



**Registration of a Charge**

Company name: **SMARTCALL RECRUITMENT (MIDLANDS) LIMITED**

Company number: **11156530**



X704HEQ3

Received for Electronic Filing: **19/02/2018**

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**Details of Charge**

Date of creation: **19/02/2018**

Charge code: **1115 6530 0001**

Persons entitled: **QUBA SOLUTIONS LIMITED**

Brief description:

**Contains fixed charge(s).**

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **PAUL TONKS ACA**



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

Company number: 11156530

Charge code: 1115 6530 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th February 2018 and created by SMARTCALL RECRUITMENT (MIDLANDS) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th February 2018 .

Given at Companies House, Cardiff on 21st February 2018

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

We hereby certify that this is a true and correct copy of the original	
Dated	19/02/2018
Name	PAUL TONKS
for and on behalf of Quba Solutions Limited of 1 Widcombe Street Dorchester DT1 3BS	

THIS DEED is dated 19/02/2018

## PARTIES

- (3) SMARTCALL RECRUITMENT (MIDLANDS) LTD incorporated and registered in England and Wales with company number 11156530 whose registered office is at KEMP HOUSE, 160 CITY ROAD, LONDON, EC1V 2NX (Employment Business).
- (4) QUBA SOLUTIONS LIMITED incorporated and registered in England and Wales with company number 7907578 whose registered office is at 1 WIDCOMBE STREET, POUNDBURY, DORCHESTER, DORSET DT1 3BS (Quba).

## BACKGROUND

- (D) Quba has agreed, pursuant to the Recruitment Support Services Agreement, to provide the Employment Business with recruitment support services on a secured basis.
- (E) Under this deed, the Employment Business provides security to Quba for the facilities made available under the Recruitment Support Services Agreement.

## AGREED TERMS

### 1. Definitions and interpretation

#### 1.1 The following definitions apply in this deed:

**Administrator:** an administrator appointed to manage the affairs, business and property of the Employment Business pursuant to clause 8.12.

**Book Debts:** all present and future book and other debts, and monetary claims due or owing to the Employment Business excluding any already book debts validly assigned to Quba under the Recruitment Support Services Agreement;

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Delegate:** any person appointed by Quba or any Receiver pursuant to clause 13 and any person appointed as attorney of Quba, the Receiver or the Delegate.

**Equipment:** all present and future equipment, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Employment Business, including any part of it and all spare parts, replacements, modifications and additions.

**Event of Default:** has the meaning given to that expression in the Recruitment Support Services Agreement.

**Insurance Policy:** each contract and policy of insurance effected or maintained by the Employment Business from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the Properties or the Equipment).

**Intellectual Property:** the Employment Business's present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights.

**Investments:** all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by the Employment Business, including any:

- (a) dividend, interest or other distribution paid or payable in relation to any of the Investments; and
- (b) right, money, shares or property accruing, offered or issued at any time in relation to any of the Investments by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise.

**LPA 1925:** Law of Property Act 1925.

**Properties:** all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Employment Business, or in which the Employment Business holds an interest, and **Property** means any of them.

**Receiver:** a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by Quba under clause 11.

**Recruitment Support Services Agreement:** the agreement dated 19/02/2018 between the Employment Business and Quba for the provision of recruitment support services secured by this deed.

**Secured Assets:** all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them).

**Secured Liabilities:** all present and future monies, obligations and liabilities of the Employment Business to Quba, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Recruitment Support Services Agreement or this deed (including, without limitation, those arising under clause 25.3(b)), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

**Security:** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**Security Period:** the period starting on the date of this deed and ending on the date on which Quba 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.

## 1.2 In this Deed:

- (a) clause and Schedule headings shall not affect the interpretation of this deed;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees;

- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes fax but not email;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed
- (l) any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- (n) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (q) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- (r) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
- (s) any term which is not defined in this deed shall have the meaning set out in the Recruitment Support Services agreement.

