



Registration of a Charge

Company name: **DARLINGTON NEUROLOGICAL CARE CENTRE LTD**
Company number: **10532297**



X60XRA15

Received for Electronic Filing: **24/02/2017**

Details of Charge

Date of creation: **17/02/2017**
Charge code: **1053 2297 0001**
Persons entitled: **THE ROYAL BANK OF SCOTLAND PLC AS LENDER**
Brief description: **N/A**

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

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

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:

**LISA ZHAO FOR AND ON BEHALF OF CMS CAMERON MCKENNA
LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 10532297

Charge code: 1053 2297 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th February 2017 and created by DARLINGTON NEUROLOGICAL CARE CENTRE LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th February 2017 .

Given at Companies House, Cardiff on 27th February 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

DATE: 17 FEBRUARY 2017

DEBENTURE

Between

DARLINGTON NEUROLOGICAL CARE CENTRE LTD (AND OTHERS)
(as Chargors)

and

THE ROYAL BANK OF SCOTLAND PLC
(as Lender)

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THIS DEED is made on the 17 day of FEBRUARY 2017

BETWEEN:

- (1) THE COMPANIES whose respective names and company numbers appear in Schedule 1 (*The Chargors*) (collectively the "Chargors" and each a "Chargor"); and
- (2) THE ROYAL BANK OF SCOTLAND PLC (registered number SC090312) whose registered office is at 36 St Andrew Square, Edinburgh, EH2 2YB as lender (the "Lender").

WHEREAS:

- (A) Each Chargor enters into this Deed in connection with a facilities agreement (the "Original Facilities Agreement") originally dated 19 October 2015, as amended and restated pursuant to a first amendment and restatement agreement dated 25 October 2016, and made between (1) Sunflower Holding S.à r.l. (a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of Luxembourg, with registered office at 6 avenue Pasteur, L-2310 Luxembourg, registered with the Luxembourg Register of Commerce and Companies under the number B 165.905 and having a share capital of GBP 20,000) (the "Parent"), (2) the subsidiaries of the Parent listed in Schedule 1 to the Original Facilities Agreement as original borrowers, (3) the subsidiaries of the Parent listed in Schedule 1 to the Original Facilities Agreement as original guarantors, and (4) the Lender and as amended and restated pursuant to an amendment and restatement agreement entered into on or around the date of this Deed and made between, among others, (1) the Parent and (2) the Lender, and as acceded to by the Chargors pursuant to accession deeds entered into between each Chargor, the Parent and the Lender dated on or around the date of this Deed (the "Facilities Agreement").
- (B) The Board of Directors of each Chargor is satisfied that the giving of the security contained or provided for in this Deed is in the interests of that Chargor and has passed a resolution to that effect.

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 Terms defined in the Facilities Agreement shall, unless otherwise defined in this Deed, have the same meanings when used in this Deed and in addition in this Deed:

"Authorisation": has the meaning given to it in the Facilities Agreement.

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

"Charged Property": means all the assets of each Chargor which from time to time are the subject of any security created or expressed to be created in favour of the Lender by or pursuant to this Deed.

"Debt Proceeds": means any proceeds of any book debts and other debts or monetary claims (including any chose in action which may give rise to a monetary claim) owing to any Chargor (including, without limitation, any sums of money received by any Chargor from any of the assets charged under Clause 3.2.7 (*Book debts*) and/or Clause 3.2.8 (*Bank accounts and deposits*)).

“Delegate”: means any person appointed by the Lender or any Receiver pursuant to Clauses 13.2 to 13.4 (*Delegation*) and any person appointed as attorney of the Lender and/or any Receiver or Delegate.

“Event of Default”: has the meaning given to it in the Facilities Agreement.

“Finance Documents”: has the meaning given to it in the Facilities Agreement.

“Insurances”: means all other contracts and policies of insurance or assurance (including, without limitation, life policies and the proceeds of them) from time to time taken out by or for the benefit of any Chargor or in which any Chargor from time to time has an interest, together with all bonuses and other moneys, benefits and advantages that may become payable or accrue under them or under any substituted policy.

“Intellectual Property”: means:

- (a) all patents, trademarks, service marks, designs, business names, design rights, moral rights, inventions and all other registered or unregistered intellectual property rights;
- (b) all copyrights (including rights in software), database rights, domain names, source codes, brand names and all other similar registered or unregistered intellectual property rights;
- (c) all applications for intellectual property rights and the benefit of any priority dates attaching to such applications and all benefits deriving from intellectual property rights, including royalties, fees, profit sharing agreements and income from licences;
- (d) all know-how, confidential information and trade secrets; and
- (e) all physical material in which any intellectual property might be incorporated,

including, without limitation, any of the same specified in Schedule 3 (*Intellectual Property*).

“Inter-Company Debt”: means any present and future claims and inter-company debt from time to time of a Chargor (as creditor) against any other Chargor which may arise now or in the future from any relationship between the Chargors.

“Legal Reservations”: has the meaning given to it in the Facilities Agreement.

“Liability Period”: means the period beginning on the date of this Deed and ending on the date on which the Lender is satisfied, acting in good faith, that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

“LPA”: means the Law of Property Act 1925.

“Mortgaged Property”: means any freehold, commonhold or leasehold property the subject of the security constituted by this Deed and references to any “**Mortgaged Property**” shall include references to the whole or any part or parts of it.

“Plans” means each numbered plan contained in Schedule 3 (*Plans*).

“Premises”: means all buildings and erections from time to time situated on or forming part of any Mortgaged Property.

“Receiver”: means a receiver, receiver and manager or administrative receiver of the whole or any part or parts of the Charged Property.

“Related Rights”: means, in relation to the Securities, all dividends, interest, benefits, property, rights, accretions, moneys, advantages, credits, rebates, refunds (including rebates and refunds

in respect of any tax, duties, imposts or charges) and other distributions paid or payable in respect of the Securities, whether by way of bonus, capitalisation, conversion, preference, option, substitution, exchange, redemption or otherwise.

“Secured Liabilities”: means all present and future liabilities and obligations at any time due, owing or incurred by any member of the Group or any Chargor to any Secured Party, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

“Secured Parties”: means the Lender, its Affiliates and any Receiver or Delegate from time to time.

“Securities”: means all stocks, shares, loan notes, bonds, certificates of deposit, depository receipts, loan capital indebtedness, debentures or other securities from time to time legally or beneficially owned by or on behalf of any Chargor, including, without limitation, any of the same specified in Schedule 4, together with all property and rights of any Chargor in respect of any account held by or for that Chargor as participant, or as beneficiary of a nominee or trustee participant, with any clearance or settlement system or depository or custodian or sub-custodian or broker in the United Kingdom or elsewhere.

“Security”: has the meaning given to it in the Facilities Agreement.

“Specified Contracts”: means each of the contracts specified in Schedule 5 (*Specified Contracts*).

Construction

1.2 Any reference in this Deed to:

1.2.1 the **“Lender”**, any **“Chargor”** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

1.2.2 **“assets”** includes present and future properties, revenues and rights of every description;

1.2.3 **“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;

1.2.4 a **“person”** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

1.2.5 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; and

1.2.6 a provision of law is a reference to that provision as amended or re-enacted.

