



**Registration of a Charge**

Company name: **AFFINITY LIVING LIMITED**

Company number: **09559366**

Received for Electronic Filing: **31/10/2016**



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**Details of Charge**

Date of creation: **27/10/2016**

Charge code: **0955 9366 0002**

Persons entitled: **KISMET INTERNATIONAL S.À R.L**

Brief description: **INTENTIONALLY BLANK**

**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 THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **SHOOSMITHS LLP**



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

Company number: 9559366

Charge code: 0955 9366 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 27th October 2016 and created by AFFINITY LIVING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 31st October 2016 .

Given at Companies House, Cardiff on 1st November 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

27 October

2016

(1) AFFINITY LIVING LIMITED

and

(2) KISMET INTERNATIONAL S.À R.L.

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**CHARGE OVER SHARES**

**Shares in Affinity Living Trinity Holdco Limited**

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**SHOOSMITHS**

HQ Building  
Old Granada Studios  
2 Atherton Street  
Manchester  
M3 3GS  
Ref: LFS/M-00559274

## TABLE OF CONTENTS

1	DEFINITIONS AND INTERPRETATION .....	1
2	COVENANT TO PAY .....	3
3	GRANT OF SECURITY .....	3
4	NEGATIVE PLEDGE .....	3
5	PERFECTION OF SECURITY .....	4
6	FURTHER ASSURANCE .....	4
7	REPRESENTATIONS .....	5
8	UNDERTAKINGS .....	5
9	VOTING RIGHTS AND DIVIDENDS .....	7
10	ENFORCEMENT OF SECURITY .....	8
11	POWERS OF THE LENDER .....	8
12	APPOINTMENT OF RECEIVER .....	10
13	POWERS OF RECEIVER .....	10
14	APPLICATION OF MONEYS .....	12
15	PROTECTION OF PURCHASERS .....	12
16	POWER OF ATTORNEY .....	12
17	PRESERVATION OF SECURITY .....	13
18	NEW ACCOUNTS .....	15
19	COSTS, EXPENSES AND INDEMNITIES .....	15
20	CHANGES TO THE PARTIES .....	16
21	MISCELLANEOUS .....	16
22	SET-OFF .....	17
23	NOTICES .....	17
24	PARTIAL INVALIDITY .....	18
25	REMEDIES AND WAIVERS .....	18
26	COUNTERPARTS .....	18

27 GOVERNING LAW .....18

28 JURISDICTION .....18

THIS DEED is made the 27 day of October 2016

**BETWEEN**

1. **AFFINITY LIVING LIMITED**, a company incorporated in England and Wales (company number 09559366) whose registered office is at The Box, Horseshoe Lane, Alderley Edge, SK9 7QP (the "Chargor"); and
2. **KISMET INTERNATIONAL S.À R.L.**, (the "Lender").

**BACKGROUND**

The third party security granted under this Deed is granted by the Company in favour of the Lender as consideration for and in satisfaction of clause 2.1.1 of the security side letter dated 30 March 2016 entered into between Vita (Man 2) Limited (a sister company of the Chargor) and the Lender and the extension side letter dated 1 September 2016 between the same parties.

The Parties agree as follows:

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed the following definitions apply:

<b>"Borrower"</b>	Vita (Man 2) Limited, a company registered in England and Wales with company number 09316880;
<b>"Charged Property"</b>	means all the assets of the Chargor which from time to time are, or are expressed to be, the subject of the Security created or expressed to be created in favour of the Lender pursuant to this Deed;
<b>"Company"</b>	means Affinity Living Trinity Holdco Limited, a company registered in England and Wales with company number 10023780;
<b>"EU Regulation"</b>	means the Council of the European Union Regulation 1346/2000/EC on insolvency proceedings
<b>"LPA 1925"</b>	means the Law of Property Act 1925;
<b>"Master Loan Terms Agreement"</b>	means the master loan terms agreement dated 15 June 2015 entered into between the Parent, the Borrower and the Lender;
<b>"Parent"</b>	Select Property Group (Holdings) Limited, a company registered in England and Wales with company number 08958577;
<b>"Party"</b>	means a party to this Deed;
<b>"Receiver"</b>	means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property;

**"Related Rights"**

means:

- (a) all dividends, interest, distributions and all other rights and benefits of an income nature accruing, payable or paid at any time in respect of the Shares;
- (b) all other rights, monies or property accruing, offered or issued at any time in respect of the Shares by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise; and
- (c) the proceeds of sale of any Share(s);

**"Relevant Jurisdiction"**

means, in relation to the Chargor:

- (a) the jurisdiction under whose laws it is incorporated at the date of this Deed;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Security created or expressed to be created in favour of the Lender pursuant to this Deed;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of this Deed;

**"Secured Obligations"**

means all present and future liabilities and obligations at any time due, owing or incurred by the Borrower and/or the Parent to the Lender under or in connection with the Finance Documents, both actual and contingent and whether incurred solely or jointly or jointly and severally, as principal or surety or in any other capacity together with all costs, charges and expenses incurred by the Lender in connection with the protection, preservation or enforcement of its rights;

**"Security Period"**

means the period beginning on the date of this Deed and ending on the date on which the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full and any Commitment has been cancelled; and

**"Shares"**

means all of the shares in the share capital of the Company.

## 1.2 Construction

- 1.2.1 Terms defined in the Master Loan Terms Agreement have the same meaning in this Deed unless given a different meaning in this Deed.
- 1.2.2 The provisions of clauses 1.2 to 1.7 of the Master Loan Terms Agreement apply to this Deed as though set out in full in this Deed save that any reference to the Master Loan Terms Agreement will be construed to be a reference to this Deed.
- 1.2.3 Unless the context otherwise requires, any reference to "**Charged Property**" includes any part of that Charged Property and any proceeds of that Charged Property.
- 1.2.4 An Event of Default is "**continuing**" if it has not been waived.
- 1.2.5 Any covenant by the Chargor under this Deed remains in force during the Security Period and is given for the benefit of the Lender.
- 1.2.6 It is intended that this document take effect as a deed notwithstanding that a Party may execute it under hand.

## 1.3 Third party rights

- 1.3.1 Unless expressly provided to the contrary in this Deed a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Deed.
- 1.3.2 Notwithstanding any term of this Deed, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- 1.3.3 Any Receiver, Delegate or any person may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Deed which expressly confers rights on it.

## 2 COVENANT TO PAY

The Chargor covenants that it will on demand pay and discharge the Secured Obligations to the Lender as and when the same are due.

## 3 GRANT OF SECURITY

- 3.1 The Chargor with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 charges by way of fixed charge in favour of the Lender as continuing security for the payment and discharge of the Secured Obligations, all of its right, title and interest in and to:

- 3.1.1 the Shares; and

- 3.1.2 the Related Rights.

## 4 NEGATIVE PLEDGE

- 4.1 Except as expressly permitted under the Master Loan Terms Agreement, the Chargor shall not:
  - 4.1.1 create or permit to subsist any Security over any of the Charged Property other than the Security created or expressly permitted by this Deed; nor

- 4.1.2 enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, discount, factor, transfer, assign, lease, lend or otherwise dispose of any of the Charged Property.

## **5 PERFECTION OF SECURITY**

- 5.1 Immediately following the execution of this Deed, the Chargor shall deposit with the Lender:
- 5.1.1 all deeds, certificates and other documents of title relating to the Charged Property which are in the possession or control of the Chargor (and the Chargor undertakes to obtain possession of any such deeds and documents that are not in its possession and/or control); and
- 5.1.2 stock transfer forms in respect of the Charged Property, executed and completed except for the name of the transferee, the date and the consideration.
- 5.2 The Lender shall be entitled to hold all deeds, certificates and other documents of title relating to the Charged Property throughout the Security Period.
- 5.3 Promptly upon the accrual, offer or issue of any Related Rights in the form of stocks, shares, warrants or other securities, the Chargor shall procure the delivery to the Lender of:
- 5.3.1 all deeds, certificates and other documents of title relating to such Related Rights; and
- 5.3.2 such stock transfer forms or other instruments of transfer in respect of those Related Rights as the Lender may request, executed and completed except for the name of the transferee, the date and the consideration.

## **6 FURTHER ASSURANCE**

- 6.1 The Chargor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require in favour of the Lender or its nominee(s)):
- 6.1.1 to perfect the Security created or expressed to be created in favour of the Lender pursuant to this Deed (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Security created or expressed to be created in favour of the Lender pursuant to this Deed) or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law; and/or
- 6.1.2 to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created or expressed to be created in favour of the Lender pursuant to this Deed.
- 6.2 The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security created or expressed to be created in favour of the Lender pursuant to this Deed.