1.3 If Quba considers that an amount paid by the Employment Business in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Employment Business or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

1.4 A reference in this deed to a charge or mortgage of or over any Property includes:

- (a) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time;
- (b) the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property;

- (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Employment Business in respect of that Property, and any monies paid or payable in respect of those covenants; and
- (d) all rights under any licence, agreement for sale or agreement for lease in respect of that Property.

1.5 For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Recruitment Support Services Agreement and of any side letters between any parties in relation to the Recruitment Support Services Agreement are incorporated into this deed.

## 2. Covenant to pay

The Employment Business shall, on demand, pay to Quba and discharge the Secured Liabilities when they become due.

## 3. Grant of security

3.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Employment Business with full title guarantee charges to Quba by way of first fixed charge:

- (a) all Properties acquired by the Employment Business in the future;
- (b) all present and future interests of the Employment Business not effectively mortgaged or charged under the preceding provisions of this clause 3 in, or over, freehold or leasehold property;
- (c) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;
- (d) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Employment Business's business or the use of any Secured Asset, and all rights in connection with them;
- (e) all its present and future goodwill;
- (f) all its uncalled capital;
- (g) all the Equipment;
- (h) all the Intellectual Property;
- (i) all the Book Debts;
- (j) all the Investments;
- (k) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person, together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest); and
- (l) all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy.

3.2 As a continuing security for the payment and discharge of the Secured Liabilities, the Employment Business with full title guarantee charges to Quba, by way of first floating charge, all the undertaking, property, assets and rights of the Employment Business at any time not effectively mortgaged, charged or assigned pursuant to clause 3.1.

3.3 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.2.

3.4 The floating charge created by clause 3.2 shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:

- (a) the Employment Business:
  - (i) *creates, or attempts to create, without the prior written consent of Quba, a Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this deed or the Recruitment Support Services Agreement); or*
  - (ii) *disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);*
- (b) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or
- (c) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Employment Business.

3.5 Quba may, in its sole discretion, at any time and by written notice to the Employment Business, convert the floating charge created under this deed into a fixed charge as regards any part of the Secured Assets specified by Quba in that notice.

3.6 Any asset acquired by the Employment Business after any crystallisation of the floating charge created under this deed that, but for that crystallisation, would be subject to a floating charge under this deed, shall (unless Quba confirms otherwise to the Employment Business in writing) be charged to Quba by way of first fixed charge.

## 4. Liability of the Employment Business

4.1 The Employment Business's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, Quba that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) Quba renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Employment Business.

4.2 The Employment Business waives any right it may have to require Quba to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Employment Business.

## 5. Representations and warranties

5.1 The Employment Business makes the following representations and warranties to Quba:

- (a) The Employment Business is the sole legal and beneficial owner of the Secured Assets.
- (b) The Secured Assets are free from any Security other than the Security created by this deed.

- (c) The Employment Business has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.
- (d) There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.
- (e) There is no breach of any law or regulation that materially and adversely affects the Secured Assets.
- (f) Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.
- (g) 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 Employment Business or otherwise.
- (h) This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Employment Business, and is, and will continue to be, effective security over all and every part of the Secured Assets in accordance with its terms.
- (i) The Investments are fully paid and are not subject to any option to purchase or similar rights and
  - (i) *No constitutional document of an issuer of an Investment, nor any other agreement:*
    - (A) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this deed; or
    - (B) contains any rights of pre-emption in relation to the Investments.

5.2 The representations and warranties set out in clause 5.1(a) to clause 5.1(i) are made by the Employment Business on the date of this deed 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.

## 6. General covenants

6.1 The Employment Business shall not at any time, except with the prior written consent of Quba:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this deed;
- (b) 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 Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or
- (c) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

6.2 The Employment Business shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by Quba, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this deed.

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

6.4 The Employment Business shall not use or permit the Secured Assets to be used in any way contrary to law.

6.5 The Employment Business shall:



- (a) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;
- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
- (c) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

6.6 The Employment Business shall use its best endeavours to:

- (a) procure the prompt observance and performance of the covenants and other obligations imposed on the Employment Business's counterparties; and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that Quba may require from time to time.

6.7 The Employment Business shall, promptly on becoming aware of any of the same, notify Quba in writing of:

- (a) any representation or warranty set out in clause 5 which 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.

