



**Registration of a Charge**

Company name: **MILLER INVERNESS INVESTMENTS LIMITED**

Company number: **SC441944**



X2LEB677

Received for Electronic Filing: **18/11/2013**

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**Details of Charge**

Date of creation: **14/11/2013**

Charge code: **SC44 1944 0001**

Persons entitled: **THE ROYAL BANK OF SCOTLAND PLC AS TRUSTEE, AGENT AND SECURITY AGENT FOR EACH OF THE SENIOR SECURED PARTIES (AS DEFINED IN THE INSTRUMENT EVIDENCING THE CHARGE ACCOMPANYING THIS FORM MR01).**

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 THE ELECTRONIC**

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

Certified by:

**COLIN HARLEY ON BEHALF OF MACLAY MURRAY & SPENS LLP**



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

Company number: 441944

Charge code: SC44 1944 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 14th November 2013 and created by MILLER INVERNESS INVESTMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18th November 2013 .

Given at Companies House, Edinburgh on 19th November 2013



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

14 November 2013

**DEBENTURE**

**between**

**MILLER INVERNESS INVESTMENTS LIMITED**

**and**

**THE ROYAL BANK OF SCOTLAND PLC**  
**as Security Agent**

**EXECUTION VERSION**

**(Note to the Land Registry. This Debenture contains (in Clause 26.1  
(*Request to the Land Registry*)) an application to enter a restriction  
in the Proprietorship Register and (in Clause 26.2 (*Further  
Advances*)) an application to enter a notice on the Charges Register)**

**THIS DEBENTURE IS SUBJECT TO THE TERMS  
OF THE INTERCREDITOR AGREEMENT DATED 29 FEBRUARY 2012 AS AMENDED AND  
RESTATED ON 26 SEPTEMBER 2013 BETWEEN, AMONG OTHERS, THE PARENT, THE  
DEBTORS (AS DEFINED IN THE INTERCREDITOR AGREEMENT), THE AGENT AND THE  
SECURITY AGENT**

**One London Wall London EC2Y 5AB DX 123 LONDON/CHANCERY LN  
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[www.mms.co.uk](http://www.mms.co.uk)**

**Ref: NXZH/AKC/SMK/ROY/0015/00904**

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THIS DEBENTURE is made as a deed on the 14 day of November 2013

between:

- (1) **MILLER INVERNESS INVESTMENTS LIMITED** (registered number SC441944) having its registered office at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH (the “Chargor”); and
- (2) **THE ROYAL BANK OF SCOTLAND PLC** as trustee, agent and security agent for each of the Senior Secured Parties (the “Security Agent”).

**WHEREAS:**

- (A) The Senior Secured Parties have made available to the Borrowers certain credit facilities.
- (B) It is a condition to the Senior Secured Parties continuing to make those credit facilities available to the Borrowers that the Chargor enters into this Deed.

**NOW THIS DEED WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Incorporation of definitions**

Terms defined in the Facilities Agreement, unless otherwise defined in this Deed or unless a contrary intention appears, bear the same meaning when used in this Deed.

**1.2 Additional definitions**

In this Deed:

- “Administrator”** means any person appointed as an administrator pursuant to paragraph 26 of Schedule B1 to the Insolvency Act.
- “Assigned Documents”** means the documents listed in Schedule 3 (*Assigned Documents*).
- “Charged Account”** means any Specified Account and any other current or deposit or other account of the Chargor which is or has become the subject of a fixed charge pursuant to this Deed.

<b>“Charged Assets”</b>	means the assets, rights and undertaking of the Chargor from time to time mortgaged, charged or assigned to the Security Agent by or pursuant to this Deed.
<b>“Deed”</b>	means this debenture.
<b>“Enforcement Event”</b>	means an acceleration notice is served pursuant to clause 28.20 of the Facilities Agreement following an Event of Default.
<b>“Facilities Agreement”</b>	means the senior facilities agreement dated 29 February 2012 between, among others, the Parent, Bank of Scotland plc, National Australia Bank Limited and The Royal Bank of Scotland plc as Arrangers, The Royal Bank of Scotland plc as Agent and Security Agent and the Original Lenders as amended by an amendment agreement dated 15 March 2013 and as amended and restated by an amendment and restatement agreement dated 26 September 2013 and as further amended and restated by an amendment and restatement agreement dated on or around the date hereof.
<b>“Insolvency Act”</b>	means the Insolvency Act 1986.
<b>“Insurance Policy”</b>	means any policy of insurance or assurance in which the Chargor may at any time have an interest but excluding any third party liability or public liability insurance and any directors and officers insurance where the Chargor does not have a right to the proceeds of a claim under that policy of insurance or assurance or where the Chargor has the right to receive the proceeds of a claim under that policy of insurance or assurance but is then under an involuntary obligation to pass such proceeds to a third party.
<b>“Investments”</b>	means all shares and stock in the capital of any company (other than the Shares and any such shares and stock in any company registered in a jurisdiction other than England and Wales), debentures, securities, certificates or deposits, interests in collective investment schemes, warrants, options and any other rights to subscribe for or acquire any such investments hereafter owned by the Chargor or in which the Chargor has an interest together in all cases with all Related Rights.



<b>“LPA”</b>	means the Law of Property Act 1925.
<b>“Mortgaged Property”</b>	means the freehold and leasehold property specified in Schedule 1 ( <i>Mortgaged Property</i> ) and includes all buildings and fixtures on that property, the proceeds of sale of any part of that property, any licence, agreement for sale or agreement for lease in relation to that property, the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor in respect of that property and any monies paid or payable in respect of those covenants.
<b>“Real Property”</b>	means the Mortgaged Property and any other present or future freehold or leasehold property in which the Chargor has an interest and includes all buildings and fixtures on that property, the proceeds of sale of any part of that property, any licence, agreement for sale or agreement for lease in relation to that property, the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor in respect of that property and any monies paid or payable in respect of those covenants.
<b>“Receiver”</b>	means a receiver or receiver and manager or an administrative receiver of the whole or any part of the Charged Assets, which term will include joint receivers and any substitute receiver, receiver and manager or administrative receiver whether appointed under this Deed or pursuant to statute.
<b>“Related Rights”</b>	means, in relation to any Shares or Investments, all rights derived from those Shares or Investments including rights to dividends, interest and other distributions paid or payable after the date of this Deed on all or any of those Shares or Investments and all stocks, shares or other securities (and dividends, interest and other distributions thereon) or other rights accruing or offered at any time by way of redemption, bonus, pre-emption or otherwise to or in respect of all or any of those Shares or Investments or in substitution or exchange for all or any of the Shares or Investments.
<b>“Shares”</b>	means the shares listed in Schedule 2 ( <i>Shares</i> ) together with all Related Rights.