1.3 Clause and Schedule headings are for ease of reference only.

1.4 Any reference in this Deed to a mortgage, charge or assignment of any asset shall be construed so as to include:

1.4.1 the benefit of any covenants for title given or entered into by any predecessor in title of any Chargor in respect of that asset and all other rights, benefits, claims, contracts, warranties, remedies, security or indemnities in respect of that asset;

- 1.4.2 the proceeds of sale of any part of that asset and any other moneys paid or payable in respect of or in connection with that asset; and
 - 1.4.3 in respect of any Mortgaged Property, all Premises and all fixtures and fittings (including trade fixtures and fittings and tenants' fixtures and fittings) from time to time in or on that Mortgaged Property.
- 1.5 Each term in any Finance Document is, to the extent not set out in or otherwise incorporated into this Deed, deemed to be incorporated into this Deed insofar as is necessary to comply with Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 but, except where stated otherwise, if there is any conflict between that incorporated term and any other term of this Deed that other term shall prevail.
- 1.6 Any reference in this Deed to any Finance Document or any other agreement or other document shall be construed as a reference to that Finance Document or that other agreement or document as the same may have been, or may from time to time be, restated, varied, amended, supplemented, substituted, novated or assigned, whether or not as a result of any of the same:
 - 1.6.1 there is an increase or decrease in any facility made available under that Finance Document or other agreement or document or an increase or decrease in the period for which any facility is available or in which it is repayable;
 - 1.6.2 any additional, further or substituted facility to or for such facility is provided;
 - 1.6.3 any rate of interest, commission or fees or relevant purpose is changed;
 - 1.6.4 the identity of the parties is changed;
 - 1.6.5 the identity of the providers of any security is changed;
 - 1.6.6 there is an increased or additional liability on the part of any person; or
 - 1.6.7 a new agreement is effectively created or deemed to be created.
- 1.7 Any reference in this Deed to "**this Deed**" shall be deemed to be a reference to this Deed as a whole and not limited to the particular Clause, Schedule or provision in which the relevant reference appears and to this Deed as amended, novated, assigned, supplemented, extended, substituted or restated from time to time and any reference in this Deed to a "**Clause**" or a "**Schedule**" is, unless otherwise provided, a reference to a Clause or a Schedule of this Deed.
- 1.8 Unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.
- 1.9 Where any provision of this Deed is stated to include one or more things, that shall be by way of example or for the avoidance of doubt only and shall not limit the generality of that provision.
- 1.10 It is intended that this document shall take effect as and be a deed of each Chargor notwithstanding the fact that the Lender may not execute this document as a deed.
- 1.11 Any change in the constitution of the Lender or its absorption of or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person shall not in any way prejudice or affect its rights under this Deed.

Third Party Rights

- 1.12 Nothing in this Deed is intended to confer on any person any right to enforce or enjoy the benefit of any provision of this Deed which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

2. COVENANT TO PAY

Covenant to Pay

- 2.1 Each Chargor covenants with the Lender that it shall pay, perform and discharge the Secured Liabilities as and when the same fall due for payment, performance or discharge in accordance with the terms of the Finance Documents or, in the absence of any such express terms, on demand.

Interest

- 2.2 Each Chargor covenants with the Lender to pay interest on any amounts due and payable under Clause 2.1 (*Covenant to Pay*) from day to day until full discharge (whether before or after judgment, liquidation, winding-up or administration of any person) at the rate and in the manner specified in Clauses 10.4 to 10.6 (*Default Interest*) of the Facilities Agreement.

3. FIXED SECURITY

Charges

- 3.1 Each Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, charges in favour of the Lender by way of a first legal mortgage all of that Chargor's right, title and interest in and to the freehold, commonhold and leasehold property now vested in it (including, but not limited to, the freehold, commonhold and leasehold property (if any) specified in Schedule 2 (*Real Property*)).
- 3.2 Each Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, charges in favour of the Lender by way of first fixed charge all of that Chargor's right, title and interest in and to the following assets, both present and future:
- 3.2.1 all estates or interests in any freehold, commonhold or leasehold property (other than such property effectively mortgaged under Clause 3.1 above);
 - 3.2.2 all licences held by it to enter upon or use land and/or to carry on the business carried on upon that land and all agreements relating to land to which it is a party or otherwise entitled;
 - 3.2.3 where any Mortgaged Property is leasehold property, any right or interest arising by virtue of any enfranchising legislation (including, but not limited to, the Leasehold Reform Act 1967 and the Leasehold Reform Housing and Urban Development Act 1993 but excluding Part II of the Landlord and Tenant Act 1954) which confers upon a tenant of property whether individually or collectively with other tenants of that or other properties the right to acquire a new lease of that property or to acquire, or require the acquisition by a nominee of, the freehold or any intermediate reversionary interest in that property;
 - 3.2.4 any amounts owing to it by way of rent, licence fee, service charge, dilapidations, ground rent and/or rent charge in respect of any Mortgaged Property or Premises;
 - 3.2.5 all fixed and other plant and machinery, computers, vehicles, office equipment and other chattels in its ownership or possession (but excluding any of those items to the extent that they are part of its stock in trade);
 - 3.2.6 all Insurances, including all claims, the proceeds of all claims and all returns of premium in connection with Insurances;

- 3.2.7 all book debts and all other debts or monetary claims (including all choses in action which may give rise to a debt or monetary claim), all proceeds thereof and, in each case, any cheque, bill, note, negotiable instrument or other document representing the same;
- 3.2.8 all moneys from time to time deposited in or standing to the credit of any bank account with the Lender or any other bank or financial institution (including, without limitation, any rent deposit given to secure liabilities in relation to land and any retention or similar sum arising out of a construction contract or any other contract (and, in each case, any cheque, bill, note, negotiable instrument or other document representing the same));
- 3.2.9 all Securities and their Related Rights;
- 3.2.10 all of its goodwill and uncalled capital;
- 3.2.11 all Intellectual Property;
- 3.2.12 all Authorisations (statutory or otherwise) held in connection with its business or the use of any Charged Property and the right to recover and receive all compensation which may be payable in respect of them;
- 3.2.13 (to the extent they are not subject to an effective assignment under Clause 3.3 (*Assignment*) of this Deed) each of the Specified Contracts and the Inter-Company Debt, together with:
 - (a) all contracts, guarantees, appointments, warranties and other documents to which it is a party or in its favour or of which it has the benefit relating to any letting, development, sale, purchase or the operation of any Mortgaged Property or Premises;
 - (b) all agreements entered into by it or of which it has the benefit under which credit of any amount is provided to any person;
 - (c) all contracts for the supply of goods and/or services by or to it or of which it has the benefit (including, without limitation, any contracts of hire or lease of chattels); and
 - (d) any currency or interest swap or any other interest or currency protection, hedging or financial futures transaction or arrangement entered into by it or of which it has the benefit (whether entered into with the Lender or any other person),
 - (e) including, in each case, but without limitation, the right to demand and receive all moneys whatsoever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatsoever accruing to or for its benefit arising from any of them.

Assignment

- 3.3 Each Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, assigns to the Lender absolutely by way of a first legal assignment all of that Chargor's right, title and interest in and to the Specified Contracts and the Inter-Company Debt.

4. FLOATING CHARGE

Creation of Floating Charge

- 4.1 Each Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, charges in favour of the Lender by way of a first floating charge the whole of its undertaking and assets, present and future, including all of its stock in trade and all assets of that Chargor not otherwise validly and effectively mortgaged, charged or assigned (whether at law or in equity) by way of fixed security pursuant to Clause 3 (*Fixed Security*), but including all of its assets situated in Scotland whether or not the same are otherwise effectively mortgaged, charged or assigned under this Deed.

Qualifying Floating Charge

- 4.2 The provisions of paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to the floating charge created pursuant to Clause 4.1 (*Creation of Floating Charge*).

Conversion by Notice

- 4.3 The Lender may by notice in writing at any time to any Chargor convert the floating charge created by that Chargor pursuant to Clause 4.1 (*Creation of Floating Charge*) with immediate effect into a fixed charge (either generally or specifically as regards any assets of that Chargor specified in the notice) if:

- 4.3.1 the security constituted by this Deed becomes enforceable; or
- 4.3.2 the Lender reasonably considers that any of the Charged Property may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process or that it is necessary to do so in order to protect or preserve the security constituted by this Deed over any of the Charged Property and/or the priority of that security.

Automatic Conversion

- 4.4 Notwithstanding Clause 4.3 (*Conversion by Notice*) and without prejudice to any law which may have a similar effect, each floating charge created by Clause 4.1 (*Creation of Floating Charge*) will automatically be converted (without notice) with immediate effect into a fixed charge as regards all of the undertaking and assets subject to that floating charge if:
- 4.4.1 any Chargor creates or attempts to create any Security over any of the Charged Property (other than as expressly permitted under the Facilities Agreement or this Deed);
 - 4.4.2 any person levies or attempts to levy any distress, execution or other process against any of the Charged Property; or
 - 4.4.3 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of any Chargor or an administrator is appointed in respect of any Chargor.

