



**Registration of a Charge**

Company Name: **ORCA MIDCO LIMITED**

Company Number: **14669678**



Received for filing in Electronic Format on the: **14/03/2024**

XCYWEZ60

**Details of Charge**

Date of creation: **07/03/2024**

Charge code: **1466 9678 0003**

Persons entitled: **LLOYDS BANK PLC AS SECURITY TRUSTEE FOR THE SECURED PARTIES**

Brief description: **NOT APPLICABLE**

**Contains fixed charge(s).**

**Contains negative pledge.**

**Authentication of Form**

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

**Authentication of Instrument**

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

Certified by: **ADDLESHAW GODDARD LLP**



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

Company number: 14669678

Charge code: 1466 9678 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th March 2024 and created by ORCA MIDCO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 14th March 2024 .

Given at Companies House, Cardiff on 19th March 2024

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**

7 March **2024**

**ORCA MIDCO LIMITED**  
as Assignor

**LLOYDS BANK PLC**  
as Security Agent

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**DEED OF ASSIGNMENT**

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This Deed is made on

7 March

2024

## Between

- (1) **Orca Midco Limited** (registered in England with number 14669678) (**Assignor**); and
- (2) **Lloyds Bank plc** (registered in England and Wales with number 00002065) as security trustee for the Secured Parties (**Security Agent**) as defined in the Facilities Agreement (defined below).

## It is agreed

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Deed:

**Assigned Agreements** means the agreements, details of which are set out in Schedule 1 to this Deed, together with all monies payable in respect of those agreements

**Assigned Property** means all of the rights and assets of the Assignor which from time to time are, or are expressed to be, the subject of any Security created (or expressed to be created) by, under or supplemental to, this Deed in favour of the Security Agent

**Cash Equivalent Investments** means as defined in the Facilities Agreement

**Debt Document** means as defined in the Intercreditor Agreement

**Declared Default** means as defined in the Intercreditor Agreement

**Facilities Agreement** means the facilities agreement dated 5 April 2022 and made between the Company, the Company and certain of its subsidiaries as Original Borrowers, the Company and certain of its subsidiaries as Original Guarantors, HSBC UK Bank plc, Lloyds Bank plc and PDL Europe Holdings LP acting by its general partner PDL Europe GP Ltd as Arrangers, certain financial institutions as Original Lenders and Lloyds Bank plc as Agent and as Security Agent as amended on 6 October 2022, as amended and restated on 28 February 2023 and as further amended on or around the date of this Deed

**Intercreditor Agreement** means the intercreditor agreement dated 5 April 2022 and made between, among others, the Company, the Original Debtors (as defined therein), the Agent, the Security Agent and the Original Lenders (as defined therein)

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

**Orca Denmark** means Orca Holding Denmark APS (CVR no 43 86 61 09)

**Party** means a party to this Deed

**Receiver** means any receiver, receiver and manager or administrative receiver of the Assignor or the whole or any part of any of the Assigned Property and includes any appointee made under a joint or several appointment

**Related Rights** means, in respect of any asset:

- (a) all monies, amounts and proceeds paid or payable in respect of (or derived from) that asset (whether as income, capital or otherwise)
- (b) all rights in respect of, derived from or incidental to that asset (including all rights to make any demand or claim)
- (c) all powers, remedies, causes of action, guarantees, indemnities, security or other collateral in respect of, or derived from, that asset (or any of them) and
- (d) the benefit of any judgment or order to pay a sum of money and all rights of enforcement in respect of that asset

**Relevant Jurisdiction means, in relation to the Assignor:**

- (a) its jurisdiction of incorporation
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts all or substantially all of its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it

**Secured Obligations** means all the liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity

**Secured Party** means as defined in the Intercreditor Agreement

**Security** means as defined in the Intercreditor Agreement

**Security Period** means the period beginning on the date of this Deed and ending on the Senior Discharge Date

**Senior Discharge Date** means as defined in the Intercreditor Agreement

**Subordinated Loans** means:

- (a) each and every sum from time to time paid or payable by Orca Denmark for the time being to the Assignor and
- (b) the aggregate of all and any loans made available or to be made available by the Assignor to Orca Denmark from time to time (and whether pursuant to a Subordinated Loan Agreement or otherwise)

**Subordinated Loan Agreements** means each subordinated loan agreement entered or to be entered into from time to time between Orca Denmark and the Assignor

## 1.2 Interpretation

- (a) Unless otherwise defined in this Deed, a term defined in the Facilities Agreement has the same meaning when used in this Deed or any notices, acknowledgements or other documents issued under or in connection with this Deed.

- (b) In this Deed the term **disposal** includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and **dispose** will be construed accordingly.
- (c) Clause 1.2 (Construction) and 1.3 (Currency symbols and definitions) of the Facilities Agreement are incorporated in this Deed as if set out here in full but so that each reference in that clause to this **Agreement** or a **Finance Document** shall be read as a reference to this Deed.

