



**Registration of a Charge**

Company name: **ONE-DYAS MARINER LIMITED**

Company number: **SC449498**



X83MPUI9

Received for Electronic Filing: **18/04/2019**

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**Details of Charge**

Date of creation: **11/04/2019**

Charge code: **SC44 9498 0001**

Persons entitled: **ABN AMRO BANK N.V. (AS SECURITY AGENT)**

Brief description:

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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





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

Company number: 449498

Charge code: SC44 9498 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 11th April 2019 and created by ONE-DYAS MARINER LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18th April 2019 .

Given at Companies House, Edinburgh on 23rd April 2019

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

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# BRACEWELL

## FLOATING CHARGE

dated 11 April 2019

between

ONE-DYAS MARINER LIMITED

and

ABN AMRO Bank N.V.

as Security Agent

I, LAURA YOUNG OF BRACEWELL (UK) LLP  
HEREBY CERTIFY THAT, SAVE FOR MATERIAL  
REDACTED PURSUANT TO S. 859 G OF THE  
COMPANIES ACT 2006, THIS IS A TRUE COPY  
OF THE ORIGINAL DOCUMENT.

SIGNATURE: LYoung

POSITION: ASSOCIATE

DATE: 17 APRIL 2019

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This deed (the "Deed") is made as a deed and is dated 11 April 2019 and made between:

- (1) **ONE-DYAS MARINER LIMITED**, (formerly Dyas Mariner Limited) incorporated and registered in Scotland with company number SC449498 whose registered office is at 1 Exchange Crescent, Conference Square, Edinburgh, Lothian, EH3 8UL (the "Chargor"); and
- (2) **ABN AMRO Bank N.V.** as agent and trustee for the Secured Parties (as defined in the Facility Agreement (as defined below)) (the "Security Agent").

## **BACKGROUND**

- (A) Under this Deed, the Chargor provides security to the Security Agent (as agent and trustee for the Secured Parties) for the credit facilities made available to the Borrowers under the Facility Agreement.
- (B) The board of directors of the Chargor is satisfied that the Chargor giving the security contained or provided for in this Deed is in the best interests of the Chargor and has passed a resolution to that effect.
- (C) The Security Agent (as agent and trustee for the Secured Parties) holds the benefit of this Deed on trust for the Secured Parties on the terms of the Finance Documents.

**IT IS AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

Terms defined in the Facility Agreement shall, unless otherwise defined in this Deed, have the same meanings when used in this Deed. In addition, the following definitions apply in this Deed:

**"Administrator"** means an administrator appointed pursuant to Clause 8.7 (*Appointment of an Administrator*) to manage the affairs, business and property of the Chargor.

**"Delegate"** means any person appointed by the Security Agent or any Receiver pursuant to Clause 12 (*Delegation*) and any person appointed as attorney of the Security Agent, Receiver or Delegate.

**"Expense"** means all charges, costs (including legal fees), damages and expenses sustained or incurred by the Security Agent or any Receiver or Delegate at any time in connection with the Secured Assets or the Secured Liabilities or in taking, holding or perfecting this Deed or in defending, enforcing, preserving or protecting the Security constituted by this Deed or in exercising any powers, remedies or rights provided by or pursuant to this Deed (including any power or right to make payments on behalf of the Chargor under the terms of this Deed) or by law in each case on a full indemnity basis.

**"Facility Agreement"** means the facility agreement originally dated 31 December 2018 between the Borrower, certain subsidiaries of the Borrower, the Mandated Lead Arrangers and Original Lenders referred to therein, ING Bank N.V. as Agent and the Security Agent and certain other financial institutions referred to therein, as amended and restated pursuant to an amendment and restatement agreement dated 27 March 2019, for the provision of the credit facilities secured by various Transaction Security Documents, including this Deed.

**"Financial Collateral"** has the meaning given to that expression in the Financial Collateral Regulations.

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

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

**"Party"** means a party to this Deed.

**"Receiver"** means a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets (in whole or part or parts) appointed by the Security Agent under Clause 10 (*Receiver*).

**"Secured Assets"** means all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this Deed.

**"Secured Liabilities"** means all present and future monies, indebtedness, obligations and liabilities owed by each Obligor and each Subordinated Creditor to all or any of the Secured Parties, whether actual or contingent, in whatever currency denominated and whether owed jointly or severally, as principal or surety or in any other capacity whatsoever, under or in connection with the Finance Documents (including those arising under Clause 15.2 (*Discharge conditional*) of this Deed and any liabilities arising pursuant to an increase in Commitments under the Facility whether pursuant to clause 2.5 (*Accordion*) of the Facility Agreement or otherwise), together with all interest (including default interest) accruing in respect of such monies or liabilities and including any liability in respect of any further advances made under the Finance Documents, together with all Expenses and all interest under clause 13 (*Interest*) of the Facility Agreement.

