



**Registration of a Charge**

Company name: **PHARMALEX UK HOLDING LIMITED**

Company number: **09684636**



X6L31P15

Received for Electronic Filing: **11/12/2017**

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**Details of Charge**

Date of creation: **08/12/2017**

Charge code: **0968 4636 0002**

Persons entitled: **NORDDEUTSCHE LANDESBANK GIROZENTRALE**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **BURGES SALMON LLP (CH15)**



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

Company number: 9684636

Charge code: 0968 4636 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 8th December 2017 and created by PHARMALEX UK HOLDING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th December 2017 .

Given at Companies House, Cardiff on 13th December 2017

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

*8 December 2017*

## SHARE CHARGE

PHARMALEX UK HOLDING LIMITED (the **Chargor**) (1)

NORDDEUTSCHE LANDESBANK GIROZENTRALE (the  
**Security Agent**) (2)

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THIS DEED is dated

8 December

2017 and made

BETWEEN:

- (1) **PHARMALEX UK HOLDING LIMITED** a company incorporated in England and Wales (Registered No. 09684636) whose registered office is at ~~30 Upper High Street, Thame, Oxfordshire, OX9 3EZ~~ (the "**Chargor**"); and **170 EDMUND STREET, BIRMINGHAM, B3 2HB.**
- (2) **NORDDEUTSCHE LANDESBANK GIROZENTRALE** (with registered number HRA 26247) acting through its office located at Friedrichswall 10, 30159 Hannover, Germany (the "**Security Agent**") as agent and trustee for itself and each of the other Secured Parties (as defined below).

## BACKGROUND

- (A) The Original Lenders have agreed, pursuant to the Facility Agreement, to provide the Borrower with a loan facility on a secured basis.
- (B) Under this Deed, the Chargor provides security to the Security Agent for the loan facility made or to be made available under the Facility Agreement.

IT IS AGREED as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

The following definitions apply in this Deed:

"**Additional Guarantor**" means any person which becomes a guarantor pursuant to the terms of the Facility Agreement.

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**Borrower**" means **PharmaLex GmbH** a company incorporated in Germany (Registered with the register of commerce at the local court of Homburg under number HRB 13017) whose registered office is at Bahnstraße 42-46, 61381 Friedrichsdorf, Germany.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Hannover and Luxembourg.

"**Charged Assets**" means all the assets, property and undertaking of the Chargor for the time being subject to the Security created by, or pursuant to, this Deed (and references to the Charged Assets shall include references to any part of them).

**"Default Rate"** means the rate specified in Clause 13 (*Verzug und Schadensersatz*) of the Facility Agreement.

**"Delegate"** means any person appointed by the Security Agent or any Receiver pursuant to Clause 15 (*Delegation*) and any person appointed as attorney of the Security Agent, Receiver or Delegate.

**"Enforcement Event"** means:

- (a) any event described in clause 10.2 (*Vorzeitige Rückzahlung infolge Kündigung*) of the Facility Agreement;
- (b) an Event of Default.

**"Event of Default"** means any event or circumstance specified in clause 21 of the Facility Agreement (*Kündigungsgründe*) or any other "*wichtiger Grund*", which would under the laws of the Federal Republic of Germany permit the Security Agent to cancel the facility granted pursuant to the terms of the Facility Agreement.

**"Existing Security Documents"** means:

- (a) the share charge dated 19 April 2017 made between the Chargor and the Security Agent; and
- (b) the deed of guarantee dated 21 March 2017 made between (1) the Chargor (2) Norddeutsche Landesbank -Girozentrale- and (3) NORD/LB Luxembourg SA Covered Bond Bank.

**"Facility Agreement"** means the facility agreement dated 13 June 2014 as amended from time to time including as most recently amended and restated on or around the date of this Deed between, among others, the Borrower and the Security Agent for the provision of a loan facility.

**"Finance Document"** has the meaning given to the expression "*Darlehensdokumentation*" in the Facility Agreement.

**"Finance Party"** means any Darlehensgeber (lender), Konsortialführer (agent), Arrangeur (arranger) Bank and Sicherheitenpoolführer (security holder) each as defined in the Facility Agreement.

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

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

**"Guarantor"** means the Original Guarantor and any Additional Guarantor.

**"Legal Reservations"** means:

- (c) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (d) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (e) the fact that English courts may characterise charges expressed to be fixed charges as being floating charges;
- (f) similar principles, rights and defences under the law of any relevant jurisdiction; and
- (g) any other matters which are set out as qualifications or reservations or elsewhere referred to in any legal opinion as matters of general application in any legal opinion referred to in the Facility Agreement;

**"LPA 1925"** means the Law of Property Act 1925.

**"Original Guarantor"** means PharmaLex Holding GmbH (formerly Yes Beteiligungsgesellschaft mbH), with its registered seat in Friedrichsdorf/Germany and registered with the commercial register of the local court of Bad Homburg v. d. Höhe under HRB 13021.

**"Original Lenders"** means Nord/LB Luxembourg S.A. Covered Bond Bank and Norddeutsche Landesbank Girozentrale.

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

**"Receiver"** means a receiver, receiver and manager or administrative receiver of any or all of the Charged Assets appointed by the Original Lender under Clause 13 (*Receiver*).

**"Related Rights"** means any:

- (a) dividend, interest or other distribution (whether in cash or in specie and whether of a capital or income nature) declared, paid or payable in relation to the Shares at any time; and
- (b) accretion, right, benefit, money or property accruing, offered or issued at any time in relation to any Share by way of rights, capitalisation, pre-emption,

redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise and all interest or rights (whether legal or equitable having regard to applicable law) in relation to the Shares.