### 1.3 Third party rights

- (a) Unless expressly provided to the contrary in any Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other Finance Document issued or entered into under or in connection with it.
- (b) Subject to clause 40.5 (Other exceptions) of the Facilities Agreement but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- (c) Any Receiver or Delegate may enforce and enjoy the benefit of any clause which expressly confers rights on it, subject to clause 1.3(b) and the provisions of the Contracts (Rights of Third Parties) Act 1999.

### 1.4 Intercreditor Agreement

- (a) This Deed is subject to the terms of the Intercreditor Agreement.
- (b) If there is any conflict or inconsistency between any provision of this Deed and any provision of the Intercreditor Agreement, the provision of the Intercreditor Agreement shall prevail.

### 1.5 Application of provisions in Facilities Agreement

Clause 21 (Costs and expenses) of the Facilities Agreement is deemed to form part of this Deed as if expressly incorporated into it and as if all references in those clauses to:

- (a) the Facilities Agreement were references to this Deed; and
- (b) an Obligor or the Obligors were references to the Assignor.

### 1.6 Present and future assets

- (a) A reference in this **Deed** to any **Assigned Property** or other asset includes, unless the contrary intention appears, present and future **Assigned Property** and other assets.
- (b) The absence of or incomplete details of any Assigned Property in any Schedule shall not affect the validity or enforceability of any Security under this Deed.

### 1.7 Fixed security

Clause 3.2 (Assignment) and 3.3 (First fixed charge) shall be construed as creating a separate and fixed charge or assignment by way of security over each relevant asset within any particular class of assets defined under this Deed and the failure to create an effective fixed charge or assignment by way of security (whether arising out of this Deed or any act or omission by any

party) on any one asset shall not affect the nature of any fixed charge or assignment by way of security imposed on any other asset whether within that same class of assets or not.

## 1.8 No obligations

The Security Agent shall not be under any obligation in relation to the Assigned Property as a consequence of this Deed and the Assignor shall at all times remain liable to perform all obligations expressed to be assumed by it in respect of the Assigned Property.

## 2 Covenant to pay

### 2.1 Covenant

Subject to the provisions of clause 2.2, the Assignor

covenants with the Security Agent as security trustee for the Secured Parties, to pay and discharge the Secured Obligations when they become due for payment and discharge in accordance with the terms of the Finance Documents.

### 2.2 Limited recourse

Notwithstanding the terms of any other provision of this Deed or the Debt Documents:

- (a) the recourse of the Security Agent against the Assignor in respect of the Secured Obligations is limited to the rights of enforcement and recovery against the Assigned Property;
- (b) the Assignor's liabilities and obligations under this Deed are limited to, and may only be discharged from, the aggregate amount actually received by the Security Agent from the proceeds of realisation of the Assigned Property as a result of enforcement of the security granted pursuant to this Deed in accordance with Clause 12 (*Enforcement of security*) (the **Third Party Security Recovery Proceeds**) (and the liabilities of the Assignor under this Deed shall be fully discharged and extinguished upon such realisation of the Assigned Property by the Security Agent); and
- (c) no Secured Party or any Receiver or Delegate:
  - (i) shall have any recourse to any assets of the Assignor other than the Assigned Property;
  - (ii) may seek to recover from the Assignor any shortfall between the amount of the Third Party Security Recovery Proceeds and the Secured Obligations; or
  - (iii) sue or commence, join or bring any action or proceeding against the Assignor or apply to have the Assignor wound up or made subject to insolvency proceedings in relation to any shortfall referred to in sub-paragraph (c)(ii) above.

## 3 Charging provisions

### 3.1 General

All Security created by the Assignor under this Deed is:

- (a) a continuing security for the payment and discharge of the Secured Obligations;

- (b) granted with full title guarantee, being subject to and qualified by the Legal Reservations; and
- (c) granted in favour of the Security Agent as security trustee for the Secured Parties and the Security Agent shall hold the benefit of this Deed and the Security created by or pursuant to it on trust for the Secured Parties.

### 3.2 **Assignment**

- (a) The Assignor assigns absolutely, subject to a proviso for re-assignment on redemption all its rights, title and interest in and to each Subordinated Loan Agreement, each Subordinated Loan and each Assigned Agreement, together with, in each case, all Related Rights.
- (b) The Assignor shall remain liable to perform all its obligations under the Assigned Agreements.
- (c) Notwithstanding the other terms of this clause 3.2, prior to the occurrence of a Declared Default which is continuing, the Assignor may, subject to the other terms of the Finance Documents, continue to exercise all and any of its rights under and in connection with the Subordinated Loan Agreements and the Assigned Agreements.

