



Registration of a Charge

Company name: **EXOVA (UK) LIMITED**

Company number: **SC070429**

Received for Electronic Filing: **21/12/2018**



Details of Charge

Date of creation: **14/12/2018**

Charge code: **SC07 0429 0024**

Persons entitled: **ING BANK N.V., LONDON BRANCH AS THE SECURITY AGENT**

Brief description:

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by:

CAROLINE ALLAN



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 70429

Charge code: SC07 0429 0024

The Registrar of Companies for Scotland hereby certifies that a charge dated 14th December 2018 and created by EXOVA (UK) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st December 2018 .

Given at Companies House, Edinburgh on 24th December 2018

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**



EXOVA (UK) LIMITED
as Chargor

in favour of

ING BANK N.V., LONDON BRANCH
as Security Agent

SECOND LIEN BOND AND FLOATING CHARGE

I certify that save for material redacted pursuant
to s.859G of the Companies Act 2006, this copy
instrument is a correct copy of the original instrument

Caroline R. Allen

27.12.18

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BOND AND FLOATING CHARGE

by

- (1) **EXOVA (UK) LIMITED**, a company incorporated under the Companies Acts with registered number SC070429 and having its registered office at Lochend Industrial Estate, Queen Anne Drive, Newbridge, Midlothian, EH28 8LP (the “**Chargor**”)

in favour of

- (2) **ING BANK N.V., LONDON BRANCH** as trustee for each of the Secured Parties on the terms and conditions set out in the Facilities Agreement (the “**Security Agent**”)

CONSIDERING THAT:

- (A) The Secured Parties have agreed to make loan facilities available under the Facilities Agreement (as defined below).
- (B) One of the conditions precedent to the availability of the facilities referred to in paragraph (A) above is that the Chargor grants to the Security Agent this bond and floating charge.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Instrument:

“**Administrator**” means any administrator appointed pursuant to this Instrument;

“**Agency Agreement**” means the agency agreement dated on or about the date of the Chargor’s execution of this Instrument between ING Bank N.V., London Branch as Administrative Agent and Greenrock Finance, Inc. as Issuer (as amended and/or restated, varied, novated or supplemented from time to time);

“**Agreed Security Principles**” means the principles set out in the definition of “Collateral and Guarantee Requirement” in the Facilities Agreement or any equivalent principles set out in any Second Lien Facility Agreement;

“**Charged Assets**” means the whole of the property (including uncalled capital) which is or may be from time to time while this Instrument is in force comprised in the property and undertaking of the Chargor;

“**Collateral Rights**” means all rights, powers and remedies of the Security Agent provided by or pursuant to this Instrument or by law;

“**Debtor**” has the meaning ascribed to such term in the Intercreditor Agreement;

“Declared Default” has the meaning ascribed to the term “Second Lien Liabilities Acceleration Event” in the Intercreditor Agreement;

“Deed of Covenant” means the deed of covenant dated on or about the date of the Chargor’s execution of this Instrument between, amongst others, Greenrock Finance, Inc. as the Company, certain Guarantors named therein and ING Bank N.V., London Branch as Agent and Security Agent (as amended and/or restated, varied, novated or supplemented from time to time);

“Existing Security” means the First Lien Security and the Second Lien Security;

“Facilities Agreement” means (a) the second lien credit agreement dated 19 April 2017 between, among others, Greenrock Topco Limited as Initial Holdings, Greenrock Midco Limited as Initial UK Borrower, Greenrock Finance, Inc. as Initial U.S. Borrower and the Security Agent (as amended and restated on or about the date of the Chargor’s execution of this Instrument such that it takes the form of the Agency Agreement and Deed of Covenant and as amended and/or restated, varied, novated or supplemented from time to time); and (b) in relation to any other Second Lien Facility, the facility agreement entered into after the date of this Instrument by the relevant member of the Group and designated by the Parent as a ‘Second Lien Facility Agreement’ in the applicable Further Creditor Notice;

“First Lien Bond and Floating Charge” means the first lien bond and floating charge dated 10 November 2017 between the Chargor and the Security Agent (as amended and/or restated, varied, novated or supplemented from time to time);

“First Lien Debenture” means the first lien debenture dated 10 November 2017, amongst others, the Chargor and the Security Agent (as amended and/or restated, varied, novated or supplemented from time to time);