**"Rights"** means any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise.

**"Secured Liabilities"** means all present and future obligations and liabilities of the Borrower, any Guarantor or the Chargor (whether actual or contingent and whether owed jointly or severally or in any other capacity whatever) which are, or are expressed to be, or may become, due, owing or payable to the Security Agent (whether for its own account or as agent or trustee for the Secured Parties) or to any of the other Secured Parties under or in connection with any of the Finance Documents, together with all costs, charges, losses, liabilities, expenses and other sums and any taxes thereon incurred by the Security Agent or any other Secured Party which are, or are expressed to be, or may become due, owing or payable by the Borrower, any Guarantor or the Chargor under or in connection with any Finance Document;

**"Secured Parties"** means:

- (a) the Security Agent; and
- (b) each Finance Party.

**"Security"** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest, title retention or other encumbrance of any kind securing, or any right conferring a priority of payment in respect of, any obligation of any person or any other agreement or arrangement have a similar effect.

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

**"Security Period"** means the period starting on the date of this Deed and ending on the date on which the Security Agent is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**"Security Trust Deed"** means the security trust deed entered into on 19 April 2017 between the Original Lenders.

**"Shares"** means the shares detailed in Schedule 1 (*The Shares*) issued to the Chargor.

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in the Deed to:
  - (i) the "**Security Agent**", any "**Finance Party**", any "**Original Lender**", the "**Borrower**", the "**Chargor**" or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
  - (ii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iii) this "**Deed**", a "**Finance Document**" or any other agreement or instrument is a reference to, this Deed, that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (iv) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (v) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (vi) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (vii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (viii) a time of day is a reference to London time.
- (b) Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any notice given under or in connection with this Deed has the same meaning in that notice as in this Deed.
- (d) an Event of Default is "**continuing**" if it has not been remedied or waived in writing by the Security Agent.

### **1.3 Clawback**

If the Security Agent reasonably considers that an amount paid by the Borrower or the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

### **1.4 Perpetuity period**

If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

### **1.5 Schedules**

The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

### **1.6 Effect as a Deed**

This Deed is intended to take effect as a Deed notwithstanding that the Security Agent may have executed it under hand only.

### **1.7 Third party rights**

- (a) 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 to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of this Deed the consent of any other person who is not a Party is not required to rescind or vary this Deed at any time.

## **2 COVENANT TO PAY**

### **2.1 Covenant to pay**

The Chargor will on demand pay or otherwise discharge all Secured Liabilities from time to time, at the times at which, in the manner in which, and in the currencies in which they are expressed to be due and payable or due for discharge under the Finance Documents.

### **2.2 Certain liabilities**

The Secured Liabilities shall, without limitation, include all liabilities arising under this Deed and the Finance Documents, interest (both before and after judgment) from the date such liabilities are due, owing or incurred up to the date of payment at such rates

and upon such terms as specified in the Facility Agreement and all legal, administrative and other costs, charges and expenses on a full and unqualified indemnity basis which may be incurred by the Secured Parties in relation to any such moneys, obligations or liabilities or the release of all or any of the Charged Assets or the enforcement of the security hereby created or generally in respect of the Chargor or otherwise incurred in dealing with any matter in relation to this Deed.

### **2.3 Interest**

The Chargor shall pay interest at the Default Rate on unpaid sums (whether before or after any judgment) in accordance with the terms of Clause 13 (*Verzug und Schadensersatz*) of the Facility Agreement.

## **3 GRANT OF SECURITY**

### **3.1 Fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Security Agent (for the benefit of and as trustee for itself and each of the other Secured Parties) by way of first fixed charge:

- (a) the Shares and their proceeds of sale; and
- (b) all Related Rights.

### **3.2 Trust**

- (a) Subject to paragraph (b) of this Clause 3.2, if or to the extent that the charging of any Charged Asset is prohibited, the Chargor holds it on trust for the Security Agent (for the benefit of and as trustee for itself and each of the other Secured Parties).

- (b) If the reason referred to in paragraph (a) of this Clause 3.2 is that:

- (i) a consent or waiver must be obtained;
- (ii) a condition must be satisfied

then:

- (A) subject to paragraph (c) of Clause 3.2, the Chargor shall apply for the consent or waiver; and
- (B) the Chargor shall use its best endeavours to satisfy the condition

in each case within 30 days of the date of this Deed or, if the Charged Asset is acquired after that date of this Deed, within 30 days of the date of the acquisition.

- (c) Where the consent or waiver is not to be unreasonably withheld, the Chargor shall:
  - (i) use its best endeavours to obtain it as soon as possible; and
  - (ii) keep the Security Agent informed of the progress of the negotiations to obtain it.
- (d) On the waiver or consent being obtained, or the condition being satisfied, the Charged Asset shall be mortgaged, charged or assigned (as appropriate) under this Clause 3.2 and, in relation to such Charged Asset, the trust referred to in paragraph (a) of this Clause 3.2 shall terminate.

#### **4 CONFIRMATION**

The Chargor confirms that the Existing Security Documents:

- 4.1** rank as a continuing security for the payment and discharge of the Secured Liabilities including, without limitation, all present and future monies, obligations and liabilities owed by the Borrower and any Guarantor to the to the Security Agent (whether for its own account or as agent or trustee for the Secured Parties) or to any of the other Secured Parties whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity, under or in connection with the Facility Agreement; and
- 4.2** shall continue in full force and effect in all respects.