### 3.3 **First fixed charge**

To the extent not validly and effectively assigned pursuant to clause 3.2, the Assignor charges by way of first fixed charge all its rights, title and interest in and to each Subordinated Loan Agreement, each Subordinated Loan and each Assigned Agreement together with, in each case, all Related Rights thereto.

## 4 **Effectiveness of security**

### 4.1 **Continuing security**

The Security constituted by this Deed shall be continuing security and shall remain in full force and effect unless and until discharged by the Security Agent in writing and regardless of any intermediate payment, discharge or satisfaction by the Assignor or any other person of the whole or any part of the Secured Obligations.

### 4.2 **No prejudice**

The Security created by or pursuant to this Deed shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Assignor or any other person, by the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties or by any variation of the terms of the trust upon which the Security Agent holds the Security or by any other thing which might otherwise prejudice that Security.

### 4.3 **Cumulative rights**

- (a) The Security constituted by this Deed shall be cumulative, in addition to and independent of any other Security which any Secured Party may hold at any time for the Secured Obligations (or any of them) or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent security

notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security.

- (b) No prior Security held by the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Assigned Property shall merge into the Security constituted by this Deed.

#### 4.4 **Waiver of defences**

The obligations of, and the Security created by, the Assignor under this Deed will not be affected by an act, omission, matter or thing which, but for this clause 4.4, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any Obligor 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 Obligor 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 an Obligor 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.

#### 4.5 **Assignor intent**

Without prejudice to the generality of clause 4.4, the Assignor expressly confirms that it intends that the Security created under the Deed 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: acquisitions of any nature; increasing working capital; enabling 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.

#### 4.6 **Immediate recourse**

The Assignor waives any right it may have of first requiring any Secured Party (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 the Assignor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### 4.7 **Deferral of rights**

Until the end of the Security Period, the Assignor will not exercise any rights which it may have by reason of performance by it of its obligations under this Deed:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under this Deed;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under this Deed or of any other guarantee or Security taken pursuant to, or in connection with, this Deed by any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under any Finance Document;
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Secured Party.

If the Assignor 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 any Secured Party by the Obligors under or in connection with this Deed to be repaid in full on trust for the Security Agent and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with clause 14 (Application of monies).

### 5 **Negative pledge**

- 5.1 The Assignor shall not create or permit to subsist any Security over any of the Assigned Property.
- 5.2 Clause 5.1 does not apply to any Security which is expressly permitted pursuant to the terms of the Facilities Agreement.

### 6 **Restrictions on disposals**

- 6.1 The Assignor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of all or any part of the Assigned Property.
- 6.2 Clause 6.1 does not apply to any disposal expressly permitted pursuant to the terms of the Facilities Agreement.

## **7 Further assurance**

- 7.1 The Assignor shall promptly, at its own expense, take all such action (including filings, registrations, notarisations and applying for relief against forfeiture) and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent or a Receiver may reasonably specify (and in such form as the Security Agent may require):
- (a) subject to the Agreed Security Principles, to create, perfect, protect and/or maintain the Security created or intended to be created under or evidenced by this Deed in favour of the Security Agent or its nominee(s) (which may, subject to the Agreed Security Principles, include the execution by the Assignor of a mortgage, charge or assignment over all or any of the assets constituting or intended to constitute Assigned Property) or for the exercise of any rights, powers and remedies of the Security Agent, the Finance Parties or any Receiver provided by or pursuant to this Deed or by law;
  - (b) (if a Declared Default has occurred which is continuing) to facilitate the realisation of the assets which are, or intended to be, the subject of the Security created by or under this Deed.
- 7.2 The Assignor 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 Security Agent or the Finance Parties by or pursuant to this Deed.

## **8 Notices of assignment of Assigned Agreements**

- 8.1 The Assignor shall give notice in the form specified in Part 1 (Form of notice of assignment) of Schedule 2 to the relevant parties to the Subordinated Loan Agreements and Assigned Agreements that the Assignor has assigned to the Security Agent all its right, title and interest in the relevant Subordinated Loan Agreements and Assigned Agreements.
- 8.2 The Assignor shall give the notices referred to in clause 8.1:
- (a) in the case of each Subordinated Loan Agreement and Assigned Agreement in existence as at the date of this Deed on the date of this Deed; and
  - (b) in the case of each Subordinated Loan Agreement and Assigned Agreement coming into existence or being designated as such after the date of this Deed, on the later of that agreement coming into existence or being designated a Subordinated Loan Agreement or Assigned Agreement.
- 8.3 The Assignor shall use reasonable endeavours to procure that the recipient of such notice acknowledges that notice in substantially the form specified in Part 2 (Form of Acknowledgement) of Schedule 2.

## **9 Representations**

The Assignor makes the representations set out in this clause 9 to the Security Agent for the benefit of each Secured Party.