## **7 REPRESENTATIONS**

### **7.1 General**

The Chargor makes the representations and warranties set out in this Clause 7 to the Lender on the date of this Deed and on each date during the Security Period by reference to the facts and circumstances then existing.

### **7.2 Binding obligations**

Subject to the Legal Reservations:

7.2.1 the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations; and

7.2.2 this Deed creates the security interests which it purports to create and those security interests are valid and effective.

### **7.3 Ranking**

The Security created or expressed to be created in favour of the Lender pursuant to this Deed has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security.

### **7.4 Legal and beneficial ownership**

It is the sole legal and beneficial owner of the assets over which it purports to grant the Security created or expressed to be created in favour of the Lender pursuant to this Deed.

### **7.5 Shares**

7.5.1 The Shares include the entire issued share capital of the Company.

7.5.2 The Shares are fully paid and not subject to any option to purchase or similar rights.

7.5.3 The constitutional documents of the Company do not and could not restrict or inhibit any transfer of the Shares on creation or enforcement of this Deed.

7.5.4 There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of the Company (including any option or right of pre-emption or conversion).

7.5.5 No nominations have been made in respect of any of the Charged Property.

### **7.6 Centre of main interests and establishments**

For the purposes of the EU Regulation, its centre of main interests (as that expression is used in Article 3(1) of the EU Regulation) is situated in England and Wales and it has no other "establishment" (as that term is used in Article 2(h) of the EU Regulation) in any other jurisdiction.

## **8 UNDERTAKINGS**

The undertakings in this Clause 8 remain in force throughout the Security Period.

## 8.1 Information

The Chargor shall supply to the Lender:

- 8.1.1 promptly, copies of all notices, circulars, reports, accounts and other documents which are sent or received by it in relation to the Charged Property; and
- 8.1.2 promptly, such information as the Lender may reasonably require about the Charged Property and the Chargor's compliance with the terms of this Deed.

## 8.2 Authorisations

The Chargor shall promptly:

- 8.2.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and
- 8.2.2 supply certified copies to the Lender of:
  - any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
    - a) enable it to perform its obligations under this Deed; and
    - b) ensure the legality, validity, enforceability or admissibility in evidence of this Deed.

## 8.3 Preservation of assets

The Chargor shall not do, cause or permit to be done or omit to do anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any of the Charged Property.

## 8.4 *Pari passu* ranking

The Chargor shall ensure that at all times any unsecured and unsubordinated claims of the Lender against it under this Deed rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

## 8.5 Shares

The Chargor shall:

- 8.5.1 promptly pay all calls or other payments which may become due in respect of the Shares. If the Chargor fails to make any such payment the Lender may make that payment on behalf of the Chargor and any sums so paid by the Lender shall be reimbursed by the Chargor on demand;
- 8.5.2 promptly upon the accrual, offer or issue of any Related Rights in the form of stocks, shares, warrants or other securities, execute in favour of the Lender such additional charge or other document as the Lender may require in respect of them in each case in form and substance satisfactory to the Lender;
- 8.5.3 at the request of the Lender, procure all consents, waivers and approvals which are necessary, under the articles of association of the Company or otherwise, for the transfer of the Charged Property to the Lender or its nominee or to a transferee upon the enforcement of this Deed and to procure the amendment of the share transfer

provisions of the Company's articles of association in such manner as the Lender may require in order to permit such a transfer;

- 8.5.4 not at any time exercise its right to nominate any person other than the Lender to enjoy or exercise any right relating to any of the Charged Property;
- 8.5.5 not without the prior written consent of the Lender amend, vary, novate, supplement, supersede, waive or terminate the articles of association of the Company; and
- 8.5.6 not take nor allow the taking of any action on its behalf which may result in the rights attaching to, or conferred by, all or any of the Charged Property being altered nor cause or permit any of the Charged Property to be consolidated, sub-divided, converted, re-organised, exchanged or repaid nor allow any further shares in the share capital of the Company to be issued.

## **8.6 Centre of main interests and establishments**

The Chargor shall not, without the prior written consent of the Lender, change its centre of main interest (as that expression is used in Article 3(1) of the EU Regulation) to somewhere other than England and Wales, nor will it have any establishment (as that term is used in Article 2(h) of the EU Regulation) in any other jurisdiction.