#### **5 LIABILITY OF THE CHARGOR AND SECURITY AGENT'S PROTECTIONS**

##### **5.1 Liability not discharged**

The Chargor's liability under this Deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any intermediate payment, settlement of account or discharge in whole or in part of the Secured Liabilities;
- (b) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which a Secured Party may now or after the date of this Deed have from or against the Borrower, the Chargor or any other person in connection with the Secured Liabilities;

- (c) any act or omission by a Secured Party or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Borrower, the Chargor or any other person;
- (d) any termination, amendment, variation, novation or supplement of or to any of the Secured Liabilities;
- (e) any grant of time, indulgence, waiver or concession to the Borrower, the Chargor or any other person;
- (f) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Borrower, the Chargor or any other person;
- (g) any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Borrower, the Chargor or any other person in connection with the Secured Liabilities;
- (h) any claim or enforcement of payment from the Borrower, the Chargor or any other person; or
- (i) any other act or omission which would not have discharged or affected the liability of the Chargor had it been a principal debtor or by anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Chargor or otherwise reduce or extinguish its liability under this Deed.

## **5.2 Immediate recourse**

The Chargor waives any right it may have to require a Secured Party:

- (a) to take any action or obtain judgment in any court against the Borrower or any other person;
- (b) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Borrower or any other person; or
- (c) to make demand, enforce or seek to enforce any claim, right or remedy against the Borrower or any other person

before taking steps to enforce any of its rights or remedies under this Deed.

## **5.3 Non-competition**

The Chargor warrants to the Security Agent that it has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against the Borrower, its

liquidator, an administrator, co-guarantor or any other person in connection with any liability of, or payment by, the Chargor under this Deed but:

- (a) if any of the Rights is taken, exercised or received by the Chargor, those Rights and all monies at any time received or held in respect of those Rights shall be held by the Chargor on trust for the Security Agent for application in or towards the discharge of the Secured Liabilities under this Deed; and
- (b) on demand by the Security Agent, the Chargor shall promptly transfer, assign or pay to the Security Agent all Rights and all monies from time to time held on trust by the Chargor under this Clause 5.3.

## **6 REPRESENTATIONS**

### **6.1 Representations**

The Chargor makes the representations and warranties set out in this Clause 6 (*Representations*) to the Security Agent as trustee for itself and for the benefit of each of the other Secured Parties on the date of this Deed.

### **6.2 Binding obligations**

The obligations expressed to be assumed by it in this Deed are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations and this Deed is, and will continue to be, effective security overall and every part of the Charged Assets in accordance with its terms.

### **6.3 Non-conflict with other obligations**

Subject to the Legal Reservations, the entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets.

### **6.4 Power and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by it.
- (b) No limit on its powers will be exceeded as a result of the grant of security or contemplated by this Deed.

## **6.5 Validity and admissibility in evidence**

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed; and
- (b) to make this Deed admissible in evidence in its jurisdiction of incorporation

have been obtained or effected and are in full force and effect.

## **6.6 Governing law and enforcement**

- (a) The choice of English law as the governing law of this Deed will be recognised and enforced in its jurisdiction of incorporation.
- (b) Any judgment obtained in England in relation to this Deed will be recognised and enforced in its jurisdiction of incorporation.

## **6.7 Shares**

- (a) The Shares are fully paid and are not subject to any option to purchase or similar rights.
- (b) The Shares represent at least 90% of the issued share capital of an issuer of any Charged Assets.
- (c) The Chargor is the sole legal and beneficial owner of the Shares.
- (d) The constitutional documents of an issuer of any Charged Assets do not:
  - (i) restrict or inhibit any transfer of the Shares on creation or enforcement of the security constituted by this Deed; or
  - (ii) contain any rights of pre-emption.
- (e) The Chargor has complied with all notices relating to all or any of the Shares received by it pursuant to sections 790D and 790E of the Companies Act 2006.
- (f) No warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued or received under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of all or any of the Shares.

## **6.8 No Security**

The Charged Assets are free from any Security other than the Security created by this Deed.

**6.9 No adverse claims**

The Chargor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Assets or any interest in them.

**6.10 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Charged Assets.

**6.11 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Charged Assets.

**6.12 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Charged Assets is subject to terms entitling any person to terminate or curtail its use.

**6.13 Avoidance of Security**

No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

**6.14 No prohibitions or breaches**

The entry into this Deed by the Chargor does not and will not constitute a breach of any policy, agreement, document, instrument or obligation binding on the Chargor or its assets.

**6.15 Enforceable security**

This Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Chargor and is and will continue to be effective security over all and every part of the Charged Assets in accordance with its terms.

**6.16 Repetition**

The representations and warranties set out in Clause 6.2 (*Ownership of Charged Assets*) to Clause 6.15 (*Enforceable security*) are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

## **7 INFORMATION UNDERTAKINGS**

The Chargor makes the undertakings set out in this Clause 7 to the Security Agent as trustee for itself and for the benefit of each of the other Secured Parties for the continuance of the Security Period.

### **7.1 Information**

The Chargor shall:

- (a) give the Security Agent such other information concerning the Charged Assets as the Security Agent may require;
- (b) promptly notify the Security Agent in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Charged Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Security Agent's prior approval, implement those proposals at its own expense.

### **7.2 Notification of misrepresentation and breaches**

The Chargor shall, promptly on becoming aware of any of the same, notify the Security Agent in writing of:

- (a) any representation or warranty set out in Clause 6 (*Representations*) which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant or undertaking set out in this Deed.

## **8 GENERAL UNDERTAKINGS**

The Chargor makes the undertakings set out in this Clause 8 to the Security Agent as trustee for itself and for the benefit of each of the other Secured Parties for the continuance of the Security Period.