### **9.1 Status**

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

## 9.2 **Binding obligations**

Subject to the Legal Reservation and the Perfection Requirements:

- (a) the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations.
- (b) without limiting the generality of clause 9.2(a), the Security conferred by this Deed constitutes a first priority Security interest of the type described, over Assigned Property and those assets are not subject to any prior or pari passu Security.

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

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

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument, in each case to the extent such conflict has or is reasonably likely to have a Material Adverse Effect.

## 9.4 **Power and authority**

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

## 9.5 **Validity and admissibility in evidence**

Subject to the Legal Reservations and the Perfection Requirements, all Authorisations required:

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

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

## 9.6 **Acting as principal**

It is acting in all matters relating to this Deed as principal for its own account and not as agent or trustee or in any other capacity whatsoever on behalf of any third party.

## 9.7 **Governing law and enforcement**

Subject to the Legal Reservations and the Perfection Requirements:

- (a) the choice of English law as the governing law of this Deed will be recognised and enforced in its Relevant Jurisdictions.
- (b) any judgment obtained in England in relation to this Deed will be recognised and enforced in its Relevant Jurisdictions.

## 9.8 **Insolvency**

No corporate action, legal proceeding or other formal procedure or step described in paragraph (a) of Clause 27.7 (Insolvency proceedings) of the Facilities Agreement or creditors' process described in Clause 27.8 (Creditors' process) of the Facilities Agreement has been taken or, to the knowledge of the Assignor, been taken or threatened in writing (and is, in each case, outstanding) in relation to the Assignor and none of the circumstances described in Clause 27.6 (Insolvency) of the Facilities Agreement applies to the Assignor.

## 9.9 **No filing or stamp taxes**

It is not necessary under the laws of its Relevant Jurisdiction that this Deed be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Deed or the transactions contemplated by this Deed except registration of a statement of particulars and a certified copy of this Deed at Companies House under the Companies Act 2006 and payment of associated fees, which will, in the case of the Perfection Requirements (other than any Perfection Requirements which the Lenders or their counsel have agreed are not required to be effected) and related fees, be made and paid promptly after the date of this Deed.

## 9.10 **Subordinated Loans and Assigned Agreements**

Each Subordinated Loan Agreement and each Assigned Agreement is in full force and effect in accordance with its terms and is enforceable (subject to the Finance Documents) by the Assignor against Orca Denmark. There are no restrictions on the ability of the Assignor to assign or charge any Subordinated Loan, whether contained in a Subordinated Loan Agreement, an Assigned Agreement or otherwise.

## 9.11 **Centre of main interest and establishments**

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in England and Wales and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

## 9.12 **No adverse consequences**

- (a) It is not necessary under the laws of its Relevant Jurisdictions:
  - (i) in order to enable the Security Agent to enforce its rights under this Deed; or

- (ii) by reason of the execution of this Deed or the performance by it of its obligations under this Deed,

that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any Relevant Jurisdiction of the Assignor.

- (b) No Finance Party is or will be deemed to be resident, domiciled or carrying on business in any Relevant Jurisdiction of the Assignor by reason only of the execution, performance and/or enforcement of this Deed.

### 9.13 Holding Company

The Assignor has not traded or incurred any liabilities or commitments (actual or contingent, present or future) other than acting as a Holding Company.

### 9.14 Repetition

- (a) All the representations and warranties in this Clause 9 are made by the Assignor on the date of this Deed.
- (b) The representations and warranties in this clause 9.1 (Status) to 9.6 (Governing law and enforcement) and 9.9 (Legal and beneficial ownership) are deemed to be made by the Chargor by reference to the facts and circumstances then existing on:
  - (i) each Utilisation Date;
  - (ii) the first day of each Interest Period
  - (iii) the date of each Incremental Facility Notice; and
  - (iv) each Establishment Date.

## 10 Undertakings

### 10.1 Duration

The Assignor undertakes to the Security Agent for the benefit of the Secured Parties in accordance with this clause 9. The undertakings in this clause 9 shall remain in force during the Security Period.

### 10.2 Authorisations

The Assignor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) after the Agent's request, supply certified copies to the Security Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction to enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence of this Deed and enable it to carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

### 10.3 Compliance with laws

The Assignor shall comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

### 10.4 General undertaking

The Assignor shall not do or cause or permit to be done anything which may in any way materially depreciate, jeopardise or otherwise prejudice the value to the Finance Parties of the Security created by or under this Deed.

### 10.5 Subordinated Loans

Following the occurrence of a Declared Default which is continuing, the Assignor shall not take, or omit to take, any action which might result in:

- (a) the alienation or impairment of any rights in any Subordinated Loan; or
- (b) any right to terminate a Subordinated Loan Agreement becoming exercisable by any party to that agreement.

