Management Agency Act 2009 (as if references therein to NAMA were references to the Security Agent); and

- (u) to do all such other acts or things as acts and things as he may consider necessary or desirable for the realisation of the Secured Assets or incidental or conducive to any of the matters, powers or authorities conferred on a receiver and to exercise and do, in relation to the Secured Assets or any part thereof, all such powers, authorities and things as he would be capable of exercising if he were the absolute beneficial owner of the same.

13.3 The restrictions contained in Section 108(1) shall not apply to this deed.

13.4 Section 108(7) of the Conveyancing Act shall not apply to the commission and/or remuneration of a Receiver appointed pursuant to this deed. A Receiver shall be entitled to remuneration at a rate to be fixed by agreement between him and the Security Agent (or, failing such agreement, to be fixed by the Security Agent).

13.5 Section 99(1) of the Conveyancing Act shall not apply to this deed and any obligations imposed on mortgagees in possession or Receivers by virtue of the application of Section 99(1) shall not apply to the Security Agent or any Receiver.

13.6 Neither the Security Agent nor any Receiver will be liable in respect of all or any part of the Secured Assets or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of their respective powers.

13.7 All or any of the powers, authorities and discretions which are conferred by this deed (either expressly or impliedly) upon any Receiver may be exercised after the security created by this deed has become enforceable by the Security Agent in relation to the Secured Assets without first appointing a Receiver of the Secured Assets or notwithstanding the appointment of a Receiver of the Secured Assets.

#### **14. FINANCIAL COLLATERAL**

14.1 To the extent that the Secured Assets constitute "financial collateral" and this deed and the obligations of the Chargor under this deed constitute a "security financial collateral arrangement" (in each case for the purpose of and as defined in European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010) as amended from time to time (the "**Regulations**")), the Security Agent shall have the right after the security under this deed has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Obligations.

14.2 For the purpose of clause 14.1, the Chargor and the Security Agent agree that the value of the financial collateral so appropriated shall be the market value of that financial collateral determined reasonably by the Security Agent by reference to a public index or by such other process as the Security Agent may select, including independent valuation. The Chargor and the Security Agent also agree that the method of valuation provided for in this deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

#### **15. PROTECTION OF PURCHASERS**

Nothing in this deed shall affect the provisions of the Conveyancing Act for the protection of purchasers and all of the protections to purchasers contained in sections 104, 105, 106 and 108(5) of the Conveyancing Act shall apply to any person purchasing from or dealing with the Security Agent or any Receiver appointed pursuant to this deed.

## **16. APPLICATION OF FUNDS**

- 16.1 All monies received by the Security Agent or any Receiver after the Security has become enforceable shall (subject to the rights and claims of any person having a security ranking in priority to the Security) be applied in accordance with and subject to the terms of the Intercreditor Agreement.
- 16.2 The provisions of clause 16.1 shall take effect as and by way of variation to the provisions of sections 106(3), 107 and 109 of the Conveyancing Act which provisions as so varied and extended shall be deemed incorporated into this deed as if they related to a receiver of the Secured Assets and not merely a receiver of the income thereof.