“First Lien Security” means any mortgage, charge, pledge, lien or other security interest created under or pursuant to the First Lien Debenture and the First Lien Bond and Floating Charge;

“Group” means Element Materials Technology Limited and each of its Subsidiaries for the time being;

“Intercreditor Agreement” means the intercreditor agreement dated 19 April 2017 and made between, among others, Greenrock Topco Limited, Greenrock Midco Limited, Greenrock Bidco Limited, and the Security Agent (as amended on 29 June 2017 and on or about the date of the Chargor’s execution of this Instrument and amended and/or restated, varied, novated or supplemented from time to time);

“Liabilities” means all present and future liabilities and obligations at any time of any member of the Group to any Secured Party under the Secured Debt Documents, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other

capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings;

“Receiver” means any receiver or administrative receiver appointed in respect of the Charged Assets (whether pursuant to this Instrument, pursuant to any statute, by a court or otherwise) and includes joint receivers;

“Second Lien Debenture” means (i) the second lien debenture dated 10 November 2017, amongst others, the Chargor and the Security Agent; and (ii) the second lien debenture dated on or around the date of the Chargor’s execution of this Instrument (both as amended and/or restated, varied, novated or supplemented from time to time);

“Second Lien Floating Charge” means the second lien bond and floating charge dated 10 November 2017 between the Chargor and the Security Agent (as amended and/or restated, varied, novated or supplemented from time to time);

“Second Lien Security” means any mortgage, charge, pledge, lien or other security interest created under or pursuant to the Second Lien Debenture or Second Lien Floating Charge.

“Secured Debt Documents” has the meaning ascribed to the term “Second Lien Finance Documents” in the Intercreditor Agreement;

“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 Secured Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity, except for any obligation or liability which, if it were included, would cause that obligation or liability or any of the Security in respect thereof, to be unlawful, prohibited or invalid by or under any applicable law;

“**Secured Party**” has the meaning ascribed to such term in the Facilities Agreement; and

“**Security Period**” means the period beginning on the date of this Instrument and ending on the date on which the Security Agent is satisfied (acting reasonably) that the Secured Obligations have been irrevocably and unconditionally discharged in full and no Secured Party is under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor or any other person under any of the Secured Debt Documents.

1.2 **Terms defined in other Secured Debt Documents**

Unless defined in this Instrument, or the context otherwise requires, a term defined in the Intercreditor Agreement or in any other Secured Debt Document has the same meaning in this Instrument, or any notice given under or in connection with this Instrument.

1.3 **Construction**

1.3.1 The rules of interpretation contained in sections 1.02 (*Other Interpretive Provisions*) to 1.07 (*Timing of Payment or Performance*) of the Facilities Agreement and any equivalent rules of interpretation contained in any Second Lien Facility Agreement shall apply to the construction of this Instrument and any notice given under or in connection with this Instrument.

1.3.2 Any reference to the “**Security Agent**”, the “**Secured Parties**” or the “**Chargor**” shall be construed so as to include its or their (and any subsequent) successors in title, permitted assigns and permitted transferees in accordance with their respective interests and, in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with the Intercreditor Agreement.

1.3.3 References in this Instrument to any Clause shall be to a Clause contained in this Instrument.

1.3.4 The term this “**Security**” means any security created by this Instrument.

1.3.5 A reference to any asset, unless the context otherwise requires, includes any present and future asset.

1.3.6 If the Security Agent considers that an amount paid to it or a Receiver or any Secured Party is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Instrument.

1.4 **Existing Security**

1.4.1 The Chargor and the Security Agent acknowledge the existence of the Existing Security in accordance with the terms of the Existing Security and the ranking of

security created pursuant to Clause 3 (Floating Charge) and that in accordance with the terms of the Intercreditor Agreement, the Security granted by this Instrument is intended to rank junior and subordinated to the First Lien Security and that the application of proceeds pursuant to this Instrument and each Existing Security is provided for in the Intercreditor Agreement.

- 1.4.2 To the extent of any obligation of the Chargor under or any provision of the Existing Security is satisfied any corresponding provision or obligations of the Chargor arising under any provision of this Instrument shall be deemed satisfied.

1.5 Second Lien Security

Each of the parties hereto acknowledges that the ranking of security created pursuant to Clause 3 (Floating Charge) is subject to the Existing Security and the Intercreditor Agreement and that the application of proceeds pursuant to this Instrument and each Existing Security is provided for in the Intercreditor Agreement.