- “Secured Obligations”** means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly or severally, or as principal debtor, guarantor or surety or otherwise or as the equivalent obligor under the laws of any other jurisdiction) of the Chargor or any other Obligor to the Security Agent and the other Senior Secured Parties (or any of them) under the Finance Documents together with:
- (a) any refinancing, novation, refunding, deferral or extension of or increase in any of those obligations or liabilities;
  - (b) any further advances and additional facilities which may be made by any Senior Secured Party to the Chargor or any other Obligor under any Finance Document and all interest, fees and costs in connection therewith;
  - (c) any claim for damages or restitution in the event of rescission of any of those obligations or liabilities or otherwise in connection with any of the Finance Documents;
  - (d) any claim against the Chargor or any other Obligors flowing from the recovery by the Chargor or any other Obligors of a payment or discharge in respect of any of those liabilities on grounds of preference or otherwise;
  - (e) any amounts which would be included in any of the foregoing but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings; and
  - (f) all costs, charges and expenses incurred by the Security Agent or any other Senior Secured Party and payable by an Obligor in connection with the protection, preservation or enforcement of its rights against the Chargor or any other Obligor.
- “Specified Accounts”** means any Mandatory Prepayment Account and Holding Account

in each case as defined in the Facilities Agreement.

**“Specified Amounts”** means any amount falling within the definition of Insurance Proceeds or Disposal Proceeds as defined in each case in the Facilities Agreement.

### 1.3 **Implied covenants for title**

The obligations of the Chargor under this Deed shall be in addition to the covenants for title deemed to be included in this Deed by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

### 1.4 **Modification of Law of Property (Miscellaneous Provisions) Act 1994**

The following provisions of the Law of Property (Miscellaneous Provisions) Act 1994 will not apply to Clause 3 (*Creation of security*), being:

- 1.4.1 the words “other than any charges, encumbrances or rights which that person does not and would not reasonably be expected to know about” in Section 3(1);
- 1.4.2 the words “except to the extent that” and all the words thereafter in Section 3(2); and
- 1.4.3 Section 6(2).

### 1.5 **Effect as a deed**

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

### 1.6 **Law of Property (Miscellaneous Provisions) Act 1989**

To the extent necessary for any agreement for the disposition of the Charged Assets in this Deed to be a valid agreement under section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the other Finance Documents and of any side letters between the parties to this Deed are incorporated into this Deed.

### 1.7 **Security trust and intercreditor provisions**

- 1.7.1 The Security Agent holds the benefit of this Deed on trust for the Senior Secured Parties in accordance with clause 14 (*Security Agent*) of the Intercreditor Agreement.
- 1.7.2 This Deed is granted subject to the terms of the Intercreditor Agreement.

## 1.8 Construction

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

- (a) the **“Chargor”**, **“Security Agent”**, **“Senior Secured Party”**, **“Obligor”** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) **“assets”** includes present and future properties, revenues and rights of every description;
- (c) an Event of Default is **“continuing”** if it has not been remedied or waived;
- (d) the **“Facilities Agreement”**, a **“Finance Document”** or any other agreement or instrument is a reference to that Facilities Agreement or Finance Document or other agreement or instrument as from time to time amended, novated, supplemented, replaced, extended or restated in whole or in part;
- (e) 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) or two or more of the foregoing;
- (f) a **“regulation”** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (g) a provision of law is a reference to that provision as from time to time amended or re-enacted;
- (h) **“disposal”** includes a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary (and **“dispose”** shall be construed accordingly);
- (i) **“document”** includes any deed, instrument (including negotiable instrument) or other document of any kind;
- (j) any matter **“including”** specific instances or examples of such matter shall be construed without limitation to the generality of that matter (and references to **“include”** shall be construed accordingly);

- (k) the “winding-up”, “dissolution” or “administration” of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or established, or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors; and

- (l) Clauses and Schedules are to the clauses and schedules to this Deed.

1.8.2 Clause headings are for ease of reference only.

1.8.3 Words in the singular shall import the plural and *vice versa*.

1.8.4 Words defined in the Companies Act 2006 have the same meanings in this Deed.

## 2. **COVENANT TO PAY**

### 2.1 **Covenant to pay**

The Chargor, as principal debtor and not just as surety, covenants with the Security Agent to pay, discharge and satisfy the Secured Obligations when the same become due in accordance with the terms of the Finance Documents whether by acceleration or otherwise.

### 2.2 **Interest**

The Chargor shall pay interest on any amount demanded from it in accordance with this Deed from the date of such demand until such amount is irrevocably discharged and paid in full (such interest to accrue on a daily basis after as well as before judgment or the liquidation or administration of the Chargor and to be payable on demand) at the rate from time to time applicable to unpaid sums specified in the Facilities Agreement, save to the extent that such interest is charged on such amount pursuant to the relevant Finance Document and itself constitutes a Secured Obligation.

## 3. **CREATION OF SECURITY**

### 3.1 **General**

All the security created under this Deed:

- 3.1.1 is created in favour of the Security Agent as trustee, agent and security agent for each of the Senior Secured Parties;

- 3.1.2 is created over present and future assets of the Chargor;
- 3.1.3 is security for the payment of all the Secured Obligations; and
- 3.1.4 is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

### 3.2 **Mortgage**

The Chargor charges by way of first legal mortgage all its right title and interest in the Mortgaged Property.

### 3.3 **Fixed charges**

To the extent not validly and effectively charged by way of first legal mortgage pursuant to Clause 3.2 (*Mortgage*) or by way of specific legal charge in favour of the Security Agent or effectively assigned pursuant to Clause 3.5 (*Assignment by way of Security*) as security for the payment of the Secured Obligations, the Chargor charges by way of first fixed charge:

- 3.3.1 all estates or interests in any Real Property in England and Wales now or hereafter belonging to it, save to the extent prohibited in terms of any agreement relating to such Real Property;
- 3.3.2 all its rights under any agreement relating to the purchase of any freehold or leasehold property, save to the extent prohibited in terms of such agreement;
- 3.3.3 all its rights under any occupational lease, licence or other right of occupation, save to the extent prohibited in terms of any agreement relating to such right;
- 3.3.4 all plant, machinery, computers, office equipment or vehicles owned by it and its interests in any plant or machinery, save to the extent prohibited in terms of any agreement relating to such property;
- 3.3.5 all monies standing to the credit of any account maintained by it with any person or (to the extent of its interest) in which it has an interest and the debts represented by them and all its rights in such accounts;
- 3.3.6 all of its book debts and other debts, the proceeds of the same and all other moneys due and owing to it and the benefit of all rights, securities and guarantees of any nature enjoyed or held by it in relation to any of the foregoing;
- 3.3.7 all its rights under any interest rate hedging arrangements;

- 3.3.8 its goodwill;
- 3.3.9 its uncalled capital;
- 3.3.10 the Shares specified against its name in Schedule 2;
- 3.3.11 all its right, title and interest in any Investment including all rights which the Chargor may have at any time against any clearance or settlement system or any custodian in respect of any Investment;
- 3.3.12 all its right, title and interest in any Intellectual Property belonging to it or (to the extent of its interest) in which it has an interest;
- 3.3.13 the benefit of all licences, consents and authorisations (statutory or otherwise) held by it in connection with its business or the use of any Charged Asset specified in any other sub-paragraph in this Clause and the right to recover and receive all compensation which may be payable to it in respect of them; and
- 3.3.14 any beneficial interest, claim or entitlement it has to any assets of any pension fund.