**"Security Financial Collateral Arrangement"** has the meaning given to that expression in the Financial Collateral Regulations.

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

**"Subordinated Creditor"** has the meaning given to it in the Intercreditor Agreement.

## **1.2 Interpretation**

- (a) Unless a contrary indication appears, a reference in this Deed to:
  - (i) "asset" or "assets" includes present and future assets and rights of every description;
  - (ii) "disposal" means any a sale, lease, transfer or other disposal and "dispose" will be construed accordingly;
  - (iii) a "Finance Document" or any other agreement or instrument is a reference to that Finance Document or any other agreement or instrument as amended, novated, supplemented, extended or restated (including, but without limitation) any increase pursuant to clause 2.2 (*Increase due to cancellation*) and/or clause 2.5 (*Accordion*) of the Facility Agreement;

- (iv) "guarantee" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (v) "indebtedness" includes any obligation (whether incurred as principal or as a surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (vii) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (viii) the "Security Agent", the "Chargor", any "Secured Party", any "Party", any "Obligor", any "Subordinated Creditor" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this Deed and, in the case of the Security Agent, shall include any person for the time being appointed as a security agent in accordance with the Facility Agreement;
  - (ix) a provision of law is a reference to that provision as amended or re-enacted;
  - (x) a time of day is a reference to London time; and
  - (xi) the singular includes the plural (and vice versa).
- (b) Where the term "Secured Party" is used in, and construed for the purposes of, this Deed, a Hedge Counterparty and the Overdraft Provider shall be a Secured Party.
  - (c) The words "other" or "otherwise" and "whatsoever" when used in this Deed shall not be construed ejusdem generis or construed in a narrower way by reference to any preceding words.
  - (d) Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
  - (e) Section, Clause and Schedule headings are for ease of reference only.
  - (f) A Default (other than an Event of Default) is "continuing" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been waived.

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

The obligation of the Chargor under this Deed shall be in addition to the covenant 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 Law of Property (Miscellaneous Provisions) Act 1989**

To the extent necessary for any agreement for the disposition of the Secured 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.

**1.5 Third party rights**

A person who is not a Party (other than a permitted successor or assign, any Receiver or any Delegate) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

**1.6 Perpetuity period**

If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

**1.7 Security Agent provisions**

The Chargor agrees that the terms of clause 32 (*The Security Agent*) of the Facility Agreement are incorporated into this Deed as if those terms were set out in full in this Deed, with references to "the Agreement" being construed as a reference to this Deed.

**1.8 Conflict**

In the event of a conflict between the terms of:

- (a) this Deed and the Facility Agreement, the terms of the Facility Agreement shall prevail; or
- (b) this Deed and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall prevail,

to the extent permitted by law.

**1.9 Effect as a deed**

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

**2. COVENANT TO PAY**

The Chargor shall, on demand, pay to the Security Agent and discharge the Secured Liabilities when they become due.

**3. GRANT OF SECURITY**

**3.1 Floating charge**

As a continuing security for the payment, performance and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Security Agent (as agent and trustee for the Secured Parties), by way of first floating charge, all the undertaking, property, assets and rights of the Chargor whatsoever, present and future.

### **3.2 Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by Clause 3.1 (*Floating Charge*).

### **3.3 Automatic crystallisation of floating charge**

Notwithstanding Clause 3.4 (*Crystallisation of floating charge by notice*) and without prejudice to any law which may have similar effect, the floating charge created by Clause 3.1 (*Floating Charge*) shall automatically and immediately (without notice) be converted into a fixed charge over all of the undertaking and the assets subject to that floating charge if:

- (a) the Chargor:
  - (i) creates, or attempts to create, without the prior written consent of the Security Agent, any Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this Deed or the Facility Agreement); or
  - (ii) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);
- (b) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or
- (c) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor.

### **3.4 Crystallisation of floating charge by notice**

The Security Agent may, acting on behalf and under the instruction of the Majority Lenders, by written notice to the Chargor, convert the floating charge created under this Deed into a fixed charge as regards any part of the Secured Assets specified by the Security Agent in that notice if:

- (a) an Event of Default occurs and is continuing; or
- (b) the Security Agent considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

### **3.5 Assets acquired after any floating charge has crystallised**

Any asset acquired by the Chargor after any crystallisation of the floating charge created under this Deed that, but for that crystallisation, would be subject to a floating charge under this Deed, shall (unless the Security Agent confirms otherwise to the Chargor in writing) be charged to the Security Agent by way of first fixed charge.