## **17. POWER OF ATTORNEY**

- 17.1 The Chargor hereby irrevocably and by way of security appoints the Security Agent and separately any Receiver severally to be its attorney in its name and on its behalf and as its act and deed or otherwise to:
- (a) execute, complete and perfect in favour of the Security Agent or its nominees or of any purchaser any documents which the Security Agent may require for perfecting its title to or for vesting the Secured Assets in the Security Agent or its nominees or in any purchaser; and
  - (b) execute, complete and perfect all documents and do all such acts and things as may be required for the full exercise of all or any of the powers conferred on the Security Agent and any Receiver under this deed or which may be deemed expedient by the Security Agent or any Receiver on or in connection with any sale, lease, disposition, realisation or getting in by the Security Agent or any Receiver of the Secured Assets or any part thereof or in connection with any other exercise of any power hereunder.
- 17.2 The Chargor hereby covenants with the Security Agent and separately with any Receiver that on request they will ratify and confirm all security agreements, documents, acts and things and all transactions entered into by the Security Agent or any Receiver or by the Chargor at the instance of the Security Agent or any Receiver in the exercise or purported exercise of its or his powers.
- 17.3 Each of the Security Agent and any Receiver shall have full power to delegate the power conferred on it or him by this clause 17 but no such delegation shall preclude the subsequent exercise of such power by the Security Agent or the Receiver itself or himself or preclude the Security Agent or the Receiver from making a subsequent delegation thereof to some other person; any such delegation may be revoked by the Security Agent or the Receiver at any time.
- 17.4 The power of attorney granted pursuant to this clause 17 shall take effect immediately but the powers conferred by it shall only become exercisable after the occurrence of a Declared Default.

## **18. NOTICES**

- 18.1 A demand, notice and other communications to any party to this deed required or permitted under this deed or any proceedings relating to this deed shall be in writing and will be sufficiently served:
- (a) if delivered by hand; or
  - (b) if sent by fax; or

(c) if sent by prepaid registered post; or

(d) if sent by email,

to the address specified below in this clause 18.1 or to any other address as is from time to time notified to the other party in accordance with the provisions of this clause 18 or another address customarily used:

**The Security Agent:**

Address: HSBC Bank PLC  
4 Hardman Square  
Manchester

Attention: Simon Dixon

Fax: 0044 2 79924680

**The Chargor:**

Address: British Engineering Services  
3<sup>rd</sup> Floor  
5 New York Street  
Manchester  
United Kingdom  
M1 4JB

Attention: Lynn Krige

Fax: N/A

18.2 Any notice or communication shall be deemed to have been served:

- (a) if delivered by hand, on delivery;
- (b) if sent by fax, when the sender's facsimile machine issues confirmation that the relevant pages have been transmitted to the recipient's facsimile machine;
- (c) if sent by pre-paid registered post, on the second Business Day after the date of posting; and
- (d) if sent by email, on receipt by the sender of proof of delivery,

provided that, if in accordance with the above provisions, any notice or communication is delivered by hand or received by facsimile or email outside working hours on any day, that notice or communication shall be deemed to have been served at the start of working hours on the next Business Day.

18.3 Each person giving a notice or making a communication under this deed by facsimile or email may promptly confirm the notice or communication by post to the person to whom the notice or communication was addressed but the absence of any confirmation shall not affect the validity of the notice or communication or the time upon which it is deemed to have been served.

## **19. CONTINUING SECURITY**

- 19.1 The Security Interests created by this deed shall be a continuing security to the Security Agent for all debts, liabilities and obligations from time to time of the Chargor to the Security Agent and shall not be considered as satisfied or discharged by any intermediate payment or satisfaction of any part of the Secured Obligations.
- 19.2 The Security Interests created by this deed shall be in addition to and independent of and shall not prejudice, or be prejudiced by, any other security, right, remedy or lien which the Security Agent may now, or at any time hereafter, have or hold for all or any of the Secured Obligations.

## **20. ACCOUNTS**

- 20.1 If the Security Agent shall at any time receive notice of any subsequent Security Interest or other interest (in the nature of a Security Interest) affecting the Secured Assets, the Security Agent may open a new account or accounts for the Chargor in the Security Agent's books. If the Security Agent does not do so, then (unless the Security Agent gives express written notice to the contrary to the Chargor) as from the time of receipt of such notice by the Security Agent, all payments made by the Chargor to the Security Agent shall in the absence of any express appropriation by the Chargor to the contrary be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations at the time when the Security Agent received the notice.
- 20.2 All monies received, recovered or realised by the Security Agent under this deed (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to any suspense or impersonal account and may be held in such account for so long as the Security Agent shall think fit with interest accruing thereon at such rate, if any, as the Security Agent may deem fit) pending its application from time to time (as the Security Agent shall be entitled to do in its discretion) in or towards the discharge of any of the Secured Obligations.
- 20.3 In case the Security Agent shall have more than one account for the Chargor in in the Security Agent's books, the Security Agent may at any time after the Secured Obligations have become payable or after the Security Agent shall have received notice of any subsequent charge or other interest affecting all or any part of the Secured Assets, and without prior notice in that behalf, forthwith transfer all or any part of any balance standing to the credit of any such account to any other such account which may be in debit.