### **8.1 Authorisations**

The Chargor shall:

- (a) comply with the requirements of any law and regulation relating to or affecting the Charged Assets or the use of it or any part of them; and

- (b) obtain, and promptly renew from time to time, and comply with the terms of all Authorisations that are required in connection with the Charged Assets or their use or that are necessary to preserve or renew any Charged Asset.

## **8.2 Compliance with laws**

The Chargor shall not without the Security Agent's prior written consent, use or permit the Charged Assets to be used in any way contrary to law.

## **8.3 Negative pledge**

The Chargor shall not at any time, except with the prior written consent of the Security Agent create, purport to create or permit to subsist any Security on, or in relation to, any Charged Asset other than any Security created by this Deed.

## **8.4 Disposals**

The Chargor shall not at any time, except with the prior written consent of the Security Agent:

- (a) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Charged Assets; or
- (b) create or grant (or purport to create or grant) any interest in the Charged Assets in favour of a third party.

## **8.5 Preservation of Charged Assets**

The Chargor shall not do, or permit to be done, any act or thing that would depreciate, jeopardise or otherwise prejudice the security held by the Security Agent, or materially diminish the value of any of the Charged Assets or the effectiveness of the security created by this Deed.

## **8.6 Compliance with laws and regulations**

- (a) The Chargor shall not use or permit the Charged Assets to be used in any way contrary to law.
- (b) The Chargor shall comply with the requirements of any law or regulation relating to or affecting the Charged Assets or the use of it or any part of it.

## **8.7 Chargor's waiver of set-off**

The Chargor waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Chargor under this Deed).

**8.8 Enforcement of rights**

The Chargor shall use its best endeavours to enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Assets that the Security Agent may require from time to time.

**8.9 Payment of outgoings**

The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Charged Assets and, on demand, produce evidence of payment to the Security Agent.

**8.10 Notice of misrepresentations and breaches**

The Chargor shall, promptly on becoming aware of any of the same, give the Security Agent notice in writing of:

- (a) any representation or warranty set out in this Deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this Deed.

**8.11 Title to Charged Assets**

The Chargor shall on the execution of this Deed, deliver to the Security Agent, or as the Security Agent may direct:

- (a) all share certificates and other documents of title or evidence of ownership relating to the Charged Assets;
- (b) all stock transfer forms relating to the Charged Assets duly completed and executed by or on behalf of the Chargor, but with the name of the transferee, the consideration and the date left blank; and
- (c) any other documents (in each case duly completed and executed by or on behalf of the Chargor) that the Security Agent may request to enable it or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain legal title to, or to perfect its security interest in any of the Charged Assets,

so that the Security Agent may, at any time after the occurrence of an Event of Default and without notice to the Chargor, complete and present those stock transfer forms and other documents to the issuer of the Charged Assets for registration.

**8.12 Nominations**

- (a) The Chargor shall immediately terminate all nominations it may have made in respect of any Charged Asset and, pending such termination, procure that any person so nominated:
  - (i) does not exercise any rights in respect of any Charged Asset without the prior written approval of the Security Agent; and
  - (ii) immediately upon receipt by it, forward to the Security Agent all communications or other information received by it in respect of any Charged Asset for which it has been so nominated.
- (b) The Chargor shall not, during the Security Period, exercise the right to nominate any person other than the Security Agent or Secured Parties to enjoy or exercise any right relating to the Charged Assets.

**8.13 Pre-emption rights and restrictions on transfer**

The Chargor shall:

- (a) obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association (or otherwise) of an issuer of any Charged Assets, for the transfer of the Charged Assets to the Security Agent or its nominee, or to a purchaser on enforcement of the security constituted by this Deed; and
- (b) procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) under the articles of association, other constitutional document or otherwise of each issuer of the Charged Assets in any manner that the Security Agent may require in order to permit the transfer of the Charged Assets to the Security Agent or its nominee, or to a purchaser on enforcement of the security constituted by this Deed.

**8.14 Calls and other obligations**

- (a) Notwithstanding the security created by this Deed, the Chargor shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any part of the Charged Assets.
- (b) If the Chargor fails to do so, the Security Agent may, at its discretion but without obligation, pay the calls, instalments or other payments on behalf of the Chargor.

- (c) The Chargor shall, immediately on request by the Lenders, reimburse the Security Agent for any payment made by it under this Clause 8.14.
- (d) The Chargor shall comply with, and shall remain liable to perform, all of the other conditions and obligations assumed by it in respect of all or any part of the Charged Assets.

#### **8.15 Changes to rights**

- (a) The Chargor shall not take, or 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 Assets being altered.
- (b) The Chargor shall not cause or permit:
  - (i) any of the Charged Assets to be consolidated, sub-divided or converted;
  - (ii) the other shares of each issuer of the Shares to be re-organised, exchanged or repaid; or
  - (iii) any further shares in the share capital of an issuer of the Shares to be issued.

#### **8.16 Compliance with Requests for Information**

The Chargor shall promptly copy to the Security Agent and comply with all requests for information which are made under the Companies Act 2006 (including, without limitation, under sections 790D and 790E of the Companies Act 2006) relating to all or any part of the Charged Assets. If it fails to do so, the Security Agent may elect to provide such information as it may have on behalf of the Chargor.