## 7. Intellectual Property covenants

7.1 The Employment Business shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including (without limitation) by observing all covenants and stipulations relating to those rights, and by paying all applicable renewal fees, licence fees and other outgoings.

7.2 The Employment Business shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.

## 8. Powers of Quba

8.1 Quba shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Employment Business of any of its obligations contained in this deed.

8.2 The Employment Business irrevocably authorises Quba and its agents to do all things that are necessary or desirable for that purpose.

8.3 Any monies expended by Quba in remedying a breach by the Employment Business of its obligations contained in this deed shall be reimbursed by the Employment Business to Quba on a full indemnity basis and shall carry interest in accordance with clause 15.1.

8.4 The rights of Quba under clause 8.1 are without prejudice to any other rights of Quba under this deed.

8.5 The exercise of any rights of Quba under this deed shall not make Quba liable to account as a mortgagee in possession.

- 8.6 At any time after the security constituted by this deed has become enforceable, Quba or any Receiver may, as agent for the Employment Business, dispose of any chattels or produce found on any Property.
- 8.7 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 8.6, the Employment Business shall indemnify Quba and any Receiver against any liability arising from any disposal made under clause 8.6.
- 8.8 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 Quba in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.
- 8.9 If Quba receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, Quba may open a new account for the Employment Business in Quba's books. Without prejudice to Quba's right to combine accounts, no money paid to the credit of the Employment Business in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- 8.10 If Quba does not open a new account immediately on receipt of the notice, or deemed notice, under clause 8.9, then, unless Quba gives express written notice to the contrary to the Employment Business, all payments made by the Employment Business to Quba shall be treated as having been credited to a new account of the Employment Business 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 Quba.
- 8.11 Quba may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Employment Business) 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 Employment Business for the Secured Liabilities.
- 8.12 Quba may, without notice to the Employment Business, appoint any one or more persons to be an Administrator of the Employment Business pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.
- 8.13 Any appointment under this clause 8.12 shall:
  - (a) be in writing signed by a duly authorised signatory of Quba; and
  - (b) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- 8.14 Quba may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 8.12 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.
9. **When security becomes enforceable**
  - 9.1 The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

9.2 After the security constituted by this deed has become enforceable, Quba 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 Secured Assets.

## 10. Enforcement of security

10.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.

10.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 9.1.

10.3 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

10.4 The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise Quba and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Employment Business, to:

- (a) grant a lease or agreement to lease;
- (b) accept surrenders of leases; or
- (c) grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Employment Business, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as Quba or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

10.5 At any time after Quba has demanded payment of the Secured Liabilities or if the Employment Business defaults in the performance of its obligations under this deed or the Recruitment Support Services Agreement, the Employment Business will allow Quba or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where Quba or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Employment Business for, or by any reason of, that entry.

10.6 At all times, the Employment Business must use its best endeavours to allow Quba or its Receiver access to any premises for the purpose of clause 10.5 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

10.7 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, Quba 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 Employment Business. All monies paid by Quba to an encumbrancer in settlement of any of those accounts shall, as from its payment by Quba, be due from the Employment Business to Quba on current account and shall bear interest at the default rate of interest specified in the Recruitment Support Services Agreement and be secured as part of the Secured Liabilities.

10.8 No purchaser, mortgagee or other person dealing with Quba, 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 Quba, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- (c) how any money paid to Quba, any Receiver or any Delegate is to be applied.

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

10.10 Neither Quba, any Receiver, any Delegate nor any Administrator shall be liable, by reason of entering into possession of a Security Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured 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 Secured Assets for which a mortgagee in possession might be liable as such.

10.11 The receipt of Quba, 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 Secured Assets or in making any acquisition in the exercise of their respective powers, Quba, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

## 11. Receiver

11.1 At any time after the security constituted by this deed has become enforceable, or at the request of the Employment Business, Quba 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 Secured Assets.

11.2 Quba 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.

11.3 Quba 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.

11.4 The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of Quba 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.

