



**Companies House**

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**Registration of a Charge**

LLP name: **PORTFOLIO COMPANY ADVISORS EUROPE, LLP**  
LLP number: **OC381949**



X28B8G55

Received for Electronic Filing: **13/05/2013**

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**Details of Charge**

Date of creation: **30/04/2013**  
Charge code: **OC38 1949 0001**  
Persons entitled: **BANK OF AMERICA, N.A.**  
**BROWN BROTHERS HARRIMAN & CO.**  
Brief description:  
**Contains fixed charge(s).**  
**Contains floating charge(s) .**  
**Notification of addition to or amendment of charge.**

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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 AS APPLIED BY THE LIMITED LIABILITY PARTNERSHIPS (APPLICATION OF COMPANIES ACT 2006) REGULATIONS 2009 THE ELECTRONIC**

**COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION  
FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**SAM BRODIE**



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

LLP number: OC381949

Charge code: OC38 1949 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th April 2013 and created by PORTFOLIO COMPANY ADVISORS EUROPE, LLP was delivered pursuant to Part 25 of the Companies Act 2006 as applied by The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2013 on 13th May 2013 .

Given at Companies House, Cardiff on 13th May 2013



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**GUARANTY AND DEED OF ASSIGNMENT AND CHARGE**

**dated**

**30 April 2013**

**BAIN CAPITAL EUROPE, LLP**

**PORTFOLIO COMPANY ADVISORS EUROPE, LLP**

**as Chargers**

**BANK OF AMERICA, N.A.**

**BROWN BROTHERS HARRIMAN & CO.**

**as Lenders**

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THIS GUARANTY AND DEED OF ASSIGNMENT AND CHARGE (this "Deed") is dated 30 April 2013 and made between:

- (1) BAIN CAPITAL EUROPE, LLP, a limited liability partnership incorporated in England & Wales with partnership number OC380135 and whose registered office is at 10 Snow Hill, London, EC1A 2AL (a "Chargor");
- (2) PORTFOLIO COMPANY ADVISORS EUROPE, LLP, a limited liability partnership incorporated in England & Wales with partnership number OC381949 and whose registered office is at Devonshire House, 6th Floor, Mayfair Place, London W1J 8AJ (a "Chargor" and together with Bain Capital Europe, LLP, the "Chargors");
- (3) BANK OF AMERICA, N.A., as a Lender ("BoA" and a "Lender"); and
- (4) BROWN BROTHERS HARRIMAN & CO., as a Lender (a "Lender" and together with "BoA", the "Lenders").

#### RECITALS

- (A) Reference is made to a Third Amended and Restated Credit Agreement (as amended, restated, amended and restated, supplemented, modified and otherwise in effect from time to time (including, without limitation, the waiver and ninth amendment dated 3 April 2013 (the "Waiver and Ninth Amendment to the Credit Agreement")), the "Credit Agreement"), originally dated as of August 11, 2006, by and among Bain Capital, LLC (the "Borrower") and the Lenders, whereby the Lenders have agreed to make available certain facilities on the terms and conditions contained in the Credit Agreement.
- (B) It is a condition subsequent of the Waiver and Ninth Amendment to the Credit Agreement that the Chargors enter into this Deed.

#### THIS DEED WITNESSES

##### 1. DEFINITIONS, INTERPRETATION AND MISCELLANEOUS PROVISIONS

###### 1.1 Definitions

In this Deed, unless otherwise defined or provided for herein, words and expressions shall have the same meanings as is given to them in the Credit Agreement. In addition, the following definitions apply:

"Administrator" means an administrator appointed under Schedule B1 to the Insolvency Act 1986.

"Bank Debts" means, in relation to any Chargor, all its right, title and interest in all advisory, subadvisory or management fees and any other arrangement, deal-related, director's and other fees payable directly or indirectly to any Chargor by a Fund, and all proceeds, accounts, or general intangibles consisting of the right to receive the payment of money arising therefrom or in connection therewith, whether now existing or hereafter arising.

"Companies Act" means the Companies Act 1985 and the Companies Act 2006.

"Charge" means any Security created by this Deed.

"Charged Asset" means the property, assets and income mortgaged, assigned or charged to the Lenders (whether by way of legal mortgage, assignment, fixed or floating charge) by or pursuant to this Deed and each and every part of such property, assets and income.

"Default Rate" means the rate of interest per annum as described in Section 5.7 (*Interest After Default*) of the Credit Agreement.

"Delegate" means a delegate or sub-delegate appointed, directly or indirectly, pursuant to Clause 10.3 (*Delegation*).

"Floating Charge Property" has the meaning given to that term in Clause 4.1 (*Creation of Floating Charge*).

"Loan Party" means the Borrower or a Guarantor.

"Party" means a party to this Deed.

"Receiver" means an administrative receiver or a receiver appointed pursuant to the provisions of this Deed or pursuant to any applicable law and such expression shall include, without limitation, a receiver and manager.

"Secured Obligations" means all present and future obligations and other liabilities of any nature of each Loan Party due, owing or incurred under or in connection with the Loan Documents (or any of them), including any Obligations, to the Lenders (including under any amendments, supplements or restatements of any of the Loan Documents or in relation to any new or increased advances or utilizations hereunder) and whether indebtedness or liabilities originally owed to all or any of the Secured Parties or any other person or persons actual or contingent, matured or not matured, liquidated or unliquidated, whether incurred solely or jointly and/or severally or in any other capacity whatsoever and whether as principal or surety, in any currency, including all interest accruing thereon (calculated in accordance with Clause 1.7 (*Interest*)), after as well as before judgment, and all costs, charges and expenses (to the extent payable by the relevant Loan Party pursuant to the terms of the Loan Documents) incurred in connection therewith.

"Secured Parties" means each Lender from time to time party to the Credit Agreement, and any Receiver, Administrator or Delegate and "Secured Party" shall mean any one of them.

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

## 1.2 Clause Headings

Clause headings are for convenience of reference only and shall not affect the construction of this Deed.