### 10.6 Assigned Agreements

The Assignor shall:

- (a) perform its obligations under each Assigned Agreement in accordance with the terms of that Assigned Agreement;
- (b) promptly pay all amounts it is required to pay under the Assigned Agreements and do all other things necessary to keep all of the Assigned Agreements in full force and effect; and
- (c) shall, promptly on request by the Security Agent, give to the Security Agent copies of the Assigned Agreements and such information in connection with the Assigned Agreements as the Security Agent may reasonably require. The Assignor will notify the Security Agent in writing of all renewals, variations and cancellations of the Assigned Agreements made or, to its knowledge of it, threatened or pending.

### 10.7 Holding Company

The Assignor shall not trade, carry on any business (other than as a holding company), own any assets or incur any liabilities except for:

- (a) the provision of legal, treasury, accounting, management and administrative services to other members of the Group of a type customarily provided by a holding company to its Subsidiaries;
- (b) ownership of shares in its Subsidiaries, intra-Group debit balances, intra-Group credit balances and other credit balances in bank accounts, cash and Cash Equivalent Investments but only if those shares, credit balances, cash and Cash Equivalent Investments are subject to the Transaction Security;
- (c) any rights or liabilities under the Transaction Documents to which it is a party and professional fees and administration costs and any Tax incurred in the ordinary course of business as a holding company;

- (d) any rights or liabilities under any hedging transaction permitted under clause 26.29 (Treasury Transactions) of the Facilities Agreement;
- (e) any rights or liabilities under any contract and agreement with directors, officers, executives, consultants, shareholders and employees to the extent arising in the ordinary course of business as a holding company;
- (f) any rights or liabilities under any service contract or consultancy agreement for any other director, executive or consultant or employee to the extent arising in the ordinary course of business as a holding company;
- (g) any Permitted Guarantee;
- (h) any rights or liabilities in relation to Subordinated Debt or New Shareholder Injections;
- (i) any rights or liabilities in relation to any employee incentive scheme operated by any member of the Group;
- (j) any arrangement in respect of a Permitted Payment or a Permitted Transaction (including the declaration, making of or payment of dividends, distributions or other amounts and the receipt of any Permitted Payment);
- (k) any rights or liabilities in relation to any litigation or court or other similar proceedings that are being contested in good faith;
- (l) the payment of any Acquisition Costs;
- (m) any other assets or liabilities owned or reasonably incurred in the ordinary course of business as a holding company (including liabilities in respect of Taxes, customary insurance policies and liabilities arising by operation of law);
- (n) any activity taken in preparation for or in connection with a Permitted Reorganisation, a Listing, or other issuance, offering and/or sale of shares or securities;
- (o) the incurrence of any liability by operation of law or as a result of the existence of a fiscal unity or any analogous arrangement, in each case, of which an Obligor is a member; and
- (p) the incurrence of any other costs that relate to services provided or duties of the Group.

## 11 Security power of attorney

The Assignor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any of their delegates or sub-delegates to be its attorney with the full power and authority of the Assignor (in its name and otherwise on its behalf) to:

- (a) execute, deliver and perfect all deeds, instruments and other documents; and
- (b) to do or cause to be done all acts and things,

in each case:

- (i) following a Declared Default which is continuing;

- (ii) which may be required / which the Assignor ought or has agreed to execute or do under this Deed and which it has failed to do within 10 Business Days following a request from the Security Agent to undertake such execution or action; or
- (iii) The Assignor ratifies and confirms whatever any attorney does or purports to do under its appointment under this clause.

## **12 Enforcement of security**

### **12.1 When security is enforceable**

On and at any time after the occurrence of a Declared Default which is continuing, any Security created by or under this Deed is immediately enforceable.

### **12.2 Acts of enforcement**

The Security Agent may, at its absolute discretion, at any time after the Security created by or under this Deed is enforceable:

- (a) enforce all or any part of the Security created by or under this Deed in any manner and on the terms it sees fit;
- (b) exercise all and any of its rights and powers conferred upon mortgagees by the LPA or otherwise by any law on mortgagees, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed or otherwise by law, whether or not it has taken possession or appointed a Receiver to any of the Assigned Property;
- (c) appoint one or more persons to be a Receiver to all or any part of the Assigned Property;
- (d) appoint one or more persons to be an administrator in respect of the Assignor and take any steps to do so;
- (e) exercise its power of sale under section 101 of the LPA (as amended by this Deed); or
- (f) if permitted by law, appoint an administrative receiver in respect of the Assignor.

### **12.3 Statutory Powers - General**

- (a) For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the LPA (restricting the power of sale) and section 93 of the LPA (restricting the right of consolidation) do not apply to the Security constituted by or under this Deed.
- (c) Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the LPA and the Insolvency Act 1986 on mortgagees and receivers when such Receivers have been duly appointed under the relevant Act.