## **4. FURTHER ASSURANCE**

### **4.1 Further assurance**

- (a) The Chargor shall, at its own expense, take whatever action is required in accordance with clause 27.16 (*Transaction Security Documents and Further Assurance*) of the Facility Agreement.

- (b) Without prejudice to the obligations of the Chargor under paragraph (a) above and Clause 6.4 (*Notification to the Oil and Gas Authority of the United Kingdom*), the Chargor shall, at the direction of the Security Agent given at any time, immediately execute and deliver to the Security Agent all transfers and other documents and do all such things as may be necessary or desirable:
  - (i) to register all or any of the Secured Assets in the name of the Security Agent or its nominee after the Security constituted by this Deed has become enforceable and/or the occurrence of any of the events set out in Clauses 3.3 (*Automatic crystallisation of floating charge*) and 3.4 (*Crystallisation of floating charge by notice*);
  - (ii) for creating, registering, perfecting, maintaining or protecting the Security created by this Deed;
  - (iii) for creating a fixed charge over any of the Secured Assets after the Security constituted by this Deed has become enforceable and/or the occurrence of any of the events set out in Clauses 3.3 (*Automatic crystallisation of floating charge*) and 3.4 (*Crystallisation of floating charge by notice*); and/or
  - (iv) to facilitate the realisation of all or any of the Secured Assets after the Security constituted by this Deed has become enforceable, or the exercise of any right, power or discretion vested in the Security Agent or any Delegate in relation to any Secured Assets or this Deed.

#### 4.2 Avoidance of payment and reinstatement

- (a) No amount paid, repaid or credited to a Secured Party shall be deemed to have been irrevocably paid if the Security Agent considers that the payment or credit of such amount is capable of being avoided or reduced because of any laws applicable on bankruptcy, insolvency, liquidation or any similar laws.
- (b) If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any Security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Chargor will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### 4.3 Waiver of defences

The obligations of the Chargor under this Deed will not be affected by an act, omission, matter or thing which, but for this Clause 4.3 would reduce, release or prejudice any of its obligations under this Clause 4.3 (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, the Chargor, any Obligor or other person;
- (b) the release of the Chargor, any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, the Chargor, any Obligor or other person or any non-presentation or non-observance of any

formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security; or
- (g) any insolvency or similar proceedings.

#### **4.4 Chargor Intent**

Without prejudice to the generality of Clause 4.3 (*Waiver of defences*), the Chargor expressly confirms that it intends that this Security shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **4.5 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 person before claiming from the Chargor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### **4.6 Appropriations**

Until all Secured Liabilities have been irrevocably paid in full, each Secured Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, Security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Deed.

#### **4.7 Deferral of Chargor's rights**

Until all Secured Liabilities have been irrevocably paid in full and unless the Security Agent otherwise directs, the Chargor will not exercise any rights which it may have by reason of

performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Deed:

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

If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the Agent may direct for application in accordance with the Facility Agreement.

## **5. REPRESENTATIONS AND WARRANTIES**

The Chargor makes the representations and warranties set out in this Clause 5 to the Security Agent (as agent and trustee for the Secured Parties).

### **5.1 Ownership of Secured Assets**

The Chargor is the legal and beneficial owner of the Secured Assets, free from any Security other than the Security created by this Deed and any Security created in connection with the Junior Facility Agreement.

### **5.2 No adverse claims**

The Chargor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

### **5.3 No conflicting rights or breaches**

- (a) This Deed does not and will not conflict with or result in any breach or constitute a default under any agreement, instrument or obligation to which the Chargor is a party or by which it is bound.
- (b) The entry into this Deed by the Chargor does not, and will not, constitute a breach of any agreement or instrument binding on the Chargor or its assets.

**5.4 Enforceable security**

Subject to the qualifications set out in the legal opinions delivered in connection with this Deed, this Deed constitutes the legal, valid, binding and enforceable obligations of the Chargor, and is and will continue to be effective Security over all and every part of the Secured Assets in accordance with its terms.

**5.5 Avoidance of security**

Subject to the qualifications set out in the legal opinions delivered in connection with this Deed, no Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

**5.6 Times for making representations and warranties**

The representations and warranties set out in this Clause 5 are made by the Chargor on the date of this Deed and shall be deemed to be Repeating Representations and repeated by the Chargor on the dates set out in clause 24.32(c) (*Times when representations made*) of the Facility Agreement with reference to the facts and circumstances then existing.

**6. GENERAL COVENANTS**

The Chargor covenants with the Security Agent, during the Security Period, in accordance with the terms set out in this Clause 6 (*General covenants*).