## 1.3 Interpretation

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

- (i) any "Lender", any "Secured Party", any "Loan Party" or any "Party" 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 "Loan Document" or any other agreement or instrument is a reference to that Loan Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (iv) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (v) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (vi) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organization;
- (vii) a provision of law is a reference to that provision as amended or re-enacted; and
- (viii) a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Loan Document or in any notice given under or in connection with any Loan Document has the same meaning in that Loan Document or notice as in this Deed.
- (d) A Default (other than an Event of Default) is "continuing" if it has not been remedied or waived in writing and an Event of Default is "continuing" if it has not been remedied or waived in writing.

#### 1.4 Third Party Rights

- (a) Unless expressly provided to the contrary in a Loan Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of any Loan Document, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.

#### 1.5 Covenant to Pay

Each Chargor shall pay the Secured Obligations when due in accordance with the terms of the Loan Documents.

#### 1.6 Immediate Rights

- (a) This Deed and each Chargor's obligations under this Deed are in addition to, and not to be prejudiced by or to be merged with, any other guarantee, indemnity or security at any time existing in favour of any person.
- (b) Each Chargor hereby waives any right it may have to require any Secured Party (or any trustee or agent on its behalf) to make demand of, proceed against or enforce any other rights or security or claim payment from any person before claiming against it. This waiver applies irrespective of any law or any provision of a Loan Document to the contrary.

#### 1.7 Interest

- (a) If a Chargor fails to pay any Secured Obligations on the date on which they fall due for payment by it, such Chargor shall on demand pay to the Lenders interest on all such amounts from the due date until the date of payment (both before and after judgment) calculated and payable in accordance with Section 5.7 (*Interest after Default*) of the Credit Agreement.
- (b) Any such interest not paid when due shall be compounded and bear interest calculated as provided above.

#### 1.8 Chargers' obligations continuing

Each Chargor's obligations under the Charges shall constitute and be continuing obligations and will extend to the ultimate balance of the Secured Obligations payable by any Chargor and will remain in full force and effect until no Secured Obligations remain outstanding, unsatisfied or capable of arising under the Loan Documents regardless of any intermediate discharge in whole or in part.

#### 1.9 Proportionate Discharge

Each sum appropriated by the Lenders in accordance with the Loan Documents towards payment of accrued default interest on any Secured Obligation which have not been paid on their due date under any obligation under the Credit Agreement which constitutes a Secured Obligation shall to the extent of that appropriation discharge a Chargor's obligations to pay such interest under Clause 1.7 (*Interest*) above.

### 2. GUARANTEE AND INDEMNITY

#### 2.1 Guarantee and indemnity

Each Chargor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Lender punctual performance by the Borrower of all of the Obligations;
- (b) undertakes with each Lender that whenever the Borrower does not pay any amount in respect of the Obligations when due, that Chargor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) agrees with each Lender that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it shall, as an independent and primary obligation, indemnify that Lender immediately on demand against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it in respect of the Obligations on the date when it would have been due. The amount payable by a Chargor 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.

#### 2.2 Continuing guarantee

This guarantee is a continuing guarantee and shall extend to the ultimate balance of sums payable by the Borrower in respect of the Obligations, regardless of any intermediate payment or discharge in whole or in part.

### 2.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Loan Party or any security for those obligations or otherwise) is made by a 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 Chargor under this Clause 2 will continue or be reinstated as if the discharge, release, or arrangement had not occurred.

## 3. FIXED CHARGES AND ASSIGNMENTS

### 3.1 Fixed Charges

Each Chargor, with full title guarantee and as continuing security for the payment of the Secured Obligations, charges, in favour of the Lenders by way of fixed charge all of its Book Debts, to the extent that they are not effectively assigned pursuant to Clause 3.2 (*Assignments*) below.

### 3.2 Assignments

Each Chargor, with full title guarantee and as continuing security for the payment of the Secured Obligations, assigns absolutely (subject to the reassignment on redemption pursuant to Clause 16.7 (*Redemption*)) to the Lenders all rights, title and interest in its Book Debts.

## 4. FLOATING CHARGE

### 4.1 Creation of Floating Charge

Each Chargor, with full title guarantee, as continuing security for the payment of the Secured Obligations hereby charges in favour of the Lenders by way of floating charge the Charged Assets, present and future, other than any property or assets from time to time or for the time being effectively mortgaged, charged or assigned to the Lenders under Clause 3 (*Fixed Charges and Assignment*) (collectively the "Floating Charge Property").

### 4.2 Qualifying Floating Charge

- (a) The floating charge created by the Chargors pursuant to 4.1 (*Creation of Floating Charge*) is a "qualifying floating charge" for the purposes of paragraph 14.2(a) of Schedule B1 to the Insolvency Act 1986.
- (b) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to this Deed and the Lenders may appoint an Administrator to the relevant Chargor pursuant to that paragraph.

### 4.3 Conversion of Floating Charge by notice

If, at any time:

- (a) any Event of Default has occurred and is continuing; or
- (b) the Lenders believe, acting reasonably, that any Floating Charge Property of a Chargor is in danger of being seized or sold under any form of distress, execution or other similar process; or
- (c) the Lenders believe, acting reasonably, that it is necessary in order to do so to protect the priority of the security created under this Deed,

then without prejudice to the provisions of Clause 4.4 (*Automatic Conversion of Floating Charge*) the Lenders may, by notice in writing to the relevant Chargor, convert the floating charge granted by it under this Deed into a fixed charge in relation to the Floating Charge Property specified in such notice (which assets need not be exclusively those assets which are in danger of seizure or sale).

#### 4.4 Automatic Conversion of Floating Charge

if:

- (a) any Chargor takes any steps to create any security interest in breach of Section 11.2 (*Restrictions on Liens*) of the Credit Agreement over any of the Floating Charge Property; or
- (b) any person levies any distress, execution, sequestration, attachment or other process against any of the Floating Charge Property,

then in the absence of any notice or other action by the Lenders pursuant to Clause 4.3 (*Conversion of Floating Charge by notice*), the floating charge over the relevant Charged Asset shall automatically operate as a fixed charge immediately upon the occurrence of such event.