### **9 VOTING RIGHTS AND DIVIDENDS**

#### **9.1 Voting rights and dividends- before enforcement**

- (a) Before the security constituted by this Deed becomes enforceable, the Chargor may exercise all voting and other rights and powers in respect of the Charged Assets or, if any of the same are exercisable by the Security Agent or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:
  - (i) it shall not do so in any way that would breach any provision of the Facility Agreement or this Deed or for any purpose inconsistent with the Facility Agreement or this Deed; and

- (ii) the exercise of, or failure to exercise, those voting rights or other rights and powers would not, in the Security Agent's opinion, have an adverse effect on the value of any of the Charged Assets or otherwise prejudice the Security Agent's security under this Deed.
- (b) Before the security constituted by this Deed becomes enforceable, the Chargor may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Charged Assets and, if any are paid or payable to the Security Agent or any of its nominees, the Security Agent will hold all those dividends, interest and other monies received by it for the Chargor and will pay them to the Chargor promptly on request.
- (c) The Chargor shall indemnify the Security Agent against any loss or liability incurred by the Security Agent (or its nominee) as a consequence of the Security Agent (or its nominee) acting in respect of the Charged Assets at the direction of the Chargor.
- (d) The Security Agent shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Charged Assets which the Security Agent considers prejudicial to, or impairing the value of, the security created by this Deed.

## 9.2 Voting rights and dividends - following an Event of Default

After the security constituted by this Deed has become enforceable, the Security Agent 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 powers or rights in respect of the Charged Assets, and the Chargor shall comply, or procure compliance, with any directions the Security Agent may give, in its absolute discretion, in respect of the exercise of those voting and other rights and powers;
- (b) apply all dividends, interest or other monies paid or payable in respect of the Charged Assets in accordance with Clause 16 (*Application of proceeds*) and, if any such dividends, interest or other monies are received by or on behalf of the Chargor, the Chargor shall hold all such dividends, interest and other monies on trust for the Security Agent and shall immediately pay them to the Security Agent or as it may direct;
- (c) complete all instruments of transfer held by it in relation to the Charged Assets in favour of itself or such other person as it may select and have the Charged

Assets transferred into its name or the name of its nominee or, as applicable, into an account in its own name or the name of its nominee; 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 Assets.

## **10 POWERS OF THE SECURITY AGENT**

### **10.1 Power to remedy**

- (a) The Security Agent shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this Deed.
- (b) The Chargor irrevocably authorises the Security Agent and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Security Agent in remedying a breach by the Chargor of its obligations contained in this Deed shall be reimbursed by the Chargor to the Security Agent on a full indemnity basis and shall carry interest in accordance with Clause 17.1 (*Costs*).

### **10.2 Exercise of rights**

- (a) The rights of the Security Agent under Clause 10.1 (*Power to remedy*) are without prejudice to any other rights of the Security Agent under this Deed.
- (b) The exercise of any rights of the Security Agent under this Deed shall not make the Security Agent liable to account as a mortgagee in possession.

### **10.3 Security Agent 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 constituted by this Deed has become enforceable, be exercised by the Security Agent in relation to any of the Charged Assets whether or not it has taken possession of any Charged Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

### **10.4 No duties**

The Security Agent shall not, in respect of any of the Charged Assets, have any duty or incur any liability for:

- (a) ascertaining or taking action in respect of any calls, instalments, conversions, exchanges, maturities, tenders or other matters relating to any Charged Asset

or the nature or sufficiency of any payment whether or not the Security Agent has or is deemed to have knowledge of such matters; or

- (b) taking any necessary steps to preserve rights against prior parties or any other rights relating to any of the Charged Assets.

#### **10.5 Conversion of currency**

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Security Agent may convert any monies received, recovered or realised by it under this Deed (including the proceeds of any previous conversion under this Clause 10.4 (*Conversion of currency*)) from their existing currencies of denomination into any other currencies of denomination that the Security Agent may think fit.
- (b) Any such conversion shall be effected at the Security Agent's then prevailing spot selling rate of exchange for such other currency against the existing currency.
- (c) Each reference in this Clause 10.4 (*Conversion of currency*) to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

#### **10.6 New accounts**

- (a) If the Security Agent receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Charged Assets, the Security Agent may open a new account for the Chargor in the Security Agent's books. Without prejudice to the Security Agent's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Security Agent does not open a new account immediately on receipt of the notice, or deemed notice, under Clause 10.6(a), then, unless the Security Agent gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Security Agent shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Security Agent.

#### **10.7 Indulgence**

The Security Agent may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a Party (whether or

not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Deed or to the liability of the Chargor for the Secured Liabilities.

## **11 WHEN SECURITY BECOMES ENFORCEABLE**

### **11.1 Security becomes enforceable on Enforcement Event**

The security constituted by this Deed shall become immediately enforceable if an Enforcement Event occurs and is continuing.

### **11.2 Discretion**

After the security constituted by this Deed has become enforceable, the Security Agent may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Assets.

## **12 ENFORCEMENT OF SECURITY**

### **12.1 Enforcement powers**

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall, as between the Security Agent and a purchaser from the Security Agent, arise on and be exercisable at any time after the execution of this Deed, but the Security Agent shall not exercise such power of sale or other powers until the security constituted by this Deed has become enforceable under Clause 11.1 (*Security becomes enforceable on Enforcement Event*).
- (b) Section 103 of the LPA 1925 (restricting the power of sale) does not apply to the security constituted by this Deed.
- (c) The Security Agent may do anything a Receiver has power to do under this Deed.

### **12.2 Prior Security**

At any time after the security constituted by this Deed has become enforceable, or after any powers conferred by any Security having priority to this Deed shall have become exercisable, the Security Agent may:

- (a) redeem that or any other prior Security;
- (b) procure the transfer of that Security to it; and
- (c) settle and pass any account of the holder of any prior Security.

The settlement and passing of any such account passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor. All monies paid by the Security Agent to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Security Agent, be due from the Chargor to the Security Agent on current account and shall bear interest at the Default Rate of interest specified in the Facility Agreement and be secured as part of the Secured Liabilities.