## **21. INDULGENCE**

The Security Agent may in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person or persons (whether or not party to this deed and whether or not such person or persons are jointly and/or severally liable with the Chargor) in respect of the Secured Obligations and/or this deed, so that the Secured Obligations and/or the Security shall not be prejudiced by such time or indulgence or arrangement, variation or release and the Security Agent shall not be prejudiced in exercising any right or remedy in respect of the Secured Obligations and/or under this deed which it may now or in the future have from or against the Chargor or any other person.

## **22. MISCELLANEOUS PROVISIONS**

- 22.1 Any interest payable under the terms of this deed shall be payable before and after any judgment.

- 22.2 The Chargor hereby authorises the Security Agent to apply moneys received, recovered or realised by the Security Agent under this deed in or towards payment of the purchase price of any currency required in the discharge of any of the Secured Obligations which fall to be discharged in a different currency from that of the funds out of which the Security Agent desires to discharge the same (whether or not such purchase price includes a premium over any official or any other rate of exchange) and in or towards payment of any costs, charges and expenses incurred by the Security Agent in connection with the acquisition by the Security Agent of such currency.
- 22.3 A certificate in writing of any duly authorised officer or employee of the Security Agent stating (a) the current rate of interest applicable to the Secured Obligations and/or (b) the amount of Secured Obligations at any particular time due and payable by the Chargor shall be binding on the Chargor and as respects the Chargor conclusive (save in the case of manifest error), without the necessity of proof of the signature of such person, or that he holds the office described in such certificate.
- 22.4 All costs, charges and expenses properly incurred, suffered or paid by the Security Agent in connection with this deed, or any other Security Interest held by or offered to the Security Agent for the Secured Obligations, or in connection with the enforcement of this deed of such Security Interest, shall be charged on the Secured Assets and shall be treated as monies due from the Chargor to the Security Agent on current account and shall bear interest and be secured accordingly provided that the Security shall be in addition and without prejudice to each and every other remedy, lien or security which the Security Agent may, or but for the said charges would, have for the Secured Obligations.
- 22.5 If the Chargor shall fail to perform any of its obligations under this deed the Security Agent may by itself or by its agents perform any of the said obligations capable of being performed by it or by such agents and if any such obligation requires the payment or expenditure of money, the Security Agent may make such payment or expenditure with its own funds or with money borrowed by or advanced to it for such purpose but shall be under no obligation so to do; all sums so expended or advanced shall be added to the Secured Obligations and shall bear interest and shall be accordingly repayable to the Security Agent on demand.
- 22.6 The Security shall remain valid and binding for all purposes notwithstanding any change by amalgamation consolidation or otherwise which may be made in the constitution of the entity by which the business of the Security Agent may from time to time be carried on and shall be available to the company carrying on that business for the time being.
- 22.7 The Security shall not be discharged nor shall the liability of the Chargor be affected by reason of any failure or irregularity defect or informality in any security given in respect of the Secured Obligations nor by any legal limitation, disability, incapacity or want of any borrowing powers or want of authority of any director, manager, official or other person appearing to be acting for the Chargor in any matter in respect of the Secured Obligations.
- 22.8 No delay or omission on the part of the Security Agent, whether deliberate or inadvertent, in exercising any right or remedy under this deed shall impair that right or remedy or operate as, or be taken to be, a waiver by the Security Agent of the right or remedy and it shall not preclude any other or further exercise under this deed of that other right or remedy. The waiver by the Security Agent of any breach of any term of this deed shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach. The Security Agent's rights under this deed are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Security Agent deems expedient.

