



**Registration of a Charge**

Company name: **ACCESS SOLUTIONS HOLDINGS LIMITED**

Company number: **11434632**

Received for Electronic Filing: **09/08/2018**



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**Details of Charge**

Date of creation: **31/07/2018**

Charge code: **1143 4632 0002**

Persons entitled: **ROWAN (216) 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 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:

**HARRISON CLARK RICKERBYS LIMITED**



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

Company number: 11434632

Charge code: 1143 4632 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st July 2018 and created by ACCESS SOLUTIONS HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 9th August 2018 .

Given at Companies House, Cardiff on 13th August 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

Dated 31 July 2018

THE COMPANIES SET OUT IN SCHEDULE 1

and

ROWAN (216) LIMITED

**GUARANTEE AND DEBENTURE**



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THIS DEED is made on 31 July 2018

by

- (1) **THE COMPANIES** whose details are set out in Schedule 1 (the "**Companies**" and each a "**Company**");

In favour of

- (2) **ROWAN (216) LIMITED**, a company incorporated under the laws of England and Wales with company registration number 05970945 whose registered address is at Prospect House, New Dixon Road, Monmouth, Wales, NP25 3PR (the "**Lender**").

IT IS AGREED as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Deed, terms defined in the Agreement shall have the same meaning when used in this Deed and in addition:

"**Account Bank**" means any bank or financial institution with whom a Company holds an account from time to time.

"**Agreement**" means the loan note instrument dated on or about the date of this Deed relating to the £1,450,000 secured fixed term loan notes 2025 issued by Access Solutions Holdings Limited.

"**Charged Property**" means all the assets and undertaking of a Company which from time to time are the subject of the security created or expressed to be created in favour of the Lender by or pursuant to this Deed.

"**Deed of Priority**" means the deed of priority dated on or about the date of this Deed made between (1) ABN Amro Asset Based Finance N.V., UK Branch, (2) the Lender and (3) the Companies.

"**EU Regulation**" means the Council of the European Union Regulation No. 1346/2000 on insolvency proceedings.

"**Finance Documents**" means the Agreement and/or this Deed.

"**Financial Collateral**" shall have the same meaning as in the Financial Collateral Regulations.

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

"**Floating Charge Property**" has the meaning given in Clause 3.3 (*Floating Charges*).

"**Insurance Policy**" means any policy of insurance and cover note in which a Company may from time to time have an interest.

"**Intellectual Property**" means:

- (a) all present and future patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered;
- (b) the benefit of all applications and rights to use such assets; and
- (c) all Related Rights.

**"Investments"** means:

- (a) any stocks or other securities, whether held directly by or to the order of a Company or by any trustee, fiduciary or clearance system on its behalf; and
- (b) all Related Rights (including all rights against any such trustee, fiduciary or clearance system).

**"Investment Derivative Rights"** means all dividends, interest or distributions and all other rights and benefits of an income nature accruing at any time in respect of any Investment.

**"Issuer"** means the issuer of any Investment.

**"Material Contracts"** means:

- (a) any contract entered into by a Company that may from time to time be identified in writing by the Lender as a Material Contract; and
- (b) all Related Rights.

**"Permitted Security"** means any security dated on or about the date of the Deed entered into by either of the Companies in favour of ABN AMRO Asset Based Finance N.V. registered in The Netherlands under company number 30099465.

**"Plant and Machinery"** means:

- (a) all equipment, machinery and all other assets of a similar nature which are now, or at any time after the date of this Deed become, the property of a Company; and
- (b) all Related Rights.

**"Real Property"** means a Company's estates or interests in all freehold (including commonhold), leasehold or other immovable property (including the property, if any, specified in Schedule 2 (*Real Property*)), and any buildings, fixtures or fittings from time to time situated on or forming part of such property, and all Related Rights.

**"Receivables"** means:

- (a) all present and future book and other debts and monetary claims owing to a Company; and
- (b) all Related Rights.

**"Related Rights"** means, in relation to any asset,

- (a) the proceeds of sale of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and
- (d) any income, moneys and proceeds paid or payable in respect of that asset.

**"Secured Obligations"** means all present and future obligations and liabilities, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity whatsoever, owed by any Company to the Lender under or in connection with any of the Finance Documents (whether or not such Company or, as the case may be, such other person is a party to such Finance Document as at the date of this Deed or becomes party to such Finance Document at any time thereafter and notwithstanding that any such obligations are not identified and/or the terms of those obligations not recorded as at the date of this Deed or at any time thereafter) together with all costs, charges and expenses incurred by the Lender in connection

with the protection, preservation or enforcement of its respective rights under the Finance Documents or any other document evidencing or securing any such liabilities and shall include interest on the above from the date of demand until the date of payment in full (as well after as before any judgment) calculated on a daily basis at the rate determined in accordance with clause 2.3 of Schedule 2 (*Default Interest*) of the Agreement.

**"Security"** means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Security Financial Collateral Arrangement"** shall have the same meaning as in the Financial Collateral Regulations.

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

**"Short Leasehold Property"** means a leasehold property held by a Company now or in the future under a lease granted at a rack rate which has an unexpired term of seven years or less at the date of this Deed (or in the case of future acquired leasehold property, at the date of acquisition of such property by the relevant Company);

## 1.2 Construction

(a) Unless a contrary indication appears, a reference in this Deed to:

- (i) the **"Lender"**, any **"Company"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (ii) **"assets"** includes present and future properties, revenues and rights of every description;
- (iii) a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (iv) **"guarantee"** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (v) **"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;
- (vi) 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);
- (vii) 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 regulatory, self-regulatory or other authority or organisation;
- (viii) a provision of law is a reference to that provision as amended or re-enacted; and
- (ix) a time of day is a reference to London time.

(b) Section, Clause and Schedule headings are for ease of reference only.

- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Deed.

### **1.3 Third Party Rights**

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term of this Deed.