## **9 VOTING RIGHTS AND DIVIDENDS**

### **9.1 Rights and obligations whilst no Event of Default is continuing**

The provisions of this Clause 9.1 apply at all times that no Event of Default is continuing.

9.1.1 The Chargor shall be entitled to:

- a) receive and retain all dividends, distributions and other moneys paid on or derived from the Charged Property; and
- b) exercise or refrain from exercising all voting and other rights and powers attaching to the Charged Property provided that it must not do so in a manner which is prejudicial to the interests of the Lender under this Deed.

9.1.2 If any dividends, distributions or other moneys paid on or derived from the Charged Property are paid or payable to the Lender or its nominees, the Lender or its nominees (as the case may be) shall hold such dividends, distributions and other moneys paid on or derived from the Charged Property that they receive for the Chargor and pay them to the Chargor promptly on request.

9.1.3 If any voting and other rights and powers attaching to the Charged Property are exercisable by the Lender or any of its nominees, the Lender or its nominees (as the case may be) shall exercise or refrain from exercising all voting and other rights and powers attaching to the Charged Property in accordance with any directions given in writing by the Chargor. The Lender will not, by following such directions, be construed to consent to any exercise or failure to exercise which is prejudicial to the interests of the Lender under this Deed. The Chargor shall indemnify the Lender and its nominees against any loss or liability incurred by them as a consequence of following such directions.

### **9.2 Rights and obligations during a continuing Event of Default**

The provisions of this Clause 9.2 apply after an Event of Default has occurred and is continuing.

9.2.1 The Chargor shall:

- a) hold all dividends, distributions and other monies paid on or derived from the Charged Property on trust for the Lender and pay the same immediately upon receipt to the Lender or as it may direct;
- b) comply and procure that its nominees (if any) comply with any directions from the Lender concerning the exercise of all voting and other rights and powers attaching to the Charged Property; and
- c) permit the Lender to complete the instrument(s) of transfer for the Charged Property on behalf of the Chargor in favour of the Lender or such other person as the Lender may select.

9.2.2 The Lender may at its discretion in the name of the Chargor and without any further consent or authority from the Chargor and irrespective of any direction given by the Chargor:

- a) exercise or refrain from exercising (or direct its nominee to exercise or refrain from exercising) all voting rights and any other power or rights in respect of the Charged Property and give any directions in respect of them to the Chargor;
- b) apply all dividends, interest or other monies paid or payable in respect of the Charged Property in accordance with Clause 14 (*Application of Moneys*);
- c) complete all instruments of transfer held by it in relation to the Charged Property in favour of itself or such other person as it may select and have the Charged Property transferred into its name, the name of its nominee or such other person as the Lender may select or, as applicable, into an account in the name of any of them; and
- d) in addition to any other power created under this deed, exercise or refrain from exercising (or direct its nominee to exercise or refrain from exercising) all the powers and rights conferred on or exercisable by the legal or beneficial owner of the Charged Property.

## 10 ENFORCEMENT OF SECURITY

The Security created in favour of the Lender pursuant to this Deed shall become immediately enforceable on the occurrence of an Event of Default.

## 11 POWERS OF THE LENDER

### 11.1 Powers on enforcement

At any time after an Event of Default has occurred, the Lender may, without notice to the Chargor and whether or not it has appointed a Receiver, exercise:

11.1.1 all or any of the powers, authorities and discretions conferred on mortgagees by the LPA 1925 (as varied or extended by this Deed); and

11.1.2 all or any of the powers conferred by this Deed.

## **11.2 No liability as mortgagee in possession**

Neither the Lender nor any Receiver or Delegate shall be liable to account as a mortgagee in possession in respect of all or any part of the Charged Property or be liable for any loss upon realisation or for any neglect, default or omission for which a mortgagee in possession might otherwise be liable.

## **11.3 Extension of powers**

The power of sale conferred on the Lender and on any Receiver or Delegate by this Deed shall operate as a variation and extension of the statutory power of sale under section 101 of the LPA 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Deed.

## **11.4 Restrictions**

Sections 93 and 103 of the LPA 1925 shall not apply to this Deed.