### **12.3 Protection of third parties**

No purchaser, mortgagee or other person dealing with the Security Agent, any Receiver or Delegate shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Security Agent, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- (c) how any money paid to the Security Agent, any Receiver or any Delegate is to be applied.

### **12.4 Privileges**

Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

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

Neither the Security Agent, any Receiver nor any Delegate shall be liable, to account as mortgagee in possession in respect of all or any of the Charged Assets, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Charged Assets for which a mortgagee in possession might be liable as such.

### **12.6 Relinquishing possession**

If the Security Agent, any Receiver or Delegate enters into or takes possession of the Charged Assets, it or he may at any time relinquish possession.

### **12.7 Conclusive discharge to purchasers**

The receipt of the Security Agent, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Assets or in making any acquisition in the exercise of their respective powers, the Security Agent, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

**12.8 Right of appropriation**

- (a) To the extent that:
  - (i) the Charged Assets constitute Financial Collateral; and
  - (ii) this Deed and the obligations of the Chargor under it constitute a Security Financial Collateral Arrangement

the Security Agent shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any of those Charged Assets in or towards the payment and discharge of the Secured Liabilities in any order that the Security Agent may, in its absolute discretion, may from time to time determine.

- (b) The value of any Charged Assets appropriated in accordance with this Clause shall be determined by any other method that the Security Agent may select (including independent valuation).
- (c) The Chargor agrees that the method of valuation provided for in this Clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

**13 RECEIVER****13.1 Appointment**

At any time after the security constituted by this Deed has become enforceable, or at the request of the Chargor, the Security Agent may, without further notice, appoint by way of Deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Charged Assets.

**13.2 Removal**

The Security Agent may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of Deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

**13.3 Remuneration**

The Security Agent may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this Deed, to the extent not otherwise discharged.

**13.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Security Agent under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

**13.5 Power of appointment exercisable despite prior appointments**

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

**13.6 Agent of the Chargor**

Any Receiver appointed by the Security Agent under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Security Agent.

**14 POWERS OF RECEIVER****14.1 Powers additional to statutory powers**

- (a) Any Receiver appointed by the Security Agent under this Deed shall, in addition to the powers conferred on him by statute, have the powers set out in Clause 14.3 (*Employ personnel and advisors*) to Clause 14.15 (*Incidental powers*).
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.
- (c) Any exercise by a Receiver of any of the powers given by Clause 14 (*Powers of Receiver*) may be on behalf of the Chargor or himself.
- (d) A Receiver may do anything the Security Agent has power to do under this Deed.

**14.2 Insolvency Act powers**

A Receiver may do all the acts and things in Schedule 1 to the Insolvency Act 1986 as if the words "he" and "him" referred to the Receiver and "company" referred to the Chargor.

**14.3 Employ personnel and advisers**

A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he thinks fit. A Receiver may discharge any such person or any such person appointed by the Chargor.

**14.4 Charge for remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Security Agent may prescribe or agree with him.

**14.5 Realise Charged Assets**

A Receiver may collect and get in the Charged Assets or any part of them in respect of which he is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Charged Assets with like rights.

**14.6 Dispose of Charged Assets**

A Receiver may sell, exchange, convert into money and realise all or any of the Charged Assets in respect of which he is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Charged Assets to be sold.

**14.7 Give valid receipts**

A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Assets.

**14.8 Make settlements**

A Receiver may make any arrangement, settlement or compromise between the Chargor and any other person that he may think expedient.

**14.9 Bring proceedings**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Assets as he thinks fit.

**14.10 Powers under the LPA 1925**

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

**14.11 Borrow**

A Receiver may, for any of the purposes authorised by this Clause 14 (*Powers of Receiver*), raise money by borrowing from the Security Agent (or from any other person) either unsecured or on the security of all or any of the Charged Assets in respect of which he is appointed on any terms that he thinks fit (including, if the Security Agent consents, terms under which that security ranks in priority to this Deed).

**14.12 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

**14.13 Delegation**

A Receiver may delegate his powers in accordance with this Deed.

**14.14 Absolute beneficial owner**

A Receiver may, in relation to any of the Charged Assets, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Charged Assets or any part of the Charged Assets.

**14.15 Incidental powers**

A Receiver may do any other acts and things that he:

- (a) may consider desirable or necessary for realising any of the Charged Assets;
- (b) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law; or
- (c) lawfully may or can do as agent for the Chargor.

## **15 DELEGATION**

### **15.1 Delegation**

The Security Agent or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney granted under Clause 19.1 (*Appointment of attorneys*)).

### **15.2 Terms**

The Security Agent and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

### **15.3 Liability**

Neither the Security Agent nor any Receiver shall 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.

## **16 APPLICATION OF PROCEEDS**

### **16.1 Order of application of proceeds**

All monies received by the Security Agent, a Receiver or a Delegate pursuant to this Deed, after the security constituted by this Deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied unless otherwise determined by the Security Agent, (or such Receiver or Delegate) in the following order of priority:

- (a) in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Security Agent (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed, and of all remuneration due to any Receiver under or in connection with this Deed;
- (b) in or towards payment of or provision for the Secured Liabilities in any order and manner that the Security Agent determines; and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.

### **16.2 Appropriation**

Neither the Security Agent, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

### **16.3 Suspense account**

All monies received by the Security Agent, a Receiver or a Delegate under this Deed:

- (a) may, at the discretion of the Security Agent, Receiver or Delegate, be credited to any suspense or securities realised account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Security Agent and the Chargor; and
- (c) may be held in that account for so long as the Security Agent, Receiver or Delegate thinks fit.