### **1.4 Incorporation of Terms**

The terms of the Finance Documents and of any side letters between any of the parties thereto are incorporated in this Deed to the extent required to ensure that any disposition of Real Property contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

### **1.5 Effect as a Deed**

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

## **2 COVENANT TO PAY**

### **2.1 Secured obligations**

Each Company covenants that it will pay and discharge the Secured Obligations to the Lender when due in accordance with their respective terms / in accordance with the terms of the Finance Documents (or if they do not specify a time for payment, immediately on demand by the Lender).

### **2.2 Guarantee and indemnity**

Each Company irrevocably and unconditionally jointly and severally:

- (a) guarantees to the Lender punctual performance by each other Company of all that Company's obligations under the Finance Documents;
- (b) undertakes with the Lender that whenever another Company does not pay any amount when due under or in connection with any Finance Document, that Company shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with the Lender that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Lender immediately on demand against any cost, loss or liability it incurs as a result of a Company not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Company under this indemnity will not exceed the amount it would have had to pay under this Clause 2 if the amount claimed had been recoverable on the basis of a guarantee.

### **2.3 Continuing guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Company under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

### **2.4 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Company or any security for those obligations or otherwise) is made by the Lender in whole or in part on the basis 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 Company under this Clause 2 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

## **2.5 Waiver of defences**

The obligations of each Company under this Clause 2 will not be affected by an act, omission, matter or thing which, but for this Clause 2, would reduce, release or prejudice any of its obligations under this Clause 2 (without limitation and whether or not known to it or the Lender) including:

- (a) any time, waiver or consent granted to, or composition with, any Company or other person;
- (b) the release of any other Company or any other person under the terms of any composition or arrangement with any creditor of any member of the group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Company or 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;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Company or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

## **2.6 Guarantor intent**

Without prejudice to the generality of Clause 2.5 (*Waiver of defences*), each Company expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

## **2.7 Immediate recourse**

Each Company waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Company under this Clause 2. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

## 2.8 Appropriations

Until all amounts which may be or become payable by the Companies under or in connection with the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Company shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Company or on account of any Company's liability under this Clause 2.

## 2.9 Deferral of Companies' rights

Until all amounts which may be or become payable by the Companies under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, no Company will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 2:

- (a) to be indemnified by a Company;
- (b) to claim any contribution from any other guarantor of any Company's obligations under the Finance Documents;
- (c) to 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;
- (d) to bring legal or other proceedings for an order requiring any Company to make any payment, or perform any obligation, in respect of which any Company has given a guarantee, undertaking or indemnity under Clause 2.2 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Company; and/or
- (f) to claim or prove as a creditor of any Company in competition with the Lender.

If a Company receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Lender by the Companies 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.

## 2.10 Release of Guarantors' right of contribution

If any Company (a "**Retiring Company**") ceases to be a Company in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Company then on the date such Retiring Company ceases to be a Company:

- (a) that Retiring Company is released by each other Company from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Company arising by reason of the performance by any other Company of its obligations under the Finance Documents; and
- (b) each other Company waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance

Document where such rights or security are granted by or in relation to the assets of the Retiring Company.

#### **2.11 Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Lender.

#### **2.12 Guarantee limitations**

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006.

#### **2.13 Interest**

Each Company covenants to pay interest on any sum demanded in accordance with Clause 2.1 (*Secured obligations*) until payment (both before and after judgement) at the rate determined in accordance with clause 2.3 of Schedule 2 (*Default Interest*) of the Agreement.

#### **2.14 Guarantee binding**

Each Company agrees to be bound by the guarantee contained in Clause 2.2, even if any other Company which was intended to execute this Deed may not do so or may not be effectually bound.

### **3 GRANT OF SECURITY**

#### **3.1 Fixed Charges**

Each Company with full title guarantee charges in favour of the Lender as continuing security for the payment and discharge of the Secured Obligations:

- (a) by way of legal mortgage, the Real Property and all Related Rights;
- (b) by way of fixed charge, any Real Property (other than any Short Leasehold Property) now or at any time after the date of this Deed belonging to the Company (other than property mortgaged under Clause 3.1(a) above), together with all Related Rights;
- (c) by way of fixed charge, all Related Rights in relation the Real Property (other than any Short Leasehold Property) charged pursuant to this Deed;
- (d) by way of fixed charge, all Plant and Machinery and other fixtures and fittings attached to any Real Property;
- (e) by way of fixed charge, all vehicles, computers, office and other equipment owned by the Company, both present and future;
- (f) by way of fixed charge:
  - (i) all present and future bank accounts, cash at bank and credit balances of each Company with any bank or other person; and
  - (ii) all Related Rights in relation to the accounts charged pursuant to Clause 3.1(f)(i) above;
- (g) by way of fixed charge, all present and future Receivables, other than those validly and effectively assigned under Clause 3.2 (*Security Assignment*);
- (h) by way of fixed charge:

- (i) all present and future Investments;
  - (ii) all Investment Derivative Rights; and
  - (iii) where any Investment is held in a system for the deposit and settlement of transactions in Investments, all rights against the operator of such system or any participant in respect of such Investment;
- (i) by way of fixed charge, all present and future Intellectual Property;
  - (j) by way of fixed charge, the goodwill of the Company;
  - (k) by way of fixed charge, the uncalled capital of the Company;
  - (l) by way of fixed charge, all rights, interests and claims in the Insurance Policies, other than those validly and effectively assigned under Clause 3.2 (*Security Assignment*);
  - (m) by way of fixed charge, all rights, interests and claims in the Material Contracts, other than those validly and effectively assigned under Clause 3.2 (*Security Assignment*);
  - (n) by way of fixed charge, the benefits of all licences, consents and authorisations held in connection with its business or the use of any Charged Property, and the right to any compensation in respect of any of them; and
  - (o) by way of fixed charge, all rights, interests and claims in any pension fund now or in the future.