**6.1 Negative pledge and disposal restrictions**

The Chargor shall not at any time:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Assets other than any Security created by this Deed;
- (b) sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Secured Assets; or
- (c) create or grant (or purport to create or grant) any interest in any Secured Assets in favour of a third party.

in each case, except as expressly permitted by the Facility Agreement.

**6.2 No adverse actions or variations**

The Chargor shall not cause or permit to be done anything which may adversely affect the Security created by this Deed or which is a variation or abrogation of the rights attaching to or conferred on all or any part of the Secured Assets by this Deed, without the prior written consent of the Security Agent.

**6.3 Compliance with laws and regulations**

The Chargor shall:

- (a) obtain, and promptly renew from time to time, and comply with the terms of all Authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and

- (b) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

#### **6.4 Notification to the Oil and Gas Authority of the United Kingdom**

The Chargor must promptly and, in any event, within 10 days of (i) this Deed and (ii) the acquisition of any UK petroleum licences after the date of this Deed, deliver to the Oil and Gas Authority of the United Kingdom a notice in form and substance satisfactory to the Security Agent of the creation of the charge under this Deed pursuant to and in accordance with the Open Permission (Creation of Security Rights over Licences) 2012 granted by the Secretary of State on 6 February 2012.

#### **6.5 Enforcement of rights**

The Chargor shall use its best endeavours to:

- (a) procure the prompt observance and performance of the covenants and other obligations imposed on the Chargor's counterparties; and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets which the Security Agent may require from time to time.

#### **6.6 Notice of misrepresentation and breaches**

The Chargor shall, promptly on becoming aware of any of the same, give the Security Agent notice in writing of:

- (a) any representation or warranty set out in this Deed that is incorrect or misleading when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this Deed.

#### **6.7 Information**

The Chargor shall:

- (a) give the Security Agent such information concerning the location, condition, use and operation of the Secured Assets as the Security Agent may require;
- (b) permit any persons designated by the Security Agent and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- (c) promptly notify the Security Agent in writing of any action, claim or demand made by or against it in connection with any Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim or demand, together with, in each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim or demand and shall, subject to the Security Agent's prior approval, implement those proposals at its own expense.

#### **6.8 Payment of outgoings**

The Chargor shall promptly pay all Taxes, fees, licence duties, registration charges, Insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Security Agent.

## **7. WHEN SECURITY BECOMES ENFORCEABLE**

At any time on or after the occurrence of an Event of Default which is continuing, the Security created pursuant to this Deed shall be immediately enforceable and the Security Agent may in its absolute discretion and without further notice to the Chargor or the prior authorisation of any court:

- (a) enforce all or any part of the Security created by this Deed and take possession of or dispose of all or any of the Secured Assets in each case at such times and upon such terms as it sees fit; and
- (b) whether or not the Security Agent has appointed a Receiver, exercise all of the powers, authorities and discretions:
  - (i) conferred from time to time on mortgagees by the LPA 1925 (as varied or extended by this Deed) or by law; and/or
  - (ii) granted to a Receiver by this Deed or by law.

## **8. POWERS OF THE SECURITY AGENT**

### **8.1 Power to remedy**

- (a) The Security Agent shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this Deed.
- (b) The Chargor irrevocably authorises the Security Agent and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Security Agent in remedying a breach by the Chargor of its obligations contained in this Deed shall be reimbursed by the Chargor to the Security Agent on a full indemnity basis and shall carry interest in accordance with clause 21 (*Costs and Expenses*) of the Facility Agreement.

### **8.2 Exercise of rights**

- (a) The rights of the Security Agent under Clause 8.1(a) (*Power to remedy*) are without prejudice to any other rights of the Security Agent under this Deed. The exercise of any rights of the Security Agent under this Deed shall not make the Security Agent liable to account as a mortgagee in possession.
- (b) The Security Agent shall not, in connection with the Secured Assets, have any duty or incur any liability for:
  - (i) any loss on realisation;
  - (ii) any failure to present any interest coupon or other document in respect of the Secured Assets;
  - (iii) ascertaining or taking action in respect of any calls, instalments, conversions, exchanges, maturities, tenders or other matters relating to any Secured Assets or the nature or sufficiency of any payment whether or not the Security Agent has or is deemed to have knowledge of such matters; or
  - (iv) taking any necessary steps to preserve rights against prior parties or any other rights relating to any of the Secured Assets;



- (v) any negligence or default by its nominees; or
- (vi) any other loss of any nature whatsoever arising as a result of the exercise or non-exercise of any rights or powers attaching or accruing to the Secured Assets which may be exercised by the Security Agent (or its nominee).

### **8.3 Protection of interests**

The powers conferred on the Security Agent by this Deed are solely to protect its interests in the Secured Assets and shall not impose any duty on the Security Agent to exercise any of those powers.