## **17 COSTS AND INDEMNITY**

### **17.1 Costs**

The Chargor shall, within five Business Days of demand, pay to, or reimburse, the Security Agent and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Security Agent, any Receiver or any Delegate in connection with:

- (a) this Deed or the Charged Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Security Agent's, a Receiver's or a Delegate's rights under this Deed; or
- (c) taking proceedings for, or recovering, any of the Secured Liabilities

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Chargor) at the rate and in the manner specified in the Facility Agreement.

### **17.2 Indemnity**

The Chargor shall indemnify the Security Agent, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Charged Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Deed; or
- (c) any default or delay by the Chargor in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this Clause 17.2 (*Indemnity*) subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **18 FURTHER ASSURANCE**

### **18.1 Further assurance**

The Chargor shall, at its own expense, take whatever action the Security Agent or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security intended to be created by this Deed;
- (b) facilitating the realisation of any Charged Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Security Agent or any Receiver in respect of any Charged Asset

including, without limitation (if the Security Agent or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Assets (whether to the Security Agent or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **19 POWER OF ATTORNEY**

### **19.1 Appointment of attorneys**

By way of security, the Chargor irrevocably appoints the Security Agent, every Receiver and every Delegate separately to be its attorney and, in its name, on its behalf and as its act and Deed, to execute any documents and do any acts and things that:

- (a) the Chargor is required to execute and do under this Deed; and/or

- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Security Agent, any Receiver or any Delegate.

## **19.2 Ratification of acts of attorneys**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in Clause 19.1 (*Appointment of attorneys*).

## **20 RELEASE**

Subject to Clause 21.3 (*Discharge conditional*) on the expiry of the Security Period (but not otherwise), the Security Agent shall, at the request and cost of the Chargor, take whatever action is necessary to:

- (a) release the Charged Assets from the security constituted by this Deed; and
- (b) reassign the Charged Assets to the Chargor.

## **21 FURTHER PROVISIONS**

### **21.1 Independent security**

The security constituted by this Deed shall be in addition to, and independent of, any other security or guarantee that the Security Agent may hold for any of the Secured Liabilities at any time. No prior security held by the Security Agent over the whole or any part of the Charged Assets shall merge in the security created by this Deed.

### **21.2 Continuing security**

The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Security Agent discharges this Deed in writing.

### **21.3 Discharge conditional**

Any release, discharge or settlement between the Chargor and the Security Agent shall be deemed conditional on no payment or security received by a Secured Party in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Security Agent or its nominee may retain this Deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Charged Assets, for any period that the Security Agent deems necessary to provide the Secured Party with security against any such avoidance, reduction or order for refund; and
- (b) the Secured Party may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

#### **21.4 Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this Deed.

### **22 SECURITY AGENT**

#### **22.1 Declaration of Trust**

The Security Agent hereby declares itself trustee of the covenants, undertakings, mortgages and charges of the Chargor contained in this Deed and the security and other rights, titles and interests constituted by this Deed and of the Charged Assets and all other moneys, property and assets paid to the Security Agent or held by the Security Agent or received or recovered by the Security Agent pursuant to or in connection with this Deed with effect from the date of this Deed to hold the same on trust for the Secured Parties and itself and to apply the same in accordance with the provisions of Clause 16 (*Application of Proceeds*).

#### **22.2 Appointment**

Each Secured Party has appointed the Security Agent to act as its trustee in connection with this Deed pursuant to the Security Trust Deed.

#### **22.3 Deemed entitlement**

The Security Agent may deem and treat each Secured Party as the person entitled to the benefit of this Deed in respect of the proportion of the Secured Liabilities which, in accordance with the information provided to the Security Agent pursuant to Clause 22.4 (*Directions for realisation*), are owing or incurred by the Chargor to such Secured Party for all purposes of this Deed unless and until a written notice of assignment or transfer of all or part of such Secured Party's share shall have been filed with the Security Agent.

**22.4 Directions for realisation**

Each Secured Party shall provide the Security Agent with all necessary directions in writing so as to enable the Security Agent to apply the proceeds of realisation of the security as contemplated by this Deed and such other information as it may reasonably require for the purposes of carrying out its duties and obligations under this Deed.

**22.5 Deposit of documents**

The Security Agent shall be entitled to place all deeds, certificates and other documents relating to the Charged Assets deposited with it under or pursuant to this Deed in any safe deposit, safe or receptacle selected by the Security Agent or with any solicitor or firm of solicitors and may make any such arrangements as it thinks fit for allowing the Chargor or its solicitors or auditors access to or possession of such documents when necessary or convenient and the Security Agent shall not be responsible for any loss incurred in connection with any such deposit, access or possession.

**22.6 Security Agent's duty of care**

Nothing in this Deed shall in any case where the Security Agent has failed to show the degree of care and diligence required of it as a trustee having regard to the provisions of this Deed exempt the Security Agent from or indemnify it against any liability for breach of trust or any liability which by virtue of any rule of law would otherwise attach to it in respect of any negligence, default, breach of duty or breach of trust of which it may be guilty in relation to its duties under this Deed.

**22.7 Additional statutory rights**

In addition to its rights under or by virtue of this Deed and the other Finance Documents, the Security Agent shall have all of the rights conferred on a trustee by the Trustee Act 1925, the Trustee Delegation Act 1999 and the Trustee Act 2000.