5. PERFECTION OF SECURITY

Registration at HM Land Registry

- 5.1 For the purposes of panel 8 of each Form RX1 that may be required to be completed by the Lender in relation to any Mortgaged Property registered or required to be registered at HM Land Registry, each Chargor hereby consents to an application being made by the Lender to the Chief

Land Registrar to enter the following restriction in Form P against that Chargor's title to such Mortgaged Property:

"No disposition of the registered estate by the proprietor of the registered estate [, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction] is to be registered without a written consent signed by the proprietor for the time being of the charge dated [] in favour of [*insert full name of Lender*] referred to in the charges register [or their conveyancer [*or specify appropriate details*]]".

- 5.2 If the title to any Mortgaged Property of any Chargor is not registered at HM Land Registry, that Chargor shall ensure that no person (other than itself) shall be registered under the Land Registration Act 2002 as the proprietor of all or any part of that Mortgaged Property without the prior consent in writing of the Lender.
- 5.3 Whether or not the title to any of the Mortgaged Property is registered at HM Land Registry, in the event that any caution against first registration or any notice (whether agreed or unilateral) is registered against any Chargor's title to any Mortgaged Property, that Chargor shall immediately provide the Lender with full particulars of the circumstances relating to such registration or notice and, if such caution or notice shall have been registered in order to protect a purported interest the creation of which is not permitted under this Deed, that Chargor shall immediately and at its own expense take such steps as the Lender may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

Further Advances

- 5.4 The Lender covenants with each Chargor that it shall perform its obligations to make advances under any agreement to which it and any Chargor is a party (including any obligation to make available further advances).

Acquisition of New Land

- 5.5 In relation to any freehold, commonhold or leasehold property which is acquired by or on behalf of any Chargor after the date of this Deed:
- 5.5.1 if the title to any such property is registered at HM Land Registry, that Chargor shall immediately apply to be registered as the proprietor of the registered estate acquired (or procure that such application is made on its behalf) and (for the purposes of panel 11 of Form AN1) hereby consents to an application being made by the Lender to the Chief Land Registrar for the registration of an agreed notice in Form AN1 to protect this Deed against that Chargor's title to that property;
- 5.5.2 if the title to any such property is required to be registered at HM Land Registry under the provisions of the Land Registration Act 2002, that Chargor shall immediately apply for first registration of the estate acquired in Form FR1 (or procure that such application is made on its behalf) and shall disclose or procure that the existence of this Deed is disclosed to HM Land Registry either in the Form DL accompanying such application or in panel 12 of Form FR1; and
- 5.5.3 if the title to any such property represents the transfer of either part of a commonhold unit or part of the common parts of land registered as a freehold estate in commonhold land under the Commonhold and Leasehold Reform Act 2002, that Chargor shall also procure that the application to register the transfer is accompanied by an application in Form CM3 to register the commonhold community statement that has been amended

in relation to the transfer as required by Rule 15 or, as the case may be, Rule 16 of the Commonhold (Land Registration) Rules 2004,

and, in each such case, the relevant Chargor shall, immediately after registration of it as the proprietor of the relevant registered estate, provide the Lender with an official copy of the register recording the same.

Notices of Charge and Assignment

- 5.6 Each Chargor shall, promptly upon the request of the Lender from time to time, give or join the Lender in giving:
- 5.6.1 a notice in the form set out in Part I of Schedule 6 (*Form of Notice of Charge – Specified Contracts*) or, as applicable, Part I of Schedule 7 (*Form of Notice of Charge – Accounts not with the Lender*) or in such other form as the Lender may reasonably require to each of the counterparties to each Specified Contract to which it is a party and to each bank or financial institution (other than the Lender) in respect of each account of that Chargor opened or maintained with it; and
- 5.6.2 in respect of any other asset which is charged or assigned pursuant to Clause 3 (*Fixed Security*), a notice of charge or, as applicable, assignment in such form as the Lender may reasonably require to the relevant obligor, debtor or other third party (as the case may be).
- 5.7 Each such notice shall be duly signed by or on behalf of the relevant Chargor and that Chargor shall use reasonable endeavours to procure that each of the persons on whom any such notice is served promptly provides to the Lender a duly signed acknowledgement of that notice in the form set out in Part II of Schedule 6 or, as applicable, Part II of Schedule 7 or in such other form in any case as the Lender may reasonably require.

Acknowledgement of Notice

- 5.8 The execution of this Deed by the Chargors and the Lender shall constitute notice to the Lender of the charge created by this Deed over:
- 5.8.1 any account opened or maintained by any Chargor with the Lender; and
- 5.8.2 any Inter-Company Debt.

Deposit of Documents of Title

- 5.9 Each Chargor shall promptly deposit with the Lender (unless already held by its solicitors on behalf of and to the Lender's order or at HM Land Registry for the purpose of registration of the security constituted by this Deed) all deeds, certificates and other documents of title from time to time relating to the Mortgaged Property.

Deposit of Securities

- 5.10 Each Chargor shall, in respect of any Securities which are in certificated form, promptly:
- 5.10.1 deposit with the Lender or as it may direct all stock and share certificates and other documents of title or evidence of ownership from time to time relating to such Securities; and
- 5.10.2 execute and deliver to the Lender all share transfers and other documents as the Lender may from time to time request in order to enable the Lender (or its nominee(s)) to be registered as the owner or otherwise obtain a legal title to or to perfect its security interest in such Securities, to the intent that the Lender may at any time

without notice complete and present such transfers and documents for registration after the Security constituted by this Deed has become enforceable.

- 5.11 Each Chargor shall, in respect of any Securities which are in uncertificated form, promptly upon being requested to do so by the Lender, give or procure the giving of, in accordance with and subject to the facilities and requirements of the relevant system, all instructions necessary to effect a transfer of title to such Securities into an account in the name of the Lender (or its nominee(s)) and to cause the Operator to register on the relevant register of securities the transfer of such title.
- 5.12 For the purposes of Clauses 5.10 and 5.11 above, the expressions “certificated”, “instruction”, “Operator”, “relevant system” and “uncertificated” shall have the meanings given to those terms in the Uncertificated Securities Regulations 2001.

6. FURTHER ASSURANCE

Further Assurance

- 6.1 Each Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender or any Receiver may reasonably specify (and in such form as the Lender or any Receiver may reasonably require in favour of the Lender or its nominee(s)) to:
- 6.1.1 perfect the security created or intended to be created in respect of the Charged Property (which may include the execution by that Chargor of a mortgage, charge, assignment or other Security over all or any of the assets forming part of, or which are intended to form part of, the Charged Property);
 - 6.1.2 confer on the Lender Security over any property and assets of that Chargor located in any jurisdiction equivalent or similar to the security intended to be conferred by or pursuant to this Deed;
 - 6.1.3 facilitate the realisation of the assets which form part of, or are intended to form part of, the Charged Property; and/or
 - 6.1.4 create any charge by way of legal mortgage over any freehold, commonhold or leasehold property which becomes vested in that Chargor after the date of this Deed.

Necessary Action

- 6.2 Each 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 conferred or intended to be conferred on the Lender by or pursuant to this Deed.

Implied Covenants for Title

- 6.3 Each of the mortgages, charges and assignments granted by each Chargor under this Deed are granted with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

7. REPRESENTATIONS

General

- 7.1 Each Chargor makes the representations and warranties set out in this Clause 7 to the Lender on the date of this Deed.

Status

- 7.2 It is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation and it has the power to own its assets and carry on its business as it is being conducted.

Binding Obligations

- 7.3 Subject to the Legal Reservations, the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations and (without limiting the generality of the foregoing) this Deed creates the security which it purports to create and that security is valid and effective.

Power and Authority

- 7.4 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 this Deed.
- 7.5 No limit on its powers will be exceeded as a result of the grant of security contemplated by this Deed.

Creation of Security

- 7.6 This Deed creates or, as applicable, evidences in favour of the Lender the security which it purports to create or evidence with the ranking and priority which it is expressed to have.

Continuing Representations

- 7.7 Each Chargor undertakes with the Lender that the representations and warranties in this Clause 7 are deemed to be made at the same times as the Repeating Representations, in accordance with Clause 20.70 to 20.73 (*Times when Representations Made*) of the Facilities Agreement.

8. UNDERTAKINGS

- 8.1 The undertakings in this Clause 8 remain in force from the date of this Deed for so long as any amount is outstanding under this Deed.