## **11.5 Discretion**

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

## **11.6 Delegation**

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

## **11.7 Investigations**

Following the occurrence of an Event of Default, the Lender may initiate an investigation of, and/or instruct any report (accounting, legal, valuation or other) on the business and affairs of the Chargor which it considers necessary to ascertain the financial position of the Chargor. All fees and expenses incurred by the Lender in connection with such investigations shall be payable by the Chargor and the Chargor consents to the provision by the Lender of all information in relation to the Chargor which the Lender provides to any person in relation to the preparation of any such report.

## **11.8 Power to remedy**

If at any time the Chargor does not comply with any of its obligations under this Deed, the Lender may (but shall not be obliged to) rectify such default and the Chargor irrevocably authorises the Lender, its employees and agents, at the Chargor's expense, to do all such things as are necessary or desirable to rectify such default.

## **11.9 Lender has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this Deed on a Receiver may, after the Security created in favour of the Lender by this Deed has become enforceable, be exercised by the Lender in relation to any of the Charged Property whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

## **12 APPOINTMENT OF RECEIVER**

### **12.1 Appointment and removal**

12.1.1 At any time after an Event of Default has occurred, or if requested to do so by the Chargor, the Lender may (by deed or otherwise and acting through its authorised officer):

- a) appoint one or more persons jointly or severally to be a Receiver of the whole or any part of the Charged Property;
- b) remove (so far as it is lawfully able) any Receiver so appointed; and
- c) appoint another person as an additional or replacement Receiver.

12.1.2 The power conferred by this Deed to appoint a Receiver shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise.

12.1.3 The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Charged Property.

### **12.2 Restrictions on appointment**

12.2.1 Except as provided below, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the LPA 1925) does not apply to this Deed.

12.2.2 The Lender may not appoint an administrative receiver (as defined in section 29(2)) of the Insolvency Act 1986) over the Charged Property if the Lender is prohibited from doing so by section 72A of the Insolvency Act 1986 and no exception to the prohibition on appointing an administrative receiver applies.

### **12.3 Capacity of Receivers**

Every Receiver shall be:

12.3.1 an agent of the Chargor. The Chargor shall be solely responsible for the Receiver's contracts, engagements, acts, omissions, defaults, losses and liabilities and for the payment of the Receiver's remuneration; and

12.3.2 entitled to remuneration for his services at a rate to be fixed by the Lender from time to time (without being limited to the maximum rate specified in section 109(6) of the LPA 1925).

## **13 POWERS OF RECEIVER**

### **13.1 General powers**

Every Receiver shall have all the powers:

13.1.1 conferred by the LPA 1925 on mortgagors and on mortgagees in possession and receivers appointed under that Act;

13.1.2 set out in Schedule 1 to the Insolvency Act 1986 and, in the case of an administrator, Schedule B1 to the Insolvency Act 1986; and

13.1.3 conferred from time to time on receivers by statute.

### 13.2 Additional powers

In addition to the powers referred to in Clause 13.1 (*General Powers*) a Receiver shall have the power, at the cost of the Chargor and either in his own name or in the name of the Chargor, the directors of the Chargor or (with the written approval of the Lender) in the name of the Lender:

13.2.1 to take possession of, collect and get in all or any part of the Charged Property;

13.2.2 to borrow or raise money and secure the payment of any money in priority to the charges created by this Deed for the purpose of exercising his powers and/or defraying any costs or expenses incurred by him in such exercise;

13.2.3 sell, exchange, convert into money and realise all or any of the Charged Property in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit. The consideration for any such transaction may consist of cash or of shares or securities or other obligations (and the amount of such consideration may be determined by a third party) and may be payable in a lump sum or in instalments;

13.2.4 to exercise all powers, rights and/or obligations under any contract or agreement forming part of the Charged Property, including, without limitation, all voting and other rights attaching to the Shares;

13.2.5 to redeem any prior Security in respect of all or any of the Charged Property and to settle and pass the accounts of the holder of such prior Security and any accounts so settled and passed will, in the absence of manifest error, be conclusive and binding on the Chargor. All moneys paid to the holder of such Security in accordance with such accounts shall form part of the Secured Obligations;

13.2.6 to take such proceedings and to settle, adjust, refer to arbitration, compromise and/or arrange any claim, account or demand which the Lender or the Receiver may think fit;

13.2.7 to appoint agents and accountants at such salaries and for such periods as the Receiver may determine and to discharge any person appointed by the Chargor;

13.2.8 to exercise in relation to all or any part of the Charged Property all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Charged Property;

13.2.9 give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Charged Property; and

13.2.10 to do all other acts and things as may be considered by the Receiver to be incidental or conducive to the above or otherwise expedient for or incidental or conducive to the preservation, improvement or realisation of the Charged Property.