#### 3.4 **Exceptions to fixed security**

The fixed security from time to time created by this Deed does not extend to any asset situated outside England and Wales or the rights to which are governed by any law other than the laws of England and Wales to the extent that and for so long as any such fixed security would be unlawful or ineffective under the laws of the jurisdiction in which such asset is situated.

#### 3.5 **Assignment by way of security**

To the extent not validly and effectively charged by way of first fixed charge pursuant to Clause 3.3 (*Fixed charges*) as security for the payment of the Secured Obligations, the Chargor assigns and agrees to assign absolutely all of its right, title and interest in:

- 3.5.1 all Insurance Policies taken out by it or on its behalf or (to the extent of its interest) in which it has an interest and the right to all claims and returns of premiums in respect of any such Insurance Policies; and
- 3.5.2 each of the Assigned Documents to which it is a party.

Until this Deed becomes enforceable pursuant to Clause 12 (*When security becomes enforceable*) the Chargor shall be entitled to exercise all its rights under the Assigned Documents.

### 3.6 **Floating charge**

As security for the payment of the Secured Obligations each Chargor charges by way of first floating charge the whole of its property (including uncalled capital) comprised from time to time in its property and undertaking and all other property, assets and rights of whatever nature and wherever situated which are not otherwise effectively charged or assigned pursuant to the foregoing provisions of this Clause or, in relation to assets situated in Scotland, whether or not the same are effectively charged pursuant to the foregoing provisions of this Clause.

### 3.7 **Automatic crystallisation of floating charge**

The floating charge created by Clause 3.6 (*Floating charge*) shall (other than in respect of any Charged Assets situated in Scotland if and to the extent that a Receiver would not be capable of exercising his powers in Scotland in relation thereto under Section 72 of the Insolvency Act by reason of automatic conversion) immediately upon the occurrence of the relevant event (unless otherwise permitted by any of the Finance Documents) convert into a fixed charge in respect of:

- 3.7.1 any Charged Asset which shall without the prior written consent of the Security Agent become subject to a fixed charge in favour of any person other than the Security Agent;
- 3.7.2 any Charged Asset in respect of which any person shall levy, or attempt to levy, any distress, diligence, execution, sequestration or other similar process;
- 3.7.3 all Charged Assets if an Administrator is appointed by the Security Agent or the Security Agent receives notice of an intention to appoint an Administrator; or
- 3.7.4 all Charged Assets on the convening of any meeting of the members of the Chargor to consider a resolution to wind up the Chargor (or not to wind up the Chargor).

### 3.8 **Crystallisation on notice of floating charge**

The Security Agent may at any time:

- 3.8.1 after the security created by this Deed has become enforceable in accordance with Clause 12 (*When security becomes enforceable*); or
- 3.8.1 if the Chargor fails to comply or takes or threatens to take any action which in the reasonable opinion of the Security Agent is likely to result in it failing to comply with its obligations under Clause 6 (*Restriction on dealings*); or



3.8.2 if the Security Agent in good faith considers that any of the Charged Assets are in danger of being seized or (save in terms of a Permitted Disposal) sold as a result of any legal process, or are otherwise in jeopardy; or

3.8.3 if the Security Agent in good faith considers that steps are being taken or have been taken which are likely or intended to lead to the appointment of an Administrator or the presentation of a petition for the winding-up of the Chargor,

by giving notice in writing to that effect to the Chargor convert the floating charge created by Clause 3.6 (*Floating charge*) into a fixed charge as regards any asset specified in such notice. The conversion shall take effect immediately upon the giving of the notice.

### 3.9 **Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act applies to the floating charge created by Clause 3.6 (*Floating charge*) so that the floating charge created by Clause 3.6 (*Floating charge*) shall be a “qualifying floating charge” for the purposes of that paragraph.

## 4. **PROVISIONS AS TO SECURITY**

### 4.1 **Continuing security**

4.1.1 The security from time to time created by this Deed is a continuing security and will remain in full force and effect as a continuing security for the Secured Obligations until released or discharged by the Security Agent.

4.1.2 No part of the security from time to time created by this Deed will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

### 4.2 **Additional security**

This Deed shall be without prejudice and in addition to any other security which may at any time be held by the Security Agent or any other Senior Secured Party from the Chargor or any other person in respect of the whole or any part of the Secured Obligations and may be enforced independently of any such other security.

### 4.3 **No obligation to take other enforcement proceedings**

The Security Agent shall not be obliged before exercising any of the rights conferred on it by this Deed or by law:

- 4.3.1 to make any demand of the Chargor or any other person other than that required by the terms of the Finance Documents;
- 4.3.2 to take any action, enforce any security, exercise any right of compensation or set-off or to obtain or enforce any judgement, decree or order in any court against the Chargor or any other person;
- 4.3.3 to make or file any claim or proof in a winding up, liquidation, administration or other insolvency proceedings of the Chargor or any other person; or
- 4.3.4 to enforce or seek to enforce any other security taken in respect of any of the obligations of the Chargor or any other person under the Finance Documents.

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

The obligations of the Chargor under this Deed will not be affected by any act, omission or circumstances which, but for this Clause 4.4 (*Waiver of defences*), might operate to release, discharge, impair or otherwise affect any of the obligations of the Chargor under this Deed or any of the rights, powers or remedies conferred upon the Security Agent and the other Senior Secured Parties or any of them by the relevant Finance Documents or by law including (but without limitation) and whether or not known to the Chargor or any Senior Secured Party:

- 4.4.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;
- 4.4.2 the release of any other Obligor or any other person (other than the relevant Chargor) from its obligations under any Finance Document or any security or guarantee granted in connection therewith;
- 4.4.3 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 Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 4.4.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- 4.4.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance 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 Finance Document or other document or security;

4.4.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

4.4.7 any insolvency or similar proceedings.

## **5. PERFECTION OF SECURITY**

### **5.1 Notices of Assignment**

The Chargor shall promptly when required by the Agreed Security Principles or upon this Deed becoming enforceable in accordance with Clause 12 (*When security becomes enforceable*) in respect of each Assigned Document to which it is a party, deliver a duly completed notice of assignment to each other party to that Assigned Document, and use all reasonable endeavours to procure that each such person executes and delivers to the Security Agent an acknowledgement, in each case in the form set out in Part A of Schedule 3 (*Notice of assignment of Assigned Documents*) (or in such other form as the Security Agent shall agree).