2 BOND

- 2.1 The Chargor undertakes to the Security Agent for itself and as trustee for the Secured Parties that it will pay or discharge to the Security Agent all the Secured Obligations on demand in writing when the Secured Liabilities become due for payment or discharge (whether by acceleration or otherwise) in accordance with their respective terms.
- 2.2 Paragraph 14 of Schedule B1 to the Insolvency Act (incorporated by Schedule 16 to the Enterprise Act 2002) shall apply to this Instrument which is accordingly a qualifying floating charge.

3 FLOATING CHARGE

Subject to Clause 1.4 (Existing Security), the Chargor as security for the payment and discharge of all the Secured Obligations hereby grants in favour of the Security Agent a floating charge over the Charged Assets.

4 NEGATIVE PLEDGE AND RANKING OF FLOATING CHARGE

- 4.1 The Chargor agrees that it shall be prohibited from granting or creating subsequent to the date of execution of this Instrument any fixed security or any other floating charge over the Charged Assets or any part or parts of them, other than in favour of the Security Agent or in favour of another person and with the prior written consent of the Security Agent or as permitted under the Secured Debt Documents.
- 4.2 Any fixed security granted by the Chargor in favour of the Security Agent (whether before or after the date of execution of this Instrument) shall rank in priority to this Security.

- 4.3 In the event that the Chargor grants or creates any fixed security or floating charge in breach of the prohibition in Clause 4.1 or with the consent of the Security Agent under Clause 4.1 but with no written agreement of the Security Agent as to the ranking of them, this Instrument shall rank in priority to that fixed security or floating charge.

5 **SET-OFF**

The Chargor authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right), after the occurrence of a Declared Default which is continuing, to set off against the Secured Obligations any matured obligations (contingent or otherwise) due and owing by the Security Agent to the Chargor and apply any credit balance to which the Chargor is entitled on any account with the Security Agent in accordance with Clause 8.

6 **ENFORCEMENT**

- 6.1 In addition to any statutory provisions concerning enforceability or attachment this Security shall become enforceable upon and the Security Agent's powers of appointment and other rights and powers shall become exercisable at any time after the occurrence of:

6.1.1 a Declared Default (as long as it is continuing); or

6.1.2 a request from the Chargor to the Security Agent that it execute any of its powers under this Instrument.

and the Security Agent may then (or as soon thereafter as permitted by law) by instrument in writing appoint any person or persons (if more than one with power to act both jointly and separately) to be an administrator of the Chargor or (subject, if applicable, to Section 72A of the Insolvency Act 1986) a receiver of the Charged Assets. In addition, and without prejudice to the foregoing provisions of this Clause 6.1, in the event that any person appointed to be a Receiver shall be removed by a court or shall otherwise cease to act as such, then the Security Agent shall be entitled so to appoint another person as Receiver in his place.

- 6.2 An Administrator shall have and be entitled to exercise, in addition to and without limiting all the powers of an administrator under the Insolvency Act 1986, all the powers of a receiver under Schedule 2 of the Insolvency Act 1986 and a Receiver shall have and be entitled to exercise, in addition to and without limiting all the powers of a receiver under Schedule 2 of the Insolvency Act 1986, all the powers of an administrative receiver set out in Schedule 1 of the Insolvency Act 1986 together with (in either case) the power to exercise any powers or rights incidental to ownership of the Charged Assets, including (as regards shares and other securities) any voting rights or rights of enforcing the same together with power to:

6.2.1 implement and exercise all or any of the Chargor's powers and/or rights and/or obligations under any contract or other agreement forming a part of the Charged Assets;

- 6.2.2 make any arrangement or compromise which he shall think expedient of or in respect of any claim by or against the Chargor;
- 6.2.3 promote or procure the formation of any new company or corporation;
- 6.2.4 subscribe for or acquire for cash or otherwise any share capital of such new company or corporation in the name of the Chargor and on its behalf and/or in the name(s) of a nominee(s) or trustee(s) for it;
- 6.2.5 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise the Charged Assets or any part thereof to any such new company or corporation and accept as consideration or part of the consideration therefor in the name of the Chargor and on its behalf and/or in the name(s) of any nominee(s) or trustee(s) for it, any shares or further shares in any such company or corporation or allow the payment of the whole or any part of such consideration to remain deferred or outstanding by way of loan or debt or credit;
- 6.2.6 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise on behalf of the Chargor any such shares or deferred consideration or part thereof or any rights or benefits attaching thereto;
- 6.2.7 convene an extraordinary general meeting of the Chargor;
- 6.2.8 acquire any property on behalf of the Chargor;
- 6.2.9 do all such other acts and things as he may consider necessary or desirable for protecting or realising the Charged Assets, or any part thereof, or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of or pursuant to this Instrument and exercise in relation to the Charged Assets, or any part thereof, all such powers and authorities and do all such things as he would be capable of exercising or doing if he were the absolute beneficial owner of the same and use the name of the Chargor for all and any of the purposes aforesaid;