## **14 APPLICATION OF MONEYS**

### **14.1 Order of application**

All moneys received or recovered by the Lender or any Receiver or Delegate pursuant to this Deed shall be applied in the following order:

14.1.1 **first**, in satisfaction of, or provision for, all costs, charges and expenses incurred by or on behalf of the Lender or any Receiver or Delegate under or in connection with this Deed and the payment of the remuneration of any Receiver or Delegate under or in connection with this Deed;

14.1.2 **secondly**, in or towards satisfaction of the Secured Obligations; and

14.1.3 **thirdly**, any surplus shall be paid to the Chargor or any other person entitled to it.

This Clause is subject to the payment of any claims having priority over the Security created in favour of the Lender pursuant to this Deed. This Clause does not prejudice the right of the Lender to recover any shortfall from the Chargor.

### **14.2 Actual receipts**

Only money actually paid by the Receiver or Delegate to the Lender shall be capable of being applied in or towards the satisfaction of the Secured Obligations and the Chargor shall have no rights in respect of the application by the Lender of any sums received, recovered or realised by the Lender under this Deed.

### **14.3 Avoidance of payments**

If the Lender reasonably considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Chargor under this Deed and the Security created or expressed to be created in favour of the Lender pursuant to this Deed shall continue and such amount shall not be considered to have been irrevocably paid.

## **15 PROTECTION OF PURCHASERS**

### **15.1 Receipts**

The receipt of the Lender or its delegate or any Receiver or Delegate shall be conclusive discharge to a purchaser in any sale or disposal of any of the Charged Property.

### **15.2 Protection of purchasers**

No purchaser or other person dealing with the Lender or its delegate or any Receiver or Delegate shall be bound to enquire whether the right of the Lender or such Receiver or Delegate to exercise any of its powers has arisen or become exercisable or be concerned with any notice to the contrary, or be concerned to see whether any such delegation by the Lender shall have lapsed for any reason or have been revoked.

## **16 POWER OF ATTORNEY**

### **16.1 Appointment**

The Chargor, by way of security, irrevocably appoints the Lender, each person to whom the Lender shall from time to time have delegated the exercise of the power of attorney conferred

by this Clause and any Receiver and any Delegate jointly and severally to be its attorney and in its name and on its behalf to execute, deliver and perfect all documents and to do all things which the attorney may consider to be required or desirable for:

16.1.1 carrying out any obligation imposed on the Chargor by this Deed (including the execution and delivery of any deeds, charges, assignments or other Security and any transfers of the Charged Property); and

16.1.2 enabling the Lender and any Receiver and any Delegate to exercise any of the powers conferred on them by or pursuant to this Deed or by law.

## 16.2 Ratification

The Chargor ratifies and confirms, and agrees to ratify and confirm, all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## 17 PRESERVATION OF SECURITY

### 17.1 Continuing security

The Security created or expressed to be created in favour of the Lender pursuant to this Deed will be a continuing security for the ultimate balance of the Secured Obligations notwithstanding any intermediate payment or settlement of all or any part of the Secured Obligations.

### 17.2 Waiver of defences

The obligations of the Chargor under this Deed will not be affected by any act, omission or thing which, but for this provision would reduce, release or prejudice any of its obligations under this Deed (whether or not known to it or the Lender). This includes (without limitation):

17.2.1 any time or waiver granted to, or composition with, any person;

17.2.2 any release or any person under the terms of any composition or arrangement;

17.2.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or Security over assets of, any person;

17.2.4 any non-presentation, non-observance of any formality or other requirements in respect of any instrument or any failure to realise the full value of any Security;

17.2.5 any incapacity, lack of power, authority or legal personality of or dissolution or change in the members or status of any person;

17.2.6 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or Security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or Security;

17.2.7 any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Finance Document or any other document or Security or the failure by any person to enter into or be bound by any Finance Document or any other document or Security; and

17.2.8 any insolvency or similar proceedings.