### **5.2 Shares**

5.2.1 Immediately upon execution of this Deed or, if later, immediately upon becoming entitled to the relevant Shares, the Chargor shall deliver to the Security Agent:

- (a) duly executed transfers of the Shares in favour of the Security Agent or its nominee together with the certificates in respect of all the Shares and such other documents of title as the Security Agent shall require to enable it (or its nominee) to be registered as the owner of or otherwise acquire legal title to the Shares; and
- (b) in the case of each of those companies wholly owned by a member of the Group whose shares are charged by this Deed, a certified copy of the Articles of Association of each such company evidencing that there is no restriction on the transfer of the Shares to the Security Agent or its nominee pursuant to, or by the Security Agent or its nominee in exercise of the security conferred by, this Deed; and
- (c) in the case of each of those companies which are not wholly owned by a member of the Group whose shares are charged by this Deed evidence that all necessary

consent from third parties has been received for the registration of the Shares in the name of the Security Agent or its nominee,

and shall procure the registration of the Shares in the name of the Security Agent or its nominee.

### 5.3 **Investments**

The Chargor shall, promptly following the acquisition of any Investment immediately deposit with the Security Agent, or as the Security Agent may direct, all certificates and other documents of title or evidence of ownership in relation to any Investment and shall:

- 5.3.1 execute and deliver to the Security Agent transfers (executed in blank and left undated and duly stamped if applicable) and such other documents as the Security Agent may reasonably require in order to enable the Security Agent (or its nominee) to be registered as the owner or otherwise obtain a legal title to any Investment; or
- 5.3.2 in the case of any Investment which is held in any clearance or settlement system or by any custodian, execute and deliver such documents as the Security Agent may reasonably require to perfect the security conferred over that Investment by this Deed.

### 5.4 **Registration of Intellectual Property**

The Chargor hereby agrees, if so requested in writing by the Security Agent, to execute all such documents and do all acts that the Security Agent may reasonably require to record the interest of the Security Agent in any registers relating to any material Intellectual Property in which the Chargor has an interest.

## 6. **RESTRICTION ON DEALINGS**

Save as permitted by the Facilities Agreement or the Intercreditor Agreement, the Chargor will not create or permit to subsist any Security on any part of the Charged Assets or dispose of or otherwise deal with any part of the Charged Assets.

## 7. **SHARES AND INVESTMENTS**

### 7.1 **Rights prior to default**

- 7.1.1 Prior to the security created by this Deed becoming enforceable in accordance with Clause 12 (*When security becomes enforceable*) the Chargor shall have the sole right, subject to the provisions of Clause 11 (*Undertakings*), to exercise all voting rights in relation to the Shares and Investments in its own interests and, to the extent that such

rights are exercisable by the Security Agent, the Security Agent shall, subject to the provisions of Clause 11 (*Undertakings*), exercise them in accordance with the Chargor's written instructions or if so required by the Chargor, execute any necessary form of proxy in connection therewith.

- 7.1.2 Prior to the security created by this Deed becoming enforceable in accordance with Clause 12 (*When security becomes enforceable*) the Security Agent shall have no right to exercise any voting rights in relation to the Shares and Investments other than in accordance with the Chargor's written instructions to the extent that such rights are exercisable by the Security Agent.

## 7.2 **Rights during default**

After the security created by this Deed has become enforceable in accordance with Clause 12 (*When security becomes enforceable*), the Security Agent may, at its discretion (without any further consent or authority from the Chargor):

- 7.2.1 if it has not already been done pursuant to Clause 5.2.1(a) or otherwise, register all or any of the Shares and Investments in the name of the Security Agent or its nominee and the Chargor shall, as and when required by the Security Agent, procure such registration;
- 7.2.2 exercise (or refrain from exercising) or, as the case may be, require the Chargor to exercise (or refrain from exercising) any voting rights in respect of the Shares and Investments and may revoke any proxy previously granted in connection therewith; and
- 7.2.3 exercise (or refrain from exercising) or, as the case may be, require the Chargor to exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Shares and the Investments,

in such manner and on such terms as the Security Agent may think fit.

## 7.3 **Dividends prior to default**

Prior to the security created by this Deed becoming enforceable in accordance with Clause 12 (*When security becomes enforceable*):

- 7.3.1 the Chargor shall have the sole right to receive any dividends, interest and other monies arising from the Shares and Investments and the Security Agent will, if so required by the Chargor, execute any necessary dividend mandate in connection therewith; and

7.3.2 the Security Agent shall have no right to receive any dividends, interest and other monies arising from the Shares and Investments.

#### 7.4 **Dividends during default**

After the security created by this Deed has become enforceable in accordance with Clause 12 (*When security becomes enforceable*):

7.4.1 the Security Agent shall be entitled to receive all dividends, interest and other monies arising from the Shares and Investments and may, at its discretion (without any further consent or authority from the Chargor) apply the same in payment of the Secured Obligations and may revoke any dividend mandate previously granted in connection therewith; and

7.4.2 the Chargor shall take all necessary steps to ensure that all dividends, interest and other monies arising from the Shares and Investments are paid directly to the Security Agent and if the Chargor receives any dividends, interest and other monies arising from the Shares and Investments it shall promptly pay the same to the Security Agent and pending such payment shall hold the same on trust for the Security Agent.

#### 7.5 **Performance by Security Agent**

If the Chargor fails to perform any of the obligations relating to the Shares or Investments (including the payment of any call or other payment due in respect of any of the Shares or Investments), the Security Agent may, at its sole discretion, do so on its behalf and any cost or expenses incurred by the Security Agent in so doing shall be repaid by the Chargor to the Security Agent on demand together with accrued interest thereon at the rate from time to time applicable to unpaid sums specified in the Facilities Agreement from the time or respective times of the same having been paid or incurred until payment thereof (as well as after as before judgement).

#### 7.6 **No liability for Security Agent**

Notwithstanding the provisions of Clause 7.5 (*Performance by Security Agent*) the Security Agent shall not be obliged to perform any of the obligations of the Chargor in relation to the Shares or Investments nor shall it have any liability in respect of the Shares or Investments as a result of the grant of this Deed, the transfer of the Shares or Investments to it or its nominee or as a result of the performance or non-performance of any such obligation.

## 8. **BOOK DEBTS**

### 8.1 **Collection of Book debts**

The Chargor shall get in and realise:

- 8.1.1 any securities to the extent held by way of temporary investment;
  - 8.1.2 book and other debts and other monies; and
  - 8.1.3 royalties, fees and income of like nature in relation to Intellectual Property,
- in each case in the ordinary course of business.

### 8.2 **Book Debts: Prior to an Enforcement Event**

Until the occurrence of an Enforcement Event:

- 8.2.1 in the case of any amount other than a Specified Amount, such amount will be credited to a current, deposit or other account and (subject to the terms of the Facilities Agreement) will be subject to the terms of the floating charge created by Clause 3.6 (*Floating Charge*) but (subject thereto) the Chargor shall be free to deal with such amount in the ordinary course of business;
- 8.2.2 in the case of any Specified Amount, such Specified Amount will be credited to the appropriate Specified Account and applied in accordance with the terms of the Facilities Agreement.

### 8.3 **Book Debts: Following an Enforcement Event**

After the occurrence of an Enforcement Event, the Chargor shall not, except with the prior written consent of the Security Agent, be entitled to withdraw or otherwise deal in any way with any amount standing to the credit of any Charged Account and the Security Agent may, at any time thereafter, apply all monies standing to the credit of a Charged Account and interest thereon in and towards satisfaction of the Secured Obligations.