### **3.2 Security Assignment**

Each Company with full title guarantee assigns to the Lender as continuing security for the payment and discharge of the Secured Obligations all of its rights, title, interest and benefit from time to time in and to the Insurance Policies.

### **3.3 Floating Charges**

Each Company charges and agrees to charge by way of first floating charge all of its present and future:

- (a) assets and undertaking (wherever located) not otherwise effectively charged by way of fixed mortgage or charge or assigned pursuant to Clause 3.1 (*Fixed Charges*), Clause 3.2 (*Security Assignment*) or any other provision of this Deed; and
- (b) (whether or not effectively so charged or assigned) heritable property and all other property and assets in Scotland,

((a) and (b) above together being the "Floating Charge Property").

### **3.4 Qualifying Floating Charge**

Paragraph 14 of Schedule B1 of the Insolvency Act 1986 shall apply to any floating charge created by this Deed (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act 1986).

### **3.5 Financial Collateral**

To the extent that the Charged Property constitutes Financial Collateral, each Company agrees that such Charged Property shall be held or designated so as to be under the control of the Lender (or by a person acting on its behalf) for the purposes of the Financial Collateral Regulations. To the extent that the Charged Property constitutes Financial Collateral and is

subject to a Security Financial Collateral Arrangement created by or pursuant to this Deed, the Lender shall have the right at any time after this Deed becomes enforceable, to appropriate all or any part of that Charged Property in or towards the payment or discharge of the Secured Obligations. The value of any Charged Property appropriated in accordance with this Clause shall be (a) in the case of cash, the amount standing to the credit of any account, together with accrued but unposted interest, at the time the right of appropriation is exercised, and (b) in the case of Investments, the market price of that Charged Property at the time the right of appropriation is exercised, as listed on any recognised market index, or as determined by such other method as the Lender may select (acting reasonably). Each Company agrees that the methods of valuation provided for in this Clause are commercially reasonable for the purposes of Regulation 18 of the Financial Collateral Regulations.

#### **4 NEGATIVE PLEDGE**

- (a) The Companies shall not create or permit to subsist any Security over any of the Charged Property, other than Permitted Security.
- (b) The Companies shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, discount, factor, transfer, assign, lease, lend or otherwise dispose of any of the Charged Property other than the Floating Charge Property in the ordinary course of trading on an arm's length basis or as otherwise permitted pursuant to the Agreement.

#### **5 CRYSTALLISATION OF FLOATING CHARGE**

##### **5.1 Conversion of Floating Charge**

The Lender may at any time by notice in writing to a Company immediately convert the floating charge created by Clause 3.3 (*Floating Charges*) into a fixed charge as regards any property or assets specified in the notice if:

- (a) an Event of Default has occurred and is continuing; or
- (b) 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
- (c) the Lender reasonably considers that it is desirable in order to protect the priority of the security.

##### **5.2 Automatic Conversion**

- (a) If, without the prior written consent of the Lender:
  - (i) a Company disposes of any of the Floating Charge Property other than in the ordinary course of trading on an arm's length basis or as otherwise permitted pursuant to the Agreement; or
  - (ii) any steps are taken for any of the Charged Property to become subject to any Security in favour of any other person; or
  - (iii) any person levies or attempts to levy any distress, execution or other process against any of the Charged Property; or
  - (iv) a resolution is passed or an order is made for the winding-up, dissolution, or re-organisation of or any steps are taken for the appointment of an administrator in respect of the Company,

the floating charge created under Clause 3.3 (*Floating Charges*) by any Company will automatically be converted (without notice) with immediate effect into a fixed charge in respect of the relevant Floating Charge Property.

- (b) At any time after the floating charge constituted under this Deed shall have crystallised as a fixed charge over all or part of the Charged Property pursuant to this Clause 5 but before the appointment of any Receiver pursuant hereto, the said fixed charge shall upon the written consent of the Lender cease to attach to the assets then subject to the fixed charge and shall again subsist as a floating charge.
- (c) The floating charge created under this Deed shall not convert into a fixed charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of a Company.

## **6 PERFECTION OF SECURITY**

### **Notice of Assignment**

Each Company shall, promptly following a request by the Lender give notice, in such form as the Lender shall notify to each Company, to each insurer with whom the Company has an Insurance Policy of the assignment of the Company's rights and interest in and under such Insurance Policy and shall procure that each addressee of such notice will promptly provide an acknowledgement to the Lender of such notice.

## **7 FURTHER ASSURANCE**

- (a) Each Company shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require in favour of the Lender or its nominee(s)):
  - (i) to perfect the Security created or intended to be created under or evidenced by this Deed (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of this Deed) or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to the Finance Documents or by law;
  - (ii) to confer on the Lender Security over any property and assets of the Company located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Deed; and/or
  - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Deed.
- (b) Each Company 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 the Finance Documents.

## **8 REPRESENTATIONS**

Each Company makes the representations and warranties set out in this Clause 8 (*Representations*) to the Lender on each day during the Security Period.

### **8.1 Due Incorporation**

- (a) Each Company is a duly incorporated limited liability company validly existing under the law of its jurisdiction of incorporation; and
- (b) Each Company has the power to own its assets and carry on its business as it is being

conducted.

## **8.2 Powers**

Each Company has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of this Deed and the transactions contemplated by it. No limit on its powers will be exceeded as a result of the grant of Security contemplated by this Deed.

## **8.3 Non-contravention**

The entry into and performance by each of the Companies of, and the transactions contemplated by, this Deed do not and will not contravene or conflict with:

- (a) that Company's constitutional documents;
- (b) any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
- (c) any law or regulation or judicial or official order applicable to it.

## **8.4 Authorisations**

Each Company has obtained all required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations under this Deed and to make it admissible in evidence in its jurisdiction of incorporation. Any such authorisations are in full force and effect.