Negative Pledge

- 8.2 No Chargor shall create or extend or permit to arise or subsist any Security (other than any Security constituted by this Deed) over the whole or any part of the Charged Property or enter into any arrangement or transaction as described in Clause 23.19 (*Negative Pledge*) of the Facilities Agreement in respect of any asset forming part of, or intended to form part of, the Charged Property, other than as permitted under the Facilities Agreement or with the prior written consent of the Lender.

Restriction on Disposals

- 8.3 No Chargor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of the whole or any part of the Charged Property, other than any disposal of any Charged Property which is subject only to the floating charge created by Clause 4.1 (*Creation of Floating Charge*) for full consideration in the ordinary and usual course of that Chargor's business as it is presently conducted or as permitted under the Facilities Agreement or this Deed.

Voting Rights and Dividends relating to Securities

- 8.4 At any time before the security constituted by this Deed has become enforceable:
- 8.4.1 each Chargor shall be entitled to exercise all voting and other rights and powers in respect of the Securities provided that no Chargor shall exercise or direct the exercise of any voting or other rights and powers in any manner which would breach the provisions of the Facilities Agreement or would prejudice the value of the Securities or otherwise jeopardise the security constituted by this Deed; and
 - 8.4.2 each Chargor shall pay all dividends, interest and other moneys arising from the Securities in accordance with the Facilities Agreement.
- 8.1 At any time after the security constituted by this Deed has become enforceable, the Lender may at its discretion (in the name of the any Chargor or otherwise and without any further consent or authority from any Chargor):
- 8.1.1 exercise (or refrain from exercising) all voting and other rights and powers in respect of the Securities;
 - 8.1.2 apply all dividends, interest and other moneys arising from the Securities in accordance with Clause 16.1 (*Order of Application*) and, if any of the same are paid or payable to any Chargor, that Chargor shall hold all such dividends, interest and other moneys on trust for the Lender and pay the same immediately to the Lender or as it may direct to be applied in accordance with Clause 16.1;
 - 8.1.3 if not already so transferred, transfer the Securities into the name of, or (as applicable) into an account in the name of, the Lender (or its nominee(s)); and
 - 8.1.4 in addition to any other power created under this Deed, exercise (or refrain from exercising) all the powers and rights conferred on or exercisable by the legal or beneficial owner of the Securities and, except as expressly provided for in the Deed, all the powers and discretions conferred on trustees by the Trustee Act 1925 and the Trustee Act 2000, including, without limitation, the general power of investment set out in Section 3 of the Trustee Act 2000, *provided that* the duty of care set out in Section 1 (1) of the Trustee Act 2000 shall not apply to the exercise of any other power of investment (however conferred) by the Lender (or its nominee(s)) in respect of securities or property subject to a trust.

Calls and Other Obligations in Respect of Securities

- 8.2 Each Chargor shall promptly pay all calls and other payments which may be or become due in respect of all or any part of the Securities and, if it fails to do so, the Lender may elect (but shall not be obliged) to make such payments on behalf of that Chargor. Any sums so paid by the Lender shall be reimbursed by the relevant Chargor to the Lender on demand and shall carry interest at the rate specified in Clause 2.2 (*Interest*) from the date of payment by the Lender until reimbursed (after as well as before any judgment).
- 8.3 Each Chargor shall remain liable to observe and perform all of the other conditions and obligations assumed by it in respect of any of all or any part of the Securities.
- 8.4 Neither the Lender nor its nominee(s) shall be liable to make any payment in respect of any calls or other payments which may be or become due in respect of the Securities or be under any duty to make any enquiry into the nature or sufficiency of any payment received by it in respect of the Securities or to present or file or make any claim, take any action or do any other

act or thing for the purpose of collecting and/or enforcing the payment of any amount to which it may be entitled in respect of the Securities.

- 8.5 Each Chargor shall copy to the Lender and comply with all requests for information which is within its knowledge and which are made under Section 793 of the Companies Act 2006 or any similar provision contained in any articles of association or other constitutional documents relating to all or any part of the Securities and, if it fails to do so, the Lender may elect (but shall not be obliged) to provide such information as it may have on behalf of (and at the expense of) that Chargor.
- 8.6 No Chargor shall, without the prior written consent of the Lender, do or cause or permit to be done anything which shall require any company in which any of the Securities is held to treat any person who is not the registered holder of any of the Securities as entitled to enjoy or exercise any rights of a member in relation to the whole or any part of the Securities, except pursuant to the terms of this Deed.

Book Debts and Other Debts

- 8.7 No Chargor shall at any time deal with its book debts (other than cash received into any bank account) and other debts and monetary claims except by getting in and realising them in the ordinary and usual course of its business and paying all Debt Proceeds into such account as required under the Facilities Agreement.
- 8.8 Each Chargor agrees with the Lender that any moneys received by the Lender under Clause 8.7 above which derive from rental income of that Chargor shall be received by the Lender in its capacity as chargee pursuant to Clause 3.2.7 (*Book debts*) and not in its capacity as mortgagee of any Mortgaged Property.

Bank Accounts

- 8.9 Each Chargor shall promptly deliver to the Lender, on the date of this Deed and, if any change occurs thereafter, on the date of such change, details of each account maintained by it with any bank or financial institution (other than the Lender). Each Chargor undertakes that it shall not, without the Lender's prior written consent, permit or agree to any variation of the rights attaching to any such account or close any such account.
- 8.10 Each Chargor agrees with the Lender that it shall not be entitled to receive, utilise, transfer or withdraw any credit balance from time to time on:
- 8.10.1 any account with any bank or financial institution (other than the Lender),
- 8.10.2 except, in any case, with the prior written consent of the Lender or as permitted under the Facilities Agreement.
- 8.11 At any time after the security constituted by this Deed has become enforceable, no Chargor shall be entitled to receive, utilise, transfer or withdraw any credit balance from time to time on any account except with the prior written consent of the Lender.

Specified Contracts

- 8.12 No Chargor shall make or agree to make any amendments, variations or modifications to the Specified Contracts, unless the same are (i) technical and/or administrative in nature, and (ii) not prejudicial to the interests of the Lender under the Finance Documents, or waive any of its rights under the Specified Contracts, without the prior written consent of the Lender.

Inter-Company Debt

- 8.13 No Chargor shall make or agree to make any amendments, variations or modifications to the Inter-Company Debt, unless the same are (i) technical and/or administrative in nature, and (ii) not prejudicial to the interests of the Lender under the Finance Documents, or waive any of its rights under the Inter-Company Debt, without the prior written consent of the Lender.

Not Jeopardise Security

- 8.14 No Chargor shall do or cause or permit to be done anything which might in any way depreciate, jeopardise or otherwise prejudice the value to the Lender of the security constituted or intended to be constituted by this Deed, except to the extent expressly permitted by the terms of this Deed.

9. ENFORCEMENT OF SECURITY

When Security Becomes Enforceable

- 9.1 The security constituted by this Deed shall become immediately enforceable and the power of sale and other powers conferred by Section 101 of the LPA, as varied or extended by this Deed, shall be immediately exercisable upon and at any time after the occurrence of an Event of Default which is continuing.
- 9.2 After the security constituted by this Deed has become enforceable, the Lender 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 Property.

Right of Appropriation

- 9.3 To the extent that any of the Charged Property constitutes “**financial collateral**” and this Deed and the obligations of any Chargor under this Deed constitute a “**security financial collateral arrangement**” (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (the “**FCA Regulations**”)), the Lender shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any part of such financial collateral in or towards discharge of the Secured Liabilities. For this purpose, the parties agree that the value of such financial collateral shall be (in the case of cash) the amount standing to the credit of each bank account of the relevant Chargor, together with any accrued but unpaid interest, at the time the right of appropriation is exercised and (in the case of Securities) the market price of such Securities determined by reference to a public index or by independent valuation. In each case, the parties agree that the manner of valuation provided for in this Clause 9.3 shall constitute a commercially reasonable manner of valuation for the purposes of the FCA Regulations.

Redemption of Prior Mortgages

- 9.4 The Lender or any Receiver may at any time:
- 9.4.1 redeem any prior Security over any Charged Property; or
 - 9.4.2 procure the transfer of that Security to the Lender; or
 - 9.4.3 settle and pass the accounts of the person or persons entitled to such Security (and any accounts so settled and passed shall be conclusive and binding on the relevant Chargor).