### 5. FURTHER ASSURANCE AND ADDITIONAL OBLIGATIONS

#### 5.1 Further Assurance

- (a) Each Chargor shall, at the request of the Lenders and at the cost of such Chargor, forthwith do all acts and things and execute in favour of the Lenders, or as any Lender may direct, such further or other legal assignments, transfers, mortgages, charges, securities and other deeds and documents as the Lenders may reasonably require, in such form as the Lenders may reasonably require, in order to:
  - (i) protect, preserve, perfect or improve the Security intended to be conferred on the Lenders by or pursuant to this Deed;
  - (ii) to facilitate the realisation of all or any of the Charged Asset and exercise all of the rights and powers conferred on the Lenders, any Receiver or any delegate or either of the same for the purpose thereof or in connection therewith;
  - (iii) to facilitate the exercise of any and all rights, powers, authorities and discretions intended to be vested in the Lenders, or any Receiver by or pursuant to this Deed; or
  - (iv) to facilitate the realisation of any Security, fixed charge or assignment which are, or are intended to be, conferred on the Lenders by this Deed, after such Security or security interest has become enforceable or the exercise of any right, power or discretion in relation to any Charged Asset vested in the Lenders, any Receiver or any Delegate upon such enforcement.
- (b) Each Chargor acknowledges and confirms that it has established its own adequate means of obtaining from the Borrower on a continuing basis all information desired by that Chargor concerning the financial condition of the Borrower and that that Chargor will look to the Borrower and not to the Lenders or any Lender in order for

that Chargor to keep adequately informed of changes in the Borrower's financial condition.

## 5.2 Additional Obligations

- (a) The obligations of each Chargor under this Clause shall be in addition to and not in substitution for the covenants for further assurance deemed to be included herein by virtue of the Law of Property (Miscellaneous Provisions) Act 1994.
- (b) Each Chargor shall give notice to each Lender in writing, to the extent the Borrower has not provided such notice under the Credit Agreement, (i) concurrently with the financial statements required to be delivered pursuant to Section 10.4(b) of the Credit Agreement, of any termination, modification, amendment or waiver of any agreement to which that Chargor is a party to the extent that such termination, modification, amendment or waiver would be reasonably likely to cause the Borrower to fail to comply with any of the covenants contained in Section 12 (*Financial covenants of the Borrower*) of the Credit Agreement and (ii) within ten (10) days of any decision to amend or defer any fees with respect to any advisory, sub-advisory or management agreements of that Chargor.
- (c) Each Chargor shall deliver to each Lender, to the extent not delivered by the Borrower under the Credit Agreement, (i) the financial information of that Chargor described in the Credit Agreement, and (ii) such additional financial information with respect to that Chargor as any Lender may reasonably request from time to time.
- (d) Each Chargor shall not create or incur or suffer to be created or incurred or to exist any Lien (other than Permitted Liens) upon any of its property or assets of any character whether now owned or hereafter acquired, or upon the income or profits therefrom. In addition, each Chargor will not enter into any agreement with any Person other than the Lenders limiting or restricting the ability of that Chargor to create or incur or suffer to be created or incurred or to exist any Lien upon any of its property or assets, other than (a) covenants in documents creating Permitted Liens restricting Liens on the assets subject to the Permitted Liens or (b) customary non-assignment and non-transfer provisions in advisory, subadvisory or management fee agreements, leases, licences or other contracts entered into in the ordinary course of business.

## 5.3 Notices of Assignment and Charge

Upon the occurrence of an Event of Default which is continuing, each Chargor which has granted an assignment and charge over any Book Debts under Clause 3 (*Fixed Charges and Assignments*) shall, upon receipt of a request from any Lender:

- (a) deliver promptly (and, in any event within two Business Days of the date of receipt of a request from any Lender) to the relevant Fund (with a copy to each Lender) a Fund's Notice of Assignment and Charge (in the form of Schedule 1 hereto) duly executed on behalf of that Chargor; and
- (b) use its reasonable endeavours to promptly deliver to each Lender within 15 Business Days of the date on which each Fund's Notice of Assignment and Charge is sent pursuant to (a) above, an Acknowledgement of Fund (in the form of Schedule 2 hereto) duly executed by the relevant Fund in respect of each Book Debt.

**6. WHEN SECURITY BECOMES ENFORCEABLE**

**6.1 Event of Default**

The Charges under this Deed shall become immediately enforceable on the occurrence of an Event of Default which is continuing under the Credit Agreement. This clause shall be applied in accordance with the acceleration provisions under the Credit Agreement.

**6.2 Discretion**

After the Charges under this Deed have become enforceable, each Lender may in its absolute discretion enforce all or any part of the Charges under this Deed in any manner it sees fit in accordance with the applicable law and the acceleration provisions of the Credit Agreement.

**6.3 Power of Sale**

The power of sale and other powers conferred by Section 101 of the Law of Property Act 1925, as amended by this Deed, will be immediately exercisable at any time after the Charges under this Deed have become enforceable.

**7. BOOK DEBTS**

**7.1 Restrictions on dealing with Book Debts**

No Chargor shall without the consent of the Lenders:

- (a) create or permit to subsist any Security over all or any of its Book Debts other than the Security granted under the Security Documents or as permitted under the Credit Agreement; and
- (b) enter into a single transaction or a series of transactions to factor all or any part of any of its Book Debts other than as required under Clause 5 (*Further Assurance and Additional Obligations*).

**7.2 Documents**

Each Chargor shall furnish to the Lenders from time to time statements and schedules further identifying and describing the Charged Assets and such other information in connection with the Charged Assets as any Lender may reasonably request, all in reasonable detail.

**8. APPOINTMENT AND RIGHTS OF RECEIVERS AND ADMINISTRATORS**

**8.1 Appointment**

- (a) If:
  - (i) so requested by the relevant Chargor; or
  - (ii) any of the Charges given by the relevant Chargor shall have become enforceable; or
  - (iii) a petition is presented or application made for the appointment of an administrator in respect of the relevant Chargor or notice is given of the intention to appoint an Administrator,

the Lenders may, subject to paragraph (e) below, by deed under seal or in writing under the hand of any officer of the Lenders appoint any one or more persons to be a Receiver of any Charged Asset of the relevant Chargor or, when permitted by law, may appoint an Administrator of the relevant Chargor pursuant to paragraph 14 of Schedule B1 of the Insolvency Act 1986.

- (b) The Lenders may in writing under hand (except subject to any requirement for a court order under the Insolvency Act 1986 or any other applicable insolvency law) similarly remove any Receiver.
- (c) If more than one person is appointed Receiver or Administrator of any assets, each Receiver or Administrator may act either jointly or severally unless the document appointing it states otherwise.
- (d) Section 109(1) of the Law of Property Act 1925 does not apply to this Deed.
- (e) The Lenders are not entitled to appoint a Receiver solely as a result to the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under the Insolvency Act 2000, except with the leave of the court.
- (f) The Lenders are not entitled to appoint an administrative receiver if prohibited from doing so under section 72A of the Insolvency Act 1986.