## 9. **ASSIGNED DOCUMENTS**

### 9.1 **Representations**

The Chargor represents to the Security Agent as agent and security agent for each of the Senior Secured Parties that:

- 9.1.1 it has not assigned, charged or transferred any interest in the Assigned Documents save in accordance with this Deed;
- 9.1.2 it has not received or given a notice or intimation of termination, rescission, suspension or breach in respect of any of the Assigned Documents;
- 9.1.3 the information contained in Schedule 3 (*Assigned Documents*) is complete and accurate in all respects.

## 9.2 **Undertakings**

The Chargor undertakes to the Security Agent that it will not without the prior written consent of the Security Agent:

- 9.2.1 amend, vary or waive (or agree to amend, vary or waive) any provision of the Assigned Documents, exercise any right to rescind cancel or terminate any of the Assigned Documents or release any person from any obligations under any of the Assigned Documents; and
- 9.2.2 novate, transfer or assign any of its rights under any of the Assigned Documents.

## 9.3 **Duty to perform**

The Chargor agrees that notwithstanding the provisions of Clause 3.5 (*Assignment by way of security*), it shall remain liable to perform all its obligations under and, prior to the enforcement of the security created by this Deed pursuant to Clause 12 (*When security becomes enforceable*), shall be entitled to exercise all rights, remedies, powers and discretions conferred on it under the Assigned Documents and the Security Agent shall not have any liability or responsibility under any of the Assigned Documents to the Chargor or any other party.

## 9.4 **Failure to perform**

Without prejudice to Clause 9.3 (*Duty to perform*), if the Chargor fails to perform any of its obligations under any of the Assigned Documents, the Security Agent shall be entitled, but not required, to perform or procure performance of such obligations, and the amount of all payments made or costs incurred by the Security Agent in that respect, shall be reimbursed by the Chargor to the Security Agent on demand together with accrued interest thereon at the rate from time to time applicable to unpaid sums specified in the Facilities Agreement from the time or respective times of the same having been paid or incurred until payment thereof (as well as after as before judgement).



## 10. REPRESENTATIONS AND WARRANTIES

### 10.1 Representations and warranties

The Chargor represents and warrants to the Security Agent as agent and security agent for each of the Senior Secured Parties that:

- 10.1.1 in the case of each of those companies wholly owned by a member of the Group whose shares are charged by this Deed the Shares represent the entire issued share capital of the relevant companies listed in Schedule 2 (*Shares*);
- 10.1.2 it is the sole legal and beneficial owner of the relevant Shares all of which are fully paid;
- 10.1.3 in the case of each of those companies wholly owned by a member of the Group whose shares are charged by this Deed, it has not granted or created, nor is there outstanding, any option, right of pre-emption, assignment or Security over any of the Shares or the Related Rights except any Permitted Security;
- 10.1.4 the particulars contained in the Schedule 2 (*Shares*) are complete and accurate in all respects; and
- 10.1.5 it has delivered to the Security Agent, a complete and up to date copy of the articles of association of the relevant companies listed in Schedule 2 (*Shares*) together with any resolution varying or amending the rights attaching to the Shares and there are no agreements or arrangements relating to the Shares which have not been disclosed in writing to the Security Agent.

### 10.2 Repetition

The representations and warranties set out in Clause 10.1 (*Representations and warranties*) shall be given on the date of this Deed and shall be deemed to be repeated on each date on which the representations and warranties set out in Clause 24 of the Facilities Agreement are deemed to be repeated by reference to the facts and circumstances then subsisting.

## 11. UNDERTAKINGS

### 11.1 General undertakings

The Chargor shall:

- 11.1.1 supply to the Security Agent such information as the Security Agent may reasonably require about the Charged Assets and compliance with the terms of this Deed; and
- 11.1.2 obtain, effect, comply with and maintain in full force and effect all registrations, licences, consents, authorisations and exemptions required for the performance, validity and enforceability of this Deed and any document entered into pursuant to this Deed.

## 11.2 **Undertakings relating to Shares and Investments**

The Chargor shall:

- 11.2.1 observe and perform all conditions and obligations relating to the Shares and Investments where failure to do so would adversely affect the value of the Shares and Investments;
- 11.2.2 promptly deliver to the Security Agent a copy of every circular, notice, resolution or similar documents received by it in respect of any of the Shares and Investments;
- 11.2.3 not take or omit to take any action which, in the opinion of the Security Agent acting in good faith, would prejudice the security conferred by this Deed, impair the value of any of the Shares and Investments or adversely affect the ability of the Security Agent to realise the security conferred by this Deed and shall, at its own cost, promptly take all action which is at any time necessary to protect the value of the interests of the Chargor and the Security Agent in, and their rights to, the Shares and Investments, provided that the Chargor shall not be in breach of this provision solely as a result of a decision taken by its board of directors not to invest in, or otherwise fund, any company the Shares and Investments of which such company are charged pursuant to this Deed at any time where such company is a Non Recourse Debtor;
- 11.2.4 not vary or abrogate all or any of the rights attached to any of the Shares and Investments or take or omit to take any steps which would result in such a change;
- 11.2.5 pay when due all calls or other payments which may be or become due in respect of any of the Shares and Investments; and
- 11.2.6 except for a Permitted Share Issue in terms of paragraph (a)(i) and (a)(ii) of the definition of Permitted Share Issue in the Facilities Agreement where the person subscribing for the shares issued pursuant to that Permitted Share Issue has granted security to the Security Agent in respect of such shares in similar terms to this Deed,

not permit any company whose Shares are charged by this Deed to issue any shares (or securities convertible into shares) or grant any option over or right to subscribe for any shares to any person other than the Chargor.

## 12. **WHEN SECURITY BECOMES ENFORCEABLE**

The security created by this Deed will become immediately enforceable upon the occurrence of an Enforcement Event.

## 13. **ENFORCEMENT OF SECURITY**

### 13.1 **Enforcement**

After the security created by this Deed has become enforceable in accordance with Clause 12 (*When security becomes enforceable*), the Security Agent may in its absolute discretion without prior notice to the Chargor enforce all or any part of the security created by this Deed and take possession of or dispose of all or any of the Charged Assets in any manner it sees fit.

### 13.2 **Powers of Security Agent**

Any right, power or discretion conferred by this Deed or by law on a Receiver may after the security created by this Deed has become enforceable, to the extent permitted by law, be exercised by the Security Agent in relation to any Charged Asset without first appointing a Receiver or notwithstanding the appointment of a Receiver.

### 13.3 **Statutory Provisions**

13.3.1 The rights, powers, privileges and immunities conferred on mortgagees or receivers by the LPA, the Insolvency Act, the Insolvency Rules 1986, the Insolvency (Scotland) Rules 1986 or by any other enactment now or at any time in force shall apply to the Security Agent and any Receiver except in so far as they are expressly or impliedly excluded and where there is any ambiguity or conflict between powers conferred by that legislation and those contained in this Deed the terms of this Deed shall prevail.