**22.8 Limit on Security Agent's Responsibility**

The Security Agent shall not have any responsibility to any Secured Party:

- (a) to ascertain whether all deeds and documents which should have been deposited with it under or pursuant to this Deed have been so deposited;
- (b) to investigate or make any enquiry into the title of the Chargor to the Charged Assets or any part thereof;
- (c) for the failure to register this Deed with the Register of Companies;
- (d) for the failure to register this Deed in accordance with the provisions of the documents of title of the Chargor to any of the Charged Assets;

- (e) for the failure to take or require the Chargor to take any steps to render this Deed effective as regards Charged Assets outside England or Wales or to secure the creation of any ancillary charge under the laws of the jurisdiction concerned; or
- (f) for acting (or as the case may be, refraining from acting) in accordance with the directions of any of the Secured Parties given pursuant to Clause 22.4 (*Directions for realisation*).

## **23 ASSIGNMENT AND TRANSFER**

### **23.1 Assignment by Security Agent**

- (a) At any time, the Security Agent may assign or transfer (including by way of novation) any of its rights and obligations under this Deed.
- (b) The Security Agent may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Charged Assets and this Deed that the Security Agent considers appropriate.

### **23.2 Assignments and transfer by the Chargor**

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

## **24 SET-OFF**

### **24.1 Security Agent's right of set-off**

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

### **24.2 Exclusion of Chargor's right of set-off**

All payments made by the Chargor to the Security Agent or a Secured Party under this Deed shall be made without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**25 NOTICES****25.1 Communications in writing**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

**25.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below and or any substitute address or fax number or department or officer as the party may notify to the other parties to this Deed by not less than five Business Days' notice.

The Chargor

Address: PharmaLex UK Services Limited

Wessex House

Marlow Road

Bourne End

Bucks

SL8 5SP

Attention: Chris Colton

The Security Agent

Address: Friedrichswall 10

30159 Hannover

Fax: + 49 (0)511 361-9820222

Email: [ksmcontractsstructuring@nordlb.de](mailto:ksmcontractsstructuring@nordlb.de)

Attention: Herrn Henning Carstens

**25.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

- (i) if by way of fax, when received in legible form;
- (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address; or
- (iii) if by way of email, when actually received in readable form and in the case of any electronic communication made by the Chargor to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose;

and, if a particular department or officer is specified as part of its address details provided under Clause 25.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) All notices from or to the Chargor shall be sent through the Security Agent and any notice, communication or document made or delivered to the Security Agent from the Chargor will be deemed to have been made or delivered to each of the relevant Finance Parties.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **25.4 Notification of address and fax number**

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 25.2 (*Addresses*) or changing its own address or fax number, the Chargor shall notify the other parties.

#### **25.5 Electronic communication**

- (a) Any electronic communication which becomes effective, in accordance with Clause 25.3(a)(iii) above, after 5:00 p.m. in the place in which the party to whom the relevant communication is sent or made available has its address for the purpose of this Deed shall be deemed only to become effective on the following day.

- (b) Any reference in this Deed to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 25.5 (*Electronic communication*).

## **25.6 English language**

Any notice given under or in connection with this Deed must be in English.

## **26 CALCULATIONS AND CERTIFICATES**

### **26.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Security Agent are *prima facie* evidence of the matters to which they relate.

### **26.2 Certificates and Determinations**

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

### **26.3 Day count convention**

Any interest, commission or fee accruing under this Deed will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the London interbank market differs, in accordance with that market practice.

## **27 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.

## **28 REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Security Agent, 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 Security Agent 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 by this Deed are cumulative and not exclusive of any rights or remedies provided by law.

**29 AMENDMENTS AND WAIVERS**

Any term of this Deed may be amended or waived only with the express written consent of the Security Agent and the Chargor and any such amendment or waiver will be binding on all parties.

**30 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.

**31 GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

**32 JURISDICTION****32.1 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").
- (b) The parties to this Deed 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.
- (c) This Clause 32.1 (*Jurisdiction*) is for the benefit of the Security Agent only. As a result, the Security Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.

**THIS DOCUMENT HAS BEEN EXECUTED AS A DEED AND IS DELIVERED AND TAKES EFFECT ON THE DATE STATED AT THE BEGINNING OF IT**

**Schedule 1****The Shares**

<b>Issued by:</b>  <b>Company name (and registered number)</b>	<b>Number</b>	<b>Denomination or  Type of Security:</b>
<b>PHARMALEX UK SERVICES LIMITED</b> <b>(03696586)</b>	200	Ordinary Shares of £200

**and** any further shares substituted or added by simple written instruction of the Chargor or owned by the Chargor in respect of each company detailed in the column "Issued by" above, from time to time.

## EXECUTION PAGE

## CHARGOR

Executed as a Deed by )

**PHARMALEX UK HOLDING** )

**LIMITED** acting by Dr Jürgen Hönig / )

Jonathan Jeffery )

Director )

OR

Director/Secretary .....

Director

In the presence of:

Witness

Name

Address

Occupation

..... LISA DARRAH .....

..... OFFICE MANAGER .....

## SECURITY AGENT

Signed by

for and on behalf of **NORDDEUTSCHE  
LANDESBANK GIROZENTRALE** by its duly  
authorised signatories ).....

Authorised Signatory

).....

Authorised Signatory

**EXECUTION PAGE****CHARGOR**

Executed as a Deed by )

**PHARMALEX UK HOLDING** )**LIMITED** acting by Dr Jürgen Hönig / )

Jonathan Jeffery )

Director )

OR

Director/Secretary .....

In the presence of:

Director .....

Witness .....

Name .....

Address .....

Occupation .....

**SECURITY AGENT**

Signed by

for and on behalf of **NORDDEUTSCHE  
LANDESBANK GIROZENTRALE** by its duly  
authorised signatories ).....

Authorised Signatory

).....

Authorised Signatory