- 11.5 The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by Quba despite any prior appointment in respect of all or any part of the Secured Assets.
- 11.6 Any Receiver appointed by Quba under this deed shall be the agent of the Employment Business and the Employment Business 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 Employment Business goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of Quba.
- 12. Powers of Receiver**
- 12.1 Any Receiver appointed by Quba under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 12.4 to clause 12.25.
- 12.2 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.
- 12.3 Any exercise by a Receiver of any of the powers given by clause 12 may be on behalf of the Employment Business, the directors of the Employment Business (in the case of the power contained in clause 12.18) or himself.
- 12.4 A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.
- 12.5 A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that he thinks fit.
- 12.6 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 Employment Business.
- 12.7 A Receiver may make, exercise or revoke any value added tax option to tax as he thinks fit.
- 12.8 A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that Quba may prescribe or agree with him.
- 12.9 A Receiver may collect and get in the Secured 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 Secured Assets with like rights.
- 12.10 A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Employment Business.
- 12.11 A Receiver may sell, exchange, convert into money and realise all or any of the Secured 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 Secured Assets to be sold.

- 12.12 A Receiver may sever and sell separately any fixtures or fittings from any Property without the consent of the Employment Business.
- 12.13 A Receiver may sell and assign all or any of the Book Debts in respect of which he is appointed in any manner, and generally on any terms and conditions, that he thinks fit.
- 12.14 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 Secured Assets.
- 12.15 A Receiver may make any arrangement, settlement or compromise between the Employment Business and any other person that he may think expedient.
- 12.16 A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as he thinks fit.
- 12.17 A Receiver may make substitutions of, or improvements to, the Equipment as he may think expedient.
- 12.18 A Receiver may make calls conditionally or unconditionally on the members of the Employment Business in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Employment Business on its directors in respect of calls authorised to be made by them.
- 12.19 A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 15, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Employment Business under this deed.
- 12.20 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.
- 12.21 A Receiver may, for any of the purposes authorised by this clause 12, raise money by borrowing from Quba (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which he is appointed on any terms that he thinks fit (including, if Quba consents, terms under which that security ranks in priority to this deed).
- 12.22 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 Employment Business, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.
- 12.23 A Receiver may delegate his powers in accordance with this deed.
- 12.24 A Receiver may, in relation to any of the Secured 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 Secured Assets or any part of the Secured Assets.

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

- (a) may consider desirable or necessary for realising any of the Secured 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 Employment Business.

## 13. Delegation

13.1 Quba 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 17.1).

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

13.3 Neither Quba nor any Receiver shall be in any way liable or responsible to the Employment Business for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

## 14. Application of proceeds

14.1 All monies received by Quba, 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 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 Quba (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 Quba determines; and
- (c) in payment of the surplus (if any) to the Employment Business or other person entitled to it.

14.2 Neither Quba, 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.

14.3 All monies received by Quba, a Receiver or a Delegate under this deed:

- (a) may, at the discretion of Quba, 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 Quba and the Employment Business; and
- (c) may be held in that account for so long as Quba, Receiver or Delegate thinks fit.

## 15. Costs and indemnity

15.1 The Employment Business shall, within five Business Days of demand, pay to, or reimburse, Quba 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 Quba, any Receiver or any Delegate in connection with:

- (a) this deed or the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of Quba'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 Employment Business) at the rate and in the manner specified in the Recruitment Support Services Agreement.

15.2 The Employment Business shall indemnify Quba, 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 Secured 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 Employment Business in performing any of its obligations under this deed.

Any past or present employee or agent may enforce the terms of this clause 15.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 16. Further assurance

16.1 The Employment Business shall, at its own expense, take whatever action Quba 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 Secured Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by Quba or any Receiver in respect of any Secured Asset,

including, without limitation (if Quba 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 Secured Assets (whether to Quba or to its nominee) and the giving of any notice, order or direction and the making of any registration.



## 17. Power of attorney

17.1 By way of security, the Employment Business irrevocably appoints Quba, every Receiver and every Delegate separately to be the attorney of the Employment Business 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 Employment Business is required to execute and do under this deed; 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 Quba, any Receiver or any Delegate.