## **8.5 Binding obligations**

- (a) Each Company's obligations under this Deed are legal, valid, binding and enforceable; and
- (b) This Deed creates:
  - (i) valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and
  - (ii) subject to registration pursuant to Part 25 of the Companies Act 2006 and, in the case of real property, registration at the Land Registry, perfected Security over the assets referred to in this Deed,

In favour of the Lender having the priority and ranking expressed to be created by this Deed and ranking ahead of all (if any) Security (other than Permitted Security) and rights of third parties, except those preferred by law.

## **8.6 Registration**

It is not necessary to file, record or enrol this Deed (other than at Companies House or the Land Registry) with any court or other authority or pay any stamp, registration or similar taxes in relation to this Deed or the transactions contemplated by it.

## **8.7 No default**

- (a) No Event of Default or, on the date of this Deed, event or circumstance which would, on the expiry of any grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, constitute an Event of Default, has occurred and is continuing.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, would constitute) a default or a termination

event (however described) under any other agreement or instrument which is binding on it or to which any of its assets is subject which has or is likely to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Deed.

#### **8.8 Litigation**

No litigation, arbitration or administrative proceedings are taking place, pending or, to the Companies' knowledge, threatened against either of them, any of their directors or any of their assets.

#### **8.9 Information**

The information, in written or electronic format, supplied by, or on behalf of, the Companies to the Lender in connection with this Deed was, at the time it was supplied or at the date it was stated to be given (as the case may be), to the best of the Companies' knowledge and belief was factual information, complete, true and accurate in all material respects except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Companies to the Lender.

#### **8.10 Investments**

The Investments are fully paid.

#### **8.11 Centre of Main Interests**

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

### **9 UNDERTAKINGS**

Each Company covenants and agrees with the Lender that it will, during the Security Period, comply with the covenants in this Clause 9 (*Undertakings*).

#### **9.1 General**

##### **(a) Notification of default**

Each Company shall notify the Lender of any Event of Default or event or circumstance which would, on the expiry of any grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, constitute an Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

##### **(b) Authorisations**

Each Company shall promptly obtain all consents and authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation of its jurisdiction of incorporation to enable it to perform their respective obligations under this Deed and to ensure the legality, validity, enforceability and admissibility in evidence of this Deed in their jurisdiction of incorporation.

##### **(c) Compliance with law**

Each Company shall comply in all respects with all laws to which it may be subject if failure to do so would materially impair its ability to perform its obligations under this Deed.

(d) Change of business

Each Company shall not make any substantial change to the nature or scope of its business as carried out on the date of this Deed.

(e) Information

Each Company shall supply to the Lender:

- (i) all documents dispatched by the Company to its shareholders (or any class of them), or its creditors generally, at the same time as they are dispatched;
- (ii) details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Company as soon as it becomes aware of them and which might, if adversely determined, have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Deed or any document evidencing the Secured Obligations; and
- (iii) promptly, any further information about the financial condition, business and operations of the Company as the Lender may reasonably request.

**9.2 Charged Property Generally**

(a) Each Company shall:

- (i) permit the Lender (or its designated representatives), on reasonable written notice:
  - (A) access during normal office hours to the accounting records of the Company and to any documents and records relating to the Charged Property; and
  - (B) to inspect, take extracts from, and make copies of, the same, and to provide (at the Company's expense), such clerical and other assistance which the Lender may reasonably require to do this;
- (ii) comply in all material respects with all obligations in relation to the Charged Property under any present or future law, regulation, order or instrument of any competent authority or other approvals, licences or consents;
- (iii) comply with all material covenants and obligations affecting any of the Charged Property or the manner of use of any of it; and
- (iv) provide the Lender with all information which it may reasonably request in relation to the Charged Property.

(b) The Companies shall not:

- (i) except with the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed), enter into any onerous or restrictive obligation affecting any of the Charged Property; or
- (ii) do, cause or permit to be done or omit to do anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any of the Charged Property;

### 9.3 Property matters

(a) Each Company shall

- (i) notify the Lender within 14 days of receipt of every material notice, order or proposal given, or made in relation to, the Real Property by any competent authority and (if required by the Lender) immediately provide it with a copy of the same and either:
  - (A) comply with such notice, order or proposal; or
  - (B) make such objections to the same as the Lender may require or approve;
- (ii) duly and punctually pay all rates, rents, taxes and other outgoings owed by it in respect of the Real Property;
- (iii) comply with all material covenants and obligations affecting any of the Real Property or the manner of use of any of it;
- (iv) maintain all buildings and erections forming part of the Charged Property in a good state of repair provided that nothing in this Clause shall oblige the Companies to keep any of its buildings and erections in a better state of repair or in better working order or condition than they are at the date of this Deed, or than is required for the business of the Company, and in all cases subject to fair wear and tear; and
- (v) properly discharge all duties of care and responsibility placed on it by Environmental Law and apply for and obtain all authorisations necessary to ensure that it does not breach Environmental Law;
- (vi) notify the Lender immediately upon the acquisition of any Real Property;
- (vii) permit the Lender, the Lender and any person nominated by any of them at all reasonable times with reasonable notice to enter any part of the Real Property and view the state of it;
- (viii) grant the Lender on request all reasonable facilities within the power of the Company to allow the Lender (or its lawyers) to carry out (at the Company's expense) investigations of title to the Real Property and to make all enquiries in relation to any part of the Real Property which a prudent mortgagee might carry out;
- (ix) immediately upon demand by the Lender, provide the Lender with a report as to title of the Company to the Real Property concerning those items which may properly be sought to be covered by a prudent mortgagee in a lawyer's report of this nature;
- (x) in respect of any Real Property which is acquired after the date of this Deed, title to which is registered at the Land Registry or which is required to be so registered:
  - (A) give written notice of this Deed to the Land Registry and procure that notice of this Deed is clearly noted in the Register of Title for such Real Property;
  - (B) procure that no person is registered as proprietor of any such property under the Land Registration Acts 1925 to 2002 without the prior written consent of the Lender;
- (xi) authorise the Lender to make any application which the Lender deems appropriate for the designation of this Deed and/or any other document as an exempt information document under rule 136 of the Land Registration Rules 2003 and use its best endeavours to assist with any such application made by or on behalf of the