### 17.3 **Chargor intent**

Without prejudice to the generality of Clause 17.2 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Security created or expressed to be created in favour of the Lender pursuant to this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any Finance Document and/or any facility or amount made available under any Finance Document.

### 17.4 **Immediate recourse**

The Chargor waives any rights it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other right or Security or claim payment from any person or file any proof or claim in any insolvency, administration, winding-up, liquidation or bankruptcy, proceedings relative to any other person before claiming from the Chargor under this Deed.

### 17.5 **Tacking**

Any obligation of the Lender to make further advances to the Chargor is deemed to be incorporated in this Deed.

### 17.6 **Financial collateral**

17.6.1 For the purposes of this Clause, the expressions "financial collateral arrangement", "financial collateral" and "financial instrument" have the meaning given to them by the Financial Collateral Arrangements (No.2) Regulations 2003 (Amendment) Regulations 2009.

17.6.2 This Deed constitutes a financial collateral arrangement. Any part of the Charged Property that constitutes financial collateral may be appropriated by the Lender at any time after an Event of Default has occurred.

17.6.3 If the Lender exercises its power of appropriation:

- a) any Charged Property that consists of a financial instrument shall be valued as the cash payment which the Lender would have received on a disposal of that Charged Property for immediate payment; and
- b) any Charged Property that consists of a balance on an account shall be valued as the amount standing to the credit of that account, together with any accrued interest not credited to the account at the time of the appropriation.

17.6.4 The exercise of any right of appropriation shall not prejudice or affect any other right or remedy available in respect of the remainder of the Charged Property or any Secured Obligations that remain unpaid.

### 17.7 **Appropriations**

Until all amounts which may be or become payable by the Chargor to the Lender under or in connection with the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may without affecting the liability of the Chargor under this Deed:

17.7.1 refrain from applying or enforcing any other monies, Security or rights held or received by the Lender (or any trustee or agent on its behalf) against those accounts; or apply

and enforce them in such manner and order as it sees fit (whether against those amounts or otherwise); and

17.7.2 hold in a suspense account any moneys received under or in connection with this Deed.

#### **17.8 Additional security**

17.8.1 This Deed is in addition to and is not in any way prejudiced by any other Security now or subsequently held by the Lender.

17.8.2 No prior Security held by the Lender (in its capacity as such or otherwise) over any Charged Property will merge into the Security created or expressed to be created in favour of the Lender pursuant to this Deed.

#### **18 NEW ACCOUNTS**

18.1 If the Lender at any time receives or is deemed to have received notice of any subsequent Security affecting all or any part of the Charged Property it may open a new account or accounts with the Chargor.

18.2 If the Lender does not open a new account or accounts it shall nevertheless be treated as if it had done so as at the time when it received or was deemed to have received such notice.

18.3 As from such time all payments made to the Lender shall be credited or be treated as having been credited to such new account or accounts and shall not operate to reduce the amount of the Secured Obligations.

#### **19 COSTS, EXPENSES AND INDEMNITIES**

##### **19.1 Costs and expenses**

19.1.1 The Chargor shall, promptly on demand, pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender and any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of this Deed and any other documents referred to in this Deed.

19.1.2 The Chargor shall, within three Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under this Deed and the Security created or expressed to be created in favour of the Lender pursuant to this Deed and any proceedings instituted by or against the Lender as a consequence of taking or holding that Security or enforcing these rights.

##### **19.2 Indemnities**

19.2.1 The Chargor shall promptly indemnify the Lender and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:

- a) the taking, holding, protection or enforcement of the Security created or expressed to be created in favour of the Lender pursuant to this Deed;
- b) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Lender and each Receiver and Delegate by this Deed or by law;
- c) any default by the Chargor in the performance of the obligations expressed to be assumed by it in this Deed; or

- d) acting as Lender, Receiver or Delegate under this Deed or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the Lender's, Receiver's or Delegate's gross negligence or wilful misconduct).

19.2.2 The Lender and every Receiver and Delegate may indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in Clause 19.2.1.

### 19.3 Currency indemnity

If any sum due from the Chargor under this Deed (a "Sum"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:

19.3.1 making or filing a claim or proof against the Chargor; or

19.3.2 obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Chargor shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

## 20 CHANGES TO THE PARTIES

20.1 The Lender may assign or transfer all or any of its rights and obligations under this Deed to any person to whom it is entitled to assign or transfer any of its rights or interests under the Master Loan Terms Agreement.