- 9.5 All principal moneys, interest, costs, charges and expenses of and incidental to any such redemption or transfer shall be paid by the relevant Chargor to the Lender and every Receiver on demand and shall be secured by this Deed.

10. EXTENSION AND VARIATION OF THE LPA

General

- 10.1 For the purposes of all powers implied by the LPA, such powers shall arise (and the Secured Liabilities shall be deemed to have become due and payable for that purpose) on the date of this Deed.
- 10.2 Section 103 of the LPA (restricting the power of sale) and Section 93 of the LPA (restricting the right of consolidation) shall not apply to the security constituted by this Deed.
- 10.3 The statutory powers of leasing conferred on the Lender are extended so as to authorise the Lender and any Receiver at any time after the security constituted by this Deed has become enforceable to make any lease or agreement for lease, accept surrenders of leases and/or grant options on such terms as it or he shall think fit, without the need to comply with any restrictions imposed by Sections 99 and 100 of the LPA.

Privileges

- 10.4 Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA on mortgagees and receivers.

11. APPOINTMENT OF RECEIVER AND ADMINISTRATOR

Appointment

- 11.1 At any time after the security constituted by this Deed has become enforceable or any Chargor so requests the Lender in writing (in which case the security constituted by this Deed shall become immediately enforceable), the Lender may without prior notice to any Chargor:
- 11.1.1 appoint free from the restrictions imposed by Section 109(1) of the LPA either under seal or in writing under its hand any one or more persons to be a Receiver of the whole or any part or parts of the Charged Property in like manner in every respect as if the Lender had become entitled under the LPA to exercise the power of sale conferred under the LPA; or
- 11.1.2 appoint one or more persons to be an administrator of any one or more of the Chargors.

Removal

- 11.2 The Lender may by writing under its hand (or by an application to the court where required by law):
- 11.2.1 remove any Receiver appointed by it; and
- 11.2.2 may, whenever it deems it expedient, appoint any one or more persons to be a new Receiver in the place of or in addition to any Receiver.

Statutory Powers of Appointment

- 11.3 The powers of appointment of a Receiver conferred by this Deed shall be in addition to all statutory and other powers of appointment of the Lender under the LPA (as extended by this

Deed) or otherwise and such powers shall be and remain exercisable from time to time by the Lender in respect of any part or parts of the Charged Property.

Capacity of Receiver

- 11.4 Each Receiver shall be deemed to be the agent of the relevant Chargor for all purposes. Each Chargor alone shall be responsible for a Receiver's contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him.
- 11.5 The agency of each Receiver shall continue until the relevant Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.
- 11.6 If there is more than one Receiver holding office at the same time, each Receiver shall (unless the document appointing him states otherwise) be entitled to act (and to exercise all of the powers conferred on a Receiver under this Deed) individually or together with any other person appointed or substituted as Receiver.

Remuneration of Receiver

- 11.7 The Lender may fix the remuneration of any Receiver appointed by it without any restriction imposed by Section 109(6) of the LPA and the remuneration of the Receiver shall be a debt secured by this Deed, which shall be due and payable immediately upon its being paid by the Lender.

12. POWERS OF RECEIVER

General

- 12.1 Each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out below in this Clause 12 in addition to those conferred by law.
- 12.2 Without prejudice to the generality of this Clause 12, each Receiver shall have all the rights, powers and discretions of an administrative receiver under Schedule 1 to the Insolvency Act 1986 whether he falls within the statutory definition of an administrative receiver or not.

Specific Powers

- 12.3 Each Receiver shall have the following powers (and every reference in this Clause 12.3 to the "Charged Property" shall be read as a reference to that part or parts of the Charged Property in respect of which that Receiver was appointed):
 - 12.3.1 power to purchase or acquire land and purchase, acquire or grant any interest in or right over land as he thinks fit;
 - 12.3.2 power to take immediate possession of, get in and collect any Charged Property;
 - 12.3.3 power to carry on the business of any Chargor as he thinks fit;
 - 12.3.4 power (but without any obligation to do so) to:
 - (a) make and effect all repairs, alterations, additions and insurances and do all other acts which any Chargor might do in the ordinary conduct of its business as well for the protection as for the improvement of the Charged Property;
 - (b) commence or complete any building operations on the Charged Property;
 - (c) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence; and

- (d) negotiate for compensation with any authority which may intend to acquire or be in the process of acquiring all or any part of the Charged Property and make objections to any order for the acquisition of all or any part of the Charged Property and represent any Chargor at any enquiry to be held to consider such objections or otherwise relating to any such acquisition,

in each case as he thinks fit;

- 12.3.5 power to appoint and discharge managers, officers, agents, advisers, accountants, servants, workmen, contractors, surveyors, architects, lawyers and others for the purposes of this Deed upon such terms as to remuneration or otherwise as he thinks fit and power to discharge any such persons appointed by any Chargor (and the costs incurred by any Receiver in carrying out such acts or doing such things shall be reimbursed to that Receiver by the relevant Chargor on demand and until so reimbursed shall carry interest at the rate specified in Clause 2.2 (*Interest*) from the date of payment by the Receiver until reimbursed (after as well as before any judgment));
- 12.3.6 power to raise and borrow money either unsecured or (with the prior consent of the Lender) on the security of any Charged Property either in priority to the security constituted by this Deed or otherwise and generally on any terms and for whatever purpose he thinks fit;
- 12.3.7 power to sell, exchange, convert into money and realise any Charged Property by public auction or private contract and generally in any manner and on any terms as he thinks fit;
- 12.3.8 power to sever and sell separately any fixtures from the property containing them without the consent of any Chargor;
- 12.3.9 power to let any Charged Property for any term and at any rent (with or without a premium) as he thinks fit and power to accept a surrender of any lease or tenancy of any Charged Property on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender);
- 12.3.10 power to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of any Chargor or relating in any way to any Charged Property;
- 12.3.11 power to bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any Charged Property or in relation to any Chargor which may seem to him to be expedient;
- 12.3.12 power to give valid receipts for all moneys and execute all assurances and things which may be proper for realising any Charged Property;
- 12.3.13 power to form a subsidiary of any Chargor and transfer to that subsidiary any Charged Property;
- 12.3.14 power to do all such acts as may seem to him to be necessary in order to initiate or continue any development of any Charged Property and for these purposes to appoint and to enter into such contracts with such building and engineering contractors or other contractors and professional advisers as he may think fit;

- 12.3.15 power to call any meeting of the members or directors of any Chargor in order to consider such resolutions or other business as he thinks fit;
- 12.3.16 power to exercise in relation to any Charged Property all the powers and rights which he would be capable of exercising if he were the absolute beneficial owner of the same;
- 12.3.17 power to do all other acts and things which he may consider necessary for realising any Charged Property or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed; and
- 12.3.18 power to exercise any of the above powers in the name of or on behalf of the relevant Chargor or in his own name and, in each case, at the cost of that Chargor.

Lender's Powers

- 12.4 To the fullest extent permitted by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) upon a Receiver may after the security constituted by this Deed has become enforceable be exercised by the Lender in relation to any Charged Property, irrespective of whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

13. DISCRETIONS AND DELEGATION

Discretion

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

Delegation

- 13.2 Each of the Lender and 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).
- 13.3 Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Lender or any Receiver (as the case may be) shall think fit.
- 13.4 Neither the Lender nor any Receiver shall be in any way liable or responsible to any Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate (other than a loss or liability arising from such party's gross negligence or wilful misconduct).

14. POWER OF ATTORNEY

Appointment and Powers

- 14.1 Each Chargor, by way of security, irrevocably appoints the Lender, every Receiver and every Delegate severally and independently to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which any Chargor is required to execute, deliver, perfect, and do under this Deed but has failed to do in order to carry out any obligation imposed on any Chargor by this Deed.
- 14.2 The power of attorney in Clause 14.1 above shall be effective immediately but only exercisable after the security constituted by this Deed has become enforceable.

Ratification

- 14.3 Each Chargor shall ratify and confirm whatever any attorney does or purports to do pursuant to its appointment under Clause 14.1 (*Appointment and Powers*).