## **8.2 Scope of Appointment**

Any Receiver may be appointed either Receiver of all the Charged Asset (subject to any applicable restrictions under the Insolvency Act 1986) or Receiver of such part thereof as may be specified in its appointment and, in the latter case, the rights conferred on a Receiver by this Deed shall have the effect as though every reference therein to the Charged Assets were a reference to the part of such assets so specified or any part thereof.

## **8.3 Rights of Receivers**

- (a) Any Receiver appointed pursuant to this Clause shall have all the rights, powers and discretions conferred on a receiver or and administrative receiver under the Insolvency Act 1986, the Law of Property Act 1925 and any other applicable Law.
- (b) In addition, a Receiver shall be entitled (either in its own name or in the name of a relevant Chargor or any trustee or nominee for the Chargor) and in such manner and upon such terms and conditions as the Receiver thinks fit:
  - (i) *Take possession:* to enter upon, take possession of, get in and collect the Charged Assets;
  - (ii) *Deal with Charged Assets:* to sell, transfer, assign, exchange, hire out, lend or otherwise dispose of, convert into money or realise the Charged Assets either by public offer or auction, tender or private contract to any person in any manner and on any terms and for a consideration of any nature he thinks fit and generally to exercise, in the name of and on behalf of and at the cost of such Chargor, all the powers and rights of an absolute owner of the Charged Assets and do or omit to do anything which the charger could do or omit to do;

- (iii)  *borrowings*: to borrow or raise money either unsecured or on the security of the Charged Asset either in priority to the charges or otherwise and on such terms as he thinks fit;
  - (iv)  *Proceedings and Claims*: to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Asset or the business of such Chargor;
  - (v)  *Compromise of Claims*: to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating in any way to the Charged Asset;
  - (vi)  *Redemption of Security*: to redeem any Security (whether or not having priority to the Charges) over the Charged Assets or relating in any way to the Charged Assets;
  - (vii)  *Employment*: to appoint and discharge officers, employees, agents and advisors and others for the purposes of this Deed and to discharge any person appointed by the Chargor;
  - (viii)  *Receipts*: to give a valid receipt for any moneys and execute any document which is necessary or desirable for realising any Charged Assets;
  - (ix)  *Insolvency Act 1986*: to exercise all powers set out in Schedule 1 or Schedule B1 of the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver) and any powers added to Schedule 1 or Schedule B1 of the Insolvency Act 1986 after the date of this Deed;
  - (x)  *Other Powers*: to do all such other acts and things the Receiver may consider necessary or expedient for the realising of the Charged Assets or incidental to the exercise of any of the rights, powers and discretions conferred on the Receiver under or by virtue of this Deed or by Law.
- (c) Each of the powers specified in paragraph (b) above shall (except as otherwise provided) be distinct and shall not be in any way limited by reference to any other paragraph or the order in which they appear.

#### 8.4 Directions of the Lenders

Any Receiver shall in the exercise of its rights, comply with any regulations, restrictions and directions from time to time made or given by the Lenders.

#### 8.5 Agent of each Chargor

Any Receiver shall be the agent of the relevant Chargor for all purposes and, subject to any applicable law, the relevant Chargor alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him (except to the extent that the liability or loss arises directly from the Receiver's gross negligence, wilful misconduct or breach of any obligations under the Loan Documents) and no Secured Party shall incur any liability by reason of the appointment of a Receiver or for any other reason whatsoever.

#### **8.6 Remuneration**

The Lenders may from time to time determine the remuneration of any Receiver and the maximum rate specified in Section 109(6) of the Law of Property Act 1925 will not apply. The Lenders may direct payment of such remuneration out of moneys accruing to the Receiver but the relevant Chargor alone shall be liable for the payment of such remuneration and for all other costs, charges and expenses of the Receiver.

#### **8.7 Removal of Receivers**

Subject to section 45 of the Insolvency Act 1986, the Lenders may:

- (a) remove any Receiver previously appointed hereunder; and
- (b) appoint another person or other persons as Receiver or Receivers, either in the place of a Receiver so removed or who has otherwise ceased to act or to act jointly with a Receiver or Receivers previously appointed hereunder.

#### **8.8 Receivers and Administrators to act Jointly**

If at any time and by virtue of any such appointment(s) any two or more persons shall hold office as Receivers or Administrators, as the case may be, of the same assets or income, such Receivers or Administrators, as the case may be, may act jointly and/or severally so that each one of such Receivers or Administrators, as the case may be, shall be entitled (unless the contrary shall be stated in any of the deed(s) or other instrument(s) appointing them) to exercise all the powers and discretions hereby conferred on Receivers or Administrators, as the case may be, individually and to the exclusion of the other or others of them.

### **9. APPLICATION OF PROCEEDS**

#### **9.1 Application of Proceeds**

All moneys received by a Lender or any Receiver shall (subject to the terms of the Loan Documents and the payment of any liabilities having priority to the Secured Obligations) be applied in the following order:

- (a) in or toward the payment of or provision for all of the costs, losses, charges, liabilities and expenses incurred by the Lenders or any Receiver under or in connection with this Deed or the Receiver's appointment and remuneration due in connection with this Deed;
- (b) 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;
- (c) in or towards discharge of the Secured Obligations in such order as required pursuant to the Loan Documents; and
- (d) any surplus shall be paid to the relevant Chargor or other person entitled thereto.

#### **9.2 Partial Application**

All moneys from time to time received by a Lender or the Lenders (as the case may be) from any Chargor or any person liable to pay the same or from any Receiver or otherwise on the realisation or enforcement of the Charges may, subject to Clause 9.1 (*Application of*

*Proceeds*), be applied by that Lender or the Lenders (as the case may be) either as whole or in such proportion as the Lenders shall think fit to any account or item of account or any transaction to which the same may be applicable.