### **8.4 Security Agent has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by law or by this Deed on a Receiver may, after the Security constituted by this Deed has become enforceable, be exercised by the Security Agent in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

### **8.5 New accounts**

- (a) If the Security Agent receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Security Agent may open a new account for the Chargor in the Security Agent's books. Without prejudice to the Security Agent's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Security Agent does not open a new account immediately on receipt of the notice, or deemed notice, under Clause 8.5(a) (*New accounts*) then, unless the Security Agent gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Security Agent shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Security Agent.

### **8.6 Indulgence**

The Security Agent may, at the instruction of the Majority Lenders, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a Party (whether or not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Deed or to the liability of the Chargor for the Secured Liabilities.

### **8.7 Appointment of an Administrator**

- (a) The Security Agent may, without notice to the Chargor, appoint any one or more persons to be an Administrator of the Chargor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Deed becomes enforceable.
- (b) Any appointment under this Clause 8.7 (*Appointment of an Administrator*) shall:
  - (i) be in writing signed by a duly authorised signatory of the Security Agent; and

- (ii) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- (c) The Security Agent may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this Clause 8.7 (*Appointment of an Administrator*) appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

## **9. ENFORCEMENT OF SECURITY**

### **9.1 Enforcement**

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall, as between the Security Agent and a purchaser from the Security Agent, arise on and be exercisable at any time after the execution of this Deed, but the Security Agent shall not exercise such power of sale or other powers until the Security constituted by this Deed has become enforceable under Clause 7 (*When Security becomes enforceable*).
- (b) Section 103 of the LPA 1925 does not apply to the Security constituted by this Deed.

### **9.2 Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Security Agent and any Receiver, at any time after the Security constituted by this Deed has become enforceable, whether in its own name or in that of the Chargor, to:

- (a) grant a lease or agreement to lease;
- (b) accept surrenders of leases; or
- (c) grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Chargor, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Security Agent or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

### **9.3 Access on enforcement**

- (a) At any time after the Security Agent has demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this Deed or the Facility Agreement, the Chargor will allow the Security Agent or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Security Agent or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Chargor for, or by any reason of, that entry.
- (b) At all times, the Chargor must use its best endeavours to allow the Security Agent or its Receiver access to any premises for the purpose of Clause 9.3(a) (including

obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

#### **9.4 Prior Security**

At any time after the Security constituted by this Deed has become enforceable, or after any powers conferred by any Security having priority to this Deed shall have become exercisable, the Security Agent may:

- (a) redeem that or any other prior Security;
- (b) procure the transfer of that Security to it; and
- (c) settle and pass any account of the holder of any prior Security.

Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor. All monies paid by the Security Agent to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Security Agent, be due from the Chargor to the Security Agent on current account and shall bear interest at the default rate of interest specified in the Facility Agreement and be secured as part of the Secured Liabilities.

#### **9.5 Protection of third parties**

- (a) No purchaser, mortgagee or other person dealing with the Security Agent, any Receiver or Delegate shall be concerned to enquire:
  - (i) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
  - (ii) whether any power the Security Agent, a Receiver or Delegate is purporting to exercise, pursuant to any Finance Document, has become exercisable or is properly exercisable;
  - (iii) whether any consents, directions, regulations or restrictions relating to such rights have been obtained or complied with;
  - (iv) otherwise as to the propriety or regularity of acts intended, or purporting, to be in exercise of any such rights; or
  - (v) as to the application of any money paid to the Security Agent, any Receiver or any Delegate.
- (b) All the protection to purchasers contained in sections 104 and 107 of the LPA 1925, section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any other Secured Party, any Receiver or any Delegate.

#### **9.6 Privileges**

Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

**9.7 No liability as mortgagee in possession**

Neither the Security Agent, any Receiver, any Delegate nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

**9.8 Conclusive discharge to purchasers**

The receipt of the Security Agent or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Security Agent, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

**9.9 Right of appropriation**

(a) To the extent that:

- (i) the Secured Assets constitute Financial Collateral; and
- (ii) this Deed and the obligations of the Chargor under it constitute a Security Financial Collateral Arrangement,

the Security Agent shall have the right, at any time after the Security constituted by this Deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Security Agent may, in its absolute discretion, determine.

(b) The value of any Secured Assets appropriated in accordance with this Clause 9.9 shall be the price of those Secured Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by any other method that the Security Agent may select (including independent valuation).

(c) The Chargor agrees that the methods of valuation provided for in this Clause 9.9 are commercially reasonable for the purposes of the Financial Collateral Regulations.