15. PROTECTION OF PURCHASERS

Consideration

- 15.1 The receipt of the Lender 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 Property (including a disposal by a Receiver or Delegate to any subsidiary of any Chargor) or in making any acquisition in the exercise of their respective powers, the Lender, every Receiver and every Delegate may do so for such consideration, in such manner and on such terms as it or he thinks fit.

Protection of Third Parties

- 15.2 No person (including a purchaser) dealing with the Lender, any Receiver or any Delegate shall be bound to enquire:
- 15.2.1 whether the Secured Liabilities have become payable; or
 - 15.2.2 whether any power which the Lender or any Receiver or Delegate is purporting to exercise has arisen or become exercisable; or
 - 15.2.3 whether any money remains due under the Finance Documents; or
 - 15.2.4 how any money paid to the Lender or to any Receiver or Delegate is to be applied,
- or shall be concerned with any propriety, regularity or purpose on the part of the Lender or any Receiver or Delegate in such dealings or in the exercise of any such power.

16. APPLICATION OF PROCEEDS

Order of Application

- 16.1 All moneys received or recovered by the Lender, any Receiver or any 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 thereto and by way of variation of the provisions of the LPA) be applied in the following order (but without prejudice to the right of the Lender to recover any shortfall from any Chargor):
- 16.1.1 in or towards payment of all costs, losses, liabilities and expenses of and incidental to the appointment of any Receiver or Delegate and the exercise of any of his rights and powers, including his remuneration, and all outgoings paid by him;
 - 16.1.2 in or towards payment of all other Secured Liabilities or such part of them as is then due and payable to the Lender in accordance with the order of application set out in Clause 29.5 (*Partial Payments*) of the Facilities Agreement; and
 - 16.1.3 in payment of the surplus (if any) to any Chargor or other person entitled to it.
- 16.2 Clause 16.1 (*Order of Application*) will override any appropriation made by any Chargor.

New Accounts

- 16.3 If the Lender at any time receives, or is deemed to have received, notice of any subsequent Security or other interest affecting any Charged Property, the Lender may open a new account with any Chargor.
- 16.4 If the Lender does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received, or was deemed to have received, such notice. As from that time all payments made by or on behalf of any Chargor to the Lender shall be credited or be treated as having been credited to the new account of that Chargor and not as having been applied in reduction of the Secured Liabilities.

Currency Conversion

- 16.5 For the purpose of or pending the discharge of any of the Secured Liabilities, the Lender may (in its absolute discretion) convert any moneys received or recovered by the Lender or any Receiver or Delegate pursuant to this Deed or any moneys subject to application by the Lender or any Receiver or Delegate pursuant to this Deed from one currency to another and any such conversion shall be made at the Lender's spot rate of exchange for the time being for obtaining such other currency with the first currency and the Secured Liabilities shall be discharged only to the extent of the net proceeds of such conversion realised by the Lender. Nothing in this Deed shall require the Lender to make, or shall impose any duty of care on the Lender in respect of, any such currency conversion.

17. NO LIABILITY AS MORTGAGEE IN POSSESSION

- 17.1 Neither the Lender nor any Receiver or Delegate shall in any circumstances (either by reason of entering into or taking possession of any Charged Property or for any other reason and whether as mortgagee in possession or on any other basis) be liable to account to any Chargor for anything, except actual receipts, or be liable to any Chargor for any costs, charges, losses, liabilities or expenses arising from the realisation of any Charged Property or from any act, default or omission of the Lender, any Receiver, any Delegate or any of their respective officers, agents or employees in relation to the Charged Property or from any exercise or purported exercise or non-exercise by the Lender or any Receiver or Delegate of any power, authority or discretion provided by or pursuant to this Deed or by law or for any other loss of any nature whatsoever in connection with the Charged Property or the Finance Documents.

18. SET-OFF

Without limiting any other rights conferred on the Lender by law or by any other agreements entered into with any Chargor, the Lender may (but shall not be obliged to) set off any matured obligation due from any Chargor under this Deed (to the extent beneficially owned by the Lender) 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.

19. EFFECTIVENESS OF SECURITY

Continuing Security

- 19.1 The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, unless and until discharged by the Lender, and will extend

to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

Cumulative Rights

- 19.2 The security constituted by this Deed and all rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law shall be cumulative and in addition to, and independent of, any other guarantee or Security now or subsequently held by the Lender for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior Security held by the Lender over the whole or any part of the Charged Property shall be superseded by, or supersede or merge into, the security constituted by this Deed.

Reinstatement

- 19.3 If any discharge, release or arrangement (whether in respect of the obligations of the Parent or another Chargor or any Security for those obligations or otherwise) is made by the Lender in whole or in part on the faith of any payment, Security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Chargor under, the security constituted by this Deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- 19.4 The Lender may concede or compromise any claim that any payment or any discharge is liable to avoidance or restoration.

Waiver of Defences

- 19.5 Neither the obligations of any Chargor under this Deed nor the security constituted by this Deed nor the rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law will be affected by an act, omission, matter or thing which, but for this Clause 19.5, would reduce, release or prejudice any of its obligations under this Deed, any of that security or any of those rights, powers and remedies (without limitation and whether or not known to it or the Lender) including:
- 19.5.1 any time, waiver or consent granted to, or composition with, the Parent or another Chargor or any other person;
 - 19.5.2 the release of any person under the terms of any composition or arrangement with any creditor of any person;
 - 19.5.3 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, the Parent or another Chargor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
 - 19.5.4 any incapacity or lack of power, authority or legal personality of, or dissolution or change in the members or status of, the Parent or another Chargor or any other person;
 - 19.5.5 any variation, amendment, novation, supplement, extension (whether of maturity or otherwise), substitution, restatement (in each case, however fundamental and of whatsoever nature and whether or not more onerous) or replacement of any Finance Document or any other document or Security including without limitation any change in the purpose of, any extension of or any increase in, any facility or the addition of any new facility under any Finance Document or other document or Security;

19.5.6 any unenforceability, illegality or invalidity of any obligation of the Parent or another Chargor or any other person under any Finance Document or any other document or Security; or

19.5.7 any insolvency or similar proceedings.

Immediate Recourse

19.6 Each Chargor waives any right it may have of first requiring the Lender to proceed against or enforce any other rights or Security or claim payment from any person or file any proof or claim in any insolvency, administration, winding up or liquidation proceedings relating to any person before claiming from it under this Deed. This waiver applies irrespective of any law or any provision of any Finance Document to the contrary.

Appropriations

19.7 Until all the Secured Liabilities which may be or become payable by the Chargors under or in connection with this Deed have been irrevocably paid, performed and discharged in full, the Lender may:

19.7.1 without affecting the liability of any Chargor under this Deed:

(a) refrain from applying or enforcing any other moneys, Security or rights held or received by it in respect of the Secured Liabilities; or

(b) apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and no Chargor shall be entitled to direct the appropriation of any such moneys, Security or rights or to enjoy the benefit of the same; and/or

19.7.2 hold in a suspense account any moneys received from any Chargor or on account of any Chargor's liability in respect of the Secured Liabilities. Amounts standing to the credit of any such suspense account shall bear interest at a rate considered by the Lender to be a fair market rate.