## **10. LENDER'S RIGHTS**

### **10.1 General Rights**

All or any of the rights which are conferred by this Deed (either expressly or impliedly) or by law upon a Receiver may be exercised after the Charges become enforceable by the Lenders irrespective of whether the Lenders shall have taken possession or appointed a Receiver of the Charged Assets.

### **10.2 Redemption of Prior Security**

- (a) The Lenders may at any time redeem any Security having priority to any Charges or, at any time after an Event of Default has occurred and is continuing, procure the transfer of that Security to itself and may settle the accounts of the prior encumbrancer and any accounts so settled shall, in the absence of manifest error, be conclusive and binding on each Chargor.
- (b) Each Chargor shall on demand of any Lender pay to each Lender all the reasonable costs and expenses incurred by it in connection with any such redemption or transfer.
- (c) All the rights conferred by a prior charge upon the chargee or any receiver thereunder shall be exercisable by the Lenders or a Receiver in like manner as if the same were expressly included herein and the Lenders shall be entitled to exercise all the rights of a receiver appointed thereunder.

### **10.3 Delegation**

- (a) The Lenders or any Receiver may delegate in any manner to any person it may think fit any right, power or discretion exercisable by it under this Deed.
- (b) Any such delegation may be made upon such terms, consistent with the terms of the Loan Documents (including power to sub-delegate) as the Lenders may think fit.
- (c) The Lenders shall not be in any way liable to any Chargor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any Delegate save in the case of its gross negligence, wilful misconduct or breach of any of its obligations under the Loan Documents.

### **10.4 Continuation of Accounts**

At any time following the commencement of the winding-up of any Chargor or any Lender becoming aware of any subsequent Security affecting the Charged Assets, any Lender may open a new account in the name of such Chargor with it. If any Lender does not open a new account, it shall nevertheless be treated as if it had done so at the time when the winding-up commenced or any Lender received, or was deemed to have received, notice of such subsequent Security interest. No payments made thereafter by a Chargor to any Lender shall discharge or reduce the Secured Obligations but such payments shall be credited, to the extent a new account has been opened, or be treated as having been credited to that account.

#### 10.5 Custody

The Lenders shall be entitled to keep all certificates and documents of title relating to the Charged Assets in safe custody at any of its branches or otherwise provide for their safe custody by third parties and shall not be responsible for any loss or damage occurring to or in respect thereof unless such loss or damage shall be caused by its own gross negligence or wilful default.

#### 10.6 Recovery of Debts

The Lenders and any manager or officer of the Lenders or of any branch is hereby irrevocably empowered on or after the date the Charges are first enforced to receive all Book Debts and on payment to give an effectual discharge therefore and on non-payment to take (if the Lenders in its sole discretion so decides) all steps and proceedings either in the name of each Chargor or in the name of the Lenders for the recovery thereof and also to agree accounts and to make allowances and to give time to any surety. Neither the Lenders nor any Receiver shall be obliged to make any enquiry as to the sufficiency of any sums received in respect of any Book Debts or to make any claims or take any other action to collect or enforce the same.

### 11 RESPONSIBILITIES OF THE LENDERS

#### 11.1 No Obligation to Remain in Possession

If a Lender, any Receiver or any Delegate shall take possession of the Charged Assets, it may from time to time in its absolute discretion relinquish such possession.

#### 11.2 Lenders' Obligation to Account

Each Lender shall not (either by reason of taking possession of the Charged Assets or for any other reason and whether as mortgagee in possession or on any other basis):

- (a) be liable to account to any Chargor or any other person for anything except a Lender's own actual receipts which have not been distributed or paid to such Chargor or the persons entitled (or at the time of payment believed by that Lender to be entitled) thereto; or
- (b) be liable to such Chargor or any other person for any costs, losses, liabilities or expenses arising from or connected with any realisation by a Lender of the Charged Assets or from any act, default, omission or misconduct of that Lender, its Delegates, officers, employees or agents in relation to the Charged Assets or from any exercise or non-exercise by that Lender of any right exercisable by it under the Loan Documents unless they shall be caused by that Lender's own gross negligence, wilful default or breach of any of its obligations under the Loan Documents.

#### 11.3 Receiver's and Delegate's Obligation to Account

All the provisions of Clause 11.2 (*Lenders' Obligation to Account*) shall apply in respect of the liability of any Receiver or Delegate as though every reference in Clause 11.2 (*Lenders' Obligation to Account*) to a Lender were instead a reference to the Receiver or, as the case may be, Delegate.

## **12. POWER OF ATTORNEY**

### **12.1 Appointment**

Each Chargor by way of security irrevocably appoints the Lenders, every Receiver and every Delegate severally to be its attorney following an Event of Default which is continuing:

- (a) to do all acts and things which such Chargor is obliged to do under this Deed but has failed to do;
- (b) to transfer any interest in any Charged Assets in the circumstances in which such transfer may be required under this Deed including on an enforcement of the Charges over such Charged Assets; and
- (c) in its name and on its behalf to exercise any right conferred on the Lenders, any Receiver or any Delegate in relation to the Charged Assets or under this Deed or by law after such right has become exercisable.

### **12.2 Ratification**

- (a) Each Chargor agrees to ratify and confirm whatever any such attorney shall do or purport to do in the exercise or purported exercise of the power of attorney granted by Clause 12.1 (*Appointment*).
- (b) All moneys expended by any such attorney shall be deemed to be expenses incurred by the Lenders under this Deed.

## **13. PROTECTION OF THIRD PARTIES**

### **13.1 No Duty to Enquire**

No person dealing with a Lender, any Receiver, Administrator or any Delegate shall be concerned to enquire:

- (a) whether any power which a Lender or any Receiver or Administrator is purporting to exercise or which is conferred by or pursuant to this Deed has become exercisable or is being properly exercised;
- (b) whether the Secured Obligations have become payable or any amount remains outstanding under the Loan Documents; or
- (c) as to the application of any money paid to a Lender or any Receiver, Administrator or Delegate.

### **13.2 Statutory Protection**

All the protection to purchasers contained in Sections 104 and 107 of the Law of Property Act 1925, Section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with a Lender, any Receiver or any Delegate.

## **14. EXPENSES, STAMP DUTY AND INDEMNITIES**

### **14.1 Expenses**

Each Chargor will on demand pay to and reimburse a Lender or any other Secured Party, Receiver or Delegate on the basis of a full indemnity, all reasonable costs and expenses

(including legal fees and other out of pocket expenses and any VAT in accordance with the Credit Agreement) incurred by that Lender or any other Secured Party in connection with this Deed and will indemnify them against any failure to pay such amounts including any amounts arising from any actual breach of any law.