13.3.2 The Chargor shall not exercise or agree to exercise any of the powers of leasing or of accepting surrenders of leases conferred by sections 99 and 100 of the LPA or by common law or otherwise or grant or accept or agree to grant or accept any lease, tenancy or licence or share or agree to share possession or occupation of the Charged Assets but the Security Agent shall be entitled to grant and make agreements for leases at a premium or otherwise and accept surrenders of leases and grant options on such

terms as the Security Agent shall consider expedient and without statutory or other restrictions.

- 13.3.3 For the purposes of Section 99 of the LPA, the expression “Mortgagor” will include any encumbrancer deriving title under the Chargor and Sub-section (18) of Section 99 of the LPA will not apply.
- 13.3.4 Section 93 of the LPA shall not apply to this Deed or to any sale made under it. The Security Agent shall have the right after the security created by this Deed has become enforceable in accordance with Clause 12 (*When security becomes enforceable*) to consolidate all or any of the security created by or pursuant to this Deed with any other security in existence at any time.
- 13.3.5 The Secured Obligations shall be deemed to have become due and payable on the date of this Deed for the purposes of section 101 of the LPA and the power of sale and other powers conferred by section 101 of the LPA (as varied or extended by this Deed) and all other powers shall be deemed to arise immediately after execution of this Deed.
- 13.3.6 Section 103 of the LPA (restricting the exercise of the power of sale) shall not apply to this Deed.

#### 13.4 **Protection of third parties**

- 13.4.1 No purchaser from, or other person dealing with, the Security Agent or a Receiver shall be concerned to enquire whether any of the powers exercised or purported to be exercised has arisen or become exercisable, whether any of the Secured Obligations remains outstanding, whether the Security Agent or a Receiver is authorised to act or as to the propriety or validity of the exercise or purported exercise of any power and a certificate in writing by an officer or agent of the Security Agent or any Receiver that the power of sale or other disposal has arisen and is exercisable shall be conclusive evidence of that fact in favour of a purchaser of all or any of the Charged Assets.
- 13.4.2 The receipt of Security Agent or a Receiver shall be an absolute discharge to a purchaser from, or other person dealing with, the Security Agent or a Receiver and shall relieve that purchaser of any obligation to see to the application of any monies paid to or at the discretion of Security Agent or a Receiver and in making any sale or disposal the Security Agent or a Receiver may do so for such consideration, in such manner and on such terms (including payment by instalments) as it thinks fit.

### **13.5 Protection of the Security Agent and Receiver**

Neither the Security Agent nor any Receiver shall be liable to account to the Chargor as mortgagee in possession in respect of any Charged Asset or be liable to the Chargor in respect of any loss or damage which arises out of the exercise, the attempted or purported exercise or the failure to exercise any of their respective powers or for any other loss of any nature whatsoever.

### **13.6 Delegation**

13.6.1 The Security Agent and any Receiver may from time to time delegate by power of attorney or otherwise to any person or corporation any of the powers and discretions of the Security Agent or the Receiver under this Deed whether arising by statute, the provisions hereof or otherwise upon such terms and for such periods of time as it may think fit and may determine any such delegation.

13.6.2 Neither the Security Agent nor any Receiver will be liable to the Chargor for any loss or damage arising from any act, default, omission or misconduct of any such delegate, and references in this Deed to the Security Agent or to any Receiver will where the context so admits include references to any delegates so appointed.

### **13.7 Prior charges**

13.7.1 In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking security in case of exercise by the Security Agent or any Receiver of any power of sale under this Charge the Security Agent may redeem such prior security or procure the transfer thereof to itself.

13.7.2 The Security Agent may settle and pass the accounts of the prior mortgagee, chargee or encumbrancer and any accounts so settled and passed will be conclusive and binding on the Chargor.

13.7.3 All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Chargor to the Security Agent on demand together with accrued interest thereon at the rate from time to time applicable to unpaid sums specified in the Facilities Agreement from the time or respective times of the same having been paid or incurred until payment thereof (as well as after as before judgement).

## 14. **RECEIVERS AND ADMINISTRATORS**

### 14.1 **Appointment and Removal**

Without prejudice to the provisions of the Insolvency Act, at any time after having been requested to do so by the Chargor or after the security created by this Deed has become enforceable in accordance with Clause 12 (*When security becomes enforceable*), the Security Agent may by instrument in writing (under seal, by deed or otherwise under hand), without prior notice to the Chargor:

- 14.1.1 (subject to section 72A of the Insolvency Act) appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets;
- 14.1.2 remove (so far as it is lawfully able) any Receiver so appointed;
- 14.1.3 appoint another person(s) as an additional or replacement Receiver(s); and
- 14.1.4 appoint one or more persons to be an Administrator in accordance with paragraph 14 of Schedule B1 to the Insolvency Act 1986.

### 14.2 **Receiver as agent of the Chargor**

A Receiver shall be the agent of the Chargor and, except as otherwise required by the Insolvency Act, the Chargor shall be solely responsible for his acts and defaults and liable on any contract or engagements made or entered into or adopted by him.

### 14.3 **Remuneration of Receiver**

The Security Agent may fix the remuneration of any Receiver appointed by it and any maximum rate imposed by law (including Section 109(6) of the LPA) shall not apply. The amount of such remuneration shall be paid in accordance with the terms and conditions and in the manner agreed from time to time between the Security Agent and the Receiver.

### 14.4 **Powers of Receiver**

A Receiver shall have (and be entitled to exercise in such manner and on such terms as he may in his absolute discretion think fit) in relation to the Charged Assets over which he is appointed the following powers (as the same may be varied or extended by the provisions of this Deed):

- 14.4.1 all of the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act (whether or not the Receiver is an administrative receiver) (or in Schedule 2 thereof in the event of the Chargor being a company registered in Scotland);

- 14.4.2 all of the powers conferred from time to time on receivers, mortgagors and mortgagees in possession by the LPA;
- 14.4.3 power to sell (whether by public auction or private contract or otherwise) all or any of the Charged Assets on any terms and for any consideration (including without limitation for deferred consideration or a consideration payable wholly or partly in instalments or consisting in whole or in part of shares or securities of any other company or of any other non-cash asset);
- 14.4.4 power to grant any lease or tenancy or right of or affecting the Charged Assets for any term or terms of years at any or no rent and with or without any premium and accept the surrender of any lease or tenancy or right and give a valid receipt for any premium payable on any such grant or surrender and to amend or vary any lease, licence agreement or other arrangement in any way relating to or affecting the Charged Assets;
- 14.4.5 power to grant options to sell, lease, licence or dispose of the Charged Assets;
- 14.4.6 power to enter on or otherwise take possession of the Charged Assets to repair, convert, manufacture, process, decorate, alter, renew, improve, add to or develop or to complete any development or building which may be unfinished and to settle, compound, compromise or submit to arbitration any accounts or claims arising out of the commencement, carrying on or completion of any such development or building;
- 14.4.7 power to redeem any mortgage, charge or other encumbrance on, over or affecting the Charged Assets or any part of it;
- 14.4.8 power to repair, renew or improve plant, machinery, implements, furniture, equipment and other effects of the Chargor in or on the Charged Assets;
- 14.4.9 power to settle or compromise or submit to arbitration any claim or claims on or against the Charged Assets or claim or dispute arising out of the Charged Assets;
- 14.4.10 power to disclaim, abandon or disregard all or any of the outstanding contracts of the Chargor and to allow time for payment by or to the Chargor of any debts either with or without security;
- 14.4.11 power to manage and carry on or concur in managing or carrying on upon the Charged Assets any type of trade or business and to enter and perform such contracts and arrangements and incur any obligations in relation thereto;