Deferral of Chargor's Rights

19.8 Until the Secured Liabilities, and all amounts which may be or become payable by the Chargors under or in connection with the Finance Documents (including this Deed) have been irrevocably paid in full and unless the Lender otherwise directs, no Chargor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents (including this Deed) or by reason of any amount being payable, or liability arising, under this Clause 19 to:

19.8.1 be indemnified by a Chargor;

19.8.2 claim any contribution from any other guarantor of any Chargor's obligations under the Finance Documents;

19.8.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender;

19.8.4 bring legal or other proceedings for an order requiring any Chargor to make any payment, or perform any obligation, in respect of which any Chargor has given a guarantee, undertaking or indemnity under any of the Finance Documents;

- 19.8.5 exercise any right of set-off against any Chargor; and/or
- 19.8.6 claim or prove as a creditor of any Chargor in competition with the Lender.
- 19.9 If a Chargor receives any benefit, payment or distribution in relation to any rights referred to in Clause 19.8 above, it shall hold that benefit, payment or distribution to the extent necessary to enable all the Secured Liabilities, and all amounts which may be or become payable to the Lender by the Chargors under or in connection with the Finance Documents to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application in accordance with Clause 16 (*Order of Application*).
- 20. CERTIFICATES AND DETERMINATIONS**
- 20.1 Any certificate 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. PARTIAL INVALIDITY**
- 21.1 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 of this Deed nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired and, if any part of the security constituted, or intended to be constituted, by this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.
- 22. REMEDIES AND WAIVERS**
- 22.1 No failure to exercise, nor any delay in exercising, on the part of the Lender, any right, remedy or power under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right, remedy or power prevent any further or other exercise or the exercise of any other right, remedy or power. The rights, remedies and powers provided in this Deed are cumulative and not exclusive of any rights, remedies or powers provided by law.
- 22.2 Any amendment, waiver or consent by the Lender under this Deed must be in writing and may be given subject to any conditions thought fit by the Lender. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.
- 23. NOTICES**
- Communications in writing*
- 23.1 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.
- Addresses*
- 23.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Chargor and the Lender for any communication or document to be made or delivered under or in connection with this Deed is:
- 23.2.1 in the case of any Chargor, that identified with its name in Schedule 1 (*The Chargors*);
and
- 23.2.2 in the case of the Lender, that identified with its signature below,

or any substitute address, fax number or department or officer as any Chargor may notify to the Lender (or the Lender may notify to the Chargors, if a change is made by the Lender) by not less than five Business Days' notice.

Delivery

- 23.3 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:
- 23.3.1 if by way of fax, when received in legible form; or
- 23.3.2 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,
- 23.3.3 and, if a particular department or officer is specified as part of its address details provided under Clause 23.2 (*Addresses*), if addressed to that department or officer.
- 23.4 Any communication or document to be made or delivered to the Lender will be effective only when actually received by it and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as it shall specify for this purpose).

English Language

- 23.5 Any notice or communication given or made under or in connection with this Deed must be in English.
- 23.6 All other documents provided under or in connection with this Deed must be:
- 23.6.1 in English; or
- 23.6.2 if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

24. COUNTERPARTS

- 24.1 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. Delivery of an electronic counterpart of this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

25. ASSIGNMENT

- 25.1 The Lender may assign, charge or transfer all or any of its rights under this Deed without the consent of any Chargor. The Lender may disclose any information about any Chargor and this Deed as the Lender shall consider appropriate to any actual or proposed direct or indirect successor or to any person to whom information is required to be disclosed by any applicable law or regulation.

26. RELEASES

- 26.1 Upon the expiry of the Liability Period (but not otherwise) and subject to Clauses 19.3 and 19.4 (*Reinstatement*), the Lender shall, at the request and cost of the relevant Chargor, take whatever action is necessary to release the Charged Property of that Chargor from the security constituted by this Deed.

27. GOVERNING LAW

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

28. ENFORCEMENT

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 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”).

28.2 Each Chargor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary or take proceedings relating to a Dispute in any other courts.

28.3 Clauses 28.1 and 28.2 above are 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.

Service of Process

28.4 Without prejudice to any other mode of service allowed under any relevant law, each Chargor (other than a Chargor incorporated in England and Wales):

28.4.1 irrevocably appoints Sunfleur Limited, whose address for service is c/o Patron Capital Partners, One Vine Street, One Vine Street, London, W1J 0AH as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed (and by its execution of this Deed accepts that appointment); and

28.4.2 agrees that failure by an agent for service of process to notify the relevant Chargor of the process will not invalidate the proceedings concerned.

28.5 If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the relevant Chargor must immediately (and in any event within five (5) days of such event taking place) appoint another agent on terms acceptable to the Lender. Failing this, the Lender may appoint another agent for this purpose.

Waiver of Immunity

28.6 To the extent that any of the Chargors may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), that Chargor irrevocably agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of that jurisdiction.

IN WITNESS of which this Deed has been entered into as a deed and is intended to be and is delivered on the day and year first before written.

**SCHEDULE 1
THE CHARGORS**

Name of Chargor	Registration number (or equivalent, if any)	Jurisdiction of Incorporation
Badby Properties (Darlington) S.à.r.l.	B 211.134	Luxembourg
Darlington Neurological Care Centre Ltd	10532297	England and Wales

**SCHEDULE 2
REAL PROPERTY**

**Part 1
Registered Land**

**(Freehold, commonhold or leasehold property (if any) in England and Wales of which the relevant
Chargor is registered as the proprietor at the Land Registry)**

None

**Part 2
Unregistered Land**

**(Freehold or leasehold property (if any) in England and Wales title to which is not registered at the
Land Registry of which the relevant Chargor is the owner)**

None.

SCHEDULE 3
INTELLECTUAL PROPERTY

None.

**SCHEDULE 4
SECURITIES**

**Part I
Shares**

None.

**Part II
Other Securities**

None.

SCHEDULE 5
SPECIFIED CONTRACTS

Name of Chargor	Description

SCHEDULE 6

FORM OF NOTICE OF CHARGE – SPECIFIED CONTRACTS

Part I

Form of Notice

To: [Name of relevant counterparty to Specified Contract]

Address: [] [Date]

Dear Sirs

The Royal Bank of Scotland plc (the “**Lender**”) and [insert name of relevant Chargor] (the “**Company**”) HEREBY GIVE NOTICE that by a charge contained in a mortgage debenture dated [•] and made between, inter alios, the Company and the Lender (the “**Debenture**”) the Company charged to the Lender by way of first fixed charge all of its present and future right, title and interest in and to the following agreement:

[describe agreement]

(the “**Agreement**”) including, but not limited to, the right to demand and receive all moneys whatsoever payable to or for the benefit of the Company under or arising from the Agreement, all remedies provided for in the Agreement or available at law or in equity in relation to the Agreement, the right to compel performance of the Agreement and all other rights, interests and benefits whatsoever accruing to or for the benefit of the Company arising from the Agreement.

All moneys payable by you to the Company pursuant to the Agreement shall be paid to the Company’s account (account number [insert account number], sort code [insert sort code] and account reference “[insert account name]”) with the Lender unless and until you receive notice from the Lender to the contrary, in which event you should make all future payments as directed by the Lender.

Notwithstanding the charge referred to above or the making of any payment by you to the Lender pursuant to it, the Company shall remain liable under the Agreement to perform all the obligations assumed by it under the Agreement and neither the Lender nor any receiver nor any delegate appointed by the Lender or any such receiver shall be at any time under any obligation or liability to you under or in respect of the Agreement. The Company shall also remain entitled to exercise all its rights, powers and discretions under the Agreement and you should continue to give notices under the Agreement to the Company in each case unless and until you receive notice from the Lender to the contrary when all such rights, powers and discretions shall be exercisable by, and notices shall be given to, the Lender or as it directs.

Please note that, pursuant to the Debenture, the Company and the Lender have agreed that the Company will not make or agree to make any amendments, variations or modifications to the Agreement or waive any of its rights under the Agreement, without the prior written consent of the Lender [or except as expressly permitted by the terms of the Debenture].

The Company confirms that:

- (i) in the event of any conflict between communications received from it and from the Lender, the communication from the Lender shall prevail;
- (ii) none of the instructions, authorisations or confirmations in this Notice of Charge (the “**Notice**”) can be revoked or varied in any way except with the Lender’s specific written consent; and

- (iii) any written notice or instructions given to you by the Lender in accordance with this Notice shall be conclusive.

Kindly acknowledge receipt of this Notice and confirm your agreement to it by signing the enclosed form of acknowledgement and returning it to the Lender at 280 Bishopsgate, London, United Kingdom, EC2M 4RB for the attention of Catherine Dever.