### **12.4 Contingencies**

If the Security Agent enforces the Security constituted by or under this Deed at a time when no amounts are due to any Finance Party under the Finance Documents but at a time when

amounts may or will become so due, the Security Agent (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.

#### 12.5 **Mortgagee in possession – no liability**

None of the Security Agent, its nominee(s) nor any Receiver shall be liable, by reason of entering into possession of any Assigned Property, to account as a mortgagee or mortgagee in possession or for any loss arising by reason of taking any action permitted by this Deed or any neglect, default or omission in connection with the Assigned Property or taking possession of or realising all or any part of the Assigned Property.

#### 12.6 **Redemption of prior mortgages**

At any time after the Security created by or under this Deed has become enforceable the Security Agent may:

- (a) redeem any prior form of Security over any Assigned Property;
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Assignor.

### 13 **Receiver**

#### 13.1 **Appointment of Receiver**

- (a)
  - (i) At any time after any Security created by or under this Deed is enforceable, the Security Agent may appoint one or more persons to be a Receiver to all or any part of the Assigned Property in accordance with clause 11.2(c) (Acts of enforcement).
  - (ii) At any time, if so requested in writing by the Assignor, without further notice, the Security Agent may appoint a Receiver to all or any part of the Assigned Property as if the Security Agent had become entitled under the LPA to exercise the power of sale conferred under the LPA.
- (b) Any appointment under clause 12.1(a) may be by deed, under seal or in writing under its hand.
- (c) Except as provided below, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the LPA) does not apply to this Deed.
- (d) Any Receiver appointed under this Deed shall be deemed to be the agent of the Assignor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the LPA. The Assignor is responsible for any contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver.
- (e) In no circumstances whatsoever shall the Security Agent or any Secured Party be liable (either to the Assignor or to any other person) by reason of the appointment of a

Receiver or for any other reason nor be in any way responsible for any misconduct, negligence or default of the Receiver.

### 13.2 Removal

The Security Agent may (subject to any requirement for an order of the court in the case of an administrative receiver) remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

### 13.3 Powers of Receiver

#### (a) General

(i) A Receiver has all of the rights, powers and discretions set out below in this clause 13 in addition to those conferred on it by the LPA.

(ii) A Receiver shall have all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the receiver is an administrative receiver).

(iii) A Receiver may, in the name of the Assignor:

(A) do all other acts and things which he may consider expedient for realising any Assigned Property; and

(B) exercise in relation to any Assigned Property all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.

(iv) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.

#### (b) Borrow money

A Receiver may raise and borrow money (either unsecured or on the security of any Assigned Property, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

#### (c) Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person relating in any way to any Assigned Property.

#### (d) Delegation

A Receiver may delegate his powers in accordance with clause 13 (Delegation).

#### (e) Lending

A Receiver may lend money or advance credit to any person.

(f) Employees

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of an Assignor or for itself as Receiver, may:

- (i) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and
- (ii) discharge any such persons appointed by the relevant Assignor.

(g) Legal actions

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the Assignor in relation to any Assigned Property as he considers expedient.

(h) Possession

A Receiver may take immediate possession of, get in and collect any Assigned Property.

(i) Receipts

A Receiver may give valid receipts for all monies and execute all assurances and things which may be expedient for realising any Assigned Property.

(j) Deal with Assigned Property

A Receiver may, without restriction vary the terms of or otherwise dispose of or deal with, all or any part of the Assigned Property without being responsible for loss or damage, and so that any such disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration, and the Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase or otherwise acquire interests in all or any of the Assigned Property or otherwise, arrange for such companies to trade or cease to trade and to purchase or otherwise acquire all or any of the Assigned Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit.

(k) Security

A Receiver may redeem any prior Security and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Assignor and the money so paid shall be deemed to be an expense properly incurred by the Receiver.

(l) Incidental matters

A Receiver may do all other acts and things including, without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the

Assigned Property and to use the name of the Assignor for all the purposes set out in this clause 12.

#### 13.4 **Remuneration**

The Security Agent may from time to time fix the remuneration of any Receiver appointed by it.

#### 14 **Delegation**

14.1 Each of the Security Agent, and any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of right, power, authority or discretion vested in it in its capacity as such.

14.2 That delegation may be made upon such terms and conditions (including the power to sub-delegate) and subject to any restrictions as the Security Agent, or that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.

14.3 Neither the Security Agent nor any Receiver nor any delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

#### 15 **Application of monies**

15.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the LPA shall not apply to a Receiver appointed under this Deed.

15.2 All monies from time to time received or recovered by the Security Agent or any Receiver under this Deed or in connection with the realisation or enforcement of all or part of this Security will be held by the Security Agent and shall be applied in accordance with the terms of the Intercreditor Agreement. This clause 14 is subject to the payment of any claims having priority over this Security.