Lender; and

- (xii) notify the Lender in writing as soon as it receives notice of any person's application under rule 137 of the Land Registration Rules 2003 for the disclosure of this Deed or any other document, following its designation as an exempt information document and not make any application under rule 138 of the Land Registration Rules 2003 for the removal of the designation of such document as an exempt information document.
- (b) The Companies shall not
- (i) except with the prior written consent of the Lender, confer on any person:
    - (A) any lease or tenancy of any of the Real Property or accept a surrender of any lease or tenancy (whether independently or under any statutory power);
    - (B) any right or licence to occupy any land or buildings forming part of the Real Property;
    - (C) any licence to assign or sub-let any part of the Real Property; or
    - (D) enter into any onerous or restrictive obligation affecting any of the Real Property;
  - (ii) carry out any development within the meaning of section 55 of the Town and Country Planning Act 1990 without first obtaining such permissions as may be required under applicable legislation and, in the case of development involving a substantial change in the structure of, or a change in use of, any part of the Real Property, without first obtaining the written consent of the Lender; or
  - (iii) do or permit to be done anything as a result of which any lease may be liable to forfeiture or otherwise be determined.

#### **9.4 Plant and Machinery**

- (a) Each Company shall:
- (i) maintain at its own expense all Plant and Machinery for the time being owned by it in good working order and condition provided that nothing in this Clause shall oblige the Company to keep any of its Plant and Machinery in a better state of repair or in better working order or condition than they are at the date of this Deed, or than is required for the business of the Company, and in all cases subject to fair wear and tear; and
  - (ii) immediately on request by the Lender, affix to any item of Plant and Machinery a durable notice of this Deed in such form as the Lender may require.
- (b) The Companies shall not:
- (i) make any material alterations or additions to any Plant and Machinery which are reasonably likely to depreciate, jeopardise or prejudice their value or marketability; or
  - (ii) remove any Plant and Machinery from the Charged Property except for the purpose of maintenance pursuant to the terms of this Deed.

## 9.5 Insurance

(a) Each Company shall:

(i) effect and maintain at its expense insurances in respect of all its assets and business with insurers previously approved in writing by the Lender. Such insurances shall:

(A) provide cover against such risks and in such amounts as is issued for companies owning or possessing similar assets and carrying on similar businesses and against all other risks which the Lender may from time to time specify;

(B) have the interest of the Lender as mortgagee noted on all relevant policies;

(C) be on such terms and contain such clauses as the Lender may reasonably require and in particular will require the relevant insurer to inform the Lender of:

1) any cancellation, alteration, termination or expiry of any such insurance at least 30 days before it is due to take effect;

2) any default in payment of any premium or failure to renew at least 30 days before the renewal date; or

3) any act, omission or event of which the insurer has knowledge which may make any insurance void, voidable or unenforceable (in whole or in part);

(ii) promptly pay all premiums relating to all policies of insurance;

(iii) supply to the Lender on request copies of each policy of insurance required to be maintained in accordance with this Deed together with current premium receipts relating to it;

(iv) if it defaults at any time in effecting or maintaining such insurances or in producing any policy or receipt to the Lender on demand, authorise the Lender to take out or renew such policies of insurance in any sum which the Lender may reasonably think expedient. All moneys which are expended by the Lender in so doing shall be deemed to be properly paid by the Lender and shall be reimbursed by the Company on demand;

(v) notify the Lender if any claim arises or may be made under the insurances;

(vi) give the Lender the sole right to conduct or settle any insurance claim; and

(vii) authorise the Lender to give any discharge for insurance and to direct the application of all moneys received or receivable under any insurances either in making good the loss or damage in respect of which the same have been received or in or towards the discharge of the Secured Obligations.

(b) Neither Company shall do or permit to be done or omit to do anything which may render any insurance void, voidable or unenforceable (in whole or in part) nor vary, amend or terminate any policy of insurance.

## **9.6 Intellectual Property**

**(a) Each Company shall:**

- (i)** observe and comply with all material obligations and laws to which it is subject in its capacity as registered proprietor, beneficial owner, user, licensor or licensee of its Intellectual Property or any part of it;
- (ii)** do all acts as are reasonably practicable to maintain, protect and safeguard its material Intellectual Property and not discontinue the use of any of its material Intellectual Property nor allow it to be used in such a way that it is put at risk by becoming generic or by being identified as disreputable in any way;
- (iii)** duly register in such register(s), or with such authorities as may be available for the purpose and in such name(s) as may be required by the law and practice of the place or registration, such of its material Intellectual Property (and all assignments, licences and mortgages of it) as may be capable of registration in such places;
- (iv)** pay all fees necessary to maintain, protect and safeguard its material Intellectual Property and the registrations required to be made for such purposes prior to the latest time provided for payment of them;
- (v)** take all reasonable steps (including the commencement of legal proceedings) as may be necessary to safeguard and maintain the validity, reputation, integrity, registration or subsistence of its material Intellectual Property; and
- (vi)** maintain a comprehensive, detailed and up-to-date centralised record of all its material Intellectual Property (including details of agents engaged in relation to registrations of it) and, when reasonably requested by the Lender, immediately provide to the Lender a copy of such record and/or a summary of all its Intellectual Property created or acquired since the date of this Deed or the date of last notification.

**(b) The Companies shall not:**

- (i)** change the specification referred to in any of its registrations of material Intellectual Property or permit any disclaimer, condition, restriction, memorandum or other thing to be entered on the registration of any of the trade marks comprised within such material Intellectual Property, the effect of which will be to materially and adversely affect the value of such trade marks; or
- (ii)** grant any licence to any person to use its material Intellectual Property in any manner which will materially and adversely affect the value of such material Intellectual Property.