- 22.9 The Security shall be deemed to be effective whether or not the Secured Obligations or any part thereof shall have been advanced before or upon or after the date of this deed.
- 22.10 This deed shall ensure to the benefit of and be binding upon the respective parties hereto and their respective successors and permitted assigns.
- 22.11 If any date specified in this deed falls on a day which is not a Business Day any sum of money required to be paid or any act or thing required to be performed under this deed upon that date shall be deemed to have been duly paid and performed if paid or performed upon the first Business Day next following thereon but this clause 22.11 shall not be construed so as to deprive the Security Agent of interest due under this deed up to the date of actual payment.
- 22.12 If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this deed nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction shall in any way be affected or impaired thereby.
- 22.13 No modification of any provision of this deed shall be binding unless the same shall be evidenced in writing duly executed under seal.
- 22.14 The non-execution or invalid execution of this deed by any one or more of those who have agreed to join in this deed will not affect the liability of those who have joined in and executed this deed.
- 22.15 This deed may be executed in any number of counterparts and by the different parties to this deed on separate counterparts, each of which, when executed and delivered, shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.
- 22.16 This clause 22.16 shall be regarded as an undertaking for safe custody of documents of title given under Section 84 of the Conveyancing Act. The Chargor agrees that in the event of the loss or destruction of, or injury to, the documents of title relating to the Secured Assets, the Security Agent shall have no liability to the Chargor:
- (a) if the loss, destruction or injury occurred:
    - (i) prior to actual receipt of the documents of title in question by the Security Agent from the Chargor or the Chargor's solicitor; or
    - (ii) after the documents of title in question have been given by the Security Agent to some other person at the written request of the Chargor and before the documents have been received back by the Security Agent; or
  - (b) for any damages suffered by the Chargor as a result of the loss or destruction of, or injury to, the documents of title in question where such damages:
    - (i) do not directly and naturally result from such loss, destruction or injury; or
    - (ii) relate to loss of profit or expected profit from the Chargor's business or from the development of the Secured Assets.
- 22.17
- (a) The Chargor shall not, without prior written consent of the Security Agent, assign or transfer any of its rights, benefits or obligations contained in this deed.

- (b) The Security Agent may assign or transfer all or any part of its rights under this deed pursuant to the resignation or removal of the Security Agent in accordance with the Intercreditor Agreement. The Chargor shall, immediately upon being requested to do so by the Security Agent, enter into such documents as may be necessary to effect such assignment or transfer.
- (c) The Security Agent is entitled to impart any information concerning the Chargor to any such assignee, transferee or other successor or any participant in any of the Secured Obligations or proposed assignee, transferee, successor or participant.

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

### **23. LAW AND JURISDICTION**

- 23.1 This deed 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 Ireland.
- 23.2 For the benefit of the Security Agent, the Chargor submits to the jurisdiction of the courts of Ireland in relation to any claim or proceeding.
- 23.3 Nothing in this clause shall limit the right of the Security Agent to take any suit, action or proceeding ("**Proceedings**") against the Chargor in any other court of competent jurisdiction and the Chargor irrevocably submits to any other jurisdiction in which it has assets and hereby waives any objection to any claim that any Proceedings have been brought in any inconvenient forum. The taking of any Proceedings in one or more jurisdictions shall not preclude the Security Agent from taking Proceedings in any other jurisdiction, whether concurrently or not.