- 14.4.12 power to make or exercise an election pursuant to paragraphs 2 and 3 of Schedule 10 to the Value Added Tax Act 1994 in relation to the Charged Assets or exercise any option or right of election available to the Chargor or the Security Agent or the Receiver that the supplies made in respect of any lease or tenancy of any part of the Charged Assets shall be supplies chargeable or taxable for value added tax purposes at the standard or other applicable rate provided always that neither the Security Agent nor the Receiver shall be liable for any loss suffered by the Chargor as a result and to execute all documents, and perform such acts or things as a result and to execute all documents, and perform such acts or things as maybe necessary to permit any disposal of the Charged Assets to be zero-rated for the purposes of value added tax;
- 14.4.13 power to exercise all voting and other rights attaching to stocks, shares and other securities comprising or comprised within the Charged Assets;
- 14.4.14 power to exercise in relation to any Charged Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Charged Asset; and
- 14.4.15 power to do all things which, in the opinion of the Receiver, are incidental to any of the powers, functions, authorities or discretions conferred or vested in the Receiver pursuant to this Deed or upon receivers by statute or law generally (including the bringing or defending of proceedings in the name of, or on behalf of, the Chargor; the preservation, improvement, collection and/or realisation of Charged Assets; and the execution of documents in the name of the Chargor (whether under hand, or by way of deed or by utilisation of the company seal of the Chargor).

#### 14.5 **Discretions**

Any liberty or power which may be exercised or any determination which may be made under this Deed by the Security Agent or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

#### 14.6 **Powers may be restricted**

The powers granted to a Receiver pursuant to this Deed may be restricted by the instrument (signed by the Security Agent) appointing him but they shall not be restricted by any winding-up or dissolution of the Chargor.



#### 14.7 **Discretions**

Any liberty or power which may be exercised or any determination which may be made under this Deed by the Security Agent or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

#### 14.8 **Actions of any Administrators**

Save as provided for in statute or otherwise agreed in writing by that Senior Secured Party, no Senior Secured Party shall have any liability for the acts or omissions of an Administrator.

### 15. **RELEASE OF SECURITY**

#### 15.1 **Release of security**

When (a) the Secured Obligations have been irrevocably paid or discharged in full to the satisfaction of the Security Agent and no Senior Secured Party has any further obligation to provide credit facilities or other accommodation to any Obligor, (b) required in order to give effect to a Permitted Disposal, a Permitted Transaction or a Third Party Disposal (as defined in Clause 31.3.1 of the Facilities Agreement, (c) required to give effect to Clause 11.2 of the Intercreditor Agreement or (d) if the Security Agent so agrees, at any other time, the Security Agent shall, subject to the provisions of Clause 16 (*Avoidance of Payments*), at the request and cost of the Parent, execute such documents as may be required to release this Deed and any other security created over the Charged Assets or any of them by this Deed.

#### 15.2 **Entitlement to retain security**

If any payment or discharge of the Secured Obligations is, in the reasonable opinion of the Security Agent (acting on legal advice received by it), liable to be avoided or invalidated under any enactment relating to bankruptcy or insolvency, the Security Agent may refuse to grant any release of the security created by this Deed for such further period as the risk of such avoidance or invalidity continues.

### 16. **AVOIDANCE OF PAYMENTS**

No assurance, security or payment which may be avoided or adjusted under the law, including under any statute relating to bankruptcy or insolvency and no release, settlement or discharge given or made by the Security Agent on the faith of any such assurance, security or payment, shall prejudice or affect the right of the Security Agent to recover the Secured Obligations from the Chargor (including any monies which any Senior Secured Party may be compelled to pay or

refund under the provisions of the Insolvency Act and any costs payable by it pursuant to or otherwise incurred in connection therewith) or to appoint a Receiver and enforce the security created by this Deed to the full extent of the Secured Obligations.

**17. CUMULATIVE REMEDIES AND WAIVERS**

The rights of the Security Agent and the Receiver may be exercised as often as necessary, are cumulative and are in addition to its respective rights under general law and may be waived only in writing and specifically. Delay in the exercise or non-exercise of any right shall not be a waiver of that right.

**18. SEVERABILITY**

If any of the provisions of this Deed is or becomes invalid, illegal or unenforceable that shall not affect the validity, legality and enforceability of any other provision in this Deed.

**19. EVIDENCE AND CALCULATIONS**

Any certificate or determination by the Security Agent as to the amount of the Secured Obligations shall, in the absence of manifest error, be conclusive and binding on the Chargor for all purposes of this Deed.

**20. APPLICATION OF PROCEEDS**

**20.1 Application of proceeds**

Any moneys received by the Security Agent or any Receiver after the security created by this Deed has become enforceable in accordance with Clause 12 (*When security becomes enforceable*) shall be applied in accordance with the provisions of the Intercreditor Agreement.

**20.2 Other claims**

The provisions of Clause 20.1 (*Application of Proceeds*) are subject to the payment of any claims having priority over the security created by this Deed. This Clause does not prejudice the right of any Senior Secured Party to recover any shortfall from the Chargor.

**21. NEW ACCOUNTS**

**21.1 New Accounts**

If the Security Agent at any time becomes aware of any subsequent security or other like interest, matter, event or transaction affecting any Charged Asset (except as permitted by the Facilities

Agreement), the Security Agent may open a new account or accounts for the Chargor in its books.

## 21.2 **Ruling off**

If the Security Agent does not open any such new account then, unless it gives express written notice to the Chargor to the contrary, the Security Agent will be treated as if it had in fact opened such account or accounts at the time when it became so aware and as from that time all payments by or on behalf of the Chargor to the Security Agent will be credited or treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations then outstanding.

## 22. **SUSPENSE ACCOUNTS**

All monies received, recovered or realised by the Security Agent under this Deed (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 maintained with any bank, building society or financial institution as it considers appropriate and may be held in such account for so long as the Security Agent may think fit pending their application from time to time (as the Security Agent is entitled to do in its 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.