## **9.7 Receivables**

Subject to the terms of the Deed of Priority, each Company shall:

- (a)** deal with the Receivables in accordance with any directions given in writing from time to time by the Lender and, in the absence of such directions, hold the Receivables on trust for the benefit of the Lender;
- (b)** after the security constituted by this Deed becomes enforceable, comply with any notice served by the Lender on the Company prohibiting the Company from withdrawing all or any monies from time to time standing to the credit of its accounts with any bank, financial institution or other person, except with the prior written consent of the Lender;
- (c)** if called upon so to do by the Lender, execute a legal assignment of the Receivables to the Lender in such terms as the Lender may require and give notice thereof to the debtors

from whom the Receivables are due, owing or incurred; and

- (d) deliver to the Lender such information as to the amount and nature of its Receivables as the Lender may from time to time reasonably require.

## **9.8 Investments**

Each Company shall:

- (a) promptly pay all calls or other payments which may become due in respect of the Investments;
- (b) promptly send to the Lender copies of all notices, circulars, reports, accounts and other documents which are sent to the holders of any Investments;
- (c) at the request of the Lender, procure all consents, waivers and approvals which are necessary, under the articles of association of any Issuer or otherwise, for the transfer of the Investments to the Lender or its nominee or to a purchaser upon the enforcement of this Deed and to procure the amendment of the share transfer provisions of each Issuer's articles of association in such manner as the Lender may require in order to permit such a transfer;
- (d) if so requested by the Lender:
  - (i) instruct any clearance system to transfer any Investment held by it for the Company or its nominee to an account of the Lender or its nominee with that clearance system; and
  - (ii) take whatever action the Lender may request for the dematerialisation or re-materialisation of any Investment held in a clearance system;
- (e) without prejudice to the above, permit the Lender, at the expense of the Company, to take whatever action it deems necessary for the dematerialisation or re-materialisation of any Investment;
- (f) until the security constituted by this Deed becomes enforceable, be entitled to:
  - (i) receive and retain all dividends, distributions and other moneys paid on or derived from the Investments; and
  - (ii) exercise all voting and other rights and powers attaching to the Investments provided that it must not do so in a manner which is prejudicial to the interests of the Lender under this Deed;
- (g) after the security constituted by this Deed becomes enforceable:
  - (i) hold all dividends, distributions and other moneys paid on or derived from the Investments on trust for the Lender and pay the same immediately upon receipt into the Collections Account; and
  - (ii) comply and procure that its nominees comply with any directions from the Lender concerning the exercise of all voting and other rights and powers attaching to the Investments; and
- (h) at any time after the security constituted by this Deed becomes enforceable, permit the Lender to complete the instrument(s) of transfer for the Investments on behalf of the Company in favour of itself or such other person as it may select.

### **9.9 Centre of Main Interests**

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

### **9.10 Goodwill**

Neither Company shall, except with the prior written consent of the Lender, grant any franchise, licence or other authority to any person to use its company name, trade name or business name or any other business asset which will materially and adversely affect the value of the goodwill of that Company.

### **9.11 Uncalled capital**

- (a) Each Company shall promptly apply any paid capital towards the repayment, in full or in part, of the Secured Obligations.
- (b) Neither Company shall call up, or receive in advance of its due date, any uncalled capital.

## **10 ENFORCEMENT OF SECURITY**

### **10.1 Powers on enforcement**

At any time after the security created under this Deed becomes enforceable, the Lender may, without notice to any Company and whether or not it has appointed a Receiver, exercise:

- (a) all or any of the powers, authorities and discretions conferred on mortgagees by the Law of Property Act 1925 (as varied or extended by this Deed);
- (b) all of the powers conferred on the holder of a qualifying floating charge (as defined in the Insolvency Act 1986) by the Insolvency Act 1986; and
- (c) all or any of the powers conferred by this Deed.

### **10.2 No Liability as Mortgagee in Possession**

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

## **11 POWERS OF THE LENDER**

### **11.1 Extension of Powers**

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

### **11.2 Restrictions**

Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Deed.

### **11.3 Power of Leasing**

At any time after the security created by this Deed becomes enforceable, the Lender may lease or make arrangements to lease, at a premium or otherwise, and accept surrenders of leases

without any restriction and in particular without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925.

#### **11.4 Discretion**

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

#### **11.5 Delegation**

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

#### **11.6 Investigations**

If any event of default (howsoever described) in any agreement between the Lender and a Company occurs then (while it is continuing), the Lender may initiate an investigation of, and/or instruct any report (accounting, legal, valuation or other) on the business and affairs of a Company which it considers necessary to ascertain the financial position of the Company. All fees and expenses incurred by the Lender in connection with such investigations shall be payable by the Company and the Company consents to the provision by the Lender of all information in relation to the Company which the Lender provides to any person in relation to the preparation of any such report.

#### **11.7 Power to Remedy**

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

### **12 APPOINTMENT OF RECEIVER OR ADMINISTRATOR**

#### **12.1 Appointment and Removal**

- (a) At any time after the security created under this Deed becomes enforceable, or if requested to do so by a Company, the Lender may (by deed or otherwise and acting through its authorised officer):
  - (i) appoint one or more persons jointly or severally to be a Receiver of the whole or any part of the Charged Property;
  - (ii) remove (so far as it is lawfully able) any Receiver(s) so appointed;
  - (iii) appoint another person(s) as an additional or replacement Receiver(s); and
  - (iv) appoint one or more persons to be an administrator of that Company.
- (b) Notwithstanding anything to the contrary in this deed, neither the obtaining of a moratorium by a Company under schedule A1 to the Insolvency Act 1986 nor the doing of anything by a Company with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:
  - (i) an event under this deed which causes any floating charge created by this deed to

crystallise;

- (ii) 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 Borrower; or
- (iii) a ground under this deed for the appointment of a Receiver.