#### 14.2 Stamp Duties

Each Chargor will on demand pay to and indemnify the Lenders, each other Secured Party from and against any liability for any stamp duty, stamp duty reserve, documentary or registration or similar taxes or notarial fees ("Relevant Costs") which are or may subsequently become payable in connection with the entry into, performance, execution or enforcement of this Deed or to which this Deed may otherwise be or become subject or give rise. Each Chargor will in addition on demand indemnify the Lenders, each other Secured Party, from and against any losses or liabilities which they incur as a result of any delay or omission by such Chargor to so pay any such Relevant Costs.

#### 14.3 Taxes

(a) All sums payable by each Chargor under this Deed shall be paid:

- (i) free of any restriction or condition;
- (ii) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of any tax; and
- (iii) without deduction or withholding (except to the extent required by law) on account of any other amount whether by way of set-off, counter-claim or otherwise.

(b) If any Chargor or any other person is required by law to make any deduction or withholding on account of any such tax from any sum paid or payable by any Chargor to any Secured Party under this Deed the sum payable by such Chargor in respect of which the relevant deduction or withholding is required shall be increased to the extent necessary to ensure that, after the making of that deduction or withholding, the receiving party receives on the due date and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been required or made as provided for in the Credit Agreement.

### 15. PAYMENTS

#### 15.1 Demands

Any demand for payment made by a Secured Party shall be valid and effective even if it contains no statement of the relevant Secured Obligations or an inaccurate or incomplete statement of them.

#### 15.2 Certificates

A certificate, determination, notification or opinion of the Lenders or any other Secured Party as to the amount of the Secured Obligations or any other matter connected with this Deed or the Charges shall, in the absence of manifest error, be conclusive evidence of the matters to which it relates.

### 15.3 Payments

All payments under or pursuant to this Deed (including damages in respect of breaches hereof) shall be made in accordance with the terms hereof or of the Credit Agreement.

## 16. AVOIDANCE OF SECURITY

### 16.1 Avoidance of Payments

If:

- (a) any payment is made by a Chargor; or
- (b) any discharge is given by a Lender (whether in respect of the obligations of any Chargor or any Security for those obligations or otherwise); or
- (c) any settlement is made in whole or in part on the basis of any payment, security or other disposition,

which is avoided or reduced as a result of insolvency or any similar event:

- (i) the liability of each Chargor shall continue as if the payment, discharge, settlement, avoidance or reduction had not occurred;
- (ii) each Secured Party shall be entitled to recover the value or amount of that payment, discharge, security or settlement from each Chargor, as if the payment, discharge, settlement, avoidance or reduction had not occurred together with any other cost, loss, expense or liability incurred by such Secured Party as a result of such avoidance or discharge; and
- (iii) each Chargor shall on demand indemnify the relevant Secured Party against any funding or other cost, loss, liability or expense (other than loss of anticipated profits) incurred by the Secured Party as a result of any Secured Party being required for any reason to refund all or part of any amount received by it in respect of any of the Secured Obligations.

### 16.2 Waiver of Defences

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

- (a) any time, waiver or consent granted to, or composition with, any Loan Party or other person;
- (b) the release of any other Loan Party 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 Loan Party 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 Loan Party or any other person;
- (e) any amendment, revision, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Loan Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Loan Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Loan Document or any other document or security; or
- (g) any insolvency or similar proceedings.

#### 16.3 Other Loan Parties

It is specifically acknowledged and agreed that the Secured Parties may from time to time make any arrangement, compromise, waiver or other dealing with any Chargor or any Loan Party in relation to any guarantee or other obligations under the Loan Documents which such Secured Parties may think fit and no such arrangement, compromise, waiver or other dealing shall exonerate or discharge any other Chargor from its obligations under the Loan Documents.

#### 16.4 Appropriations

Until all Secured Obligations have been irrevocably and unconditionally paid and discharged in full, the Lenders may, subject to the terms of the Loan Documents and without affecting the liability of any Chargor under this Deed:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Lenders (for its own account or on behalf of another Secured Party) 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 Chargor shall be entitled to the benefit of the same;
- (b) to the extent that any of the Charged Assets constitute "financial collateral" and this Deed and the obligations of the Chargor hereunder constitute a "security financial collateral arrangement" (in such case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "Regulations") the Lenders shall have the right following enforcement of this Deed to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations. For this purpose the parties agree that any method of valuation selected by the Lenders (acting reasonably), including, without limitation, an independent valuation, shall constitute a commercially reasonable method of valuation for the purposes of the Regulations; and
- (c) hold in an interest-bearing suspense account any moneys received from any Chargor or on account of any Chargor's liability under this Deed.

#### 16.5 Exercise of Chargor's Rights

Until all Secured Obligations have been irrevocably and unconditionally paid and discharged in full or the Lenders otherwise direct:

- (a) no Chargor will exercise any rights which it may have (by reason of performance of any of its obligations under the Loan Documents):
  - (i) to be indemnified by any other Loan Party; or
  - (ii) to claim any contribution or payment from any other Loan Party or surety of any Loan Party's obligations under the Loan Documents; or
  - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Parties under the Loan Documents or of any other Security or guarantee taken pursuant to, or in connection with, the Loan Documents by any Secured Party; or
  - (iv) to claim, rank, prove or vote as creditor of any Loan Party or its estate in competition with any Secured Party (or any trustee or agent on its behalf); or
  - (v) to claim or take the benefit of any payment or distribution for or on account of any Loan Party or to exercise any right of set-off against any Loan Party; and
- (b) that Chargor shall hold any amount received or recovered by it as a result of any exercise of any such right on trust for the Secured Parties and shall pay an amount equal to the amount received or recovered forthwith to the Lenders, provided that no rights referred to in paragraph (a) above shall arise or exist, which if they did exist would constitute a right to be indemnified by, to prove in the winding up of, to take the benefit of any Security or guarantee granted by, or to exercise any rights of contribution against, any subsidiary of any Loan Party whose shares, or the partnership interests in whom, are charged at any time to the Lenders and each Chargor waives all its entitlement and rights to or in respect of any such rights.