subject always to the rights of the Security Agent as holder of this Security.

- 6.3 To the extent that any of the Charged Assets constitutes "financial collateral" and this Instrument and the obligations of the Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "Regulations")) the Security Agent shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be (a) in the case of cash, the amount standing to the credit of each of the relevant accounts, together with any accrued but unposted interest, at the time the right of appropriation is exercised; and (b) in the case of any shares, stocks,

debentures, bonds or other securities or investments, the market price of such shares, stocks, debentures, bonds or other securities or investments determined by the Security Agent by reference to a public index or by such other process as the Security Agent may select, including independent valuation. In each case, the parties agree that the method of valuation provided for in this Instrument shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

7 OFFICE OF RECEIVER

7.1 Any Receiver appointed under Clause 6 (Enforcement) shall be the agent of the Chargor for all purposes and (subject to the provisions of the Insolvency Act 1986) the Chargor alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him and for his remuneration and his costs, charges and expenses and the Security Agent shall not incur any liability for those (either to the Chargor or any other person) by reason of the Security Agent making his appointment as such Receiver or for any other reason whatsoever.

7.2 Any Receiver appointed under Clause 6 (Enforcement) shall be entitled to remuneration for his services and the services of his firm appropriate to the responsibilities involved. Subject to Section 58 of the Insolvency Act 1986, the remuneration of the Receiver may be fixed by the Security Agent (and may be or include a commission calculated by reference to the gross amount of all money received or otherwise and may include remuneration in connection with claims, actions or proceedings made or brought against the Receiver by the Chargor or any other person or the performance or discharge of any obligation imposed upon him by statute or otherwise) but such remuneration shall be payable by the Chargor alone and the amount of such remuneration shall form part of the Secured Liabilities and accordingly be secured on the Charged Assets under the floating charge constituted by this Instrument.

8 APPLICATION OF ENFORCEMENT PROCEEDS

8.1 All monies received or recovered and any non-cash recoveries made or received by the Security Agent pursuant to this Instrument or the powers conferred by it shall (subject to the claims of any person having prior rights thereto) be applied first in the payment or other discharge of the costs, charges and expenses incurred and payments made by the Receiver, the payment or other discharge of his remuneration and of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Security Agent (notwithstanding any purported appropriation by the Chargor) in accordance with the terms of the Intercreditor Agreement.

9 EFFECTIVENESS OF SECURITY

9.1 Continuing security

9.1.1 The Security created by or pursuant to this Instrument shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Security Agent in writing.

9.1.2 No part of the Security from time to time intended to be created by this Instrument will be considered satisfied or discharged by an intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

9.2 Cumulative rights

The Security created by or pursuant to this Instrument, and the Collateral Rights, shall be cumulative, in addition to and independent of every other Security which the Security Agent or any Secured Party may at any time hold for the Secured Obligations 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. 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 Charged Assets shall merge into the Security created by this Instrument.

9.3 No prejudice

The Security created by or pursuant to this Instrument, and the Collateral Rights, shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person, or 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 or any Collateral Right.

9.4 Remedies and waivers

No failure on the part of the Security Agent to exercise, nor any delay on its part in exercising, any Collateral Right, shall operate as a waiver of that Collateral Right or constitute an election to affirm this Instrument. No election to affirm this Instrument on the part of the Security Agent shall be effective unless it is in writing. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

9.5 No liability

None of the Security Agent, its nominee(s) or any Receiver shall be liable:

9.5.1 to account as a mortgagee or mortgagee in possession; or

9.5.2 for any loss arising by reason of taking any action permitted by this Instrument or any neglect or default in connection with the Charged Assets or taking possession of or realising all or any part of the Charged Assets,

except in the case of gross negligence or wilful default upon its part.