## **12.2 Capacity of Receivers**

Each Receiver shall be:

- (a) entitled to act individually or together with any other person appointed or substituted as Receiver;
- (b) for all purposes, deemed to be the agent of the relevant Company which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Lender; and
- (c) entitled to remuneration for his services at a rate to be fixed by the Lender from time to time (without being limited to the maximum rate specified in Section 109(6) of the Law of Property Act 1925).

## **13 POWERS OF RECEIVER**

### **13.1 General Powers**

Every Receiver shall have all the powers:

- (a) conferred by the Law of Property Act 1925 on mortgagees in possession and receivers appointed under that Act;
- (b) set out in Schedule 1 to the Insolvency Act 1986; and
- (c) conferred from time to time on receivers by statute.

### **13.2 Additional Powers**

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

- (a) to take possession of, collect and get in all or any part of the Charged Property in respect of which the Receiver was appointed;
- (b) to carry on, manage or concur in carrying on and managing all or any part of the business of the Company;
- (c) to borrow or raise money and secure the payment of any money in priority to the charges created by this Deed for the purpose of exercising his powers and/or defraying any costs or expenses incurred by him in such exercise;
- (d) to sell, let, lease or concur in selling, letting or leasing and to vary the terms or determine, surrender and to accept surrenders of leases or tenancies of or grant options or licences over all or any part of the Charged Property in any manner and on such terms as he thinks fit (the consideration for any such transaction may consist of cash or of shares or securities of another company (and the amount of such consideration may be dependent on profit or turnover or be determined by a third party) and may be payable in a lump sum or in instalments);
- (e) to sever any fixtures (including trade and tenants fixtures) from the property of which they

form part, without the consent of the Company;

- (f) to exercise all powers, rights and/or obligations under any contract or agreement forming part of the Charged Property, including, without limitation, all voting and other rights attaching to the Investments;
- (g) to make and effect all repairs, renewals, improvements, and insurances;
- (h) to redeem any prior Security in respect of all or any of the Charged Property and to settle and pass the accounts of the holder of such prior Security and any accounts so settled and passed will, in the absence of manifest error, be conclusive and binding on the Company (all moneys paid to the holder of such Security in accordance with such accounts shall form part of the Secured Obligations);
- (i) to promote the formation of subsidiaries of the Company for the purpose of purchasing, leasing, licensing or otherwise acquiring interests in all or any of the assets of the Company and to arrange for any such subsidiaries to trade or cease to trade on such terms as the Receiver thinks fit;
- (j) to take such proceedings and to make any arrangement or compromise which the Lender or the Receiver may think fit;
- (k) to appoint managers, officers and agents at such salaries and for such periods as the Receiver may determine;
- (l) to exercise in relation to all or any part of the Charged Property all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Charged Property; and/or
- (m) to do all other acts and things as may be considered by the Receiver to be incidental or conducive to the above or otherwise expedient for or incidental or conducive to the preservation, improvement or realisation of the Charged Property.

## **14 APPLICATION OF MONEYS**

### **14.1 Application**

- (a) All moneys received or recovered by the Lender or any Receiver pursuant to this Deed shall (subject to the rights and claims of any person having security ranking in priority to the security constituted by this Deed) be applied in the following order:
  - (i) first, in satisfaction of, or provision for, all costs, charges and expenses incurred by the Lender or any Receiver and the payment of the remuneration of any Receiver;
  - (ii) second, in or towards payment of any debts or claims which are required by law to be paid in preference to the Secured Obligations, but only to the extent to which such debts or claims have such preference;
  - (iii) third, in or towards payment of all matters referred to in the first three paragraphs of Section 109(8) of the Law of Property Act 1925 (other than the remuneration of the Receiver);
  - (iv) fourth, in or towards satisfaction of the Secured Obligations; and
  - (v) fifth, any surplus shall be paid to the relevant Company or any other person entitled thereto.
- (b) Only money actually paid by the Receiver to the Lender, or received or recovered by the Lender under this Deed, shall be capable of being applied in or towards the satisfaction of

the Secured Obligations and a Company shall have no rights in respect of the application by the Lender of any sums received, recovered or realised by the Lender under this Deed.

#### **14.2 Suspense Account**

Until all Secured Obligations have been irrevocably and unconditionally paid and discharged in full, the Lender and any Receiver may place and keep for such time as it thinks prudent any moneys received, recovered or realised under or by virtue of this Deed in a separate or suspense account to the credit of either a Company or of the Lender without any obligation to apply all or any part of such moneys in or towards the discharge of the Secured Obligations. Amounts standing to the credit of such Suspense Account shall bear interest at a fair market rate.

#### **14.3 Avoidance of Payments**

If the Lender reasonably considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Companies under this Deed and the security constituted hereby shall continue and such amount shall not be considered to have been irrevocably paid.

#### **14.4 Use of insurance proceeds**

All moneys receivable by virtue of any of the Insurance Policies shall be paid to the Lender (or if not paid by the insurers directly to the Lender shall be held on trust for the Lender) and shall at the option of the Lender be applied in replacing, restoring or reinstating the Charged Property (any deficiency being made good by the Companies) or (except where the relevant Company is obliged (as landlord or tenant) to lay out such insurance moneys under the provisions of any lease of any Real Property) in reduction of the Secured Obligations.

### **15 PROTECTION OF PURCHASERS**

#### **15.1 Receipts**

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

#### **15.2 Protection of Purchasers**

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

### **16 POWER OF ATTORNEY**

#### **16.1 Appointment**

Each Company, by way of security and to more fully secure the performance of its obligations under this Deed, irrevocably appoints the Lender, each person to whom the Lender shall from time to time have delegated the exercise of the power of attorney conferred by this Clause and any Receiver jointly and severally to be its attorney and in its name and on its behalf to execute, deliver and perfect all documents and to do all things which the attorney may consider to be necessary for:

- (a) carrying out any obligation imposed on the Company by this Deed that the Company has failed to perform (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Property); and
- (b) enabling the Lender and any Receiver to exercise any of the powers conferred on them by

or pursuant to this Deed or by law.