20.2 The Lender shall be entitled to disclose information concerning the Chargor and this Deed to any person it is entitled to disclose information to under the Master Loan Terms Agreement.

20.3 The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Deed.

## 21 MISCELLANEOUS

### 21.1 No deductions and tax gross-up

21.1.1 All payments to be made by the Chargor under this Deed shall be made in freely available funds and in sterling and shall be calculated and be made without (and free and clear of any deduction for) set-off, counterclaim or deduction on account of Tax.

21.1.2 If a Tax deduction is required by law to be made by the Chargor, the amount of the payment due from the Chargor shall be increased to an amount which (after making any Tax deduction) leaves an amount equal to the payment which would have been due if no Tax deduction has been required.

### 21.2 Currency

For the purpose of or pending the discharge of the Secured Obligations, the Lender may, in its sole discretion, convert any moneys received, recovered or realised in any currency under this

Deed (including the proceeds of any previous conversion under this Clause) from their existing currency into any other currency at such rate or rates of exchange and at such time as the Lender thinks fit.

### **21.3 Perpetuity period**

The perpetuity period under the rule against perpetuities, if applicable to this Deed, shall be the period of 125 years from the date of this Deed.

### **21.4 No liability**

21.4.1 None of the Lender, its delegate(s) nominee(s) or any Receiver or Delegate shall be liable for any loss by reason of (a) taking any action permitted by this Deed or (b) any neglect or default in connection with the Charged Property or (c) taking possession of or realising all or any part of the Charged Property, except in the case of gross negligence or wilful default upon its part.

21.4.2 The Lender will not be required in any manner to perform or fulfil any obligation of the Chargor, make any payment, make any enquiry as to the nature or sufficiency of any payment received by it or present or file any claim or take any action to collect or enforce the payment of any amount.

21.4.3 The Lender shall not be liable either to the Chargor or to any other person by reason of the appointment of a Receiver or Delegate or for any other reason.

21.4.4 Neither the Lender nor the Receiver or Delegate will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

### **21.5 Certificates**

Any certification or determination by the Lender of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **21.6 Release**

At the end of the Security Period, the Lender must, at the request and cost of the Chargor, take whatever action is reasonably necessary to release the Charged Property from the Security created or expressed to be created in favour of the Lender pursuant to this Deed and re-assign any Charged Property assigned under this Deed.

## **22 SET-OFF**

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

## **23 NOTICES**

### **23.1 English language**

Any communication to be made under or in connection with this Deed shall be made in accordance with the provisions of Clause 23 (*Notices*) of the Master Loan Terms Agreement.

## **24 PARTIAL INVALIDITY**

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

## **25 REMEDIES AND WAIVERS**

No failure to exercise, nor delay in exercising, on the part of the Lender, any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

## **26 COUNTERPARTS**

This Deed 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 Deed.

## **27 GOVERNING LAW**

This Deed and any non-contractual obligation arising in connection with it are governed by English law.

## **28 JURISDICTION**

28.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "Dispute").

28.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

28.3 This Clause 28 is for the benefit of the Lender only. As a result the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

**THIS DEED has been signed on behalf of the Lender and EXECUTED AS A DEED by the Chargor and is delivered by them on the date specified at the beginning of this Deed.**

**SIGNATORIES**

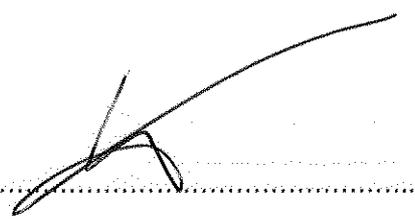
EXECUTED as a DEED by )

**AFFINITY LIVING LIMITED** )

acting by a director in the presence of: )

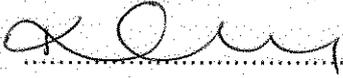
Director

Print name:



M. DAWSON

Signature of witness



Print name (in BLOCK CAPITALS)

KRISTINE MURPHY

Address

C/O SPG, THE BOX

HORSESHOE LANE

ALDERLEY EDGE

SK9 7QP

Occupation:

EXECUTIVE ASSISTANT

Name:

Duly authorised for and on behalf of **KISMET INTERNATIONAL S.À R.L.**

Name:

Duly authorised for and on behalf of **KISMET INTERNATIONAL S.À R.L.**