15.3 The Security Agent and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

#### 16 **Expenses and indemnity**

The Assignor must:

- (a) immediately on demand pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with this Deed including any arising from any actual or alleged breach by any person of any law or regulation; and
- (b) keep each Secured Party indemnified against any failure or delay in paying those costs or expenses.

#### 17 **Remedies and waivers**

17.1 No failure to exercise, nor any delay in exercising, on the part of the Security Agent or any Receiver, any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or

remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

- 17.2 A waiver or affirmation given or consent granted by the Security Agent or any Receiver under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

## 18 Protection of third parties

- 18.1 No person (including a purchaser) dealing with the Security Agent or a Receiver or its or his agents has an obligation to enquire:

- (a) whether the Secured Obligations have become payable;
- (b) whether any power purported to be exercised has become exercisable or is being properly exercised;
- (c) whether any Secured Obligations or other monies remain outstanding;
- (d) how any monies paid to the Security Agent or to the Receiver shall be applied; or
- (e) the status, propriety or validity of the acts of the Receiver or Security Agent.

- 18.2 The receipt of the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve that purchaser of any obligation to see to the application of any monies paid to or by the direction of the Security Agent or any Receiver.

- 18.3 In clauses 17.1 and 17.2 **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Assigned Property or any of them.

## 19 Additional security

The Security created by or under this Deed is in addition to and is not in any way prejudiced by any guarantee or Security now or subsequently held by any Finance Party.

## 20 Settlements conditional

- 20.1 If the Security Agent (acting reasonably) believes that any amount paid by the Assignor or any other person in respect of the Secured Obligations is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid.

- 20.2 Any settlement, discharge or release between the Assignor and any Secured Party shall be conditional upon no Security or payment to or for that Secured Party by the Assignor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

## 21 Subsequent security

- 21.1 If any subsequent charge or other interest affects any Assigned Property, a Secured Party may open a new account with the Assignor.

21.2 If that Secured Party does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest.

21.3 As from that time all payments made to that Secured Party will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Obligations.

## **22 Set-off**

At any time following the occurrence of an Event of Default which is continuing and subject to clause 2.2 (Limited Recourse), a Finance Party may set off any matured obligation due from the Assignor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Assignor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **23 Notices**

Any communication under this Deed or any other Security or Finance Document created by or under this Deed, shall be made and given in accordance with the terms of clause 36 (Notices) of the Facilities Agreement.

## **24 Invalidity**

Clause 38 (Partial Invalidity) of the Facilities Agreement shall apply to this Deed as if set out here in full but so that references to the Finance Documents shall be construed as references to this Deed and any Security created by or under it.

## **25 Assignment**

25.1 Each Finance Party may assign or otherwise transfer all or any part of its rights under this Deed or any Security created by or under it in accordance with the terms of the Finance Documents

25.2 The Assignor may not assign or otherwise transfer any of its rights and obligations under this Deed.

## **26 Releases**

Upon the Senior Discharge Date, the Security Agent shall, at the request and cost of the Assignor, take whatever action is necessary to release and reassign to the Assignor:

- (a) its rights arising under this Deed; and
- (b) the Assigned Property from the Security created by and under this Deed.

## **27 Currency clauses**

27.1 Clause 34.11 (Change of currency) of the Facilities Agreement shall apply to this Deed as if set out here in full but so that references to the Finance Documents shall be construed as references to this Deed and any Security created by or under it and references to the Obligor shall be construed as references to the Assignor.

27.2 If a payment is made to the Security Agent under this Deed in a currency (**Payment Currency**) other than the currency in which it is expressed to be payable (**Contractual Currency**), the Security Agent may convert that payment into the Contractual Currency at the market rate of exchange and to the extent that the converted amount of the payment falls short of the amount due and payable the Assignor will remain liable for such shortfall.

## 28 **Certificates and determinations**

Clause 37.2 (Certificates and determinations) of the Facilities Agreement shall apply to this Deed as if set out here in full but so that references to the Finance Documents shall be construed as references to this Deed and any Security created by or under it and references to the Finance Parties shall be construed as references to the Security Agent.

## 29 **Counterparts**

This Deed or any Finance Document entered into under or in connection with this Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed or any Finance Document.

## 30 **Governing law**

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

## 31 **Enforcement**

### 31.1 **Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (**Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 30 is for the benefit of the Security Agent. As a result, the Security Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.

**This Deed** has been signed on behalf of the Security Agent and executed as a deed by the Assignor and is delivered on the date given at the beginning of this Deed. It is intended by the parties to this Deed that this Deed will take effect as a deed notwithstanding that the Security Agent may only execute it under hand.