9.6 Partial invalidity

If, at any time, any provision of this Instrument is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Instrument nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the Security intended to be created by or pursuant to this Instrument is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

9.7 Waiver of defences

The obligations assumed, and the Security created, by the Chargor under this Instrument and the Collateral Rights, will not be affected by any act, omission, matter or thing which, but for this Clause 9.7, would reduce, release or prejudice any of its obligations under, or the Security created by, this Instrument (without limitation and whether or not known to the Chargor or any Secured Party) including:

- 9.7.1 any time, waiver or consent granted to, or composition with, the Chargor or other person;
- 9.7.2 the release of any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- 9.7.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 9.7.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any other person;
- 9.7.5 any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatever nature, and whether or not more onerous) or replacement of any of the Secured Debt Documents or any other document or Security or of the Secured Obligations;
- 9.7.6 any unenforceability, illegality or invalidity of any obligation of any person under any of the Secured Debt Documents or any other document or Security or of the Secured Obligations; and
- 9.7.7 any insolvency or similar proceedings.

9.8 Chargor intent

Without prejudice to the generality of Clause 9.7 (Waiver of Defences), the Chargor expressly confirms that it intends that the Security created under this Instrument and the Collateral Rights, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to any of the Secured Debt Documents and/or any facility or amount made available under any of the Secured Debt Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

9.9 Immediate recourse

The Chargor 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 other person before claiming from the Chargor under this Instrument. This waiver applies irrespective of any law or any provision of this Instrument to the contrary.

9.10 Deferral of rights

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

9.10.1 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Party under this Instrument or of any other guarantee or Security taken pursuant to, or in connection with, this Instrument by any Secured Party; and/or

9.10.2 to exercise any right of set-off against any Obligor.

If the Chargor receives any benefit, payment or distribution in relation to such rights it shall, subject to the First Lien Bond and Floating Charge and the First Lien Debenture, hold that benefit, payment or distribution on trust for the Secured Parties to the extent necessary to enable all amounts which may be or become payable to any Secured Party by the Chargor under or in connection with this Instrument to be repaid in full 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 8.

10 FURTHER ASSURANCE

10.1 Subject to the Agreed Security Principles, the Chargor shall promptly, at its own cost, do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notarisations, registrations, notices and instructions) as the Security Agent may

reasonably specify (and in such form as the Security Agent may reasonably require) in favour of the Security Agent or its nominee(s):

- 10.1.1 to create, perfect and/or protect the Security created or intended to be created in respect of the Charged Assets (which may include the execution by the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Assets) or for the exercise of the Collateral Rights;
- 10.1.2 to confer on the Security Agent Security over any asset or undertaking of the Chargor located in any jurisdiction outside Scotland equivalent or similar to the Security intended to be conferred by or pursuant to this Instrument; and/or
- 10.1.3 to facilitate the realisation of the Charged Assets following the occurrence of a Declared Default.

10.2 Necessary action

Subject to the Agreed Security Principles, the Chargor shall take all such action as is available to it (including making all filings and registrations and applying for relief against forfeiture) as may be necessary or as may reasonably be requested by the Security Agent for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent by or pursuant to this Instrument.

11 MANDATE AND ATTORNEY

11.1 Appointment and powers

The Chargor by way of security irrevocably appoints the Security Agent and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

- 11.1.1 carrying out any obligation imposed on the Chargor by this Instrument or any other agreement binding on the Chargor to which the Security Agent is a party (including the execution and delivery of any deeds, charges, assignments or other Security and any transfers of the Charged Assets and perfecting and/or releasing the Security created or intended to be created in respect of the Charged Assets); and
- 11.1.2 enabling the Security Agent and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Instrument or by law (including, after the occurrence of a Declared Default, the exercise of any right of a legal or beneficial owner of the Charged Assets),

provided that these powers cannot be exercised unless there has been a Declared Default or the Chargor has failed to comply with a further assurance or perfection obligation in

accordance with the terms of this Instrument within 20 Business Days of being notified of that failure (with a copy of that notice being sent to the Parent) and being requested to comply.

11.2 Ratification

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers except to the extent caused by such attorney's fraud, negligence or wilful misconduct.