#### 16.6 Consolidation

Section 93 of the Law of Property Act 1925 (restricting the right of consolidation of the Charges with any other Security Interest) shall not apply to the Charges and a Lender may consolidate all or any of the Charges with any other Security to the extent lawful.

#### 16.7 Redemption

- (a) The Lenders shall, on the date on which it is satisfied (acting reasonably), that all the Secured Obligations have been irrevocably and unconditionally paid and discharged in full and no further Secured Obligations are capable of becoming outstanding (the "Release Date") or following receipt of a notice under paragraph (b) below, take all steps necessary to release and/or re-assign the Charged Assets from the Charges as soon as reasonably practicable.
- (b) If, under the terms of the Loan Documents, a Chargor is entitled to require the release of the Charges, it shall give the Lenders not less than 3 Business Days' prior notice in writing requesting release of the Charges; *provided that*, any release of Security over any Charged Asset disposed of in accordance with the Credit Agreement, shall be automatic.

- (c) All documents which are necessary in connection with the redemption of the Charges or the transfer of the Charged Assets back to the relevant Chargor shall be in such form as the Lenders shall reasonably require.

**17. CONSOLIDATION OF ACCOUNTS AND SET-OFF**

- (a) In addition to any general lien or similar rights to which they may be entitled by operation of law, each of the Secured Parties shall have the right at any time and without notice to any Chargor to set off or transfer any sum or sums standing to the credit of any one or more accounts of any Chargor in or towards satisfaction of any of the liabilities of the Chargors to each of such Secured Parties on any other account or in any other respect.
- (b) The liabilities referred to in this Clause 17 may be actual, contingent, primary, collateral, several or joint liabilities, and the accounts, sums and liabilities referred to in this Clause 16 may be denominated in any currency.

**18. RETENTION OF SECURITY**

If a Lender determines, acting reasonably, that any amount paid or credited to any Secured Party under any Loan Document is capable of being avoided or otherwise set aside on the winding-up or liquidation (or other similar process) of any Chargor or any other person, or otherwise, that amount shall not be considered to have been paid in determining whether the Secured Obligations have been repaid and that Lender may retain such security as it thinks fit.

**19. CURRENCY**

For the purpose of or pending the discharge of any of the Secured Obligations a Lender may, in its sole discretion, convert any moneys received, recovered or realised in any currency under this Deed (including the proceeds of any previous conversion under this Clause 19) from their existing currency of denomination into any other currency at that Lender's spot rate of exchange then prevailing for purchasing that other currency with the existing currency (or any spot rate used by a reputable bank) at such time(s) as the Lenders think fit.

**20. APPLICATION**

No Chargor shall have any rights in respect of the application by the Secured Parties of any sums received, recovered or realised by a Lender under this Deed.

**21. NOTICES**

The provisions of Section 10.5 (*Notices*) of the Credit Agreement shall be incorporated into this Deed as if set out in full in this Deed.

**22. CHANGE OF PARTIES**

**22.1 Assignment and transfer by Secured Parties**

The Secured Parties shall have a full and unfettered right to assign or otherwise transfer the whole or any part of the benefit of this Deed to any person to whom all or any part of its rights, benefits and obligations under the Credit Agreement are assigned or transferred in accordance with the provisions of the Credit Agreement.

**22.2 Assignment and transfers by Chargors**

No Chargor may assign any of its rights or transfer any of its rights or obligations under this Deed.

**23. INDEMNITIES**

**23.1 Currency indemnity**

- (a) If any sum due from any Chargor under the Loan Documents (a "Sum"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:

- (i) making or filing a claim or proof against that Chargor; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Chargor shall as an independent obligation, within three Business Days of demand, indemnify the Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Chargor waives any right it may have in any jurisdiction to pay any amount under the Loan Documents in a currency or currency unit other than that in which it is expressed to be payable.

**23.2 Indemnity by Chargors**

- (a) Each Chargor hereby agrees to indemnify the Lenders and the other Secured Parties against all losses, actions, claims, costs, charges, expenses and liabilities incurred by the Lenders and the other Secured Parties (including any substitute delegates attorney as aforesaid) in relation to this Deed or the Secured Obligations or occasioned by any breach by the Chargor of any of its covenants or obligations under this Deed save for any losses arising directly as a result of the gross negligence, wilful misconduct or breach of any obligations by any of the Secured Parties under the Loan Documents.
- (b) The Chargors shall so indemnify the Lenders and the other Secured Parties on demand and shall pay interest on the sum demanded at the Default Rate from time to time from the date on which the same were demanded by the Lenders or any other Secured Party, as the case may be, and any sum so demanded together with any interest, shall be a charge upon the Charged Asset in addition to the moneys hereby secured.

**24. PARTIAL INVALIDITY**

If, at any time, any provision of this Deed becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**25. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy 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.

**26. AMENDMENTS**

No amendments or waiver of any provision of this Deed and no consent to any departure by any Chargor therefrom shall in any event be effective unless the same shall be in writing and signed or approved in writing by the Chargors and the Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

**27. TACKING**

For the purposes of Section 94(1) of the Law of Property Act 1925 and Section 49 of the Land Registration Act 2002, the Secured Parties are obliged to make further advances to the Chargors under the Loan Documents. Each Secured Party shall comply with its obligations under the Loan Documents (including any obligation to make further advances).

**28. AMENDMENTS TO LOAN DOCUMENTS**

This Deed shall remain in full force and effect notwithstanding any amendments or variations from time to time of the Loan Documents and all references to the Loan Documents herein shall be taken as referring to the Loan Documents as amended or varied from time to time (including, without limitation, any increase in the amount of the Secured Obligations).

**29. TRUST**

The Lenders shall hold the benefit of the covenants, mortgages, assignments and charges (as applicable) given by each Chargor herein upon trust for the Secured Parties.

**30. COUNTERPARTS**

This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

**31. GOVERNING LAW**

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

**32. ENFORCEMENT**

**32.1 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a "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 32.1 is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

IN WITNESS whereof each Chargor has executed this Deed as a deed and each Lender has executed this Deed under hand with the intention that it be delivered the day and year first before written.