17.2 The Employment Business 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 17.1.

## 18. Release

Subject to clause 25.3, on the expiry of the Security Period (but not otherwise), Quba shall, at the request and cost of the Employment Business, take whatever action is necessary to:

- (a) release the Secured Assets from the security constituted by this deed; and
- (b) reassign the Secured Assets to the Employment Business.

## 19. Assignment and transfer

19.1 At any time, without the consent of the Employment Business, Quba may assign or transfer any or all of its rights and obligations under this deed.

19.2 Quba may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Employment Business, the Secured Assets and this deed that Quba considers appropriate.

19.3 The Employment Business may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

## 20. Set-off

20.1 Quba may at any time set off any liability of the Employment Business to Quba against any liability of Quba to the Employment Business, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, Quba may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Quba of its rights under this clause 20 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

20.2 Quba is not obliged to exercise its rights under clause 20.1. If, however, it does exercise those rights it must promptly notify the Employment Business of the set-off that has been made.

20.3 All payments made by the Employment Business to Quba 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).

## 21. Amendments, waivers and consents

- 21.1 No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).
- 21.2 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 21.3 A failure to exercise, or a delay in exercising, any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by Quba shall be effective unless it is in writing.
- 21.4 The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## 22. Severance

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

## 23. Counterparts

- 23.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- 23.2 Transmission of the executed signature page of a counterpart of this deed by fax or email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

## 24. Third party rights

- 24.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 24.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

## 25. Further provisions

### 25.1 Independent security

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

### 25.2 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 Quba discharges this deed in writing.

### 25.3 Discharge conditional

Any release, discharge or settlement between the Employment Business and Quba shall be deemed conditional on no payment or security received by Quba 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) Quba 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 Secured Assets, for any period that Quba deems necessary to provide Quba with security against any such avoidance, reduction or order for refund; and
- (b) Quba may recover the value or amount of such security or payment from the Employment Business subsequently as if the release, discharge or settlement had not occurred.

### 25.4 Certificates

A certificate or determination by Quba as to any amount for the time being due to it from the Employment Business under this deed and the Recruitment Support Services Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

### 25.5 Consolidation

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

### 25.6 Small company moratorium

Notwithstanding anything to the contrary in this deed, neither the obtaining of a moratorium by the Employment Business under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Employment Business with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:

- (a) an event under this deed which causes any floating charge created by this deed to crystallise;
- (b) an event under this deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Employment Business; or

- (c) a ground under this deed for the appointment of a Receiver.

## 26. Notices

26.1 Each notice or other communication required to be given to a party under or in connection with this deed shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service; and
- (c) sent to:

(i) *Smartcall Recruitment (Midlands) Ltd at:*

Kemp House, 160 City Road, London, EC1V 2NX

Attention: Roger Watkins

(ii) *Quba at:*

1 Widcombe Street, Poundbury, Dorchester, Dorset DT1 3BS

Attention: Paul Tonks

or to any other address or fax number as is notified in writing by one party to the other from time to time.

26.2 Any notice or other communication given under or in connection with this deed shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address; and
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given as described in clause 26.2(a) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

26.3 This clause 26 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26.4 A notice or other communication given under or in connection with this deed is not valid if sent by email.

## 27. Governing law and jurisdiction

27.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

27.2 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of Quba to take proceedings against the Employment Business in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by Smartcall  
Recruitment (Midlands) Ltd acting by  
Roger Watkins, a director, in the presence  
of:

  
.....  
Director

.....  
SIGNATURE OF WITNESS  
NAME, ADDRESS [AND OCCUPATION] OF  
WITNESS

JOHN SCOTT DAY, DIRECTOR  
59 ORRELL LANE  
ORRELL PARK  
LIVERPOOL  
L9 8BX

Executed as a deed by Quba Solutions  
Limited acting by Ashley Lyas, a director, in  
the presence of:

  
.....  
Director

.....  
SIGNATURE OF WITNESS  
NAME, ADDRESS [AND OCCUPATION] OF  
WITNESS

PAUL TONES ACA  
2 WISTERS COTTAGES, HAVERANT