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

Yours faithfully,

for and on behalf of

[insert name of relevant Chargor]

for and on behalf of

The Royal Bank of Scotland plc

Part II
Form of Acknowledgement
[on duplicate]

To: The Royal Bank of Scotland plc
Address: 280 Bishopsgate, London, United Kingdom, EC2M 4RB
Attention: Catherine Dever

[Date]

Dear Sirs

We acknowledge receipt of the Notice of Charge of which this is a copy. Terms and expressions defined in that Notice shall have the same meanings when used in this acknowledgment. We give any consent to the creation of the charge required pursuant to the Agreement and agree to and confirm that:

- (a) we will pay all moneys hereafter becoming due to the Company in respect of the Agreement as directed in the Notice and accept and will comply with the terms of the Notice;
- (b) we will send to you copies of any notices which we may give to the Company under the Agreement at the same time as we send them to the Company;
- (c) we shall not exercise or seek to exercise any right which we may have to terminate or treat as terminated the Agreement without first giving to you by registered or recorded delivery post not less than [20] working days' prior written notice specifying our grounds for terminating or treating as terminated the Agreement and further that we shall not terminate the Agreement nor treat the same as terminated if:
 - (i) any breach giving rise to the right to terminate the Agreement is remedied before the expiration of [20] working days from such notice; or
 - (ii) prior to the expiry of such period, you have agreed to execute or procure the execution of, and you call upon us to execute, a novation agreement (in form and substance acceptable to you) by which you[, a receiver appointed by you under the Debenture] or another person nominated by you and approved by us (such approval not to be unreasonably withheld or delayed) assume(s) the rights and obligations of the Company under the Agreement (but giving credit to you[, such receiver] or such other person for moneys already paid and obligations already performed by or on behalf of the Company pursuant to the Agreement) and we agree and confirm that on being called upon to execute any such novation agreement we shall promptly execute the same;
- (d) we shall provide to you promptly on request any documents or other relevant information which you[, such receiver] or such other person may from time to time require in order to perform the obligations of the Company;
- (e) if you should serve on us a notice in writing stating that the Company is in breach of an obligation on its part under or in connection with the Debenture, we shall:
 - (i) permit you to exercise all or any of the rights of the Company under the Agreement for so long as you shall require. Such notice in writing shall be binding and conclusive upon us; and/or

- (ii) enter into a novation agreement (in form and substance acceptable to you) by which you[, a receiver appointed by you under the Debenture] or another person nominated by you and approved by us (such approval not to be unreasonably withheld or delayed) assume(s) the rights and obligations of the Company under the Agreement (but giving credit to you[, such receiver] or such other person for moneys already paid and obligations already performed by or on behalf of the Company pursuant to the Agreement) and we agree and confirm that on being called upon to execute any such novation agreement we shall promptly execute the same;
- (f) we have not received notice of any other charge, assignment or other third party right or interest whatsoever in, of, over, or affecting, the Agreement or any other notice relating to the Agreement; and
- (g) this acknowledgement is freely assignable or transferable by you, by any subsequent assignee, transferee or successor in title in accordance with the terms of the Agreement (“**Subsequent Party**”) and by any receiver appointed by you or by any Subsequent Party pursuant to the Debenture.

Yours faithfully

.....
for and on behalf of
[Name of relevant counterparty to Specified Contract]

SCHEDULE 7
FORM OF NOTICE OF CHARGE – ACCOUNTS NOT WITH THE LENDER

Part I
Form of Notice

To: [Name of relevant bank or financial institution]

Address: [] [Date]

Dear Sirs

The Royal Bank of Scotland plc (the “**Lender**”) and [insert name of relevant Chargor] (the “**Company**”) HEREBY GIVE NOTICE that by a charge contained in a mortgage debenture dated [•] and made between, inter alios, the Company and the Lender (the “**Debenture**”) the Company charged to the Lender by way of first fixed charge all of its present and future right, title and interest in and to all moneys from time to time deposited in or standing to the credit of any bank account with any bank or financial institution, including the following account(s) (each a “**Relevant Account**”) maintained with you:

[Specify accounts: account name, account number, details of branch etc].

Accordingly, the Company hereby irrevocably and unconditionally instructs and authorises you:

- (a) to disclose to the Lender, without any reference to or further authority from the Company and without any enquiry by you as to the justification for such disclosure, such information relating to any of the Relevant Accounts and the moneys from time to time deposited in or standing to the credit of any of the Relevant Accounts as the Lender may at any time and from time to time request you to disclose to it;
- [(b) not to permit any withdrawal by the Company of all or any part of the moneys from time to time deposited in or standing to the credit of any of the Relevant Accounts without the prior written consent of the Lender [or except as expressly permitted by the terms of the Debenture];]
- (c) to hold all moneys from time to time deposited in or standing to the credit of any of the Relevant Accounts to the order of the Lender and to pay or release all or any part of such moneys in accordance with the written instructions of the Lender at any time and from time to time; and
- (d) to comply with the terms of any other written notice or instructions that you receive at any time and from time to time from the Lender in any way relating to the Debenture, any of the Relevant Accounts or the moneys from time to time deposited in or standing to the credit of any of the Relevant Accounts without any reference to or further authority from the Company and without any enquiry by you as to the justification for or validity of such notice or instructions.

[The Lender has agreed that the Company may withdraw any moneys from any of the Relevant Accounts without any reference to or further authority from the Lender except to the extent that the Lender gives you notice to the contrary. Upon and after the giving of such notice, the Company shall cease to be entitled to make any such withdrawal to the extent specified in the notice.]

The Company confirms that:

- (i) in the event of any conflict between communications received from it and from the Lender, the communication from the Lender shall prevail;
- (ii) none of the instructions, authorisations or confirmations in this Notice of Charge (the “**Notice**”) can be revoked or varied in any way except with the Lender’s specific written consent; and

- (iii) any written notice or instructions given to you by the Lender in accordance with this Notice shall be conclusive.

Kindly acknowledge receipt of this Notice and confirm your agreement to it by signing the enclosed form of acknowledgement and returning it to the Lender at 280 Bishopsgate, London, United Kingdom, EC2M 4RB for the attention of Catherine Dever.

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

Yours faithfully,

for and on behalf of

[insert name of relevant *Chargor*]

for and on behalf of

The Royal Bank of Scotland plc

Part II
Form of Acknowledgement

[on duplicate]

To: The Royal Bank of Scotland plc
Address: 280 Bishopsgate, London, United Kingdom, EC2M 4RB
Attention: Catherine Dever

[Date]

Dear Sirs

We acknowledge receipt of the Notice of Charge of which this is a copy. Terms and expressions defined in that Notice shall have the same meanings when used in this acknowledgment. We agree to and confirm the following:

- (a) we accept and will comply with the terms of the Notice;
- (b) we have not received notice of any other charge, assignment or other third party right or interest whatsoever in, of, over or affecting any of the Relevant Accounts;
- (c) we have not claimed or exercised and will not claim or exercise (except with the Lender's prior written consent) any security interest, right of set-off, consolidation or counterclaim or any other right against or in respect of any of the Relevant Accounts, except in respect of our usual administrative and transactional fees and charges in relation to the Relevant Account in question; and
- (d) we shall not permit the Company to make any withdrawal from any of the Relevant Accounts without the prior written consent of the Lender or except as expressly permitted by the terms of the Debenture.

Yours faithfully

.....
for and on behalf of
[name of relevant bank or financial institution]

THE LENDER

Executed as a deed by
THE ROYAL BANK OF SCOTLAND PLC

on being signed by:

.....Neil Parry.....
in the presence of:

.....
Authorised Signatory

Signature of witness:

Name:

.....THOMAS HATTON.....

Address:

.....3rd Floor, Argyle House
Rampart Street, W1B 3PB.....

Occupation:

.....BANKER.....

EXECUTION PAGE

THE CHARGORS

Executed as a deed by)
BADBY PROPERTIES)
(DARLINGTON) S.À R.L.)
on being signed by:)
..... **Géraldine Schmit**)
..... **Manager.**



Manager

Executed as a deed by
DARLINGTON NEUROLOGICAL CARE)
CENTRE LTD

)
on being signed by:)
) **Director**

.....
in the presence of:

Signature of witness:

Name:

Address:

Occupation:

EXECUTION PAGE

THE CHARGORS

Executed as a deed by)
BADBY PROPERTIES)
(DARLINGTON) S.À R.L.)
on being signed by:)
) Manager

Executed as a deed by
DARLINGTON NEUROLOGICAL CARE)
CENTRE LTD

on being signed by:)
)
) Director

DANIEL KAY
.....
in the presence of:

Signature of witness:

Name: TIMOTHY SALISBURY

Address: ONE VINE STREET

LONDON, W.1J 0AH

Occupation: COMPANY OFFICER