**IN WITNESS** whereof the parties have executed this document as a deed on the date first above written.

### SCHEDULE 1: SHARES

<b>Name of Chargor</b>	<b>Issuer (company name, country of incorporation and registered number)</b>	<b>Share Type</b>	<b>Denomination</b>	<b>Number Held by Chargor</b>
British Engineering Services Holdco Limited	Vertigo Inspection (ROI) Limited Ireland - 566073	Ordinary Share of €1.00	Euro	1

## **SCHEDULE 2:**

### **Part 1: Dividend Payment Mandate**

To: The Secretary  
Vertigo Inspection (ROI) Limited

Dated: [ ]

We, [ ], hereby authorise and direct you to pay any and all cash dividends and any other distributions, interest or other income and assets receivable (whether in the nature of capital or income) paid or payable on our shares in Vertigo Inspection (ROI) Limited (a company registered in Ireland and having company number 566073), which are registered in our name and which are subject to a charge over shares dated [ ] between (1) us, as Chargor, and (2) HSBC Bank plc, as Security Agent, to or to the order of the Security Agent.

On receipt of this mandate please acknowledge to the Security Agent that you will act in accordance with the instructions contained in this mandate. This request is irrevocable.

Compliance with this request shall be a good discharge to us.

Signed by:

\_\_\_\_\_  
[ ]

## Part 2: Irrevocable Proxy

Dated: [                      ]

We, [                      ] being a member of Vertigo Inspection (ROI) Limited (a company registered in Ireland and having company number 566073) ("**Company**") hereby irrevocably appoint:

- **HSBC Bank plc ("Security Agent")** as our proxy to vote for us and on our behalf at meetings of the shareholders of the Company, in respect of any existing or future shares in the Company which may have been or may from time to time be issued to us and/or registered in our name and which are subject to the charge over shares dated [                      ] between (1) us (as Chargor) and (2) the Security Agent.

This proxy is irrevocable by reason of being coupled with the interest of the Security Agent, as charge, of the aforesaid shares in the Company.

The person appointed as proxy is authorised to vote as that person thinks fit.

Signed by:

\_\_\_\_\_  
For and on behalf of  
[                      ]

### Part 3: Letter of Authority

To: HSBC Bank plc  
(the Security Agent)

Dated:

**Re: Charge over Shares dated [ ] ("Charge") between (1) [ ], as  
Chargor, and (2) HSBC Bank plc, as Security Agent, in respect of shares in Vertigo  
Inspection (ROI) Limited (a company registered in Ireland and having company  
number 566073) ("Company")**

Dear Sirs

Capitalised terms not otherwise defined in this letter shall have the same meanings as ascribed to those terms in the Charge.

Items (i) to (iii) below were all deposited by us with the Security Agent, pursuant to the terms of the Charge. We hereby unconditionally and irrevocably authorise the Security Agent to date and otherwise complete:

- (i) the stock transfer form in respect of the Securities;
- (ii) the dividend payment mandate in respect of the Securities; and
- (iii) the irrevocable voting proxy in respect of the Securities,

as and when the Security Agent becomes entitled to date and complete these items pursuant to the terms of the Charge.

Yours faithfully

Signed by:

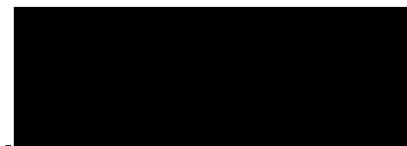
\_\_\_\_\_  
For and on behalf of  
[ ]

**EXECUTION PAGE**

**THE CHARGOR**

Executed as a deed, but not delivered until the )  
first date specified on page 1, by )  
**BRITISH ENGINEERING SERVICES** )  
**HOLDCO LIMITED** by a director in the )  
presence of a witness: )

Signature



Name (block capitals) STEVEN DENNISON  
**Director**

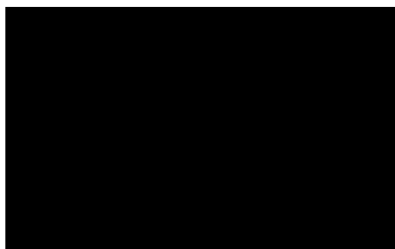
Witness signature



Witness name  
(block capitals)

F. K. DENNISON

Witness address



**THE SECURITY AGENT**

Signed for and on behalf of )  
**HSBC BANK PLC** by: )

Signature

.....

Name (block capitals)

**Director/authorised  
signatory**