**10. RECEIVER**

**10.1 Appointment**

At any time after the Security constituted by this Deed has become enforceable, or at the request of the Chargor, the Security Agent may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

**10.2 Removal**

The Security Agent may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **10.3 Remuneration**

Subject to Section 36 of the Insolvency Act 1986, the Security Agent may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this Deed, which shall be due and payable immediately on its being paid by the Security Agent.

### **10.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Security Agent under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

### **10.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Security Agent despite any prior appointment in respect of all or any part of the Secured Assets.

### **10.6 Agent of the Chargor**

Any Receiver appointed by the Security Agent under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Security Agent.

## **11. POWERS OF RECEIVER**

### **11.1 General**

- (a) Any Receiver appointed by the Security Agent under this Deed shall, in addition to the powers conferred on him by statute, have the powers set out in this Deed and have all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver).
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.
- (c) Any exercise by a Receiver of any of the powers given by Clause 11 (*Powers of Receiver*) may be on behalf of the Chargor, the directors of the Chargor (in the case of the power contained in Clause 11.11 (*Make calls on Chargor members*)) or himself.

### **11.2 Employ personnel and advisors**

A Receiver may provide services and employ, or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he thinks fit. A Receiver may discharge any such person or any such person appointed by the Chargor.

**11.3 Make VAT elections**

A Receiver may make, exercise or revoke any value added tax option to any Tax as he thinks fit.

**11.4 Remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Security Agent may prescribe or agree with him.

**11.5 Realise Secured Assets**

A Receiver may collect and get in the Secured Assets or any part of them in respect of which he is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.

**11.6 Manage or reconstruct the Chargor's business**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Chargor.

**11.7 Disposal of Secured Assets**

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which he is appointed in any manner (including by public auction or private sale) and generally on any terms and conditions as he thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

**11.8 Valid receipts**

A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.

**11.9 Make settlements**

A Receiver may make any arrangement, settlement or compromise between the Chargor and any other person that he may think expedient.

**11.10 Bring proceedings**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as he thinks fit.

**11.11 Make calls on Chargor members**

A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Chargor on its directors in respect of calls authorised to be made by them.

#### **11.12 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 19.4 (*Indemnity to Security Agent*) of the Facility Agreement, effect with any insurer any policy of Insurance either in lieu or satisfaction of, or in addition to, the Insurance required to be maintained by the Chargor under this Deed.

#### **11.13 Powers under the LPA 1925**

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

#### **11.14 Borrow**

A Receiver may, for any of the purposes authorised by this Clause 11 (*Powers of Receiver*), raise money by borrowing from the Security Agent (or from any other person) either unsecured or on the Security of all or any of the Secured Assets in respect of which he is appointed on any terms that he thinks fit (including, if the Security Agent consents, terms under which that security ranks in priority to this Deed).

#### **11.15 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

#### **11.16 Absolute beneficial owner**

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.

#### **11.17 Incidental powers**

A Receiver may do any other acts and things:

- (a) that he may consider desirable or necessary for realising any of the Secured Assets;
- (b) that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law; and
- (c) that he lawfully may or can do as agent for the Chargor.

### **12. DELEGATION**

#### **12.1 Delegation**

The Security Agent or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney granted under Clause 14.1 (*Appointment of Attorneys*)).

## **12.2 Terms**

The Security Agent and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

## **12.3 Liability**

Neither the Security Agent nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

## **13. APPLICATION OF PROCEEDS**

### **13.1 Order of application of proceeds**

All monies received or recovered by the Security Agent, any Receiver or any Delegate pursuant to this Deed, after the security constituted by this Deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

- (a) in or towards payment of or provision for all costs, charges, expenses, losses and liabilities of, or incurred by, or on behalf of, the Security Agent (and any Receiver, Delegate, attorney or agent appointed by it) under, or in connection with, or incidental to, this Deed and the appointment of any Receiver or Delegate and the exercise of his rights, including his remuneration under or in connection with this Deed;
- (b) in or towards payment of or provision for the Secured Liabilities in accordance with clause 38.6 (*Partial Payments*) of the Facility Agreement; and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.

### **13.2 Appropriation**

Neither the Security Agent, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

### **13.3 Suspense account**

All monies received by the Security Agent, a Receiver or a Delegate under this Deed:

- (a) may, at the discretion of the Security Agent, Receiver or Delegate, be credited to any suspense or securities realised account;
- (b) shall bear interest, if any, in accordance with clause 13 (*Interest*) of the Facility Agreement; and
- (c) may be held in that account for so long as the Security Agent, Receiver or Delegate thinks fit.