**Schedule 1**

**Assigned Agreements**

<b>Parties</b>	<b>Brief description of agreement</b>	<b>Date of agreement</b>
----------------	---------------------------------------	--------------------------

**Schedule 2**

**Assigned Agreements and Subordinated Loan Agreements**

**Part 1 - Form of notice of assignment**

To: ◆

Dated: ◆

Dear Sirs

**The agreements described in the attached schedule ([Assigned Agreements/ Subordinated Loan Agreements])**

We hereby notify you that we have assigned absolutely, subject to a proviso for re-assignment on redemption, to Lloyds Bank Plc (**Security Agent**) as security trustee for itself and others all our right, title and interest in and to the [Assigned Agreement(s)/Subordinated Loan Agreements].

We hereby irrevocably and unconditionally authorise and instruct you upon receipt of a notice from the Security Agent:

- 1 without notice or reference to or further authority from us and without enquiring as to the justification or the validity of those instructions, to comply only with any instructions from time to time received by you from the Security Agent relating to the [Assigned Agreement(s)/Subordinated Loan Agreements] (or any of them); and
- 2 to pay all sums, if any, payable by you under the [Assigned Agreement(s)/Subordinated Loan Agreements] (or any of them) directly to the Security Agent at:

Bank: ◆

Account number: ◆

Sort code: ◆

or such other account as the Security Agent may specify from time to time.

We remain liable to perform all our obligations under the [Assigned Agreement(s)/Subordinated Loan Agreements] and the Security Agent is under no obligation of any kind whatsoever under the [Assigned Agreement(s)/Subordinated Loan Agreements] nor under any liability whatsoever in the event of any failure by us to perform our obligations under the [Assigned Agreement(s)/Subordinated Loan Agreements].

Please sign and return the acknowledgement attached to one enclosed copy of this notice to the Security Agent and the other copy to us.

The provisions of this notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

.....

for and on behalf of  
◆ **Limited**

**The Schedule**

<b>Parties</b>	<b>Description of agreement</b>	<b>Date of agreement</b>
◆	◆	◆

*[Attach form of acknowledgment]*

**Part 2 - Form of acknowledgement**

To: Lloyds Bank Plc  
 New Uberior House  
 11 Earl Grey Street  
 Edinburgh  
 EH3 9BN

To: Orca Midco Limited (**Assignor**)  
 [address]

Dated: ♦

We acknowledge receipt of the notice of assignment (**Notice**) of which the above is a duplicate. Terms defined in the Notice shall have the same meaning when used in this acknowledgement. We confirm that:

- (a) there has been no amendment, waiver or release of any rights or interests in any [Assigned Agreement(s)/Subordinated Loan Agreements] since the date of such [Assigned Agreement(s)/Subordinated Loan Agreements];
- (b) we will not agree to any amendment, waiver or release of any provision of any [Assigned Agreement(s)/Subordinated Loan Agreements] or any right, title and interest in and to the [Assigned Agreement(s)/Subordinated Loan Agreements] without the prior written consent of the Security Agent;
- (c) we shall act in accordance with the Notice;
- (d) the Assignor will remain liable to perform all its obligations under the [Assigned Agreement(s)/Subordinated Loan Agreements] and the Security Agent is under no obligation of any kind whatsoever under the [Assigned Agreement(s)/Subordinated Loan Agreements] nor under any liability whatsoever in the event of any failure by the Assignor to perform its obligations under the [Assigned Agreement(s)/Subordinated Loan Agreements];
- (e) as at the date of this acknowledgement we have not received any notice of security assignment or charge of (or of any interest of any third party in) the Assignor's interest in any [Assigned Agreement(s)/Subordinated Loan Agreements] in favour of any other person;
- (f) as at the date of this acknowledgement, we are not aware of any breach by the Assignor of the terms of the [Assigned Agreement(s)/Subordinated Loan Agreements]; and
- (g) we do not have and have not claimed or exercised any right or claim against the Assignor or exercised or attempted to exercise any right of set-off, counterclaim or other right relating to any [Assigned Agreement(s)/Subordinated Loan Agreements].

The provisions of this acknowledgement and any non-contractual obligations arising out of or in connection with it are governed by English law.

For and on behalf of

♦



**SIGNATURES TO THE DEED**

**The Assignor**

Executed as a deed by )  
**ORCA MIDCO LIMITED** ) .....  
acting by a director in the presence of ) Director

.....  
Signature of witness

Name .....

Address .....

.....

Address: 40 Phoenix Road, Washington, Tyne & Wear, England, NE38 0AD

Fax No: 0191 416 3053

**The Security Agent**

**LLOYDS BANK PLC** )  
By: )   
)  
)

Address: Lloyds Bank, 11 Earl Grey Street, Edinburgh, EH3 9BN

Fax No:  
Attention: Alex Valentine, Associate Director