12 RELEASE OF SECURITY

12.1 Release of Security

Upon the expiry of the Security Period, or in accordance with the Secured Debt Documents, the trusts set out in the Intercreditor Agreement shall be wound up and the Security Agent shall, at the request and cost of the Chargor, release and cancel the Security created by this Instrument subject to Clause 12.2 and without recourse to, or any representation or warranty by, the Security Agent or any of its nominees.

12.2 Clawback

If the Security Agent (acting reasonably) considers that any amount paid or credited to any Secured Party is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Chargor under this Instrument and the Security created by those documents will continue and such amount will not be considered to have been irrevocably discharged.

13 EXPENSES AND INDEMNITY

The Chargor must:

13.1 immediately on demand pay all costs and expenses (including legal fees) incurred in connection with this Instrument by the Security Agent, attorney, manager, agent or other person appointed by the Security Agent under this Instrument including any arising from any actual or alleged breach by any person of any law or regulation, whether relating to the environment or otherwise; and

13.2 keep each of them indemnified against any failure or delay in paying those costs or expenses.

14 SUBSEQUENT SECURITY INTERESTS

If the Security Agent (acting in its capacity as trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security, assignment or transfer affecting all or any part of the Charged Assets which is prohibited by the terms of any of the Secured Debt Documents, all payments thereafter by or on behalf of the Chargor to the Security Agent (whether in its capacity as trustee or otherwise) or any of

the other Secured Parties will (in the absence of any express contrary appropriation by the Chargor) be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations at the time that notice was received.

15 SUSPENSE ACCOUNTS

All monies received, recovered or realised by the Security Agent under this Instrument (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Security Agent considers appropriate (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Security Agent's discretion, in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

16 ASSIGNATION BY THE SECURITY AGENT

16.1 No assignments or transfers by Chargor

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Instrument.

16.2 Assignations and transfers by the Security Agent

To the extent permitted by the Secured Debt Documents, the Security Agent may assign and transfer all or any of its rights and obligations under this Instrument. The Security Agent shall be entitled to disclose such information concerning the Chargor and this Instrument in accordance with the provisions of section 10.08 (Confidentiality) of the Facilities Agreement and any equivalent provision in any Secured Debt Document.

16.3 Successors

This Instrument shall remain in effect despite any amalgamation or merger (however effected) relating to the Security Agent. References to the Security Agent shall include (i) any assignee or successor in title of the Security Agent, (ii) any entity into which the Security Agent is merged or converted or with which it may be consolidated, (iii) any legal entity resulting from any merger, conversion or consolidation to which such Security Agent is a party and (iv) any other person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Security Agent under this Instrument or to which, under such laws, those rights and obligations have been transferred (such person described in (i) to (iv) being a successor to the Security Agent for all purposes under the Secured Debt Documents).

17 NOTICES

The provisions of clause 27 of the Intercreditor Agreement shall apply to this Instrument.

18 **GOVERNING LAW**

This Instrument shall be governed by, and construed in all respects in accordance with Scots law.

19 **JURISDICTION**

19.1 **Scottish Courts**

The Scottish courts have exclusive jurisdiction to settle any dispute (a “**Dispute**”) arising out of, or in connection with this Instrument (including a dispute relating to the existence, validity or termination of this Instrument or any non-contractual obligations arising out of or in connection with this Instrument).

19.2 **Convenient Forum**

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

19.3 **Exclusive Jurisdiction**

This Clause 19 is for the benefit of the Security Agent only. As a result and notwithstanding Clause 19.1, it does not prevent the Security Agent 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.

CONSENT TO REGISTRATION

A certificate signed by any official, manager or equivalent account officer of the Security Agent shall, in the absence of manifest error, conclusively determine the Secured Liabilities at any relevant time and shall constitute a balance and charge against the Chargor, and no suspension of a charge or of a threatened charge for payment of the balance so constituted shall pass nor any sist of execution thereon be granted except on consignment. The Chargor hereby consents to the registration of this Instrument and of any such certificate for preservation:

IN WITNESS WHEREOF these presents consisting of this and the preceding 15 pages are executed as follows and DELIVERED on 14 December 2018:

THE CHARGOR

SUBSCRIBED for and on behalf of the said EXOVA (UK) LIMITED

at 10 Lower Grosvenor Place, London, England, SW1W 0EN
on 11 December 2018

by

William Winter

Print Full name

Director

before this witness:

Rachel Hawker

Print Full Name

Witness

Address:

10 Lower Grosvenor Place
London
SW1W 0EN