#### **14. POWER OF ATTORNEY**

##### **14.1 Appointment of attorneys**

By way of security, the Chargor irrevocably appoints the Security Agent, every Receiver and every Delegate severally as its attorneys (with full power of substitution) in its name, on its behalf, or otherwise, at such time and in such manner as the attorney thinks fit, to execute any documents, exercise any rights and do any acts and things that:

- (a) the Chargor is required to execute, exercise and do under any Finance Document to which it is a party (including to execute charges over, transfers, conveyances, assignments and assurances of, and other instruments, notices, orders and directions relating to, the Secured Assets); and
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Security Agent, any Receiver or any Delegate in relation to the Secured Assets or under any Finance Document, the LPA 1925 or the Insolvency Act 1986.

##### **14.2 Ratification of acts of attorneys**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in Clause 14.1 (*Appointment of Attorneys*).

#### **15. RELEASE**

##### **15.1 Security Period**

Subject to Clause 15.2 (*Discharge conditional*), on the expiry of the Security Period (but not otherwise), the Security Agent shall, at the request and cost of the Chargor, take whatever action is necessary to:

- (a) release the Secured Assets from the Security constituted by this Deed; and
- (b) reassign the Secured Assets to the Chargor.

##### **15.2 Discharge conditional**

Any release, discharge or settlement between the Chargor and the Security Agent shall be deemed conditional on no payment or Security received by the Security Agent or any other Secured Party in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Security Agent or its nominee may retain this Deed and the Security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Security Agent deems necessary to provide the Security Agent with security against any such avoidance, reduction or order for refund; and
- (b) the Security Agent may recover the value or amount of such Security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

**16. ASSIGNMENT AND TRANSFER**

**16.1 Assignment by Security Agent**

- (a) At any time, without the consent of the Chargor, the Security Agent may assign or transfer the whole or any part of the Security Agent's rights and/or obligations under this Deed to any person.
- (b) The Security Agent may disclose to any actual or proposed assignee or transferee any information about the Chargor, the Secured Assets and this Deed that the Security Agent considers appropriate.

**16.2 Assignment by Chargor**

The Chargor may not assign any of its rights, or transfer any of its obligations, under this Deed, or enter into any transaction that would result in any of those rights or obligations passing to another person.

**17. FURTHER PROVISIONS**

**17.1 Independent security**

This Deed shall be in addition to, and independent of, any other security or guarantee that the Security Agent may hold for any of the Secured Liabilities at any time. No prior security held by the Security Agent or any other Secured Party over the whole or any part of the Secured Assets shall merge in the security created by this Deed.

**17.2 Continuing security**

This Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, notwithstanding any settlement of account, or intermediate payment, or other matter or thing, unless and until the Security Agent discharges this Deed in writing.

**17.3 Certificates**

A certificate or determination by the Security Agent as to any rate or amount for the time being due to it from the Chargor under this Deed shall be, in the absence of any manifest error, conclusive evidence of the matters to which it relates.

**17.4 Partial invalidity**

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

**17.5 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Secured Party any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of any Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

**17.6 Property**

This Deed is and will remain the property of the Security Agent.

**17.7 Amendments**

Clause 44 (*Amendments and waivers*) of the Facility Agreement shall apply to this Deed *mutatis mutandis* as if the same had been set out herein in full

**17.8 Enforcement costs and expenses**

The Chargor shall, on demand reimburse each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, this Deed.

**17.9 Indemnity**

- (a) The Chargor shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
  - (i) any failure by any Obligor to comply with clause 21 (*Costs and expenses*) of the Facility Agreement;
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Security created pursuant to this Deed;
  - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by this Deed or by law;
  - (v) acting as Security Agent, Receiver or Delegate under this Deed or which otherwise relates to any of the Secured Assets (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver, attorney, delegate, manager, agent or other person appointed by the Security Agent (each a "Relevant Person") hereunder shall be entitled to be indemnified out of the Secured Assets or any part thereof in respect of all liabilities and expenses incurred by it or him in the execution of any of the powers, authorities or discretions vested in it or him pursuant to this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the Secured Assets or any part of them (other than by reason of such Relevant Person's gross negligence or wilful misconduct). The Security Agent and any such Receiver may retain and pay all sums in respect of which it is indemnified out of any monies received by it under the powers conferred by this Deed.
- (c) The Chargor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 17.9 will not be prejudiced by any release of Security or disposal of assets.

#### 17.10 Set off

- (a) A Secured Party may set off any matured obligation due from the Chargor under the Finance Documents (to the extent beneficially owned by that Secured Party) against any matured obligation owed by that Secured Party to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (b) All payments to be made by the Chargor under this Deed shall be made without any setoff, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If the Chargor is compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to the Security Agent under this Deed or, if any such withholding or deduction is made in respect of any recovery under this Deed, the Chargor shall pay such additional amount so as to ensure that the net amount received by the Security Agent shall equal the full amount due to it under the provisions of this Deed had no such withholding or deduction been made.