## 23. **POWER OF ATTORNEY**

### 23.1 **Appointment and powers**

By way of security for the obligations of the Chargor under this Deed, the Chargor irrevocably appoints the Security Agent and every Receiver to be its attorney on its behalf or in its name or otherwise to:

- 23.1.1 before the occurrence of an Enforcement Event, do all such assurances, acts and things (including to sign, execute, seal and deliver and otherwise perfect any deed, assurance, agreement, instrument or act which it or he may reasonably deem proper in or for the purpose of exercising any such powers) which the Chargor is required to do under this Deed and has failed to do following a written request from the Security Agent; and
- 23.1.2 after the occurrence of an Enforcement Event, do all such assurances, acts and things generally in its name and on its behalf to exercise all or any of the powers, conferred by

or pursuant to this Deed or by statute on the Security Agent or any Receiver (including to sign, execute, seal and deliver and otherwise perfect any deed, assurance, agreement, instrument or act which it or he may reasonably deem proper in or for the purpose of exercising any such powers, authorities and discretions).

## 23.2 **Ratification**

The Chargor ratifies and confirms whatever any such attorney mentioned in Clause 23.1 (*Appointment and powers*) shall do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in such Clause.

## 24. **TRANSFERS**

### 24.1 **Transfer by Chargor**

The Chargor may not assign or otherwise transfer its rights and obligations under this Deed.

### 24.2 **Transfer by Security Agent**

The Security Agent may (without prejudice to its right to appoint any joint trustee) assign and transfer all or any of its rights and obligations under this Deed to any person appointed as its successor as Security Agent (or any joint trustee). The Security Agent shall be entitled to disclose such information concerning the Chargor and this Deed as the Security Agent considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

## 25. **NOTICES**

Any communication to be made under or in connection with this Deed shall be made in accordance with Clause 37 of the Facilities Agreement.

## 26. **LAND REGISTRY**

### 26.1 **Request to the Land Registry**

Where the whole or any part of the Real Property is registered at the Land Registry the Chargor hereby applies to the Chief Land Registrar for registration against the registered title of the following restriction:

“No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time

being of the charge dated [ ] 2013 in favour of The Royal Bank of Scotland plc referred to in the charges register or their conveyancers.”

## 26.2 **Further advances**

If any Senior Secured Party is obliged to make further advances under the Finance Documents, that obligation is deemed to be incorporated in this Deed and, where the whole or part of the Real Property is registered at the Land Registry, the Chargor applies to the Chief Land Registrar for the registration against the registered title of the Real Property of a note that the Security Agent is under an obligation to make further advances to the Chargor.

## 27. **THIRD PARTIES**

Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed or a Senior Secured Party may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

## 28. **PERPETUITY PERIOD**

The perpetuity period for the trusts in this Deed is 125 years.

## 29. **FINANCIAL COLLATERAL**

### 29.1 **Right to appropriate**

To the extent that the Charged Assets constitute “financial collateral” and this Deed and the obligations of the Chargor constitute a “security financial collateral arrangement” (in each case for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the “**Regulations**”)) the Security Agent shall have the right after the security created by this Deed has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Obligations.

### 29.2 **Value of financial collateral**

For the purpose of Clause 29.1 (*Right to appropriate*), the value of the financial collateral appropriated shall be such amount as the Security Agent reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it and the Chargor agrees that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

### 30. COUNTERPARTS

This Deed may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

### 31. GOVERNING LAW AND JURISDICTION

#### 31.1 Governing law

This Deed shall be governed by, and construed in accordance with, the laws of England.

#### 31.2 Jurisdiction

31.2.1 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**”).

31.2.2 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.

31.2.3 This Clause 31.2 (*Jurisdiction*) is for the benefit of the Senior Secured Parties only. As a result, no Senior 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 Senior Secured Parties may take concurrent proceedings in any number of jurisdictions.

IN WITNESS WHEREOF this Deed has been executed as a deed on the date stated at the beginning of this Deed.

**SCHEDULE 1**  
**MORTGAGED PROPERTY**

None.

**SCHEDULE 2**

**SHARES**

None



**SCHEDULE 3**

**ASSIGNED DOCUMENTS**

None

**Part A****Notice of assignment of Assigned Documents**

To: [ ]

Date: [ ]

Dear Sirs,

We give you notice that, by a Debenture dated ● (the “**Debenture**”), we charged by way of assignment to ● (the “**Security Agent**”) all our right, interests and benefits in, to and under [the [*describe Assigned Document*] dated ● between ● relating to ● (including all monies payable thereunder and the proceeds of all claims and judgments for breach of covenant) (the “**Assigned Document**)”].

We will remain liable to perform all our obligations under the Assigned Document and the Security Agent is under no obligation of any kind whatsoever under the Assigned Document nor under any liability whatsoever in the event of any failure by us to perform our obligations under the Assigned Document.

We irrevocably instruct and authorise you to pay all payments under or arising under the Assigned Document to our account called ● account number ● sort code ●. It is very important that you make all immediate arrangements for all sums payable by you under the Assigned Document to be paid to this account.

Please note that all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising under the Assigned Document are exercisable by and belong to the Security Agent.

This letter is governed by and will be construed in accordance with the laws of England.

Would you please confirm your agreement to the above by sending the enclosed acknowledgement to the Security Agent with a copy to ourselves.

Yours faithfully

For and on behalf of

[ ]

### Acknowledgement of assignment of Assigned Documents

To: [ ]  
as Security Agent

Date: ●

Dear Sirs

We confirm receipt from ● (the “**Chargor**”) of a notice dated ● of a charge by way of assignment upon the terms of a Debenture dated ● (the “**Debenture**”) to ● (the “**Security Agent**”) of all the Chargor’s right, interest and benefit in, to and under the Assigned Document (as specified in that notice) to which we are a party.

We confirm that we have not received notice of any assignment or charge of or over any of the rights, interests and benefits specified in such notice and will make all payments to the account specified in that notice.

We acknowledge that the Chargor will remain liable to perform all its obligations under the Assigned Document and the Security Agent is under no obligation of any kind whatsoever under the Assigned Document nor under any liability whatsoever in the event of any failure by the Chargor to perform our obligations under the Assigned Document; and

We confirm that we have made all necessary arrangements for all future payments payable under such Assigned Document to be made into the account specified in the notice.

This letter is governed by and will be construed in accordance with the laws of England.

Yours faithfully

[ ]

**EXECUTION PAGE****Chargor**

Executed as a deed by  
**MILLER INVERNESS INVESTMENTS LIMITED**  
 acting by

..... Director

in the presence of:

..... Witness signature

*JONATHAN HAZEMAN*..... Print name

..... Address

.....

**Security Agent**

Executed as a deed by  
**THE ROYAL BANK OF SCOTLAND PLC**  
 as Security Agent  
 acting by

..... Authorised Signatory

in the presence of this witness:

..... Witness

..... Full Name

..... Address

.....

**EXECUTION PAGE****Chargor**

Executed as a deed by  
**MILLER INVERNESS INVESTMENTS LIMITED**  
 acting by

..... Director

in the presence of:

..... Witness signature

..... Print name

..... Address

.....

**Security Agent**

Executed as a deed by  
**THE ROYAL BANK OF SCOTLAND PLC**  
 as Security Agent  
 acting by

..... Authorised Signatory

in the presence of this witness:

..... Witness

..... Full Name

..... Address

.....