## **16.2 Ratification**

Each Company ratifies and confirms to agree to ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## **17 CONTINUING SECURITY**

### **17.1 Continuing Security**

The security created by or pursuant to this Deed will be a continuing security for the Secured Obligations notwithstanding any intermediate payment or settlement of all or any part of the Secured Obligations or other matter or thing whatsoever and will be without prejudice and in addition to and shall not merge with any other right, remedy or security which the Lender may hold at any time for the Secured Obligations and will not be affected by any release, reassignment or discharge of such other right, remedy or security.

### **17.2 Settlements conditional**

Any release, discharge or settlement between a Company, the Lender shall be conditional upon no security, disposition or payment to the Lender by the Company or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy or insolvency or for any other reason whatsoever, and if such condition shall not be fulfilled the Lender shall be entitled to enforce this Deed subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made.

## **18 NEW ACCOUNTS**

If the Lender at any time receives or is deemed to have received notice of any subsequent Security affecting all or any part of the Charged Property it may open a new account or accounts with a Company. If the Lender does not open a new account or accounts it shall nevertheless be treated as if it had done so as at the time when it received or was deemed to have received such notice and as from such time all payments made to the Lender shall be credited or be treated as having been credited to such new account or accounts and shall not operate to reduce the amount of the Secured Obligations.

## **19 EXPENSES AND INDEMNITY**

### **19.1 Indemnity**

Each Company shall, notwithstanding any release or discharge of all or any part of the security constituted by this Deed, indemnify the Lender, its agents, attorneys and any Receiver against any action, proceeding, claim, loss, liability and cost which it may sustain:

- (a) in the exercise (or purported exercise) of any of the rights, powers or discretions vested in them by this Deed (or by law); and/or
- (b) in connection with or otherwise relating to this Deed or the Charged Property.

## **20 MISCELLANEOUS**

### **20.1 Assignment and disclosure of information**

The Lender may assign and transfer all or any of its rights and obligations under this Deed. The Lender shall be entitled to disclose such information concerning the Companies and this Deed as the Lender considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

## **20.2 Perpetuity Period**

The perpetuity period under the rule against perpetuities, if applicable to this Deed, shall be the period of one hundred and twenty five years from the date of this Deed.

## **20.3 No Liability**

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

## **21 NOTICES**

Each communication to be made under this Deed shall be made in accordance with the provisions of clause 8 of Schedule 3 (*Notice*) of the Agreement.

## **22 COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

## **23 GOVERNING LAW**

This Deed is governed by and shall be construed in accordance with English law.

## **24 JURISDICTION**

### **24.1 English Courts**

The courts of England have exclusive jurisdiction to settle any disputes (a "**Dispute**") arising out of, or connected with this Deed (including a dispute regarding the existence, validity or termination of this Deed or the consequences of its nullity).

### **24.2 Convenient Forum**

The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

### **24.3 Exclusive Jurisdiction**

This Clause 24 is for the benefit of the Lender only. As a result and notwithstanding Clause 24.1 (*English Courts*), it does not prevent the Lender from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law the Lender may take concurrent proceedings in any number of jurisdictions.

**THIS DEED** has been signed on behalf of the Lender and **EXECUTED AS A DEED** by the Companies and is delivered by them on the date first specified above.



**SCHEDULE 1  
THE COMPANIES**

<b>Name of Company</b>	<b>Company number</b>	<b>Registered Office</b>
Ladder and Fencing Industries (Newent) Limited	00588937	Horse Fair Lane, Newent, GL18 1RP
Access Solutions Holdings Limited	11434632	Unit 19 The Business Centre, Edward Street, Redditch, B97 6HA

**SCHEDULE 2  
REAL PROPERTY**

**Part A  
Registered Land**

<b>Company</b>	<b>Address</b>	<b>Title Number</b>

**Part B  
Unregistered Land**

		<b>Document describing the Real Property</b>		
<b>Company</b>	<b>Address</b>	<b>Date</b>	<b>Document</b>	<b>Parties</b>

EXECUTION CLAUSES TO THE DEBENTURE

**COMPANIES**

Executed as a DEED by

**LADDER AND FENCING**

**INDUSTRIES (NEWENT) LIMITED** by:

Director

in the presence of:

Witness signature ..

Witness name JORDAN HOLLINGSWORTH

(block capitals)

Witness address ..... **Higgs & Sons Solicitors**  
..... **3 Waterfront Business Park**  
..... **Brierley Hill**  
..... **West Midlands...**  
..... **DY5 1LX**  
.....

Executed as a DEED by

**ACCESS SOLUTIONS**

**HLDINGS LIMITED** by:

Director

in the presence of:

Witness signature ..

Witness name JORDAN HOLLINGSWORTH

(block capitals)

Witness address ..... **Higgs & Sons Solicitors**  
..... **3 Waterfront Business Park**  
..... **Brierley Hill**  
..... **West Midlands**  
..... **DY5 1LX**  
.....

**LENDER**

Executed as a **DEED** by

**ROWAN (216) LIMITED** by:

 Director

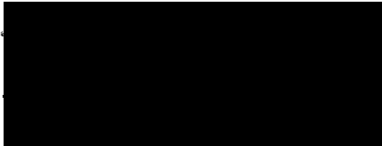
in the presence of:

Witness signature

Witness name

(block capitals)

Witness address

  
RICHARD HENRY KNIGHT  
ELLENBOROUGH HOUSE  
WELLINGTON STREET  
CHELTENHAM GL50 1YD  
SOLICITOR