#### 17.11 Stamp Taxes

The Chargor shall pay immediately on demand to the Security Agent a sum equal to any liability which the Security Agent incurs in respect of any stamp duty, registration fees and other taxes which is or becomes payable in connection with the entry into, performance or enforcement of this Deed (including any interest, penalties, liabilities, costs and expenses resulting from any failure to pay or delay in paying any such duty, fee or tax).

#### 17.12 Tax

Clause 17 (*Tax Gross up and indemnities*) of the Facility Agreement shall apply to this Deed *mutatis mutandis* as if the same had been set out in full herein with references in such clause to:

- (a) "Obligors" being construed as if the context so requires a reference to the Chargor;
- (b) the "Agreement" being construed as a reference to this Deed; and
- (c) the "Agent" being, if the context so requires, construed as a reference to the Security Agent.

#### 17.13 Currency of Payment

- (a) The obligation of the Chargor under this Deed to make payments in any currency shall not be discharged or satisfied by any tender, or recovery pursuant to any judgment or otherwise, expressed in or converted into any other currency, except to the extent that tender or recovery results in the effective receipt by the Security Agent of the full amount of the currency expressed to be payable under this Deed. To the extent that there is a shortfall between the amount of receipt in one currency and the amount due under this Deed in the original currency then the Security Agent shall have a further separate cause of action against the Chargor and shall be entitled to enforce the security created over the Secured Assets to recover the amount of that shortfall.

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

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

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

- (c) The Chargor waives any right it may have in any jurisdiction to pay any amount under this Deed in a currency or currency unit other than that in which it is expressed to be payable.

#### **17.14 Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this Deed.

#### **17.15 Counterparts**

This Deed may be executed in any number of counterparts which, together, have the same effect as if the signatures on the counterparts were on a single copy of this Deed.

### **18. NOTICES**

#### **18.1 Communications**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by letter or email.

#### **18.2 Addresses**

The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is:

- (b) in the case of the Chargor:

- (i) Address: 1 Exchange Crescent, Conference Square, Edinburgh,  
Lothian, EH3 8UL  
  
Copy to: Parnassusweg 815, 1082 LZ Amsterdam, The Netherlands  
  
Attention: Board of Directors
- (ii) Fax: +31 20 5354 122
- (iii) Email: notices@dyas.com and notices@onedyas.com

(c) in the case of the Security Agent:

(i) Address: Gustav Mahlerlaan 10, 1082 PP Amsterdam, The Netherlands,  
PAC HQ9037

Attention: Agency Team I

(ii) Email: abn.amro.agency.team.1@nl.abnamro.com

or any substitute address, email address or department or officer as a Party may notify to the other Party, by not less than five Business Days' notice.

### 18.3 Delivery

(a) Any communication or document made or delivered by one Party to another Party under or in connection with this Deed will only be effective if:

(i) by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

(ii) by way of email, when actually received in readable form,

and, if a particular department or officer is specified as part of its address details provided under Clause 18.2 (*Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified (or any substitute department or officer as the Security Agent shall specify for this purpose).

(c) Any communication or document which becomes effective, in accordance with paragraphs (a) and (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### 18.4 English language

(a) Any notice given under or in connection with this Deed must be in English.

(b) All other documents provided under or in connection with this Deed must be:

(i) in English; or

(ii) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## 19. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the law of England and Wales.

## **20. ENFORCEMENT**

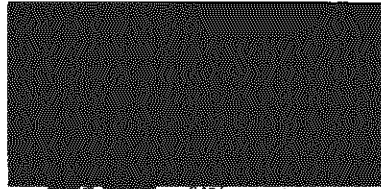
- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "Dispute").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 20 is for the benefit of the Security Agent only. As a result, the Security Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.

This Deed has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## SIGNATORIES

**Chargor**

**EXECUTED AS A DEED by )**  
**ONE-DYAS MARINER )**  
**LIMITED )**  
acting by two Directors



(Signature of Director)

Name: **C.H. de Ruyter van Steveninck**  
Director



(Signature of Director)

Name:

*[Signature page to Floating Charge (ONE-Dyas Mariner Limited)]*



**Security Agent**

Signed for and on behalf of ABN AMRO  
Bank N.V., as Security Agent by:

Authorised Signatory

Name:

J. Kok

Title:

Proxy Holder

Authorised Signatory

Name:

L. van Keulen-vesthuis

Title:

Proxy Holder

*[Signature page to Floating Charge (ONE-Dyas Mariner Limited)]*