**SCHEDULE I**  
**FORM OF FUND'S NOTICE OF ASSIGNMENT AND CHARGE**

**Fund's Notice of Assignment and Charge**

To: [FUND]

From: [CHARGOR] (the "Chargor")

Address: [ ]

Copied to: Bank of America, N.A. and Brown Brothers Harriman & Co. (the "Lenders")

Date: [ ]

Dear Sirs,

Guaranty and Deed of Assignment and Charge dated [ ] April 2013 between Bain Capital Europe, LLP and Portfolio Company Advisors Europe, LLP, as Chargers and Bank of America, N.A. and Brown Brothers Harriman & Co. as Lenders (the "Deed")

1. In this letter, unless otherwise defined or provided for herein, words and expressions shall have the same meanings as is given to them in the Deed.
2. We refer to the ([Name of contract] between)/([description of Receivable] due and owing by) [counterparty] and [Name of Assignor] (the "Chargor") [dated [ ] ] (the "Assigned Property").
3. We hereby inform you that by the Deed, the Chargor assigned (and to the extent not effectively assigned, charged) to the Lenders all its rights, title, interest and benefits in respect of the Assigned Property and all moneys due in respect thereof to which the Chargor is or may at a future time become entitled as security for certain obligations under the Loan Documents (as defined in the Credit Agreement).
4. By this letter the Chargor requests you to recognise the Lenders' right to payment in respect of and security interest in the Assigned Property.
5. The Chargor requests that after your receipt of this notice:
  - (a) all payments by you to the Chargor under or arising from the Assigned Property should be made to the Lenders or to their order as they may specify in writing from time to time;
  - (b) all remedies provided for in the Assigned Property or available at law or in equity are exercisable by the Lenders (or any one of them);
  - (c) all rights to compel performance of the Assigned Property are exercisable by the Lenders (or any one of them) although the Chargor shall remain liable to perform all the obligations undertaken by it in the Assigned Property;
  - (d) all rights, interests and benefits whatsoever accruing to or for the benefit of the Chargor arising from the Assigned Property belong to the Lenders and no changes may be made to the terms of the Assigned Property nor may the Assigned Property be terminated without the consent of each of the Lenders; and

- (e) you are authorised and instructed, without requiring further approval from the Chargor, to provide each of the Lenders with such information relating to the Assigned Property as it may from time to time request and to send it copies of all notices issued by you under the Assigned Property to each of the Lenders as well as to the Chargor.
6. These instructions may not be revoked, varied or waived without the prior written consent of each of the Lenders.
7. Kindly acknowledge receipt of this letter by signing the attached Acknowledgement and Confirmation and returning the same to the Lenders at the following addresses [ ] marked for the attention of [ ].
8. This letter 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  
[CHARGOR]

**SCHEDULE 2  
FORM OF ACKNOWLEDGEMENT OF FUND**

**Acknowledgement of Fund**

To: Bank of America, N.A. and Brown Brothers Harriman & Co.

AND

Copied to: [CHARGOR]

Date: [ ]

Dear Sirs,

Guaranty and Deed of Assignment and Charge dated [ ] April 2013 between Bain Capital Europe, LLP and Portfolio Company Advisors Europe, LLP, as Chargors and Bank of America, N.A. and Brown Brothers Harriman & Co. as Lenders

We hereby acknowledge receipt of the Notice of Assignment dated [ ] (the "Notice") (a copy of which is attached hereto) from [CHARGOR].

We hereby acknowledge the Notice and confirm that we shall hereafter act in accordance with the terms of the Notice.


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

Yours faithfully

.....  
(or and on behalf of  
[FUND])

EXECUTION PAGE

Executed and delivered as a Deed by  
BAIN CAPITAL EUROPE, LLP  
acting through its managing corporate member  
BAIN CAPITAL EUROPE HOLDINGS, LLC

By:   
Authorized Signatory

  
Witness Signature

Name of Witness: Kelly Henderson  
Address of Witness: 300 Massachusetts St, Boston, MA  
Occupation of Witness: Legal Affairs Manager

Executed and delivered as a Deed by  
PORTFOLIO COMPANY ADVISORS EUROPE, LLP  
acting through its managing corporate member  
PORTFOLIO COMPANY ADVISORS EUROPE HOLDINGS, LLC

By:   
Authorized Signatory

  
Witness Signature

Name of Witness: Kelly Henderson  
Address of Witness: 300 Massachusetts St, Boston, MA  
Occupation of Witness: Legal Affairs Manager

SIGNED for and on behalf of  
BANK OF AMERICA, N.A.  
as a Lender

}  
}  
}

SIGNED for and on behalf of  
BROWN BROTHERS HARRIMAN & CO.  
as a Lender

}  
}  
}

EXECUTION PAGE

Executed and delivered as a Deed by  
**BAIN CAPITAL EUROPE, LLP**  
acting through its managing corporate member  
**BAIN CAPITAL EUROPE HOLDINGS, LLC**

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Witness Signature

Name of Witness:  
Address of Witness:  
Occupation of Witness:

Executed and delivered as a Deed by  
**PORTFOLIO COMPANY ADVISORS EUROPE, LLP**  
acting through its managing corporate member  
**PORTFOLIO COMPANY ADVISORS EUROPE HOLDINGS, LLC**

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Witness Signature

Name of Witness:  
Address of Witness:  
Occupation of Witness:

SIGNED by \_\_\_\_\_  
BANK OF AMERICA N.A.  
its Lender

)  
)  
)

SIGNED for and on behalf of  
**BROWN BROTHERS HARRIMAN & CO.**  
as a Lender

)  
)  
)

EXECUTION PAGE

Executed and delivered as a Deed by  
BAIN CAPITAL EUROPE, LLP  
acting through its managing corporate member  
BAIN CAPITAL EUROPE HOLDINGS, LLC

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Witness Signature

Name of Witness:  
Address of Witness:  
Occupation of Witness:

Executed and delivered as a Deed by  
PORTFOLIO COMPANY ADVISORS EUROPE, LLP  
acting through its managing corporate member  
PORTFOLIO COMPANY ADVISORS EUROPE HOLDINGS, LLC

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Witness Signature

Name of Witness:  
Address of Witness:  
Occupation of Witness:

SIGNED for and on behalf of )  
BANK OF AMERICA, N.A. )  
as a Lender )

SIGNED for and on behalf of )  
BROWN BROTHERS HARRIMAN & CO. )  
as a Lender )

